

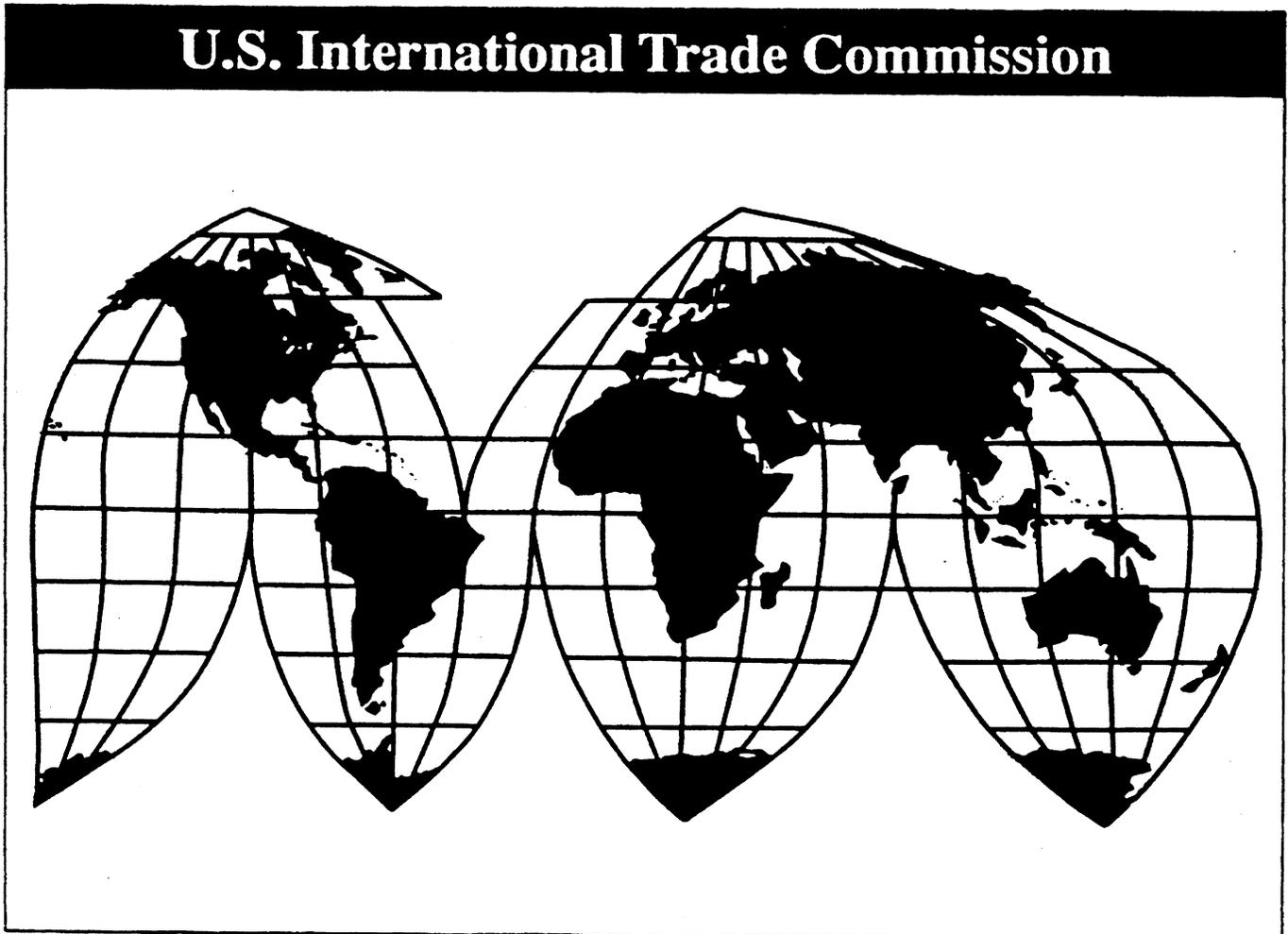
Elastic Rubber Tape From India

Investigation No. 731-TA-805 (Final)

Publication 3200

June 1999

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

COMMISSIONERS

Lynn M. Bragg, Chairman

Marcia E. Miller, Vice Chairman

Carol T. Crawford

Jennifer A. Hillman

Stephen Koplan

Thelma J. Askey

Robert A. Rogowsky
Director of Operations

Charles Yost, *Investigator*
David Michels, *Industry Analyst*
Stephen Wanser, *Economist*
Jerald Tepper, *Accountant*
Michael Diehl, *Attorney*

Robert Eninger, *Supervisory Investigator*

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

U.S. International Trade Commission

Washington, DC 20436

Elastic Rubber Tape From India



Publication 3200

June 1999

CONTENTS

	<i>Page</i>
Determination	1
Views of the Commission	3
Dissenting views of Commissioner Carol T. Crawford	19
Dissenting views of Commissioner Stephen Koplan	31
Part I: Introduction	I-1
Background	I-1
Summary data	I-2
The product	I-2
Part II: Conditions of competition in the U.S. market	II-1
Introduction	II-1
Market segments	II-1
Supply and demand considerations	II-2
Substitutability issues	II-5
Elasticity estimates	II-9
Part III: Condition of the U.S. industry	III-1
U.S. producers	III-1
U.S. production, capacity, capacity utilization, shipments, inventories, and employment	III-2
Part IV: U.S. imports, apparent consumption, and market shares	IV-1
Part V: Pricing and related information	V-1
Factors affecting prices	V-1
Pricing practices	V-3
Price data	V-4
Lost sales and lost revenues	V-7
Part VI: Financial experience of the U.S. producers	VI-1
Background	VI-1
Operations on elastic rubber tape	VI-1
Investment in productive facilities, capital expenditures, and research and development expenses	VI-4
Capital and investment	VI-4
Part VII: Threat considerations	VII-1

Appendixes

A. <i>Federal Register</i> notices	A-1
B. Calendar of the public hearing	B-1
C. Summary data	C-1
D. COMPAS presentation	D-1
E. Fiscal year data of the U.S. producers	E-1

Figures

IV-1. Elastic rubber tape: U.S. imports and inventories of Indian product, by months, Sept. 1997-Apr. 1999	IV-2
V-1. Ribbed smoked sheet (RSS1): Quarterly average of monthly spot prices of RSS1 quoted in the Singapore Rubber Market, Jan. 1996-Dec. 1998	V-2

CONTENTS

	<i>Page</i>
Figures—continued	
V-2. Exchange rates: Indices of the nominal and real exchange rates of the Indian rupee relative to the U.S. dollar, by quarters, Jan. 1996-Sept. 1998	V-3
V-3. Elastic rubber tape, product 1: Price trends of U.S. producers and importers, by quarters, Jan. 1996-Dec. 1998	V-6
V-4. Elastic rubber tape, product 2: Price trends of U.S. producers and importers, by quarters, Jan. 1996-Dec. 1998	V-6
V-5. Elastic rubber tape, product 3: Price trends of U.S. producers and importers, by quarters, Jan. 1996-Dec. 1998	V-6
 Tables	
II-1. Elastic rubber tape: Percentage of sales (by quantity) to end-use markets, by company, 1998	II-1
II-2. Elastic rubber tape: Factors affecting purchasing decisions	II-6
II-3. Elastic rubber tape: Comparison of U.S. to Indian product	II-8
III-1. Elastic rubber tape: U.S. production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of U.S. production and related workers, and hours worked by and wages paid to such workers, 1996-98	III-3
IV-1. Elastic rubber tape: U.S. imports, U.S. shipments of imports, re-exports, and end-of-period inventories, 1996-98	IV-1
IV-2. Elastic rubber tape: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 1996-98	IV-2
IV-3. Elastic rubber tape: U.S. shipments by U.S. producers and imports of Indian product of standard quality material, 1996-98	IV-3
IV-4. Elastic rubber tape: U.S. Shipments by U.S. producers and imports of Indian product, by end use, 1996-98	IV-3
V-1. Elastic rubber tape: Total quantities of reported price data and shares of domestically produced and imported commercial shipments, Jan.-Dec. 1998	V-5
V-2. Elastic rubber tape, product 1: Weighted-average quantities and f.o.b. unit values reported by U.S. producers and importers, by quarters, Jan. 1996-Dec. 1998	V-6
V-3. Elastic rubber tape, product 2: Weighted-average quantities and f.o.b. unit values reported by U.S. producers and importers, by quarters, Jan. 1996-Dec. 1998	V-6
V-4. Elastic rubber tape, product 3: Weighted-average quantities and f.o.b. unit values reported by U.S. producers and importers, by quarters, Jan. 1996-Dec. 1998	V-6
V-5. Elastic rubber tape, product 4: Weighted-average quantities and f.o.b. unit values reported by U.S. importers, by quarters, Jan. 1996-Dec. 1998	V-6
V-6. Elastic rubber tape: Instances and ranges of under/(over)selling, by product	V-7
V-7. Elastic rubber tape: Percentage margins of under/(over)selling by importers, by products and by quarters, Jan. 1996-Dec. 1998	V-7
V-8. Elastic rubber tape: Lost sales allegations, Jan. 1996-July 1998	V-7
V-9. Elastic rubber tape: Lost revenue allegations, Jan. 1996-July 1998	V-7

CONTENTS

	Page
Tables—Continued	
V-10. Elastic rubber tape: Lost sales allegations, Aug. 1998-Dec. 1998	V-8
V-11. Elastic rubber tape: Lost revenue allegations, Aug. 1998-Dec. 1998	V-8
VI-1. Results of operation of U.S. producers on their operations producing elastic rubber tape, calendar years 1996-98	VI-1
VI-2. Results of operations of U.S. producers, by firms, on their operations producing elastic rubber tape, calendar years 1996-98	VI-2
VI-3. Elastic rubber tape: Breakdown of components of the cost of goods sold, by firms, calendar years 1996-98	VI-2
VI-4. Variance analysis for elastic rubber tape operations, calendar years 1996-98	VI-3
VI-5. Value of assets, capital expenditures, and research and development expenses for producers of elastic rubber tape, fiscal (Elastotec) and calendar (Fulflex) years 1996-98	VI-4
VII-1. Elastic rubber tape: India's production, capacity, shipments, and end-of-period inventories, fiscal years 1996-98	VII-2
C-1. Elastic rubber tape: Summary data concerning the U.S. market, 1996-98	C-3
D-1. COMPAS—The effects of LTFV pricing of imports	D-3
E-1. Results of operations of U.S. producers on their operations producing elastic rubber tape, fiscal years 1996-98	E-3
E-2. Results of operations of Elastotec on its operations producing elastic rubber tape, fiscal years, 1996-98	E-3

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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-805 (Final)

ELASTIC RUBBER TAPE FROM INDIA

DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury by reason of imports from India of elastic rubber tape,² classified in subheading 4008.21.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted this investigation effective August 18, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by counsel for Fulflex, Inc., Middletown, RI, and two wholly-owned subsidiaries of M-Tec Corp., Elastomer Technologies Group, Inc., Stuart, VA, and RM Engineered Products, Inc., North Charleston, SC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of elastic rubber tape from India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of February 10, 1999 (64 FR 6679). The hearing was held in Washington, DC, on April 20, 1999, 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)).

² Commissioner Crawford determines that an industry in the United States is materially injured by reason of the subject imports from India, and Commissioner Koplan determines that an industry in the United States is threatened with material injury by reason of the subject imports from India.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we find that an industry in the United States is neither materially injured nor threatened with material injury by reason of imports of elastic rubber tape (“ERT”) from India that have been found by the Department of Commerce (“Commerce”) to be sold at less than fair value (“LTFV”).^{1 2 3}

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the “domestic like product” and the “industry.” Section 771(4)(A) of the Tariff Act of 1930 (“the Act”) defines the relevant industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ 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.”⁵

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission applies the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products, and disregards minor variations.⁸ Although the Commission must accept the determination of Commerce as to the scope of the

¹ Commissioner Crawford determines that an industry in the United States is materially injured by reason of the subject imports from India. *See* Dissenting Views of Commissioner Carol T. Crawford.

² Commissioner Koplan determines that an industry in the United States is threatened with material injury by reason of the subject imports from India. *See* Dissenting Views of Commissioner Stephen Koplan.

³ Effective April 19, 1999, the Commission terminated its investigation into imports alleged to be subsidized, due to Commerce’s negative final determination regarding subsidies on the subject merchandise. 64 Fed. Reg. 22643 (April 27, 1999).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

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

⁷ *See, e.g., Nippon Steel*, 19 CIT at 454-55.

⁸ *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).

imported merchandise being sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.⁹

Commerce has defined the imported article within the scope of this investigation as: vulcanized, non-cellular rubber strips of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness and 1/8 inches to 1-5/8 inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.¹⁰

ERT is similar in appearance and elasticity to a household rubber band, although usually ERT is wider and flatter.¹¹ The product is used primarily to give elasticity to the hem or seam of certain garments, especially underwear and swim wear.¹² Unlike some other products that provide elasticity to garments, ERT is not visible after it is incorporated into the garment, typically being drawn into a tunnel of surrounding fabric.¹³ ERT is produced from natural, synthetic, or blended rubber, which is rolled by heavy equipment in a process called "calendering" into flat sheets of varying thicknesses.¹⁴ These sheets are then slit to the desired width.¹⁵

In the preliminary phase of this investigation the Respondents¹⁶ argued that the domestic like product should include crocheted elastic tape ("CET"). The Commission determined, however, that there is a single like product, co-extensive with the scope of the subject merchandise.¹⁷ The parties have presented no significant new arguments or new evidence indicating that the Commission should change that finding in the final phase of the investigation. Accordingly, for the same reasons articulated in the preliminary determination, including differences in physical characteristics and uses, limited interchangeability, differences in production facilities, processes, and employees, and differences in producer and customer perceptions, we determine not to expand the like product to include CET.¹⁸

⁹ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

¹⁰ 64 Fed. Reg. 19123, 19123 (April 19, 1999).

¹¹ Petition at 5.

¹² Confidential staff report ("CR") at I-5 and public staff report ("PR") at I-4, and Transcript from Conference of September 8, 1998 ("Conference Tr.") at 12 (testimony of Douglas Booth, President of Petitioner Elastotec). Note: references to the CR are as modified by memoranda INV-W-100 (May 12, 1999) and INV-W-103 (May 17, 1999).

¹³ CR at I-5 and PR at I-4; Conference Tr. at 12, 14-15 (Booth).

¹⁴ CR at I-4 to I-5, I-11 and PR at I-3 to I-4, I-7.

¹⁵ CR at I-11 and PR at I-7.

¹⁶ The Respondent Garware Elastomerics, Limited ("GEL") is the sole foreign producer. GEL imports the majority of subject merchandise through U.S.-based Elastomer, Inc. CR and PR at IV-1.

¹⁷ Elastic Rubber Tape from India, Inv. Nos. 701-TA-383 & 731-TA-805 (Preliminary), USITC Pub. 3133, at 7 (Oct. 1998) ("Preliminary Determination").

¹⁸ See *id.* at 5-7. Additional information gathered in the final phase of the investigation further supports our determination. See, e.g., CR at I-5 to I-10 and II-7 to II-8 and PR at I-4 to I-7 and II-5; and Transcript of April 20, 1999 Hearing ("Hearing Tr.") at 17 (unless otherwise indicated, citations to "Hearing Tr." are to the open session) (Booth) and at 213 (closed session) (***)

The Respondents argued for the first time in the final phase of the investigation that the domestic like product should also include cut rubber thread.¹⁹ We determine not to include cut rubber thread in the domestic like product in this final phase investigation.

1. Physical characteristics and uses

Although cut rubber thread and ERT both consist of a single piece of rubber, cut rubber thread is far smaller in cross section than ERT.²⁰ Also, cut rubber thread is square in cross section, whereas ERT is rectangular in cross section.²¹ ERT and cut rubber thread have differing chemistry in terms of polymer and filler content, resulting in differences in durability and other performance characteristics.²²

ERT is used primarily as covered elastic bands in underwear and swim wear.²³ Most domestically produced cut rubber thread is used in golf balls.²⁴

2. Interchangeability

There is little or no interchangeability between ERT and cut rubber thread. Cut rubber thread cannot be used as an elastic insert in underwear, a major use of ERT.²⁵ Conversely, ERT cannot be used in golf balls, the use to which most domestically produced cut rubber thread is directed.²⁶

3. Channels of distribution

The majority of both ERT and cut rubber thread is sold directly to end users in the apparel and sporting goods industries, respectively.²⁷

4. Production facilities, processes, and employees

ERT and cut rubber thread are generally made in the same production facilities, using the same processes.²⁸ The final processing equipment used in the production of the two products is different, however.²⁹

¹⁹ There is comparatively little record information on cut rubber thread, due in part to Respondents' failure to present their argument at an earlier point in the final investigation, or to suggest that the Commission gather information about cut rubber thread in their comments on the Commission's draft questionnaires in the final phase of the investigation.

²⁰ Hearing Tr. at 22 (William E. Russell, President of Fulflex, Inc.) and Conference Tr. at 27 (Russell).

²¹ CR at I-3, I-8 n.27 and PR at I-3, I-6 n.27.

²² Hearing Tr. at 23 (Russell) and Conference Tr. at 19-20 (Russell).

²³ CR at I-5 and PR at I-4.

²⁴ CR at I-8 and PR at I-6; Hearing Tr. at 22 (Russell); and Conference Tr. at 19-20 (Russell). Some domestic cut rubber thread is also used in disposable applications. Conference Tr. at 19 (Russell).

²⁵ Hearing Tr. at 22 (Russell); Conference Tr. at 19-20 (Russell); and Hearing Tr. (closed session) at 213-214 (***)

²⁶ Hearing Tr. at 22 (Russell); and Conference Tr. at 20 (Russell).

²⁷ CR at I-10 and PR at I-7 (substantially all ERT sold to end users) and Hearing Tr. at 23 (Russell) ("98 percent" of Fulflex's cut rubber thread sales are directly to end users).

²⁸ CR at I-8 & n.27 and PR at I-6 & n.27.

²⁹ Hearing Tr. at 22-23 (Russell).

5. Customer and producer perceptions

Although the Petitioners produce both ERT and cut rubber thread, they regard the two products as distinct and not substitutable.³⁰ One domestic producer, Fulflex, asserts that none of its customers purchases both products.³¹ A Fulflex representative testified that Fruit of the Loom, a major ERT customer, attempted to use cut rubber thread as a substitute for ERT but failed.³²

6. Price

Cut rubber thread is more expensive than ERT.³³

7. Conclusion

We find that the record evidence in this investigation indicates a clear dividing line between ERT and cut rubber thread. Accordingly, we do not include cut rubber thread in the definition of the domestic like product. In accordance with the foregoing, we define the domestic like product co-extensively with the scope of the subject merchandise as defined by Commerce.³⁴

B. Domestic Industry

The domestic industry is defined as “the producers as a whole of a domestic like product.”³⁵ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all of the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.³⁶ Based on our domestic like product determination,

³⁰ *Id.* at 23 (Russell).

³¹ *Id.*

³² *Id.* at 22 (Russell). *See* Hearing Tr. (closed session) at 213-14 (***)

³³ Hearing Tr. (closed session) at 214 (***)

³⁴ In the preliminary phase of this investigation the Commission also considered whether the domestic like product should include “wide tape,” which is a product similar to ERT in certain respects, but is wider than 1-5/8 inches, the maximum width of ERT within the scope of the subject merchandise as defined by Commerce. *See* Preliminary Determination at 7, n.38 (indicating that the Commission intended to examine wide tape in the final phase of the investigation). The record indicates that wide tape differs in physical characteristics from ERT not only in width but also in terms of its chemical composition, with resulting differences in durability, heat resistance, elasticity, and resistance to staining. CR at I-7 & n.22 and PR at I-5 and n.22 and Conference Tr. at 31-34 (Russell, F. David Foster, counsel to Petitioners). Unlike ERT, wide tape cannot be used as elastic inserts in underwear or swim wear because it is too wide. Wide tape is instead used in industrial belts and ***. CR at I-7 and PR at I-5 and Conference Tr. at 34 (Foster). Wide tape cannot be interchanged for ERT for use as elastic inserts because it is too wide and because it differs in chemical composition and thus lacks the desired performance characteristics. Likewise, ERT cannot be substituted for wide tape for use in industrial belts or bandages. Although ERT and wide tape are apparently made in the same production facilities on the same machinery, producers view ERT and wide tape as distinct products based on size and chemical composition. CR at I-7 and PR at I-5 and Conference Tr. at 31-34 (Russell and Foster). ERT customers apparently also view them as distinct, with only one reporting that it buys wide tape. CR at I-6 to I-7 and PR at I-5. Based on the foregoing, we determine that the differences between ERT and wide tape constitute a clear dividing line between the products and we therefore do not include wide tape in the definition of the domestic like product.

³⁵ 19 U.S.C. § 1677(4)(A).

³⁶ *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).

we find as we did in the preliminary phase investigation that the domestic industry consists of the producers of ERT: Fulflex, Inc., and the two commonly-owned companies jointly referred to as “Elastotec.”³⁷

II. NO MATERIAL INJURY BY REASON OF DUMPED IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the dumped imports under investigation.^{38 39} In making these determinations, the Commission must consider the volume of the dumped imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.⁴⁰ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁴¹ In assessing whether the domestic industry is materially injured by reason of dumped imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁴² No single factor

³⁷ Preliminary Determination at 8. CR and PR at III-1. Elastotec is the brand name for products manufactured by RM Engineered Producers and Elastomer Technologies Group, Inc., which are under the common ownership of M-Tec Corp. CR and PR at III-1.

³⁸ 19 U.S.C. § 1673d(b).

³⁹ Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is materially injured “by reason of” LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the “ITC will consider information which indicates that harm is caused by factors other than the less-than-fair-value imports.” S. Rep. No. 96-249 at 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. *Id.* at 74; H.R. Rep. No. 96-317 at 46-47 (1979). The Commission is not to determine if the unfairly traded imports are “the principal, a substantial or a significant cause of material injury.” S. Rep. No. 96-249 at 74. Rather, it is to determine whether any injury “by reason of” the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.” S. Rep. No. 100-71 at 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

For a detailed description and application of Commissioner Crawford’s analytical framework, *see* Certain Steel Wire Rod from Canada, Germany, Trinidad & Tobago, and Venezuela, Inv. Nos. 731-TA-763-766 (Final), USITC Pub. 3087 at 29 (March 1998) and Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 35 (April 1997). Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with Commissioner Crawford’s mode of analysis, expressly holding that her mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports. United States Steel Group v. United States, 96 F.3d 1352, 1361 (Fed. Cir. 1996), *aff’g* 873 F. Supp. 673, 694-95 (Ct. Int’l Trade 1994).

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

⁴¹ 19 U.S.C. § 1677(7)(A).

