

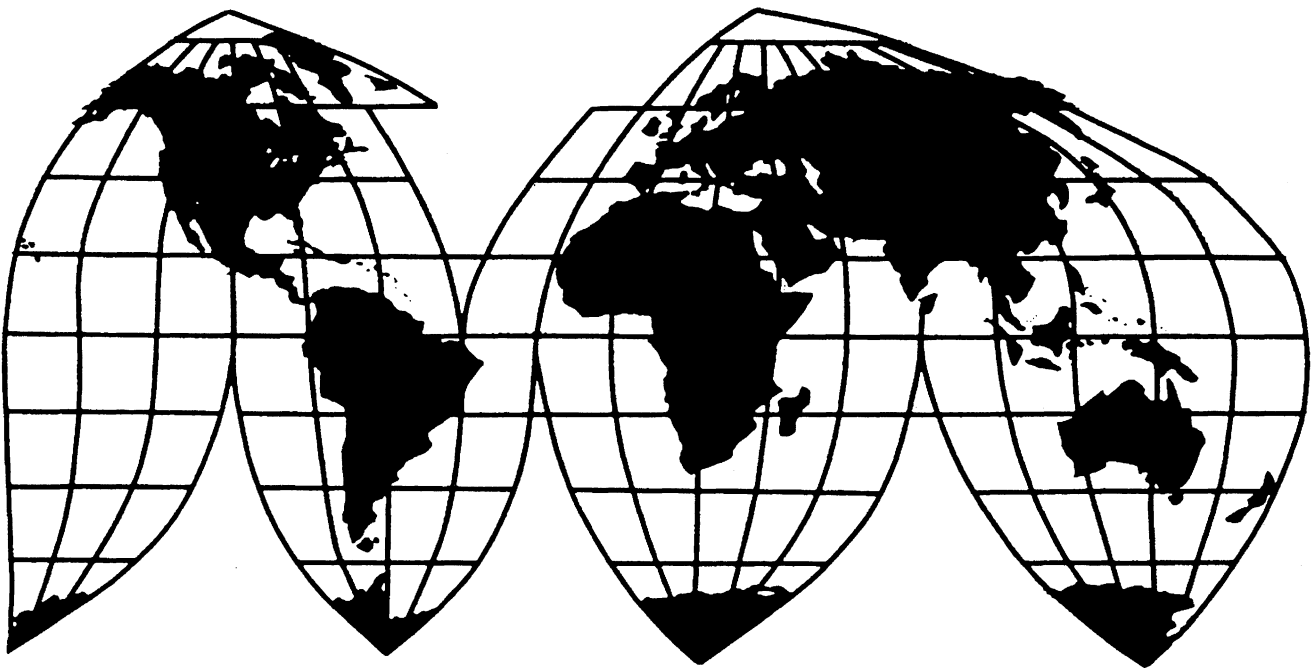
Elastic Rubber Tape From India

Investigation No. 701-TA-383 (Preliminary) and
Investigation No. 731-TA-805 (Preliminary)

Publication 3133

October 1998

U.S. International Trade Commission



U.S. International Trade Commission

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Note.—Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 701-TA-383 (Preliminary) and Investigation No. 731-TA-805 (Preliminary)

ELASTIC RUBBER TAPE FROM INDIA

DETERMINATION

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission determines,² pursuant to section 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from India of elastic rubber tape, provided for in subheading 4008.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and sold in the United States at less than fair value (LTFV).

COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigations under section 703(b) or 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in these investigations under section 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

BACKGROUND

On August 18, 1998, a petition was filed with the Commission and the Department of Commerce by Fulflex, Inc., Middletown, RI; and two subsidiaries of M-Tec Corp., Elastomer Technologies Group, Inc., Stuart, VA, and RM Engineered Products, Inc., North Charleston, SC, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and LTFV imports of elastic rubber tape from India. Accordingly, effective August 18, 1998, the Commission instituted countervailing duty investigation No. 701-TA-383 (Preliminary) and antidumping investigation No. 731-TA-805 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in

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

² Commissioner Askey dissenting.

connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of August 25, 1998 (63 FR 45255). The conference was held in Washington, DC, on September 8, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in these investigations, we find that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of elastic rubber tape (“ERT”) from India that are allegedly subsidized and sold in the United States at less than fair value (“LTFV”).¹

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determinations, whether there is a reasonable indication that a domestic industry is materially injured, or threatened with material injury, by reason of the allegedly unfairly traded imports.² In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”³

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of the subject imports, the Commission first defines the “domestic like product” and the “industry.”⁴ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant industry as the “producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁵ In turn, the Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation.”⁶

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁷ No single factor is dispositive, and the Commission

¹ Commissioner Askey determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise from India. See Dissenting Views of Commissioner Thelma J. Askey.

² 19 U.S.C. §§ 1671b(a), 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994 (Fed. Cir. 1986); Calabrian Corp. v. United States, 794 F. Supp. 377, 381 (Ct. Int’l Trade 1992).

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

⁴ 19 U.S.C. § 1677(4)(A).

⁵ *Id.*

⁶ 19 U.S.C. § 1677(10).

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

may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁹ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly subsidized and sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description

Commerce has defined the imported merchandise within the scope of these investigations as ERT, consisting of:

vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness, and 1/8 inches to 1 5/8 inches (3 mm to 42 mm) in width. Such product is generally used in swimwear and underwear.¹¹

Similar to a household rubber band in appearance and elasticity, ERT consists of a rubber strip that is incorporated into various articles to provide elasticity.¹² The bulk of ERT is consumed in the production of the trimming and leg openings in underwear and swimwear.¹³ ERT is not visible on the face of the garment, but is instead drawn into a tunnel of fabric made in the hem or seam of the garment.¹⁴

Most ERT is produced from a natural rubber compound, consisting of natural rubber and various chemical additives. A far smaller amount of ERT is made from a compound containing synthetic rubber, or a blend of synthetic and natural rubber.¹⁵ The rubber compound is rolled into sheets of varying thickness, which are then slit to the desired width.¹⁶

C. Domestic Like Product Issues

Petitioners asserted that the domestic like product should be co-extensive with the subject merchandise. Respondents argued that the domestic like product should be broader, and include crocheted

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

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

¹⁰ Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹¹ 63 Fed. Reg. 49546, 49546 (Sept. 16, 1998) (antidumping), 63 Fed. Reg. 49549, 49549 (Sept. 16, 1998) (countervailing duty). The scope definition further explains that the merchandise subject to the investigations "is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive." *Id.*

¹² Petition at 5 (ERT similar to a rubber band); confidential staff report ("CR") at I-3; public staff report ("PR") at I-2.

¹³ CR at I-3; PR at I-2. Other products incorporating ERT include fitted bed sheets, disposable health care products such as surgical masks, and the inside pockets of luggage. CR at I-3; PR at I-2.

¹⁴ CR at I-3; PR at I-2.

¹⁵ CR at I-3 to I-4; PR at I-3. On a quantity basis, sales of synthetic ERT accounted for *** percent of total sales of ERT by Elastotec and *** percent of sales by Fulflex in 1997. CR at II-6; PR at II-4.

¹⁶ CR at I-3 to I-4; PR at I-3.

elastic tape (“CET”).¹⁷ CET is made by crocheting or otherwise combining a textile yarn such as nylon or cotton with an elastic thread into a flat ribbon or tape.¹⁸ As discussed below, we determine not to include CET in the domestic like product in these preliminary determinations.

1. Physical Characteristics and Uses

Although both products consist of strips of elastic tape or ribbon, ERT and CET differ in physical characteristics. ERT consists of a single piece of vulcanized rubber, whereas CET consists of elastic and textile threads that are crocheted (or knitted, woven, or braided) together.¹⁹ The elastic thread component of CET may, in addition, be wrapped with a textile before being combined with the textile thread.²⁰ Record evidence indicates that the textile component of CET predominates over the elastic component, while ERT is essentially a rubber product.²¹ As a result, CET is less elastic than ERT.²²

These differences in physical characteristics generally cause ERT and CET to be used differently, although there are some overlapping uses as well. Both products are used to provide elasticity to the openings of garments, but generally in different ways. CET is used in uncovered elastic bands, such as the waistband in men’s briefs, and thus comes into contact with the skin of the wearer.²³ ERT is not used in uncovered elastic bands for reasons of fashion and comfort, and because the natural latex rubber used to produce most ERT creates an allergic reaction in a certain percentage of the population.²⁴

ERT is instead used in covered elastic bands. Covered elastic bands are made by drawing a strip of elastic material into a tunnel of fabric in the hem or seam of a garment.²⁵ The elastic insert is therefore covered and does not come into contact with the skin of the wearer. Although CET can also be used as elastic inserts, it appears that the proportion of CET elastic inserts in swimwear and underwear is declining.²⁶

¹⁷ The Respondents Garware Elastomerics, Ltd. (the Indian foreign producer) and Elastomer, Inc. (the larger of the two U.S. importers) variously referred to the additional product they urged consideration of as “CET,” “knitted rubber tape,” and “knitted elastic tape (also called braided or crocheted).” Transcript of Sept. 8, 1998 conference (“conference tr.”) at 61; Respondents’ Postconference Brief at 1, 5.

¹⁸ CR at I-6; PR at I-4; Respondents’ Postconference Brief at Exhibit 1, page 6.

¹⁹ CR at I-4 and I-6; PR at I-3 and I-4.

²⁰ Respondents’ Postconference Brief at 5, and at Exhibit 1, pages 4 & 6 (containing the 10-K report of Worldtex, Inc., describing the wrapping of elastic threads used in CET).

²¹ Conference tr. at 14 (testimony of Douglas Booth, president of petitioner Elastotec) (CET may be only 20 percent elastic thread, with cotton, polyester or nylon comprising the primary component).

²² CR at I-6, PR at I-4.

²³ Conference tr. at 14 (Booth), 67 (testimony of John Mitchell, president of Global Trading of Martinsville, Inc., for Respondents) (CET does not always require tunneling, resulting in a sewing savings to the garment manufacturer).

²⁴ *Id.* at 14-15 (Booth), 35-37 (testimony of F. David Foster, counsel for Petitioners; Booth; and William E. Russell, president of Petitioner Fulflex, Inc.), 67-69 (Mitchell).

²⁵ CR at I-3, PR at I-2.

²⁶ Respondents’ Postconference Brief at Exhibit 2 (letter by garment manufacturer *** indicating that CET can be used as “insert elastics . . . covered with fabric,” but also indicating that most of the leg bindings in that company’s men’s briefs are now made using ERT instead of CET, and indicating further that the company was considering replacing other CET elastic inserts with ERT); Respondents’ Postconference Brief at 7 (indicating that CET is knitted into the garment, whereas ERT must be “tunneled” into it, suggesting that CET primarily is used as uncovered elastic bands (which can be knitted into the garment) and that ERT is used as covered elastic bands (because they must be “tunneled”)); and telephone notes from Sept. 28, 1998 conversation with *** (indicating that the swimsuit maker formerly used CET in covered bands, but no longer does so because ERT is less expensive).

2. Interchangeability

Evidence indicates that interchangeability between ERT and CET is limited. The two products are not interchangeable for use in uncovered elastic bands (such as waistbands in men's briefs) because of fashion and comfort considerations and because ERT cannot come into contact with the skin due to possible allergic reaction. There is at least some interchangeability between ERT and CET, however, when used as covered elastic bands.²⁷

3. Channels of Distribution

It appears that the channels of distribution for ERT and CET are similar. Substantially all ERT is sold by ERT producers directly to end users.²⁸ CET likewise is sold directly to end users, although there is some evidence that it is also sold through distributors.²⁹

4. Production Facilities, Processes, and Employees

ERT is produced by rolling a rubber compound into a flat sheet by means of heavy equipment, and then slitting the sheet to the desired width.³⁰ CET is made by entirely different processes involving the crocheting, braiding, knitting, or weaving of textile threads together with elastic threads.³¹ The two products are also manufactured by different producers in different manufacturing facilities, using different employees.³²

5. Customer and Producer Perceptions

Customers and producers appear to perceive ERT and CET to be somewhat substitutable in covered elastic bands, but not in uncovered elastic bands. A major U.S. purchaser, ***, indicated that it had changed from using CET to ERT in certain types of covered elastic bands, and that it was considering replacing CET with ERT in other types of covered elastic bands as well.³³ As indicated above, however, it appears that the proportion of covered elastic bands using CET is declining. The two domestic producers perceive very little substitutability of ERT for purposes for which CET is usually used, *e.g.*, uncovered

²⁷ Respondents' Postconference Brief at Exhibit 2; telephone notes from Sept. 28, 1998 conversation with ***.

²⁸ CR at I-5, PR at I-4.

²⁹ Respondents' Postconference Brief at 6.

³⁰ CR at I-3 to I-4; PR at I-2 to I-3.

³¹ CR at I-6; PR at I-4 to I-5.

³² CR at I-6; PR at I-4 to I-5 (indicating that neither domestic producer produces CET). In addition, the textile and elastic thread component parts of CET used in apparel are also themselves usually made by processes different from those used in the production of ERT. The preparation of the textile thread, which can physically account for 80 percent of the product, requires specialized processes and equipment not used in the production of ERT. *Cf.* Open-End Spun Rayon Singles Yarn from Austria, 731-TA-751 (Final), USITC Pub. 3059 (Sept. 1997) at I-5 (describing processes not used in the production of ERT and illustrating that yarns generally require processes other than those used in the production of ERT). Most of the elastic rubber thread made in the United States for use in CET is extruded rubber thread. CR at I-6 to I-7; PR at I-4 (indicating that, although cut rubber thread is also used in the production of CET, most of the cut rubber thread made by the domestic industry is for use in golf balls). CR at I-6; PR at I-4 to I-5; Respondents' Postconference Brief, Exhibit 1, page 4. Extruded rubber thread is made by extruding a rubber latex mix through small holes, forming a continuous filament -- a capital intensive process not used in the production of ERT. CR at I-6; PR at I-4.

³³ Respondents' Postconference Brief at Exhibit 2, page 1.

waistbands.³⁴ In this regard, we note in particular their unsuccessful efforts in recent years to increase sales by selling ERT to purchasers that currently use CET instead. Further, the possibility of allergic reaction to ERT by some consumers makes producers reluctant to use it in exposed applications, such as uncovered waistbands.

6. Price

CET is more expensive than ERT, likely reflecting the additional manufacturing processes necessary to produce CET. The per pound price of CET is up to twice that of ERT.³⁵

7. Conclusion

We find that the record evidence in this preliminary phase of these investigations indicates a clear dividing line between ERT and CET.^{36 37} Accordingly, we do not include CET in the definition of the domestic like product in these preliminary determinations. In accordance with the foregoing, we define the domestic like product co-extensively with the scope of the subject merchandise as established by Commerce.³⁸

D. Domestic Industry

The domestic industry is defined as “the producers as a [w]hole of a domestic like product.”³⁹ In defining the domestic industry, the Commission’s general practice has been to include in the industry all of

³⁴ Conference tr. at 35-37 (Foster, Booth, Russell).

³⁵ Conference tr. at 14 (Booth). Respondents argued that the per pound difference is not significant because, for any given length, CET weighs less than ERT, and because CET is less expensive to incorporate into a garment. *Id.* at 67 (Mitchell); and Respondents’ Postconference Brief at 9. Evidence on the record tends to refute Respondents’ contention, however. A major purchaser, (***) indicated that it expected “considerable” cost savings by replacing CET used in covered elastic bands with ERT. Respondents’ Postconference Brief at Exhibit 2. Another purchaser reported that in its ***. Telephone notes from conversation with ***, September 28, 1998.

³⁶ Because the information currently on the record is sufficient to demonstrate a clear dividing line between ERT and CET, we do not intend to gather additional information on this question in any final phase of these investigations.

³⁷ Commissioner Crawford notes that she intends to gather additional information on substitutability between ERT and CET in any final phase of these investigations.

³⁸ The domestic like product is limited to ERT of the same dimensions as indicated in Commerce’s scope determination for the following reasons. First, the Petitioners indicated that they produce no or very little ERT outside the specified dimensions. *Id.* at 30-35 (Foster, Russell, Booth). Second, Petitioners testified that any ERT outside the specified dimensions differed from that within the dimensions in terms of chemical composition, physical characteristics, function, and applications. *Id.*

Late in the investigations it was learned that some domestically-produced ERT originally reported as falling within the specified dimensions in fact exceeded those dimensions. Notes from Sept. 24, 1998 telephone conversation with *** (regarding ***). This ERT is therefore outside the definition of the domestic like product, for purposes of these preliminary determinations. We intend to seek additional information on this question, in any final investigations, because of the limited information in the preliminary record regarding ERT of dimensions outside the scope of these investigations.

Commissioner Crawford has examined the data both including and excluding in the like product the ERT erroneously reported as coming within the specified dimensions, and notes that the inclusion or exclusion of the additional volume has no effect on her injury and threat determination. She intends to re-examine this issue in any final phase of these investigations.

³⁹ 19 U.S.C. § 1677(4)(A).

the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.⁴⁰ Because we have found that the domestic like product consists of ERT, for purposes of these preliminary investigations we also find that the domestic industry consists of all domestic producers of ERT: Fulflex, Inc. and two commonly owned companies jointly referred to as “Elastotec.”⁴¹

⁴²

III. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS

In preliminary antidumping and countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the allegedly subsidized and LTFV imports under investigation.^{43 44} In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of

⁴⁰ See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), *aff’d*, 96 F.3d 1352 (Fed. Cir. 1996).

⁴¹ CR at III-1; PR at III-1. Elastotec is the brand name for products manufactured by RM Engineered Products and Elastomer Tech., which are under the common ownership of M-Tec Corp. *Id.*

⁴² Commissioner Askey does not join the remainder of this opinion. See Dissenting Views of Commissioner Thelma J. Askey.

