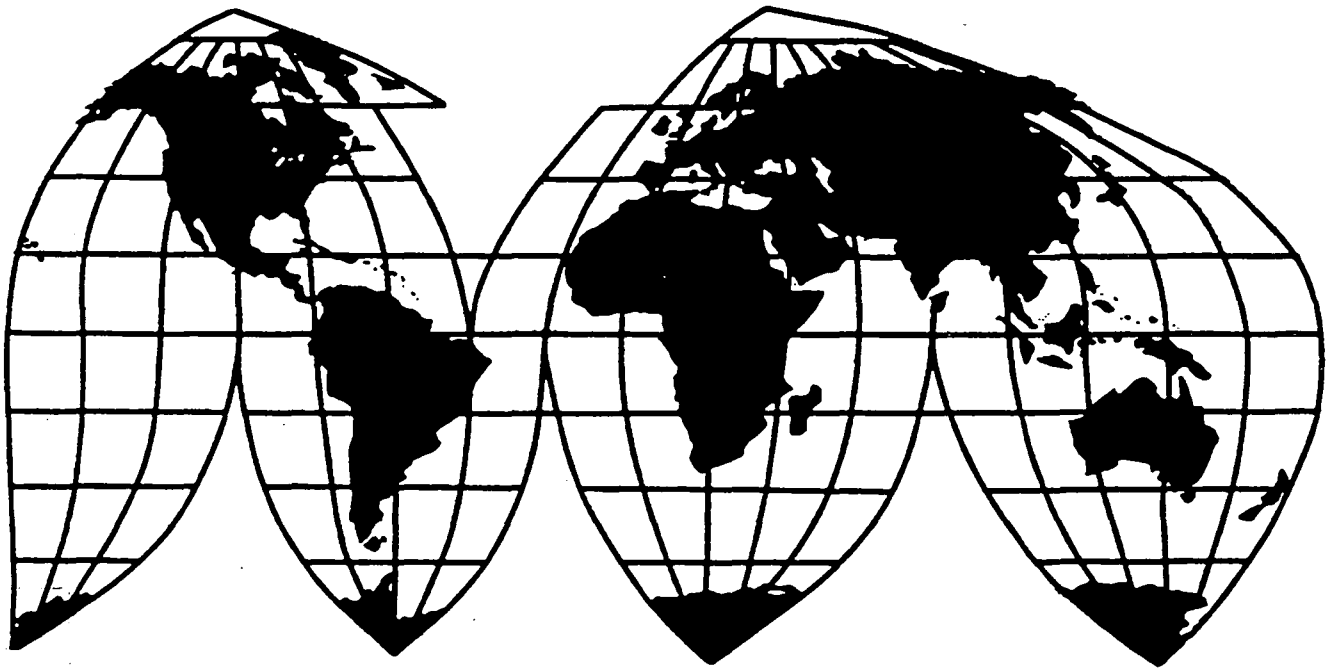
# Extruded Rubber Thread From Malaysia

Investigation No. 753-TA-34

**Publication 3112** **June 1998**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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Marc Bernstein, *Attorney*

Vera Libeau, *Supervisory Investigator*

**Address all communications to**
**Secretary to the Commission**
**United States International Trade Commission**
**Washington, DC 20436**

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Note.--Information that would reveal the confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

## GLOSSARY

| | |
|---|---|
| C.i.f. | Cost-insurance-freight |
| COGS | cost of goods sold |
| Commerce | U.S. Department of Commerce |
| Commission | U.S. International Trade Commission |
| Customs | U.S. Customs Service |
| CVD | Countervailing duty |
| ERT | Extruded rubber thread |
| FDA | Food & Drug Administration |
| Filati | Filati Lastex Sdn. Bhd. |
| FLE-USA | FLE-USA, Inc. |
| Flexfil | Flexfil Corp. |
| F.o.b. | Free-on-board |
| Globe | Globe Manufacturing Co. |
| GSP | Generalized System of Preferences |
| Heveafil/Filmax | Heveafil Sdn. Bhd./Filmax |
| HTS | Harmonized Tariff Schedule |
| ISO | International Standards Organization |
| LTFV | Less than fair value |
| MFN | Most favored nation |
| NCS | Net countervailable subsidy |
| North American | North American Rubber Thread Co. |
| Qualitex | Qualitex, Inc. |
| Rubberflex | Rubberflex Sdn. Bhd. |
| Rubber Thread | Rubber Thread Industries (M) Sdn. Bhd. |
| Rubfil | Rubfil Sdn. Bhd. |
| SG&A | Selling, general, & administrative |
| TR | Transcript of the Commission's hearing |
| URAA | Uruguary Round Agreements Act |

## UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 753-TA-34

EXTRUDED RUBBER THREAD FROM MALAYSIA

### DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 753(a) of the Tariff Act of 1930 (19 U.S.C. § 1675b(a)) (the Act), that an industry in the United States is not likely to be materially injured by reason of imports of extruded rubber thread from Malaysia, provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States, if the countervailing duty order concerning such extruded rubber thread is revoked.

### BACKGROUND

The Commission initiated this investigation effective December 15, 1997, following receipt of a request filed with the Commission by North American, Fall River, MA, on June 30, 1995, requesting the continuation of the existing countervailing duty order, issued August 25, 1992, concerning extruded rubber thread from Malaysia. Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of December 24, 1997 (62 FR 67406). The hearing was held in Washington, DC, on May 5, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine under section 753 of the Tariff Act of 1930, as amended ("the Act"), that an industry in the United States is not likely to be materially injured by reason of imports of the subject merchandise if the countervailing duty order concerning extruded rubber thread (ERT) from Malaysia is revoked.[1]

## I. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. In General

In making its determination under section 753, the Commission first defines the "domestic like product" and the "industry."[2] Section 771(4)(A) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of that product."[3] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[4]

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[5] No single factor is dispositive, and the Commission may

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

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

[3] Id.

[4] 19 U.S.C. § 1677(10).

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

consider other factors it deems relevant based on the facts of a particular investigation.[6] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[7]

### B. Product Description and Domestic Like Product

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

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

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

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

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

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

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

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

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

[12] Malaysian Respondents' Posthearing Brief, ex. 1 at 11.

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

### C. Domestic Industry

The domestic industry is defined as "the producers as a [w]hole of a domestic like product, or those producers whose collective output of the domestic like product constitutes a major proportion of the total domestic production of that product."[15] In defining the domestic industry, the Commission's practice has been to include in the domestic industry all domestic production, whether toll-produced, captively consumed, or sold in the merchant market, assuming sufficient production-related activity occurs in the United States.[16] Based on our domestic like product determination, we find that the domestic industry consists of the

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

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

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

[15] 19 U.S.C. § 1677(4)(A).

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

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

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

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

Section 753 indicates that the Commission shall consider the nature of the countervailable subsidy identified by Commerce[21] and states that if the Commission considers the magnitude of the net countervailable subsidy in making its determination, it shall use the net countervailable subsidy that Commerce provides.[22] Section 753 does not itself otherwise specify the factors that the Commission is to examine in determining likelihood of material injury. However, the Statement of Administrative Action

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

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

[19] 19 U.S.C. § 1675b(a)(1).

[20] 19 U.S.C. § 1677(7)(A).

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

[22] 19 U.S.C. § 1675b(b)(2).

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

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

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

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

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

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

[26] 19 U.S.C. § 1675(c)(1).

[27] *See* 19 U.S.C. § 1675a(a).

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

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

### A. Conditions of Competition

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

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

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

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

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

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

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

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

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

(continued...)

Third, ERT is manufactured in different varieties, *i.e.* standard talced, standard talcless, heat-resistant, fine-gauge, and food-grade, which comprise various segments of the ERT market. In recent years there have been substantial proportions of domestic production of the standard talcless, fine-gauge, and heat-resistant products, a much smaller proportion of standard talced product, and no commercial production of food-grade ERT. By contrast, in recent years imports from Malaysia have been predominantly standard talced and talcless products, as well as smaller volumes of fine-gauge, food-grade, and heat-resistant ERT.[35]

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

Fifth, the level of demand for ERT in the U.S. market is prone to noticeable annual fluctuations. Apparent consumption of ERT increased from 1991 to 1994, declined significantly from 1994 to 1996, and then increased sharply from 1996 to 1997.[37]

### B. Likely Volumes of Subject Imports

Imports of ERT from Malaysia have had a relatively stable presence in the U.S. market in recent years. U.S. shipments of subject imports were sharply lower in 1993, the first full year after the countervailing duty order came into effect, than in either 1991 or 1992.[38] Since 1994, U.S. shipments of

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

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

[36] CR at V-1-2 & n.1, PR at V-1.

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

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

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

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

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[38](...continued)
in 1992 and then declined to *** in 1993. Table C-4, CR at C-6, PR at C-3.

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

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

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

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

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

Moreover, our examination of the factors specified in section 752(a)(2) of the Act indicates that, even if Malaysian producers were motivated to increase their exports to the United States, they would have limited ability to do so. ERT production capacity in Malaysia has increased modestly during the period examined. Between 1995 and 1997, the increase in capacity was only *** percent.[44] Capacity utilization was very high towards the latter portion of the period examined, reaching *** percent in 1995, *** percent in 1996, and *** percent in 1997.[45] These figures indicate that important constraints exist on the ability of Malaysian producers to increase exports to the United States by increasing production.[46] Additionally, there is no indication of any recent buildup in inventory levels of subject imports which would indicate a likelihood of significantly increased imports. Since 1995, relative levels of inventories of ERT in Malaysia have remained generally stable, and inventory levels of the subject merchandise in the United States have declined on both an absolute and a relative basis.[47]

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

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

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

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

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

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

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

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

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

### C. Likely Price Effects

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

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

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

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

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

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

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

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

[54] Tr. at 26 (Friar).

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

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

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

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

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

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

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

[59] Chairman Bragg does not join this statement.

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

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

### D. Likely Impact of Subject Imports

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

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

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

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

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

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

(continued...)

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

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

In recent years, the domestic industry's performance has been mixed. Production declined from 1995 to 1996 and then increased by a lesser amount from 1996 to 1997.[68] Capacity utilization followed a similar pattern.[69] Domestic producers' market share has declined each year from 1995 to 1997.[70] Employment declined from 1995 to 1996, and increased by a lesser amount from 1996 to 1997.[71] The industry ***.[72] We observe that several of the conditions of competition have impacted the domestic ERT industry's performance in recent years. The *** financial results of 1995 and 1996 were coincident with a period where raw material costs rose sharply and producers' unit costs of goods sold increased.[73] Additionally, recent years have been characterized by increasing volumes of imports from countries other than Malaysia, as Globe

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[65](...continued)
injured by reason of the subject imports if the order is revoked.

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

[67] Chairman Bragg does not join this statement.

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

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

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

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

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

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

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

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

## CONCLUSION

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

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

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

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

## VIEWS OF COMMISSIONER CAROL T. CRAWFORD

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

### I. LIKE PRODUCT

I have joined my colleagues in finding that all types of ERT, other than food-grade ERT, and all gauges of ERT should be included in the same like product. However, I do not concur in their conclusion that there is not "production" of food-grade ERT and therefore that it cannot be considered a separate like product. Rather, I conclude that domestic production of food-grade ERT exists, and I find that food-grade ERT is a separate like product.

Only one firm, Globe, reported producing any food-grade ERT during the period of investigation. It produced small quantities of food-grade ERT in each of the three years 1995, 1996 and 1997.[2] Globe's food-grade production was limited to samples for research and development. None of the production has been sold commercially, because Globe's food-grade production has not been approved for sale by the Food and Drug Administration ("FDA").

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

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

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

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

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

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

While there are differences in physical characteristics between food-grade ERT and other ERT, a clear dividing line exists based on different uses and the lack of interchangeability. Food-grade ERT is used only in rubber netting that is used to wrap food, primarily boneless meats. Food-grade ERT must satisfy FDA requirements for use as a food wrap. Therefore, purchasers of food-grade ERT are prohibited from using other ERT to wrap food. Consequently, consumers simply cannot use other types of ERT as an alternative to food-grade ERT. While it may be possible that food-grade ERT could be used in place of other ERT, no evidence has been offered that such interchangeability actually occurs. In sum, the legal restrictions on food-grade ERT dictate different uses for food-grade ERT and other ERT. In addition, there is no interchangeability between food-grade ERT and other ERT.[4]

The FDA requirements and lack of interchangeability create a clear dividing line between food-grade ERT and other ERT. Therefore, I find two like products, food-grade ERT and ERT other than food-grade ERT.

## II. DOMESTIC INDUSTRY

Having found two like products, I find two domestic industries, the industry producing ERT other than food-grade ERT and the industry producing food-grade ERT. There is no evidence to suggest that any domestic producer is a related party or should be excluded from the domestic industry. Therefore, I find that the domestic industry producing ERT other than food-grade ERT consists of both domestic producers.[5] Furthermore, I find that the domestic industry producing food-grade ERT consists of Globe, the only domestic producer that reported producing any food-grade ERT.

## III. LEGAL STANDARD

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

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

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

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

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

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

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

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

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

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

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

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[6] 19 U.S.C. § 1675b(a)(1).

[7] 19 U.S.C. § 1675a(a)(1).

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

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

The statute is clear on its face, and thus it is neither necessary nor appropriate to resort to the legislative history.[9] The statute requires the Commission to employ the analysis used in original countervailing duty investigations. Consequently, in accordance with the statute[10] I evaluate the likely volume of the subject imports, the likely effect of the subject imports on domestic prices, and the likely impact of the subject imports on the domestic industry if the countervailing duty order is revoked.

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

As discussed above, only one domestic firm, Globe, reported producing any food-grade ERT during the period of investigation. However, this firm has not obtained the required FDA approval, and therefore cannot legally sell its product commercially. In addition, North American has testified that it will be able to manufacture food-grade ERT, but not until the FDA issues its final regulations governing food-grade ERT.[11] Nonetheless, at the current time neither domestic firm is legally able to sell food-grade ERT in the U.S. market.

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

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

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

[10] 19 U.S.C. § 1677(7)(B).

[11] Tr. at 17-18.

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

# PART I: INTRODUCTION

## BACKGROUND

This investigation results from a request filed by North American, Fall River, MA, on June 30, 1995, requesting the continuation of the existing countervailing duty order, issued August 25, 1992, concerning extruded rubber thread (ERT)[1] from Malaysia.[2] Petitioner alleges that if the countervailing duty order were revoked, an industry in the United States would be materially injured by reason of subsidized imports of ERT from Malaysia. Information relating to the background of the investigation is provided below.

| *Date* | *Action* |
|---|---|
| August 29, 1991 .... | Original petition filed with Commerce and the Commission[3] |
| December 30, 1991 .. | Commerce's preliminary affirmative countervailing duty determination |
| August 25, 1992 .... | Commerce's final affirmative countervailing duty determination |
| August 25, 1992 .... | Commerce issued countervailing duty order (57 FR 38472) |
| June 30, 1995 ..... | Request for continuation of existing countervailing duty order filed with the Commission |
| December 15, 1997 .. | Initiation of Commission investigation (62 FR 67406, Dec. 24, 1997)[4] |

*Tabulation continued.*

[1] The ERT covered under the existing countervailing duty order, and subject to this investigation, consists of vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex, of any cross-sectional shape, measuring 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inches or 18 gauge, in diameter.

[2] Section 753(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, ("Act") provides that, in the case of a countervailing duty order issued under section 303 of the Act with respect to which the requirement of an affirmative determination of material injury under section 303(a)(2) was not applicable at the time the order was issued, interested parties may request that the Commission initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked.

[3] At the time of the filing of that petition, Malaysia was eligible for duty-free entry under the GSP and was a contracting party of the then-in-place General Agreement of Tariffs and Trade. Therefore, even though it was not a "country under the Agreement" within the meaning of section 701(b) of the Act, Malaysia was entitled to an injury determination. Accordingly, in response to the petition filed on Aug. 29, 1991, the Commission instituted countervailing duty investigation No. 303-TA-22 (Preliminary) under section 303(a) of the Act and subsequently determined that there was a reasonable indication that an industry in the United States was materially injured by reason of the subsidized imports of ERT from Malaysia. On Dec. 30, 1991, Commerce issued a preliminary affirmative countervailing duty determination and the Commission, in turn, instituted countervailing duty investigation No. 303-TA-22 (Final). However, on Mar. 12, 1992, the President of the United States determined that it was appropriate to withdraw the duty-free entry afforded under the GSP to ERT that is the product of Malaysia. Therefore, Malaysia was no longer entitled to an injury determination under section 303 of the Act and the Commission discontinued its countervailing duty investigation.

[4] *Federal Register* notice presented in app. A.

*Continuation of tabulation.*

| *Date* | *Action* |
|---|---|
| January 8, 1998 ..... | Commerce report of information to be used in the Commission determination[5] |
| May 5, 1998 ..... | Commission's hearing[6] |
| June 11, 1998 ..... | Date of the Commission's vote |
| June 25, 1998 ..... | Commission determination transmitted to Commerce |

## Tariff Classification

ERT currently is classified under subheading 4007.00.00 of the HTS. Column 1 MFN tariff rates since 1992 have been as follows: 4.2 percent *ad valorem* for the period 1992-94, 3.4 percent *ad valorem* for 1995, 2.5 percent *ad valorem* for 1996, 1.7 percent *ad valorem* for 1997, and 0.8 percent *ad valorem* in 1998. ERT imported under column 1 rates will be free of duty in 1999.