⁴² 19 U.S.C. § 1677(7)(C)(iii).

is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁴³

For the reasons discussed below, we determine that the domestic industry producing ERT is not materially injured, or threatened with material injury, by reason of LTFV imports from India.^{44 45}

A. Conditions of Competition

A number of conditions of competition are pertinent to our analysis in this investigation. First, there are only two domestic producers, which together accounted for all domestic consumption of ERT in 1996, *** percent of domestic consumption in 1997, and more than *** percent during 1998.⁴⁶ Although these domestic producers competed with each other for sales, the extent of that competition was limited by their specialization in different parts of the ERT market. Elastotec concentrated on ERT used in underwear and Fulflex concentrated on ERT used in swim wear and various other applications.⁴⁷ The Indian producer GEL accounted for all of the remaining shipments of ERT in the United States as there were no sales of non-subject imports.⁴⁸

Second, consumption of ERT fluctuated during the period examined. Apparent consumption rose by *** percent from *** million pounds in 1996 to *** million pounds in 1997, and then fell to *** million pounds in 1998.⁴⁹ Demand for ERT is a derived demand, with underwear and swim wear accounting for the bulk of ERT consumption.⁵⁰ Changes in consumption of ERT used in underwear account for a *** of the higher apparent consumption in 1997 and the lower apparent consumption in 1998.⁵¹

Third, ERT purchasers Fruit of the Loom and *** account for a substantial share of the demand for ERT, particularly ERT for use in underwear.⁵² Because these companies make large purchases, and sometimes agree to buy from only one producer for periods as long as two years, their purchasing

⁴³ 19 U.S.C. § 1677(7)(C)(iii).

⁴⁴ Commissioner Crawford finds the domestic industry is experiencing material injury by reason of the subject imports. She joins the Commission’s discussion of the conditions of competition, but does not join the remainder of the opinion. *See* Dissenting Views of Carol T. Crawford.

⁴⁵ Commission Koplán finds that the domestic industry is threatened with material injury by reason of subject imports. Except as noted below, he joins the Commission’s opinion with respect to material injury, but does not join its opinion as to the threat of material injury. *See* Dissenting Views of Commissioner Stephen Koplán.

⁴⁶ Table IV-2, CR at IV-5 and PR at IV-3.

⁴⁷ Tables II-1 and IV-4, CR at II-2, IV-7 to IV-9 and PR at II-1, IV-3; and CR at III-3 to III-4, and VI-9; and PR at III-2 and VI-3. Note: figures in Table II-1 were corrected in memorandum INV-W-103, dated May 17, 1999.

⁴⁸ Table IV-2, CR at IV-5 and PR at IV-3.

⁴⁹ *Id.*

⁵⁰ CR at I-5 and PR at I-4.

⁵¹ Table IV-4, CR at IV-7 to IV-9 and PR at IV-3.

⁵² *Compare* CR at V-20 to V-21, and VI-9, and PR at V-9 and VI-3 (showing volumes purchased by Fruit of the Loom and *** *with* Table IV-2, CR at IV-5 and PR at IV-3 (showing domestic consumption).

decisions can have significant effects on companies that supply ERT for the U.S. market.⁵³ Hence, purchasing patterns of the two largest ERT customers are additional conditions of competition.

Fourth, a substantial portion of ERT purchased by these and other purchasers in the domestic market is consolidated with fabric and other materials at U.S. "kitting" facilities, and is subsequently shipped to manufacturing facilities outside of the United States for processing into finished goods.⁵⁴ However, regardless of whether and to what extent such ERT shipments are ultimately consumed outside the United States, they are first purchased by, and delivered to, the U.S. customer and are subject imports for purposes of the antidumping law and our analysis.⁵⁵

These ERT sales to purchasers in the United States stand in contrast to the new shipping arrangement phased in by the foreign producer GEL and Fruit of the Loom from ***.⁵⁶ Under the new arrangement, GEL ships ERT directly from India to a distribution facility it leases in Honduras, where ERT is available for purchase by Fruit of the Loom to use in its Central American assembly operations.⁵⁷ This shift to direct shipments to Central America, bypassing the United States, constitutes an additional condition of competition relating to the large purchaser Fruit of the Loom.⁵⁸

A further condition of competition is that ERT made by different producers is generally substitutable, with the exception of "second quality" ERT produced by GEL.⁵⁹ Second quality ERT is sold, at a fraction of the price of standard ERT, for use in alternative products such as shock cords.⁶⁰ Second quality ERT accounted for *** percent of the U.S. shipments of the subject merchandise in 1997 and *** percent in 1998.⁶¹ There were no U.S. shipments of second quality ERT by domestic

⁵³ Petition at Exhibit 14, page 1. The large volume of these purchases may suggest an ability to negotiate lower prices.

⁵⁴ CR at I-10 & n.34, II-3 & n.7, V-18 and PR at I-7 & n.34, II-2 & n.7, V-8; and Hearing Tr. (closed session) at 146-47 (***)

⁵⁵ CR at I-10, V-18 and PR at I-7 and V-8, and Hearing Tr. (closed session) at 146-47 (***)

⁵⁶ CR and PR at IV-1, Hearing Tr. at 89 (Ramesh Garware, Chairman, Respondent GEL), 105 (Diya Garware, Sales, Respondent Elastomer, Inc.) and Hearing Tr. (closed session) at 148-50, 212-13 (***)

During this transition period, Fruit of the Loom ***, while stocks of ERT accumulated in GEL's Central American warehouse via direct shipments from India. CR and PR at IV-1 & n.5; Hearing Tr. (closed session) at 148-49, 194, 212-13 (***)

This transition was complete by approximately ***. Hearing Tr. at 194, 212-13 (***)

The ERT used in kits in 1999 was drawn primarily from Elastomer's U.S. inventories rather than additional imports. See April 30, 1999 letter from counsel for Respondents to the Commission, Exhibit 1, and Figure IV-1, CR at IV-3 and PR at IV-2. GEL's direct shipments from India to Central America largely replaced its shipments to the United States, although some shipments to the United States will continue. Hearing Tr. at 104-05 (D. Garware) and Hearing Tr. (closed session) at 149, 211-13 (***)

and Figure IV-1, CR at IV-3 and PR at IV-2, and Table VII-1, CR at VII-4 and PR at VII-2.

⁵⁷ Hearing Tr. (closed session) at 148-50 (***)

⁵⁸ Commissioner Koplan is not persuaded that this shift is permanent. See his Dissenting Views.

⁵⁹ CR at I-9 and PR at I-6. The Commission received testimony at the hearing that the foreign producer inadvertently produced large volumes of second quality ERT due to unanticipated problems when it began operating its ERT production equipment. Hearing Tr. at 95-96 (Vayu Garware, Director of Garware Walropes Ltd.) and 114-15 (D. Garware).

⁶⁰ CR at I-9 and V-8 and PR at I-6 and V-5. During the period examined, there were no reported domestic purchases of second quality ERT for use in the manufacture of underwear or swim wear.

⁶¹ CR at IV-3 and PR at IV-2.

producers during the period examined.⁶² As to standard ERT, purchasers did not consistently report differences in quality among the producers.⁶³ Evidence also indicates that price is an important factor in purchasing decisions, although no purchaser listed it as the most important factor.⁶⁴ Assuming that the ERT under consideration is comparable in quality and availability, however, price becomes the most important factor in purchasing decisions.^{65 66}

In addition, a portion of the domestically produced product currently faces limited competition from the subject merchandise. ERT for use in swim wear constitutes a considerable share of domestic production.⁶⁷ However, it accounts for a *** portion of the subject merchandise, which is concentrated in ERT for use in underwear.⁶⁸ The subject ERT for use in underwear generally does not compete for sales of ERT used for swim wear due to differences in the chemical composition of the ERT and because it is coated in talc, whereas many purchasers of ERT for use in swim wear prefer alternative anti-sticking agents.⁶⁹

The final pertinent condition of competition is that the cost of rubber, the primary raw material input into ERT by weight, fell by nearly one-half over the period examined.⁷⁰ Natural rubber accounts for about *** of the domestic producers' raw materials costs.⁷¹ As a result, the domestic industry's raw materials costs fell by *** percent from 1996 to 1998.⁷²

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."⁷³

⁶² CR at I-9 and PR at I-6.

⁶³ See Conference Tr. at 94-97 (Russell, Booth); CR at II-10 to II-12; PR at II-7 to II-8.

⁶⁴ Table II-2, CR at II-10 and PR at II-6. Although no purchaser listed price as the most important factor, ***. CR at II-8 and PR at II-5 to II-6.

⁶⁵ *Id.* and Hearing Tr. (closed session) at 161-63 (***). Commissioner Koplan notes that one major purchaser ***.

⁶⁶ Commissioners Crawford and Askey also note that direct contacts between representatives of purchasers and sellers are important to purchasing decisions in this market. Hearing Tr. at 100, 120-21, 288 (D. Garware) and Hearing Tr. (closed session) at 171-74 (***).

⁶⁷ Compare Table IV-3, CR at IV-6 and PR at IV-3 (showing total shipments of domestic product and subject merchandise) with Table IV-4, CR at IV-8 and PR at IV-3 (showing shipments of domestic product and subject merchandise for use in swim wear).

⁶⁸ *Id.*

⁶⁹ CR at I-4 to I-5 & n.14, II-2, II-10 and PR at I-3 to I-4 & n.14, II-1 and II-7, and Hearing Tr. at 73-74 (Russell), 103 (D. Garware).

⁷⁰ The price of natural rubber declined 46.7 percent between January 1996 and December 1998. CR and PR at V-1.

⁷¹ CR at VI-7 and PR at VI-2.

⁷² Table VI-3, CR at VI-8 and PR at VI-2. Elastotec accounted for *** industrywide raw materials cost declines; Fulflex's raw materials costs ***. *Id.*

⁷³ 19 U.S.C. § 1677(7)(C)(i).

The volume of the subject imports followed an irregular pattern over the period of investigation.⁷⁴ There were no subject imports in 1996, a relatively small volume, *** pounds, in 1997, and a sharply higher volume, *** pounds, in 1998.⁷⁵ The subject imports' market share (measured in pounds shipped) increased from zero percent in 1996 to *** percent in 1997 and to *** percent in 1998.⁷⁶ Excluding shipments of second quality ERT, the market share of the subject imports (measured in pounds shipped) was *** percent in 1997 and *** percent in 1998.⁷⁷ Measured in value, the market share of total subject imports was zero in 1996, *** percent in 1997, and *** percent in 1998.⁷⁸

We find that the volume of the subject imports is significant.⁷⁹ However, in light of the price and non-price factors discussed below, we find that the domestic ERT industry is not materially injured by reason of the subject imports.

C. Price Effects of Subject Imports

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

the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁸⁰

Purchasers of ERT consider price to be a significant factor in making purchasing decisions, although not the most important one.⁸¹ Except for second quality ERT, the domestic product and subject

⁷⁴ In this investigation, we treat all ERT entering the customs territory of the United States as imports for consumption, and as imports for purposes of the antidumping law.

⁷⁵ Table IV-1, CR at IV-2 and PR at IV-1. See Figure IV-1, CR at IV-3 and PR at IV-2. The record shows that in the first four months of 1999 subject imports decreased substantially to *** pounds, as compared to *** pounds in 1998. April 30, 1999 letter from counsel for Respondents to the Commission, Exhibit 1. See Figure IV-1, CR at IV-3 and PR at IV-2.

⁷⁶ Table IV-2, CR at IV-5 and PR at IV-2.

⁷⁷ The subject imports' market share of non-second quality ERT is derived from CR at IV-3 and PR at IV-2 (showing percentage of U.S. shipments of imports that are second quality) and Table IV-2, CR at IV-5 and PR at IV-3 (showing total U.S. shipments of imports and domestic product). Market share of non-second quality ERT was calculated as a percentage of all shipments of non-second quality ERT.

⁷⁸ Table IV-2, CR at IV-5 and PR at IV-2.

⁷⁹ Chairman Bragg and Commissioner Askey determine that, when viewed in isolation, both the absolute and increasing volume of subject imports might be considered significant. However, because second quality ERT commands a much lower price than standard ERT, and because second quality ERT made up a considerable portion of the subject imports but not the domestic product, we find on the facts in this investigation that market share figures based on value are an important measure of market penetration. Viewing market share based on value and considering the price and non-price factors discussed below, Chairman Bragg and Commissioner Askey find that the increasing volume of subject imports in this investigation is not significant.

⁸⁰ 19 U.S.C. § 1677(7)(C)(ii).

⁸¹ Table II-2, CR at II-10 and PR at II-6, CR at II-8 and PR at II-5 to II-6, and Hearing Tr. (closed session) at 161-63 (***).

imports are generally substitutable, although the portion of subject imports used in swim wear is *** than the portion of domestic production used in swim wear.⁸²

The Commission compared the prices of the subject imports and the domestic product on three ERT products, two used in underwear and one used in swim wear.⁸³ While subject merchandise undersold the domestic product in *** out of *** quarterly comparisons, with margins of underselling ranging from *** to *** percent, we do not find the underselling to be significant, nor do we find that the subject imports depressed prices for the domestic product to a significant degree.⁸⁴ For product 1, which accounted for *** of the shipments of the subject merchandise, prices for the domestic product *** prior to the introduction of significant volumes of the subject merchandise, this *** occurring from the third quarter of 1996 to the third quarter of 1997 (with a slight *** in the first quarter of 1997).⁸⁵ After the introduction of the subject merchandise, the price of the domestic product ***, from the third quarter of 1997 through the second quarter of 1998, and then was *** in the last two quarters of 1998, at the same price as at the beginning of the period of investigation, despite much *** import volumes.⁸⁶ For product 2, the price of the domestic product *** throughout 1997, and then *** further in 1998 coincident with the first volumes of the subject imports.⁸⁷ We do not attribute these price declines in product 2 to the subject merchandise in significant part, however, because the volume of subject imports was *** compared to the domestic product in 1998.⁸⁸ For product 3, the price of the domestic product fluctuated prior to the introduction of the subject imports in the third quarter of 1997, but, with only one exception, prices for the domestic product were higher in each quarter after the introduction of the subject imports than they were in the second quarter of 1997.⁸⁹ Consistent with the lack of observed price effects in products 1 and 3 and the minimal volume of imports of product 2, we also note that the average unit value of the domestically produced ERT increased *** from \$*** per pound in 1997 to \$*** per pound in 1998.⁹⁰

We also find that the subject imports did not suppress to a significant degree price increases that otherwise would have occurred. We find the volume of subject imports was too small to have suppressed any price increase that otherwise might have occurred from 1996 to 1997, because market penetration reached only *** percent in 1997 measured in pounds shipped (and market penetration of non-second

⁸² CR at II-10 to II-12 and PR at II-7 to II-8, and *see* Conference Tr. at 94-97 (Russell, Booth) (on substitutability) and Tables IV-3 and IV-4, CR at IV-6 and IV-8 and PR at IV-3 (showing, for subject imports and domestic production, total shipments of ERT and shipments of ERT for use in swim wear).

⁸³ CR at V-6 and PR at V-4. The Commission also collected pricing data on second quality ERT, but due to a lack sales of that product by domestic producers, no comparisons were possible. CR at I-9 and V-8 and PR at I-6 and V-5.

⁸⁴ Table V-6, CR at V-15 and PR at V-7.

⁸⁵ Table V-2, CR at V-9 and PR at V-6.

⁸⁶ *Id.*

⁸⁷ Table V-3, CR at V-10 and PR at V-6.

⁸⁸ *Id.* For product 2, sales of the subject merchandise totaled less than *** percent of the sales of the domestic product in two quarters and less than *** percent in the remaining quarter for which imports were reported. *Id.*

⁸⁹ Table V-4, CR at V-11 and PR at V-6.

⁹⁰ Table III-1, CR at III-5 and PR at III-3. We have considered the various instances described in the staff report in which the domestic producer reduced prices in the face of competition with the subject merchandise in order to make or maintain a sale. Such anecdotal evidence, while useful in many investigations, is outweighed in our view in this investigation by other price data failing to indicate significant price depression due to the subject merchandise.

quality ERT was *** percent).⁹¹ Several factors indicate that the subject merchandise did not suppress price increases that otherwise might have occurred in 1998. Demand for ERT fell *** percent in 1998, as apparent consumption dropped to *** million pounds compared to *** million pounds in 1997.⁹² Raw material costs also fell, from \$*** per pound of ERT in 1997 to \$*** per pound of ERT in 1998.⁹³ Due in part to the drop in raw materials costs, the cost of goods sold per pound also fell, from \$*** per pound in 1996 to \$*** per pound in 1998.⁹⁴ Based on the above, we find it unlikely that, absent imports, the domestic industry would have obtained price increases. Therefore, we find that the subject imports have not, to a significant degree, suppressed prices.

D. Impact of Subject Imports^{95 96}

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.⁹⁷ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development.

Having found that the subject imports did not have a significant effect on prices of the domestic product, our analysis of the impact of the subject import centers on a possible adverse impact by the increased volume of the subject merchandise. Although the increased volume of subject merchandise is reflected in some industry indicators, we do not find present material injury by reason of the subject imports.

⁹¹ Market share shown at Table IV-2, CR at IV-5 and PR at IV-3. Market share of non-second quality ERT in 1997 derived from CR at IV-3 and PR at IV-2 (showing percentage of U.S. shipments of imports that are second quality) and Table IV-2, CR at IV-5 and PR at IV-2 (showing total U.S. shipments of imports and domestic product). Market share of non-second quality ERT was calculated as a percentage of all shipments of non-second quality ERT. Market share of subject imports by value was *** percent. Table IV-2, CR at IV-5 and PR at IV-2.

⁹² Table IV-2, CR at IV-5 and PR at IV-2.

⁹³ Table VI-3, CR at VI-8 and PR at VI-2.

⁹⁴ *Id.* The cost of goods sold per pound was lowest in 1997, perhaps reflecting greater volumes in that year. *Id.* As a percentage of net sales, the total cost of goods sold rose by *** percentage points from 1997 to 1998, but it was still *** percentage points lower in 1998 than in 1996. Table VI-1, CR at VI-2 and PR at VI-1.

⁹⁵ As part of its consideration of the impact of imports, the statute as amended by the Uruguay Round Agreements Act ("URAA") specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). Commerce's final dumping margin for GEL is 66.51 percent. 64 Fed. Reg. 19123, 19124 (April 19, 1999).

⁹⁶ Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. *See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China*, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

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

Several indicators of the industry's condition relating to volume were less favorable in 1998 than in 1997, including production, shipments, net sales, and capacity utilization.⁹⁸ These factors are strongly influenced, however, by the *** percent fall in apparent consumption from 1997 to 1998.⁹⁹ Moreover, the record indicates that the upward spike in apparent consumption in 1997 was an anomaly caused by an unanticipated high volume of orders at the end of 1997 and a corresponding drop in 1998.¹⁰⁰ Under the circumstances, we find the more informative comparison to be that of the overall period of investigation, from 1996 to 1998. The difference in apparent consumption was much smaller between those years, with 1998 apparent consumption only *** percent higher than in 1996.¹⁰¹ Moreover, the subject imports accounted for a zero percent market share in 1996, compared to *** by value and *** percent by quantity in 1998, suggesting that a comparison of those years would demonstrate the injury, if any, caused by the subject imports.

Comparing 1996 to 1998, production, shipments, net sales values, and capacity utilization were lower in 1998, although the 1996 to 1998 decreases are much less than the decreases in these factors from 1997 to 1998.¹⁰² The domestic industry has not, however, experienced any decline in profitability. The domestic industry's gross profit as a ratio of net sales increased *** percentage points from *** percent in 1996 to *** percent in 1998.¹⁰³ Likewise, the domestic industry's operating income as a ratio of net sales rose *** from *** percent in 1996 to *** percent in 1998.¹⁰⁴ Not only did the domestic industry generate favorable profits throughout the period of investigation, the domestic industry *** profits from 1996 to 1998. Moreover, this improvement occurred even though the domestic industry's average unit values were somewhat lower at \$*** per pound in 1998, compared with \$*** per pound in 1996.¹⁰⁵ We

⁹⁸ Production by the domestic industry was, in thousands of pounds, *** in 1996, *** in 1997, and *** in 1998. U.S. shipments, also in thousands of pounds, were *** in 1996, *** in 1997, and *** in 1998. By value, in thousands of dollars, U.S. shipments were \$*** in 1996, \$*** in 1997, and \$*** in 1998. Capacity utilization was *** in 1996, at (***) percent, increased to *** percent in 1997, and then declined to *** percent in 1998. The capacity utilization decline was mainly due to increased capacity rather than reduced production, although both contributed to the decline. Table C-1, CR at C-3; PR at C-3.

⁹⁹ Table C-1, CR at C-3 and PR at C-3.

¹⁰⁰ Hearing Tr. at 40 (Booth).

¹⁰¹ *Id.*

¹⁰² Production by the domestic industry was, in thousands of pounds, *** in 1996, *** in 1997, and *** in 1998. U.S. shipments, also in thousands of pounds, were *** in 1996, *** in 1997, and *** in 1998. By value, in thousands of dollars, U.S. shipments were \$*** in 1996, \$*** in 1997, and \$*** in 1998. Table C-1, CR at C-3; PR at C-3.

¹⁰³ Table VI-1, CR at VI-2 and PR at VI-1. The gross profits generated as a ratio of net sales was highest, at *** percent, in 1997, but we view comparisons with this year as less informative than the comparison of 1996 to 1998 for the reasons given above. *Id.*

¹⁰⁴ *Id.* Operating income as a ratio of net sales was also highest in 1997, at *** percent, but we view comparisons with 1997 as less information than comparisons of 1996 and 1998. *Id.*

¹⁰⁵ Table III-1, CR at III-5 and PR at III-3. This decline in average unit values occurred from 1996 to 1997, falling from \$*** to \$*** per pound, prior to shipments of significant quantities of standard quality subject merchandise. *Id.* and Table IV-3, CR at IV-6 and PR at IV-3. Other industry measures were mixed. Hours worked increased from 1996 to 1998, although the number of production workers and wages paid fell (the latter only slightly). Hours worked, in thousands, increased from *** in 1996, to *** in 1997, and to *** in 1998. The average number of production workers was *** in 1996, *** in 1997, and *** in 1997. Wages paid, in thousands of dollars, were \$*** in 1996, \$*** in 1997, and \$*** in 1998. Table C-1, CR at CR-4 and PR at C-3. The decline in production workers is partly explained by the consolidation of *** production facilities. CR at VI-12 and PR at VI-4.

find that the lack of any demonstrable adverse impact on the profitability of the domestic industry is significant, especially considering that the subject imports held no market share in 1996, but an *** percent share by quantity and an *** percent share by value in 1998.

For all of the foregoing reasons, we find that the domestic industry is not experiencing material injury by reason of the subject imports.

III. THREAT OF MATERIAL INJURY BY REASON OF DUMPED IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹⁰⁶ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.¹⁰⁷ In making our determination, we have considered all statutory factors that are relevant to this investigation.¹⁰⁸

In the preliminary phase of the investigation, we found that there was a reasonable indication that the domestic industry was threatened with material injury by reason of the subject merchandise.¹⁰⁹ Based on already increasing subject import volumes, and the projected even larger future purchases by Fruit of the Loom, we found a likelihood of significant imminent increases in the volume of imports.¹¹⁰ Respondents urged us to discount the future sales to Fruit of the Loom, alleging that GEL would supply its contract by direct shipments to Central America by the fourth quarter of 1998, bypassing the purchaser’s kitting operations in the United States. We declined to discount the sales to Fruit of the Loom, and found that the record data on balance provided a reasonable indication of threat of material injury.¹¹¹

In the final phase of this investigation, the record now contains complete data through the end of 1998, and partial data on import volumes and inventories through April of 1999. The record indicates that the volume of subject imports increased significantly in the third and fourth quarters of 1998 compared to earlier quarters, but also that import volumes then fell sharply in the first four months of 1999.¹¹² This decline was the result of direct shipments of ERT from India to Honduras, from which

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

¹⁰⁷ 19 U.S.C. § 1677(7)(F)(ii).