⁴³ 19 U.S.C. §§ 1671b(a) & 1673b(a).

⁴⁴ Commissioner Crawford notes that the statute requires that the Commission determine whether there is a reasonable indication that a domestic industry is materially injured “by reason of” the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than the less-than-fair-value imports.” S. Rep. No. 96-249 at 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 96-317 at 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74. Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 100-71 at 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, see Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final) USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’g* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994). However, in these investigations, she does not make any findings regarding material injury by reason of the subject imports, but rather determines that there is a reasonable indication of threat of material injury by reason of the subject imports. She concurs with her colleagues’ discussion of conditions of competition and their treatment of lost sales and lost revenue allegations not included in the petition.

U.S. production operations.^{45 46 47} The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁴⁸

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of allegedly subsidized and LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁴⁹

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing ERT is materially injured by reason of allegedly unfairly traded imports of ERT from India.⁵⁰

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations.

First, there are only two domestic producers, which together accounted for more than *** percent of domestic shipments of ERT throughout the period of investigation.⁵¹ Moreover, the subject imports, which held the remaining market share, only recently entered the domestic market. Further, competition between the domestic producers was limited by their specialization in different parts of the ERT market, with Elastotec concentrating on ERT used in underwear and Fulflex concentrating on ERT used in swimwear and medical applications, although this specialization was apparently less the case in the latter portion of the period of investigation.⁵²

Second, demand for ERT is a derived demand, with underwear and swimwear accounting for the bulk of ERT consumption. This demand was considerably higher in 1997 than during the rest of the period of investigation.⁵³ Demand increased *** percent from 1996 to 1997.⁵⁴

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

⁴⁶ As part of our consideration of the impact of imports, the statute specifies that the Commission is to consider in an antidumping proceeding, “the magnitude of the dumping margin.” 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment “does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive of the Commission’s material injury analysis.” SAA at 180. The statute defines the “magnitude of the margin of dumping” to be used by the Commission in a preliminary determination as “the dumping margin or margins published by the administering authority [Commerce] in its notice of initiation of the investigation.” 19 U.S.C. § 1677(35)(C). In its notice of initiation, Commerce estimated dumping margins of 49.43 to 66.51 percent for comparison of constructed export price to home market prices and of 28.93 to 43.66 percent for comparisons of constructed value to constructed export price. 63 Fed. Reg. at 49547.

⁴⁷ Chairman Bragg notes that she does not ordinarily consider the alleged magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China*, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

⁴⁸ 19 U.S.C. § 1677(7)(A).

⁴⁹ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁰ The subject imports from India accounted for all or substantially all of the total volume of all U.S. imports of ERT throughout the period of investigation. CR and PR at IV-1. Consequently, we find that the subject imports are not negligible under 19 U.S.C. §§ 1671b(a), 1673b(a), and 1677(24).

⁵¹ Table IV-2, CR at IV-3; PR at IV-2.

⁵² CR and PR at III-1. *See also* conference tr. at 12-13 (Booth) (describing the differing requirements for ERT used in underwear and swimwear). *See, infra*, note 75.

⁵³ Conference tr. at 12 (Booth) & 43-47 Russell, Booth; CR at I-3; PR at I-2.

⁵⁴ Table C-1, CR at C-3; PR at C-3.

Third, two large purchasers account for a substantial share of the demand for ERT, especially ERT for use in underwear. In 1997, purchasers Fruit of the Loom and *** (both makers of underwear) together accounted for slightly more than a *** of total demand for ERT, and a higher proportion of that used in underwear.⁵⁵ Because these companies make large purchases, and sometimes agree to purchase from only one producer for periods as long as two years, their purchasing decisions can have significant effects on both the domestic ERT producers and importers of ERT.⁵⁶ Hence, purchasing patterns of the two largest ERT customers are additional conditions of competition. Additionally, a substantial but unquantified portion of ERT purchased in the domestic market is shipped by U.S. purchasers to manufacturing facilities outside of the United States for processing into finished goods.⁵⁷ However, regardless of whether and to what extent such ERT shipments are ultimately consumed outside the United States, they are first purchased by, and delivered to, the U.S. customer.⁵⁸

Finally, ERT made by different producers is generally substitutable, with no consistently reported differences in quality.⁵⁹ Evidence also indicates that price is an important factor in purchasing decisions, while the quality of service provided by ERT producers is diminishing in importance in purchasing decisions.⁶⁰ Still, there is some product differentiation based on the domestic and foreign producers' respective ability to make certain sizes of ERT and their use of synthetic rubber or particular anti-sticking agents (*e.g.*, talc).⁶¹ We note that Respondents assert that "second quality" ERT, which is sold only for use in alternative products at a fraction of the price of standard ERT, makes up a greater proportion of the subject imports that so far have been imported into the United States than they do of the domestic production.⁶²

B. Volume of Subject Imports

Section 771(7)(C)(i) provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."⁶³

⁵⁵ CR at V-13; PR at V-6 (the combined purchases of the two companies accounting for *** percent of total domestic demand for ERT in 1997).

⁵⁶ Petition at Exhibit 14, page 1 (statement of Douglas Booth); CR at V-13 and PR at V-6. The large volume of these purchases may suggest an ability to negotiate lower prices.

⁵⁷ CR at I-5, II-3 n.5, V-13 to V-14; PR at I-4, II-2 n.5, V-6 (indicating that, in addition to other purchasers, Fruit of the Loom, which accounted for approximately *** percent of domestic consumption in 1997, ships some ERT purchased in the United States to overseas production facilities).

⁵⁸ *Id.*

⁵⁹ See conference tr. at 94-97 (Russell, Booth); CR at II-5 and II-7; PR at II-3 to II-4.

⁶⁰ Conference tr. at 49-50.

⁶¹ CR at II-6; PR at II-4.

⁶² However, we note that the information regarding the full nature, production and volumes of "second quality" ERT is unclear. In any final phase investigations, we intend to seek further information regarding this point. See, *e.g.*, *id.* at IV-1 to IV-2 & n.2; PR at IV-1 & n.2 (second quality commanding substantially lower prices and accounting for a *** share of the subject import shipments, and a *** share of domestic production); notes from telephone conversation with Tammy Rogers of importer Elastomer, Inc., Sept. 11, 1998 (describing markets and prices for second quality ERT). Collectively, such ERT is known as "salvage" material, as opposed to "damaged" material, which has no market at all and must be wasted. Notes from telephone conversation with Tammy Rogers of importer Elastomer, Inc., Sept. 11, 1998.

⁶³ 19 U.S.C. § 1677(7)(C)(i).

U.S. imports of the subject merchandise essentially began in the second half of 1997 at the volume of *** pounds, of which *** pounds was shipped to U.S. purchasers that year.⁶⁴ In interim (January through June) 1998, subject imports increased to *** pounds and shipments of imports increased to *** pounds. Although the volume of subject imports increased *** during the last twelve months of the period of investigation, it remained small in relation to domestic consumption, even during interim 1998, accounting for *** percent of the quantity of domestic consumption in 1997, and *** percent in interim 1998.⁶⁵ By value, the market share of the subject import shipments was even lower: *** percent in 1997, and *** percent in interim 1998.⁶⁶ In addition, “second quality” ERT accounted for a higher proportion of the subject imports than of domestic production.⁶⁷ Based on the foregoing, we find that the volume of the subject imports is presently not significant.⁶⁸

C. Price Effects of Subject Imports

Section 771(7)(C)(ii) provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether--

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁶⁹

As indicated in our discussion of the conditions of competition, ERT made by different producers is generally substitutable, and price is an important factor in purchasing decisions.

For the purposes of these preliminary determinations, the Commission compared domestic producers’ prices with Respondents’ prices for two ERT products used in underwear and one used in swimwear.⁷⁰ The subject imports undersold the domestic product in nine out of ten quarterly comparisons, with margins of underselling ranging from *** to *** percent.⁷¹ Although these data indicate price underselling, we do not find the effects of this underselling to be significant at present. Additionally, the confirmed lost sale and lost revenue involving the larger purchasers took effect after the period for which data were collected, and the information available indicates that the ordered shipments have only recently begun to enter the United States.^{72 73}

⁶⁴ Tables IV-1 and IV-2, CR at IV-2 and IV-3 and PR at IV-2.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ CR at IV-1 and IV-2 n.2; PR at IV-1 and IV-1 n.2.

⁶⁸ Despite Respondents’ urging that we do so, we have not given less weight to the volume of subject imports that are eventually exported by the purchasers to overseas production facilities. For purposes of these preliminary investigations, we find that these subject imports competed with domestically produced ERT for sales in the United States.

⁶⁹ 19 U.S.C. § 1677(7)(C)(ii).

⁷⁰ CR at V-5; PR at V-3.

⁷¹ Table V-5, CR at V-12; PR at V-5.

⁷² Although the Commission received confirmatory evidence of a substantial lost sale involving *** and lost revenue involving ***, only a fraction of the losses manifested themselves during the period of investigation. CR at V-13; PR at V-6. Those losses in sales volumes and revenues are relevant only to our determination of whether there is a reasonable indication of a *threat* of material injury to the domestic industry.

⁷³ For purposes of these preliminary determinations, we have not considered the lost sale and lost revenue

(continued...) 1

We find that the subject imports did not depress prices to a significant degree. Although prices were lower for the three products at the end of the period of investigation than at the beginning, declines began in the fourth quarter in 1996, nearly a year before the first imports of the subject merchandise.⁷⁴ In fact, these declines appear to be due at least in part to increased levels of competition between the two domestic producers, as well as the 38 percent decline in natural rubber prices, during the period of investigation.⁷⁵ In light of this pattern, the declines in prices of U.S. products occurring after the subject imports entered the market do not appear to be significant.

For the same reasons given above, we also find that the subject imports did not suppress price increases that otherwise would have occurred, to a significant degree. In addition, we note that the domestic industry's cost of goods sold as a ratio of net sales fell from 1995 to 1996, and again in 1997.⁷⁶ Although the ratio was higher in interim 1998 than in interim 1997, the increase was smaller than the decrease over the previous years.⁷⁷ Likewise, the industry continued to generate significant net operating income.⁷⁸

For the foregoing reasons, we find that the subject imports have not caused significant adverse price effects for purposes of these preliminary determinations.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry." These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."⁷⁹

⁷³ (...continued)

allegations that were omitted from the petition. Commission rules 207.11(b)(2)(v) and (3) require the listing of all lost sales and lost revenue allegations in the petition, or a certification that the facts underlying these loss allegations were not reasonably available to petitioners. As we have previously stated, where a petitioner is a domestic producer of the product at issue, lost sales allegations covering the period up until the filing of the petition must be contained in the petition. Certain Carbon Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Invs. Nos. 731-T-763-766 (Preliminary), USITC Pub. 3037 (April 1997) at 26, n.152. Petitioners included neither the information nor the certification required by our rules, and we instead obtained those additional allegations in the domestic producer questionnaire responses. As a consequence, the Commission was unable to contact a number of the purchasers named in the allegations contained only in the questionnaire responses.

⁷⁴ *Id.*

⁷⁵ See producer questionnaire responses of Fulflex and Elastotec at page 14 and CR at V-13 and PR at V-6 (indicating no overlap in the *** of the two companies, but that they ***). If these investigations proceed to a final phase, the Commission intends to gather more information on the nature and extent of competition between the domestic producers.

⁷⁶ Table VI-2, CR at VI-5; PR at VI-2.

⁷⁷ *Id.*

⁷⁸ CR and PR at V-1.

⁷⁹ *Id.* No party has alleged that the captive production provision, 19 U.S.C. § 1677(7)(C)(iv), should be applied. We decline to apply the provision because there is no evidence that a significant production of the domestic like product was internally transferred for the production of a downstream product, which is a required showing under the provision.

Consistent with our findings that the volume and price effects have not been significant, we find no reasonable indication that the domestic industry is currently materially injured by reason of the subject imports.

The various indicators of the condition of the industry, including the ratio of net operating income to net sales, production, U.S. shipments, number of production workers, and wages paid, were positive throughout the period of investigation, and were significantly higher in 1997 than in 1995 or 1996.⁸⁰ Thus, despite the entry of the subject imports in 1997, the condition of the industry was significantly better that year than in years prior to the introduction of the subject imports and remained positive in interim 1998.

Although several indicators of the domestic industry's condition were less favorable in interim 1998 than they were in interim 1997, the decline in interim 1998 may, in part, reflect the 1997 peak in consumption, which resulted in a strong year for the domestic industry.⁸¹ As noted above, apparent domestic consumption was significantly higher in 1997 than in 1995 or 1996.⁸² Likewise, apparent domestic consumption was higher during interim 1997 as compared to interim 1998.⁸³ The various industry indicators followed the same pattern. Thus, the declines from interim 1997 to interim 1998 appear to reflect the comparative strength of the domestic market and industry in 1997, rather than the present adverse effects of the subject imports.

Moreover, the industry remained profitable throughout the period of investigation. For example, the ratio of net operating income, which was *** percent in 1997, remained healthy at *** percent in interim 1998.⁸⁴ Thus, although the industry's financial performance during interim 1998 was below the 1997 levels, the industry remained healthy in interim 1998.⁸⁵

Finally, we find that the volume of the subject imports during the period of investigation was so low that it did not have a significant effect on the volume of domestic shipments by the domestic industry, nor did it have significant price effects. Nevertheless, because Fruit of the Loom and *** made large purchases, and occasionally agreed to use a single supplier for periods of up to two years, the lost sale and lost revenue allegations involving these companies take on considerable importance in our analysis. However, the full projected impact of this lost sale, lost revenue, and declining market share has not been fully reflected in the financial condition of the industry. Thus, the adverse effect of the subject imports has not yet reached the level necessary for us to find present material injury by reason of such imports.

For the foregoing reasons we find no reasonable indication that the domestic industry is experiencing material injury by reason of the subject imports.

⁸⁰ Production by the domestic industry was, in thousands of pounds, *** in 1995, *** in 1996, and *** in 1997. U.S. shipments, also in thousands of pounds, were *** in 1995, *** in 1996, and *** in 1997. By value, in thousands of dollars, U.S. shipments were \$*** in 1995, \$*** in 1996, and \$*** in 1997. The average number of production workers was *** in 1995, *** in 1996, and *** in 1997. Wages paid, in thousands of dollars, were \$*** in 1995, \$*** in 1996, and \$*** in 1997. Net operating income as a percentage of sales was *** in 1995, *** in 1996, and *** in 1997. Table C-1, CR at C-3; PR at C-3.

⁸¹ Production by the domestic industry was, in thousands of pounds, *** in interim 1997 and *** in interim 1998. U.S. shipments, also in thousands of pounds, were *** in interim 1997 and *** in interim 1998. By value, in thousands of dollars, U.S. shipments were \$*** in interim 1997 and \$*** in interim 1998. The average number of production workers was *** in interim 1997 and *** in interim 1998. Wages paid, in thousands of dollars, were \$*** in interim 1997 and \$*** in interim 1998. Net operating income as a percentage of sales was *** in interim 1997 and *** in interim 1998. Table C-1, CR at C-3; PR at C-3..

⁸² Table IV-2, CR at IV-3 and PR at IV-1 to IV-2.

⁸³ Table IV-2, CR at IV-3 and PR at IV-1 to IV-2.

⁸⁴ Table VI-2, CR at VI-6; PR at VI-2.

⁸⁵ Capital expenditures remained generally steady between \$*** in interim 1997 and \$*** in interim 1998, as did unit sales values, which were \$*** in interim 1997 and \$*** in interim 1998. Table C-1, CR at C-3; PR at C-3.

IV. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF SUBJECT IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”⁸⁶ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.⁸⁷ In making our determination, we have considered all statutory factors⁸⁸ that are relevant to these investigations.⁸⁹

Based on an evaluation of the relevant statutory factors, we determine that there is a reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports. We find that subject imports increased significantly on a percentage basis from early 1997 to the present.⁹⁰ Although imports did not rise in absolute terms to a significant level by the end of the investigation period, we find that they are likely to increase substantially in the imminent future. Respondents themselves state that they have already arranged to import *** pounds of ERT after June 30, 1998.⁹¹ We believe that the bulk of this quantity will arrive in the United States before year end,⁹² which would bring the U.S. market share for imports from India to approximately *** percent, an increase of approximately *** over the first half of the year.⁹³

Respondents’ success in winning the Fruit of the Loom account from domestic producer Elastotec was significant in our analysis. Fruit of the Loom’s anticipated purchases of approximately *** pounds of ERT in 1998 would constitute *** percent of apparent domestic consumption at 1997 levels,⁹⁴ making it the largest purchaser of ERT in the United States. This suggests that subject import volume in the second half of 1998 could likely exceed Respondents’ projections.⁹⁵ Respondents have argued that we should

⁸⁶ 19 U.S.C. §§ 1671b(a) and 1677(7)(F)(ii).

⁸⁷ 19 U.S.C. § 1677(7)(F)(ii). While the language referring to imports being imminent (instead of “actual injury” being imminent and the threat being “real”) is a change from the prior provision, the SAA indicates the “new language is fully consistent with the Commission’s practice, the existing statutory language, and judicial precedent interpreting the statute.” SAA at 854.

⁸⁸ The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the WTO Antidumping Agreement and Subsidies and Countervailing Measures Agreement, although “[n]o substantive change in Commission threat analysis is required.” SAA at 855.

⁸⁹ 19 U.S.C. § 1677(7)(F)(I). Factor VII regarding raw and processed agriculture products is inapplicable to the products at issue.

⁹⁰ Subject imports amounted to *** pounds in the first half of 1997, *** pounds in the second half of 1997, and *** pounds in the first half of 1998. Import shipments followed a similar path: *** pounds in the first half of 1997, *** pounds in the second half, and *** pounds in the first half of 1998. Tables IV-1 and IV-2; CR at IV-2 and IV-3, and PR at IV-1.