## Nature and Extent of Subsidies

On January 8, 1998, Commerce reported to the Commission its findings concerning the NCS that is likely to prevail if the countervailing duty order that is the subject of the investigation is revoked.[7] As reported, the net countervailable subsidy (NCS) for all Malaysian producers, except for Rubfil, is 6.76 percent *ad valorem*.[8] The NCS for Rubfil is 1.06 percent *ad valorem*. The NCS is comprised of the following programs:[9]

> **(1) Export Credit Refinancing (ECR).**--The ECR program was established to promote (a) exports of manufactured goods and agricultural food products that have significant value-added and high local content, (b) greater domestic linkages in export industry, and (c) easy access to credit facilities.

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[5] Commerce is required by the Act to report certain information to the Commission to be used in its section 753 determination. This information consists of: (1) the net countervailable subsidy, as defined in section 753(b)(2)(A), and (2) the nature of the subsidy, as defined in section 753(b)(2)(B).

[6] A list of witnesses appearing at the hearing is presented in app. B.

[7] Section 753(b)(2) of the Act states that if the Commission considers the magnitude of the net countervailable subsidy in making its section 753 determination, it must use the net countervailable subsidy provided by Commerce.

[8] The NCS for Rubfil differs from that applicable to all other companies due to the fact that Rubfil was found to have a significantly different subsidy rate in the original investigation. At the time of the original Commerce investigation, Commerce issued country-wide rates, except when the average for an individual firm differed "significantly" from the calculated countrywide rate. ("Significant" was defined as either *de minimis* or as plus or minus 5 points from the countrywide rate or as plus or minus 25 percent from the country-wide rate.) Following the assumption that if the countervailing duty order were revoked there would be a return to "the old world," Commerce based its Jan. 8, 1998, calculations on its original countervailing duty investigation, adjusting data where necessary to account for the termination of any programs. Accordingly, Rubfil was assigned a NCS that differs from that of the other companies. Conversation with Commerce, Mar. 31, 1998.

[9] 62 FR 26289, May 13, 1997.

**(2) Abatement of Income Tax on Export Sales.**--The Malaysian Promotion of Investments Act of 1986 provides an abatement of income tax based upon export performance. Specifically, a portion of income, equal to 50 percent of the ratio of export sales to total sales, is exempt from income tax.

**(3) Industrial Building Allowance for Warehousing Exports.**--The Malaysian Income Tax Act allows an income tax deduction for a percentage of the value of constructed or purchased buildings used to store finished goods ready for export or imported inputs to be incorporated into exported goods.

**(4) Double Deduction for Export Promotion Expenses.**--The Malaysian Promotion of Investments Act allows companies to deduct expenses related to the promotion of exports twice, once in calculating net income of the financial statement and again in calculating taxable income.

**(5) Pioneer Program for Exporters.**--Pioneer status is a tax incentive offered to promote investment in the manufacturing, tourist, and agricultural sectors.

Each year during the anniversary month of the publication in the *Federal Register* of a countervailing duty (or antidumping) order, interested parties to the investigation may request that Commerce conduct an administrative review of the order. Once the final results of the review are published in the *Federal Register*, Commerce instructs Customs to collect cash deposits of estimated countervailing (or antidumping) duties in the percentages found during the review of the f.o.b. invoice price on all shipments from reviewed companies, entered, or withdrawn from warehouse, for consumption.[10, 11] The cash deposit rates remain in effect until publication of the final results of the next administrative review.

Information concerning the results of these reviews (including the antidumping reviews) is presented below as a potential aid in analyzing import volume and pricing data presented elsewhere in this report. The results of the administrative reviews of the countervailing duty order concerning imports of ERT from Malaysia that have been conducted to date are presented in table I-1.

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[10] Any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*. Accordingly, for those producers/exporters, no cash deposit is required.

[11] As counsel for Malaysian respondents pointed out during the hearing held by the Commission in connection with this investigation, an importer has to take two factors into consideration in determining the impact of any countervailing (or antidumping) duties on the pricing set by his firm. One factor is the current deposit rate (which will have a direct effect on the cash flow of the firm) and the other is the actual final duty that must be paid. Because the U.S. system is retrospective, the importer will not know the amount of the final duty until after the goods are imported (and the pricing of the foreign producer/exporter is reviewed by Commerce). Counsel stated that "to the extent the companies can assess ... the degree to which they may be selling below fair value, they will try to estimate, in their own calculations ... how much the actual final duties would be." Hearing TR, pp. 88-89.

Table I-1
ERT: Results of Commerce's final countervailing duty investigation concerning imports of ERT from Malaysia and subsequent administrative reviews

| | (Percent) | | | | |
|---|---|---|---|---|---|
| Firm | Countervailing duty investigation | 1992 | 1993 | 1994[1] | 1995[1] |
| Rubfil | 4.21 | 3.30 | 1.00 | 0.38 | 0.03 |
| Heveafil | 9.63 | 3.30 | 1.00 | 0.23 | 0.90 |
| Filmax | 9.63 | 3.30 | 1.00 | 0.23 | 0.90 |
| Rubberflex | 9.63 | 3.30 | 1.00 | 0.19 | 0.30 |
| Filati | 9.63 | 3.30 | 1.00 | 1.39 | 0.15 |

[1] Commerce issued individual rates for investigated or reviewed companies. Pursuant to the URAA, there is no longer a preference for calculating a single country-side subsidy rate in countervailing duty proceedings.

Source: 57 FR 38472 (Aug. 25, 1992), 60 FR 17515 (Apr. 6, 1995), 60 FR 1982 (Oct. 4, 1995), 61 FR 55272 (Oct. 25, 1996), and 62 FR 48985 (Sept. 18, 1997).

In 1996, no party requested a review due to lack of interest at that point.[12] Respondents argue that the level of subsidization is so low that there is no possible impact on the U.S. market.[13] Petitioner counters that "{a}bsent [14] those disciplinary measures ... it's clear that the subsidies would have been much higher."[15] Petitioner further argues that the Malaysian producers, as the importers of record, "are themselves absorbing these countervailing {and co-existing antidumping} duties."[16] Counsel for Malaysian respondents indicates that "most of the time the companies, obviously, will try to translate ... {collected duties} into an actual cost, which goes to the end user {or purchaser}."[17]

## Related Commission Investigations

In addition to the completed investigations described below, the Commission, in response to petitions filed by North American, on March 31, 1998, instituted countervailing duty and antidumping investigations concerning imports of ERT from Indonesia (invs. Nos. 701-TA-375 and 731-TA-787 (Preliminary)). It

[12] Testimony by counsel for respondents at the Commission's hearing. Hearing TR, p. 7.

[13] According to counsel for respondents, the U.S. Government will collect countervailing duties of less than $80,000 for imports entered in 1993, less than $10,000 for imports entered in 1994, and $40,000 for imports entered in 1995. Hearing TR, p. 8. (Presented data are drawn from exhibits to the public responses of Malaysian producers/exporters to Commerce questionnaires.)

[14] The use of "curved brackets" throughout the staff report indicates that changes have been made from a source document.

[15] Hearing TR, p. 20.

[16] Hearing TR, p. 19. The responsibilities of the Commission to consider whether duty absorption has occurred applies only to the sunset review investigations of antidumping proceedings mandated under the URAA.

[17] Hearing TR, p. 90.

subsequently made affirmative determinations in the preliminary phases of both the countervailing duty and antidumping investigations. As a result of the Commission's affirmative determinations, Commerce will continue its investigations, with its preliminary countervailing duty determination currently due on or about June 24, 1998, and its preliminary antidumping determination currently due on or about September 8, 1998.

**Antidumping Investigation (731-TA-527 (Final))**

ERT from Malaysia was also the subject of an antidumping investigation conducted by the Commission in 1991-92.[18] That investigation was instituted in response to a petition filed by North American concurrent with its countervailing duty petition concerning imports of ERT from Malaysia. Information relating to the background and results of the antidumping investigation is provided below and in table I-2.

| *Date* | *Action* |
|---|---|
| August 29, 1991 .... | Petition filed with Commerce and the Commission; institution of Commission investigation |
| April 2, 1992 ..... | Commerce's preliminary affirmative antidumping determination |
| August 17, 1992 .... | Commerce's final affirmative antidumping determination |
| September 26, 1992 .. | Commission's final affirmative antidumping determination |
| October 7, 1992 ..... | Commerce issued antidumping order |

Table I-2
ERT: Results of Commerce's final antidumping investigation concerning imports of ERT from Malaysia and subsequent administrative reviews

| | *(Percent)* | | | | |
|---|---|---|---|---|---|
| Firm | Antidumping investigation | Apr. 2, 1992-Sept. 30, 1993 | Oct. 1, 1993-Sept. 30, 1994 | Oct. 1, 1994-Sept. 30, 1995 | Oct. 1, 1995-Sept. 30, 1996 |
| Heveafil/Filmax ..... | 10.68 | 10.65 | 0.36 | 7.88 | 54.31 |
| Rubberflex ..... | 20.38 | 1.88 | 29.83 | 20.38 | 3.75 |
| All others ..... | 15.16 | (1) | (1) | (1) | (1) |
| Rubfil ..... | (2) | (2) | 29.83 | 54.31 | 54.31 |
| Filati ..... | (2) | (2) | 0.00 | 8.11 | 52.89 |

[1] The margin for all other manufacturers or exporters was not calculated and remained 15.16 percent, the "all others" rate established in Commerce's original LTFV investigation.

[2] Rubfil and Filati were not given company-specific rates, but were assigned the "all others" rate of 15.16 percent.

*Continued on next page.*

[18] The Commission determined that an industry in the United States was materially injured by reason of imports from Malaysia of ERT. (However, Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford dissented with respect to food-grade ERT.) *Extruded Rubber Thread*, USITC Pub. 2563, Dec. 1992.

*Additional information concerning the most recent administrative review.* Rubfil failed to respond to the questionnaire it received in December 1996 from Commerce. As a consequence, Commerce applied the adverse inferences provision of the Act and assigned the highest rate (of 54.31 percent) calculated for any respondent in any segment of its proceeding. Regarding Heveafil, Commerce stated that "we were unable to verify the cost of production (COP) and constructed value (CV) information provided by Heveafil because we discovered at verification that the company had destroyed the source documents upon which a large portion of its response was based. The destruction of these source documents raises particular concern, as Heveafil should have been aware of the necessity of retaining these documents based upon its participation in prior segments of this proceeding. Moreover, there were significant delays in the verification process itself, caused by company difficulties in locating documents and the inability of company officials to link information in the questionnaire response to the accounting system." Commerce, therefore, applied the adverse inference provision of the Act and, as it did for Rubfil, based Heveafil's margin on the highest rate calculated. The rate for Filati is also much higher in the most recent review period than in previous ones. According to counsel for Filati, this is due to a jump in the cost of latex (the raw material used to produce ERT) and to changes in Commerce's methodology. (Conversation with counsel for Filati, Mar. 31, 1998.)

Source: 57 FR 46150 (Oct. 7, 1992), 61 FR 54767 (Oct. 22, 1996), 62 FR 62547 (Nov. 24, 1997), 62 FR 33588 (June 20, 1997), and 63 FR 12752 (Mar. 16, 1998).

As discussed, Commerce had ordered both countervailing and antidumping duties to be placed on imports of ERT from Malaysia by October 1992. All of the subsidies considered by Commerce in its 1992 countervailing duty investigation were export subsidies and, in accordance with section 772(d)(1)(D) of the Act, Commerce normally adjusts the amount of the antidumping duties to offset export subsidies and avoid "double-counting" that portion of any co-existing countervailing duties that are export subsidies. However, in the instance of the original investigations and the first administrative reviews no adjustment to the antidumping duties was required because the export subsidies did not affect the antidumping margin calculations, thus eliminating any "double-counting."[19] However, following methodological changes resulting from the URAA, Commerce determined that the Malaysian home market was viable and, for the administrative reviews for October 1, 1994 onward, it generally based normal value on the home market with the consequent need to begin adjusting the antidumping margin to offset the export subsidies. For the most recent administrative review for October 1, 1995 through September 30, 1996, the cash deposit rate of 54.31 percent for Heveafil/Filmax will be reduced by 0.90 percent, the current cash deposit rate attributable to export subsidies (63 FR 12752, Mar. 16, 1998).

As a consequence, respondents argue that "the insignificant benefit levels for Malaysian ERT have no effect because they are simply offset against the companies antidumping duty liability. ... {t}he subsidy amounts represent only a technical adjustment, not a separate and additional collection."[20] The impact that this observation will have for the Commission's economic analysis, and further information concerning Commerce's methodology, is presented in Part II of this report.

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[19] Because Commerce determined that the home market in Malaysia was not viable, foreign market values in the original investigation and first administrative reviews were based on sales to appropriate third country market(s) where respondents received the same export subsidies as on exports to the United States. Therefore, the export subsidies were reflected in both the U.S. prices and foreign market values used in calculating the antidumping margins, with no net effect on the antidumping margin, and no consequent need to "offset" the countervailing duty.

[20] Respondents' prehearing brief, p. 11.

**Section 202 Investigation (TA-201-63)**

In response to another petition filed by North American, the Commission, effective June 23, 1992, instituted under section 202 of the Trade Act of 1974 an investigation also involving ERT (inv. No. TA-201-63). In its determination in that investigation, the Commission was equally divided on the question of whether or not ERT was being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with imported ERT.[21] On January 15, 1993, the President selected as the determination of the Commission the views of those Commissioners who found in the negative and, accordingly, no import relief measures were taken under the provisions (section 203) of the Trade Act of 1974.[22]

## DATA PRESENTED IN REPORT

A summary of data collected in the current investigation is presented in appendix C, tables C-1 (all ERT), C-2 (non-food-grade ERT), and C-3 (food-grade ERT). Except as noted, U.S. industry data are based on questionnaire responses of the two producing firms (the petitioner, North American, and Globe). These two firms accounted for all known U.S. production of ERT from 1992 through 1997, the period covered by the Commission's questionnaires in this investigation. Information concerning the importation of ERT from Malaysia primarily is based on questionnaire responses of three firms that accounted for 96 percent of U.S. imports in 1997. The Commission utilized official Commerce statistics to estimate imports of ERT from nonsubject sources. Domestic producers and importers generally sell the product directly to unrelated manufacturers of elasticized intermediate goods, such as round or flat braid, knitted or woven narrow fabric, and covered rubber yarns. Approximately 61 purchasers of ERT received questionnaires from the Commission and data from 37 responding firms are presented in Parts II and V of this report.

In addition, the Commission incorporated information collected during the earlier antidumping investigation (inv. No. 731-TA-527 (Final)) into the record for its instant investigation. The Commission gathered full-year data for the period 1989-91 for inv. No. 731-TA-527 (Final) and a summary of that data is also shown in appendix C, tables C-4 (including Qualitex) and C-5 (excluding Qualitex). For purposes of comparison and to allow an assessment of the immediate impact of the countervailing duty and antidumping orders on the U.S. industry producing ERT, these tables also incorporate two years of data (1992 and 1993) gathered during the current investigation. The databases compiled during the two investigations are comparable (i.e., in terms of completeness of coverage) and it is statistically appropriate to compare 1989-91 data with 1992-97 data if desired.

The data presented for ERT in this report include ERT in all gauges. As noted earlier, only ERT measuring from 140 gauge (or 0.007 inches) to 18 gauge (or 0.056 inches) in diameter is subject to the existing countervailing duty order. Petitioner did not include heavier gauge thread (that less than 18 gauge in diameter) within the scopes proposed in the petitions filed in 1991 for countervailing duty and antidumping

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[21] Chairman Newquist and Commissioners Rohr and Nuzum voted in the affirmative. Vice Chairman Watson and Commissioners Brunsdale and Crawford voted in the negative. Those Commissioners voting in the affirmative recommended in a report transmitted on Dec. 21, 1992 that the President impose a tariff-rate quota on imports of ERT. *Extruded Rubber Thread*, USITC Pub. 2563, Dec. 1992.

[22] The resulting notice of Presidential action in citing the views of those Commissioners finding in the negative stated that "imports were not a substantial cause of the decline experienced by the U.S. industry. The decline stemmed from the closure of the major U.S. manufacturer of rubber thread in 1990." 58 FR 6317, Jan. 27, 1993.

investigations.[23] Commerce's subsequent final countervailing duty (and antidumping) orders likewise did not include ERT under 18 gauge in diameter. However, the Commission did not draw a distinction between gauge ranges for purposes of defining the like product in the determination it made in the antidumping investigation (inv. No. 731-TA-527 (Final)).[24] As a result, data are presented in this report for all ERT regardless of diameter (except where noted otherwise).

## THE SUBJECT PRODUCT

The imported product covered under the existing countervailing duty order and subject to this investigation, or ERT, consists of vulcanized rubber thread obtained by extrusion of stabilized or concentrated natural rubber latex, of any cross-sectional shape.[25] This part of the report presents information on both imported and domestically produced ERT. In addition, a discussion of the factors that the Commission typically considers in defining the domestic product(s) "like" that ERT subject to investigation is presented later in the section entitled "Like Product Issues."[26]

### Physical Characteristics

As noted above, ERT (a monofilament elastomeric fiber) is vulcanized and is produced by a low-pressure extrusion of compounded natural rubber latex. ***.[27] ERT usually is manufactured and sold by both U.S. and foreign manufacturers, including those in Malaysia, in standard sizes falling within the range of 22 gauge through 60 gauge,[28] and as finer-gauge thread (or over 75 gauge). One U.S. producer also manufactures a heavier gauge thread (under 18 gauge in diameter) for limited uses. There are no exports of ERT under 18 gauge from Malaysia.[29]

For ease of handling and shipment, manufacturers generally bond the rubber threads temporarily together in the form of a ribbon. The width of the ribbon varies depending on the thread diameter and number of threads per ribbon. Ribbons can be made from 2 to more than 100 threads; however, ribbons of 40 and 48 threads are most common. A recent innovation is packaging ERT into tubes or tube shapes. Globe testified at the Commission's conference held in connection with the Commission's investigations concerning imports of ERT from Indonesia (invs. Nos. 701-TA-375 and 731-TA-787 (Preliminary)) that

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[23] There is no thread produced that is finer than 140 gauge in diameter. From a commercial standpoint it is not feasible to manufacture gauges finer than 110 gauge in diameter due to costs. Submission by ***, dated Mar. 31, 1998.