¹⁰⁸ 19 U.S.C. § 1677(7)(F)(i). Factor I is inapplicable because this investigation does not involve countervailing duties. Petitioners alleged countervailing duties, but effective April 19, 1999, the Commission terminated its investigation into imports alleged to be subsidized, due to Commerce’s negative final determination regarding subsidies on the subject merchandise. 64 Fed. Reg. 22643 (April 27, 1999). Factor VI regarding product-shifting is not an issue in this investigation. Factor VII is inapplicable because this investigation does not involve imports of a raw agricultural product.

¹⁰⁹ Preliminary Determination at 14-17.

¹¹⁰ *Id.* at 14-16.

¹¹¹ *Id.* at 14-15.

¹¹² April 30, 1999 letter from counsel to Respondents to the Commission, Exhibit 1. See Figure IV-1, CR at IV-3 and PR at IV-2.

Fruit of the Loom draws inventories.¹¹³ A ***,¹¹⁴ Recent lower import volumes and changes in the delivery arrangements for Fruit of the Loom indicate that the volume of the subject imports is likely to decrease significantly in the near future, compared to 1998. This evidence is consistent with GEL's projections that it will export *** pounds of ERT to the United States in 1999, and *** pounds in 2000.¹¹⁵

Petitioners urge the Commission to consider the direct shipping arrangement to be a post-petition development entitled to reduced weight in our analysis.¹¹⁶ We do not find that this arrangement is related to the pendency of the investigation. The record indicates that the shift was contemplated prior to the investigation.¹¹⁷ The record does not indicate that Fruit of the Loom would institute such a difficult shift for a minor component of their finished product in order to avoid a possible antidumping order.¹¹⁸ Petitioners themselves have provided testimony as to the difficulty of executing a change in shipping arrangements from receiving shipments in the United States for incorporation into kits, to direct delivery to a warehouse in Central America.¹¹⁹ We also now have record *** as to Fruit of the Loom's preparations to begin drawing ERT from a warehouse in Honduras, and that this regional warehousing approach involves other underwear components in addition to ERT.¹²⁰ This evidence as to other components supports the ***.¹²¹ Moreover, we find it unlikely that after instituting this change, Fruit of the Loom will return to direct U.S. shipments of GEL's ERT in the absence of an antidumping order. Accordingly, the Commission sees no indication that these direct shipping arrangements should be given reduced weight in this analysis.

Inventory trends also indicate a likelihood of lower future domestic shipments of the subject merchandise. Subject inventories in the United States fell by over 50 percent between the end of December 1998 and the end of April 1999.¹²² A representative of respondent Elastomer, Inc. testified before the Commission that the company intends to keep only a small inventory in the United States in the future.¹²³ The depletion of existing inventories, coupled with the lack of imports in recent months, suggests lower future domestic shipments of subject imports.

¹¹³ See Hearing Tr. (closed session) at 148-50, 212-13 (***)

¹¹⁴ *Id.* at 147-50 (***) and CR at V-18 and PR at V-8, Respondents' Posthearing Brief at Q-19, Exhibit 21.

¹¹⁵ Table VII-1, CR at VII-4 and PR at VII-2.

¹¹⁶ The statute provides that "[t]he Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation . . . is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, [or] threat of material injury" 19 U.S.C. § 1677(7)(I).

¹¹⁷ Hearing Tr. (closed session) at 147-48, 185-86 (***)

¹¹⁸ *Id.* at 148, 150.

¹¹⁹ Hearing Tr. at 19-20 (Booth) and 65-66 (Russell, Booth) (detailing difficulties with inventory control and shrinkage and other problems).

¹²⁰ Hearing Tr. (closed session) at 149-50, 165, 183-86 (***)

¹²¹ *Id.* at 148, 150 (***)

¹²² Inventories of the subject merchandise held in the United States declined from *** pounds at the end of December 1998, to *** pounds at the end of April 1999. April 30, 1999 letter from counsel to Respondents to the Commission, Exhibit 1. The record indicates that inventories are mostly held in anticipation of further order from an established customer or are pre-sold and awaiting delivery. CR at VII-3 and PR at VII-2.

¹²³ Hearing Tr. at 105 (D. Garware).

Record information on GEL's capacity suggests that with the large volume commitment for direct delivery to Central America, GEL does not have sufficient capacity to significantly increase its shipments to the United States. GEL listed its capacity at *** million pounds in response to a Commission questionnaire, and Fruit of the Loom estimates its requirements under the contract for delivery directly to Central America as *** million pounds.¹²⁴ Even if GEL operates at one hundred percent capacity, and its production has not yet approached that level, and then directs all production not committed to Fruit of the Loom to the United States, the available *** million pounds is less than its *** million pounds imported into the United States in 1998.¹²⁵ GEL's capacity, coupled with its commitment to Fruit of the Loom, suggests that GEL does not have capacity to supply another large underwear maker because such purchasers require very large quantities and because they tend to sole source their ERT needs.¹²⁶ Additionally, GEL's ability to shift capacity from other products to ERT is limited because ERT already accounts for approximately *** percent of GEL's production, with its only other product, cut rubber thread, accounting for the remainder.¹²⁷ Additionally, we are not aware of any pending shifts by purchasers away from a domestic producer to GEL.

Taking into account the record evidence showing lower recent import volumes, declining inventories, GEL's commitment to supply Fruit of the Loom directly at a location outside the United States, the likelihood that Fruit of the Loom will continue to require delivery at that location in the future, the size of that commitment relative to GEL's capacity and demonstrated production to date, and GEL's limited ability to shift capacity to ERT production, we do not find that an imminent increase in the volume of the subject imports, or domestic shipments of subject imports, is likely.

We also find that future volumes of subject imports are not likely to have a significant depressing or suppressing effect on prices of the domestic product. For the reasons given above, we found that the subject imports are not currently having a significant depressing or suppressing price effect. Based on likely lower future volumes of imports and domestic shipments of subject imports, we find that such future volumes are not likely to have such effects in the near future.

Although the Petitioners report the ***,¹²⁸ the domestic industry's capital expenditures in 1998 were nearly *** those in 1997, when imports of subject merchandise, especially standard quality subject merchandise, were very low in volume.¹²⁹ Although 1998 capital expenditures were lower than in 1996, the industry's 1996 expenditures appear unusually high, and in large part due to ***.¹³⁰ Regardless of whether 1996 capital expenditures were unusually high, 1998 capital expenditures were still *** of such

¹²⁴ CR at V-18 and VII-1 and PR at V-8 and VII-1. The Commission heard testimony from Mr. Vayu Garware at the hearing in the final investigation explaining the difference between the *** million pound capacity reported to the Commission and the 5.62 million pound capacity equivalent reported on its website. The website capacity is for a thicker ERT than the product that accounts for much of GEL's actual production. Hearing Tr. at 92-95 (V. Garware); CR at VII-1 to VII-2 and PR at VII-1.

¹²⁵ Tables IV-1 and VII-1, CR at IV-2 and VII-4 and PR at IV-1 and VII-2.

¹²⁶ Hearing Tr. (closed session) at 228-29 (John G. Reilly, economic consultant on behalf of Respondents).

¹²⁷ CR at VII-2 and PR at VII-1.

¹²⁸ CR at VI-13 and PR at VI-4.

¹²⁹ Table VI-5, CR at VI-12 and PR at VI-4. Capital expenditures were \$*** million in 1996, \$*** million in 1997, and \$*** million in 1998. *Id.*

¹³⁰ *Id.* and CR at III-1 and VI-12 and PR at III-1 and VI-4.

expenditures in 1996 and 1997.¹³¹ Additionally, expenditures on research and development increased from 1996 to 1997, and by an even greater amount from 1997 to 1998.¹³²

For the foregoing reasons, we find that the domestic industry producing ERT is not threatened with material injury by reason of the subject imports from India.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing ERT is not materially injured, or threatened with material injury, by reason of subject imports from India.

¹³¹ Table VI-5, CR at VI-12 and PR at VI-4.

¹³² Research and development expenses were \$*** in 1996, \$*** in 1997, and \$*** in 1998. *Id.*

DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in this investigation, I determine that the industry in the United States producing elastic rubber tape (“ERT”) is materially injured by reason of imports of ERT from India that are sold in the United States at less-than-fair-value (“LTFV”). I join my colleagues in the findings with respect to the domestic like product and the domestic industry, as well as in the discussion of the conditions of competition in the U.S. market. Because my analysis and determination differ from the majority, my dissenting views follow.

I. BACKGROUND

In the preliminary phase of this investigation, I joined with the majority of my colleagues in finding that there was a reasonable indication that an industry in the United States was threatened with material injury by reason of imports of ERT from India that were alleged to be unfairly traded.¹ Although subject imports had not risen in absolute terms to a significant level by the end of the period for which data were collected, the Commission majority found that they were likely to increase substantially in the imminent future.² Respondents’ success in winning the *** Fruit of the Loom account from domestic producer Elastotec was significant in this analysis. Respondents argued at the time that, beginning in the fourth quarter of 1998, they would ship Fruit of the Loom’s ERT directly to the purchaser’s third country facilities.³

I have examined the record concerning imports of ERT from India as a whole as well as the particular shipments for sale in the United States to Fruit of the Loom. Because Fruit of the Loom has recently undertaken a marked change in its receipt of ERT, receiving shipments from a central warehouse located in Honduras rather than from “kitting” facilities in the United States, I no longer find that LTFV imports of the subject merchandise pose a threat to the U.S. industry. However, based on the conditions of competition in the U.S. market, and the volume, price effects, and impact of the subject merchandise during the period examined in the final phase of this investigation,⁴ I find that the domestic industry is materially injured by reason of LTFV imports of ERT from India.

II ANALYTICAL FRAMEWORK

In determining whether a domestic industry is materially injured by reason of the LTFV imports, the statute directs the Commission to consider:

- (I) the volume of imports of the merchandise which is the subject of the investigation,

¹ *Elastic Rubber Tape from India*, Invs. Nos. 701-TA-383 (Preliminary) and 731-TA-805 (Preliminary), USITC Pub. 3133 (October 1998), at 3.

² *Id.* at 14.

³ *Id.* at 14-15.

⁴ In the final phase of this investigation, the Commission gathered data regarding the importation of ERT and the condition of the domestic industry for the period 1996-98. Certain additional data, such as the volume of ERT imported and the drawdown of inventories for sale by one U.S. importer of the subject merchandise, provide a partial picture of the U.S. market in early 1999. However, given the time constraints for data collection in this investigation, it is not possible to evaluate fully the effects on the domestic industry of continued U.S. shipments of Indian ERT during 1999. Thus, I have not based my determination on the partial data for 1999.

- (II) the effect of imports of that merchandise on prices in the United States for like products, and
- (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . .⁵

In making its determination, the Commission may consider “such other economic factors as are relevant to the determination.”⁶ In addition, the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷

The statute directs that we determine whether there is “material injury by reason of the dumped imports.” Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other “factors” that are causing injury. These factors may even be causing greater injury than the dumping. However, the statute does not require us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether any injury “by reason of” the dumped imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. “When determining the effects of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry.”⁸ It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. Both the Court of International Trade and the United States Court of Appeals for the Federal Circuit have held that the “statutory language fits very well” with my mode of analysis, expressly holding that my mode of analysis comports with the statutory requirements for reaching a determination of material injury by reason of the subject imports.⁹

In my analysis of material injury, I evaluate the effects of the dumping¹⁰ on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what domestic prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,¹¹ I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined

⁵ 19 U.S.C. § 1677(7)(B)(i).

⁶ 19 U.S.C. § 1677(7)(B)(ii).

⁷ 19 U.S.C. § 1677(7)(C)(iii).

⁸ S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added). Gerald Metals, Inc. v. United States, 132 F.3d 716 (Fed. Cir. 1997) (rehearing denied).

⁹ United States Steel Group v. United States, 96 F.3d 1352, at 1361 (Fed.Cir. 1996), *aff’g* 873 F.Supp. 673, 694-695 (Ct. Int’l Trade 1994).

¹⁰ As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding “the magnitude of the margin of dumping.” 19 U.S.C. § 1677(7)(C)(iii)(V). In this investigation, the dumping margins for subject imports are 66.51 percent for Garware, the only known manufacturer/exporter of the subject merchandise, and 45.55 percent for all other manufacturers/exporters. 64 F.R. 19124-19125, April 19, 1999.

¹¹ In examining the quantity sold, I take into account sales from both existing inventory and new production. 20

price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales, and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (*e.g.*, employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales, and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

For the reasons discussed below, I determine that the domestic industry producing ERT is materially injured by reason of LTFV imports of ERT from India.

III. LIKE PRODUCT AND DOMESTIC INDUSTRY

As discussed previously, I concur with my colleagues' finding that crocheted elastic tape ("CET"), cut rubber thread, and wide tape should not be included in the same like product with ERT. I also concur with the conclusion that the domestic industry consists of the two U.S. producers of ERT, Elastotec and Fulflex.

IV. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. I concur with the discussion of certain important conditions of competition presented in the views of the Commission majority. However, my analysis requires additional evaluation of the commercial environment in which competition takes place. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. Demand Conditions

An analysis of demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, such as an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (*e.g.*, how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall demand for ERT is moderately inelastic.

Importance of the Product and Cost Factor. Key factors that measure the willingness of purchasers to pay higher prices are the importance of the product to purchasers and the significance of its cost. In the case of an intermediate product (*e.g.*, an input), the importance will depend on its cost relative to the total cost of the downstream product in which it is used. When the price of the input is a small portion of the total cost of the downstream product in which it is used, changes in the price of the input are less likely to alter demand for the downstream product, and, by extension, demand for the input.

Demand for ERT is derived from demand for its end-use products, primarily underwear and, to a lesser extent, swimwear, as well as miscellaneous items (children's wear, health care products, shock cord, etc.). Record evidence indicates that the cost share of ERT tends to be small (less than 3 percent) for all such products other than shock cord (***) percent).¹² The low cost share indicates that demand would likely be moderately inelastic.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Information on the record indicates that alternative products that can substitute for ERT are available for certain specific applications. However, the record also indicates that there are limits on the substitutability of the alternative products. Although one-half of reporting purchasers indicated that substitution for ERT by other more expensive products was technically feasible, few seemed to regard it as practical.¹³ Like ERT, CET is used to make textile items more form fitting, but the two products are generally not used in the same applications.¹⁴ The limited availability and substitutability of alternative products indicate moderately inelastic demand for ERT.

The low cost share of ERT in downstream products, combined with the limited availability of alternative products, reduces the elasticity of demand. For this reason, I find that the demand for ERT is moderately inelastic. That is, purchasers will not reduce significantly the amount of ERT they buy in response to a general increase in the price of ERT.

B. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; 2) differences in other non-price considerations such as reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations, and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because demand for ERT is moderately inelastic, overall purchases will not decline significantly if the overall prices of ERT increase. However, purchasers can avoid price increases from one source by seeking other sources of ERT. In addition to any changes in overall demand for ERT, the demand for

¹² CR at II-8, PR at II-5.

¹³ CR at II-7, PR at II-5. However, *** has switched from using woven elastic inserts in its *** to ERT. CR at II-7, PR at II-5. A U.S. producer of shock cord switched from second-quality rubber thread to second-quality ERT from India. *Respondents' Prehearing Brief* at exh. 4.

¹⁴ CR at I-8, PR at I-5-6. Most ERT purchasers do not even purchase CET. The one notable exception for certain applications is ***. CR at I-9, PR at I-6.

ERT from different sources will decrease or increase depending on their relative prices and their substitutability. If ERT from different sources is substitutable, purchasers are more likely to shift their demand from one source when the products from that source (*i.e.*, subject imports) experience a price increase. The magnitude of this shift in demand is determined by the degree of substitutability among the sources.

Purchasers have only two readily-available sources of ERT: ERT produced by domestic producers Elastotec and Fulflex, and subject imports. Purchasers are more or less likely to switch from one source to another depending on the similarity, or substitutability, between and among them. I have evaluated the substitutability among ERT from different sources as follows.

Based on the evidence in the record, I find that subject imports and domestic ERT are at least moderate substitutes for each other. Purchasers do not consider U.S. and Indian ERT to be substantially different, nor do any of the firms buying ERT believe that there is only one source for their product needs.¹⁵ However, a number of purchasers rate U.S. ERT superior to Indian ERT in terms of quality and availability, the two characteristics other than price that they appear to value most highly.¹⁶ U.S. producers are also highly-rated with respect to their delivery terms, delivery time, product consistency, reliability of supply, technical support and service, and transportation network.¹⁷

When Indian ERT first entered the U.S. market in 1997, the product was primarily of second quality.¹⁸ As the Indian product became established in the U.S. market, the share of imports consisting of second-quality ERT declined markedly.¹⁹ However, while most of the Indian imports are now standard-quality ERT, the Indian product range is still limited to product composed of natural rubber, coated only with talc, and no thinner than 0.010 inch.²⁰ By contrast, a very small portion of U.S. ERT is composed of synthetic rubber, although the majority of one producer's ERT consists of a blend of natural rubber and small amounts of synthetic rubber.²¹ A large portion, *** percent of U.S. ERT, is coated with cornstarch or silicone, rather than, or in addition to, talc.²² U.S.-produced ERT thinner than 0.010 inch is reportedly limited to sales to two swimwear producers.²³

By 1998, the U.S. market appeared to have accepted Indian ERT for underwear applications (*** percent of total 1998 U.S. shipments) and "other applications" (*** percent of total 1998 U.S. shipments), while use in lower-volume swimwear applications remains less widespread (only *** percent

¹⁵ CR at II-11-12, PR at II-6-7.

¹⁶ Tables II-2 and II-3, CR at II-10 and II-12, PR at II-6 and II-8. With respect to availability, the primary importer of Indian ERT maintains a large inventory in the United States. While Elastotec also maintains an inventory of ERT, Fulflex has until recently been a "make-to-order" supplier. Fulflex's witness testified that "we have been criticized for our 'make-to-order' policy" and "just because of challenges in the marketplace, (Fulflex has) adopted a new policy which is we will deliver ERT on the day you order it now." Hearing transcript at 63, testimony of Mr. Russell.

¹⁷ Table II-3, CR at II-12, PR at II-8.

¹⁸ The domestic producers do not sell second-quality (or off-specification) ERT in the U.S. market. CR at I-9, PR at I-6.

¹⁹ Second-quality ERT comprised *** percent of U.S. shipments of Indian ERT in 1997 and *** percent of U.S. shipments of Indian ERT in 1998. CR at IV-3, PR at IV-2.

²⁰ CR at I-5-7; Hearing transcript at 91, testimony of Ramesh Gaware.

²¹ CR at I-5, fn. 15, PR at I-4, fn. 15.

²² CR at I-6, fn. 18, PR at I-4, fn. 18.

²³ CR at I-7, PR at I-5.

of total 1998 U.S. shipments).²⁴ This appears to reflect the swimwear industry's preference for silicone-coated ERT which Garware does not currently produce.²⁵ Unlike the underwear segment of the ERT market, currently only an estimated *** percent of the swimwear segment's ERT purchases are talc-coated, and Garware is several years away from producing silicone-coated ERT.²⁶

For these reasons, I find that subject imports and domestic ERT are at least moderate substitutes for each other. Therefore, I find that purchasers would have switched from purchases of subject imports to purchases of domestic ERT had subject imports been fairly priced.

C. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives, and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply of ERT is high.

Capacity Utilization and Capacity. Unused capacity can exert price discipline in a competitive market, because no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have the available capacity and are willing to sell more at a lower price. In 1998, the domestic industry's capacity utilization stood at *** percent.²⁷ Therefore, a substantial share (***) of capacity was unused and thus apparently was available to increase production. Based on these rates, it would appear that both U.S. producers have considerable unused capacity that could have been used to supply the demand for subject imports.

Production and Shipment Alternatives. Under appropriate circumstances, producers can alter their product mix by changing the proportion of equipment time and labor devoted to producing ERT. Both Elastotec and Fulflex devote considerable resources to the manufacture of products other than ERT (e.g., golf ball material, thread gaskets, and bandage material) by the same equipment and workers.²⁸ Similarly, producers can make available to the domestic market volumes of ERT designated for sale in export markets or held in inventory. On the basis of decreasing (albeit still consequential) export shipments (***) percent of total shipments), rising inventories (***) percent of total shipments), and existing production alternatives (***) percent of production equipment and workers),²⁹ U.S. producers appear to have substantial flexibility to shift between production and shipment alternatives to supply the demand for subject imports.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In the U.S. market, there are now

²⁴ Table IV-4, CR at IV-7-IV-9, PR at IV-3.

²⁵ Hearing transcript, p. 137, testimony of Ms. Diya Garware.

²⁶ *Respondents' Posthearing Brief* at Q-7.

²⁷ Variation in the industry's capacity utilization (***) percent in 1997 v. *** percent in 1998) reflects the combined effects of fluctuating production levels and a steady increase in capacity by *** up until the fourth quarter of 1998, when it ***. Table III-1, CR at III-5, PR at III-3; *see also* CR at III-1-2, PR at III-1.

²⁸ CR at II-4-5, PR at II-3.

²⁹ Table III-1, CR at III-5, PR at III-3; CR at II-4-5, PR at II-2-3.

only two companies that produce ERT, and thus there is limited competition within the domestic industry.³⁰ Nonsubject imports are not a substantial source of competition in this market, as evidenced by their total absence during the period examined. Consequently, I find that there is only a modest level of competition in the U.S. market for ERT.

Notwithstanding the modest level of competition in the U.S. market, I find that the elasticity of supply is quite high, based on the domestic industry's very extensive ability to increase the supply of domestic ERT from existing unused or otherwise allocated capacity, inventories, and exports.

V. MATERIAL INJURY BY REASON OF LTFV IMPORTS OF ERT FROM INDIA

The statute requires us to consider the volume of subject imports, their effect on domestic prices, and their impact on the domestic industry. I consider each requirement in turn.

A. Volume of Subject Imports

Imports from India of ERT were *** pounds, with a landed, duty-paid value of ***, in 1998, compared to *** pounds, with a landed, duty-paid value of ***, in 1997.³¹ There were no imports of ERT from India in 1996.³² By quantity, U.S. shipments of Indian ERT accounted for *** percent of apparent U.S. consumption in 1997 and *** percent in 1998. By value, U.S. shipments of Indian ERT accounted for *** percent of apparent U.S. consumption in 1997 and *** percent in 1998.³³ The 1998 volume of U.S. shipments of Indian ERT (by application) was as follows: ***. The total quantity of U.S. shipments of Indian ERT in 1998, therefore, was *** pounds.³⁴

While it is clear that the larger the volume of subject imports, the larger the effect they will have on the domestic industry, whether the volume is significant cannot be determined in a vacuum, but must be evaluated in the context of its price and volume effects. Based on the market share of subject imports and the conditions of competition in the domestic market, I find that the volume of subject imports is significant in light of its price and volume effects.

³⁰ The U.S. market is characterized by both a low number of U.S. producers and limited overlap in actual sales according to application by those producers. Elastotec sells ERT primarily (***) percent) to producers of underwear, which is a small customer base (***) percent) for Fulflex. Conversely, Fulflex sells the majority (***) percent) of its ERT to producers of swimwear, a smaller customer base for Elastotec (***) percent), as well as to producers of health care, children's wear, and other products (***) percent). CR at VI-9, PR at VI-3. This would seem to indicate that the U.S. market for ERT is segmented and non-competitive. I note, however, the representations made by company representatives about the extent of competition existing between the two companies, as well as the testimony by *** regarding ***. Hearing transcript at 21, testimony of Mr. Russell; hearing transcript at 159, testimony of ***.