⁹¹ Elastomer Inc. Importer Questionnaire Response at 4.

⁹² The *** pounds of imports after June 30 is less than the amount that Fruit of the Loom is likely to order from Garware between that date and the end of the year, suggesting that there will be still more imports in 1998. *See infra*, note 95.

⁹³ Table IV-2, CR at IV-3 and PR at IV-2. This is based on a calculation that, as in 1997, apparent domestic consumption in the second half of the year will be *** as in the first half of the year.

⁹⁴ CR at V-13; PR at V-6.

⁹⁵ Respondents’ Postconference Brief at 31. Fruit of the Loom confirmed that Garware will supply its full annual consumption of *** pounds of ERT, which is equivalent to *** pounds per month. CR at V-13; PR at 6.

(continued...)14

place little weight on this *** because Fruit of the Loom intends to ship the ERT it purchases in the United States to production facilities in ***. They allege that, beginning in the fourth quarter of 1998, Respondents will ship Fruit of the Loom's ERT directly to the purchaser's third country facilities, thus removing those shipments from the U.S. import volume and eliminating any threat to the domestic industry.⁹⁶

However, we find that Respondents' contention is not borne out by the evidence on the record in this preliminary phase of the investigations. Fruit of the Loom ***.^{97 98} Despite Respondents' contention, we find that, the record does not indicate that the Indian producer will depart in the immediate future from its current practice of exporting its ERT directly to Elastomer in the United States, which then delivers to Fruit of the Loom also in the United States.⁹⁹ Therefore, we conclude that these shipments are likely to result in a significant, imminent increase in the volume of imports.

The data on capacity and capacity utilization indicate that the foreign producer operated at *** during the first half of 1998, but forecasts that it will increase production to *** in fiscal 1999.¹⁰⁰ Since the foreign producer shipped more than *** of total output to the United States from July 1997 through June 1998,¹⁰¹ we believe that it will direct *** its projected increase in ERT production to the United States.¹⁰² As such, the foreign producer has demonstrated its intent and ability to ship most of its current and future production to the United States. The record does not indicate another significant, confirmed outlet for India's excess ERT capacity. Although Respondents project a *** in shipments to third countries, primarily because of expected direct shipments to Fruit of the Loom's *** production facilities,

⁹⁵ (...continued)

Garware took over the Fruit of the Loom account as of August 15, 1998, giving it four and one half months of shipments for 1998, which would equal *** pounds of imports. Petition at 40. However, the Respondent importer has already arranged to import into the United States *** pounds of ERT after June 30, 1998. It projects that approximately *** pounds are for Fruit of the Loom. See Elastomer Inc. Importer Questionnaire Response at 4. Therefore, they would need additional imports beyond those reported to the Commission to cover Fruit of the Loom's needs.

⁹⁶ Respondents' Postconference Brief at 18-21.

⁹⁷ The customer's *** indicated that the company will not finalize the decision on whether to ship directly ***, and could not finish ***. CR at V-13 to V-14, PR at V-6. We are also mindful of Section 771(7)(I) of the Tariff Act of 1930, which authorizes the Commission to "reduce the weight" accorded to post-petition information. We note that almost all of the evidence that Fruit of the Loom plans to arrange for direct shipment to *** postdates the filing of the petition on August 18, 1998. The earliest documentary evidence that Fruit of the Loom was considering *** is a letter from Fruit of the Loom's *** to Garware, dated *** in Respondents' Postconference Brief, Exh. 8. The letter references ***. Therefore, the earliest documented date on which parties were considering a new distribution channel is ***, after the filing of the Petition.

⁹⁸ Commissioners Hillman and Koplan observe that the record does not explicitly indicate whether, with respect to the underwear that will be produced using respondents' ERT, Fruit of the Loom intends to take advantage of preferential trade programs, such as the Special Access Program or the tariff provisions of HTS Chapter 9802. It is not clear from the record whether changes to Fruit of the Loom's "kit" operations would have any impact on the eligibility of its underwear produced in *** for these preferential trade programs. Based on the evidence in the preliminary phase of these investigations, it would be speculative to assume that it will be feasible and advantageous for Fruit of the Loom immediately to reroute shipments from India directly to ***.

⁹⁹ We note that Fruit of the Loom confirmed its full annual anticipated volume of purchases, *** pounds, as a lost sale. CR at V-12; PR at V-6.

¹⁰⁰ Table VII-2, CR at VII-2; PR at VII-1.

¹⁰¹ Table VII-1, CR at VII-2; PR at VII-1.

¹⁰² Garware forecasts shipments to third countries of *** pounds for April 1998-March 1999 and of *** pounds for April 1999-March 2000. Table VII-1, CR at VII-2; PR at VII-1. Given Garware's current shipping patterns, we place little weight on these predictions. The establishment of Elastomer as a sales company dedicated to selling Indian ERT in the United States demonstrates a commitment to the U.S. market. CR at IV-1; PR at IV-1.

as noted above, we find no indication that shipments directly to the United States will decrease in the near future.¹⁰³ Moreover, Respondents' success in securing the Fruit of the Loom sale shows they have the capability to expand quickly.¹⁰⁴ Their ability to win that account is likely to enhance their credibility with other customers. Indeed, their participation in the bidding process for sales to certain large purchasers demonstrates that they have established the necessary contacts to compete with U.S. producers for large sales.

Finally, U.S. inventories of the subject merchandise are relatively high. U.S. importers of Indian ERT currently maintain inventories equivalent to more than *** months of their total shipments.¹⁰⁵ This relationship suggests that there are sufficient quantities of Indian ERT on hand to ship rapidly to new customers.¹⁰⁶

Based on our consideration of existing business relationships, the rate at which subject imports have increased since their initial entry into the U.S. market, the foreign producer's capacity, current and projected capacity utilization, export patterns, and inventories, we determine that there is a reasonable indication that further dumped or subsidized imports of ERT from India are imminent.

We also find that imports are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices. During the investigation period, subject imports undersold domestic products by *** percent in nine out of the ten reported comparisons, all of which took place in the last year of the period of investigation.¹⁰⁷ As the volume of low-priced subject imports grows, supply to the U.S. market will likely increase, likely resulting in a greater depressing or suppressing effect on domestic producers' prices. The record indicates that total domestic consumption is, after a surge in 1997, returning to earlier levels of approximately *** million pounds per year.¹⁰⁸ Thus, at a projected *** pounds per year, imports to Fruit of the Loom alone will account for approximately *** percent of projected apparent consumption. With increasing imports, we believe that the interplay of increased supply and decreased demand will likely suppress or depress prices.

We also considered Petitioners' argument that competition from subject imports has forced them to cancel expansion projects, reject investment proposals, and reduce the size of capital investments.¹⁰⁹ They have provided no documentary support for these allegations. We will investigate these allegations more fully in any final phase investigation. In addition, we considered Petitioners' allegations that the subject merchandise benefitted from subsidies granted to Garware, some of which are claimed to be export subsidies.¹¹⁰

The data available at this preliminary stage suggest that the imminent subject import volume and price suppression or depression will lessen the domestic industry's revenues and profitability. The effects on sales to the two largest U.S. purchasers are illustrative. Low price quotations for subject merchandise led Elastotec to cut its price to the second largest U.S. purchaser, ***, resulting in *** in confirmed lost

¹⁰³ The foreign producer currently devotes *** percent of its production to cut rubber thread. It produces ERT and cut rubber thread at the same facilities and, therefore, can potentially shift production from rubber thread to ERT. CR at VII-1 and I-6; PR at VII-1, I-4 to I-5.

¹⁰⁴ CR at V-12 to V-15; PR at V-6.

¹⁰⁵ Table IV-2, CR at IV-2; PR at IV-2.

¹⁰⁶ We note that *** distributor ships ERT to established customers within four hours of receiving an order. CR at V-4; PR at V-3.

¹⁰⁷ Table V-5, CR at V-12; PR at V-5.

¹⁰⁸ Table IV-2, CR at IV-3 and PR at IV-2. We project that, as in 1997, the volume consumed in 1998 will be approximately double the amount consumed in the first half of the year.

¹⁰⁹ Petitioners' Postconference Brief at 33.

¹¹⁰ Petition at 26-32.

revenue.¹¹¹ There is no indication that Elastotec has found another buyer for the product previously sold to ***, which accounted for approximately *** percent of its domestic sales quantity in 1997.¹¹² Thus, Elastotec likely will either have to lower its output, with lower profit margins as the company spreads fixed costs over a smaller output, or increase its inventories, which would likely pressure the company to sell the ERT at depressed prices. The combination of these effects and the other evidence on the record leads us to determine that there is a reasonable indication that material injury by reason of subject imports would occur unless antidumping and countervailing duty orders are imposed.¹¹³

For the foregoing reasons, we find that there is a reasonable indication that the domestic industry producing ERT is threatened with material injury by reason of the subject imports from India.

¹¹¹ CR at V-13 ; PR at V-6, and Table VI-1, CR at 2; PR at VI-1.

¹¹² CR at V-13, PR at V-6; Elastotec Producer Questionnaire Response at 5.

¹¹³ The Commission is unaware of any outstanding antidumping findings or remedies imposed by other WTO Member countries, so Section 771(7)(F)(iii) does not apply.

DISSENTING VIEWS OF COMMISSIONER THELMA J. ASKEY

Based on the record in these preliminary phase investigations, I determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of elastic rubber tape ("ERT") from India that are allegedly subsidized and/or sold at less than fair value ("LTFV").¹

I concur in the conclusions of my colleagues with respect to the domestic like product and the domestic industry. In these dissenting views, I explain the reasons for my determination that there is no reasonable indication that the domestic industry producing ERT is materially injured or threatened with material injury by reason of the subject imports.

I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

When making my determination in these preliminary phase investigations, I have carefully considered the legal standard for preliminary determinations under the statute. In a preliminary phase investigation, I am required to determine whether there is a "reasonable indication" of material injury or a threat of material injury by reason of the subject imports.² In American Lamb Co. v. United States,³ the Federal Circuit held that the "reasonable indication" standard does not mean that the Commission is to determine only whether there is a "possibility" of material injury.⁴ Instead, the Federal Circuit stated that the Commission may appropriately weigh the record evidence in a preliminary determination in order to determine whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."⁵ Indeed, the Federal Circuit has stated that "[t]he statute calls for a reasonable indication of injury, not a reasonable indication of need for further inquiry."⁶

In this investigation, I believe that the record evidence is clear and convincing that the domestic industry is not materially injured or threatened with material injury by reason of the subject imports and that there is little or no likelihood that contrary evidence will arise in a final investigation. In this regard, I note that the Commission obtained detailed questionnaire responses from the entire domestic industry and from importers accounting for virtually all imports of the subject merchandise into the United States.⁷ Moreover, the Commission obtained detailed information about the market from a number of purchasers, including several of the most significant purchasers in the market.⁸ The level of the information now available on the record leads me to conclude that I have a full and accurate picture of this market as it now stands.

I also believe that the record evidence clearly and convincingly shows that this industry is not materially injured or threatened with material injury by reason of the subject imports. In this regard, I note

¹ I note that material retardation of an industry is not an issue in these investigations.

² 19 U.S.C. §§ 1671b(a)(i) & 1673b(a)(1).

³ 785 F.2d 994 (Fed. Cir. 1986).

⁴ 785 F.2d at 1004.

⁵ 785 F.2d at 1001. In this regard, I note that the Court of International Trade has stated that, when the Commission considers the likelihood that contrary evidence will arise in a final investigation, it "must analyze the 'best information available' contained in the record at the time of its determination and judge the likelihood that evidence contrary to that already gathered will arise in a final determination that would support an affirmative determination." Calabrian Corp. v. U.S. Int'l Trade Comm'n, 794 F. Supp. at 386.

⁶ Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

⁷ CR at I-2-3; PR at I-2-3.

⁸ CR at V-12-V-13; PR at V-5-6.

that I agree with the other members of the Commission that the record evidence “clearly and convincingly” establishes that the industry is not materially injured by reason of the subject imports. I also agree with the other Commissioners that there are no current volume or price effects attributable to the subject imports and that the industry has not been impacted by reason of the subject imports. In effect, I believe that I only disagree with the other members of the Commission about the significance that should be attributed to one sale, that involving Fruit of the Loom. In my view, the loss of this sale, even when considered with several other minor lost sales and revenue allegations, does not amount to a reasonable indication of a threat of material injury by reason of the subject imports.

In this regard, I note that the purpose of my threat inquiry is a relatively straightforward one. Before making an affirmative threat finding, I am directed by the statute to determine, among other things, “whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued...”⁹ In my opinion, the record of these preliminary phase investigations is as complete as is necessary and leads me to conclude that material injury will not imminently occur unless an order is issued. In this case, two domestic producers control nearly the entire market and have been operating at highly profitable levels during the last two and a half years of the period. Those two producers have filed an antidumping and countervailing duty petition that appears to be based primarily on the allegation that the industry has lost a single sale to Fruit of the Loom. Even though the industry may have lost that sale, the record evidence shows that imports on that sale have been minimal to date and will soon be shifted to Central America. In these circumstances, I believe the record evidence shows that the industry is not currently being injured by the subject imports and is not imminently threatened with injury by the subject imports. In my opinion, therefore, these investigations should not continue.¹⁰

II. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY SUBSIDIZED AND LTFV IMPORTS

As I indicated above, in preliminary antidumping and countervailing duty investigations, I am required to determine whether there is a reasonable indication that an industry in the United States is materially injured by reason of the allegedly subsidized and LTFV imports under investigation.¹¹ In making this determination, I must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹³

In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of allegedly subsidized and LTFV imports, I have considered all of the relevant economic factors that bear on the state of the industry in the United States.¹⁴ No single factor is dispositive and I have

⁹ 19 U.S.C. § 1677(7)(F)(i).

¹⁰ I note that, in American Lamb, the Federal Circuit stated that Congress intended the Commission to use preliminary determinations to avoid the cost and disruption to trade caused by unnecessary investigations. 785 F.2d 994 (Fed. Cir. 1986).

¹¹ 19 U.S.C. §§ 1671b(a) & 1673b(a).

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

¹³ 19 U.S.C. § 1677(7)(A).

¹⁴ 19 U.S.C. § 1677(7)(C)(iii).

considered all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."¹⁵

For the reasons discussed below, I determine that there is no reasonable indication that the domestic industry producing ERT is materially injured by reason of allegedly unfairly traded imports from India.

A. Conditions of Competition

I have considered several conditions of competition in my analysis in these investigations. First, demand for ERT is derived from the demand for the downstream products in which it is used, such as underwear and swimwear.¹⁶ Moreover, overall demand has been growing throughout the period of investigation, with demand peaking in 1997.¹⁷ Although demand has declined somewhat in interim 1998, demand remains at higher levels on an annualized basis in 1998 than in full year 1995.¹⁸

Second, the domestic ERT market is dominated by the two domestic producers and is, therefore, oligopolistic in nature. The two petitioners control the overwhelming bulk of the domestic market throughout the period of investigation and their market share has never fallen below *** percent at any point during the period of investigation.¹⁹ Moreover, any competition between the domestic producers is limited by the fact that they concentrate their sales efforts in different parts of the ERT market, with Elastotec concentrating on ERT used in underwear and Fulflex concentrating on ERT used in swimwear.²⁰

Third, two large purchasers account for a significant share of demand in the ERT market, although there are many smaller purchasers as well. In 1997, purchasers Fruit of the Loom and *** together accounted for approximately *** percent of demand.²¹ Thus, the ability of the domestic industry to command higher prices from customers as a result of their power in the market is offset to some extent by the purchasing power of these two companies.

Fourth, a significant portion of the ERT purchased in the domestic market is shipped by purchasers to manufacturing facilities outside of the United States for processing into finished goods.²² Although this ERT is consumed outside the United States, it is first purchased and delivered inside this country.²³

Finally, there is a small market segment for "second quality" or "salvage" ERT.²⁴ Second quality ERT is suitable for use in alternative products such as shock cords and bungee cords, and

¹⁵ *Id.*; 19 U.S.C. §§ 1671d(b) & 1673d(b).

¹⁶ See CR at II-4.

¹⁷ Conference tr. at 12 (Booth); CR at I-3; PR at I-2.

¹⁸ CR and PR at Table IV-2.

¹⁹ Table IV-2, CR at IV-3; PR at IV-2.

²⁰ CR and PR at III-1. See also conference tr. at 12-13 (Booth) (describing the differing requirements for ERT used in underwear and swimwear).

²¹ CR at V-13; PR at V-6.

²² CR at I-5, II-3 n.5, V-13 to V-14; PR at I-4, II-2 n.5, V-6.

²³ *Id.*

²⁴ *Id.* at IV-1 to IV-2 n.2; PR at IV-1 n.2 (second quality accounting for a *** share of the subject imports, and a *** share of domestic production); and notes from telephone conversation with Tammy Rogers of importer Elastomer, Inc., Sept. 11, 1998 (describing markets for second quality ERT). Collectively, such ERT is known as "salvage" material, as opposed to "damaged" material, which has no market at all and must be wasted. Notes from telephone conversation with Tammy Rogers of importer Elastomer, Inc., Sept. 11, 1998.

commands only a fraction of the price of standard ERT.²⁵ Although this merchandise represents only a small portion of domestic production, the merchandise accounted for nearly *** of all subject imports and nearly *** of all subject import shipments in 1997.²⁶

B. Volume of Subject Imports

Section 771(7)(C)(i) provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”²⁷

Subject import volumes have remained minimal throughout the entire period of investigation. There were no imports of the subject merchandise in 1995 and 1996 and only *** pounds were imported in full year 1997. The subject imports increased somewhat in interim 1998 but not to a significant level, with their volume remaining at the still minimal level of *** pounds.²⁸ Although the subject imports have increased their share of the market during the final year and a half of the period, their market share remains small in relation to domestic consumption throughout the period, accounting for *** percent of consumption in 1995 and 1996, *** percent of the quantity of domestic consumption in 1997, and *** percent in interim 1998.²⁹ By value, the volume and market share of the subject imports remained minimal throughout the period as well.³⁰

Given the foregoing, I find that the record clearly indicates that the volume of the subject imports is not significant.³¹

C. Price Effects of Subject Imports

Section 771(7)(C)(ii) provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.³²

As an initial matter, I note that the record indicates that there is only a moderate degree of substitutability between the subject merchandise and the domestic like product. Although the record indicates that there is a relatively high degree of physical interchangeability between the subject and domestic merchandise, their overall level of substitutability is limited by the small volume of the subject imports, the significant differences in the product mix offered by the subject importers and the

²⁵ CR and PR at IV-1; notes from telephone conversation with Tammy Rogers of importer Elastomer, Inc., Sept. 11, 1998.