[24] "Views of Chairman Newquist and Commissioners Rohr and Nuzum," p. 9, and "Views of Vice Chairman Watson and Commissioners Brunsdale and Crawford," p. 31, *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992.

[25] The size of an individual thread usually is expressed in "gauge" or "count," terms that refer to the number of threads which would, if set down side-by-side, produce a ribbon 1 inch wide. As stated earlier, there is no thread produced that is finer than 110 gauge in diameter.

[26] The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities and production employees; (5) customer and producer perceptions; and, where appropriate, (6) price.

[27] ***.

[28] Most standard ERT is sold within the 26 gauge to 48 gauge size ranges. Conversation with ***, Mar. 17, 1998.

[29] Conversation with counsel for respondents, Mar. 24, 1998.

such packaging allows high-volume users to integrate the ERT at higher speeds into their production process and increase their own efficiency and productivity.[30]

ERT is typically black or white in color; however, it is also available from both U.S. and Malaysian sources in such colors as light blue, red, and cream, which have been developed in recent years. In addition to gauge and color, another important characteristic is the type of lubricant used to prevent rubber thread from sticking together. The traditional lubricant is talcum powder. In 1969, a silicone-based lubricant was developed as an alternative to talcum powder. Thread coated with talcum powder is referred to as "talced;" "talcless" rubber thread uses the silicone-based lubricant. Talced standard-gauges normally are used by braiders and weavers; talcless standard-gauges are very often sold for knitted elastics. Both talced and talcless ERT are produced domestically and in Malaysia. A high-quality talcless product first became available from Malaysian producers in 1991.

In addition to talced and talcless ERT, there are also a number of specialty rubber thread products. These include fine-gauge, food-grade, and heat-resistant ERT.[31] As noted earlier, fine-gauge ERT is constructed with a gauge greater than 75 (and is usually used for hosiery). Heat-resistant ERT is produced using antioxidants and vulcanizing agents to provide better protection against heat degradation. It is primarily manufactured for use in underwear waistband elastics where its greater resistance to heat provides better performance during repeated launderings. Heat-resistant ERT is also used in such limited areas as hospital garments and in bandages that are subject to sterilization by heating in an autoclave. Food-grade ERT is manufactured into an elastic netting which then is used to package (usually) boneless meats. ERT of food-grade quality is manufactured using FDA-approved processes and formulations to meet stated requirements. It must be treated so that it does not impart a taste to foods. Also, and more importantly, food-grade ERT must have lower levels of nitrosamines, which have been suggested as a cause of certain types of cancers.

Table I-3 presents the quantity and share of total quantity of U.S. shipments in 1997 for the different product types. As shown, both talced and talcless ERT were available from domestic and from Malaysian manufacturers. However, domestic producers (specifically Globe) produced proportionally greater quantities

Table I-3
ERT: Quantity and share of total quantity of shipments by U.S. producers and of U.S. exports by Malaysian manufacturers, by type of product, 1997

* * * * * * *

[30] Globe stated further that "We do not believe that North American is equipped to offer this product or to produce it in the volume necessary for larger users." Conference TR, p. 20. None of the Malaysian product is known to be packaged into tubes.

[31] Most specialty grades can be manufactured in either talced or talcless forms, although they are typically talced. Reportedly, all food-grade ERT is talced. In all subsequent discussions in this report concerning the types of ERT, unless stated otherwise, the terms "talced" and "talcless" refer only to standard ERT, not the specialty threads.

of fine-gauge[32] and heat-resistant rubber thread for the U.S. market than did the Malaysian firms. In contrast, during the period reviewed, all U.S. shipments of food-grade thread were of product manufactured in Malaysia. This pattern of availability is comparable to that found during the Commission's earlier antidumping investigation when it examined the types of ERT sold domestically for the years 1989-91, (although at that time ***).[33]

### Uses

The textile industry is the largest user of ERT, processing the product into such items as panty hose, women's lingerie, underwear waistbands, sock tops, and jogging suits, as well as into items as diverse as diapers, furniture webbing, and koosh balls.[34] Traditional customers for ERT in the textile industry include coverers, weavers, braiders, and knitters. It is either used "as is" or wrapped with a rigid fiber, such as nylon or cotton, to limit elongation and to maintain the thread under constant tension. Using varying manufacturing techniques, weavers, braiders, and knitters incorporate rubber thread, bare or covered, into their production of narrow fabric and sell the output to apparel makers.

### Channels of Distribution

Both U.S. firms and importers of Malaysian-produced ERT sell product directly to the unrelated manufacturers of the elasticized goods described above.[35] In response to Commission questionnaires, neither U.S. manufacturers nor importers from Malaysia reported any sales to intermediate distributors. Small quantities of imported ERT often are purchased directly from importers' stock held in U.S. warehouses. Larger purchases (i.e., full container loads of 22,000 pounds) of imported product are shipped directly from overseas production facilities to the buyers' facilities in the United States.

### Manufacturing Processes

Production of ERT begins with the preparation of the rubber latex mixture. Producers add a variety of chemicals in small amounts to the natural rubber latex to impart desired physical properties in the end product and to prepare the latex mix for vulcanization.[36] Desirable physical properties include acceptable tensile strength, elongation at room temperature, and resilience or rebound elasticity. (For given types of ERT, there are standardized levels for the various properties that are accepted worldwide.) The chemical additives are blended thoroughly with the liquid latex to ensure homogeneity and the latex is then "matured" in an activation tank for 1 to 5 days. Maturation results in thread that is free of lumps and blisters and does not show an irregular thickening when extended or retracted. After the maturation process, the latex is passed

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[32] According to respondents, "The quality of Globe's medium to fine-gauges (63g-105g) is superior to the ERT imported from Malaysia. This is one reason Globe owns a major share of the fine-gauge market. The other reason is some customers require ERT with a single thread packaged on a spool. At this time, Globe is the only supplier that has this technology." Response by *** to the importers' questionnaire.

[33] *Extruded Rubber Thread from Malaysia,* USITC Pub. 2559, Sept. 1992.

[34] In its response to the Commission's questionnaire in inv. No. TA-201-63, North American stated that ***. North American still sells *** ERT for koosh balls today. ***. Conversation with North American, Mar. 17, 1998.

[35] Sales of food-grade ERT are a noted exception to this statement.

[36] Vulcanization is an irreversible process during which the chemical structure of a rubber compound changes and it becomes less plastic, more elastic, and more resistant to swelling from liquids.

through a homogenizer which removes any remaining lumps in the mixture that might clog the capillary nozzles during the subsequent extrusion process, leading to thread breakage. Finally, the latex enters a vacuum/feed tank to remove air bubbles and adjust the feed rate through the extruder.[37]

The latex mix is next extruded at low pressure through glass capillary nozzles into an aqueous acetic acid solution which acts as a coagulant to solidify the liquid latex into a continuous thread. From there, the newly formed thread passes into a hot wash bath where excess acetic acid is washed off, then enters a drying oven that cures or vulcanizes the thread. At this point the thread is sticky, so a lubricant or antiblocking agent (i.e., talcum powder or silicone-based lubricant) is applied to "detackify" each thread. Following lubrication, the threads are lightly bonded together in ribbons to form flat tapes or tubes which are placed into an oven where they are rotated for up to 20 minutes. They next pass over cooling rollers and are either wound onto bobbins or packaged in boxes.

According to petitioner, there are only slight variations in the machinery and materials used to produce ERT by domestic and Malaysian manufacturers.

## Like Product Issues

Petitioner does not directly address the issue of like product in its prehearing or posthearing briefs, although it states that "{t}he countervailing duty order should continue against food-grade ERT."[38] It also did not address the issue of like product in its June 30, 1995 request for a section 753 injury investigation except to note that "the domestic like product and U.S. industry is extruded rubber thread." Petitioner stated in its 1995 request that the Commission considered like product and domestic industry issues in the Commission's 1992 antidumping investigation (inv. No. 731-TA-527) concerning ERT from Malaysia.[39] During that investigation, petitioner argued that all varieties of ERT (including food-grade thread) should be part of a single like product.[40] In contrast, respondents in this investigation argue that food-grade ERT is a distinct like product.[41]

### Issue of Food-grade ERT

In the earlier antidumping investigation (inv. No. 731-TA-527 (Final)), three Commissioners found two like products and two domestic industries--food-grade ERT and all other ERT.[42] The other three Commissioners found one like product consisting of all types of extruded rubber thread and specifically

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[37] It is important that the latex mix has a uniform viscosity. Viscosity affects the rate of flow of the latex mix through the extruder and any change in viscosity will vary the diameter of the thread.

[38] Petitioner's posthearing brief, p. 10.

[39] Petitioner's "Request for an Injury Investigation Under § 753 of the Tariff Act of 1930, As Amended," dated June 30, 1995.

[40] However, it asserted that wider gauge ERT (or that under 18 gauge in diameter) should not be included in the like product. *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992, pp. 7-8. Respondents in the current investigation did not address the issue of whether the domestic like product should be expanded to include ERT under 18 gauge in diameter.

[41] Respondents' prehearing brief, p. 17, and posthearing brief, pp. 9-11 and exhibit 1, pp. 10-13, and 3.

[42] "Views of Vice Chairman Watson and Commissioners Brunsdale and Crawford," *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992, p. 34.

included food-grade ERT within that like product. Concomitantly, they defined the domestic industry to include all domestic producers of ERT.[43]

As noted earlier, food-grade ERT must be produced to a formulation that meets FDA requirements.[44] None of the other types of ERT must comply with requirements set by a certifying institution; rather, ERT other than food-grade is typically produced to meet such standards as ISO 9000.[45] In general, all forms (i.e., product types) of subject ERT, including food-grade, are manufactured on the same machinery using the same basic manufacturing process. The exact recipe for the rubber latex mixture used in the production process will vary depending on the performance characteristics desired in the thread, but the basic process is the same.[46] *** states that producing both food-grade and non-food-grade ERT on common equipment would require that the machinery be cleaned between production runs; in an actual production situation they would probably use a dedicated extrusion line.[47] Similarly, *** states that only cleaning need be done between production runs, and adds that cleaning between food-grade and non-food-grade runs would not differ in degree from that required for changeovers between any ERT of varying formula.[48] ***, Malaysian producers, who manufacture commercial quantities of both food-grade and non-food-grade product, report that the production lines must be dedicated to food-grade ERT to prevent unsafe chemicals from seeping into the food-grade product.[49]

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[43] "Views of Chairman Newquist and Commissioners Rohr and Nuzum," *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992, p. 12.

[44] In 1990, the FDA regulated rubber meat netting as a "food" additive and attempted to ban its use in the United States. In Feb. 1991, two U.S. producers of meat packing netting (and purchasers of food-grade ERT) sued the FDA for violation of "due process" for imposing the ban without a prior hearing. A subsequent settlement of the suit stipulated the FDA would refrain from any prohibition of the use of ERT in meat netting as long as manufacturers made "good faith" efforts to obtain FDA approval. In addition, the then-existing suppliers of food-grade ERT (who were Malaysian manufacturers) were allowed to continue selling their product in the United States pending final agreement on regulatory limits. From the point of view of North American the lawsuit ***. Response by *** to the producers' questionnaire and conversation with ***, Mar. 17, 1998. Malaysian producers state that they are currently in the last stages of the FDA process to receive final approval. Interviews with the FDA indicate that ***. The Indonesian food-grade product sold in the United States in 1997 is ***. E-mail message dated May 6, 1998 from ***.

[45] ISO 9000 standards are a series of global, market-driven criteria that assure end users that a producer has exercised recommended quality control procedures in the design, development, testing, and service of its products, as well as adhering to certain management standards. The standards have been adopted by 26 of the largest producer and consumer nations, and ISO registration (i.e., approval) is generally a prerequirement to sell products in those countries.

[46] However, respondents argue that "the chemical costs of producing food-grade rubber thread are different from the costs of other types of rubber thread." Respondents' prehearing brief, p. 19.

[47] Conversation with ***, Mar. 17, 1998.

[48] Conversation with ***, May 19, 1998.

[49] Response by *** to the importers' questionnaire.

Food-grade ERT is not, in practice, used in place of the non-food-grade product.[50] Its pigmentation is natural in hue and the product is unlikely to be used in those textile applications where specific colors are required. Further, according to respondents, food-grade ERT ***.[51] In contrast, North American states that food-grade ERT could be utilized for certain non-food-grade applications. It reports that the product is similar in physical composition, but "just has fewer nitrosamines." Further, a white pigmentation can be added to the food-grade ERT, making it suitable for textile applications.[52, 53] In any case, non-food-grade ERT cannot be used for meat netting . As shown in table I-4, the unit value of food-grade ERT is about the same, if not a little less, than other standard ERT products.[54]

Table I-4
ERT: Unit value of shipments by U.S. producers and of U.S. exports by Malaysian manufacturers, by type of product and by source, 1997[1]

*(Dollars per pound)*

| Item | U.S. shipments by -- Globe[2] | North American[3] | Average | Exports to the United States from Malaysia[4] | Average[5] |
|---|---|---|---|---|---|
| Talced | *** | *** | *** | *** | $1.58 |
| Talcless | *** | *** | *** | *** | 1.44 |
| Fine-gauge | *** | *** | *** | *** | 3.03 |
| Heat-resistant | *** | *** | *** | *** | 2.22 |
| Food-grade | *** | *** | *** | *** | 1.16 |
| Average | *** | *** | *** | *** | 1.91 |

*Notes continued on next page.*

[50] In fact, Robert Boyle, vice president of FLE-USA, an importer of the Malaysian product, testified at the Commission's hearing that "as far as food-grade material being used in standard textile, I've been in the business for years. I have never, ever, ever seen that done, and the only way I've ever seen food-grade is if it went into a customer ... and wasn't running right, it would be sold for bungee cord." Hearing TR, p. 60. John Friar, Treasurer of North American, indicated at the hearing that North American's concern was that food-grade ERT could {emphasis supplied by staff} be used as a substitute for "conventional" ERT. Hearing TR, p. 29. Further, "if food-grade thread was no longer subject to the discipline of the anti-subsidy order, subsidized food-grade thread could be sold into the United States and used in normal thread applications. The anti-subsidy order would, thereby, be circumvented." Hearing TR, p. 18.

[51] Respondents' posthearing brief, p. 14.

[52] Response by North American to the producers' questionnaire.

[53] *** writes that "Although *** does not participate in the Food Grade thread market, it is believed that food-grade thread could be used interchangeably in any other end-use but NOT visa-versa." Response by ***. *** indicates that it has never substituted the food-grade product for another type of ERT. However, the firm further notes that for many applications where standard talced ERT is used, the thread is either heavily covered or is covered prior to being woven so that its color, or lack of color, is not an issue. ***. ***.

[54] Robert Boyle, vice president of FLE USA, testified at the Commission's hearing that the price of food-grade ERT and the non-food-grade product "is basically the same." Hearing TR, p. 70.

*Notes for table I-4.*

[1] Note that the values of commercial shipments of U.S. producers and the export values of Malaysian manufacturers are not comparable in that the export values do not include mark-up added by the U.S. importers. It is more accurate to compare the relative values of the different types of ERT than to contrast the values of U.S. and Malaysian manufacturers. Part V of this report provides actual price comparisons between domestic and subject ERT products.

[2] Data reported by Globe ***. Also, data reported by Globe are compiled from a separate database than that used for its overall data and, therefore, totalled shipments by type do not exactly equal total shipments reported elsewhere in this report.

[3] North American does sell some talced ERT. As explained in greater detail in their Mar. 29, 1998, addendum to their response to the producers' questionnaire, the firm was not able to compile separate data for talced and talcless ERT. North American estimates that the percent of North American's sales that are talced is believed to have varied from a low of *** percent to a maximum of *** percent. Submission dated May 20, 1998, from North American.

[4] ***.

[5] Average unit values are derived from table C-6 (in appendix C).

Note--Table does not include data for nonsubject sources, most notably Indonesia.

Source: Compiled from data submitted in response to Commission questionnaires.

There is no domestic production of food-grade ERT for commercial shipment. Globe has produced samples of food-grade ERT (***) for research and development.[55] The firm currently is attempting to obtain approval to market food-grade ERT in the United States. The Commission contacted both Globe and the FDA to determine the options available to Globe. Information obtained was at times unclear and somewhat contradictory. This may be due in large part to the fact that the FDA has limited experience with the granting of petitions concerning the use of such "single-use" articles of rubber as ERT for meat netting and procedural precedent has not yet been clearly established. Also, any information, or suppositions, reported by Globe to the Commission was treated as business proprietary and could not be directly verified with the FDA.

* * * * * * *[56]

Actions taken by North American to sell food-grade ERT in the United States are summarized below. The firm stated in its questionnaire response that:

* * * * * * *[57]

John Friar, treasurer of North American, further testified at the Commission's hearing that, due to its work on lowering the nitrosamines in ERT destined for koosh balls, North American does have the

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[55] ***.

[56] Conversations with ***, May 8, 1998, and the FDA, May 12, 1998.

[57] Response by North American to the producers' questionnaire.

technology to produce food-grade ERT and that once the FDA issues the final regulations for the food-grade product, it will be able to manufacture it.[58]

**Issue of Gauge Range**

Generally speaking, the bulkiness of the end product determines the specific gauge of thread required by purchasers and, as discussed earlier, the Commission did not draw a distinction between gauge ranges of ERT for purposes of defining the like product in its earlier antidumping determination (for inv. No. 731-TA-527 (Final)) concerning imports of ERT from Malaysia. Data presented in this report consist of ERT in all gauges and, as a consequence, include a *** amount of large-diameter product measuring under 18 gauge (or over 0.056 inches). Information by gauge range is presented in table I-5. As shown, North American is the only U.S. manufacturer that produces ERT less than 18 gauge in diameter. As was the case in the earlier antidumping investigation, the amounts of such product produced are *** compared to total ERT manufactured.