³¹ Table IV-1, CR at IV-2, PR at IV-2.

³² Table IV-1, CR at IV-2, PR at IV-2.

³³ Table IV-2, CR at IV-4, PR at IV-3. Import volume is measured by imports for consumption, while U.S. market share is measured by U.S. shipments of imports. Due to a substantial build-up of inventories and a small volume of re-exports in 1998, the latter measure is markedly smaller than the former.

³⁴ Table IV-4, CR at IV-7-9, PR at IV-3. Data for the volume of ERT sold for shock cord appears CR at IV-5, PR at IV-3; the volume of "unclassified" ERT represents the difference in Table IV-2, CR at IV-5, PR at IV-2, and Table IV-4, CR at IV-7-9, PR at IV-3.

B. Effect of Subject Imports on Domestic Prices

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

If the subject imports had not been dumped, their prices in the U.S. market would have increased significantly. Thus, if subject imports had been fairly priced, they would have become more expensive relative to domestic ERT. In such a case, if subject imports are at least moderate substitutes with domestic ERT, purchasers would have shifted towards the relatively less expensive products.

In this investigation, the dumping margins for subject imports are quite large: 66.51 percent for Garware, the only known manufacturer/exporter of the subject merchandise, and 45.55 percent for all other manufacturer/exporters. Therefore, subject imports would have been priced significantly higher had they been fairly traded. Subject imports and domestic ERT are at least moderate substitutes for each other, and thus some of the demand for subject imports would have shifted to domestic ERT had subject imports been fairly traded. Although a few other countries are known to produce ERT, there were no nonsubject imports of ERT at any time during the period examined.

At fairly traded prices, much of the demand supplied by subject imports from India would have shifted away from this source of ERT. Competition in the underwear segment of the market (the largest segment and the one in which Indian shipments have been concentrated) is extremely price sensitive.³⁵ Moreover, the market segment has high standards for quality and availability that must be met in order to even be considered; however, once they are met, pricing considerations become paramount.³⁶ Some of the other uses for ERT are also price sensitive (*e.g.*, shock cord). Therefore, at fairly traded prices, it is likely that much of the demand for Indian ERT (equivalent to U.S. shipments of *** pounds) would have shifted away from Garware.³⁷

Not all of the shift in demand away from the subject imports would have gone to the domestic industry. Although there were no nonsubject imports, substitute products would have captured some of the shift in demand away from the subject imports. For example, for price reasons, *** would likely return to *** for its *** rather than purchase the standard-quality ERT available from the domestic producers.³⁸ As noted earlier, CET can provide an alternative to some buyers of ERT, but substitution to date remains infrequent.

Given even a moderate level of substitutability between subject imports and the domestic like product, at least some of the demand for subject imports would have shifted to domestic producers, had

³⁵ See the testimony of the *** witness: “***.” Hearing transcript at 209, testimony of ***.

³⁶ ***. Hearing transcript at 161-163, testimony of ***.

³⁷ U.S. importers of Indian ERT might have retained some swimwear customers by virtue of their available inventories (as opposed to Fulflex’s “make-to-order” policy). However, swimwear sales only accounted for *** pounds of shipments of Indian ERT imports in 1998. Table IV-4, CR at IV-8, PR at IV-3.

³⁸ See *Respondent’s Prehearing Brief* at exh. 4. However, secondary material for shock cord only accounted for *** pounds of Indian ERT imports in 1998. CR at IV-5, PR at IV-3.

the subject imports been fairly traded. Therefore, had subject imports been fairly traded, the domestic producers could have increased output and/or raised prices. Overall demand for ERT would not have changed much in response to higher prices for imported or domestic ERT because demand is moderately inelastic. However, the elasticity of supply is quite high, and thus the domestic industry would have increased its output and sales significantly had the subject imports been fairly traded.

Because the larger portion of the sales in question (***) pounds) were to underwear manufacturers, ***. However, ***. Furthermore, the formidable purchasing power wielded by the largest underwear manufacturers limits the ability of U.S. producers to raise prices, especially in light of falling rubber prices.³⁹ Consequently, I find that subject imports are not having significant effects on the price of ERT produced and sold by the industry the United States.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors.⁴⁰ These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

As I have discussed above, competition from nonsubject imports is currently absent from the U.S. market, and thus, had subject imports not been dumped, most of the demand satisfied by subject imports would have shifted to domestic ERT. The increase in demand for the domestic product would have been substantial, though the domestic producers would not have been able to increase their prices significantly in response to the increased demand. However, the elasticity of domestic supply is quite high and so the domestic industry would have been able to increase its production and output significantly in response to the shift in demand. Overall, the domestic industry would have increased its prices only slightly, if at all, but would have increased its output and sales, and therefore its revenues, significantly had subject imports not been dumped. Consequently, the domestic industry would have been materially better off if the subject imports had been fairly traded.

VI. NO CRITICAL CIRCUMSTANCES WITH RESPECT TO SUBJECT IMPORTS FROM INDIA

Because Commerce made affirmative findings of critical circumstances with respect to imports of ERT from India⁴¹ and I have found that the domestic industry producing ERT is materially injured by reason of the subject imports, the statute requires a determination of “whether the imports subject to the affirmative {Commerce critical circumstances} determination . . . are likely to undermine seriously the

³⁹ Rubber prices are published and widely available. Moreover, they appear to be a consideration in long-term, as well as short term, contracts. For example, ***’s contract with *** contains a price adjustment clause to ***. Such prices are published in the *Wall Street Journal*. *Respondents’ Posthearing Brief*, exh. 21.

⁴⁰ 19 U.S.C. § 1677(7)(C)(iii).

⁴¹ 64 F.R. 19124, April 19, 1999.

remedial effect of the antidumping order to be issued.”⁴² Under current law, as under prior practice, a separate material injury determination regarding the surge in imports is not required.⁴³

For the following reasons, I make a negative critical circumstances determination with respect to ERT from India.

The statute requires the Commission to find that imports subject to Commerce’s critical circumstance determinations “are likely to undermine seriously” the remedial effect of the order. In making this finding, the Commission is instructed to examine certain factors, including the timing and the volume of the imports and whether there has been a rapid increase in inventories of the imports.⁴⁴ These factors provide guidance for whether the surge in imports and any increase in inventories are “likely to” undermine seriously the effect of an order. However, these factors do not provide any guidance for evaluating the effects of the surge and increase in inventories, that is, whether an order is undermined seriously.

Neither the statute nor the legislative history defines the term “undermines seriously.” Nonetheless, the choice of this term clearly indicates that something more than merely affecting the order is required. *Black’s Law Dictionary* defines “serious” as grave or great, and *Webster’s Third New International Dictionary* defines “undermine” as to subvert or weaken insidiously.⁴⁵ Therefore, the plain meaning of the term “undermine seriously” establishes a very high standard: that the surge in imports greatly and insidiously weakens or subverts the effect of the order.

An antidumping duty order provides a remedy for market disruption caused by dumped imports. Therefore, evaluating the market disruption caused by the surge in imports and increase in inventories serves to measure the effect they have on the order. If the magnitude of the surge in imports and increase in inventories is sufficiently large that they greatly and insidiously weaken or subvert the effect of the order, then the order is undermined seriously.

In its critical circumstances analysis, the Commission generally relies on data gathered from the periods immediately preceding and following the filing of the petition unless there is evidence the market for the product at issue is seasonal.⁴⁶ The evidence in the record does not support the position that ERT

⁴² 19 U.S.C. § 1673d(b)(4)(A)(i). The statute further provides that in making this determination: the Commission shall consider, among other factors it considers relevant--

- (I) the timing and the volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. § 1673d(b)(4)(A)(ii).

⁴³ SAA at 877, citing ICC Industries, Inc. v. United States, 632 F. Supp. 36, 40 (Ct. Int’l Trade 1986), aff’d, 812 F.2d 694 (Fed. Cir. 1987).

⁴⁴ 19 U.S.C. § 1673d(b)(4)(A)(ii)(I)-(II).

⁴⁵ *Black’s Law Dictionary* 1367 (6th ed. 1990); *Webster’s Third New International Dictionary* 2489 (1981).

⁴⁶ Compare Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 19 n.109 (April 1997) with Steel Concrete Reinforcing Bars from Turkey, Inv. No. 731-TA-745 (Final), USITC Pub. 3034 at 34 (April 1997).

imports from India are seasonal in nature.⁴⁷ Consequently, a comparison of the periods immediately preceding and following the filing of the petition is appropriate.

In this investigation, the petition was filed August 18, 1999, and the suspension of liquidation of entries occurred on February 2, 1999.⁴⁸ During the 5-month period from March to July 1998, imports of the subject merchandise totaled *** pounds, and averaged *** pounds per month.⁴⁹ In August 1998, imports of the subject merchandise were *** pounds.⁵⁰ During the 5-month period September 1998 through January 1999, that volume of subject imports was *** pounds, or *** pounds per month.⁵¹ U.S. inventories were *** pounds in July 1998, *** pounds in August 1998, and *** pounds in January 1999.⁵²

I note that the increase in subject imports and inventories by *** was underway at the time of the filing of the petition. This is not surprising, considering that Fruit of the Loom awarded its contract on ***.⁵³ This strongly supports the contention that these increases, which proved to be of a temporary nature, were not an effort to subvert any remedy arising from the filing of the petition.

I find no other circumstances indicating that the remedial effect of an antidumping duty order will be seriously undermined. Quite the contrary, the transition of ***, Fruit of the Loom, away from U.S. delivery of ERT for kitting in favor of direct supply via Honduras, has resulted in both a marked drawdown of existing inventories of the subject merchandise in the United States and a sharp decrease in imports for consumption. These are outcomes that are fully consistent with the remedial effect of the order. Therefore, notwithstanding the volume of the imports, I find that the imports subject to Commerce's affirmative critical circumstances determination are not likely to undermine seriously the remedial effect of an antidumping duty order. Consequently, I make a negative critical circumstances determination.

VI. CONCLUSION

On the basis of the foregoing analysis, I determine that the domestic industry producing ERT is materially injured by reason of LTFV imports of ERT from India. Further, I make a negative determination with respect to critical circumstances.

⁴⁷ The available data covering September 1997 through April 1999 do not indicate that there was a particular month or group of months in which subject imports from India surged consistently. Figure IV-1, CR at IV-3, PR at IV-2.

⁴⁸ 64 F.R. 5025, 5029, February 2, 1999.

⁴⁹ April 30, 1999 letter from counsel to Respondents to the Commission. See Figure IV-1, CR at IV-3, PR at IV-2. Of course, included in this period were two months in which ***.

⁵⁰ April 30, 1999 letter from counsel to Respondents to the Commission. See Figure IV-1, CR at IV-3, PR at IV-2.

⁵¹ April 30, 1999 letter from counsel to Respondents to the Commission. See Figure IV-1, CR at IV-3, PR at IV-2.

⁵² April 30, 1999 letter from counsel to Respondents to the Commission. See Figure IV-1, CR at IV-3, PR at IV-2.

⁵³ *Respondents' Posthearing Brief* at exh. 21.

DISSENTING VIEWS OF COMMISSIONER STEPHEN KOPLAN

Based on the record in this investigation, I find that an industry in the United States is threatened with material injury by reason of imports of elastic rubber tape from India that have been found by the Department of Commerce (“Commerce”) to be sold at less than fair value.

I join the Commission in defining the domestic like product co-extensively with the scope of the subject merchandise as defined by Commerce, and in finding that the domestic industry consists of the United States producers of elastic rubber tape (“ERT”). I concur with the Commission in finding no present material injury by reason of subject imports. I dissent from the Commission and determine that an industry in the United States is threatened with material injury by reason of the subject imports from India.

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”¹ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued.² In making my determination, I have considered all statutory factors that are relevant to this investigation.³

I find a significant volume of subject imports is likely to enter the U.S. market in the imminent future. First, there has been a significant increase in the volume of subject imports during the period of investigation. Between 1996 and 1998, imports of ERT from India increased from *** pounds in 1996 to *** pounds in 1998. With that substantial increase in volume, subject imports captured *** percent of market share by 1998, up from only *** percent in 1997. Much of that volume did not include the anticipated annual volume of the contract with Fruit of the Loom which is *** pounds and which is equivalent to *** percent of 1998 U.S. apparent consumption.⁴ While the record indicates that imports from India in the first three months of 1999 are very low⁵, that drop off appears to be the result of this investigation. In fact, significant shipments entered the U.S. immediately prior to that time. End-of-period U.S. inventories of subject imports from India were *** pounds, or approximately *** percent of 1998 U.S. apparent consumption. Therefore, I find the recent significant rate of increase in the volume of imports and the significant inventories of subject merchandise within the United States indicate the likelihood of substantially increased imports as well as the likelihood of significant sales at less than fair value from the stockpiled U.S. inventories.

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

² 19 U.S.C. § 1677(7)(F)(ii).

³ 19 U.S.C. § 1677(7)(F)(ii). Factor I is inapplicable because this investigation does not involve countervailing duties. Petitioners alleged countervailing duties, but effective April 19, 1999, the Commission terminated its investigation into imports alleged to be subsidized, due to Commerce’s negative final determination regarding subsidies on the subject merchandise. 64 Fed. Reg. 22643 (April 27, 1999). Factor VII is inapplicable because this investigation does not involve imports of a raw agricultural product.

⁴ CR at V-18, Table C-1 at C-3, and PR at V-8. I have considered the volume of Fruit of the Loom’s purchase from GEL in this analysis for the reasons discussed below.

⁵ Figure IV-1, CR at IV-3, and PR at IV-2.

Moreover, existing unused capacity in India indicates the likelihood of substantially increased imports of the subject merchandise into the United States. Respondent Garware Elastomerics, Limited (“GEL”) reported to the Commission a capacity of *** pounds of ERT in fiscal year 1998, production of *** pounds and a capacity utilization rate of *** percent.⁶ Thus, GEL itself reported excess capacity of *** pounds which represents *** percent of U.S. apparent consumption in 1998. This unused capacity is significant. Petitioners argued that GEL’s capacity is much higher than they reported to the Commission.⁷ While GEL disputes this claim,⁸ and argues that it does not have sufficient capacity to supply any major U.S. *** producer ***, I find the fact that GEL continues to make sales calls to *** and other major apparel companies indicates that GEL must have sufficient capacity to supply at least this large purchaser of ERT.⁹ As to the likely markets for shipments from any such production, it is clear the GEL is export oriented as *** percent of its shipments were exported in fiscal year 1997 and *** percent of the exports were directed to the United States.¹⁰ The shipments of ERT to the U.S. declined in early 1999 (fiscal year 1998), due principally to the direct shipments of ERT to Fruit of the Loom in Central America, which I discuss further below. I find, therefore, that the unused production capacity levels indicate that there are likely to be substantial increases in imports in the imminent future.

GEL argues that imports will not increase and do not threaten the domestic industry with material injury because they are now supplying the Fruit of the Loom contract by shipping ERT directly to a warehouse in Central America, instead of delivering the subject imports to a “kitting” facility in the United States. I find this direct shipment of ERT was at least in part a result of the investigation.¹¹ Absent antidumping duties, GEL has a strong incentive to ship the ERT to Fruit of the Loom in the United States. First, I note that the contract stipulates *** The price to Fruit is *** Based on these terms, upon delivery of the ERT to Fruit of the Loom ***, Fruit of the Loom ***¹² Following the antidumping investigation, with direct shipments to Central America, GEL now *** Second, GEL currently ships ***.¹³ Thus, GEL presumably would have an economic incentive to *** Given these facts, GEL would obtain *** if it were to resume its shipments to Fruit of the Loom in the United States, and it would have ***.

In addition to the strong incentive for GEL to deliver ERT to Fruit of the Loom in the United States, the record indicates that Fruit itself may have an incentive to receive the shipments of ERT at one facility in the U.S. *** The only record evidence on the issue indicates that ***¹⁴ Fruit of the Loom would ***¹⁵ All of the foregoing suggests that Fruit of the Loom has an incentive to have the ERT ***.

⁶ Table VII-1, CR at VII-4 and PR at VII-2.

⁷ Petitioners state that GEL reports a capacity of 6,600,000 pounds in public documents. Petitioners’ Prehearing Brief at 24-25.

⁸ GEL argues that the publicly reported capacity, measured in pounds, is overstated because it is based on production of a product mix that is thicker, and therefore heavier, than the subject merchandise. Respondent’s Prehearing Brief at 22 and Hearing Tr. at 93-94 (Vayu Garware). I do not find this argument persuasive for the reasons stated below.

⁹ Hearing Tr. at 99-100 (Ms. Garware).

¹⁰ Table VII-1, CR at VII-4 and PR at VII-2.

¹¹ ***. The parties do not dispute that the decision to ship directly to Central America occurred after to the filing of the petition. See Respondent’s Posthearing Brief at Q-16 to Q-19.

¹² Respondent’s Posthearing Brief at Q-15.

¹³ CR at V-23 and PR at V-9.

¹⁴ *Id.*

¹⁵ Hearing TR. at 217.

Therefore, I find that there is reason to conclude that, absent an antidumping duty order, shipments for the Fruit of the Loom contract likely would again be directed to the United States.

The record also indicates that GEL has and will maintain a presence in the United States, both to serve existing customers as well as for marketing to new customers currently served by the Petitioners. While GEL argues that its presence in the U.S. is only to negotiate with major purchasers who maintain headquarters in the U.S., the record indicates that the other major purchasers would in fact consume any such ERT purchased from GEL at the purchasers' kitting facilities in the U.S.¹⁶ There is nothing in the record indicating that any of the other purchasers intends to cease U.S. kitting operations in favor of direct shipment to off-shore production facilities.

In this regard, I note that the major underwear producers frequently *** their ERT purchases.¹⁷ Thus, as with Fruit of the Loom, the domestic industry stands to lose the entire quantity of product shipped to the purchaser if that purchaser decides to source from the Respondent. Fruit of the Loom described GEL as *** in seeking Fruit's business.¹⁸ The record indicates that GEL has engaged in the same pattern of conduct with respect to at least two other major purchasers.¹⁹ If GEL is successful in obtaining either of those additional contracts, the domestic industry stands to lose a significant volume sale. Based on the foregoing, I find that subject imports are likely to enter the U.S. in significant quantities in the imminent future.

I also find that the subject imports likely would enter the U.S. at less than fair value prices that are likely to have a significant depressing or suppressing effect on domestic prices. *** There also was testimony indicating that ***²⁰ Thus, while the subject imports did not suppress or depress prices to a significant extent during the period of investigation, in the imminent future with *** the likely substantial volume of subject imports are likely to suppress or depress domestic prices to a significant degree.

The significant volume of subject imports at less than fair value prices is likely to adversely impact the domestic industry's financial performance, output, capacity utilization, capital investment, and employment. Accordingly, I determine that the domestic industry is threatened with material injury by reason of the subject imports from India.

¹⁶ Respondent's Posthearing Brief at Q-24, CR at V-25 to V-26 and PR at V-10.

¹⁷ CR at V-5, V-25 and PR at V-4, and V-9. Hearing Tr. at 100 and 204.

¹⁸ Hearing Tr. at 171.

¹⁹ GEL has sought contracts with Jockey and Sara Lee who along with Fruit of the Loom are the three largest purchasers. Hearing Tr. at 28, 91, 99-100, and 288.

²⁰ Hearing Tr. at 209. In addition, another major purchaser of ERT, ***, reported that *** CR at V-26 and PR₃ at V-10.

PART I: INTRODUCTION

BACKGROUND

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

<i>Date</i>	<i>Action</i>
August 18, 1998	Petition filed with Commerce and the Commission; institution of Commission investigations (63 FR 45255, Aug. 25, 1998)
September 16, 1998	Commerce’s notices of initiation (63 FR 49546 and 49549, Sept. 16, 1998)
October 2, 1998	Commission’s preliminary determination
December 7, 1998	Commerce’s preliminary negative countervailing duty determination (63 FR 67457) and alignment of its final countervailing duty determination with its final antidumping determination (64 FR 860, Jan. 6, 1999).
February 2, 1999	Commerce’s preliminary antidumping determination (64 FR 5025); scheduling of final phase of Commission investigation (64 FR 6679, Feb. 10, 1999)
April 19, 1999	Commerce’s final LTFV determination and affirmative finding of critical circumstances (64 FR 19123, Apr. 19, 1999); ³ Commerce’s final negative CVD determination (64 FR 19125, Apr. 19, 1999) ⁴
April 19, 1999	Commission’s termination of countervailing duty investigation (64 FR 22643, Apr. 27, 1999)
April 20, 1999	Commission’s hearing ⁵
May 24, 1999	Date of the Commission’s vote
June 1, 1999	Commission determination sent to Commerce

¹ For purposes of this investigation, elastic rubber tape is vulcanized, non cellular rubber strips, of either natural or synthetic rubber, 0.006 inch to 0.100 inch (0.15 mm to 2.54 mm) in thickness and 1/8 inch to 1-5/8 inches (3 mm to 42 mm) in width, generally used in swimwear and underwear, classified in subheading 4008.21.00 of the Harmonized Tariff Schedule of the United States (HTS), a subheading that includes other rubber products. The 1999 column 1-general or normal trade relations rate for this subheading, applicable to imports from India, is free. Elastic rubber tape has not been the subject of any previous Commission investigations.

² *Federal Register* notices cited in the tabulation since Commerce’s preliminary determinations are presented in app. A.

³ In the final phase, Commerce used the highest LTFV rate in the petition, 66.51 percent, because Garware Elastomerics Ltd. (GEL) withdrew from the investigation. Commerce calculated the “all other” rate at 45.55 percent from the average of the margins contained in the petition.

⁴ Commerce determined that countervailable subsidies in the amount of 1.71 percent are being provided to GEL. Such subsidies stem from an exemption from customs duties on certain capital goods. Commerce treated the contingent liability arising from the exemption as a series of zero interest, short term loans. GEL also received an income tax exemption on profits from exports. Commerce determined that because these subsidies are less than 3 percent, such subsidies are *de minimis*.

⁵ App. B shows a list of witnesses appearing at the public hearing. A portion of the hearing was conducted *in camera* (64 FR 22644, Apr. 27, 1999).

SUMMARY DATA

A summary of data collected in the investigation is presented in appendix C, table C-1. U.S. industry data are based on questionnaire responses of the petitioners, which accounted for all known U.S. production of elastic rubber tape during the period for which data were collected (1996-98). Data for U.S. imports are based on questionnaire responses of importers that account for all imports of the subject product into the United States. As far as can be determined, there have been no imports of the subject product from countries other than India.⁶ Except in table titles, the terms “elastic rubber tape,” “rubber tape,” and “tape” are used interchangeably for the subject product.

THE PRODUCT

As indicated in appendix A, Commerce has defined the imported merchandise within the scope of its investigation as elastic rubber tape, stating that--

“Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness and 1/8 inches to 1-5/8 inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.”

During the preliminary phase of the investigation the Commission defined the domestic like product⁷ co-extensively with the scope of the subject merchandise as established by Commerce. The Commission concluded that information on the record was sufficient to demonstrate a clear dividing line between elastic rubber tape and crocheted elastic tape (CET).⁸ However, the Commission stated that it intended to seek additional information concerning elastic rubber tape outside the specified dimensions of the product included within the scope of the investigations, the substitutability between elastic rubber tape and CET, and so-called “second quality” elastic rubber tape.⁹ Information gathered during this investigation concerning like product and interchangeability factors, for both imported and domestically produced elastic rubber tape, is presented below.