²⁶ Importers’ Questionnaires of Coast Pad & Trim Corp. and Elastomer, Inc.

²⁷ 19 U.S.C. § 1677(7)(C)(i).

²⁸ CR and PR at Table IV-1. Only *** pounds of subject imports were shipped in full year 1997 and *** pounds were shipped in interim 1998. CR and PR at Table IV-2.

²⁹ CR and PR at Table IV-2.

³⁰ CR and PR at Table IV-1 & IV-2.

³¹ In making this finding, I have not given less weight to the volume of subject imports that are exported by U.S. purchasers to overseas production facilities subsequent to sale and delivery in the United States. Although these are re-exports, there is no indication that they are temporary imports under bond, entries into free trade zones, or bonded warehouse entries. Accordingly, as “imports for consumption,” I am required to consider them in my volume analysis.

³² 19 U.S.C. § 1677(7)(C)(ii).

domestic producers,³³ and by the differences in the geographic regions served by the subject imports and the domestic merchandise.³⁴ This moderate level of substitutability limits the importance of price in the purchase decision. In this regard, I note that several purchasers reported that price was not the only purchase consideration in sales involving both subject import and domestic competition and that quality and service were important considerations as well.³⁵

With this in mind, I believe the record clearly indicates that the subject imports have not had significant effects on the prices of the domestic like product. Although the record evidence indicates that the subject imports undersold the domestic product in 9 out of 10 quarterly comparisons, with margins of underselling ranging from *** to *** percent,³⁶ even a relatively cursory examination of the record shows that this underselling has not had significant price-suppressive or price-depressive effects. For example, if one examines the unit prices of the domestic merchandise for comparison product 1, one can see that underselling by the subject imports during the last four quarters of the period caused almost no price movement on the part of the domestic merchandise.³⁷ Moreover, the single largest domestic price decline for that product occurred in the second quarter of 1997, when imports were not even present in the market.³⁸ Similar price trends are evident upon an examination of the other underselling charts for the price comparison products.³⁹ In these investigations, my examination of the price comparison data indicates that any price impact from the subject imports during the period of investigation has been minimal, at best, and reflects the limited level of substitutability between the subject and domestic merchandise.

In sum, the record indicates to me that the subject imports have not had a significant impact on domestic prices during the period. In this regard, I note that this lack of any clear evidence of current price effects from the subject imports was an important factor in my finding that there is no reasonable indication of a threat of material injury from the subject imports.

D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry,” including actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, investment, and existing development and production efforts of the domestic industry; and the

³³ In this regard, the majority of U.S. shipments of the subject imports are of second-quality ERT, while only a small portion of the domestic merchandise is of second-quality merchandise. Similarly, there is some differentiation between the products because of the domestic producers’ use of synthetic rubber, their ability to make certain sizes of ERT and their use of synthetic rubber or particular anti-sticking agents. CR at II-6; PR at II-4.

³⁴ The subject importers sell ERT in limited sales areas on the East Coast and in Southern California, while the domestic producers sell ERT on a nationwide basis. CR at V-2-3; PR at V-2.

³⁵ CR at V-12-15; PR at V-5-6.

³⁶ Table V-5, CR at V-12; PR at V-5.

³⁷ CR and PR at Table V-2.

³⁸ Id.

³⁹ CR and PR at Table V-3 & V-4. For example, for comparison product no. 3, the price of the domestic merchandise actually rose during the period from second quarter 1997 through first quarter 1998, despite relatively large levels of underselling by the subject imports. CR and PR at V-4.

magnitude of the margin.⁴⁰ I have considered these factors within the context of the conditions of competition I described above.”⁴¹

As I previously indicated, the subject imports have had minimal, if any, volume or price effects during the period of investigation. Accordingly, I find that the record also establishes that there is no reasonable indication that the subject imports have had an adverse impact on the condition of the domestic industry. First, although the industry’s market share has declined somewhat in full year 1997 and interim 1998, the industry retains the overwhelming bulk of the market and the two domestic producers remain the dominant suppliers in the market.⁴² Moreover, the condition of the industry improved considerably during the period, as almost all of the financial indicators of the condition of the industry (including profitability levels, net sales, production volumes, U.S. shipments, capacity utilization, number of production workers, and wages paid) increased significantly during the period from full year 1995 to full year 1997.⁴³ This overall improvement continued to occur as imports began entering the market in 1997.

Moreover, although the industry’s financial indicators have generally declined somewhat in interim 1998 when compared to interim 1997, the financial indicators are at the same or a higher level on an annualized basis in interim 1998 than in 1995, when no imports were present in the market.⁴⁴ In particular, the industry’s profitability levels in interim 1998 remain significantly above its profitability levels in full year 1995.⁴⁵ Thus, the condition of the industry has appeared not to be impacted at all by reason of the subject imports.

Given the foregoing, I find that the record clearly indicates that the condition of the domestic industry has not been adversely impacted by reason of the subject imports. The lack of any current volume or price effects, when considered together with the overall improvement of the condition of the industry in the face of increased import volumes, indicates to me that the subject imports have not had a more than minimal or tangential causal nexus to any injury that may be suffered by the industry.⁴⁶

⁴⁰ As part of my consideration of the impact of imports, the statute specifies that the Commission is to consider in an antidumping proceeding, “the magnitude of the dumping margin.” 19 U.S.C. § 1677(7)(C)(iii)(V). In making my determination, I have considered the margins of dumping announced by Commerce in its notice of initiation. 63 Fed. Reg. at 49547.

⁴¹ *Id.* No party has alleged that the captive production provision, 19 U.S.C. § 1677(7)(C)(iv), should be applied.

⁴² The industry’s market share throughout the period has remained above *** percent. CR and PR at Table IV-2. The industry’s market share was *** percent in 1995 and 1996, *** percent in 1997 and *** percent in interim 1998. *Id.*

⁴³ Production by the domestic industry was, in thousands of pounds, *** in 1995, *** in 1996, *** in 1997, and *** in interim 1998. Capacity utilization increased from *** percent in 1995 to *** percent in 1997, although it declined to *** percent in interim 1998, primarily as a result of an increase in overall capacity. U.S. shipments, also in thousands of pounds, were *** in 1995, *** in 1996, *** in 1997, and *** in interim 1998. By value, in thousands of dollars, U.S. shipments were \$*** in 1995, \$*** in 1996, \$*** in 1997, and \$*** in interim 1998. Production workers numbered *** in 1995, *** in 1996, *** in 1997, and *** in interim 1998. Wages paid, in thousands of dollars, were \$*** in 1995, \$*** in 1996, \$*** in 1997, and \$*** in interim 1998. CR and PR at Table III-1. Net sales increased from \$*** million in 1995 to \$*** million in 1997, with a decline in interim 1998 to \$*** million. Gross profits as a percentage of sales increased from *** percent in 1995 to *** percent in 1996 to *** percent in 1997, but then declined slightly to *** percent in interim 1998. Similarly, net operating income as a percentage of sales was *** in 1995, *** in 1996, *** in 1997, and *** in interim 1998. CR and PR at Table VI-1.

⁴⁴ *Id.*

⁴⁵ CR and PR at Table VI-1.

⁴⁶ Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997).

III. NO REASONABLE INDICATION OF A THREAT OF MATERIAL INJURY BY REASON OF THE SUBJECT IMPORTS

A. General

Because I have concluded that there is no reasonable indication that the domestic industry is materially injured by reason of the subject imports, I must also determine whether the industry is threatened with material injury by reason of the subject imports.⁴⁷ The statute directs me to consider nine enumerated factors when performing this threat analysis.⁴⁸ In making my determination, I have considered all statutory factors that are relevant to these investigations.⁴⁹

When performing my threat analysis in these preliminary phase investigations, I have closely considered the statutory requirement that I assess whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued...” before making an affirmative threat finding.⁵⁰ Moreover, I have closely considered the requirement that my determination may not be made “on the basis of mere conjecture or supposition.” Finally, I have considered the threat factors “as a whole” when making my threat determination.

B. Vulnerability of the Industry

As an initial matter, I find that the domestic industry is not vulnerable to a threat of material injury from the subject imports. As I described above, the two domestic producers retain the lion’s share of the market, with their share remaining at *** percent even in interim 1998. Further, the industry remains very profitable and is now significantly more profitable than it was in 1995, when no imports were in the market. Moreover, nearly all of the industry’s financial indicators were at the same or higher levels in 1997 and interim 1998 than in 1995. Given these considerations, I find that the industry is not now vulnerable to a threat of injury from the subject imports.

C. My Consideration of the Statutory Threat Factors

I have considered all of the relevant statutory threat factors when assessing whether there is a reasonable indication that the subject imports from India threaten to materially injure the domestic industry. For the reasons set forth below, I find that there is no reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from India.

As required by the statute, I first considered the nature of the subsidies alleged to be provided to the subject imports⁵¹ and whether those imports are likely to increase as a result of those subsidies. In these proceedings, the petitioners have alleged fifteen separate programs applicable to the subject merchandise,

⁴⁷ 19 U.S.C. §§ 1673d(b) & 1677(7)(F).

⁴⁸ 19 U.S.C. § 1677(7)(F).

⁴⁹ 19 U.S.C. § 1677(7)(F)(i). In this regard, I note that Factor VII of section 1677(7)(F)(i), regarding raw and processed agriculture products, is inapplicable. In addition, the record evidence indicates that the subject merchandise from India is not subject to antidumping findings or remedies in any WTO member countries. CR and PR at VII-2. *See* 19 U.S.C. § 1677(7)(F)(iii)(I).

⁵⁰ 19 U.S.C. § 1673d(b) and 1677(7)(F)(ii).

⁵¹ 19 U.S.C. § 1677(7)(F)(i)(I). The statute directs me particularly to consider whether Commerce found any export subsidies. *Cf.* SAA at 855 (noting that factor I involves “consideration of export subsidies”).

including a number of programs that are export-related in nature.⁵² Although I note that these subsidies programs might otherwise provide an incentive to the Indian producer to significantly increase exports of the subject merchandise to the United States, the record indicates that the Indian producer has not significantly increased its shipments to the United States during recent years of the period of investigation and appears to have no plans to do so in the imminent future.⁵³ This suggests that the existence of subsidy programs have not had, nor will they have, a substantial impact on the Indian producer's exports to the United States, particularly when considered in the context of the Indian producer's plans to ship most of its production to Central America and other non-U.S. export markets during the next two years.⁵⁴

I have also considered whether there is "any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports."⁵⁵ In this case, the record indicates that the subject Indian producer does not have *** during the next two years.⁵⁶ The producer does, however, have substantial unused capacity available to increase exports to the United States.⁵⁷ Although this fact might normally indicate that a producer has an incentive to substantially increase its shipments to the United States, the record in these investigations indicates that it is unlikely that the Indian producer will ship substantially increased volumes of merchandise to the United States in the imminent future.

In this regard, I have carefully considered the circumstances surrounding the Fruit of the Loom sale, which involves a substantial volume of merchandise and was awarded by Fruit of the Loom to the Indian producer in mid 1998.⁵⁸ The circumstances of this sale indicate that it is unlikely that the Indian producer will substantially increase its exports to the United States in the imminent future. Both Fruit of the Loom and the Indian producer report that the Indian producer plans to begin shipping merchandise on this sale to Central American locations within six months of the date of this determination. ***. Because the parties involved in this arrangement have clearly stated that they intend to discontinue imports into the United States for this sale, this sale will not result in a substantial and continued increase in imports of the subject merchandise to the United States in the imminent future, even though the subject Indian producer now has excess production capacity.

Moreover, the record evidence indicates that production on the Fruit of the Loom sale will occupy most of the excess production capacity of the Indian producer during the next two years.⁵⁹ Apparently as a result of this sale, the Indian producer projects that its capacity use rate will be *** percent in its fiscal year 1998 and close to *** percent in fiscal 1999.⁶⁰ The producer also projects that this increase in production will result in a peak level of shipments to the United States in fiscal 1998 of *** pounds, equivalent to less than *** percent of the total U.S. market in 1997. Further, the Indian producer is projecting that its shipments to the U.S. will drop by nearly *** in fiscal 1999, primarily because it will no longer be shipping

⁵² CR and PR at I-1-2.

⁵³ CR and PR at Tables IV-2 & VII-1.

⁵⁴ CR and PR at Table VII-1 & VII-1-2.

⁵⁵ 19 U.S.C. §1677(7)(F)(i)(II).

⁵⁶ CR and PR at Table VII-1, n. 2.

⁵⁷ The Indian producer had a relatively low capacity use rate of *** percent in fiscal 1997 and a rate of *** percent in Jan.-June 1998. CR and PR at Table VII-1.

⁵⁸ According to Fruit of the Loom, it decided to award its ERT supply contract to the Indian producer in mid 1998. CR at V-12-13. Fruit of the Loom estimates that its annual consumption volume is approximately *** pounds, or *** percent of apparent consumption in 1997. CR at V-13.

⁵⁹ The Indian producer had excess capacity of approximately *** pounds in 1997, while the estimated annual needs of Fruit of the Loom were approximately *** pounds. CR and PR at VII-2.

⁶⁰ CR and PR at Table VII-1.

its Fruit of the Loom sales through the United States. Thus, although I recognize that there will be increased U.S. imports by the Indian producer for a temporary period in 1998, I do not find that this temporary increase is a sufficient indication of a threat of imminent and continued material injury by reason of subject imports. Accordingly, I find that the underutilized capacity of the Indian producer will not result in substantially increased imports of the subject merchandise in the imminent future nor does it indicate that there is a likelihood of material injury to the industry “unless an order is issued.”⁶¹

I have also examined whether there has been “a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports.”⁶² In this case, I believe that, in the context of this market, an increase in the subject import’s market share to *** percent in interim 1998 does not represent a significant increase in the volume or market penetration of the subject imports indicating the likelihood of substantially increased imports. Moreover, although the Fruit of the Loom sale may be a significant loss to the domestic producers, I believe (as I explained above) that it does not represent a sale that indicates a significant future increase in subject import volumes.⁶³

Similarly, I have examined “whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices and are likely to increase demand for further imports.”⁶⁴ As I explained in my injury views above, the record shows that the subject imports have not had significant price effects on the price of domestic merchandise. I do not believe that there is any record evidence to suggest that there will be any significant change in the manner in which the subject imports compete with the domestic merchandise in the imminent future. Accordingly, I find it unlikely that the subject imports will have significant price-depressing or price-suppressing effects on domestic prices in the imminent future.

I have also considered the levels of “inventories of the subject merchandise.”⁶⁵ Although the inventory levels of U.S. importers have increased during the last year of the period of investigation, foreign inventories have declined by a similar amount. Thus, the overall level of subject merchandise inventories have remained relatively stable.⁶⁶ Moreover, the record shows that reported U.S. inventories are, for the most part, held for existing accounts or are pre-sold and awaiting delivery to the customer.⁶⁷ Accordingly, I do not find that inventory levels of the subject merchandise support a finding of a threat of material injury.

⁶¹ 19 U.S.C. §1677(7)(F)(ii).

⁶² 19 U.S.C. §1677(7)(F)(i)(III).

⁶³ In this regard, as I previously indicated, I have taken into account the fact that additional shipments on the Fruit of the Loom that will be imported to the United States during the next half-year. The record indicates that these imports will amount to approximately *** pounds in the remainder of 1998. CR at VII-1 & Table VII-1. The record also indicates that imports will decline significantly thereafter when shipments on the sale begin to be shipped directly to Central America. I have taken this latter decline into account in finding that there is not a likelihood of a significant increase in imports into the United States.

Moreover, the existence of the Fruit of the Loom contract strongly suggests that there is little likelihood of substantial, continued increases in import volumes from India because the Indian producer has, in essence, undertaken to use its remaining production capacity to produce all of Fruit of the Loom’s requirements in the next two years. Accordingly, the producer’s commitment to ship Fruit of the Loom’s anticipated volume requirements under the terms of the contract significantly limits the ability of the Indian producer to increase its shipments to the U.S. market. Given these facts, I find that the volume and market share increases exhibited by the subject imports are not significant and do not indicate a likelihood of substantially increased import volumes in the future.

⁶⁴ 19 U.S.C. §1677(7)(F)(i)(III).

⁶⁵ 19 U.S.C. §1677(7)(F)(i)(V).

⁶⁶ CR at VII-1 & IV-1.

⁶⁷ CR at VII-1-2; PR at VII-1.

I am also directed to consider whether there is a “potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.”⁶⁸ Here, the record evidence suggests that there is a minimal potential for product shifting between cut rubber thread and ERT by the Indian producer.⁶⁹ Despite this, there is little indication in the record that the subject producer has actually shifted production between these products to increase shipments to the United States during the period of investigation, or that it intends to do so in the future.