Table I-5
ERT: U.S. producers' U.S. shipments, by gauge and by firm, 1992-97

* * * * * * *

North American sells ERT in gauges below 18 to ***. ***. As shown in table I-5, the reported unit values for ERT less than 18 gauge in diameter are *** than finer ERT sold by North American, but the differential is well within the range found for other specialty ERT threads. Wider gauge product is manufactured ***.

## SIZE OF THE U.S. MARKET

Table I-6 presents apparent U.S. consumption and U.S. market shares for the period 1992-97. As shown, apparent U.S. consumption rose in the period immediately following the imposition of the countervailing duty order (increasing to 39.4 million pounds in 1994), then declined to 28.1 million pounds in 1996 before rebounding in 1997 to a level comparable to that found in 1992.

The markets into which ERT are sold are mature and, according to U.S. producers of ERT, demand for the product reportedly has not changed appreciably since 1992. However, domestic production of downstream products has been affected by an increase in imports of narrow elastic fabric from Canada, in particular. Changes in demand are discussed more fully in Part II of this report.

As shown in appendix C (table C-6), standard talcless ERT was the largest single product category sold in the United States in 1997 by suppliers. In 1997, *** percent of total U.S. shipments were standard talced ERT, *** percent were standard talcless product, *** percent were fine-gauge ERT, *** percent were heat-resistant ERT, and *** percent were food-grade threads. Proportionally less non-specialized product (whether talced or talcless) from U.S. producers and Malaysian sources was sold in 1997 compared to 1992. In contrast, sales of fine-gauge and heat-resistant ERT increased somewhat from 1992, both in absolute terms and relative to total ERT usage. Sales of food-grade ERT remained small in comparison to the whole.

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[58] Hearing TR, p. 107.

Table I-6
ERT: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1992-97

| Item | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 |
|---|---|---|---|---|---|---|
| | Quantity (*1,000 pounds*) | | | | | |
| U.S. producers' shipments | *** | *** | *** | *** | *** | *** |
| Import shipments from: | | | | | | |
| Malaysia | *** | *** | *** | *** | *** | *** |
| Indonesia | *** | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** | *** |
| All other | *** | *** | *** | *** | *** | *** |
| Total import shipments | *** | *** | *** | *** | *** | *** |
| Apparent consumption | 34,181 | 35,455 | 39,353 | 33,507 | 28,060 | 34,414 |
| | Value (*$1,000*) | | | | | |
| U.S. producers' shipments | *** | *** | *** | *** | *** | *** |
| Import shipments from: | | | | | | |
| Malaysia | *** | *** | *** | *** | *** | *** |
| Indonesia | *** | *** | *** | *** | *** | *** |
| Subtotal | *** | *** | *** | *** | *** | *** |
| All other | *** | *** | *** | *** | *** | *** |
| Total import shipments | *** | *** | *** | *** | *** | *** |
| Apparent consumption | 54,412 | 58,095 | 65,086 | 60,614 | 53,951 | 61,900 |

Source: Compiled from data submitted in response to Commission questionnaires (for U.S. producers and Malaysia) and from official Commerce statistics (for Indonesia and other sources).

However, it should be noted that table C-6 presents data only for U.S. shipments of domestic and Malaysian producers. As shown in table I-6, imports from Indonesia increased dramatically during the period reviewed and, by 1997, comprised almost *** of total U.S. consumption.

The majority of product from Indonesia is a standard talcless product. If the data in table C-6 were adjusted to include Indonesian data, in addition to the absolute decrease from 1992 to 1997 in the amount of talced ERT consumed within the United States, there would be a decrease in the share of total U.S. consumption accounted for by talc. This suggests there was a gradual decrease in the use of talced ERT for at least some applications or, possibly, a decrease in demand for downstream products that use talced ERT. Reportedly, the buildup of talcum powder (from using talced rubber thread) can cause excessive machine wear on purchasers' equipment, leading to increased production costs for replacement needles and machine downtime. (However, some purchasers, particularly flat braiders who separate the ERT ribbon at high speeds,

prefer using talced ERT because the physical presence of the talc helps the thread pass more easily through the braider).[59]

[59] ***.

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

## INTRODUCTION

The discussion in this section draws from information provided by both U.S. producers, six U.S. importers of ERT--of which three import ERT from Malaysia--and 37 U.S. firms that purchase domestically-produced and/or imported ERT. The 35 purchasers that have responded with usable data accounted for 68.3 and 63.7 percent[1] of total U.S. producer shipments and U.S. imports, respectively.[2]

The remainder of Part II is organized as follows. The following section discusses the relationship between the major segments of the ERT market and the product's channels of distribution. The next section reviews supply and demand considerations. The subsequent section discusses substitutability issues. The remaining sections provide the final estimates of the elasticities of supply, aggregate demand, and substitution that are used in the modeling analysis presented in appendix D; discuss the possible impact of NCS revocation; and review purchasers' comments regarding the impact of NCS revocation.

## MARKET SEGMENTS AND CHANNELS OF DISTRIBUTION

ERT is sold directly to firms that cover the product and those that manufacture a variety of products, including narrow fabrics (knit, woven, and braided) that are used in apparel products such as underwear and hosiery; shock (bungee) cords; tubular elastic netting (both for food and non-food products); bandages and other medical supplies; furniture webbing; and disposable diapers. These products fall into fairly distinct market segments (e.g., apparel, medical, personal hygiene) and firms within these segments report somewhat different trends in overall demand for their products and, in some cases, their purchasing patterns of ERT.

Firms reported that particular types of ERT tend to be used for specific applications. *** noted that the decision to use talced or talcless thread is a function of customer desire, and that its customers rarely mix the two. They also reported that talced ERT has a high "dust" nuisance factor, and that large-volume users of ERT tend to prefer talcless. In contrast, *** reported that the two types are interchangeable.[3] With respect to other types of ERT, *** reported that "specialty compounds designed for specific applications are not interchangeable," but also noted that "customers using heat-resistant ERT may also use non-heat-resistant ERT."[4,5]

Food-grade is sold to a very small sector of the market, specifically those who manufacture netting and meat packing. Neither U.S. producer reported commercial production of food-grade ERT. Non-food-grade is used primarily by different segments of the textile industry. Since U.S. regulations relating to food safety apply to these products, non-food-grade cannot be substituted for food-grade. It may be possible to

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[1] Percentage calculations are based on the total quantities these firms reported for 1997.

[2] The Commission sent questionnaires to 61 firms that are believed to purchase ERT. Thirty-seven firms (corresponding to 43 of the original 61) submitted responses to the questionnaire.

[3] One purchaser *** also indicated that interchangeability was possible.

[4] ***'s questionnaire response for invs. Nos. 701-TA-375 and 731-TA-787 (Preliminary).

[5] In the production of knitted narrow fabrics, *** reported that some heat-resistant ERT can be used as a substitute for 27 and 37 gauge talcless ERT.

use food-grade ERT in place of other types of ERT. However, as discussed in Part I, the technical differences between the two product types make such substitution unlikely.[6] Table II-1 shows estimates of U.S. ERT consumption broken out by market sector and gauge range.

Table II-1
U.S. producers' estimates of the share of the total U.S. ERT market accounted for by end use and the types of ERT (by gauge) used in these products

* * * * * * *

## SUPPLY AND DEMAND CONSIDERATIONS

### U.S. Supply

#### Domestic Production

Based on available information, staff believes that ERT producers are likely to respond to changes in demand with moderate changes in the quantity of shipments to the U.S. market. The major factor contributing to the industry's ability to react to price changes is its unused capacity. Factors that might serve as supply-responsiveness constraints are somewhat limited export markets and relatively low inventory levels (although reported inventory levels have recently increased). These issues are discussed below.

*Capacity in the U.S. industry*

*** reported capacity utilization data. These data show significant variations in capacity utilization over the period reviewed. ***. In general, ***'s reported capacity utilization was *** over the six-year period, amounting to ***.

*Production alternatives*

* * * * * * *[7]

*Inventory levels*

As a percentage of total shipments, inventories *** from *** percent in 1992 to *** percent in 1994. In 1997, inventories *** past their 1992 levels to *** percent.

*Export markets*

* * * * * * *

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[6] *** reported that in manufacturing elastic bandages, they typically use talced, non-food-grade (63 and 75 gauge), and identified food-grade or heat-resistant ERT as possible substitutes.

[7] Interview with ***, Mar. 27, 1998.

**Subject Imports -- Capacity Utilization and Export Markets**

Between 1992 and 1997, Malaysian producers increased their capacity by *** percent. Capacity utilization increased from *** percent to *** percent over the period of investigation and is projected to be *** percent in 1998. The U.S. market received *** percent of their total production in 1997. Thus, Malaysian producers may be able to increase exports to the United States by diverting shipments from other export markets, which account for *** percent of total Malaysian shipments.

## U.S. Demand

As shown in table I-6, U.S. apparent consumption of ERT increased steadily from 1992 through 1994, then dropped during 1995 and 1996, returning to its 1992 levels in 1997. *** reported that the demand for ERT has not changed significantly since 1992. *** noted in its questionnaire that this appears to be the case despite an increase in U.S. imports of Canadian narrow elastic fabric containing ERT. Importers reported that over the past few years U.S. consumption of Malaysian ERT has fluctuated. Factors that may have contributed to this fluctuation include the decline in U.S. production of narrow fabric and downstream finished garments, and increased U.S. imports of ERT from Indonesia.[8]

Approximately half of the reporting purchasers (17) noted that demand for their firms' final products containing ERT has not changed since August 1992. The remaining 18 purchasers indicated that demand for their products changed for a variety of reasons.[9] Eight firms reported declining demand. For example, *** noted in its questionnaire response that demand for knitted and woven narrow fabrics has decreased as a result of increased imports of these fabrics. The firm states that "our customers are buying more imported product from Canada and Mexico. The ERT pricing is one factor that contributes to the competition." Similarly, *** stated that the cost of rubber, duties, and tariffs are so high that its customers can import elastic from Canada at prices that are lower than its cost of production. *** noted that some fashion changes have required switching from ERT to spandex. *** stated in its questionnaire response that there has been a move to "latex-free" products, decreasing demand.

In contrast, eight purchasers reported in their questionnaire responses that they have experienced an increase in demand since 1992. Purchasers reported that market growth has increased their sales and now they are making products containing more elastic. They also reported that demand for their elastic products has increased.[10] For example, *** reported in its questionnaire response that "market growth has increased our sales, and we are making more product with elastics." *** reported a 30-percent increase in the demand for its tubular elastic netting over the 1992-97 period.[11]

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[8] As reported by ***.

[9] Two of these firms did not report the direction of the trend.

[10] *** all reported an increase in demand and hence an increase in their sales.

[11] The firm stated in its questionnaire response that "Increased export for our United States produced meat and poultry netting has increased dramatically. We are for the first time exporting to countries such as Russia, Taiwan, Philippines, Central and South America, due to the favorable conditions in the United States meat processing industry. ... However, we have recently found to be competitively disadvantaged by new foreign netting manufacturers who sell an identical product to ours but who have substantially lower manufacturer costs since their raw material purchases of Malaysian food-grade ERT carry no punitive import penalties."

Although most purchasers report buying the product consistently throughout the year, some reported seasonal fluctuations. For example, *** reported that demand for its products peak during August through October, and *** reported peaks in the Fall and Spring.

**Substitute Products**

Substitutability between ERT and other products is generally limited. *** reported in its questionnaire that "in certain end-uses, spandex fiber and strip (cut) rubber thread" could be used as substitutes. *** noted in its questionnaire response that with "price and performance as criteria," no alternative products can be easily substituted for ERT. Importers that responded to the questionnaire noted that spandex was the most likely substitute product, but *** reported that spandex can only be used in some applications. *** reported that a synthetic rubber such as polyisoprene is also a possible substitute. Finally, *** indicated that neoprene and cut rubber thread substitute for ERT.

Cut rubber thread can be made from either natural rubber (like ERT) or synthetic rubber. A key difference between cut rubber thread and ERT is the cross-sectional shape of the thread--the extruded product has a round cross-section, whereas cut rubber thread is rectangular or square in cross-section. Consequently, cut rubber thread cannot easily be placed on much of the machinery (specifically, knitting and weaving machinery) used by ERT purchasers. Cut rubber thread made from synthetic latex compounds (which will not degrade as easily as natural rubber) often is inserted in elastics that must withstand dry cleaning processes.

*** reported that spandex is manufactured from a synthetic polymer using a production process that differs significantly from that for ERT. The chemical composition of spandex imparts certain properties that make that product superior in some characteristics to ERT.[12] Although spandex is more expensive to produce than ERT, *** noted that it is the elastomeric fiber of choice at sizes beyond 110 gauge, the point where the manufacture of ERT is no longer commercially viable.[13]

Most purchasers (22 of 34) reported that there are no products that could be easily substituted for ERT in its end uses. The remaining firms primarily cited spandex as the most viable substitute for ERT, but noted that spandex is cost prohibitive. For example, *** reported in its questionnaire response that neoprene, dorlastan, and golspan are substitutes used to produce knitted elastic, but indicated that these alternatives are not economically viable. *** added that "any other substitute would be unsuitable due to pricing, customer preference and increased production complexity."[14] However, *** reported in its questionnaire that it has used and is currently using Lycra and synthetic elastic to produce food-grade elastic netting used in the meat and poultry industry.

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[12] For example, spandex has good resistance to abrasion, ultra-violet light, oxidation, and chlorine. Moreover, it is easily dyed, has better stretch recovery, is lighter in weight, and can be made into finer threads than ERT. Spandex usually does not require a covering unless it is to be used in the manufacture of garments, where skin contact could cause irritation or skin reaction.

[13] ***. Response by *** dated Mar. 31, 1998.

[14] *** response to Commission questionnaire.

In a supplementary questionnaire, purchasers were asked to identify the types of ERT used in production and any alternative types of ERT that could be used as substitutes. Three firms identified non-ERT products. This information is shown in table II-2.

**Table II-2**
**ERT product and identified substitutes[1]**

| Product | Type of ERT used | Substitute identified[2] | Firm |
|---|---|---|---|
| Panty elastic | 4 x 1800 talcless | 1120 den spandex | *** |
| Hosiery elastic | 43 x 1150 talcless | 1680 den spandex | *** |
| Elastic | extruded latex | synthetic | *** |
| Rubber elastic bandages | 60 gauge heat-resistant | spandex and neoprene | *** |
| Brief elastic | 37 x 1475 talced | 1400 den spandex | *** |

[1] Twenty-six of 37 original responding purchasers reported answers to this question in the supplementary questionnaire.
[2] Of 46 products identified, only 5 had substitutes specified; the remaining 38 goods are reported to have no substitutes.

Source: Compiled from data submitted in response to Commission questionnaires.

## Cost Share

As noted above, purchasers of ERT use the input to produce covered thread and various types of narrow elastic fabric used in underwear, hosiery, and other apparel, as well as bandages, shock cords, and other miscellaneous products.[15] The relative cost share of ERT to end users depends on the weight and width, and as shown in table II-3, varies from 1.3 to 65 percent.

[15] Five of the 37 purchasers that responded did not report end-use products in their questionnaire responses.

**Table II-3**
**Percent of reported cost of end-use product accounted for by ERT**

| End use product | Percent of cost accounted for by ERT | Purchaser |
|---|---|---|
| Apparel | 65 | *** |
| Medical | 65 | *** |
| Furniture webbing | 50 | *** |
| Insert webbing | 50 | *** |
| Bungee cord | 50 | *** |
| Double covered elastic yarn | 15-41 | *** |
| Apparel | 40 | *** |
| Knitted elastic | 40 | *** |
| Medical webbing | 40 | *** |
| Narrow elastic webbing | 38 | *** |
| Garment elastics | 35 | *** |
| Knitted narrow fabric | 25-35 | *** |
| Elastic thread | 33 | *** |
| Narrow elastics | 33 | *** |
| Narrow elastic | 30 | *** |
| Elastic narrow fabric yarn | 30 | *** |
| Braided swim wear straps | 30 | *** |
| Woven elastic - orthopedic | 30 | *** |
| Knitted elastic waistbands | 25 | *** |
| Men's hosiery | 25 | *** |
| Elasticated thread | 25 | *** |
| Elastic hosiery yarn | 25 | *** |
| Braided industrial straps | 20 | *** |
| Underwear, hosiery, draw cord, insert, and athletic elastic | 20 | *** |
| Webbing | 20 | *** |
| Elastic | 20 | *** |
| Rubber elastic bandages | 18.5 | *** |
| Knitted narrow fabrics | 18 | *** |
| Hosiery elastic | 17 | *** |
| Gloves | 15 | *** |
| Panty elastic | 14 | *** |
| Narrow elastic | 12 | *** |
| Elastic waistband | 11.1 | *** |
| Web belting | 10 | *** |
| Suspenders | 7 | *** |
| Elastic bandages | 5 | *** |
| Home fashions | 5 | *** |
| Underwear | 3 | *** |
| Home furnishings | 2 | *** |
| Adult diapers/ feminine hygiene products | less than 2 | *** |
| Baby diapers | 1.3 | *** |

**Note: Five of the 37 firms did not provide responses to this question.**

**Source: Compiled from data submitted in response to Commission questionnaires.**

## SUBSTITUTABILITY ISSUES

### Factors Affecting Purchasing Decisions

Producers, importers, and purchasers were asked a variety of questions regarding factors that influence their sales or purchases of ERT. Information obtained from these firms indicates that the quality and technical performance of the product, price, and availability are considered the most important factors affecting purchasing decisions.