⁶ Transcript of the staff conference, pp. 55-56. At the public hearing, Mr. Russell, President of Fulflex, stated that other foreign manufacturers had not attempted to enter the U.S. market because of cost or quality considerations. Transcript of the hearing (TR), p. 26. Respondents attributed some of the difficulty in entering the U.S. market to quality and availability as well as overcoming the close relationships between the U.S. producers and their customers. TR, pp. 120-21 (Ms. Diya Garware).

⁷ The Commission’s decision regarding the appropriate domestic products that are “like” the subject imported product is based on a number of factors, including (1) physical characteristics and uses; (2) interchangeability; (3) customer and producer perceptions; (4) channels of distribution; (5) the use of common manufacturing facilities and production employees; and, where appropriate, (6) price.

⁸ “Views of the Commission,” U.S. International Trade Commission, *Elastic Rubber Tape From India*, Investigation No. 701-TA-383 (Preliminary) and Investigation No. 731-TA-805 (Preliminary), USITC publication 3133, Oct. 1998, p. 7.

⁹ *Ibid.*, pp. 7 (fns. 37 and 38) and 10 (fn. 62).

Like Product Issues

In their prehearing brief, respondents argued that cut rubber thread and CET should be included in the definition of the domestic like product.¹⁰ As noted earlier, the Commission concluded that there was a clear dividing line between tape and CET (see further discussion under “interchangeability”). Respondents state that there is no clear dividing line between the physical characteristics of tape and cut rubber thread (“thread”); and that despite its smaller size and square shape, thread has the same physical quality and is made by the same processes as tape. For example, respondents note that petitioners produce thread and tape using the same production processes.¹¹ Moreover, thread and tape are unfinished products and thread can be woven into CET and competes with tape in every application. They state that thread and tape are distributed through the same or similar channels of distribution, namely through distributors or directly to end users, and that both consumers and producers view thread made into CET as interchangeable with tape. Respondents state that unit price differences between tape and CET made from thread are insignificant: CET made from thread is sold and purchased by the yard while tape is sold and purchased by the pound; and although CET may be more expensive on a per-pound basis, because CET weighs less than tape, it may not cost more than an equivalent amount of tape on a per-yard basis.

Petitioners’ counsel states that respondents’ argument is circular because respondents argue that CET is “like” tape, and since thread is used in CET, therefore, thread also is a like product.¹² Petitioners state that thread should not be included in the domestic like product: Thread differs from tape in physical dimension and chemistry, and these differences lead to differences in end use applications (thread is used in golf balls, for example, whereas tape is not) as well as different perceptions by producers and consumers. Petitioners state further that the production processes, facilities, and production employees are distinct with respect to extruded rubber thread and tape. Differences reportedly exist at the compounding stage, and at the cutting and packaging stages.¹³

Physical Characteristics and Uses

Elastic rubber tape consists of a continuous vulcanized rubber strip that is incorporated into various articles to provide an automatically adjustable fit. The tape is manufactured in different formulations (compositions of natural rubber, natural and synthetic rubber in combination, or synthetic rubber alone), although most elastic rubber tape is produced from a compound that consists of natural rubber and certain chemical additives to enhance its heat resistance.¹⁴ It also may utilize certain coatings to accommodate the needs of different users, and its variety of thicknesses and widths make it easily

¹⁰ Respondents’ prehearing brief, Apr. 14, 1999, pp. 25-28.

¹¹ Ibid., p. 28. In particular, respondents state that combining CET (made from thread) with tape “will demonstrate that the domestic industry is thriving, in light of continued high demand in the medical, swimwear, sportswear, and golf ball markets.”

¹² Petitioners’ posthearing brief, Apr. 28, 1999, pp. 25-28 of the annex.

¹³ Ibid., p. 26. The production processes differ. Tape is produced by a rolling process, called calendering, while extruded rubber thread is produced by extrusion (pushing the rubber latex under pressure through a die). Petitioners state that no tape producer also produces extruded rubber thread. Although petitioners acknowledge producing cut rubber thread in their facilities, they state it is produced by workers on equipment that is not the same as that used to produce tape.

¹⁴ Heat resistance is the primary property of tape besides elasticity. Manufacturers add chemicals to affect the tape’s launderability, durability, and resistance to shrinkage and stains as well, while swimwear producers might add chemicals to the elastic rubber tape to make it resistant to chlorine, suntan lotions, seawater, and perspiration. Petition, p. 5.

handled and well-suited for different applications. In most applications the tape is inserted directly into tunnels of fabric in the hem or seam that are made to receive it, and the bulk of U.S. consumption is in the trimming of leg openings of various kinds of apparel, particularly underwear and swimwear. Elastic rubber tape also is used in the production of sportswear, fitted bed sheets, health care products (mainly disposable surgical masks, caps, and shoe covers), expandable partitions and inside pockets of luggage, and other products. However, elastic rubber tape generally is used where the elastic insert is covered and does not come into contact with the wearer's skin because of possible allergic reaction of the wearer to natural rubber or to the coating used, such as talc.

Interchangeability and Customer and Producer Perceptions

Generally, the elastic rubber tape that is imported from India is the same as the domestic product in terms of its physical characteristics and uses (as discussed later, production processes also are similar). U.S. producers manufacture a broader range of tape that consists of combinations of natural rubber and synthetics whereas the Indian producer manufactures only elastic rubber tape composed of natural rubber.¹⁵ According to one producer, the substitution of synthetic rubber and polymeric blends for natural rubber allows tape with reduced thickness and width to be produced, which reduces cost.¹⁶ Use of synthetic rubber and polymeric blends reportedly also provides better resistance to mineral oil and ozone.¹⁷ Moreover, U.S. producers utilize a broader range of coatings; some of their production may consist of tape coated with talc, cornstarch, or silicone, while the Indian producer coats its product only with talc.¹⁸ Although these differences inhibit use of the Indian product in certain specialized applications, the Indian product is considered interchangeable with and is used for the same applications by manufacturers of swimwear and underwear,¹⁹ the applications that account for the majority of tape uses.

Petitioners also state that they produce a wider range of sizes of tape. The Indian producer, however, is generally capable of making the same range of sizes as the domestic tape, and the current range of imported products satisfies the main segments of the domestic market (underwear and swimwear).²⁰ U.S. and Indian producers each offer a standard product line of tapes that meet most users' needs, and the producers can produce less common varieties on special order.

The Commission requested purchasers to provide information on their purchases of elastic rubber tape measuring (1) less than 0.010 inch thick and (2) greater than 0.100 inch thick and/or greater than 1-

¹⁵ Petitioners state that domestic formulations include natural rubber, synthetic rubber, and combinations of natural and synthetic rubber, depending upon customer requirements. Respondents stated that the Indian producer uses only natural rubber. Conference transcript, pp. 52-54 and pp. 63, 69-70. Elastotec reported that *** of its tape products are of natural rubber; Fulflex stated that *** of its tape products are of natural rubber, but that ***. Responses to the Commission's producers' questionnaires, p. 6.

¹⁶ Producers' questionnaire response of *** in the preliminary phase, p. 13.

¹⁷ Ibid.

¹⁸ Elastotec and Fulflex stated that *** and ***, respectively, of their tape products are coated with talc, although Fulflex stated that approximately *** tape products also are coated with silicone. Responses to the Commission's producers' questionnaires, p. 6. Garware states that it has attempted production of rubber tape coated with silicone. TR, p. 91.

¹⁹ For example, three purchasers, ***, stated that imported and domestically produced elastic rubber tape are used in the same applications, as did ***; another purchaser, ***, stated ***. Responses to the Commission's purchasers' questionnaire, p. 17.

²⁰ Conference transcript, pp. 94-95.

5/8 inches wide (i.e., tape that is outside the dimensions specified in Commerce's scope). Most purchasers stated that they do not purchase tape with either of these dimensions. Two purchasers, ***, stated they bought tape less than 0.010 inch thick for use in swimwear, and one manufacturer of *** purchases tape that measures greater than 0.100 inch thick and/or more than 1-5/8 inches wide. This latter purchaser stated that ***.²¹

The Commission also requested producers and importers to provide this same information with respect to their sales. In its importers' questionnaire response, Elastomer stated that it does not import item (1) and that Garware cannot produce a product less than 0.010 thick because of limitations imposed by its production equipment. Elastomer also stated it does not import or sell item (2). Neither producer reported sales or transfers of (1) or (2).²² Elastotec stated in its questionnaire response that tape ***.²³ Fulflex ***.²⁴ These elastic products are produced on the same machinery as tape, but strip products may differ in composition and in dimension from tape, and, apparently, are not perceived to be the same as tape by producers or purchasers. ***.²⁵

Knitted/braided/crocheted/woven elastic rubber tape is most commonly referred to in the industry as "crocheted elastic tape" or "CET." CET is a product made from extruded rubber thread (either of natural rubber or synthetic rubber²⁶) or cut rubber thread and functions similar to elastic rubber tape for similar uses, but generally not for the exact same applications.²⁷ Although the finished product, CET, is more expensive than elastic rubber tape and is not substituted for tape indiscriminately, it can be and is used by apparel manufacturers to make garments form fitting (such as the leg openings of diapers) where the additional cost and reduced elasticity are overridden by other considerations.²⁸ Neither of the petitioners produces CET or extruded rubber thread. They do produce cut rubber thread, as does the Indian producer. The majority of the petitioners' cut rubber thread is used directly in the wrapping of the inner layers of golf balls instead of undergoing further finishing. Purchasers surveyed by the

²¹ Purchasers' questionnaire response of ***, p. 5.

²² According to information received in the preliminary phase of the investigations, ***. Petitioners argued in their posthearing brief that rubber strip products wider than 1-5/8 inches "are not precursor products to tape, but are separate and distinct products. Their composition and characteristics (issues of heat resistance, modulus of elasticity, resistance to staining) are different than ERT. No ERT customer buys these products. Finally their end uses are different (e.g., copier belts versus underwear) and they are sold and distributed in different channels." Petitioners' posthearing brief, p. 27.

²³ Producers' questionnaire response of Elastotec, p. 17.

²⁴ Telephone conversation with *** on Apr. 16, 1999.

²⁵ Ibid. In respondents' posthearing brief (see exhibit 16), one of Garware's proposals made on Sept. 12, 1997, to Fruit of the Loom was ***.

²⁶ The most common extruded rubber thread made of synthetic rubber is Spandex.

²⁷ Extruded rubber thread is a continuous filament, round and relatively small in cross section, produced by extruding a rubber emulsion through small holes, a process requiring completely different equipment than that used for calendaring and slitting. Cut rubber thread, on the other hand, is made by the same process as elastic rubber tape. The major difference is its relatively small size and approximately square cross-sectional shape (the width/thickness of cut rubber thread ranges from 0.027 inch to 0.064 inch). Because of the small size and relative fragility of extruded and cut rubber thread, it cannot be used directly in apparel as is elastic rubber tape, but must first be combined with a nonelastic textile fabric into the form of a braid, knit, or weave--an additional process which not only adds to the cost of manufacture, but also reduces the overall elasticity. Petitioners report that only 20 percent of the rubber's original elasticity is retained after combination with the fabric. Spandex threads are even smaller than those made from natural rubber and may be spun into a yarn before combination with a fabric.

²⁸ In its questionnaire response, Elastomer stated that ***.

Commission in this phase of the investigation generally responded that they do not purchase CET. However, one large purchaser of tape also purchases CET for use in ***, and stated that ***.²⁹ Another purchaser (who is not a manufacturer, but also imports tape from India) stated that CET can be a substitute for tape in every application, including “swimwear, underwear, activewear, and bedsheets, or anywhere an elastic may be needed, depending on the customer’s preference.”³⁰ This company also stated that “CET is more expensive than strip rubber, particularly in the narrow widths (e.g., 1/4 inch through 3/4 inch); does not possess the same resistance to chlorine, salt, urine, or sun tan oil as does elastic rubber tape;³¹ and, therefore, may not be preferred to tape for these uses. CET is sold and purchased by the yard, unlike tape, which is purchased and sold by the pound.”³²

With respect to substandard grades, variously described as “second quality,” “off-specification,” “salvage,” “wrinkled,” and the like, apparel manufacturers responded that these grades are not substitutes for standard quality elastic rubber tape. One manufacturer of *** also stated that off-specification grades are not substitutes for standard grades, but that this company can use such off-specification material in its product.³³ The two domestic producers of tape reported that they do not deliberately make substandard grades, and if off-specification tape is produced it is usually disposed of instead of being sold. The Indian producer sold *** pounds annually during 1997-98 of off-specification material in the United States at “disposal” prices (roughly, *** percent of the unit value of the standard quality material); these quantities represent a decreasing proportion of total imports from India, and may decrease with a decline in production problems that Garware has encountered. Some of the imported tape has been substandard material sold to nontraditional segments of the market. A further discussion of these sales is presented in Part IV of this report, “U.S. Imports, Apparent Consumption, and Market Shares.” See additional discussion of India’s production and exports in Part VII, “Threat Considerations.”

Channels of Distribution

U.S. producers sell substantially all of their product directly to end users, which are firms that use elastic rubber tape in the manufacture of their products, chiefly items of apparel. The Indian producer currently sells to U.S. end users through two importers. Although these two importers are legally independent of the Indian producer, one (Elastomer, Inc.) was specifically created to market the Indian products, and Elastomer negotiates all sales and prices. U.S. and Indian producers compete head to head in the subject product’s major markets. Although tape may be sold and delivered domestically, it is not necessarily consumed domestically. Several manufacturers of underwear and swimwear have offshore affiliates to which they ship their purchased tape for incorporation into the garment.³⁴ Elastomer has

²⁹ Purchasers’ questionnaire response of ***, p. 6.

³⁰ Purchasers’ questionnaire response of ***, p. 6.

³¹ Ibid.

³² The limited information available shows a unit price of *** for CET as shown in the purchaser response of ***, p. 6. Further information on the substitutability between elastic rubber tape and CET is presented in Part II of the report.

³³ Purchasers’ questionnaire response of ***, pp. 5 and 7.

³⁴ Reportedly, a number of tape customers have apparel assembly operations in Central America, but throughout 1996-98 purchased tape for delivery to their “kitting” facilities in the United States. (A kitting facility is a location where tape and other component inputs are collected and shipped elsewhere for assembly of the downstream product.) According to the two U.S. producers, apparel manufacturers that have announced their intention to move their garment production to facilities outside the United States or have actually moved, include ***. Producers’ questionnaire responses of Elastotec and Fulflex, p. 19. However, Fulflex stated that it ***.

(continued)

concluded sales to one large garment manufacturer, Fruit of the Loom, for direct shipment from India to Honduras.³⁵ The Indian tape is to be incorporated into pieces of apparel at that facility and be imported into the United States along with the apparel.

Manufacturing Processes

The production process used to manufacture elastic rubber tape is similar worldwide and consists of four stages: (1) blending, or compounding to produce the desired rubber formulation; (2) calendering, or rolling the formulation into sheets of a desired thickness; (3) vulcanizing the sheets; and (4) slitting, or cutting the sheets to the desired width. In the first stage, rubber in the form of bales, calendered slabs, or crumbs is heated and mixed with oil and chemical additives, antioxidants, and vulcanization agents to impart specific physical characteristics that are desired in the final product.³⁶ Natural rubber is most often used as the basic raw material, although for some applications synthetic rubber is used, or a combination of both. In the second stage, the rubber compound is rolled, or “calendered,” by heavy equipment into sheets of various thicknesses that depend on its ultimate application. In the third stage, the rolled rubber sheet is vulcanized or “cured.”³⁷ Finally, the sheets are slit to specific widths. In order to prevent the tape from sticking together during shipment or impeding processing during apparel manufacturing operations, it is usually coated with talc or a silicone compound. The final dimension tape is then wound onto bobbins or packed in cartons weighing 15 to 30 pounds. The equipment and production and related workers used to produce elastic rubber tape are also used to produce cut rubber thread, rubber sheet, and bandages.³⁸

Price

A comparison of unit values of the imported Indian product with the comparable domestic product in 1997 and 1998 indicates that the Indian product is lower by approximately *** percent for standard grades. This difference is less for tape that is used for swimwear (*** percent to *** percent) than it is for tape that is used in underwear (*** percent to *** percent). For additional comparisons of the imported and domestic products, see Part IV, “U.S. Imports, Apparent Consumption, and Market Shares.”

³⁴ (...continued)

Several of these tape customers acknowledged that they already operate a non-U.S. garment assembly facility or planned to manufacture apparel abroad, but stated there would be no changes in their purchases of tape. Purchasers’ questionnaire responses of ***. Further information on such offshore purchases is presented in Part IV of the report.

³⁵ TR, p. 89 (Mr. Ramesh Garware).

³⁶ The general properties imparted by the blending process through the use of additives and extenders are heat resistance (enabling the rubber to withstand laundering) and elasticity retention (enabling it to maintain elastic strength throughout repeated use). The degree to which the tape retains its elastic ability is measured by the industry in terms of “modulus retention”—the percent of original elasticity remaining after exposure to a certain temperature for a certain length of time. The exact modulus retention of the batch produced is designed to meet the needs of a specific market or buyer. Specific properties incorporated during blending include, for example, resistance to seawater, chlorine, perspiration, and suntan lotions. There is no standardized notation or nomenclature for the various rubber formulations of elastic rubber tape.

³⁷ Vulcanization is the process of reacting rubber with sulfur or other additives to prevent tackiness when warm and brittleness when cool, and to otherwise improve the useful properties of rubber such as strength, elasticity, and abrasion resistance.

³⁸ Producers’ questionnaire responses of ***, p. 7, and ***, p. 4.

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

INTRODUCTION

The discussion in this section draws from information provided by Elastotec, Fulflex, Elastomer, and Coast Pad and Trim. As noted in part I, Elastotec and Fulflex account for all known U.S. production of elastic rubber tape; Elastomer and Coast Pad and Trim accounted for 100 percent of U.S. imports of elastic rubber tape from India in 1998. In addition, information provided by 11 firms that responded to the Commission's purchaser questionnaire is included where appropriate.

MARKET SEGMENTS

Elastotec sells mainly to apparel and swimwear manufacturers, particularly manufacturers of undergarments. Fulflex sells mainly to manufacturers of swimwear, but also sells to some undergarment manufacturers. However, at the hearing representatives from both Fulflex and Elastotec stated that they competed with one another in many markets. Specifically, Mr. Russell (Fulflex) stated that "We both participate in the same markets and compete with the same customers and for the same businesses every single day."¹ Actual quantities, values, and unit values of elastic tape sold, by end use, are found in table IV-4. The 1998 market shares (by quantity) as indicated by these data are given in table II-1.

Table II-1

Elastic rubber tape: Percentage of sales (by quantity) to end-use markets, by company, 1998

* * * * *

Table II-1 shows the extent to which Elastotec is dominant in underwear and Fulflex is dominant in swimwear.² These two major markets are notable for some of their differences. The underwear market is dominated by three (perhaps four/five) large companies (Sara Lee, Jockey, and Fruit of the Loom). The swimwear market is more fragmented, and the manufacturers are typically much smaller.³ The largest underwear companies buy at least *** annually; the large swimwear companies typically buy *** annually. Mr. Russell (Fulflex) stated in the hearing that the largest swimwear account is about one-half the size of the typical underwear account and the typical swimwear account is about one twentieth the size of the typical underwear account.⁴ Underwear makers are on the East Coast; swimwear makers are predominately in New York and on the West Coast. Swimwear and underwear tape are compounded differently, but both domestic companies and Garware have the ability to manufacture the standard elastic tapes used by the swimwear and underwear manufacturers.

Both domestic producers and importers sell to end users; however there are some differences in marketing underwear and swimwear. The companies sell directly to the underwear manufacturers on the

¹ TR, p. 21.

² While Fulflex is dominant in "other" markets, the underwear and swimwear markets dominate the sales of elastic tape (see table IV-4).

³ However, three companies, Jantzen, Authentic Fitness Corp., and Apparel Adventures, have been identified as the major swimwear producers on the West Coast.

⁴ TR, p. 46.

East Coast, but on the West Coast, the domestic producers and the Indian producer also use distributors. Coast Pad and Trim is an importer/distributor for Garware. Coast Pad and Trim is a distributor for many products used by the West-Coast apparel industry; Garware's elastic tape is but one of their products. Century Narrow is a distributor for Elastotec's tape, Jerry Becker & Associates is a representative for Fulflex's swimwear-related tape, and Interwest is a distributor for Fulflex's apparel-related tape.⁵

With the exception of Coast Pad and Trim, all respondents to the purchaser's questionnaire were end users.⁶ The 11 firms responding to the purchaser's questionnaire represented producers of swimwear, underwear, limited-use protective clothing, shock cords, and respirators. Domestic purchasers of elastic rubber tape are dispersed throughout the United States, but the largest concentrations of the responding purchasers were on the East and West Coasts; underwear makers on the East Coast and swimwear makers on the West Coast. Five firms purchased elastic tape solely from U.S. producers, one company purchased elastic tape solely from India, and five firms purchased the material from both countries. No firm purchased elastic tape from a third country. Five of the companies reported having assembly operations outside of the United States and four companies *** reported having kitting facilities⁷ in the United States. None of the companies thought that their product was particularly differentiable from their competitors'; all companies listed at least two competitors.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Producers Supply

Based on the available information, it appears that U.S. producers of elastic rubber tape are able to respond to price increases with relatively large changes in the quantity of shipments of elastic rubber tape. The main factors contributing to this responsiveness are the increased capacity of domestic producers since 1996, low levels of capacity utilization, increasing inventories, and the ability to alter their product mix.

Industry Capacity

Capacity for domestic production has increased by *** percent since 1996. Capacity utilization increased from *** percent in 1996 to *** percent in 1997 and then fell to *** percent in 1998.

Inventories

Inventories of domestic elastic rubber tape increased from *** pounds in 1996 to *** pounds in 1997 and *** pounds in 1998. Inventories, as a percentage of production, increased slightly from *** percent in 1996, to *** percent in 1997 and then rose to *** percent in 1998.

⁵ Both domestic companies have representatives from the corporation visit the West Coast customers.

⁶ Thirty-eight purchaser questionnaires were sent out; not all of the 11 firms responding to the questionnaire responded in full. In some cases, a firm produced more than one category of finished good; one company *** was, in fact, an importer. These responding firms' purchases of U.S.-produced elastic rubber tape accounted for *** percent of U.S. producers' commercial shipments in 1998, and *** percent of U.S. imports from India.

⁷ A kitting facility is a location where elastic rubber tape and other component inputs of a downstream product, such as men's briefs, are collected and shipped elsewhere for assembly of the downstream product. See also, part I, Channels of Distribution, and Part V, Lost Sales Allegations.

Export Markets

Exports of elastic rubber tape accounted for a fairly small share of domestic production. Exports of elastic rubber tape (including transfers to overseas locations) decreased steadily from *** in 1996 to *** in 1998. Exports as a percentage of total production accounted for *** percent in 1996, for *** percent in 1997, and for *** percent in 1998, as both production and exports decreased between 1997 and 1998.

Production Alternatives

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

Subject Imports Supply

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

The only known Indian producer, Garware, indicated in its exporter questionnaire that elastic rubber tape accounted for the majority of its total sales, *** percent on a quantity basis.⁸ Shipments to the U.S. market in fiscal 1998 (April 1998 - March 1999) totaled ***, *** percent of Garware's total shipments of elastic rubber tape in this period.