I also examined “the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.”⁷⁰ In this case, the minimal volume levels of the subject imports have not had a significant impact on the production and development efforts of the industry. This is borne out by the fact that the domestic industry has been able to spend more on capital investments and R&D in 1997 when imports were in the market than in 1995 when they were not.⁷¹ Accordingly, the record clearly indicates that the subject imports have had, and will continue to have, a minimal impact on the industry’s ability to finance production and development efforts.⁷²

Finally, I am required by the statute to consider “any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).”⁷³ I do not find that the record in these investigations indicates that there are any demonstrable adverse trends suggesting that the subject imports will imminently materially injure the industry.

Accordingly, I find that the domestic industry is not threatened with material injury by reason of the subject imports.

CONCLUSION

For the foregoing reasons, I find that there is no reasonable indication that the domestic industry producing ERT is materially injured or threatened with material injury by reason of the subject imports from India.

⁶⁸ 19 U.S.C. §1677(7)(F)(i)(VI).

⁶⁹ CR at VII-1.

⁷⁰ 19 U.S.C. §1677(7)(F)(i)(VIII).

⁷¹ CR at Table VI-3.

⁷² See, e.g., CR and PR at Table VI-8.

⁷³ 19 U.S.C. §1677(7)(F)(i)(IX)

PART I: INTRODUCTION

BACKGROUND

These investigations were instituted in response to a petition filed by counsel for Fulflex, Inc., Middletown, RI; and two subsidiaries of M-Tec Corp., Elastomer Technologies Group, Inc. (Elastomer Tech), Stuart, VA, and RM Engineered Products, Inc., North Charleston, SC (together referred to as "Elastotec"), on August 18, 1998, alleging that an industry in the United States is materially injured and threatened with material injury by reason of subsidized and less-than-fair-value (LTFV) imports of elastic rubber tape from India.¹ Information relating to the background of the investigations is provided below.²

<i>Date</i>	<i>Action</i>
August 18, 1998 . . .	Petition filed with Commerce and the Commission; institution of Commission investigations (63 FR 45255, August 25, 1998)
September 8, 1998 . .	Commission's conference ³
September 16, 1998 .	Commerce's notices of initiation (63 FR 49546 and 49549, September 16, 1998)
October 2, 1998	Commission's vote and determination transmitted to Commerce

Elastic rubber tape has not been the subject of any previous Commission investigations.

ALLEGATIONS OF LTFV SALES AND SUBSIDIES

Petitioners provided Commerce with allegations of LTFV sales based on constructed export price (CEP) compared with both normal value and constructed value. Because most sales by Garware Elastomerics, Ltd. (Garware), the sole Indian producer of elastic rubber tape, are through its importer in the United States, petitioners based U.S. price on CEP, using prices and offers for sale by the exporter to unaffiliated purchasers in the United States in April and June of 1998. The petitioners alleged LTFV margins of 50 to 70 percent based on normal value and 39 to 55 percent based on constructed value. Commerce recalculated the estimated margins to be 49.43 to 66.51 percent based on normal value and 28.93 to 43.66 percent based on constructed value (app. A).

Petitioners alleged that a wide variety of programs provide subsidies to producers and exporters of the subject merchandise in India, but stated that they were unable to obtain detailed information on the exact levels of such benefits. Petitioners added, however, that the total subsidies previously found by Commerce and the European Union (EU) on nine of the cited programs amounted to about 50 percent (37 percent on programs examined by the EU and 13 percent on programs examined by Commerce). Commerce did not estimate the value to Garware of any of the following programs that it will examine in its countervailing duty investigation:

¹ For purposes of these investigations, elastic rubber tape is vulcanized non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inch to 0.100 inch (0.15 mm to 2.54 mm) in thickness and 1/8 inch to 1-5/8 inches (3 mm to 42 mm) in width, generally used in swimwear and underwear, as covered by subheading 4008.21.00 of the Harmonized Tariff Schedule of the United States (HTSUS), a subheading that includes other products. The most-favored-nation tariff rate for this subheading, applicable to imports from India, is 0.7 percent *ad valorem*.

² *Federal Register* notices cited in the tabulation are presented in app. A. .

³ A list of witnesses appearing at the conference is presented in app. B.

1. Passbook/duty entitlement passbook schemes;
2. Export promotion capital goods scheme;
3. Export processing zones/export oriented units programs;
4. Income tax exemption scheme;
5. Pre-shipment export financing;
6. Post-shipment export financing;
7. Import mechanism (sale of import licenses);
8. Exemption of the interest tax on export credits;
9. Re-discounting of export bills abroad;
10. Programs operated by the Small Industries Development Bank of India;
11. Special imprest licenses;
12. Market development assistance;
13. Special benefits to export and trading houses and super star trading houses;
14. Duty drawback on excise taxes; and
15. Pre-shipment export financing in foreign currency.

SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C, table C-1. U.S. industry data are based on questionnaire responses of the petitioners, which accounted for all known U.S. production of elastic rubber tape during the period for which data were collected (January 1995-June 1998). Data for U.S. imports are based on questionnaire responses of importers that account for virtually all imports of the subject product into the United States. As far as can be determined, there have been no imports of the subject product from countries other than India.⁴ Except in table titles, the terms “elastic rubber tape,” “rubber tape,” and “tape” are used interchangeably for the subject product.

THE PRODUCT

Elastic rubber tape⁵ is an intermediate product used in the production of underwear, swimwear, sportswear, fitted bed sheets, health care products (mainly disposable surgical masks, caps, and shoe covers), expandable partitions and inside pockets of luggage, and other products to provide an automatically adjustable fit. It is manufactured in different formulations to accommodate the needs of different users and in a variety of thicknesses and widths that make it easily handled and well-suited for different applications. In most applications it is inserted directly into tunnels of fabric made to receive it. The bulk of U.S. consumption is in the trimming of leg openings of various kinds of apparel, particularly underwear and swimwear.

Manufacturing Facilities, Production Employees, and Interchangeability

The production process used to manufacture elastic rubber tape is similar worldwide and consists of four stages: (1) blending, or producing the desired rubber formulation; (2) calendering, or rolling the formulation into sheets of a desired thickness; (3) vulcanizing the sheets; and (4) slitting, or cutting the sheets to the desired width. In the first stage, rubber in the form of bales, calendered slabs, or crumbs is

⁴ Conference transcript, pp. 55-56.

⁵ All elastic rubber tape previously or currently produced in or exported to the United States is believed to fall within the given definition (scope) of the product.

heated and mixed with oil and chemical additives, antioxidants, and vulcanization agents to impart specific physical characteristics that are desired in the final product.⁶ Natural rubber is most often used as the basic raw material, although for some applications synthetic rubber is used, or a combination of both. In the second stage, the rubber compound is rolled, or “calendered,” by heavy equipment into sheets of various thicknesses, depending on its ultimate application. In the third stage, the rolled rubber sheet is vulcanized, or “cured.”⁷ Finally, the sheets are slit to specific widths. In order to prevent sticking of the rubber tape during shipment and use, it is usually coated with talc or a silicone compound. The tape is packed unwound in cartons weighing 15 to 30 pounds. The equipment and production and related workers used to produce elastic rubber tape are also used to produce cut rubber thread, rubber sheet, and bandages.⁸

Despite the similarities in production techniques, differences in rubber formulations exist between the domestic and imported products. Petitioners state that domestic formulations include natural rubber, synthetic rubber, and combinations of natural and synthetic rubber, depending upon customer requirements;⁹ whereas, respondents report that the Indian rubber tape is produced using natural rubber only.¹⁰ According to one producer, the substitution of synthetic rubber and polymeric blends for natural rubber allows tape with reduced thickness and width to be produced, which reduces cost.¹¹ Use of synthetic rubber and polymeric blends also provides better resistance to mineral oil and ozone.¹² Petitioners also state that a wider range of sizes of tape is domestically produced.¹³ The Indian producer, however, is generally capable of making the same range of sizes of tape produced domestically, and the current range of imported product satisfies the main segments of the domestic market (underwear and swimwear).¹⁴ U.S. and Indian producers each offer a standard product line of tapes that meet the bulk of users’ needs and can produce less common varieties on special order. A significant quantity of the imported tape has been substandard material sold to non-traditional segments of the market. A further discussion of these sales is presented in Part IV of this report, “U.S. Imports, Apparent Consumption, and Market Shares.”

⁶ The general properties imparted by the blending process through the use of additives and extenders are heat resistance (enabling the rubber to withstand laundering) and elasticity retention (enabling it to maintain elastic strength throughout repeated use). The degree to which the tape retains its elastic ability is measured by the industry in terms of “modulus retention”—the percent of original elasticity remaining after exposure to a certain temperature for a certain length of time. The exact modulus retention of the batch produced is designed to meet the needs of a specific market or buyer. Specific properties incorporated during blending include, for example, resistance to seawater, chlorine, perspiration, and suntan lotions. There is no standardized notation or nomenclature for the various rubber formulations of elastic rubber tape.

⁷ Vulcanization is the process of reacting rubber with sulfur or other additives to prevent tackiness when warm and brittleness when cool, and to otherwise improve the useful properties of rubber such as strength, elasticity and abrasion resistance.

⁸ Elastotec producer’s questionnaire, p. 7, and Fulflex, producer’s questionnaire, p. 4.

⁹ Conference transcript, pp. 52-54.

¹⁰ Ibid., pp. 63, 69-70.

¹¹ Fulflex, producer’s questionnaire, p. 13.

¹² Ibid.

¹³ Conference transcript, p. 94.

¹⁴ Ibid., pp. 94-95.

Channels of Distribution

U.S. producers sell substantially all of their product directly to end users—i.e., firms that use elastic rubber tape in the manufacture of their products. Although the tape is sold and delivered domestically, it is not necessarily consumed domestically. Several manufacturers of underwear and swimwear have offshore affiliates to which they ship their purchased tape for actual consumption, i.e., incorporation into the garment.

The Indian producer currently sells to U.S. end users through two importers. Although the two importers are legally independent of the Indian producer, one (Elastomer, Inc.) was specifically created to market the Indian products, and the Indian producer itself negotiates all sales and prices. U.S. and Indian producers compete head to head in the subject product's major markets.

Like Product Issues

This section presents information related to the Commission's "domestic like product" determination. Petitioners contend that elastic rubber tape, as defined by Commerce in its initiation notice, identifies a specific U.S. product "like" the imported article subject to investigation, and that the petitioners as a whole of this like product constitute the relevant industry in the United States. Respondents, however, argue that "knitted elastic tape (also called braided or crocheted) should be included in the like product definition, and knitted tape producers should be included in the domestic industry."¹⁵ Respondents add that, "Although there are minor variations" between elastic rubber tape and knitted elastic tape, "there are no clear dividing lines, and the Commission should find that these products constitute one domestic like product."¹⁶

Knitted/braided/crocheted/woven elastic rubber tape is most commonly referred to in the industry as "crocheted elastic tape" or "CET." CET is a product made from extruded rubber thread (either of natural rubber or synthetic rubber)¹⁷ or cut rubber thread and functions similar to elastic rubber tape for similar uses, but generally not for the exact same applications. Extruded rubber thread is a continuous filament, round and relatively small in cross section, produced by extruding a rubber emulsion through small holes, a process requiring completely different equipment than that used for calendaring and slitting. Cut rubber thread, on the other hand, is made by the same process as elastic rubber tape. The major difference is its relatively small size and approximately square cross-sectional shape (the width/thickness of cut rubber thread ranges from 0.027 inch to 0.064 inch). Because of the small size and relative fragility of extruded and cut rubber thread, they can't be used directly in apparel as is elastic rubber tape. They must first be combined with a non-elastic textile fabric into the form of a braid, knit, or weave—an additional process which not only adds to the cost of manufacture, but also reduces their overall elasticity.¹⁸ Although the finished product, CET, is more expensive than elastic rubber tape and is not substituted for tape indiscriminately, it can be and is used by apparel manufacturers for the form fitting of garments (such as the leg openings of diapers) where the additional cost and reduced elasticity are overridden by other

¹⁵ Post-conference brief on Behalf of Garware and Elastomer, pp. 1-2.

¹⁶ Ibid, pp. 3-4.

¹⁷ The most common extruded rubber thread made of synthetic rubber is Spandex.

¹⁸ Petitioners report that only 20 percent of the rubber's original elasticity is retained after combination with the fabric. Spandex threads are even smaller than those made from natural rubber and may be spun into a yarn before combination with a fabric.

considerations.¹⁹ Neither of the petitioners produces CET or extruded rubber thread. They do, however, produce cut rubber thread. Most of the petitioners' cut rubber thread is not further finished for use in garments but is used directly in the wrapping of the inner layers of golf balls.

¹⁹ *** stated that although CET is more expensive on a per-pound basis, it is not necessarily more expensive on a per-yard basis, since CET weighs less per yard than elastic rubber tape.

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

MARKET SEGMENTS/CHANNELS OF DISTRIBUTION

Elastotec sells mainly to apparel manufacturers, particularly manufacturers of undergarments. Fulflex sells mainly to manufacturers of swimwear, but also sells to some undergarment manufacturers.¹ Both domestic producers and importers sell primarily to end users. Elastotec and Fulflex reported that *** percent of their respective sales are under contract. Both importers reported that through June 1998, all sales of elastic rubber tape were spot sales rather than sales under a contract.²

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on the available information, it appears that U.S. producers of elastic rubber tape are able to respond to price increases with relatively large changes in the quantity of shipments of elastic rubber tape. The main factors contributing to this responsiveness are the increased capacity of domestic producers since 1995, low levels of capacity utilization, and the ability to alter their product mix.

Industry capacity

Capacity for domestic production has increased by 25 percent since 1995. Capacity utilization increased from 1995 through 1997, to *** percent in the first half of 1997, then fell to *** percent in the first half of 1998. Inventories of domestic elastic rubber tape declined in 1996, both on a quantity basis and as a percentage of production, but have since increased. At the end of June 1997, domestic inventories were *** percent of the previous 6 months' production. At the end of June 1998, inventories were *** percent of the previous 6 months' production.

Export markets

Exports of elastic rubber tape are a fairly small share of domestic production. Exports of elastic rubber tape were *** percent of production in 1995, *** percent in 1996, and *** percent in 1997. In the first half of 1998, exports declined to *** percent of production.

Production alternatives

Domestic producers manufacture both elastic rubber tape and other products using the same equipment and production workers. Products include cut rubber thread, gaskets, and material for bandages. *** estimated that *** percent of equipment and production related workers used for elastic rubber tape are allocated to these other products.

¹ Conference transcript, p. 26.

² ***. Respondents have stated that the arrangement with *** "was not a binding contract, but an arrangement that set forth an anticipated course of dealing" (post-conference brief, pp. 27-28) because the quantity of shipments was not fixed. Respondents' post-conference brief exhibit 12 is a letter from ***.

Subject Imports Supply

Based on the available information, Indian producers of elastic rubber tape are currently likely to be relatively unresponsive to changes in the price of elastic rubber tape in the U.S. market because of the relatively small share of production devoted to alternative products and the lack of alternative markets.

The only known Indian producer, Garware, indicated in its exporter questionnaire that elastic rubber tape accounted for the majority of its total sales, *** percent on a quantity basis.³ Shipments to the U.S. market in the first 6 months of 1998 totaled ***. This was *** percent of Garware's total shipments of elastic rubber tape in this period.

Industry capacity

Production of elastic rubber tape by Garware began in fiscal 1996 (4/96-3/97) and production capacity is reported to be *** per year.⁴ This is approximately *** percent of the production capacity of domestic producers. Indian production capacity has not changed since fiscal 1996.

Alternative markets

The share of sales to alternative markets has decreased as shipments to the U.S. market have increased. Home market sales accounted for *** percent of shipments on a quantity basis in the first 6 months of 1997; exports to markets other than the United States accounted for *** percent. In the first 6 months of 1998, home market sales accounted for *** percent of all shipments; exports to markets other than the United States accounted for *** percent.

Garware has projected that for all of fiscal year 1998, that is April 1, 1998 through March 31, 1999, home market sales will be *** percent of its total shipments and exports to countries other than the United States will increase to *** percent of all shipments. Exports to the United States are projected to be *** percent of all shipments. In subsequent years shipments to the United States are projected to be an even smaller share of total shipments.⁵

³ ***.

⁴ Petitioners correctly note in their post-conference brief (at p. 28) that Garware's response to the Commission's questionnaire in these investigations conflicts with its publicly asserted claims of capacity. Garware's questionnaire response lists its capacity at *** pounds per year. However, Garware's internet World Wide Web site (<http://www.gelindia.com/mfg.htm>) states that "We are equipped with State of the Art machinery to produce 3000 MT per annum of Strip Rubber Elastic Tape." Thus, its publicly stated annual capacity would be 6.61 million pounds.

⁵ Respondents report that they anticipate a change in Garware's arrangement with ***. Currently, elastic rubber tape is sold to ***, and then shipped to a "kit location" in the United States where all the materials needed to assemble a specific quantity of garments are brought together before being exported for assembly. Per a letter from *** to ***, included as exhibit 8 in respondents' post-conference brief, a general agreement has been reached to ship elastic rubber tape directly from India to ***, the location of one of the purchaser's assembly operations. This may constitute a significant alternative market.

U.S. Demand

Demand Characteristics

Importer *** reports that demand for elastic rubber tape has decreased since 1996 because knitted and woven elastic products have become less expensive, some domestic apparel manufacturers have shifted their production to off-shore facilities, and some purchasers have switched to other elastic fabrics because of some consumers' allergies to natural latex rubber. Importer *** reports that demand and prices are down significantly since 1996. Both domestic producers stated that demand has been fairly stable, except for seasonal fluctuations.