Purchasers were asked to report the top three factors affecting their purchasing decisions, and responses are quantified in table II-4. Fifty-six percent of the responding purchasers cited quality[16] as their most important factor, with 18 percent reporting price. Thirty-two percent of responding purchasers reported that quality was second-most-important, while 29 percent rated price as the second most important factor. As third-most-important, 26 percent identified price and 26 percent identified product availability and/or delivery. Although many firms reported price as being one of the three-most-important factors affecting demand, all but two of the responding purchasers reported that the lowest price offered for ERT will not always win the contract or sale.[17]

**Table II-4**
**Factors affecting purchasing decisions**

| | Factors | | | | | |
|---|---|---|---|---|---|---|
| Order of importance | Quality | Price | Availability/ delivery | Other[1] | No response | Total[2] |
| | *(Percent)* | | | | | |
| First | 56[3] | 18 | 12 | 15 | 0 | 100 |
| Second | 32 | 29 | 21 | 18 | 0 | 100 |
| Third | 3 | 26 | 26 | 41 | 3 | 100 |

[1] "Other" includes long-term supplier relationships, customer service, range of products provided by supplier, reliability of supply, and extension of credit.
[2] Totals may not add to 100 due to rounding.
[3] One firm reported "lowest total cost (quality and price impact in our factory)" as the most important factor.

Source: Compiled from data submitted in response to Commission questionnaires.

Generally, supplier certification was not cited as a standard requirement. However, 12 of the 36 responding purchasers indicated that they require suppliers to become either certified or prequalified with

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[16] Quality of ERT refers to chemical formulation, product consistency, modulus, runability or machinability, elasticity, and strength.

[17] The two purchasers were ***.

respect to the quality, strength, chemistry, and other performance characteristics associated with the product. For example, *** noted in its questionnaire response that in order to certify a supplier, the firm tests raw materials and samples before using the ERT in actual production runs. *** also reported in its questionnaire response that they "pre-qualify all materials for machinability and performance in products." When qualifying producers, *** reported considering safety data and *** reported that it examines historical performance, assuring that it exceeds established standards for elongation, modulus, brightness, and dye compatibility. Other factors mentioned by purchasers as being important included reliability of supply, availability, service, and range of supplier product life.

Purchasers were also asked to rate 17 factors--in terms of their importance--in their decision to purchase ERT. Possible ratings were "very important," "somewhat important," and "not important." Factors most frequently reported by purchasers as being very important were availability, product consistency, delivery time, reliability of supply, quality, and lowest price. Other factors identified as either very, or somewhat important were discount offers, minimum quantity requirements, product range, technical support, U.S. transportation costs, transportation network, and packaging.

## Comparison of Domestic Products and Subject Imports

### Product Interchangeability

*** U.S. producers agree that U.S.-produced and imported ERT from Malaysia are used interchangeably (i.e., can physically be used in the same applications). However, *** qualified the response, reporting that only similar products are interchangeable. *** importers responded that the same product -- silicone or talc with the same gauge -- can be used interchangeably. Ninety percent of purchasers reported that U.S.-produced and Malaysian ERT can be used interchangeably, while 10 percent reported that this was not the case.

### Product Substitutability

Although the U.S. and Malaysian products are in many respects comparable, a number of firms indicated that specific product characteristics and conditions of sale may limit substitutability. Factors affecting the degree of substitutability include product performance, testing requirements, availability, and price. *** reported in its questionnaire response that the "quality, consistency, availability (just-in-time), and technical service support of U.S. produced ERT are superior to those of imports." The firm also noted that the quality of *** ERT is good, but has "begun to falter." *** and *** stated that overall there are some differences in characteristics between U.S. and Malaysian ERT. They reported that the differences are greatest in fine gauges, where the U.S. supplier is superior. *** and *** reported that U.S. fine-gauge customers also purchase other gauges from the same U.S. supplier to take advantage of volume discounts.

Thirty-two of the 35 purchasers that responded to questions regarding switching suppliers during the period of investigation noted that they rarely, seldom, infrequently, or never change their suppliers. Only eight purchasers reported that they are aware of new market suppliers since 1992.[18] ERT users are evenly split with respect to how many suppliers they either typically maintain or contact. Of the 34 firms that provided usable questionnaire responses, 17 reported contacting 1 or more suppliers and/or purchasing from

[18] Firms include ***.

2 or more suppliers. With a few exceptions, the medium to large firms tend to rely on or contact multiple suppliers. Purchasers reported that since it takes so long to qualify a new supplier, they rarely change unless there is a quality or delivery problem,[19] or market conditions change.[20]

Most purchasers indicated that the country of origin of the ERT purchased is not of particular importance to their customers. Twenty-six purchasers reported that "Buy American" policies were not an important concern. Five purchasers responded that they made some of their 1997 purchases in conjunction with "Buy American" policies.[21] For example, *** noted in its response that it only purchases U.S.-produced ERT to satisfy "Certificate of Origin" for customers and that otherwise the firm would buy the Malaysian product to reduce its raw material costs.

Purchasers were asked to compare U.S. and Malaysian ERT in terms of 14 factors. Purchasers responding to this question indicated that U.S. suppliers were superior in terms of product availability, delivery time, and technical service and support. They reported that the Malaysian product was superior in terms of price. Otherwise, U.S.-produced and Malaysian products generally were comparable. A summary of responses is shown in table II-5.

### Comparisons of Domestic Products and Subject Imports to Nonsubject Imports

As shown in table IV-1, total U.S. imports from nonsubject countries accounted for approximately *** percent of total U.S. imports in 1997. U.S. producers, importers, and purchasers were asked to assess the interchangeability of U.S.-produced and imported ERT from nonsubject countries. All importers and producers responded that the products are interchangeable. *** qualified its response by noting that the same product--silicone or talc--can be used interchangeably, although ERT manufactured in Thailand is known for poor quality. Questions were asked whether Malaysian ERT and nonsubject country imports are used interchangeably. All producers and importers generally responded affirmatively, with *** qualifying their response by stating that ***'s Indonesian rubber is superior in some gauges. *** reported that although there are quality differences between different country suppliers, the products are generally interchangeable.

Eighty percent of purchasers reported that U.S.-produced and imported ERT from nonsubject countries can be used interchangeably. Twenty percent of purchasers that answered this question reported that these products cannot be used interchangeably. All of the purchasers who responded to the question reported that Malaysian and nonsubject country ERT can be used interchangeably.

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[19] As reported by *** in its questionnaire.

[20] As reported by *** in its questionnaire.

[21] *** reported buying *** percent American, respectively.

Table II-5
ERT: Comparison of U.S. to Malaysian product[1]

| | (Percent) | | |
|---|---|---|---|
| Factor | U.S. superior | Comparable | U.S. inferior |
| Availability | 50.0 | 37.5 | 12.5 |
| Delivery terms | 25.0 | 62.5 | 12.5 |
| Delivery time | 58.3 | 37.5 | 4.2 |
| Discounts offered | 19.0 | 57.1 | 23.8 |
| Lowest price | 0 | 30.4 | 69.6 |
| Minimum quantity required | 37.5 | 45.8 | 16.7 |
| Packaging | 13.0 | 82.6 | 4.3 |
| Product consistency | 27.3 | 54.5 | 18.2 |
| Product quality | 31.8 | 50.0 | 18.2 |
| Product range | 39.1 | 47.8 | 13.0 |
| Reliability of supply | 36.4 | 59.1 | 4.5 |
| Technical support/service | 54.5 | 40.9 | 4.5 |
| Transportation network | 28.6 | 66.7 | 4.8 |
| U.S. transportation costs | 4.5 | 72.7 | 22.7 |

[1] Thirteen of the 37 firms did not provide responses to these questions.

Source: Compiled from data submitted in response to Commission questionnaires.

U.S. producers and importers were asked to assess whether differences in pricing and factors other than price between U.S. and subject ERT versus nonsubject ERT significantly affected their sales in the U.S. market. *** indicated that factors other than price were not significant and that competition was based on price. In contrast, *** indicated that competition was a function of both price and other factors. The firm noted in its questionnaire response that "Domestic ERT has a quality, availability and technical service support advantage over nonsubject imported ERT."

Importers generally reported that factors other than price were less significant than pricing differences in terms of competition between U.S.-produced ERT and nonsubject ERT. However, most importers reported that differences in pricing and factors other than pricing played a significant role in competition between U.S. imports of Malaysian and nonsubject ERT.

## ELASTICITY ESTIMATES [22]

The following elasticity estimates are used in the modeling analysis that is presented in appendix D and discussed briefly in the section below on the economic analysis of NCS revocation.

### U.S. Supply Elasticity

The U.S. supply elasticity for ERT measures the sensitivity of quantity supplied by U.S. producers to a change in the U.S. market price of ERT. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced ERT.[23] The information discussed above indicates that the U.S. industry is likely to be able to increase or decrease shipments to the U.S. market, based on these factors. Staff estimates that the supply elasticity is between 3 and 5.

### U.S. Demand Elasticity

The U.S. demand elasticity for ERT measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of ERT. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component cost share of ERT in the production of downstream products. ERT generally accounts for a moderate to large cost share of the various end products in which it is used. However, economically viable substitute products are limited. Based on available information, the aggregate demand elasticity for ERT is likely to range from 0.8 to 1.5.

### Substitution Elasticities

The elasticity of substitution depends upon the extent of product differentiation between the U.S. and imported products.[24] Product differentiation, in turn depends upon such factors as quality (e.g., runability, elasticity, and modulus) and conditions of sale (e.g., availability, service, and credit). Based on available information, the elasticity of substitution between U.S.-produced ERT and subject imported ERT is likely to range from 2 to 4.

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[22] The petitioner did not comment on the ranges of elasticities shown in the Commission's prehearing report. The respondent did not comment on the ranges shown for the supply elasticities. However, John Reilly, Economic Consultant of Nathan Associates, noted in his discussion regarding modeling results that ***. Hearing TR., pp. 96-7. In exhibit 2 of the posthearing brief, the respondent also notes that ***.

[23] Domestic supply response is assumed to be symmetrical for both an increase and a decrease in demand for the U.S. product. Therefore, factors affecting increased quantity supplied to the U.S. market also affect decreased quantity supplied to the same extent.

[24] The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and U.S. like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject product (or vice versa) when prices change.

## ECONOMIC ANALYSIS OF NCS REVOCATION

This section first discusses general issues concerning the impact of export subsidies when antidumping duty orders are in place. The section then focuses on the results of the most recent reviews conducted by Commerce and the possible effects of NCS revocation if there were no change in the level of the current export subsidies. The section concludes with a discussion of the potential effects of NCS revocation in light of Commerce's findings that were reported to the Commission on January 8, 1998.

### The Possible Effect of Existing Antidumping Duty Orders

In both antidumping investigations and administrative reviews, dumping margins are calculated as the difference between the normal value of the subject product and a company's U.S. sales price ($P_{US}$) of the product. When the subject product also receives a countervailable export subsidy, it is generally recognized that the antidumping duty order may compensate for any additional decrease in the U.S. sales price as a result of the subsidy.[25,26] In fact, with export subsidies, Commerce normally offsets the effect of a countervailing duty in its dumping margins calculations as follows:[27]

$$\text{AD duty} = \text{normal value} - (P_{US} + \text{countervailing duty}).$$

The offset prevents double-compensation for any pass-through of the export subsidy to lower U.S. sales prices.[28]

However, when a countervailable export subsidy also lowers the normal value of a product subject to an antidumping duty order, the dumping margins may not increase enough to fully prevent foreign producers from lowering U.S. sales prices in response to subsidization. This situation may arise if Commerce does not use home market sales as the basis for the normal value calculation.[29] The effect of a countervailable export subsidy on future dumping margin calculations will therefore depend on the methodology used by Commerce in calculating the normal value of the subject merchandise.

### Results of Commerce's Most Recent Reviews

As discussed in Part I of this report, U.S. imports of ERT from Malaysia currently are subject to company-specific antidumping and countervailing duties. Under the current methodology used by Commerce, all outstanding and greater than *de minimis* countervailing duties are being offset in antidumping margin calculations. The results from the most recent Commerce reviews are shown in table II-6.

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[25] This is the case when the export subsidy does not affect the normal value of the product calculated by Commerce. For example, if home market sales are used as the basis for the normal value calculation, these values generally would not be expected to reflect export subsidies.

[26] If the countervailable subsidy is not export-specific, the normal value and the export price would likely decline as the subsidy increased. Thus, the dumping margin would not reflect the subsidy and an offset would not be applied.

[27] This is in accordance with section 772(d)(1)(D) of the Act.

[28] 61 FR 54770 (Oct. 22, 1996).

[29] For example, if Commerce were to use third-country market comparisons.

Table II-6
ERT: Results of Commerce's most recent administrative reviews and the Malaysian firms' 1997 export shares

| Firm | Antidumping margin (Oct. 1, 1995-Sept. 30, 1996) | Countervailing duty (1995) | Share of total 1997 exports to U.S. market |
|---|---|---|---|
| | (Percent) | | |
| Heveafil/Filmax | 54.31 | 0.90 | *** |
| Rubberflex | 3.75 | 0.30 | *** |
| Filati | 52.89 | 0.15 | *** |
| Rubfil | 54.31 | 0.03 | *** |

Source: 62 FR 48985 (Sept. 18, 1997) and 63 FR 12752 (Mar. 16, 1998). U.S. market shares were compiled from data submitted in response to Commission questionnaires.

In its most recent antidumping administrative review, Commerce stated that:

> (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that for Heveafil the cash deposit rate will be reduced by 0.90 percent, the current cash deposit rate attributable to export subsidies); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.16 percent, the all others rate established in the LTFV investigation.[30]

In this review, Commerce calculated the antidumping margins for Filati and Rubberflex on the basis of the difference between the normal value of the goods sold in the Malaysian market and the constructed export prices of the goods sold in the U.S. market. Commerce found evidence of sales at less than the cost of production in the Malaysian market for both firms. Hence, calculation of normal values excluded these transactions. Where there were no sales of comparable goods in both markets, Commerce used constructed values in lieu of home market sales. Both Heveafil (***) and Rubfil provided insufficient information to Commerce. Thus, Commerce "used the highest rate calculated for any respondent in any segment of this proceeding" for both firms.[31]

[30] 63 FR 12764 (Mar. 16, 1998).

[31] As shown in table II-6, the antidumping margins for the Oct. 1, 1995-Sept. 30, 1996 period were issued on Mar. 16, 1998. The revised rates for Heveafil and Filati increased significantly, whereas the rate for Rubberflex declined. At this point, the impact that the new rates will have on these firm's respective shares of the U.S. market is unknown.

Commerce currently deducts the export subsidy rate from the antidumping rate shown for Heveafil because the reduction in the constructed export price attributable to these subsidies is already accounted for by the countervailing duty. Similar adjustments are not made for the other Malaysian exporters because the countervailing duties shown in table II-6 are *de minimis*. With revocation of the countervailing duty order, the full antidumping margins shown above would apply to U.S. imports from these firms. Thus, if there were no changes in the level of subsidies shown above, there would likely be no change in the U.S. market prices for these goods.

### Modeling the Potential Effects of NCS Revocation

As noted in Part I, Commerce reported to the Commission the NCS that is likely to prevail if the countervailing duty order is revoked. The NCS for all Malaysian producers except Rubfil is 6.76 percent *ad valorem*. The NCS for Rubfil is 1.06 percent. As the petitioner notes in its posthearing brief, such an increase in Malaysian export subsidies could result in lower ERT prices in the U.S. market. However, the petitioner's assertion that the dumping order against Malaysian ERT will not offset these price decreases[32] is more difficult to assess. The NCS determination by Commerce identified five export-oriented programs[33] that do not appear to have clear, predictable effects on future costs of production of foreign producers of subject ERT.[34]

To model the likely effects of the NCS on the U.S. domestic industry, staff has estimated the impact of the NCS under two different assumptions. First, the assumption is that Commerce will continue to employ its existing methodology in its antidumping margin calculations for producers of subject imported ERT. Therefore, any pass-through of the NCS for any of the four producers will be effectively compensated for by higher antidumping margins. In its most recent administrative review, Commerce found that the antidumping margin calculations for Heveafil and Rubfil should be offset by their countervailing duties.[35] Therefore, any pass-through of the NCS for these two producers is assumed to be effectively compensated by higher antidumping margins. Since the two remaining companies, Rubberflex and Filati, currently have *de minimis* countervailing duties rates, Commerce did not directly address the offset issue in the same administrative review. They did, however, calculate the antidumping margins for these firms on the basis of home market prices, which would not be expected to reflect any price declines associated with export subsidies. Assuming that such offsetting antidumping duties remain in place (or that the antidumping margins calculated in Commerce's subsequent reviews are based on the same methods), there would be no likely price effect arising from the revocation of the countervailing duty order regardless of the magnitude of the subsidies.

In essence, the impact of NCS revocation with the continuation of the existing antidumping order largely depends on the specific approach used by Commerce to calculate normal values. If Commerce were to use alternative approaches for its normal value calculations, the revised antidumping margin(s) may fail to reflect some, if not all, of the price effects of the export subsidies. As a result of this indeterminacy, staff has assumed a second scenario, namely that none of the effects of the NCS will affect future antidumping duty

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[32] Petitioner's posthearing brief, p. 9.

[33] See pp. I-2 and I-3.

[34] The petitioner argues, however, that "...to the extent that subsidies benefit a company generally, they'll reduce its financing costs, given the fungibility of money. Only countervailing duties can fully offset subsidies."