Industry Capacity

Production of elastic rubber tape by Garware began in fiscal 1996 (Apr. 1996 - Mar. 1997). The company reported that it exported none to the United States in 1996. Production capacity is reported to be *** per year, and has not changed since 1996.⁹ This is approximately *** percent of the production capacity of domestic producers.¹⁰

⁸ Garware also produces heat-resistant rubber thread, accounting for *** percent of production.

⁹ Petitioners note in their postconference brief (at p. 28) that Garware's response to the Commission's questionnaire in this investigation conflicts with its publicly asserted claims of capacity. Garware's questionnaire response lists its capacity at *** pounds per year. However, Garware's Internet World Wide Web site (<http://www.gelindia.com/mfg.htm>) states that "We are equipped with State of the Art machinery to produce 3000 MT per annum of Strip Rubber Elastic Tape." Thus, its publicly stated annual capacity would be 6.61 million pounds.

¹⁰ Garware reported the same capacity numbers in both its preliminary and final questionnaire, despite petitioner's claim that Garware publically reports a larger capacity (see footnote above). The issue was again addressed at the hearing by Mr. Vayu Garware, who stated that the numbers presented to the Commission were accurate. The difference between the numbers on the web site and those presented to the Commission originated when the company from whom it bought the manufacturing facilities (Rotunda) presented a capacity based on a different sized product. The product used in the U.S. market must be thinner. The confusion arises in comparing tonnage produced and yards of material produced. TR, pp. 93-94.

Alternative Markets

The share of sales (based on quantity) to alternative markets has decreased as shipments to the U.S. market have increased, based on quantity. In 1997, home market sales accounted for *** percent of shipments, exports to markets other than the United States accounted for *** percent, and exports to the United States accounted for about for *** percent. In 1998, home market sales accounted for *** percent of all shipments, exports to markets other than the United States accounted for *** percent, and shipments to the United States accounted for *** percent. In absolute quantity terms, however, between 1996 and 1998 shipments to all three markets increased.

Garware has projected that for fiscal years 1999 and 2000 (April 1 through March 31 for each year), home market sales will be *** percent respectively of its total shipments, and exports to countries other than the United States will increase to *** percent respectively of total shipments. Exports to the United States for the next 2 years are projected to be *** percent of all shipments. In the preliminary phase of the investigation, respondents reported that they anticipated a change in Garware's arrangement with Fruit of the Loom. Per a letter from *** to ***, a general agreement had been reached to ship elastic rubber tape directly from India to ***, the location of one of Fruit of the Loom's assembly operations.¹¹ In the final phase of the investigation, it was stated that ***.

U.S. Demand

Demand Characteristics

Based on aggregate data, U. S. consumption increased from *** million pounds in 1996 to *** million pounds in 1997 and then decreased to *** million pounds in 1998. Importer *** reports that demand for elastic rubber tape has decreased since 1996 because knitted and woven elastic products have become less expensive, some domestic apparel manufacturers have shifted their production to off-shore facilities, and some purchasers have switched to other elastic fabrics because of some consumers' allergies to natural latex rubber. Most notably, manufacturers of disposable diapers switched from use of elastic rubber tape to other materials. Importer *** reports that demand and prices are down significantly since 1996. Both domestic producers stated that demand has been fairly stable, except for seasonal fluctuations. Five purchasing companies reported no change in the demand for their products, with no corresponding change in demand for elastic rubber tape; five companies reported an increase in demand for their products, creating an increased demand for elastic rubber tape.

Substitute Products

There is some substitutability between elastic rubber tape and materials described as braids and wovens, or knitted or CET. These fabrics are woven of elastic threads, or elastic threads and other materials. Elastic rubber tape is used in widths of 1/8 inch and up, and is used bare. It is, however, usually sewn into a hem or similar part of a fabric so that it doesn't come into direct contact with skin.

Elastic rubber tape and wovens or braids of extruded rubber thread are not generally used in the same applications. Elastic rubber tape is generally less expensive than woven or braided fabrics.¹² Five

¹¹ Exhibit 8 in respondents' postconference brief.

¹² A representative of ***, a manufacturer of extruded rubber thread, was contacted by telephone and indicated that woven elastic fabrics and elastic rubber tape were not generally used in the same applications.

purchasers stated that there was no substitute for elastic rubber tape in their product, while five stated that there were technical substitutes but that in most applications the substitutes were not economical.

*** stated that it has switched from using woven elastic inserts to elastic rubber tape in its ***, and has asked *** to investigate the possibility of substituting elastic rubber tape for woven elastic inserts in other apparel, as this “could save a considerable amount of money in a years time.”¹³ There is some substitutability between different grades of elastic rubber tape. Importer *** reports that swimwear compounded elastic rubber tape manufactured by Garware is sold both to manufacturers of swimwear and manufacturers of dresses and men’s athletic apparel.

Cost Share

Most purchasers stated that elastic rubber tape accounted for less than 3 percent of the total cost of their product (with only the manufacturer of *** listing the elastic rubber tape as accounting for *** percent of total cost).

SUBSTITUTABILITY ISSUES

Factors Affecting Purchasing Decisions

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

Purchasers were asked to report the top three factors that affect their selection of a particular supplier of elastic rubber tape. All of the purchasers *** stated that the lowest price didn't necessarily win the sale. As shown in table II-2, quality and availability were the two most important criteria in deciding which product to buy. Price was generally rated as the third factor in choosing a supplier.

On a quantity basis, sales of synthetic elastic rubber tape accounted for *** percent of total sales of elastic rubber tape by Elastotec and *** percent of sales by Fulflex in 1997. Sales of elastic rubber tape 0.006 inch to 0.010 inch in thickness accounted for a *** portion of total sales by Elastotec and *** percent of sales by Fulflex in 1997.¹⁴ Both domestic producers stated at the conference that, in the past, service was very important and that they worked with customers to increase efficiency. Both also stated that falling prices had forced them to discontinue this practice.¹⁵

Purchasers were asked to state how much secondary material their company used. Of the responding purchasers, only one company used a large quantity of secondary material in its manufacture of ***. The remaining companies used at least 90 percent standard material (eight companies used 100 percent standard material). In addition, only one company used a mixture of synthetic and natural rubber

¹³ ***.

¹⁴ Petitioners’ postconference brief, p. 38.

¹⁵ Conference transcript, p. 50.

***,¹⁶ and only one company used CET. Another company tried to use CET, had to discontinue its use, and sold the remaining portion. Companies seemed focused in their manufacturing operations, requiring a limited range of tape sizes, with seven of the companies using four or fewer sizes.¹⁷ Only two of the companies used off-sizes and only two of the companies used seconds.

Table II-2 Elastic rubber tape: Factors affecting purchasing decisions						
Order of importance	Factors					
	Quality	Price	Availability / delivery	Service	Other¹	Total²
	<i>Percentage</i>					
First	82	0	18	0	0	100
Second	9	27	54	0	9	100
Third	0	60	10	10	20	100
¹ "Other" includes long-term supplier relationships, total cost of ownership, unfamiliarity with foreign supply, and extension of credit. ² Totals may not add to 100 due to rounding.						
Source: Compiled from data submitted in response to Commission questionnaires.						

Comparisons of Domestic Products and Subject Imports

Imported elastic rubber tape from India is generally substitutable for comparable compounds and sizes of elastic rubber tape produced domestically. The Indian producer of elastic rubber tape manufactures and exports a limited number of types and sizes of elastic rubber tape, apparently concentrating on compounds and sizes with the largest volume of sales. *** stated that elastic rubber tape produced in India and the United States cannot generally be used interchangeably, but that "If qualification requirements have been met, Indian ERT can be used in the apparel industry if the compounds and sizes are appropriate."¹⁸ Domestic producers and *** reported that elastic rubber tape produced in India and the United States can generally be used interchangeably.

The Indian manufacturer produces only natural elastic rubber tape in thicknesses down to 0.010 inch, and only coats its elastic rubber tape with talc as an anti-blocking agent to minimize tangling. John Mitchell (Global) stated that elastic rubber tape from India could not be used interchangeably with elastic rubber tape produced in the United States because domestic producers of elastic rubber tape worked

¹⁶ However, *** noted in its producer questionnaire response that "the blending of synthetic with natural rubbers is a well documented practice and is done worldwide. Generally, this is done to offset the cost of natural rubber when it exceeds the cost of synthetic rubber."

¹⁷ However, Fulflex reported manufacturing 122 different tape sizes and Elastotec reported producing many.

¹⁸ Importer's questionnaire attachment, p. 3.

closely with purchasers to develop “product packaging systems” to minimize production down-time for their customers.¹⁹

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

In the preliminary phase of the investigation, two purchasers contacted regarding alleged lost sales and revenue stated that the quality of elastic rubber tape imported from India was superior, and one purchaser indicated that service from *** was better than service from domestic producers.²⁰ Two of these purchasers acknowledged that price was also important in their purchase decisions. In the final phase of the investigation, no company responding to the purchaser’s questionnaire stated that the Indian product was superior.

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

Purchasers were asked whether domestic and foreign material could be used in the same application and whether certain types were available from only one source. All responding purchasers stated that domestic and foreign tape could be used in the same applications. No company thought that there was only one source for any product. Only one company having purchased a higher-priced product would buy the lower-priced product based on price alone. As noted in table II-3, only two firms indicated that the U.S. producer’s price was higher than the import price. Four firms stated that the U.S. product was of superior quality and four stated that the U.S. and Indian product were comparable in quality.

¹⁹ Conference transcript, p. 71, testimony of John Mitchell, president of Global Trading, Inc.

²⁰ *** indicated that in addition to a better price, the quality of imported elastic rubber tape was superior because it was “truly talcless.” *** stated that the service and price provided by *** were better, and *** stated that the quality and delivery of imported elastic rubber tape were superior.

Table II-3 Elastic rubber tape: Comparison of U.S. to Indian product			
Factor	Number of firms reporting ¹		
	U.S. superior	Comparable	U.S. inferior
Availability	4	2	2
Delivery terms	4	2	2
Delivery time	4	2	2
Discounts offered	0	8	0
Lowest price	2	4	2
Minimum quantity required	1	7	0
Packaging	1	6	1
Product consistency	3	4	1
Product quality	4	4	0
Product range	2	6	0
Reliability of supply	3	3	2
Technical support/service	3	3	2
Transportation network	3	5	0
U.S. transportation costs	2	6	0

¹ Eight firms provided responses to these questions.

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

Comparisons of Domestic Products and Subject Imports with Nonsubject Imports

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

ELASTICITY ESTIMATES²¹

U.S. Supply Elasticity²²

The domestic supply elasticity for elastic rubber tape measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of elastic rubber tape. 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 among production of other products, the existence of inventories, and the availability of other markets for U.S.-produced elastic rubber tape. Analysis of these factors indicates that the U.S. industry is likely to be able to increase or decrease shipments to the U.S. market significantly within a 1-year period.²³ The staff suggests an estimate in the range of 3 to 5.

U.S. Demand Elasticity

The U.S. demand elasticity for elastic rubber tape measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of elastic rubber tape. This estimate depends on the factors discussed earlier, such as the existence, availability, and commercial viability of substitute products. Demand for elastic rubber tape is, however, a derived demand, hence demand for the downstream product is an important factor limiting the sensitivity of demand to price. As noted above, while there are technically feasible substitutes for elastic rubber tape, those substitutes currently on the market (such as crocheted elastic tape) are more expensive, and therefore they are likely to be used in a subset of elastic rubber tape end-use markets. The staff suggests an estimate in the range of 0.5 to 1.0.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.²⁴ Product differentiation, in turn, depends upon such factors as quality and conditions of sale (availability of products, delivery time, size of delivery, technical assistance, etc.). Based on available information, the staff suggests the elasticity of substitution between U.S.-produced and Indian extruded rubber tape to be in the range of 2 to 4.

²¹ This section discusses the elasticity estimates that are used in the COMPAS analysis presented in app. D.

²² A supply function is only defined for competitive markets.

²³ Two important factors are the high level of unused capacity and the relative basic level of technology required to manufacture elastic rubber tape.

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

PART III: CONDITION OF THE U.S. INDUSTRY

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

U.S. PRODUCERS

The production of elastic rubber tape in the United States has been exclusive to the petitioners, Fulflex and Elastotec, since the early 1990s. Fulflex is a wholly owned subsidiary of the Moore Co., Westerly, RI. Fulflex reported that it modernized and expanded calendering and mixing capacity at its plant in Scotland Neck, NC,¹ in 1997 and 1998. Elastotec originated from the purchases by M-Tec Corp. (North Charleston, SC) of RM Engineered Products, North Charleston, SC, in October 1995 and the Rubber Products Group of JPS Elastomerics Corp., Stuart, VA, in September 1996; this latter purchase was renamed Elastomer Technologies Group, Inc. (Elastomer Tech.) Together, they are commonly referred to as "Elastotec," the joint brand name for their rubber tape products. M-Tec has managed these entities as two plants of a single firm, coordinating all production and marketing, and both produced the subject product. Recently, Elastotec reported that production of elastic rubber tape at RM Engineered Products was consolidated into Elastomer Tech. and transferred to the latter's Stuart, VA, plant.² The tape machinery at RM's facility mostly has been dismantled and, where possible, used elsewhere.³ This resulted in an annual capacity reduction of about ***.

* * * * *

Including the more recent downsizing, U.S. producers have had to restructure operations in the past 10 years. Trends in the downstream industries that use elastic rubber tape have included a complete switch from using tape in certain products and a movement offshore by apparel manufacturers to utilize less costly labor. Diaper producers were major customers for tape that was used in diaper legs and cuffs. But in 1995, the U.S. Food and Drug Administration required special labeling for products containing natural rubber latex in response to reports of allergic reaction to natural rubber. Resulting from the regulation and from other competitive reasons, many manufacturers of disposable diapers increasingly used Spandex or Lycra instead of elastic rubber tape, and synthetic elastic has become the standard for all major diaper labels.⁵ This drop in demand caused by the shift in diapers may have had a significant

¹ Although Fulflex makes elastic products at production facilities in Vermont, Tennessee, North Carolina, and Ireland, the company manufactures elastic rubber tape only at the Scotland Neck plant. Petition, p. 3.

² This consolidation reportedly occurred during the fourth quarter of 1998. Elastotec's response to the Commission's producer questionnaire, p. 3, and telephone conversation with Douglas Booth, President and Chief Operating Officer of Elastotec, on Mar. 25, 1999.

³ Telephone conversation with Joel Rogers, counsel to petitioners, on Mar. 26, 1999, and producers' questionnaire response of Elastotec, p. 3.

⁴ ***.

⁵ Respondents' posthearing brief, Apr. 28, 1999, Declaration of ***, Apr. 19, 1999, Exhibit 10. Also,

(continued...)

effect on both domestic producers; overall, the yearly loss in sales to the producing industry is estimated by respondents at ***.⁶ Respondents further allege that market segmentation broke down and the two U.S. tape producers began to compete more strenuously in each other's product niches.⁷ Secondly, the apparel industry has increasingly moved its sewing operations off-shore to take advantage of U.S. trade preferences and low-cost labor abroad, particularly in the Caribbean Basin.⁸ Although many garment manufacturers maintain kitting operations in the continental United States, such domestic kitting operations serve logistics and inventory control functions. It could be argued that the kitting function could be handled offshore as well.⁹

Geographically, both firms serve the entire U.S. market, and, although they stated they have concentrated on different market segments, there also is an overlap of competition: Elastotec sells mainly to apparel manufacturers, particularly manufacturers of undergarments; and Fulflex sells mainly to manufacturers of swimwear, but also sells to some undergarment manufacturers.¹⁰ Despite their focus on different segments of the market, both firms have similar types of production facilities and both produce or have the capability to produce a wide range of tape products. Other types of products, notably elastic rubber thread and gasket sheet, are produced in the same plants using the same resources. Neither producer imports elastic rubber tape nor consumes it internally in the production of another product. The business cycle is discussed in Part V, "Pricing and Related Information," while market segmentation is discussed in Part II, "Conditions of Competition in the U.S. Market."

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

Data relating to the petitioners' elastic rubber tape operations are shown in table III-1. Overall, these data reflect an expanding industry until 1998, when production, capacity utilization, shipments, and employment indicators turned markedly downward. Inventories increased between 1996 and 1998, and the ratio of inventories to shipments increased during the period. Some indicators, such as the average number of production and related workers, declined throughout 1996-98, while others, such as the average unit values of U.S. shipments, are mixed. Part of the declines in employment may reflect employment shifts in the course of M-Tec's upgrading and streamlining efforts at its two plants (total hours worked rose during the period although total wages paid and hourly compensation declined).

⁵ (...continued)

Declaration of ***, Exhibit 11. The period of the switchover from using elastic rubber tape to using synthetic tape apparently differs from testimony received in the preliminary phase of the investigation at the staff conference. For example, Mr. Russell testified then that elastic rubber tape was used "at one time many years ago, but today...it is no longer an issue;" (p. 31) and Mr. Mitchell stated in response to a question of whether there had been changes in the market (switchover from rubber tape to synthetic tape for diapers) after Jan. 1, 1995, "probably some, but not like they were in the '92, '91 time frame." Transcript of the staff conference, pp. 87-88.

⁶ Respondents' posthearing brief, Exhibit 10, p. 2. Also, ***.

⁷ Ibid., p. 3.

⁸ For a description of apparel industry restructuring, see USITC, *Industry and Trade Summary: Apparel*, USITC publication 3169, March 1999.

⁹ Transcript of the closed session, testimony of ***, pp. 145-149.

¹⁰ Elastotec's shipments for use in underwear accounted for *** of the firm's total shipments in 1998. Fulflex's shipments were more evenly spread in 1998: approximately *** for underwear; *** for swimwear; *** for health care products; and *** for other uses, including ***. Responses to the Commission's producers' questionnaires, p. 7.

Table III-1

Elastic rubber tape: U.S. production, average practical capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of U.S. production and related workers, and hours worked by and wages paid to such workers, 1996-98

* * * * *

Fulflex stated that in 1997 and in 1998 the ***. The *** capacity throughout the period results from ***. Theoretically, the capacity figures shown should represent that portion of U.S. producers' equipment normally reserved for elastic rubber tape production. However, other elastic rubber products are produced in these facilities on the same equipment through the calendaring process as elastic rubber tape (gaskets and other industrial products, for example). As noted earlier, Elastotec reported that the company consolidated tape production at its Stuart, VA, plant late in 1998. The consolidation led to a reduction of annual production capacity by ***, or by ***. According to company officials, the machinery for tape production was taken off-line and partially dismantled for use on other production lines that make products other than tape.

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

Although elastic rubber tape is produced by many firms in many countries, only one firm in India—Garware Elastomerics, Ltd.—has exported it to the United States during the period of investigation and only beginning in 1997.¹ The Indian product is imported by two firms, one on each coast: Coast Pad and Trim Corp. in Vernon, CA; and Elastomer, Inc., in Winston-Salem, NC. Elastomer accounts for the overwhelming bulk of Garware's exports to the United States, and it has sold small quantities to Coast Pad and Trim, the other importer of Indian product, from time to time on an as-needed basis.

Imports of elastic rubber tape from India, U.S. shipments of imports, re-exports, and end-of-period inventories are shown in table IV-1.² The disparity between imports and U.S. shipments of imports is largely reconciled by increasing inventories, but a significant quantity of imports was also re-exported by Elastomer. All of the re-exports were pre-sold before entering the United States.³ Prior to 1999, Garware first shipped this material to the United States rather than directly to Latin American users because the individual shipment quantities were less than a full container load (33,000 pounds), and it was more cost efficient to aggregate them with quantities going to the United States.⁴ After December 31, 1998, Garware began shipping directly to a warehouse it now leases in Honduras, with shipments to a Fruit of the Loom apparel assembly facility on an as-needed basis.⁵ As noted earlier, other apparel manufacturers also have garment assembly facilities abroad, although they apparently continue to purchase tape domestically for their kitting facilities and the purchased tape is then exported to an offshore sewing operation.

Table IV-1

Elastic rubber tape: U.S. imports, U.S. shipments of imports, re-exports, and end-of-period inventories, 1996-98

* * * * *

Elastomer's monthly U.S. imports and end-of-month inventories during September 1997 to April 1999 are shown in figure IV-1. There were relatively small imports before September 1997 that totaled ***.

¹ Conference transcript, pp. 54-56.

² Coast Pad and Trim, the other importer from India, provided limited import data. This company also submitted a purchaser's questionnaire, and ***.

³ According to Elastomer's questionnaire response, ***.

⁴ As noted previously, some material delivered in the United States is subsequently exported by the domestic purchaser to foreign affiliates of the purchaser. In these instances the purchase and delivery (whether of U.S.- or Indian-produced products) are domestic, while the actual consumption (use) is foreign. There are no data, however, to indicate precisely how prevalent this practice is.

⁵ TR, p. 89 (Mr. Ramesh Garware) and p. 105 (Ms. Diya Garware). The purchaser's questionnaire response of Fruit of the Loom states that ***. Several other companies that plan to manufacture apparel outside the United States stated that they will continue to purchase from U.S. sources (questionnaire response of ***), or that they do not plan to change purchasing patterns (questionnaire responses of *** and ***).

Figure IV-1

Elastic rubber tape: U.S. imports and inventories of Indian product, by months, Sept. 1997-Apr. 1999

* * * * *

Nearly all of Elastomer's re-exports in 1997 and 1998 were substandard "wrinkled" material sold to nontraditional markets. In 1997, *** percent of imports and *** percent of U.S. shipments of imports, by quantity, were second quality and side trim (the irregular-sized strips that are slit from the outer edges of the rubber sheet) and were sold to manufacturers of *** at a considerable discount, accounting for the relatively low unit value of domestic shipments. In 1998, only about *** percent of imports and *** percent of U.S. shipments of imports, by quantity, were of such material.⁶ This relative decline is largely accounted for by increased imports and commercial shipments of standard quality material, seen from the significant increase in quantities and average unit values. See additional discussion in Part VII, "Threat Considerations."

Elastomer has arranged to import *** after December 31, 1998.⁷ For a discussion of these imports, see Part VII of this report, "Threat Considerations." As discussed during the hearing, imports into Honduras are inventory designated for call by Fruit of the Loom.⁸

Apparent consumption and U.S. producers' and importers' respective shares of consumption are shown in table IV-2. After increasing by 24 percent from 1996 to 1997, the quantity of apparent U.S. consumption of elastic rubber tape fell by about 17 percent between 1997 and 1998. As a share of consumption, by quantity, importers' U.S. shipments rose from *** percent in 1997 to *** percent in 1998.

Table IV-2

Elastic rubber tape: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S.-consumption, 1996-98

* * * * *

U.S. producers' and importers' shipments of standard quality elastic rubber tape are shown in table IV-3, and shipments by end use are shown in table IV-4. Neither of the domestic producers reported production or shipments of substandard material. Importer Elastomer reported U.S. shipments of substandard material totaling ***. As noted earlier, much of this substandard material was re-exported and/or sold to *** manufacturers and accounts for a declining percentage of total U.S. imports and commercial shipments from the Indian producer. These data also show that imports of standard quality tape for use in underwear from India increased rapidly between 1997 and 1998. Unit values of the Indian product are significantly lower than those of the domestic product.

⁶ In the preliminary phase of the investigation, U.S. producers reported that they also sell small quantities of substandard elastic rubber tape, otherwise known as "salvage" material (as opposed to "damaged" material, which has no known market and must be destroyed). They estimated salvage material to constitute less than 5 percent of overall shipments and probably closer to 1 percent. However, in the final phase of the investigation, they reported no sales or shipments of such salvage material.