Substitute Products

There is some substitutability between elastic rubber tape and materials described as braids and wovens, or knitted or crocheted elastic tape. These fabrics are woven of elastic threads, or elastic threads and other materials. Elastic rubber tape is used in widths of 1/8 inch and up, and is used bare. It may be sewn into a hem or similar part of a fabric. Elastic rubber tape and wovens or braids of extruded rubber thread are not generally used in the same applications. Elastic rubber tape is generally less expensive than woven or braided fabrics. A representative of ***, a manufacturer of extruded rubber thread, was contacted by telephone and indicated that woven elastic fabrics and elastic rubber tape were not generally used in the same applications.

Respondents' post-conference brief includes as exhibit 2 a letter from ***. The letter states that *** has switched from using woven elastic inserts to elastic rubber tape in its ***, and has asked *** to investigate the possibility of substituting elastic rubber tape for woven elastic inserts in other apparel, as this "could save a considerable amount of money in a years time." This would seem to indicate that respondents feel that woven elastic strips are a substitute for elastic rubber tape, but that the two are not interchangeable. There is some substitutability between different grades of elastic rubber tape. Importer *** reports that swimwear compound elastic rubber tape manufactured by Garware is sold both to manufacturers of swimwear and manufacturers of dresses and men's athletic apparel. The share of the cost of elastic rubber tape in the total cost of garments that incorporate elastic rubber tape is unknown, but is assumed to be small.

SUBSTITUTABILITY ISSUES

Imported elastic rubber tape from India is generally substitutable for comparable compounds and sizes of elastic rubber tape produced domestically. The Indian producer of elastic rubber tape manufactures and exports a limited number of types and sizes of elastic rubber tape, apparently concentrating on compounds and sizes with the largest volume of sales. Domestic producers and importer *** reported that elastic rubber tape produced in India and the United States can generally be used interchangeably. Importer *** stated that elastic rubber tape produced in India and the United States cannot generally be used interchangeably, but that "If qualification requirements have been met, Indian ERT can be used in the apparel industry if the compounds and sizes are appropriate."⁶

⁶ Importer's questionnaire attachment, p. 3.

Factors Affecting Purchasing Decisions

Purchasers generally require that producers or importers provide shipments which are tested to ensure that the elastic rubber tape provided meets the purchasers' requirements for stain resistance, launderability, retention of elastic modulus, specific gravity, or resistance to chemicals. Other factors in addition to price and delivery considerations include the anti-blocking agent used to keep the elastic rubber tape from sticking to itself and tangling, and the yield or length per pound of tape.

Comparisons of Domestic Products and Subject Imports

The Indian manufacturer produces only natural elastic rubber tape in thicknesses down to 0.010 inch, and only coats its elastic rubber tape with talc as an anti-blocking agent to minimize tangling. Mr. John Mitchell, president of Global Trading, Inc., who appeared as a witness for the respondents in the conference, stated that elastic rubber tape from India could not be used interchangeably with elastic rubber tape produced in the United States because domestic producers of elastic rubber tape worked closely with purchasers to develop "product packaging systems" to minimize production down-time for their customers.⁷ However, importer *** stated that elastic rubber tape produced in India and the United States could generally be used interchangeably.

Domestic producers of elastic rubber tape produce both synthetic and natural rubber tape in thicknesses down to 0.006 inch and can coat their elastic rubber tape with talc, cornstarch, or silicone to minimize tangling. Domestic producers of elastic rubber tape stated that elastic rubber tape produced in India and the United States could generally be used interchangeably, and that producers and importers of elastic rubber tape from India had chosen to offer a limited range of types, thicknesses, and anti-blocking agents, in order to focus on the larger segments of the domestic rubber tape market.

On a quantity basis, sales of synthetic elastic rubber tape accounted for *** percent of total sales of elastic rubber tape by Elastotec and *** percent of sales by Fulflex in 1997. Sales of elastic rubber tape 0.006 inch to 0.010 inch in thickness accounted for a *** portion of total sales by Elastotec and *** percent of sales by Fulflex in 1997.⁸ Both domestic producers stated at the conference that, in the past, service was very important and that they worked with customers to increase efficiency. Both also stated that falling prices had forced them to discontinue this practice.⁹

Two purchasers contacted regarding alleged lost sales and revenue stated that the quality of elastic rubber tape imported from India was superior, and one purchaser indicated that service from *** was better than service from domestic producers.¹⁰ Two of these purchasers acknowledged that price was also important in their purchase decisions.

Domestic producers offer elastic rubber tape in a wider variety of compositions than those offered by importers. Sales literature indicates that elastic rubber tape imported from India is available in five different compounds. However, importer ***.

⁷ Conference transcript, p. 71.

⁸ Petitioners' post-conference brief, p. 38.

⁹ Conference transcript, p. 50.

¹⁰ In telephone calls to purchasers *** indicated that in addition to a better price, the quality of imported elastic rubber tape was superior because it was "truly talcless." *** stated that the service and price provided by *** were better, and *** stated that the quality and delivery of imported elastic rubber tape were superior.

Comparisons of Domestic Products and Subject Imports with Nonsubject Imports

Domestic producers report that there are no imports of elastic rubber tape into the United States except for those from India. There are producers of elastic rubber tape in several other countries, but they do not export to the United States. Importer *** stated that it knows of no other source of elastic rubber tape that would be interchangeable with the domestic product except India. Importer *** stated that elastic rubber tape produced in France and Italy could be used interchangeably with elastic rubber tape produced in the United States.

PART III: CONDITION OF THE U.S. INDUSTRY

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. § 1677(7)(B) and 1677(7)(C)). Information on the alleged subsidy and dumping margins was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V. Information on the other factors specified is presented in this section and/or part VI and (except as noted) is based on the questionnaire responses of three plants that accounted for 100 percent of U.S. production of elastic rubber tape in the period for which the data were collected.

U.S. PRODUCERS

The production of elastic rubber tape in the United States has been exclusive to the petitioners since the early 1990s. M-Tec Corp., North Charleston, SC, purchased RM Engineered Products in October 1995 and Elastomer Tech in October 1996 and manages these entities as two plants of a single firm, coordinating all production and marketing.¹ Together, they are commonly referred to as “Elastotec,” the joint brand name for their rubber tape products. Fulflex is a wholly-owned subsidiary of the Moore Co., Westerly, RI. Geographically, both firms serve the entire U.S. market, but they have concentrated on different segments: Fulflex on the swimwear industry and Elastotec on the underwear industry.

Despite their focus on different segments of the market, both firms have similar types of production facilities and both produce or have the capability to produce a wide range of tape products. Other types of products, however (notably elastic rubber thread and gasket sheet), are produced in the same plants using the same resources. Neither imports elastic rubber tape nor consumes it internally in the production of another product.

U.S. PRODUCTION, CAPACITY, CAPACITY UTILIZATION, SHIPMENTS, INVENTORIES, AND EMPLOYMENT

Data relating to the petitioners’ elastic rubber tape operations are shown in table III-1. Overall, the data reflect an expanding industry until 1998, when production, shipments, and employment indicators turned markedly downward and inventories increased. Some indicators, such as the average number of production and related workers and the unit values of U.S. shipments, show declines in 1997. Part of the declines in employment, however, may reflect employment shifts in the course of M-Tec’s upgrading and streamlining efforts at its two plants. The decline in unit values reflects a general decline in prices in the major U.S. markets.

The increasing capacity throughout the period results from M-Tec’s *** subsequent to its purchases of RM Engineered Products and Elastomer Tech. Theoretically, the capacity figures shown should represent that portion of U.S. producers’ equipment normally reserved for elastic rubber tape production. However, the relatively low level of capacity utilization throughout the period suggests that the petitioners’ resource allocations for tape capacity may be artificially high. If so, the capacity utilization figures shown may be more indicative of an index than actual utilization.

¹ Prior to October 1996, Elastomer Tech was the Rubber Products Group of JPS Elastomerics Corp.

Table III-1

Elastic rubber tape: U.S. production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of U.S. production and related workers, and hours worked by and wages paid to such workers, 1995-97, Jan.-June 1997, and Jan.-June 1998

* * * * *

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

Although elastic rubber tape is produced by many firms in many countries, only one firm in India—Garware Elastomerics, Ltd.—has exported it to the United States during the period of investigation and only beginning in 1997.¹ The Indian product is imported by two firms, one on each coast: Coast Pad & Trim Corp. in Vernon, CA; and Elastomer, Inc., in Winston-Salem, NC. The latter accounts for the overwhelming bulk of Garware's exports to the United States. Although legally an independent firm, Elastomer was created solely to import the Indian product, and Garware itself negotiates the sales.

Imports of elastic rubber tape from India, U.S. shipments of imports, re-exports, and end-of-period inventories are shown in table IV-1. The disparity between imports and U.S. shipments of imports is largely reconciled by increasing inventories, but a significant quantity of imports was also re-exported by Elastomer (to independently-owned Latin American firms), as shown. All of the re-exports were pre-sold before entering the United States. Garware first ships this material to the United States rather than directly to the Latin American users because the individual shipment quantities are less than a full container load (33,000 pounds), and it is more cost efficient to aggregate them with quantities going to the United States. (As noted previously, some material delivered in the United States is subsequently exported by the domestic purchaser to foreign affiliates of the purchaser. In these instances the purchase and delivery (whether of the U.S.- or Indian-produced products) is domestic, while the actual consumption (use) is foreign. There are no data, however, to indicate precisely how prevalent this practice is. Nearly all of Elastomer's re-exports were substandard "wrinkled" material sold to non-traditional markets, as were a large share of its shipments in the United States. In 1997, *** percent of imports and *** percent of U.S. shipments of imports were second quality and side trim (the irregular-sized strips that are slit from the outer edges of the rubber sheet) and were sold to a sub-market, the manufacturers of shockcord, at a considerable discount, accounting for the relatively low unit value of domestic shipments. In January-June 1998, about *** percent of U.S. shipments of imports were of such material.²

Table IV-1

Elastic rubber tape: U.S. imports, U.S. shipments of imports, re-exports, and end-of-period inventories, 1995-97, Jan.-June 1997, and Jan.-June 1998

* * * * * *

Elastomer has arranged to import a substantial quantity of tape after June 30, 1998. For a discussion of these imports, see part VII of this report, "Threat Considerations."

Apparent consumption and U.S. producers' and importers' respective shares of consumption are shown in table IV-2. After increasing by nearly 27 percent from 1995 to 1997, the quantity of elastic rubber tape consumed, or at least delivered,³ in the United States fell by about 17 percent from January-June 1997 to January-June 1998. It is likely that much of this decline reflects U.S. purchasers' shifting of

¹ Conference transcript, pp. 54-56.

² U.S. producers also sell small quantities of substandard elastic rubber tape, otherwise known as "salvage" material (as opposed to "damaged" material, which has no known market and must be destroyed). They estimate salvage material to constitute less than 5 percent of overall shipments and probably closer to 1 percent.

³ As noted, some U.S. purchasers ship tape to foreign subsidiaries for actual consumption.

Table IV-2

Elastic rubber tape: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 1995-97, Jan.-June 1997, and Jan.-June 1998

* * * * *

manufacturing operations to overseas (primarily Latin American) locations and/or taking direct delivery at those locations. The actual quantities involved, however, are unknown. As a share of consumption, importers' U.S. shipments rose from *** percent in 1997 to nearly *** percent in January-June 1998.

PART V: PRICING AND RELATED INFORMATION

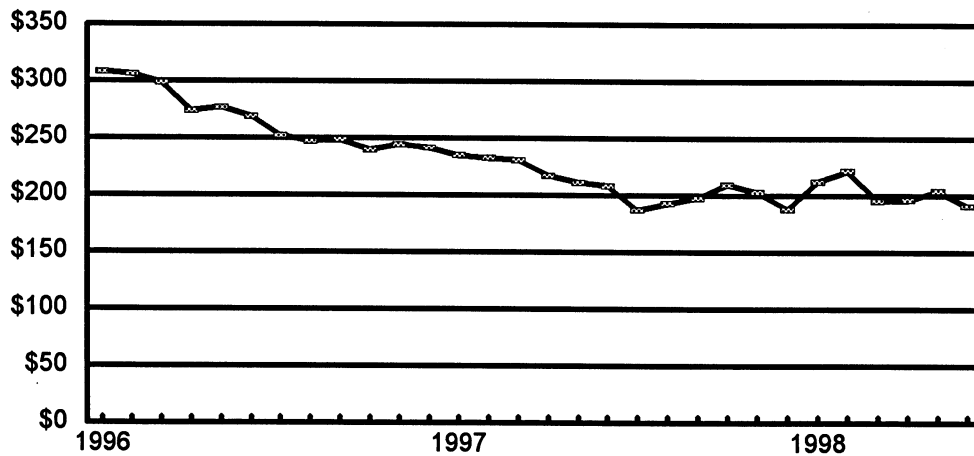
FACTORS AFFECTING PRICES

Raw Material Costs

The price of natural rubber, which is the primary raw material used in the manufacture of elastic rubber tape, declined substantially over the period of investigation. The International Rubber Study Group publishes monthly data on the Daily Market Indicator Price, which is a composite of the prices for various grades of natural rubber. The Daily Market Indicator Price in July 1998 was 38 percent below the January 1996 price. See figure V-1.

Figure V-1

Elastic rubber tape: Daily Market Indicator Price (dollars per 100 kilos), by months, Jan. 1996-June 1998



Source: International Rubber Study Group *Rubber Statistical Bulletin*, Jan. and Aug. 1998.

The raw materials cost of goods sold by Elastotec *** per pound in 1996 to *** per pound for elastic rubber tape sold in the first six months of 1998. This is a *** percent. The average raw materials cost for Fulflex, has ***. In 1996 the raw materials cost of goods sold or traded by Fulflex was *** per pound. For elastic rubber tape sold in the first six months of 1998 the raw materials cost was *** per pound, *** percent. Differences between the two domestic producers may be due to differences in the product mix or changes in the product mix over time.

Raw material costs for domestic producers, as a share of the total cost of goods sold, have decreased slightly since 1996. Domestic producer Elastotec reported that for goods sold in 1996 the cost of raw materials was *** percent of the total cost. For goods sold in the first half of 1998, raw material costs were *** percent of total cost. Domestic producer Fulflex reported that raw material costs accounted for *** percent of the total cost of goods sold in 1996 and *** percent of the total cost of goods sold in the first half of 1998.

Transportation Costs to the U.S. Market

U.S. imports of elastic rubber tape from India fall in HTS category 4008.21.00, which includes all noncellular rubber sheet and strip, including both elastic rubber tape and products such as rubber gasket

V-1

material. Average freight and insurance costs for products in this category from India were 9.4 percent of the customs value in 1997 and 7.6 percent in January-May 1998. Freight and insurance costs were calculated as the difference between c.i.f. value and the customs value, expressed as a percentage of the customs value. The lower freight costs may be due to greater volume.

U.S. Inland Transportation Costs

Domestic producers Elastotec and Fulflex reported their U.S. inland transportation costs as a share of total delivered costs as ***, respectively. Elastotec reported that *** percent of its sales are to customers within 100 miles and *** percent are to customers within 1,000 miles. Fulflex reported that *** sales take place within 100 miles and *** percent of sales are within 500 miles of production or storage facilities. Both domestic producers report that they serve the entire U.S. geographic market.

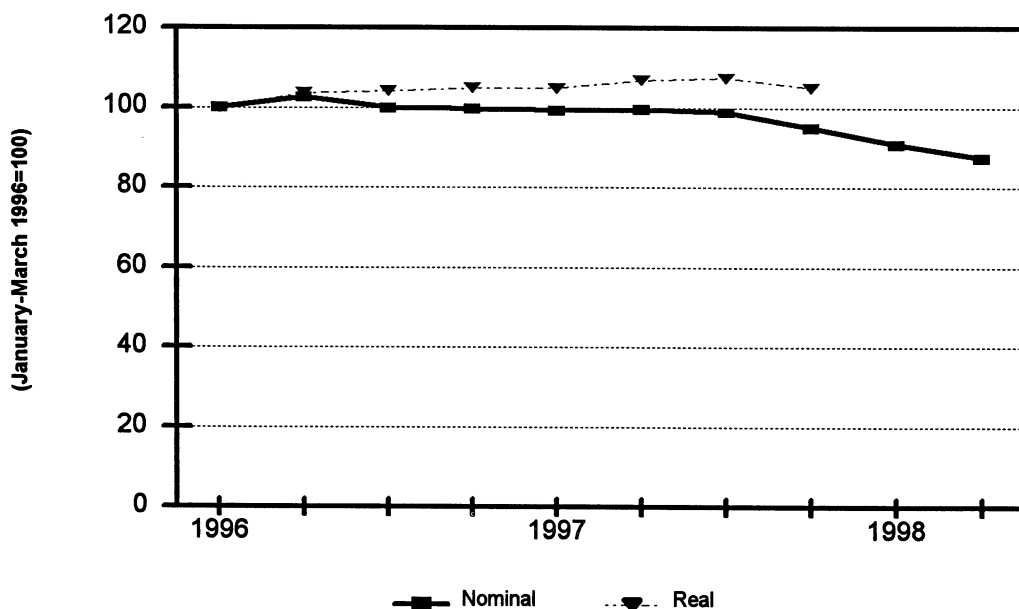
Importer Elastomer reported that *** percent of its sales are within 100 miles and the balance within 500 miles of its warehouse. *** percent of sales by Coast Pad & Trim take place within 100 miles and the balance within 500 miles of its location. Elastomer serves customers on the U.S. east coast and Coast Pad & Trim only serves customers in southern California.

Exchange Rates

The nominal dollar value of the Indian rupee fell approximately 13 percent between January 1996 and June 1998, with essentially all of the decrease in the last 3 quarters (figure V-2). The real dollar value

Figure V-2

Exchange rates: Indices of the nominal and real exchange rates of the Indian rupee relative to the U.S. dollar, by quarters, Jan. 1996-June 1998



Source: International Monetary Fund, *International Financial Statistics*, Aug. 1998.

of the Indian rupee increased by 5 percent through December 1997 (the most recent period available), as prices of manufactured goods increased faster in India than in the United States.