[35] Although the current countervailing duty for Rubfil is *de minimis*, the same methodology was employed in the antidumping margin calculations for both companies.

calculations.[36] That is, it is assumed that none of the effects of the subsidies will be compensated for by antidumping duties. This would result in declines in domestic prices, shipments, and revenues of 0.1 to 0.5 percent, 0.3 to 2.1 percent, and 0.4 to 2.6 percent, respectively. Appendix D provides a description of the model used for this analysis and complete results from the modeling exercise.

## PURCHASERS' COMMENTS REGARDING THE POTENTIAL IMPACT OF REMOVING THE COUNTERVAILING DUTY ORDER

### Potential Short-Term Effects

When asked about the likely effects of any revocation of the countervailing duty order covering imports of subject ERT from Malaysia, purchasers had mixed responses. Generally, purchasers assumed that with the removal of the countervailing duty order, there would be a fall in price of ERT in the U.S. market, which would reduce their costs. For example, *** added that as a result of the revocation of duty, there would be more–almost double–importation of ERT. Thirteen of *** responding purchasers reported in the supplementary questionnaire that they would experience little to no change in firm activities during 1998 and 1999. *** reported in its questionnaire response that "anticipated reduction in rubber prices after (revocation) of duty would result in price pressure from (their) customers." One purchaser, ***, reported that there would be little benefit in removing the countervailing duty, explaining that:

> The current CVD is less than one percent and since it is the lesser of two duties, it has not been levied in the past 3 years. The increase in ANTIDUMPING duty has a far greater effect. Currently, *** percent, and will soon go to *** percent within a month. When the increase in ANTIDUMPING duty goes into effect, results will be catastrophic. We have already been burdened by the antidumping duty placed on a product that is not even manufactured in the ***. This AD duty has allowed new foreign competitors to establish a foothold in the food-grade elastic netting industry. These foreign manufacturers are purchasing their ERT at significantly lower prices since they are not subject to the unfair duties imposed on US manufacturers.[37]

Some purchasers clearly did not make that assumption of a decrease in ERT prices. For example, *** claimed that the effect on their firm will be negative, and that "costs will increase by $200,000 a year or by 14 percent." The firm added that prices cannot increase at all since customers refuse increases in prices.

### Potential Long-Term Effects

When asked about the effect of removing the countervailing duty order on long-term activities, responses from purchasers were also divergent. Ten purchasers reported there would be little or no change in their firms' long-term activities as a direct result of revocation of the order. Of the remaining purchasers, most had the impression that there might be some changes in their firms' long-term activities. For example, *** reported they would probably see a reduction in some prices. *** added that in the long run, the change in price would likely create a competitive market for ERT. *** added that they would be able to take advantage of some of the world market price advantages and the removal of the duties would enable them to

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[36] The value used for the NCS was that reported to the Commission by Commerce on Jan. 8, 1998 (i.e., 6.76 percent).

[37] *** reported this response in its supplementary questionnaire.

pursue more areas aggressively by competing globally. *** added that any action that would decrease the price of rubber would then increase their margins.

A number of producers somehow had the impression that removing the countervailing duties would dramatically increase prices, stating that the removal "may result in rubber shortages."[38] ERT prices would increase, resulting in more costs for the company, which may result in the firm's prices not being competitive.[39] In addition, *** reported in its questionnaire response that the price increase would slow expansion plans.

### Effect on the U.S. Market

When analyzing the effect on the entire U.S. market, seven purchasers remarked that there would be no effect on the overall market, whereas five others reported that they were uncertain as to what effect there would be. A number of other purchasers thought the effect would be positive. For example, *** stated that it would have a positive impact on the ERT market because it would make them more competitive versus imports. Similarly, *** indicated that it would enable them to better compete globally. However, some producers indicated that revocation of the countervailing duty order would reduce their competitiveness and result in a reduction in demand for their products.[40]

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[38] *** reported this in its questionnaire response.

[39] *** reported this in its questionnaire response.

[40] See, for example, questionnaire responses from ***. *** indicated that few producers of narrow fabric would survive the transition.

# PART III: CONDITION OF THE U.S. INDUSTRY

## U.S. PRODUCERS

The Commission received completed questionnaire responses from Globe and North American, the two firms that have produced rubber thread in the United States since 1990.[1] As shown in table III-1, both firms are located in Fall River, MA. North American sells ERT throughout the United States, although most customers are in the mid-Atlantic states, New York, New England, Florida, California, Tennessee, and Texas. Globe reports that it chiefly sells on the East Coast, with individual accounts in other geographical areas.

Table III-1
ERT: U.S. producers, their plant locations, shares of total U.S. production in 1997, and types of ERT manufactured

| Firm | Plant location | Total U.S. production in 1997 (*1,000 pounds*) | Share of total U.S. production in 1997 (*Percent*) |
|---|---|---|---|
| Globe[1] | Fall River, MA | *** | *** |
| North American[1] | Fall River, MA | *** | *** |
| Total | | *** | 100.0 |

[1] Neither firm is owned, in whole or in part, by any other firm.

Source: Compiled from data submitted in response to Commission questionnaires.

***. At the time of the original countervailing duty and antidumping investigations, Globe accounted for *** of domestic production with a *** percent share in 1991.[2] The firm, which was established in 1945, also manufactures spandex on production equipment ***. North American began producing ERT in March 1987 when it purchased the thread production facilities of Pilgrim Latex Thread Co. The firm produces no products other than ERT.[3] ***.

Globe testified at the Commission's conference held in its concurrent countervailing duty and antidumping investigations involving imports from Indonesia (invs. Nos. 701-TA-375 and 731-TA-787 (Preliminary)) that it supplies the broadest range of gauges in the industry.[4] As shown in table III-2, Globe

[1] A third firm, Qualitex, exited the U.S. industry in Oct. 1990 with the sale of its ***. Qualitex's manufacturing facility had been located in Johnston, RI.

[2] *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992.

[3] During the period covered by the earlier antidumping investigation, North American produced *** quantities of shock cord from scrap material generated in the manufacture of ERT. However, that operation has been sold. ***. Conversation with North American, Mar. 31, 1998. ***.

[4] The higher the gauge, the finer the thread, and according to Globe, the more sophisticated the production process becomes. With a finer gauge product, the "level of care, quality control, engineering tolerances etc. are much more

(continued...)

*** manufactured fine-gauge and heat-resistant ERT during the latter part of the period reviewed; in contrast, the *** of production by North American was of standardized or heavy (medium)-gauge talcless ERT.

Table III-2 also presents data on the importing operations of both Globe and North American. As shown, Globe began importing increasing amounts of reportedly high-quality ERT from Indonesia in 1994. The imports were manufactured by the Bakrie Rubber Industry, located on the island of Sumatra. ***.

Table III-2
ERT: U.S. producers' imports/purchases of imports and U.S. production, by firm, 1992-97

* * * * * * *

***. The Indonesian product is a talcless commodity-type thread, with a gauge range of approximately 26 to 40. ***.[5] North American indicated that it ***.

Data presented in Part III, and in the remainder of this report, primarily are for the period from 1992 to 1997 (i.e., that collected in questionnaires issued by the Commission in the current investigation). However, data gathered during the original antidumping investigation concerning imports of ERT from Malaysia (inv. No. 731-TA-527 (Final)) are also presented in appendix C (tables C-4 and C-5) and, on occasion, referred to within the report.[6]

Industry data for the earliest periods includes the operations of three domestic manufacturers, namely, Globe, North American, and Qualitex (a U.S. producer operating a plant in Johnston, RI, whose assets were sold in 1990 to ***).[7] Qualitex submitted data to the Commission for its operations prior to its termination of manufacturing and sales on October 26, 1990; those data are included in table C-4 and (where appropriate) in table C-5. The following tabulation presents the quantity of ERT produced and the share accounted for by each U.S. manufacturer during the period 1989 to 1991:[8]

* * * * * * *

Three Commissioners noted in their opinion in inv. No. 731-TA-527 (Final) that Qualitex's departure "accounted for a substantial portion -- but not all -- of the declines shown in production, shipments, and employment data during the period 1989-91" and that "Qualitex's financial condition was also

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[4] (...continued)
intensive." Conference TR, p. 18.

[5] Globe's importers' questionnaire response and letter of Mar. 31, 1998.

[6] As noted earlier, for purposes of comparison and to assess the immediate impact of the countervailing duty and antidumping orders on the U.S. industry producing ERT, these tables also incorporate 2 years of data (1992 and 1993) gathered during the current investigation. Commerce issued its countervailing duty and antidumping orders for ERT from Malaysia in 1992 (in Aug. 1992 and in Oct. 1992, respectively) and 1993, as a result, was the first full year during which the orders were in effect.

[7] As part of inv. No. 731-TA-527 (Final), petitioner claimed that Qualitex was forced out of business by low-priced imports. Respondents, in contrast, stated that *** and argued that the closure of Qualitex was part of a ***. *Extruded Rubber Thread from Malaysia,* USITC Pub. 2559, Sept. 1992.

[8] *Extruded Rubber Thread from Malaysia,* USITC Pub. 2559, Sept. 1992.

significant in terms of the overall industry's financial performance." Further, "the record showed that the remainder of the industry derived some benefit from Qualitex's departure in the form of some new (formerly Qualitex) customers and sales."[9]

In contrast, three other Commissioners determined that Qualitex was a related party within the meaning of the statute and that appropriate circumstances existed to exclude it from the domestic ERT industries (food-grade ERT and all other ERT).[10] Table C-5 presents summary data for the period 1989-93 which excludes the manufacturing operations of Qualitex.

## U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Table III-3 lists production, capacity, and capacity utilization separately for Globe and North American. After the countervailing duty (and antidumping) orders went into effect in 1992, production for both firms increased steadily for the next 2 years, reaching a level in 1994 (when production of *** pounds was reported) that was only slightly less than the 1989 level (of *** pounds). However, domestic production figures showed a decline in 1995, followed the next year by an even sharper decrease. Production then rebounded somewhat in 1997 to a point that was either (in the case of ***) comparable to what it had been in the year of the countervailing duty order or (in the case of ***) that was still significantly higher than 1992, the initial year examined.[11] Domestic production trends during the 1992-97 period for Globe were affected, in part, by its previously discussed ***. As shown by the figures in table III-2, acquisition of ERT by Globe (whether through domestic manufacture or imports from Indonesia) increased by *** percent from 1992 through 1997, although much less significant declines in 1995 and 1996 are still evident. North American

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[9] "Views of Chairman Newquist and Commissioners Rohr and Nuzum," p. 16, *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992. The Commissioners concluded that "competition from the Malaysian product played an important role in the decision to close the Qualitex facility" and, therefore, they did not "entirely discount the declines in aggregate data accounted for by Qualitex's departure." However, the Commissioners further recognized that "the decision to shut down rather than simply reduce operations may have been affected by considerations other than import competition. Thus, the observed aggregate declines and losses may have been exacerbated by factors other than the subject imports." The Commissioners stated that "we view the condition of the industry in the context of these conditions of competition." *Ibid.*, pp. 16-17.

[10] Those Commissioners stated that an "important factor" (but not the only one) in their decision to exclude Qualitex from the domestic industry was "the degree to which inclusion of Qualitex would result in a distorted picture of the aggregate industry data gathered by the Commission." Further, "a review of the evidence reveals that the closure and liquidation of Qualitex's assets in 1990 had a strong negative effect on Qualitex's balance sheet in that year" and "a comparison of the aggregate financial data of the industry with and without the inclusion of Qualitex emphasizes the substantial effect closure of Qualitex had on the domestic industry as a whole during the period of investigation." Views of Vice Chairman Watson and Commissioners Brunsdale and Crawford, pp. 39-40, *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992.

[11] The use of the term "base" period does not imply that 1992 is necessarily the annual period to which other data should be measured. Rather, 1992 was the first year for which data were gathered in this investigation.

Table III-3
ERT: U.S. producers' capacity, production, and capacity utilization, 1992-97

* * * * * * *

reports that its production declines in 1995 and 1996 are due to ***. Also, North American reported that imports from Indonesia began to affect its operations beginning in 1995.[12]

Trends for capacity utilization rates (which also increased steadily from 1992 to 1994, dipped in 1995 and 1996, then rose again in 1997) were comparable to those for production. However, Globe ended the period with a capacity utilization rate of *** percent, which was significantly higher than that found in 1992 (*** percent). The firm produced about as much ERT domestically in 1997 as it had in 1992; however, capacity utilization rates increased since actual capacity to produce by Globe declined. Reductions in capacity were due to ***. North American increased capacity somewhat in 1993 as it ***.[13]

***.[14] ***.[15]

## U.S. PRODUCERS' SHIPMENTS

Table III-4 presents data on U.S. producer's shipments, by type. ***. ***.

Table III-4
ERT: U.S. producers' shipments, by type, 1992-97

* * * * * * *

Data on shipments of specific ERT product groupings by each manufacturer are presented in table C-6. Table C-6 shows the decline in domestically-produced talcless ERT discussed earlier as Globe began importing the talcless product from its Indonesian partner.

Reported unit values for commercial shipments by Globe increased irregularly during the period reviewed, rising from $*** in 1992 to $*** in 1997. The per-unit value of product shipped by North American rose by ***, increasing from $*** in 1992 to $*** in 1997. Aggregate unit values for the two firms ***. In part, this is due to product mix as Globe produces relatively greater quantities of high-valued

[12] Submission by North American, dated Mar. 30, 1998, and conversation with North American, Mar. 30, 1998.

[13] Conversation with North American, Mar. 31, 1998.

[14] ***.

[15] ***.

fine-gauge ERT products.[16] Also, a portion of Globe's product is packaged onto tubes, and not sold in the form of ribbons or tapes; tube packaging adds approximately *** to *** cents to the per-pound sales price.[17]

North American reported in its questionnaire response that the total effect of the two orders was to increase its sales from *** pounds in 1992, to *** in 1993, with the effect of the countervailing duty being to increase sales by up to *** pounds. North American arrived at this breakout by separating the effect of the countervailing duty order from the antidumping duty based on respective shares of the total duties imposed. Between 30 and 40 percent of the effects would be due to the countervailing duty order using this methodology.

## U.S. PRODUCERS' INVENTORIES

Table III-5 provides data for U.S. producers' end-of-period inventories since the date of the countervailing duty and antidumping orders, or 1992.

Table III-5
ERT: U.S. producers' end-of-period inventories, 1992-97

* * * * * * *

## U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Table III-6 presents employment data for operations at both Globe and North American. Trends for the number of production workers at Globe were comparable to those shown for the quantity of ERT produced and employment rose from *** workers in 1992 to *** workers in 1994, then declined, by *** percent, to *** workers in 1997. However, the hourly wages paid to those workers increased, albeit irregularly, from 1992 to 1997. Productivity also increased irregularly from 1992 to 1997 and unit labor costs were the same in 1997 as in 1992, with some interim fluctuation.

Table III-6
Average number of production workers producing ERT, hours worked, wages paid to such employees, hourly wages, productivity, and unit labor costs, 1992-97

* * * * * * *

The number of workers producing ERT at North American and the hours worked by and hourly wages paid to such workers increased steadily during the first part of the period reviewed (from 1992 to either, depending upon the specific indicator, 1994 or 1995), then declined somewhat during the latter years. Productivity rose sharply from 1992 to 1995, or by *** percent, then declined at an annual rate of *** percent

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[16] The same concentration in fine-gauge threads was seen in the earlier antidumping investigation where the unit value of U.S. shipments reported by Globe was *** than that reported by either North American or Qualitex. At the Commission's hearing in that investigation, William Girrier, Marketing Manager for Globe, testified that the difference was due to the number of higher-priced specialty compounds, including fine-gauge rubber thread, manufactured by Globe. As the gauge narrows, the cost per pound to produce rubber thread increases. *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992.

[17] Conversation with Globe, May 8, 1998.

in 1996, before rebounding somewhat in 1997. Unit labor costs in 1997 were comparable to what they had been in 1992.

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

## U.S. IMPORTERS

The Commission sent questionnaires to the importers which accounted for virtually all imports of rubber thread from Malaysia.[1] Almost all ERT is imported from Malaysia into the United States by firms related to the Malaysian manufacturers. The principal importers are FLE-USA, West Warwick, RI (an affiliate of Filati, Selangor, Malaysia); Flexfil, Hickory, NC (an affiliate of Rubberflex, Kuala Lumpur, Malaysia); and Heveafil USA, Charlotte, NC (an affiliate of Heveafil and Filmax, Kali, Malaysia). Each of these firms imported ERT into the United States both before and subsequent to the imposition of the countervailing duty and antidumping orders. All three firms received and responded to Commission questionnaires. An additional Malaysian manufacturer, Rubfil, exported a *** amount of ERT in 1990 and 1991 that was sold to North American, the petitioner in this investigation.[2] North American ceased importing from Rubfil in ***.[3] Rubfil resumed exporting during 1993-95, but has not exported since that time.[4] It did not respond to the Commission's questionnaire.[5] According to information provided by the U.S. Customs Service, Rubfil's U.S. affiliate imported subject product valued at $*** in 1993, at $*** in 1994, and at $*** in 1995.[6]

Data on importers' U.S. shipments received in response to Commission questionnaires were used to calculate apparent U.S. consumption. (These data were adjusted to correct for missing data from Rubfil.) There is some discrepancy, especially for 1992, between the import data provided by respondents and official data for imports of ERT from Malaysia maintained by Commerce. The following tabulation presents aggregate subject imports reported by U.S. importers and U.S. imports for consumption compiled by Commerce (or, in the case of Rubfil, by the U.S. Customs Service):

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[1] There were several additional firms which sporadically imported ERT from Malaysia in amounts valued at only a few thousand dollars that did not receive Commission importers' questionnaires.

[2] *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992.