⁷ Questionnaire response of Elastomer, p. 4.

⁸ TR, p. 105 (Ms. Diya Garware); also transcript of the closed session, pp. 216-217 (***).

Table IV-3

Elastic rubber tape: U.S. shipments by U.S. producers and imports of Indian product of standard quality material, 1996-98

* * * * *

Table IV-4

Elastic rubber tape: U.S. shipments by U.S. producers and imports of Indian product, by end use, 1996-98

* * * * *

PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

The price of natural rubber, which is the primary raw material used in the manufacture of elastic rubber tape, declined substantially over the period of investigation. The International Rubber Study Group publishes monthly data on the Daily Market Indicator Price, which is a composite of the prices for various grades of natural rubber. The Daily Market Indicator Price in December 1998 was 46.7 percent below the January 1996 price. In addition, monthly prices for ribbed smoked sheet (RSS1),¹ among other rubber products, are tracked by the domestic rubber trading company Lewis & Peat (figure V-1). Although the company's historic data show a similar decline in rubber prices, a trader for Lewis and Peat noted that the price a company actually pays for rubber is determined by the quantity purchased, the time the contract is signed, and how far into the future the contract extends.² It is also possible that natural rubber is blended with synthetic rubber.³

The raw materials cost of goods sold by Elastotec *** per pound in 1996 to *** per pound for elastic rubber tape sold in 1998, a *** percent. The average raw materials cost for Fulflex *** from *** per pound in 1996 to *** per pound in 1998. Differences between the two domestic producers may be due to differences in the product mix or changes in the product mix over time.

Raw material costs for domestic producers as a share of the total cost of goods sold have remained relatively stable since 1996. Domestic producer Elastotec reported that the cost of raw materials was *** percent of the total cost in 1996 and *** percent in 1998. Domestic producer Fulflex reported that raw material costs accounted for *** percent of the total cost of goods sold in 1996 and *** percent of the total cost of goods sold in 1998.

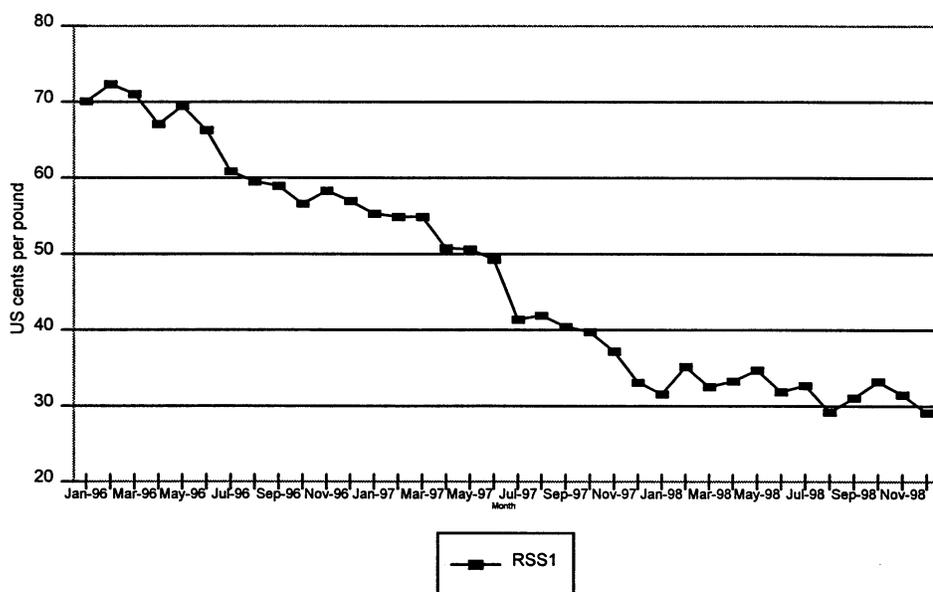
¹ ***.

² Conversation with Mathew Flannery, Lewis & Peat, Apr. 22, 1999.

³ "The blending of synthetic rubbers with natural rubbers in a well documented practice and is done worldwide. Generally, this is done to offset the cost of natural rubber when it exceeds the cost of synthetic rubber." ***'s final producer questionnaire, p. 6.

Figure V-1

Ribbed smoked sheet (RSS1¹): Quarterly average of monthly spot prices of RSS1 quoted in the Singapore Rubber Market, Jan. 1996-Dec. 1998.



¹ RSS1 is one of several standard grades of rubber.

Source: Lewis and Peat, monthly price index for ribbed smoked sheet (RSS1) Jan.1996 to Dec. 1998.

Transportation Costs to the U.S. Market ⁴

U.S. imports of elastic rubber tape from India fall in HTS category 4008.21.00, which includes all noncellular rubber sheet and strip, including both elastic rubber tape and products such as rubber gasket material. Average freight and insurance costs for products in this category from India were 5.1 percent of the customs value in 1996, 5.3 percent in 1997, and 6.2 percent in 1998. Freight and insurance costs were calculated as the difference between c.i.f. value and the customs value, expressed as a percentage of the customs value.

U.S. Inland Transportation Costs

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

Importer Elastomer reported that *** percent of its sales are within 100 miles and the balance within 500 miles of its warehouse. *** percent of sales by Coast Pad and Trim take place within 100

⁴ Material classified under HTS 4008.21.00 now enters the United States duty free.

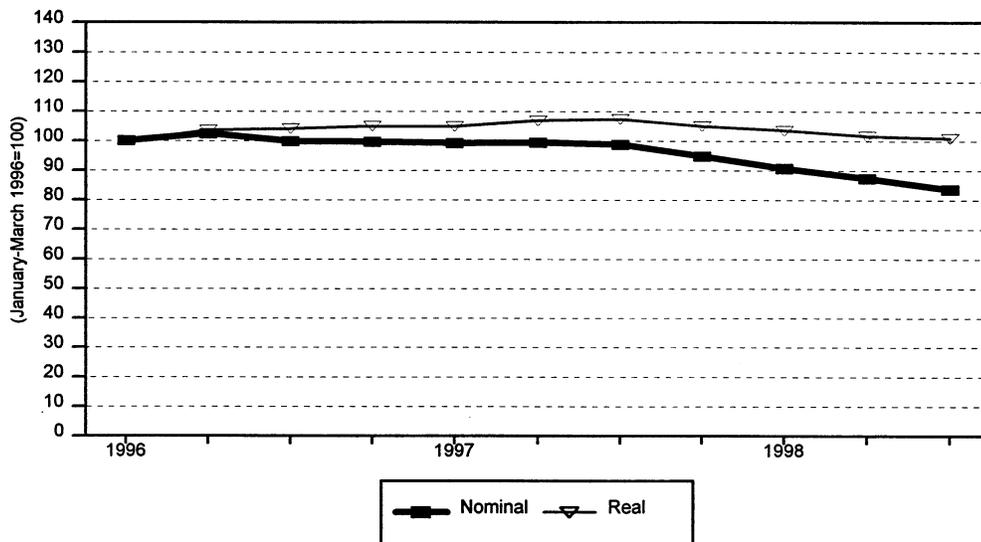
miles and the balance within 500 miles of its location. Elastomer serves customers *** and Coast Pad and Trim ***.

Exchange Rates

The nominal dollar value of the Indian rupee fell approximately 17 percent between January 1996 and September 1998, with essentially all of the decrease occurring in the last 4 quarters. The real dollar value of the Indian rupee increased by 5 percent from January 1996 through September 1997, as prices of manufactured goods increased faster in India than in the United States. The real Indian exchange rate then declined slightly in 1998 (figure V-2).

Figure V-2

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



Source: International Monetary Fund, *International Financial Statistics*, Feb. 1999.

PRICING PRACTICES

Pricing Methods

Elastotec and Fulflex reported that *** percent of their respective sales are under contract. Elastomer and Coast Pad and Trim reported that *** percent of their respective sales of elastic rubber tape were under contract. Nine of the purchasing companies reported that prices were negotiated, and six of the purchasing firms reported the prices were quoted f.o.b. Nine of the companies reported that prices seldom changed more frequently than once a year. Eight of the purchasing firms noted the existence of price leadership, yet both domestic producers and the major importer were mentioned.⁵

⁵ In its questionnaire response, ***.

*** sells almost exclusively on a spot basis rather than on a contract basis.⁶ Prices are negotiated for every transaction, with discounts or rebates from list prices to meet competition. Prices are generally quoted f.o.b. warehouse, with customers arranging for transportation. Contracts are generally negotiated annually and specify a price and quantity, with *** granted single-source status. *** also negotiates prices for each transaction, with discounts from list price based on a customer's annual purchases. Contracts generally set price and estimate volume. All but two of the purchasing companies reported some negotiation with their purchases. One (different) company reported that it was presented prices delivered; the rest noted that prices were from a price list or f.o.b. *** reported that prices are quoted f.o.b. its warehouse. *** generally delivers elastic rubber tape to its customers within the day.

Sales Terms and Discounts

Neither domestic producers nor importers offer discounts for early/prompt payment. All offer terms of net 30 days, with *** offering terms net 60 days on some sales. There is a significant difference in the delivery times from domestic producers versus importers. *** reported an average lead time between a customer's order and the date of delivery of 2 to 3 weeks. *** reported an average delivery time of 2 weeks. Importer *** reported that delivery time for a customer's first order was 8 to 10 weeks, unless in stock; but subsequent orders are shipped on the day of the order. *** reported an average delivery time of 4 hours from placement of an order.

PRICE DATA

Producers and importers were asked to provide quarterly data on the sales volume and quantity sold for four elastic rubber tape products, from the first quarter of 1996 through the fourth quarter of 1998. Quantities were requested in pounds, and sales volumes in dollars. The four products chosen were:

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

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

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

Product 4 -- Elastic rubber tape classified as substandard (second quality, salvage, side trim, wrinkled, etc.) material.

Both domestic producers reported sales of products 1 through 3 within the period of investigation, although *** reported no sales of product 1 before October 1996 and no sales of product 2 before April 1997. *** reported sales of products 1 and 3 starting in the third quarter of 1997 and sales of product 2 starting in the first quarter of 1998. *** reported sales of product 3 starting in the fourth quarter of 1997, but no sales of products 1 and 2. Domestic producers reported no shipments of product 4; Elastomer and Coast Pad and Trim reported shipments of product 4 starting in the third quarter of 1997.

⁶ *** percent.

As shown in table V-1, the quantities of products 1 through 3 accounted for *** percent of commercial shipments of elastic rubber tape by importers⁷ in 1998 and *** percent of all U.S. commercial shipments by domestic producers.⁸

Table V-1

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

* * * * *

Price Trends

Prices are shown in tables V-2 to V-5 and figures V-3 to V-5. Generally, the weighted-average unit values of domestic product 1 fluctuated over a narrow range from 1996 through 1998, with the last two average unit values in 1998 equal to the original value in 1996. Domestic prices were, however, below \$1.80 from the third quarter of 1997 through the second quarter of 1998. In the last half of 1998, the weighted-average domestic price of product 1 rose, even though prices for both U.S. producers declined or remained constant with respect to their first-half prices. Fulflex had ***. During the second half of 1998, Elastotec's shipments ***.

Average unit values for product 2 fluctuated over a narrow range through the second half of 1997, then declined slowly, but steadily, through the last quarter of 1998 (table V-3 and figure V-4). Imports of product 1 ***. Imports of product 2 *** until the last quarter of 1998, when ***. For product 2, Fulflex maintained a *** per pound for ***, while Elastotec's price ***.

The weighted-average unit value of domestically-produced product 3 ***, for the most part, ***. Only in the second quarter of 1998 did the price ***.⁹ As with product 1, the domestic producer Fulflex *** than ***. The difference between *** price and *** price for product 3 *** from *** per pound in 1996 to *** per pound in the last half of 1998. Imports of product 3 ***, with prices ***.

There was *** of product 4, but *** of product 4. ***.

Table V-2

Elastic rubber tape, product 1: Weighted-average quantities and f.o.b. unit values reported by U.S. Producers and importers, by quarters, Jan. 1996-Dec. 1998

* * * * *

⁷ Importer Elastomer reported that *** percent of its commercial shipments in the first half of 1998 were shipments of material that was wrinkled or not of first quality. The average unit value for this material was *** per pound, compared to *** per pound for "good" material. These shipments were not included as sales of elastic rubber tape. However, data reported in their final questionnaire showed somewhat higher unit values.

⁸ Domestic producers produce both synthetic and natural elastic rubber tape. However they reported no sales of synthetic elastic rubber tape meeting the descriptions of these products (petitioners' postconference brief, p. 39, and telephone conversations with *** of *** and *** of ***, Sept. 16, 1998).

⁹ ***.

Table V-3

Elastic rubber tape, product 2: Weighted-average quantities and f.o.b. unit values reported by U.S. Producers and importers, by quarters, Jan. 1996-Dec. 1998

* * * * *

Table V-4

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

* * * * *

Table V-5

Elastic rubber tape, product 4: Weighted-average quantities and f.o.b. unit values reported by importers, by quarters, Jan. 1996-Dec. 1998

* * * * *

Figure V-3

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

* * * * *

Figure V-4

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

* * * * *

Figure V-5

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

* * * * *

Price Comparisons

Indian elastic rubber tape was priced ***. The number of comparisons for each product and the ranges of under- and overselling are reported in table V-6; quarterly instances of price overselling/underselling are presented in table V-7. Price comparisons did not begin until ***.

Table V-6

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

* * * * *

Table V-7

Elastic rubber tape: Percentage margins of under/(over)selling by importers, by products and by quarters, Jan.1996-Dec.

* * * * *

LOST SALES AND LOST REVENUES

Preliminary Phase of the Investigation: Jan. 1996-July 1998

In the preliminary phase of this investigation, petitioners alleged 11 instances of lost sales totaling *** and 8 instances of lost revenues totaling ***. The allegations involved 17 purchasers. Staff was able to contact 13 of the purchasers involved in 9 instances of lost sales and 5 instances of lost revenue, and was able to confirm 5 instances of lost sales totaling *** and 5 instances of lost revenues totaling *** (tables V-8 and V-9).

Table V-8

Elastic rubber tape: Lost sales allegations, Jan. 1996-July 1998

* * * * *

Table V-9

Elastic rubber tape: Lost revenue allegations Jan. 1996-July 1998

* * * * *

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

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

The majority of these losses are from sales which had not yet taken place. They were estimates of future annual sales and revenue losses attributable to competition from less expensive imported tape. The largest single lost sale was to ***. The annual anticipated volume of *** pounds is *** percent of apparent U.S. consumption in 1997. Shipments of imported tape to *** began ***. The greatest loss in revenue other than a lost sale was due to *** on tape supplied to ***. Purchases by *** were *** percent of apparent U.S. consumption in 1997.¹⁰

Respondents have pointed out that all of the sales to *** were for re-export.¹¹ In a telephone conversation on September 24, 1998, *** reported that the company had been investigating the feasibility of establishing "kit locations" outside the United States since November 1997. ***. *** operations could begin in ***. Direct shipments of elastic rubber tape could begin earlier because tape is usually shipped in full container loads. Tape destined for assembly operations in Mexico (a small share of overall sales) may still be shipped to a U.S. location first, as the volume of shipments is smaller.

Final Phase of the Investigation: Aug. 1998-Dec. 1998

In the final phase of this investigation, Fulflex alleged ***. In the final phase, Elastotec alleged ***.¹² The details of these allegations are presented in tables V-10 and V-11.

Table V-10

Elastic rubber tape: Lost sales allegations, Aug. 1998-Dec. 1998

* * * * *

Table V-11

Elastic rubber tape: Lost revenue allegations, Aug. 1998-Dec. 1998

* * * * *

A representative *** confirmed the fact that the company had switched suppliers from *** and gave the following general information. ***.

With respect to the changing suppliers, he ***.¹³

With respect to the size of the lost sale allegation that Elastotec stated in its questionnaire ***.¹⁴

With respect to the company's kitting operations, the following information was offered. ***.¹⁵

¹⁰ Some other shipments involving lost sales and revenue have already taken place. *** negotiated a *** in the price of tape from *** as early as April or May 1997. *** placed its first order with *** in November 1996.

¹¹ Respondents' postconference brief, p. 18.

¹² In its first response to the final questionnaire, Elastotec used annualized numbers from its preliminary questionnaire for its lost sales/lost revenue allegations. On Apr. 9, 1999, the company faxed updated data covering the relevant period.

¹³ TR., pp. 161-163 (***).

¹⁴ ***.

¹⁵ The term "findings" may be a term specific to ***.

*** A representative *** confirmed the lost sales allegations and offered the following information:
***.

A representative of *** confirmed the lost revenues allegation and offered the following information: ***.

*** 16

*** A representative *** confirmed the lost revenue allegation and offered the following information.
***.

*** 17 With respect to the lost revenue allegations, *** offered the following specific information.

16 ***.

17 ***.

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

BACKGROUND

Two producers (Elastotec and Fulflex), accounting for all U.S. production of elastic rubber tape, provided financial data on their elastic rubber tape operations.¹

Elastotec is owned by M-Tec Corp., a privately held company. Its Elastomer Technology Group was formed as a result of two acquisitions which enabled the company to enter the elastic rubber tape business. In October 1995 it acquired RM Engineered Products, Inc. (North Charleston, SC) and in September 1996 it acquired the elastic business (including elastic rubber tape) from the JPS Elastomerics Corp. (Stuart, VA). At its North Charleston plant, it produced elastic rubber products for ***, and elastic rubber tape.² The Stuart, VA, plant produces ***, and elastic rubber tape.

Fulflex, a privately held company, is owned by The Moore Co. of Westerly, RI. It produces elastic rubber products for ***, and elastic rubber tape at its plant in Scotland Neck, NC.

OPERATIONS ON ELASTIC RUBBER TAPE

The aggregate results of operations for the two producers of elastic rubber tape are presented in table VI-1. Aggregate sales volume, net sales, and operating income increased between 1996 and 1997, but all three of these indicators declined between 1997 and 1998. Aggregate unit sales values declined between 1996 and 1997, but rose slightly in 1998. Aggregate changes in unit sales values and costs from year to year may reflect changes in the product mix rather than specific trends. Elastotec's operating income margins for its fiscal year (slightly different than its calendar year) were *** percent in 1996, 1997, and 1998, respectively. Its data and the combined industry fiscal year data are presented in appendix E.

Table VI-1

Results of operations of U.S. producers on their operations producing elastic rubber tape, calendar years 1996-98

* * * * *

The results of operations, by firm, are shown in table VI-2.³ ***.^{4 5 6}

¹ There were some changes in both firms' data since the prehearing report, but the industry trends did not change.

² In the latter part of 1998 the company terminated its tape production at its North Charleston plant and now only produces tape at its Stuart, VA, plant.

³ Elastotec's questionnaire data were verified by the staff.

⁴ ***.

⁵ Also refer to petitioners' response (post-hearing brief, p. 21) to Commissioner Koplan's question regarding SG&A expenses between 1996 and 1998.

⁶ ***.

Table VI-2

Results of operations of U.S. producers, by firms, on their operations producing elastic rubber tape, calendar years 1996-98

* * * * *

The raw materials used to produce tape consist of natural or synthetic rubber, various chemical additives, and tape coatings (lubricants to minimize stickiness). Some of the materials used in swimsuit tape are similar to those used in underwear tape, although the proportion of materials used varies depending upon the specific product. Swimwear tape may contain chlorine-resistant chemicals, for example.

***⁷

On a per-unit cost basis, aggregate raw materials accounted for *** percent of the cost of goods sold in 1996, 1997, and 1998, respectively. The raw material, labor, and overhead costs, for each firm, on a per-pound basis, are shown in table VI-3.

Table VI-3

Elastic rubber tape: Breakdown of components of the cost of goods sold, by firms, calendar years 1996-98

* * * * *

⁷ ***.

The product mix (type of tape) of each company's shipments (based on volume) in 1998 is summarized in the tabulation which follows (in percentages):

	<u>Elastotec</u>			<u>Fulflex</u>			
	*	*	*	*	*	*	*
*** ⁸							
*** ⁹							
*** ¹⁰							

Swimwear tape generally has had stable demand, whereas purchases by underwear manufacturers of underwear tape vary from year to year and quarter to quarter. At the hearing, Mr. Booth (President of Elastotec) stated that "In 1997, we had two particular accounts that had a very large pull of inventory in the fourth quarter. That quarter was certainly an anomaly for us. I can say that, so far this year (1999), we're enjoying a resurgence..... Ninety-seven was a strong year; 1998 did turn down for a variety of reasons, and presently 1999 seems to be resurging for us."^{11 12 13 14 15}

A variance analysis that shows the effects of prices and volume on the producers' net trade sales of elastic rubber tape, and of costs and volume on their total expenses, is shown in table VI-4. This analysis indicates that average prices were relatively stable, but that slightly unfavorable costs and the volume variance impacted on profitability. Because of product-mix factors, the variance analysis may not provide a reasonable indication of the interaction of prices, costs, and volume on changes in profitability.

Table VI-4
Variance analysis for elastic rubber tape, calendar years 1996-98

* * * * *

⁸ ***.

⁹ ***.

¹⁰ Telephone conversation with ***.

¹¹ TR, p. 40.

¹² ***.

¹³ TR (closed session), p. 234.

¹⁴ Ibid., 265.

¹⁵ Ibid., pp. 18-19.

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

The value of fixed assets (property, plant, and equipment), capital expenditures, and research and development costs for elastic rubber tape are shown in table VI-5. The Commission requested documentary support in the final phase of the investigation on the petitioners' arguments that they were forced to cancel expansion projects, reject investment proposals, and reduce the size of their capital investment. ***.

Table VI-5
Value of assets, capital expenditures, and research and development expenses for producers of elastic rubber tape, fiscal (Elastotec) and calendar (Fulflex) years 1996-98

* * * * *

CAPITAL AND INVESTMENT

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

Actual Negative Effects

Elastotec - ***.

Fulflex - ***.

Anticipated Negative Effects

Elastotec - ***.

Fulflex - ***¹⁶

¹⁶ ***.

PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(I)). Information on the LTFV sales is summarized in Part I and is shown in Commerce's notice(s) presented in appendix A of this report;¹ information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

Garware is the only known producer of elastic rubber tape in India.² It began production operations in 1996 and has increased operating rates and shipments since then. However, Garware reportedly has experienced technical problems in producing commercially acceptable quality tape that were resolved only in July 1998, and Garware and its plant supplier are in arbitration to resolve related claims.³ Garware's response to the Commission's questionnaire in this investigation regarding production capacity, ***, is apparently based on its allocation of capacity to produce the actual product mix it has. Discrepancies between this figure and its publicly asserted capacity of 2,550 MT (equivalent to 5.62 million pounds) per year were explained at the Commission's hearing by Mr. Vayu Garware, who testified that Garware's publically reported production capacity was based on figures provided to Garware by the previous owner of the plant and equipment, Rotunda. This capacity was based on a product mix destined for a different market, which required thicker sizes of tape. Because the throughput (poundage of tape production) is higher for tape of thicker dimensions, when Garware found that the market required a thinner size tape (described as half the thickness that Rotunda had informed Garware), the actual or effective capacity was reduced substantially.⁴ Reportedly, Garware does not plan any ***. The only other product it produces is heat-resistant rubber thread, which currently constitutes about *** percent of its total sales. A summary of its tape operations is shown in table VII-1. (Because Garware reported data on the basis of its fiscal year (April to March) rather than the calendar year, the data for its exports to the United States do not reconcile with data shown in tables IV-1 and IV-2).