PRICING PRACTICES

Pricing Methods

*** sells almost exclusively on a spot basis rather than on a contract basis.¹ Prices are negotiated for every transaction, with discounts or rebates from list prices to meet competition. Prices are generally quoted f.o.b. warehouse, with customers arranging for transportation. Contracts are generally negotiated annually and specify a price and quantity, with *** granted single-source status. *** also negotiates prices for each transaction, with discounts from list price based on a customer's annual purchases. *** generally arranges for transportation to its customers' locations, but prices are quoted f.o.b. warehouse. Over the period of investigation *** percent of *** sales were under contract. Contracts generally set price and estimate volume.

Importers Elastomer and Coast Pad & Trim both indicated that all their sales are on a spot basis. *** reported that prices are quoted f.o.b. its warehouse. *** generally delivers elastic rubber tape to its customers.

Sales Terms and Discounts

Neither domestic producers nor importers offer discounts for early/prompt payment. All offer terms of net 30 days, with *** offering net 60 days on some sales. There is a significant difference in the delivery times from domestic producers versus importers. *** reported an average lead time between a customer's order and the date of delivery of 2 to 3 weeks. *** reported an average delivery time of 2 weeks. Importer *** reported that delivery time for a customer's first order was 8 weeks, but that subsequent orders are shipped on the day of the order. *** reported an average delivery time of 4 hours from placement of an order.

PRICE DATA

Producers and importers were asked to provide quarterly data on the sales volume and quantity sold for three typical products, from the first quarter of 1996 through the second quarter of 1998. Quantities were reported in pounds, and sales volumes in dollars.² The three products chosen were:

Product 1 – Launderable non-staining elastic rubber tape with 50% modulus retention after 2 hours at 300° F, 0.012" thickness x 5/16" width.

Product 2 – Launderable non-staining elastic rubber tape with 50% modulus retention after 2 hours at 300°F, 0.010" thickness x 1/4" width.

Product 3 – Elastic rubber tape for swimsuits, 0.026" thickness x 1/4" to 3/8" width.

Both domestic producers reported sales of all three products within the period of investigation, although *** reported no sales of product 1 before October 1996 and no sales of product 2 before April

¹ *** percent.

² *** reported quantities in thousands of pounds and sales in thousands of dollars.

1997. *** reported sales of products 1 and 3 starting in the third quarter of 1997 and sales of product 2 starting the first quarter of 1998. *** reported sales of product 3 starting in the fourth quarter of 1997, but no sales of products 1 and 2. Values reported by *** were for delivered material. The delivery costs were estimated at *** percent of the delivered price. Values f.o.b. warehouse were used to determine average unit values. As shown in table V-1, the quantities of the three products reported accounted for *** percent of commercial shipments of elastic rubber tape by importers³ and *** percent (on a quantity basis) of all domestic and export shipments by domestic producers.⁴

Table V-1
Elastic rubber tape: Total quantities of reported price data and shares of domestically-produced and imported commercial shipments, Jan.-June 1998

*	*	*	*	*	*	*
Price Trends						

Generally, the weighted-average unit values of domestic products 1 and 2 fluctuated over a narrow range through the first quarter of 1997, with the highest average unit values in the third quarter of 1996 (tables V-2 and V-3 and figures V-3 and V-4). Average unit values for both products then fell and reached their lowest levels in the second quarter of 1998. Imports of product 1 began in the third quarter of 1997, and imports of product 2 began in the first quarter of 1998. Except for a sharp drop in Oct.-Dec. 1997 for product 1, prices were flat.

The weighted-average unit value of domestically-produced product 3 ranged from *** per pound to *** per pound from the first quarter of 1996 through the first quarter of 1998, with the highest average unit value in the third quarter of 1996. The average unit value fell to *** per pound in the second quarter of 1998. Imports of product 3 began in the third quarter of 1997 and prices fluctuated upward (table V-4 and figure V-5).

Table V-2
Elastic rubber tape: Weighted-average quantities and f.o.b. unit values of product 1 reported by U.S. producers and importers, by quarters, Jan. 1996-June 1998

*	*	*	*	*	*	*
---	---	---	---	---	---	---

Table V-3
Elastic rubber tape: Weighted-average quantities and f.o.b. unit values of product 2 reported by U.S. producers and importers, by quarters, Jan. 1996-June 1998

*	*	*	*	*	*	*
---	---	---	---	---	---	---

³ Importer Elastomer reported that *** percent of its commercial shipments in the first half of 1998 were shipments of material that was wrinkled or not of first quality. The average unit value for this material was *** per pound, compared to *** per pound for “good” material. These shipments were not included as sales of elastic rubber tape.

⁴ Domestic producers produce both synthetic and natural elastic rubber tape. However, they reported no sales of synthetic elastic rubber tape meeting the descriptions of these products (petitioners post-conference brief, p. 39, and telephone conversations with Don Hildebrand of Elastotec and William Russell, president of Fulflex, Sept. 16, 1998).

Table V-4

Elastic rubber tape: Weighted-average quantities and f.o.b. unit values of product 3 reported by U.S. producers and importers, by quarters, Jan. 1996-June 1998

* * * * *

Figure V-3

Elastic rubber tape: Price trends of U.S. producers and importers of product 1, and margins of underselling, by quarters, Jan. 1996-June 1998

* * * * *

Figure V-4

Elastic rubber tape: Price trends of U.S. producers and importers of product 2, and margins of underselling, by quarters, Jan. 1996-June 1998

* * * * *

Figure V-5

Elastic rubber tape: Price trends of U.S. producers and importers of product 3, and margins of underselling, by quarters, Jan. 1996-June 1998

* * * * *

Price Comparisons

Margins of underselling were positive for all products and all time periods except product 3 in the second quarter of 1998. In the second quarter of 1998, the share of imports of product 3 by *** increased to *** percent, up from *** percent the previous quarter. This shift largely accounts for the increased average unit value of imports of product 3 in this quarter. The number of comparisons for each product and the ranges of under- and overselling are reported in table V-5.

Table V-5

Elastic rubber tape: Instances and ranges of under/(over)selling, by product

* * * * *

LOST SALES AND LOST REVENUES

Petitioners alleged 11 instances of lost sales totaling *** and 8 instances of lost revenues totaling ***. The allegations involved 17 purchasers. Staff was able to contact 13 of the purchasers involved in 9 instances of lost sales and 5 instances of lost revenue, and was able to confirm 5 instances of lost sales

V-5

Table V-6

Elastic rubber tape: Lost sales allegations

* * * * *

Table V-7

Elastic rubber tape: Lost revenue allegations

* * * * *

Contacts with *** indicated that they were now purchasing imported elastic rubber tape at least partly because of its lower price. *** both stated that *** had not suffered lost sales due to competition from foreign imports, and that purchases from *** had been on a trial basis only. *** estimated annual usage at ***. *** had awarded its business to importers of elastic rubber tape because of quality and delivery considerations. *** had changed suppliers because of both price and quality. *** had changed suppliers because of both price and service. *** no longer uses elastic rubber tape. *** formerly purchased elastic rubber tape from a distributor, rather than from one of the petitioners.

*** confirmed that *** had lowered its price for elastic rubber tape because of a lower price bid from importers of elastic rubber tape although *** took exception to the figure of *** in alleged lost revenue, because *** faced competition from ***, as well as from importers of elastic rubber tape from India. Contacts with *** confirmed that *** had lowered its price for elastic rubber tape. *** reported that the quantity of tape purchased annually was *** pounds rather than *** pounds as reported. *** reported that the price for imported tape was less than the re-negotiated price from ***, but that the quality was inferior.

The majority of these losses are from sales which have not yet taken place. They are estimates of future annual sales and revenue losses attributable to competition from less expensive imported tape. The largest single lost sale was to ***. The annual anticipated volume of *** pounds is *** percent of apparent U.S. consumption in 1997. Shipments of imported tape to *** began ***. The greatest loss in revenue other than a lost sale was due to a price decrease on tape supplied to *** which took effect in September 1998. Purchases by *** were *** percent of apparent U.S. consumption in 1997.⁵

Respondents have pointed out that all of the sales to *** were for re-export.⁶ In a telephone conversation on September 24, 1998 *** reported that the company has been investigating the feasibility of establishing "kit locations" outside the United States since ***. ***, operations could begin in ***. Direct shipments of elastic rubber tape could begin earlier because tape is usually shipped in full container loads. Tape destined for assembly operations in Mexico (a small share of overall sales) may still be shipped to a U.S. location first, as the volume of shipments is smaller.

⁵ Some other shipments involving lost sales and revenue have already taken place. *** negotiated a decrease in the price of tape from *** as early as April or May 1997. *** placed their first order with *** in November 1996.

⁶ Respondents' post-conference brief p. 18.

PART VI: FINANCIAL EXPERIENCE OF THE U.S. PRODUCERS

BACKGROUND

Two producers (Elastotec and Fulflex), accounting for all U.S. production of elastic rubber tape, provided financial data on their elastic rubber tape operations.

Elastotec is owned by M-Tec Corp., a privately held company. Its Elastomer Technology Group was formed as a result of two acquisitions which enabled the company to enter the elastic rubber tape business. In October 1995 it acquired RM Engineered Products, Inc. (North Charleston, SC) and in October 1996 it acquired the elastic business (including elastic rubber tape) from JPS Elastomerics Rubber Products (Stuart, VA). At its North Charleston plant, it produces expansion joints, custom engineered products, sealing products, and elastic rubber tape (***) percent of output which accounted for approximately ** percent of its net sales in the latest fiscal year). The Stuart, VA plant produces golf ball thread, medical supplies, and elastic rubber tape (***) percent of output which accounted for over ** percent of its net sales in its latest fiscal year).

Fulflex, a privately held company, is owned by the Moore Co. of Westerly, RI. It produces elastic rubber tape, golf ball thread, bandages, etc. at its plant in Scotland Neck, NC. Elastic rubber tape accounted for approximately ** percent of net sales in its latest fiscal year.

OPERATIONS ON ELASTIC RUBBER TAPE

The aggregate results of operations for the two producers of elastic rubber tape are presented in table VI-1. The results of operations by firm are shown in table VI-2. **. A summary of the selected pricing data for Jan.-June 1998 is shown below (each product is shown as a percent of total volume and average price per pound).

<u>Product description</u>	<u>Elastotec</u>		<u>Fulflex</u>	
	<u>Percent</u>	<u>Average price</u>	<u>Percent</u>	<u>Average price</u>
Non-staining - 5/16" width	**	**	**	**
Non-staining - 1/4" width	**	**	**	**
Swimsuit tape	**	**	**	**
Total	**	**	**	**

Note: The percent represents the proportion of volume (to 100%) of each of the three types of tape. Total for average price is a weighted average. There are other varieties of tapes included in the subject product for which pricing data were not requested by the Commission. Data are from p. 10 of the Commission questionnaires.

Table VI-1

Results of operations of U.S. producers in the production of elastic rubber tape, fiscal years 1995-97, Jan.-June 1997, and Jan.-June 1998

* * * * *

Table VI-2

Results of operations of U.S. producers in the production of elastic rubber tape, by firms, fiscal years 1995-97, Jan.-June 1997, and Jan.-June 1998

* * * * *

INVESTMENT IN PRODUCTIVE FACILITIES, CAPITAL EXPENDITURES, AND RESEARCH AND DEVELOPMENT EXPENSES

The value of fixed assets (property, plant, and equipment), capital expenditures, and research and development costs for elastic rubber tape are shown in table VI-3. ***. Fulflex and Elastotec indicated the following in response to staff questions:

* * * * *

Table VI-3

Value of assets, capital expenditures, and research and development expenses of U.S. producers of elastic rubber tape, by firms, fiscal years 1995-97, Jan.-June 1997, and Jan.-June 1998

* * * * *

CAPITAL AND INVESTMENT

The Commission requested the producers to describe any actual or potential effects of imports of elastic rubber tape from India on their growth, investment, ability to raise capital, and/or their development efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are as follows:

Actual Negative Effects

Elastotec - ***.

Fulflex - ***.

Anticipated Negative Effects

Fulflex - ***.

Elastotec - ***.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(I)). Information on the nature of the alleged subsidies and LTFV sales is summarized in part I and is shown in Commerce's notice presented in appendix A of this report; information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V, and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

Garware is the only known producer of elastic rubber tape in India. It began production operations in 1996 and ***. The only other product it produces is cut rubber thread, which currently constitutes about *** percent of its total sales. A summary of its tape operations is shown in table VII-1. (Because Garware reported data on the basis of its fiscal year (April to March) rather than the calendar year, the data for its exports to the United States in 1997 do not reconcile with data shown in tables IV-1 and IV-2). Table VII-1 shows the increasing dominance of exports in the company's overall operations and the increasing dominance of the United States among the exports' destinations.¹ More significantly, Garware has arranged to export an additional *** pounds of tape to the United States after June 30, 1998. Most of this tape, *** pounds, has been sold to ***, which, after delivery, will re-export it out of the United States to its foreign affiliates.

Inventories in the United States have increased with imports (table IV-1), but for the most part the reported inventories are either held in anticipation of further orders from an established customer or are pre-sold and awaiting delivery. For first-time customers the lead time for delivery is about *** weeks.

So far as it is known, Garware's elastic rubber tape is not subject to any antidumping or countervailing duties in any other country.

Table VII-1

Elastic rubber tape: India's production, capacity, shipments, exports, and end-of-period inventories, fiscal years 1995-97,¹ Jan.-June 1997, and Jan.-June 1998

* * * * *

¹ Other countries to which Garware has exported directly include ***.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

Water Resources Division, P.O. Box 25287, Denver, CO, 80225.

FOR FURTHER INFORMATION CONTACT: Joel Wagner at (303) 969-2955.

SUPPLEMENTARY INFORMATION: The NPS is revising the policies and procedures for implementing Executive Order 11990: Protection of Wetlands in conformance with the new system of NPS internal guidance documents. These updated policies and procedures will be published as Director's Order #77.1: Wetland Protection and Procedural Manual #77.1: Wetland Protection. Upon final approval of this Director's Order and the procedural manual, the existing NPS wetland protection guidance (1980 NPS Floodplain Management and Wetland Protection Guidelines), will be rescinded.

Dated: August 19, 1998.

Michael Soukup,

Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 98-22724 Filed 8-24-98; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-383 (Preliminary) and Investigation No. 731-TA-805 (Preliminary)]

Elastic Rubber Tape From India

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701-TA-383 (Preliminary) and antidumping investigation No. 731-TA-805 (Preliminary) under sections 703(a) and 733(a), respectively, of the Tariff Act of 1930 (the Act) (19 U.S.C. 1671b(a) and 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 threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from India of elastic rubber tape, provided for in subheading 4008.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India and sold in the United States at less than fair value (LTFV). Unless the Department of

Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in these investigations in 45 days, or in this case by October 2, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by October 9.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: August 18, 1998.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-205-3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on August 18, 1998, by Fulflex, Inc., Middletown, RI; Elastomer Technologies Group, Inc., Stuart, VA; and RM Engineered Products, Inc., North Charleston, SC.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives,

who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on Tuesday, September 8, 1998, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202-205-3185) not later than September 4, 1998, to arrange for their appearance. Parties in support of the imposition of countervailing or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before September 11, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of A-3 submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority

These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: August 19, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98-22740 Filed 8-24-98; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; COPS Small Community Supplemental Grant Program Application.

The Department of Justice, Office of Community Oriented Policing Services (COPS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 2, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 24, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395-7285. Comments may also be

submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Extension of previously approved collection.

(2) *The title of the form/collection:* COPS Small Community Supplemental Grant Program Application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Governments.

Other: none.

The information collected will be used by the COPS Office to determine whether current COPS grantees are eligible for one time, one year grants specifically targeted for the retention of police officer positions under the following conditions: (a) the police officer was funded by a COPS Phase I, FAST or UHP grant program; AND, (b) the police officer was hired by a jurisdiction with a population under 50,000; AND (c) the police officer was hired by the jurisdiction between October 1, 1994 and September 30, 1995; AND, (d) the police officer's activities have supported public safety

and crime prevention projects in those jurisdictions serving populations under 50,000.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 4000 respondents at 20 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,000 annual burden hours.

Public comment on this proposed information collection is strongly encouraged. If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 20, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98-22755 Filed 8-24-98; 8:45 am]

BILLING CODE 4410-AT-M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Analysis Protocol: Enhanced Evaluation PSP.

The Department of Justice, Office of Community Oriented Policing Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 22, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until September 24, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash rate will be 16.99 percent, which was the "all others" rate as established in the LTFV investigation. The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR section 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305² of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: September 4, 1998.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98-24746 Filed 9-15-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-815]

Initiation of Antidumping Duty Investigation: Elastic Rubber Tape From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

² See *Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order* (63 FR 24391, May 4, 1998).

EFFECTIVE DATE: September 16, 1998.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Cynthia Thirumalai at (202) 482-1778 and (202) 482-4087, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

The Petition

On August 18, 1998, the Department of Commerce (the Department) received a petition filed in proper form by Fulflex, Inc., Elastomer Technologies Group, Inc., and RM Engineered Products, Inc., collectively referred to hereinafter as "the petitioners." Elastomer and RM are both wholly owned subsidiaries of M-Tec Corporation. The petitioners filed supplemental information to the petition on September 1, 1998.

In accordance with section 732(b) of the Act, the petitioners allege that imports of elastic rubber tape (ERT) from India are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated that they are the only producers of ERT in the United States (see Determination of Industry Support for the Petition section below).

Scope of the Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness, and 1/8 inches to 1 5/8 inches (3 mm to 42 mm) in width. Such product is generally used in swimwear and underwear.

The merchandise subject to this investigation is classified in the

Harmonized Tariff Schedule of the United States (HTSUS) at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope with the petitioners to insure the petition accurately reflects the product for which they are seeking relief. Moreover, as discussed in the preamble to the new regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by September 29, 1998. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information.

Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.¹ Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition.

In this case, the Department has determined that the petition and supplemental information contained adequate evidence of sufficient industry support; therefore, polling was not necessary. See Initiation Checklist, dated September 8, 1998 (public document on file in the Central Records Unit of the Department of Commerce, Room B-099). Additionally, no person who would qualify as an interested party pursuant to section 771(A), (C), (D), (E) or (F) has expressed opposition on the record to the petition. To the best of the Department's knowledge, the producers who support the petition account for 100 percent of the production of the domestic like product. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioners identified Garware as the only Indian exporter to the United

States of ERT. Because information obtained by the petitioners indicates that most of Garware's U.S. sales are through its affiliated importer in the United States, the petitioners have based U.S. price on constructed export price (CEP). For Garware's CEP prices, the petitioners used prices and offers for sale to unaffiliated purchasers in the United States in April and June of 1998. Because the terms of Garware's U.S. sales were delivered, the petitioners calculated a net U.S. price by subtracting estimated costs for shipment from Garware's factory in India to the port of export using publicly available information. In addition, the petitioners subtracted ocean freight expenses calculated from a Garware shipping document obtained by the petitioners. U.S. import duties were estimated by the petitioners using the HTSUS schedule and then subtracted from the prices. The petitioners also subtracted amounts for U.S. merchandise processing fees and U.S. harbor maintenance fees in accordance with section 772(c)(2)(A) of the Act. Based upon their own experience, the petitioners then subtracted estimated U.S. inland freight costs from the port of importation to customers' delivery locations. Finally, the petitioners calculated a selling expense rate based on an average of the selling costs in the domestic industry and subtracted this amount.

With respect to normal value (NV), the petitioners stated that they believe the volume of Indian home market sales was sufficient to form a basis for NV, pursuant to section 773(a)(1)(C)(ii) of the Act. The petitioners obtained gross unit prices and offers for sale during the period contemporaneous with the U.S. sales and offers for sale for products which are either identical or similar to those sold to the United States. Since the home market prices and offers for sale were ex-factory, the petitioners made no adjustment to these prices. These home market prices were then converted to U.S. dollar prices using the official exchange rate in effect for the month of the comparison U.S. sale.

While the petitioners believe that Garware's home market is viable, they have also made a dumping analysis based on constructed value (CV) in order to show dumping is occurring under either scenario. The petitioners' calculations are for the Garware ERT compound which was sold/offered for sale in the United States. To calculate CV, the petitioners relied on a chemical analysis of Garware's product to determine its composition. To value the components of Garware's product, the petitioners used Indian data, where

possible. Where Indian data was not obtainable, the petitioners used their own costs, stating that the prices they pay are equivalent to world-market prices. We adjusted the petitioners' calculation to reflect that products of various dimensions but of identical chemical composition have the same material usage per unit of weight. To value overhead and SG&A, the petitioners used percentages from the *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from the People's Republic of China*, 62 FR 27222, 27229 (May 19, 1997) (Persulfates). In *Persulfates* the Department derived the overhead and SG&A percentages from the financial statement of an Indian producer of hydrogen peroxide. Because the information in the petition does not indicate that the production of hydrogen peroxide closely resembles that of ERT, we have not used the overhead and SG&A rates from *Persulfates*. Instead, we have relied on publicly available information from the Reserve Bank of India on the chemical industry, in general. To derive a profit rate, the petitioners compared Garware's home market prices to the cost of production of the product sold.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of ERT from India are being, or are likely to be, sold at less than fair value. Based on a comparison of CEP to home market prices, the petitioners calculated dumping margins range from 49.43 to 66.51 percent. The estimated dumping margins based on a comparison between the CV of Garware's product and CEP range from 28.93 to 43.66 percent.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The petitioners explained that the industry's injured condition is evident in the declining trends in net operating profits and income, net sales volumes and values, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate

¹ See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

and adequate evidence and meet the statutory requirements for initiation. See Initiation Checklist, dated September 8, 1998 (public document on file in the Central Records Unit of the Department of Commerce, Room B-099).

Allegation of Critical Circumstances

The petitioners have alleged that critical circumstances exist. To support their allegation, the petitioners have provided evidence in the petition of a trend of increasing imports recently and the potential for even greater increases in the near future. The petitioners also provided evidence suggesting the person by whom, or for whose account, ERT is imported knew or should have known that the merchandise was being sold at less than fair value and that there was likely to be material injury as a result. In taking into consideration the foregoing, we find that the petitioners have alleged the elements of critical circumstances and supported it with reasonably available information. We, therefore, will investigate this matter further.

Initiation of Antidumping Investigation

Based upon our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of ERT from India are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by January 26, 1999.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of India. We will attempt to provide a copy of the public version of the petition to the exporter named in the petition.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by October 2, 1998, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury by reason of imports of ERT from India. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will

proceed according to statutory and regulatory time limits.

This notice is published pursuant to sections 732(d) and 777(i) of the Act.

Dated: September 8, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98-24750 Filed 9-15-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-423-602]

Industrial Phosphoric Acid From Belgium; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of antidumping duty administrative review of industrial phosphoric acid from Belgium.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the antidumping duty administrative review of the antidumping order on industrial phosphoric acid from Belgium. This review covers 1 producer/exporter of industrial phosphoric acid. The period of review is August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: September 16, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 482-4195 or 482-3814, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351.101, et seq. (62 FR 27296—May 19, 1997).

Extension of Preliminary Results

The Department initiated this administrative review on September 25,

1997 (62 FR 50292). Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. Because of the complexity of an issue in this case, it is not practicable to complete this review within the statutory time limit of 365 days. The Department, therefore, is extending the time limit for the final results of the aforementioned review to October 8, 1998. See memorandum from Maria Harris Tildon to Robert S. LaRussa, which is on file in Room B-099 at the Department's headquarters.

This extension of time limit is in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations.

Dated: September 8, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group II.

[FR Doc. 98-24747 Filed 9-15-98; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-814]

Pure Magnesium From Canada; Notice of Extension of Time Limit for Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the fifth review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1996 through July 31, 1997. This extension is made pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: September 16, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0189.

SUPPLEMENTAL INFORMATION: Because it is not practicable to complete this review within the original time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (*i.e.*,

September 9, 1998), the Department of Commerce is extending the time limit for completion of the final results to not later than November 9, 1998. See September 4, 1998 Memorandum from Deputy Assistant Secretary for AD/CVD Enforcement Richard W. Moreland to Acting Assistant Secretary for Import Administration Joseph A. Spetrini on file in the public file of the Central Records Unit, B-099 of the Department.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR section 351.213.

Dated: September 4, 1998.

Richard W. Moreland,
Deputy Assistant Secretary for AD/CVD
Enforcement.

[FR Doc. 98-24745 Filed 9-15-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-816]

Notice of Initiation of Countervailing Duty Investigation: Elastic Rubber Tape from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 16, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Hansen or Javier Barrientos at (202) 482-1276 and (202) 482-4207, respectively, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

The Petition

On August 18, 1998, the Department of Commerce (the Department) received a petition filed in proper form by or on behalf of Fulflex, Inc., Elastomer Technologies Group, Inc. (Elastomer), and RM Engineered Products, Inc. (RM) (collectively referred to hereinafter as "the petitioners"). Elastomer and RM are both wholly owned subsidiaries of

M-Tec Corporation. A supplement to the petition was filed on September 1, 1998.

In accordance with section 702(b)(1) of the Act, the petitioners allege that manufacturers, producers, or exporters of the subject merchandise in India receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring an industry in the United States. The petitioners estimate the countervailing duty rate for Garware to be 50 percent. This figure is based on the findings of the EU in its Imposition of Provisional Countervailing Duty on Imports of Certain Broad Spectrum Antibiotics Originating in India (OJ L 166/17, Commission Regulation (EC) No. 1204/98, June 11, 1998) and the Department's determination in Certain Iron-Metal Castings from India: Preliminary Results of Countervailing Duty Administrative Review (63 FR 37534, July 13, 1998).

The petitioners state that they have standing to file the petition because they are interested parties, as defined under sections 771(9)(C) and (D) of the Act, and they have demonstrated that they are the only producers of ERT in the United States (see "Determination of Industry Support for the Petition" section below).

Scope of the Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness, and 1/8 inches to 1 5/8 inches (3 mm to 42 mm) in width. Such product is generally used in swimwear and underwear.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed scope with the petitioners to insure that the scope in the petitions accurately reflects the product for which they are seeking relief. Moreover, as discussed in the preamble to our regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by September 29, 1998. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street

and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide us with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determinations.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of India (GOI) for consultations with respect to the petition. On September 1, 1998, the GOI submitted written comments regarding the programs alleged in the petition. Consultations were held on September 4, 1998. See memorandum to the file regarding the consultations with the GOI, dated September 4, 1998 (public document on file in the Central Records Unit of the Department of Commerce, Room B-099).

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition of domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not

render the decision of either agency contrary to the law.¹

Section 771(10) of the Act defines domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department has therefore adopted the domestic like product definition set forth in the petition.

In this case, the Department has determined that the petition and supplemental information contained adequate evidence of sufficient industry support and, therefore, polling is unnecessary. See the Initiation Checklist prepared for this case, dated September 8, 1998 (public documents on file in the Central Records Unit of the Department of Commerce, Room B-099). The petitioners established industry support representing 100 percent of total production of the domestic like product.

Additionally, no person who would qualify as an interested party pursuant to sections 771(9)(A)(B)(C)(D)(E) or (F) has expressed opposition on the record to the petition. Therefore, to the best of the Department's knowledge, the producers who support this petition account for 100 percent of the production of the domestic like product produced by the portion of the industry expressing an opinion regarding the petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) applies to this investigation. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the

subject merchandise from India materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the subsidized imports of the subject merchandise from India. The petitioners explain that the industry's injured condition is evident in the declining trends in net operating profits and income, net sales volumes and values, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation, and it determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation (see Attachment 2 to the September 8, 1998, Initiation Checklist entitled "Analysis of Allegations and Evidence of Material Injury and Causation").

Allegation of Critical Circumstances

The petitioners allege that critical circumstances exist with respect to imports of ERT from India. To support this allegation, the petitioners have provided evidence in the petition of a trend of increasing imports recently and the potential for even greater increases in the near future. The petitioners also have asserted that the alleged subsidies are inconsistent with the Subsidies Agreement, based on the fact that both the Department and the European Union have determined several of the alleged subsidies to be countervailable export or import substitution subsidies in other countervailing duty proceedings. In taking into consideration the foregoing, we find that petitioners have alleged the elements of critical circumstances and supported it with reasonably available information. We, therefore, will investigate this matter further.

Initiation of Countervailing Duty Investigation

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably

available to the petitioners supporting the allegations.

The Department has examined the petition on elastic rubber tape (ERT) from India and found that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of ERT from India receive subsidies. See the September 8, 1998, Initiation Checklist regarding the initiation of this investigation. We will make our preliminary determination by November 12, 1998, unless this deadline is extended.

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers and exporters of the subject merchandise in India:

1. Passbook/Duty Entitlement Passbook Schemes.
2. Export Promotion Capital Goods Scheme.
3. Export Processing Zones/Export Oriented Units Programs.
4. Income Tax Exemption Scheme.
5. Pre-Shipment Export Financing.
6. Post-Shipment Export Financing.
7. Import Mechanism (Sale of Import Licenses).
8. Exemption of the Interest Tax on Export Credits.
9. Rediscounting of Export Bills Abroad.
10. Programs Operated by the Small Industries Development Bank of India.
11. Special Imprest Licenses.
12. Market Development Assistance.
13. Special Benefits to Export and Trading Houses and Super Star Trading Houses.
14. Duty Drawback on Excise Taxes.
15. Pre-Shipment Export Financing in Foreign Currency.

We are not including in our investigation the following program alleged to be benefitting producers and exporters of the subject merchandise in India:

Location Grants

The petitioners alleged that Garware may have received grants during the POI for having located its facilities in the "Maharashtra Industrial Zone." The petitioners did not provide any additional information such as the name of a particular program, the government agency administering the program, the eligibility requirements, or the specific manner in which benefits are provided.

We are not including this alleged subsidy in our investigation because the petitioners have not provided sufficient information. While the petitioners have

¹ See *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

asserted that Garware received government grants due to its location in an industrial zone, they have provided no factual information regarding a specific program under which these alleged grants may have been provided. Furthermore, the petitioners have not provided evidence that companies located in "industrial zones" are eligible for certain benefits. (We note that we are including in our investigation Export Processing Zones, Falt Free Trade Zones and Other Free Trade Zones.) Given the lack of information regarding this allegation, we are not including it in our investigation.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of the Government of India. We will attempt to provide copies of the public version of the petition to all the exporters named in the petition, as provided for under section 351.203(c)(2) of our regulations.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of this initiation.

Preliminary Determination by the ITC

The ITC will determine by October 2, 1998, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of ERT from India. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to sections 702(c) and 777(i) of the Act.

Dated: September 8, 1998.

Richard W. Moreland,
Acting Assistant Secretary for Import Administration.

[FR Doc. 98-24749 Filed 9-15-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Weather Service Modernization and Associated Restructuring

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The NWS is publishing proposed certifications for the consolidation, automation, and closure of the Huntsville, Alabama Weather Service Office (WSO) which would be automated at FAA Weather Observation Service Level B and have its services consolidated into the future Birmingham, Alabama Weather Forecast Office (WFO).

In accordance with Pub. L. 102-567, the public will have 60-days in which to comment on these proposed consolidation, automation, and closure certifications.

DATES: Comments are requested by November 16, 1998.

ADDRESSES: Request for copies of the proposed consolidation, automation and closure package should be sent to Tom Beaver, Room 11426, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301-713-0300. All comments should be sent to Tom Beaver at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Beaver at 301-713-0300.

SUPPLEMENTARY INFORMATION: In accordance with section 706 of Pub. L. 102-567, the Secretary of Commerce must certify that this consolidation, automation, and closure will not result in a degradation of service to the affected area of responsibility and must publish the proposed consolidation, automation, and closure certifications in the FR. The documentation supporting these proposed certifications includes the following:

(1) A draft memorandum by the meteorologist-in-charge recommending the certification, the final of which will be endorsed by the Regional Director and the Assistant Administrator of the NWS if appropriate, after consideration of public comments and completion of consultation with the Modernization Transition Committee (the Committee);

(2) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(3) A comparison of the services provided within the service area and the services to be provided after such action;

(4) A description of any recent or expected modernization of NWS operation which will enhance services in the service area;

(5) An identification of any area within the affected service area which would not receive coverage (at an elevation of 10,000 feet) by the next generation weather radar network;

(6) Evidence, based upon operational demonstration of modernized NWS

operations, which was considered in reaching the conclusion that no degradation in service would result from such action including the WSR-88D Radar Commissioning Report, User Confirmation of Services Report, and the Decommissioning Readiness Report;

(7) Evidence, based upon operational demonstration of modernized NWS operations, which was considered in reaching the conclusion that no degradation in service will result from such action including the ASOS Commissioning Report; series of three letters between NWS and FAA confirming that weather services will continue in full compliance with applicable flight aviation rules after ASOS commissioning; Surface Aviation Observation Transition Checklist documenting transfer of augmentation and backup responsibility from NWS to FAA; successful resolution of ASOS user confirmation of services complaints; and an in-place supplementary data program at the responsible WFO;

(8) Warning and forecast verification statistics for pre-modernized and modernized services which were utilized in determining that services have not been degraded;

(9) An Air Safety Appraisal for offices which are located on an airport; and

(10) A letter appointing the liaison officer.

These proposed certifications do not include any report of the Committee which could be submitted in accordance with sections 706(b)(6) and 707(c) of Pub. L. 102-567. In December 1995 the Committee decided that, in general, they would forego the optional consultation on proposed certifications. Instead, the Committee would just review certifications after the public comment period has closed so their consultation would be with the benefit of public comments that had been submitted.

This notice does not include the complete certification package because it is too voluminous to publish. Copies of the certification package and supporting documentation can be obtained through the contact listed above.

Once all public comments have been received and considered, the NWS will complete consultation with the Committee and determine whether to proceed with the final certification. At the June 25, 1997 MTC meeting the Committee stated that its endorsement of certifications is "subject to the following qualifications:

(1) The number of trained staff in each modernized field office meets staffing requirements as established by the modernization criteria and documented

APPENDIX B

WITNESSES AT THE COMMISSION'S CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

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

Subject : ELASTIC RUBBER TAPE FROM INDIA
Inv. Nos. : 701-TA-383 (Preliminary) and 731-TA-805 (Preliminary)
Date and Time : September 8, 1998 - 9:30 a.m.

Sessions in connection with the investigations were held in the Commission's Main Hearing Room, 500 E Street, S.W., Washington, DC.

In Support of the Imposition of Countervailing and Antidumping Duties:

Ablondi, Foster, Sobin & Davidow
Washington, DC
on behalf of

Fulflex, Inc.
Elastotec (Elastomer Technologies Group, Inc., and RM Engineered Products, Inc.)

William E. Russell, President, Fulflex
Douglas Booth, President, Elastotec

F. David Foster)
Joel W. Rogers)--OF COUNSEL

In Opposition to the Imposition of Countervailing and Antidumping Duties:

White & Case
Washington, DC
on behalf of

Garware Elastomerics Limited

John Mitchell, Global Trading, Inc..
John Reilly, Consultant, Nathan Associates, Inc.

Christopher F. Corr)
Richard G. King)--OF COUNSEL
Robert G. Gosselink)

APPENDIX C
SUMMARY DATA

Table C-1

Elastic rubber tape: Summary data concerning the U.S. market, 1995-97, Jan.-June 1997, and Jan.-June 1998

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