[3] *Ibid.*

[4] Information provided by the U.S. Customs Service.

[5] According to counsel for respondents, Rubfil's U.S. subsidiary is no longer active and its records "are not currently available." Also, Rubfil is "unable at this time" to provide the data requested in the Commission's foreign producers' questionnaire. Counsel further states that Rubfil has made no shipments of ERT to the United States during the past 2 years, and "presently has no plans to do so in the future, regardless of whether the countervailing duty order is revoked or not." Letter dated Apr. 7, 1998.

[6] ***.

| Item | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 |
|---|---|---|---|---|---|---|
| Questionnaire data (*1,000 pounds*) | *** | *** | *** | *** | *** | *** |
| Rubfil (*1,000 pounds*) | *** | *** | *** | *** | *** | *** |
| Total (*1,000 pounds*) | *** | *** | *** | *** | *** | *** |
| Commerce data (*1,000 pounds*) | 22,830 | 7,036 | 12,110 | 7,180 | 10,383 | 8,667 |
| Ratio of questionnaire to Commerce data (*in percent*) | *** | *** | *** | *** | *** | *** |

The most precise calculation of apparent consumption results from using U.S. importers' actual shipments to their U.S. customers rather than imports entered into the United States. This is most true in those instances where U.S. importers hold inventories (especially when they fluctuate) and/or re-export some of the product they import. As will be noted in a later section of this report, the level of inventories maintained by U.S. importers declined sharply at the beginning of the period of review (i.e., from 1992 to 1993), increased significantly in 1994, then remained somewhat constant for the remainder of the period. In addition, U.S. importers re-exported some, ***, of subject product.[7] A comparison of data on U.S. imports from Malaysia presented above (whether from questionnaire or Commerce data) to importers' U.S. shipments of those imports (presented in table I-6) shows varying trends between the two datasets. Importers' U.S. shipments fluctuate somewhat less from 1992 to 1996 than do U.S. imports.

The Commission also sent importers' questionnaires to firms that imported ERT from Indonesia. (Official Commerce import statistics show imports from Indonesia increasing from an insignificant amount in 1992 to a quantity that almost equals that exported from Malaysia by 1997.) Responses accounting for the *** majority of such imports in 1996 and 1997, but a lesser percentage of the earlier years, were received from two firms (Globe, a U.S. manufacturer, and ***). ***.

## U.S. IMPORTS

Table IV-1 provides data on imports of ERT into the United States for the period 1992 to 1997. (Additional import data on the imports of non-food-grade and food-grade ERT into the United States are presented in tables C-7 and C-8, respectively, in appendix C.) As shown, at the time of the countervailing duty (and antidumping) orders, the vast majority of ERT imports were manufactured in Malaysia. Following the imposition of the order, such imports declined sharply, decreasing by over *** percent during the first year. The level of subject imports then remained somewhat constant over the next few years, although there was a temporary spike in Malaysian shipments in 1994.

Table IV-1
ERT: U.S. imports, by sources, 1992-97

* * * * * * *

[7] Also, official Commerce statistics contain a small amount of nonsubject cut rubber thread (or cord).

The quantity of total imports of ERT from all sources into the United States was about the same in 1997 (*** million pounds) as it was back in 1992 (*** million pounds), although quantities varied a bit from year to year as suppliers changed sources.[8] Imports increased sharply from Indonesia during the period reviewed. As discussed earlier, this is largely concurrent with Globe's ***. By yearend 1997, Malaysia and Indonesia exported roughly equal amounts of ERT to the United States, and together accounted for *** percent of the quantity of total U.S. imports. Thailand and Canada are the other significant sources of imported ERT.

## U.S. MARKET SHARES

Shares of apparent U.S. consumption are presented in table IV-2.

Table IV-2
ERT: Apparent U.S. consumption and market shares

* * * * * * *

Although there were distinct fluctuations during the 1992-97 period, the share of apparent U.S. consumption held by domestic manufacturers at the end of the period reviewed (in 1997) was roughly comparable to that held at the beginning (in 1992). In 1997, U.S. producers held a *** percent share (by quantity) of the U.S. market for ERT, a *** percentage point gain over the *** percent share held in 1992. As noted earlier in the report, the countervailing duty and antidumping orders were put into place in 1992, and then, later, U.S. imports from Indonesia increased. In 1992, the share of consumption (by quantity) of imports from Malaysia and Indonesia together was *** percent; in 1997 the combined figure was *** percent. However, the U.S. market shares for Malaysia alone fell by almost *** percent in 1993, and remained at about that level from then on. Market shares (by value) generally follow the same trend as those by quantity, but are significantly higher for U.S. producers.

When asked in the Commission questionnaires to address the impact of any revocation of the countervailing duty order, Globe stated that ***.

[8] However, the level of imports remained at a much higher level than had been found in 1989 (when imports of *** million pounds from all sources were reported).

# PART V: PRICING AND RELATED DATA

## FACTORS AFFECTING PRICING

### Raw Material Costs

Domestic producers reported that rubber latex (the primary material input for ERT) accounts for between *** percent of the total cost of producing ERT.[1] The average latex unit values reported by U.S. producers shown in figure V-1[2] exhibit *** between the first quarter of 1992 and the third quarter of 1994. Unit values reported by ***, while ***. ***.

Two Malaysian producers reported average annual latex values in terms of ringgit per pound. These values were converted to dollars and are presented in figure V-1. The average latex unit values reported by *** are consistently *** than those reported by *** for every quarter except the first quarter of 1994. The unit values reported by importers *** from 1992 to 1993, then *** in 1994 through 1996, then *** in 1997.

Figure V-1
Average quarterly latex prices, 1992-97

* * * * * * *

### Transportation Costs to the U.S. Market

Transportation costs from Malaysia to the U.S. market were estimated to account for approximately 7 percent of the cost of ERT (excluding U.S. inland freight) in 1997.[3] This margin fluctuated between 7 and 9 percent during 1992-97.

### U.S. Inland Transportation Costs

Producers reported that their average inland transportation costs ranged between *** percent of total delivered costs. Importers reported a larger range, varying from between *** percent of total delivered costs.[4]

---

[1] ***.

[2] Individual firm purchase prices for latex are discussed in Part VI of this report.

[3] This estimate was calculated as the percentage difference of the c.i.f. value over the customs value reported for 1997 U.S. imports classified under subheading 4007.00.00 of the HTS.

[4] This estimate is a weighted average taken from data submitted in response to Commission questionnaires.

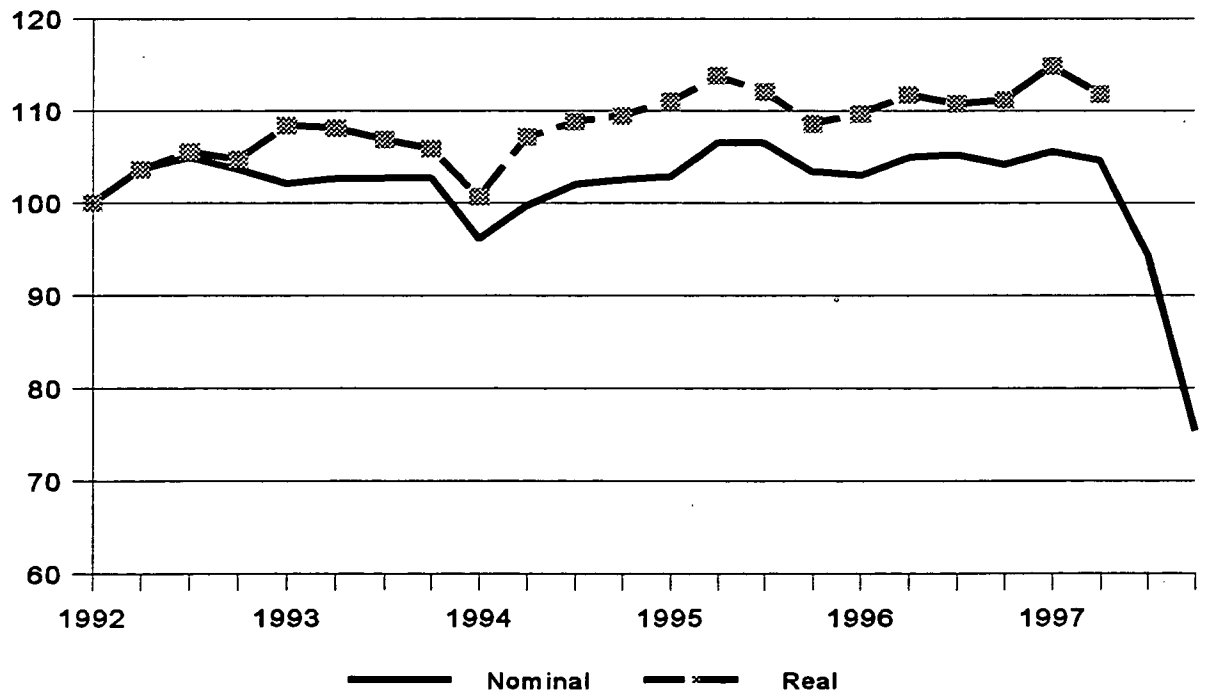
## Tariff Rates and Other Duties

As noted in Part I, U.S. imports of ERT from Malaysia are currently subject to countervailing and antidumping duties, as well as the MFN tariff. Commerce has determined the net countervailable subsidy that is likely to prevail if the countervailing duty order is revoked to be 1.06 percent for Rubfil and 6.76 percent for all other Malaysian suppliers. The antidumping margins applied to ERT imports ranged from 3.75 to 54.31 percent in 1996 (table I-2). As shown in table I-2, the antidumping margins for Heveafil, Filati, and Rubfil increased significantly during the last three administrative reviews. In contrast, the margin for Rubberflex declined. As a result of the URAA, the MFN tariff applied to U.S. imports of ERT has decreased from the pre-URAA rate of 4.2 percent to 1.7 percent in 1997.

## Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Malaysian ringgit appreciated slightly relative to the U.S. dollar from January 1992 to December 1993 (figure V-2), depreciated somewhat during the first half of 1994, and appreciated consistently through the second quarter of 1997. During the second half of 1997, the ringgit dropped by 28 percent relative to the U.S. dollar as a result of the ongoing Asian financial crisis. During 1992 through the first half of 1997, the real value of the Malaysian currency appreciated 11.8 percent vis-a-vis the U.S. dollar. The producer price index for Malaysia-- needed to calculate the real value of the ringgit--is not currently available for the second half of 1997.

Figure V-2
Exchange rates: Indices of the nominal and real exchange rates of the Malaysian ringgit relative to the U.S. dollar, Jan. 1992-Dec. 1997




Source: International Monetary Fund, *International Financial Statistics*, Mar. 1995 and Apr. 1998.

## PRICING PRACTICES

As noted earlier, the cost of producing ERT varies with the cost of the latex and other material inputs (e.g., various chemical additives). Moreover, ERT production costs vary depending on the gauge being produced and production volumes.[5]

***. U.S. producers and importers also reported that prices typically were determined through negotiation with their customers. Of the purchasers who responded to the question, the majority of purchasers--15--indicated that prices were negotiable, while 13 others reported that prices were set by their suppliers. Most purchasers report buying ERT weekly, although 10 reported receiving shipments monthly.

## PRICES

The Commission requested U.S. producers and importers to provide quarterly data for the total quantity and total value (net of all discounts, allowances, and promotions) of two types of ERT that were shipped to unrelated U.S. customers during the period January 1992 to December 1997. They were requested to report their prices on both an f.o.b. (U.S. point of shipment) basis and a delivered basis (i.e., including the cost of U.S. inland transportation costs). Products for which pricing data were requested are listed below:

**Product 1:** Talced ERT with a yield of 650-1,150 yards per pound (gauge range of 24-34).

**Product 2:** Talcless ERT with a yield of 650-1,150 yards per pound (gauge range of 24-34).[6]

*** provided usable pricing data for sales of the two products. In terms of volume, these data accounted for approximately 49 percent of open-market shipments of the U.S. product and 53 percent of U.S. imports in 1997. In its original questionnaire response, ***.[7] North American amended this estimate in a subsequent submission, indicating *** percentages of its sales during 1992-97 were talced. ***. *** in table V-1 and V-2.[8]

The Commission also asked purchasers to report total quarterly purchases of ERT on a quantity and value basis during the same period. Twenty-nine purchasers provided usable pricing data for their purchases of U.S.-produced and/or Malaysian ERT. These firms' total purchases of ERT accounted for approximately 33 percent of 1997 U.S. shipments of the domestic product and 35 percent of 1997 shipments of the Malaysian product.

---

[5] For example, more scrap is generated in the production of finer gauge products and fewer pounds are produced per hour. Conversation with ***, Mar. 27, 1998.

[6] The Commission's questionnaire specified ranges of 650-1,500 yards per pound (gauge range of 24-34). The yards per pound range that corresponds to 24 to 34 gauge ERT is approximately 650-1,150. All of the U.S. producers and importers were contacted and stated that the quarterly volume and value data that they reported falls within the definitions for products 1 and 2 that are shown above.

[7] Letter to Commission, Mar. 4, 1998.

[8] ***.

## U.S. Producer and Importer Price Trends

Weighted-average unit values for U.S. sales of U.S.-produced and imported Malaysian ERT are shown in figure V-3 and in tables V-1 and V-2.

Figure V-3
ERT: Weighted-average delivered unit values for products 1 and 2, by sources and by quarters, Jan. 1992-Dec. 1997

* * * * * * *

Table V-1
ERT--product 1: Weighted-average delivered unit values and quantities reported by U.S. producers and importers, by quarters, Jan. 1992-Dec. 1997

* * * * * * *

Table V-2
ERT--product 2: Weighted-average delivered unit values and quantities reported by U.S. producers and importers, by quarters, Jan. 1992-Dec. 1997

* * * * * * *

In general, the average unit values for product 1 *** from 1992 to mid 1995, *** during 1995, and then *** through 1997. The *** in 1995 may, in part, reflect the *** in the price of rubber latex reported by U.S. and Malaysian producers (figure V-1). This pattern is evident for sales of both the U.S.-produced and Malaysian products.[9]

The trends for U.S.-produced and Malaysian product 2 also show an increase during 1995. However, ***'s reported average unit values *** again in 1997, while the average unit values reported by *** and by U.S. importers of the Malaysian product 2 were *** after 1995.

## U.S. Producer and Importer Price Comparisons

Margins of under/overselling are shown in table V-3. Unit value comparisons between the U.S. products and importers' sales of the Malaysian products were possible in 48 instances for ***. ***.

Table V-3
ERT: Percentage margins of under/(over)selling by importers

* * * * * * *

[9] Average unit values reported by *** show a slightly different pattern as they decline in 1993, and are relatively flat after 1995.

## Price Trends Reported by Purchasers

Purchasers were asked whether the U.S. product was superior, comparable, or inferior to the Malaysian product in terms of price. Of the 23 firms that provided usable responses to this questions, 16 firms indicated that Malaysia offered superior pricing relative to U.S.-produced ERT. Seven firms reported that the U.S. product price was comparable to the Malaysian product.

Twenty-six of 29 purchasers that reported usable quarterly data also reported buying the Malaysian product (table V-4).

Table V-4
ERT: Quarterly weighted-average unit values and quantities reported by purchasers, by sources, Jan. 1992-Dec. 1997

* * * * * * *

Average unit values reported for purchases of the Malaysian product increased steadily during 1992-95, then declined during 1996-97. Purchaser data showed that average unit values of U.S.-produced ERT decreased slightly during 1992 and 1993, increased sharply in 1994, and then continued to increase somewhat during 1995-97. The quantities of these purchases generally increased during 1992-94, increased dramatically during the first three quarters of 1995 and during 1996 (with 1995, fourth quarter excepted), and then generally declined during the remainder of the period. Average unit values reported for purchases of Malaysian ERT were lower than those reported for the U.S.-produced ERT throughout the 1992-97 period. These differences in unit values may reflect differences in the composition of purchases from the two sources, as well as price differences.

# PART VI: FINANCIAL EXPERIENCE OF THE U.S. INDUSTRY

## BACKGROUND

Globe and North American, the only U.S. producers of ERT since late 1990, provided financial data on their ERT operations from 1992 to 1997. Globe was also able to provide its 1998 and 1999 projected ERT revenues and costs; North American ***. The 1992-97 data and Globe's 1998-99 projections are being presented and discussed in this section. Financial data on the producers' ERT operations from 1990 to 1992 are presented in appendix C.

Both producers have fiscal years ending December 31. Since ***, transfer sales are not being presented separate from trade sales.

## OPERATIONS ON ERT

The results of the U.S. producers' ERT operations are presented in table VI-1. Net sales ***. Table VI-2 presents selected financial data on a company-by-company basis. While the results of the two producers' ERT operations are ***. Similarly, *** in 1995. On the other hand, Globe's ***. (Table VI-3). ***.

Table VI-1
Results of U.S. producers on their operations producing ERT, fiscal years 1992-97

* * * * * * *

Table VI-2
Selected financial data of U.S. producers on their operations producing ERT, on a company-by-company basis, fiscal years 1992-97

* * * * * * *

Table VI-3
Selected unit cost data for U.S. producers on their operations producing ERT, on a company-by-company basis, fiscal years 1992-97

* * * * * * *

The variance analysis showing the effects of prices and volume on the producers' net sales of ERT, and of costs and volume on their total expenses, is shown in table VI-4. Although the producers' product mix has changed from 1992 to 1997, the extent of the changes does not appear to be substantial enough to invalidate the results of the analysis. The analysis, summarized at the bottom of the table, shows that the changes in operating profits from year to year coincide with changes (either increases or decreases) in unit revenues and changes (again, either increases or decreases) in unit costs. For instance, the *** was relatively minor.

Table VI-4
Variance analysis of U.S. producers' operations producing ERT between the fiscal years 1992-97

* * * * * * *

## CAPITAL EXPENDITURES, R&D EXPENSES, AND INVESTMENT IN PRODUCTIVE FACILITIES

Globe's and North American's capital expenditures and research and development expenditures, together with the value of their fixed assets, are shown in table VI-5. According to Globe, its capital expenditures were ***.

Table VI-5
Capital expenditures, research and development expenditures, and assets utilized by U.S. producers in their operations producing ERT, fiscal years 1992-97

* * * * * * *

## SIGNIFICANCE OF EXISTING COUNTERVAILING DUTY ORDER

The producers were asked to discuss the significance of the existing countervailing duty order covering imports of ERT from Malaysia on the operations of their firms. Their comments to two specific questions were as follows–

*1. Describe the significance that the existing countervailing duty order covering imports of ERT from Malaysia has on the operations (net sales, profitability, R&D efforts, capital investments, or other data) of your firm. You may wish to compare your firm's operations before and after the imposition of the order.*

Globe's response–

* * * * * * *

North American's response–

* * * * * * *

*2. What do you think the likely impact of any revocation of the countervailing duty order covering imports of ERT from Malaysia will have on (1) the short-term operations of your firm, (2) the long-term operations of your firm, and (3) the U.S. market as a whole?*

Globe's response–

* * * * * * *

North American's response–

* * * * * * *

## U.S. PRODUCERS' PROJECTED ERT REVENUES AND COSTS

Both producers were asked to provide projected ERT revenues and costs for future periods by submitting a business plan. As previously discussed, North American ***.

Globe's 1998 and 1999 projections are presented in table VI-6. If Globe's projections are correct, its 1998 ERT sales will be ***.

Table VI-6
Globe's projected ERT revenues and costs, fiscal years 1998 and 1999

* * * * * * *

## FIXED AND VARIABLE COST ANALYSIS

Both Globe and North American provided estimates of their respective fixed and variable costs. These costs are useful in analyzing a company's operations and assessing how their profits are affected by changes in sales volume (quantities). The costs should be particularly useful in forecasting changes in profitability when combined with the results of the partial equilibrium model presented in appendix D.

According to Globe, about ***. ***.

Changes in the unit sales price will also have an effect on ***. At a sales level of ***.

According to North American, about ***.

Globe's ***.

# PART VII: THE INDUSTRY IN MALAYSIA

## MALAYSIAN MANUFACTURERS

There are currently five known manufacturers of ERT in Malaysia: Filati, Heveafil/Filmax,[1] Rubberflex, Rubber Thread,[2] and Rubfil. Table VII-1 lists information for those manufacturers that responded, at least in part, to the Commission's request for information. Each of the producers listed in table VII-1 now exports product to the United States (and did so in the period prior to the imposition of the countervailing duty and antidumping orders). Although a party to this investigation, Rubfil was unable to provide the data requested in the Commission's foreign producer questionnaire.[3] As shown in table VII-1, Heveafil/Filmax is *** and, according to its counsel, is one of the largest world manufacturers of ERT.[4]

Table VII-1
ERT: Malaysian producers, their U.S. importers, types of ERT exported to the United States, and quantity and share of total U.S. exports from Malaysia in 1997

* * * * * * *

Historically, Italy was the major producer of rubber thread; a large portion of the technology and machinery was developed by Italian firms.[5] In the late 1980s and early 1990s, Italian producers gradually abandoned their manufacturing facilities in Italy and shipped production to plants located in Malaysia, the source of the subject imports. At least partially as a result of this shift, rubber thread production in Malaysia increased tremendously over the past 25 years. The first plant began operating in Malaysia during the 1970s and, as of 1990 (the time of the earlier Commission antidumping investigation), there were six firms[6] which reportedly supplied about 84 percent of the world demand for rubber thread.[7]

## DATA ON OPERATIONS OF MALAYSIAN MANUFACTURERS

Table VII-2 presents data primarily for the operations of the three Malaysian manufacturers that export significant amounts of ERT to the United States: Filati, Heveafil/Filmax, and Rubberflex.[8] As shown in table VII-2, capacity utilization currently is high (*** percent in 1997). Reported capacity and

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[1] Filmax is a *** subsidiary of Heveafil. Conversation with counsel for Heveafil/Filmax, Apr. 6, 1998.

[2] Rubber Thread is a small Malaysian producer that has not exported ERT to the United States since at least 1992. Conversation with counsel for respondents, Apr. 7, 1998.

[3] ***. Letter dated Apr. 7, 1998, submitted by counsel for Rubfil.

[4] Conversation with counsel for Heveafil/Filmax, May 27, 1998.

[5] May, Ngam Su, "How Long Latex Thread Boom?," *Malaysian Business*, Feb. 16, 1990, p. 40, cited in *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992.

[6] Manufacturers in 1990 consisted of Filati, Heveafil/Filmax, Hume Industries, Rubfil, Rubberflex, and Rubber Thread.

[7] May, Ngam Su, 'How Long Latex Thread Boom?,' *Malaysian Business*, Feb. 16, 1990, p. 37, cited in *Extruded Rubber Thread from Malaysia*, USITC Pub. 2559, Sept. 1992.

[8] Petitioner questions the accuracy of production data reported to the Commission, especially that provided by Rubberflex. It cites a letter, dated June 6, 1995, circulated by Rubberflex where the firm states that it recently increased its output by about 40 percent. (Petitioner's prehearing brief, pp. 9-10.) ***.

Table VII-2
ERT: Malaysian producers' capacity, production, shipments, and inventories, 1992-97 and projected 1998

* * * * * * *

production both increased from 1992 to 1997, with production rising at a faster rate (up *** percent) than capacity (up *** percent), resulting in a ***-point increase in capacity utilization during the period reviewed. The U.S. share of total shipments decreased sharply in 1993, the year after the imposition of the countervailing duty and antidumping orders. However, total exports in 1997 were considerably higher (specifically, *** percent higher) than the quantity exported in 1992 as the manufacturers shifted their exports to countries other than the United States. Home market shipments remained relatively constant (and insignificant) during the 1992-97 period.

Aggregate projected 1998 exports to the United States are at a level somewhat higher than actual exports reported in 1997 (table VII-2). Filati estimated in their response to the Commission's questionnaire that it would export *** million pounds of ERT to the United States in 1998, *** shipped in 1997;[9] Heveafil/Filmax projects 1998 exports of *** million pounds or *** exported in 1997; and Rubberflex anticipates shipping about *** pounds, somewhat *** than its U.S. exports of *** pounds in 1997. Production and U.S. export data, by firm, are provided in table VII-3. As shown, Filati has, throughout the period reviewed, exported *** amounts of ERT to the United States. ***. *** U.S. imports of ERT from Malaysia are manufactured by Heveafil/Filmax; its data show *** in exports in recent years, or since 1995. (***.) ***. According to its U.S. sales agent, Rubberflex ***. ***.[10] ***.

Table VII-3
ERT: Malaysian producers' production and U.S. exports, by firm, 1992-97

* * * * * * *

Petitioner testified at the Commission's hearing that, to the best of their knowledge, Brazil had imposed "corrective tariffs" on ERT from Malaysia several years ago and there are also protective tariffs in place by southeast Asian countries.[11] Counsel for respondents cites information provided by the ASEAN Secretariat that there are no current antidumping or subsidy orders in place for either Indonesia or Thailand; the ASEAN customs rate for imports of ERT from Malaysia is 10 percent.[12]

## U.S. INVENTORIES FROM MALAYSIA

U.S. importers' inventories of ERT that were held in the United States are reported in table VII-4.

Table VII-4
ERT: U.S. importers' end-of-period inventories of imports from Malaysia, 1992-97

* * * * * * *

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[9] ***.

[10] Conversation with ***, Flexfil, Mar. 24, 1998.

[11] Hearing TR, p. 24.

[12] Conversation with counsel for respondents, May 27, 1998.

# APPENDIX A

# *FEDERAL REGISTER* NOTICE

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 753–TA–34]**

### Extruded Rubber Thread From Malaysia

**AGENCY:** United States International Trade Commission.

**ACTION:** Initiation and scheduling of a countervailing duty investigation.

**SUMMARY:** The Commission hereby gives notice of the initiation of countervailing duty investigation No. 753–TA–34 under section 753(a) of the Tariff Act of 1930 (19 U.S.C. 1675b(a)) (the Act) to determine whether an industry in the United States is likely to be materially injured by reason of imports from Malaysia of extruded rubber thread, provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States, if the countervailing duty order on such merchandise is revoked.

For further information concerning the conduct of this investigation 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 (19 CFR part 207).

**EFFECTIVE DATE:** December 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202–205–3180), 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 or ftp://ftp.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 753(a) of the Act provides that, in the case of a countervailing duty order issued under section 303 of the Act with respect to which the requirement of an affirmative determination of material injury under section 303(a)(2) was not applicable at the time the order was issued, interested parties may request that the Commission initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked. Such a request concerning the countervailing duty order on extruded rubber thread from Malaysia was filed on June 30, 1995, by North American Rubber Thread, Fall River, MA.

#### Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. 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 investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. Copies of draft questionnaires will be sent for comment to parties who filed an entry of appearance by January 16, 1998.

#### 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 this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than 21 days prior to the hearing date specified in this notice. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

#### Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on April 10, 1998, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

#### Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 5, 1998, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 27, 1998. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 29, 1998, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

#### Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 17, 1998. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 12, 1998; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 12, 1998. On June 4, 1998, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 8, 1998, but such final comments must not contain new factual information and must otherwise comply with section

207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (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:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.46 of the Commission's rules.

Issued: December 16, 1997.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 97-33596 Filed 12-23-97; 8:45 am]

BILLING CODE 7020-02-P

# APPENDIX B

# LIST OF WITNESSES APPEARING AT THE COMMISSION'S HEARING

## CALENDAR OF PUBLIC HEARING

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

Subject: Extruded Rubber Thread from Malaysia

Inv. No.: 753-TA-34

Date and Time: May 5, 1998 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101, 500 E Street, SW, Washington, DC.

**OPENING REMARKS**

Petitioner (**Peter Koenig**, Ablondi, Foster, Sobin & Davidow, P.C.)
Respondent (**Walter J. Spak**, White & Case, LLP)

**In Support of the Continuation of the Countervailing Duty Order:**

Ablondi, Foster, Sobin & Davidow, P.C.
Washington, DC
on behalf of

North American Rubber Thread

**Mauro Primo**, Vice President
**John Friar**, Treasurer

**Peter Koenig**--OF COUNSEL

**In Opposition to the Continuation of the Countervailing Duty Order:**

White & Case, LLP
Washington, DC
on behalf of

Malaysian Producers

**Donald Sartore**, President, Jet Net Corp.
**Robert Boyle**, Vice President, FLE USA, Inc.
**John G. Reilly**, Economic Consultant, Nathan Associates

**Walter J. Spak** )
)--OF COUNSEL
**Richard G. King** )

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# APPENDIX C

# SUMMARY DATA

Table C-1
ERT: Summary data concerning the U.S. market, 1992-97

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Table C-2
ERT: Summary data concerning the non-food-grade U.S. market, 1992-97

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Table C-3
ERT: Summary data concerning the food-grade U.S. market, 1992-97

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Table C-4
ERT: Summary data concerning the U.S. market which includes the manufacturing operations of Qualitex, 1989-93

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Table C-5
ERT: Summary data concerning the U.S. market which excludes the manufacturing operations of Qualitex, 1989-93

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Table C-6
ERT: U.S. shipments, by sources and by types, 1992-97

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Table C-7
ERT: U.S. imports of non-food grade, by sources, 1992-97

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Table C-8
ERT: U.S. imports of food grade, by sources, 1992-97

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# APPENDIX D

# MODELING METHODOLOGY AND RESULTS

## METHODOLOGY

This analysis uses a nonlinear partial equilibrium model that assumes that domestic and imported products are less than perfect substitutes. Such models, also known as Armington models, are relatively standard in applied trade policy analysis, and are used extensively for the analysis of trade policy changes both in partial and general equilibrium. The analysis addresses the following question: If the countervailing duty order is revoked and the Malaysian export subsidies continue at the rate determined by Commerce, what will be the likely impact on U.S. producers' shipments, U.S. producers' revenues, U.S. imports from Malaysia, and U.S. imports from the rest of the world?

The analysis uses 1997 as the base year and Commerce's reported NCS of 6.76 percent.[1] For the purpose of this analysis, U.S. imports of ERT from Malaysia are aggregated. Other inputs used in the analysis include the range of estimates that represent price-supply, price-demand, and product-substitution relationships (i.e., elasticities of supply, demand, and substitution) in the U.S. market for ERT. The model uses these estimates with data on U.S. producers' shipments, U.S. imports from Malaysia, and U.S. imports from all other countries[2] to analyze the likely effect of revocation of the NCS on the U.S. like-product industry.

## FINDINGS

The model examines different scenarios of economic effects that correspond to various combinations of the ranges of elasticities discussed in Part II of this report. As noted in Part II, the analysis assumes that the antidumping margins do not reflect the price effects of the subsidies. Table D-1 shows the inputs that are used in the analysis. The model results, shown in table D-2, suggest that had revocation of the NCS occurred in 1997 (the base year), the Malaysian exporters would likely have been able to lower their prices by 3.3 to 5.1 percent, increase their shipments to the U.S. market by 7.9 to 15.1 percent, and increase revenues by 3.2 to 10.3 percent. The U.S. industry would have experienced a decline in domestic prices (0.1 to 0.5 percent), output (0.3 to 2.1 percent), and consequently revenues (0.4 to 2.6 percent). U.S. capacity utilization would also have declined to levels ranging from *** to *** percent. Similarly, nonsubject import prices, shipments, and revenues would have declined.[3]

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[1] The lower NCS reported for Rubfil does not apply since the firm ***.

[2] U.S. import data are entered on a customs value basis and a landed duty-paid basis and thus provide a measure for transportation, tariffs, and other costs.

[3] These results are roughly comparable to those reported in exhibit 2 of the respondents' posthearing brief. The slight differences in the results stem from revisions that were made to some of the base data (namely the value of domestic shipments) during the course of the investigation, and differences in the structure of the respective models.

| Table D-1<br>Model inputs | |
|---|---|
| U.S. domestic shipments ($1,000) | *** |
| U.S. imports from Malaysia, customs value ($1,000) | *** |
| U.S. imports from Malaysia, landed duty-paid ($1,000) | *** |
| U.S. imports from all other countries, customs value ($1,000) | *** |
| U.S. imports from all other countries, landed duty-paid ($1,000) | *** |
| U.S. capacity utilization (percent) | *** |
| Substitution elasticity | 2 to 4 |
| Demand elasticity | 0.8 to 1.5 |
| Supply elasticities: | |
| Domestic | 3 to 5 |
| Malaysian | 3 to 5 |
| All other suppliers | 5 to 10 |

**Source: Compiled from data submitted in response to Commission questionnaires, from official Commerce statistics, and Commission estimates.**

**Table D-2**
**ERT: Estimated effects of countervailing duty elimination on the overall U.S. market**

| Item | ESTIMATED IMPACT ON U.S. MARKET | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Case 1 | Case 2 | Case 3 | Case 4 | Case 5 | Case 6 | Case 7 | Case 8 |
| Domestic ERT: | | | | | | | | |
| Price | -0.3% | -0.2% | -0.1% | -0.1% | -0.5% | -0.4% | -0.3% | -0.3% |
| Shipments (quantity) | -0.8% | -1.0% | -0.3% | -0.4% | -1.5% | -2.1% | -1.0% | -1.5% |
| Revenue | -1.1% | -1.2% | -0.4% | -0.5% | -2.0% | -2.6% | -1.3% | -1.8% |
| Malaysian ERT: | | | | | | | | |
| Import price | -4.4% | -5.1% | -4.2% | -5.0% | -3.4% | -4.2% | -3.3% | -4.1% |
| Shipments (quantity) | 7.9% | 9.4% | 8.5% | 10.1% | 11.0% | 14.3% | 11.6% | 15.1% |
| Revenue | 3.2% | 3.8% | 3.9% | 4.6% | 7.2% | 9.5% | 7.9% | 10.3% |
| Nonsubject ERT: | | | | | | | | |
| Import price | -0.2% | -0.1% | -0.1% | -0.0% | -0.4% | -0.3% | -0.3% | -0.2% |
| Shipments (quantity) | -0.9% | -1.2% | -0.3% | -0.5% | -1.9% | -2.7% | -1.3% | -1.9% |
| Revenue | -1.1% | -1.3% | -0.4% | -0.5% | -2.3% | -3.0% | -1.6% | -2.1% |
| Total U.S. market effects: | | | | | | | | |
| Aggregate price | -1.1% | -1.2% | -0.9% | -1.1% | -1.1% | -1.2% | -0.9% | -1.1% |
| Shipments (quantity) | 0.9% | 1.0% | 1.4% | 1.7% | 0.9% | 1.0% | 1.4% | 1.7% |
| Revenue | -0.2% | -0.2% | 0.5% | 0.6% | -0.2% | -0.2% | 0.5% | 0.6% |
| | | | | | | | | |
| U.S. shipments ($1,000) | *** | *** | *** | *** | *** | *** | *** | *** |
| Imports, Malaysia ($1,000) | *** | *** | *** | *** | *** | *** | *** | *** |
| Imports, nonsubject ($1,000) | *** | *** | *** | *** | *** | *** | *** | *** |
| Total imports ($1,000) | *** | *** | *** | *** | *** | *** | *** | *** |
| U.S. consumption ($1,000) | *** | *** | *** | *** | *** | *** | *** | *** |
| U.S. capacity utilization | *** | *** | *** | *** | *** | *** | *** | *** |

**Source: Estimated by Commission staff.**