As Garware continues to ramp up to full production, exports represent an increasingly larger share of total shipments, rising from *** to *** between fiscal 1996 and fiscal 1998 (table VII-1).

¹ Commerce made a negative countervailing duty determination.

² Garware states ***. Foreign producers' questionnaire, p. 7.

³ Garware Elastomerics Limited, *Annual Report 1997-98*, contingent liabilities para. iii on page labeled 28/32. Technical problems reportedly led Garware to restate the date on which commercial production began (used in calculating profit/loss, depreciation, dates on which export obligations begin, and the term of loans) from Apr. 1, 1997, to Apr. 1, 1998, for example. Garware states that production "stabilized" only in July 1998.

⁴ TR, pp. 92-94 (Mr. Vayu Garware). Garware's Internet site states, "We are equipped with State of the Art machinery to produce 3000 MT per annum of Strip Rubber Elastic Tape." Elsewhere in this site, Garware describes itself as the third-largest manufacturer of strip rubber elastic tape in the world. Found at Internet site <http://www.gelinda.com/garware.htm>, retrieved on Mar. 22, 1999. In its annual report, Garware reports that licensed and installed production capacity to produce heat-resistant tension tapes is 2,550 mt (equivalent to 5.62 million pounds) plus an additional 450 mt (992,000 pounds) of capacity to produce heat-resistant rubber threads. Garware Elastomerics Limited, *Annual Report 1997-98*, table 14 on page labeled 30/32.

Exports to the United States, which accounted for about *** of Garware's total exports during 1996-98,⁵ increased from *** to *** during that same time. Projections for 1999 and 2000 show a decline of exports to the United States, to an estimated ***, but a continued increase to other countries, chiefly in Central America where certain U.S. apparel manufacturers have shifted their apparel production from the United States. In this regard, ***. In its response to the Commission's questionnaire, Garware stated ***.

Inventories in both the United States and in India have increased (tables IV-1 and VII-1), but for the most part the reported inventories are either held in anticipation of further orders from an established customer or are pre-sold and awaiting delivery. Garware reported that it had imported or arranged for the importation of elastic rubber tape from India of *** after December 31, 1998.

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

Table VII-1

Elastic rubber tape: India's production, capacity, shipments, exports, and end-of-period inventories, fiscal years 1996-98

* * * * *

⁵ Garware's questionnaire response stated that countries in ***.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

IDAHO**Ada County**

Idaho National Guard Armory (Tourtellotte and Hummel Architecture TR) 801 Reserve St., Boise, 99000253

ILLINOIS**Sangamon County**

US ARMY Aircraft P-51D-25NA 44-73287, Capital Airport, 0.5 N of Jct. of IL 29 and Veterans Parkway, Springfield, 99000254

INDIANA**Elkhart County**

State Street—Division Street Historic District, Roughly both sides of State and Division Sts. between Main and Monroe, Elkhart, 99000255

LOUISIANA**Richland Parish**

Trio Plantation House, 312 Trio Rd., Rayville vicinity, 99000257

St. Tammany Parish

Fountainbleau State Park, 67825 US 190, Mandeville vicinity, 99000256

MASSACHUSETTS**Hampden County**

Indian Orchard Branch Library, 44 Oak St., Springfield, 99000258

Worcester County

Bradley, J.D.C., House, 60 Sears Rd., Southborough, 99000260
Princeton Center Historic District, Jct. of Hubbardston and Mountain Rds., Princeton, 99000259

MONTANA**Madison County**

Union City, Address Restricted, Virginia City vicinity, 99000261

VERMONT**Rutland County**

East Clarendon Railroad Station, VT 103 and East Rd., Clarendon, 99000262

[FR Doc. 99-3192 Filed 2-9-99; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-409]

Certain CD-ROM Controllers, and Products Containing Same-II; Notice of Commission Decision Not to Review an Initial Determination Adding Seven Respondents to the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to

review an initial determination (ID) (Order No. 11) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation to add Actima Technology Corporation, ASUSTek Computer, Inc., Behavior Tech Computer Corporation, Delta Electronics, Inc., Momitsu Multi Media Technologies, Inc., Pan-International Industrial Corporation, and Ultima Electronics Corporation as respondents.

FOR FURTHER INFORMATION CONTACT: John A. Wasleff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3094.

SUPPLEMENTARY INFORMATION: This investigation was instituted on May 7, 1998, based on a complaint filed by Oak Technology Inc. (Oak), 63 Fed. Reg. 26625. The complaint alleges unlawful activities in violation of section 337 through the unlicensed importation and sale for importation of goods infringing claims 1-5 and 8-10 of U.S. Letters Patent 5,581,715.

On August 6, 1998, Oak filed a motion (Motion No. 409-7) to add the seven respondents listed above. Oak and the existing respondents had entered into a stipulation that the proposed respondents should be added. Counsel for the present respondents also represent the additional respondents. The Commission's Office of Unfair Import Investigations supported Oak's motion. No party petitioned for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.42(h) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42(h)).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation, including the motion to add the seven respondents, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

By order of the Commission.

Issued: February 1, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-3270 Filed 2-9-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-383 (Final) and 731-TA-805 (Final)]

Elastic Rubber Tape From India

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-805 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from India of elastic rubber tape, provided for in subheading 4008.21.00 of the Harmonized Tariff Schedule of the United States.¹ Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling of the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that countervailable subsidies are not being provided to producers and exporters of elastic rubber tape from India, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of countervailing duty investigation No. 701-TA-383 (Final) under section 705(b) of the Act (19 U.S.C. § 1671d(b)). The Commission is taking this action so that the final phases of the countervailing duty and antidumping investigations may proceed concurrently in the event that Commerce makes an affirmative final countervailing duty determination. If

¹ For purposes of these investigations, Commerce has defined the subject merchandise as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inch to 0.100 inch (0.15mm to 2.54mm) in thickness, and 1/8 inch to 1 1/2 inches (3mm to 42mm) in width. Such product is generally used in swimwear and underwear.

Commerce makes a final negative countervailing duty determination, the Commission will terminate its countervailing duty investigation under section 705(c)(2) of the Act (19 U.S.C. § 1671d(c)(2)), and section 207.21(d) of the Commission's rules.

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

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Yost (202-205-3432), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—The final phase of the antidumping investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of elastic rubber tape from India are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The final phase of the countervailing duty investigation is being scheduled, under waiver of § 207.21(b), discussed above, for purposes of efficiency. The investigations were requested in a petition filed on August 18, 1998, by counsel for Fulflex, Inc., Middletown, RI; and two subsidiaries of M-Tec Corp., Elastomer Technologies Group, Inc., Stuart, VA, and RM Engineered Products, Inc., North Charleston, SC (together referred to as "Elastotec").

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no

later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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 the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. 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 the final phase of these investigations will be placed in the nonpublic record on April 7, 1999, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on April 20, 1999, 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 12, 1999. 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 14, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 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 § 207.23 of the Commission's rules; the deadline for filing is April 14, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 28, 1999; 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 investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 28, 1999. On May 17, 1999, 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 May 19, 1999, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

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

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: February 3, 1999.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-3272 Filed 2-9-99; 8:45 am]

BILLING CODE 7020-02-P

A-4

SUMMARY: Notice is hereby given of the decision of NRCS to adopt a revised policy for providing nutrient management technical assistance. This revised policy will be disseminated within the agency through updates of the agency's General Manual. This includes revision of existing policy in Title 450, Part 401, Subpart A Technical Guides, Policy and Responsibilities; and new policy in Title 190, Part 402, Ecological Sciences, Nutrient Management Policy. This policy will be implemented through revision of the agency's conservation practice standards for Nutrient Management (Code 590) and Waste Utilization (Code 633). These national conservation practice standards have been revised and reissued to reflect the new policy.

EFFECTIVE DATES: The new policy and revised conservation practice standards are effective upon the date of adoption by the agency. They will be implemented by NRCS State Conservationists as quickly as possible, but not more than 2 years after their date of adoption by NRCS.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be directed to Ecological Sciences Division, NRCS, Washington, D.C. Submit questions in writing to Charles H. Lander, Nutrient Management Specialist, Natural Resources Conservation Service, Post Office Box 2890, Room 6155-S, Washington, D.C. 20013-2890.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. The policy supporting the revised conservation practice standard for Nutrient Management (Code 590) was published for comment in the *Federal Register* on Wednesday, April 22, 1998 (Vol. 163, No. 77, pgs. 19889-19893). Comments were received for 90 days. The revised standard for Waste Utilization (Code 633) was published for comment in the *Federal Register* on Wednesday, October 28, 1998 (Vol. 63, No. 208, pgs. 19889-19893). Comments were received for 60 days.

Signed in Washington, D.C., on March 30, 1999.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, D.C.

[FR Doc. 99-9704 Filed 4-16-99; 8:45 am]

BILLING CODE 3410-16-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-815]

Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape From India

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

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Alysia Wilson or Cynthia Thirumalai, Office of AD/CVD Enforcement 1, Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-0108 or (202) 482-4087, respectively.

The Applicable Statute

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

Final Determination

We determine that elastic rubber tape ("ERT") from India is being sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On February 5, 1999, after the publication of our preliminary determination in this investigation (see *Notice of Preliminary Determination of Sales at Less Than Fair Value and Preliminary Negative Critical Circumstances Determination: Elastic Rubber Tape from India*, 64 FR 5025 (February 2, 1999) (*Preliminary Determination*)), Garware Elastomers Limited ("GEL") withdrew from the remainder of the proceeding. No interested parties provided comments on the *Preliminary Determination* and no request for a hearing was received by the Department.

Scope of the Investigation

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

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

Period of Investigation

The period of investigation ("POI") is July 1, 1997, through June 30, 1998.

Adverse Facts Available

Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination.

GEL failed to respond to the Department's requests for information; namely, GEL withdrew from the investigation. Accordingly, since GEL has withheld necessary information and withdrawn from the proceeding, which prevented the Department from verifying any of GEL's responses and impeded the Department from further investigation, we have determined, under sections 776(a)(2)(A), (C) & (D) of the Act, that we must base our determination for that company on the facts available.

Section 776(b) of the Act further provides that adverse inferences may be used for a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information (see also the Statement of Administrative Action ("SAA"), accompanying the URAA, H. Doc. No. 316, 103rd Cong., 2d Sess. 870). Given GEL's refusal to comply with the

Department's request for information and its withdrawal from participation in the investigation, the Department has determined that GEL has failed to cooperate to the best of its ability in this investigation. Therefore, the Department has determined that an adverse inference is warranted with respect to GEL.

As adverse facts available, the Department is assigning GEL a margin based on the highest margin in the petition. The Department finds that the highest petition margin is appropriate and indicative of GEL's selling practices because if GEL could have submitted information demonstrating the appropriateness of a lower margin, it would have done so. See, Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Venezuela, 63 FR 8946 (February 23, 1998). The court has upheld the Department's assumption that the petition information is probative of a respondent's experience when a respondent failed to submit information in a proceeding. See, *Koenig and Bauer-Albert AG v. United States*, 15 F. Supp 2d 834, 858 (Court of International Trade (CIT) 1998) (stating that "Commerce had a right to assume that the petition information was more probative of [respondent's] experience because if [respondent] could have submitted information demonstrating that it ought to receive a lower margin, it would have done so.").

Therefore, the final rate for GEL is 66.51 percent, which is based on the highest margin alleged in the petition. We used this same petition margin as partial adverse facts available in the *Preliminary Determination*, and as discussed there, the Department has, to the extent practicable, corroborated that margin as required by Section 776(c) of the Act. See also, Memorandum to Susan Kuhbach regarding "Corroboration of Secondary Information, Use of Adverse Facts Available" dated January 26, 1999. Furthermore, no record evidence or argument has been submitted that would cause the Department to call into question the accuracy of the data in the petition. Therefore, we determine that the use of this margin as facts available for GEL is appropriate.

Critical Circumstances

Section 733(e)(1) of the Act provides that, if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or

elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed above in the "Facts Available" section, GEL has not cooperated to the best of its ability in this investigation and application of adverse facts available is appropriate. Since there is no verified information on the record with respect to GEL's volume of imports, and U.S. import statistics are unavailable because ERT is entered under an HTSUS basket category which includes a variety of other products, we have no choice but to apply the adverse inference that GEL has made massive imports of the subject merchandise over a relatively short period of time. Therefore, we find that the second criterion for determining whether critical circumstances exist with respect to GEL's exports of subject merchandise has been met. See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From Malaysia, 60 FR 10550, 10551 (February 27, 1995) where the Department determined critical circumstances existed since it was unable to verify the accuracy of this data.

In determining whether an importer knew or should have known that the exporter was selling the subject merchandise at less than its fair value and thereby causing material injury, the Department normally considers margins over 15 percent for CEP sales and 25 percent for EP sales to impute knowledge of dumping and of resultant material injury. See, Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 62 FR 61787, 61793 (November 19, 1997). In this investigation, we have determined, pursuant to an application of adverse facts available, the margin to be 66.51 percent. As this margin indicates dumping over the 15 and 25 percent thresholds for all of GEL's sales, we determine that the first criterion for ascertaining whether critical circumstances exist has also been satisfied. Therefore, since both criteria for finding critical circumstances under section 733(e)(1) of the Act have been met, we determine that critical circumstances exist with respect to exports of ERT from India by GEL.

The All Others Rate

The foreign manufacturer/exporter in this investigation is being assigned a dumping margin entirely on the basis of facts otherwise available. Section 735(c)(5)(B) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "All Others" rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated. Further, the SAA at 873 provides that where the data do not permit weight-averaging, the Department may use other reasonable methods. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, consistent with the SAA at 873, we are using an alternative method. As our alternative, we are basing the "All Others" rate on a simple average of the margins in the petition, based both on price-to-price comparisons and constructed value. As a result, the "All Others" rate is 45.55 percent.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) and 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all entries of ERT from India, that are entered, or withdrawn from warehouse, for consumption on or after February 2, 1999 the date of publication of our preliminary determination in the *Federal Register*. In addition, as a result of our critical circumstances determination in our final determination, we will instruct Customs to suspend liquidation of GEL's entries of ERT from India between November 4, 1999, and February 1, 1999 (i.e., 90 days prior to the date of publication of our preliminary determination in the *Federal Register*). We will instruct Customs to require a cash deposit or the posting of a bond equal to the percentage margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Exporter/Manufacturer	Margin percentage
Garware Elastomerics Limited (GEL)	A-6 66.51

Exporter/Manufacturer	Margin percentage
All Others	45.55

The "All Others" rate, which we derived from the average of the margins calculated in the petition, applies to all entries of subject merchandise other than those manufactured or exported by the named respondent.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

In accordance with section 735(c)(3) of the Act, if the ITC makes a final negative finding of critical circumstances, the Department will instruct Customs to terminate the retroactive suspension of liquidation of GEL's entries from the period beginning November 4, 1998, through February 1, 1999 (i.e., the 90 day period prior to publication of the preliminary determination). The Department will also instruct Customs to release any bond or other security and refund any cash deposit collected on subject merchandise retroactively suspended during this 90-day period.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 12, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-9760 Filed 4-16-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-533-816]

Final Negative Countervailing Duty Determination: Elastic Rubber Tape From India

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

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Suresh Maniam, Office I, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482-2815 or 482-0176, respectively.

Final Determination

The Department of Commerce ("the Department") determines that countervailable subsidies are being provided to Garware Elastomerics Ltd. and that these subsidies are *de minimis*.

Petitioners

The petition in this investigation was filed by Fulflex, Inc., Elastomer Technologies Group, Inc., and RM Engineered Products, Inc. ("petitioners").

Respondents

The respondents in this investigation are Garware Elastomerics Ltd. ("GEL"), its affiliate, and the Government of India ("GOI").

Case History

Since our preliminary determination on December 7, 1998 (63 FR 67457), the following events have occurred: On January 11, 1999, January 13, 1999, February 8, 1999, and February 12, 1999, we issued supplemental questionnaires to respondents. We received responses to these questionnaires prior to verification. On January 8, 1999, we aligned the date of our final determination with the date of the final determination in the companion antidumping duty investigation of elastic rubber tape from India (63 FR 4973). We conducted a verification in India of the questionnaire responses received from the Government of India, Garware Elastomerics Ltd., (GEL) and one of GEL's affiliates from February 21 through March 6, 1999. Petitioners filed a case brief on March 24, 1999. Respondents filed a rebuttal brief on March 26, 1999.

Period of Investigation

The period for which we are measuring subsidies ("the POI") is GEL's 1997 fiscal year from April 1, 1997 through March 31, 1998.

Scope of Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness, and 1/8 inches to 1 1/2 inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.

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

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"). The Department is conducting this investigation in accordance with section 701 of the Act.

Injury Test

Because India is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from India materially injure, or threaten material injury to, a U.S. industry. On October 15, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports of the subject merchandise from India (see 63 FR 55407 (October 15, 1998)).

De Minimis Threshold for Least Developed Countries

Section 705(3) of the Act requires the Department to disregard *de minimis* subsidies in making countervailing duty determinations. The Agreement on Subsidies and Countervailing Measures extends special and differential treatment to developing and least-developed members of the World Trade Organization, inter alia, by raising the *de minimis* level for these members. Normally, *de minimis* is defined as a

subsidy of one percent or less *ad valorem*. In the case of least developed countries the *de minimis* standard is three percent or less. (See section 703(b)(4)(C) of the Act.)

Because India is considered a least developed country, it is entitled to the three percent *de minimis* test. (See Developing and Least-Developed Country Designations under the Countervailing Duty Law (63 FR 29945, 29946 (June 2, 1998)).

Subsidies Valuation Information

Benchmarks for Short-term Loans: GEL received an exemption from customs duties on certain capital goods under the Export Promotion Capital Goods Scheme contingent on its export performance over a five-year period. We are treating the contingent liability arising from the exemption as a series of short-term, zero rate loans that were taken out in the year prior to the POI. Our benchmark for these loans is an average of the short-term loan rates reported by the State Bank of India for the year prior to the POI. See the Reserve Bank of India's Report on Currency and Finance (1997-98, Statement 70). We find this rate to be representative of short-term commercial interest rates in effect prior to the POI.

As explained below in the Affiliated Parties section, we found GEL to be related to an affiliated company. In addition, as explained below in the *Financial Transaction Between GEL and Its Related Company* section, we found that GEL received short-term loans from its affiliate. To determine whether loans received from its affiliate prior to the POI were on commercial terms, we used the State Bank of India's short-term advance rate (described above) as our benchmark rate. For the loans received from its affiliate during the POI, most did not have interest payments due during the POI. Therefore, GEL would not receive any benefit from these loans during the POI. For those loans received from its affiliate during the POI which also had payments due during the POI, we have used as our benchmark the average interest rate on several short-term lines of credit received by GEL from commercial banks.

Affiliated Parties

In accordance with section 771(33) of the Act, the Department considers the following persons to be affiliated or affiliated persons: (1) members of a family; (2) any officer or director of an organization and such organization; (3) partners; (4) employer and employee; (5) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of

the outstanding voting stock or shares of any organization and such organization; (6) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (7) any person who controls any other person and such other person.

In cases where a company under investigation is affiliated with another company, the Department's questionnaire directs the affiliated company to respond to our countervailing duty questionnaire, if: (1) that company produces the subject merchandise or (2) that company is "related" to the company under investigation, and there are financial transactions between the two companies. Normally, we consider companies to be "related," if they prepare consolidated financial statements or if one of the companies has at least 20 percent ownership in the other. See Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Italy, 61 FR 30288, 30290 (June 14, 1996). If the related company has financial transactions with the company under investigation that are not on commercial terms and the related company is found to have benefitted from subsidies during the POI, the Department may determine that there has been a transfer of subsidies from the related company to the company originally under investigation.

In this case, based on proprietary information in GEL's November 9, 1998 questionnaire response and its November 16, 1998 supplementary questionnaire response (SQR), we determine that GEL is related to its affiliate. In addition, GEL reported, and we verified, that financial transactions have taken place between the two companies. (See March 31, 1999 Memorandum to the File on our reasons for determining the related company to be related.) As described below, our review of these various transactions leads us to conclude that certain of the financial transactions resulted in a transfer of subsidies from the related company to GEL.

Financial Transactions Between GEL and Its Related Company

During GEL's start-up in 1995, the related company supplied certain machinery and equipment and technical advice to GEL. In addition, the related company provided loans and loan guarantees to GEL and, on limited occasions, certain inputs to production. As explained below, we determine that the transactions between GEL and its related company involving loan guarantees and the provision of supplies

were on commercial terms. However, the short-term loans provided to GEL by its related company are not on commercial terms. Nor are the financing arrangements for the machinery and technical advice provided to GEL by its related company.

Respondents argue that the financial transactions (short-term loans, loan guarantees, provision of machinery and supplies, and provision of technical advice) between GEL and its related company were consistent with commercial considerations. In support of this argument, they claim that the stock structure of GEL's related company requires that the transactions be made on commercial terms. The transfer of subsidies to GEL through non-commercial transactions would deplete the related company's assets and would be contrary to its shareholders' interests. They conclude that because these transactions were made on commercial terms, the Department has no basis on which to transfer any of the subsidies received by GEL's related company to GEL.

While we recognize that a company generally acts in the best interests of its stockholders, we cannot disregard evidence to the contrary in specific instances. As explained below, we found the short-term loans and the financing arrangements for the machinery and technical advice which GEL received from its related company were not on commercial terms. Hence, it is appropriate to allocate a portion of these subsidies received by GEL's affiliate to GEL.

Short-Term Loans to GEL From Its Related Company

GEL received short-term loans from its related company both prior to and during the POI. To determine whether GEL's loans received prior to the POI were on commercial terms, we first compared the interest rate on these loans to the benchmark rate. This comparison revealed that the interest rate on the loans from the related party was higher than the benchmark rate. We used the Bank of India rates as our benchmark for loans received prior to the POI because we did not have information on any short-term commercial loans which GEL may have received prior to the POI. Respondents assert that the loans GEL obtained from its related company during the POI were provided at above-market rates to take into account possible delays in payment of interest during the start-up period.

In fact, the Department verified that the rate charged by the related company to GEL was greater than the 13.3 percent rate for commercial loans in 1997-98 as

reported by the Reserve Bank of India. However, even though GEL's rate for pre-POI loans was higher than the benchmark rate, the terms of payment on the loans provided prior to the POI were more favorable than commercial terms. Specifically, GEL was required to (and has) repaid the principal on these loans. However, it has not paid interest on these loans and is not required to do so until after its start-up period concludes. Although deferral of interest is not inconsistent with commercial terms in itself, it is inconsistent when the borrower is not required to pay interest on the deferred interest. In such a situation, the borrower is essentially receiving a zero-interest loan in the amount of the interest that is being deferred. Consequently, we determine that GEL has received loans from its related company on terms inconsistent with commercial considerations. An examination of the loan contract does not support respondents' assertion that the interest rate accounts for delayed interest payments.

For the loans received during the POI, we have used a different benchmark interest rate. In selecting a benchmark for short-term government loan, our preference is to use the interest rate on short-term loans received by the company from a commercial bank as our benchmark. GEL received short-term lines of credit from commercial banks during the POI. Therefore, we have used the average of the interest rate on these lines of credit as our benchmark for loans received by GEL from its related company during the POI.

Therefore, for loans received from the related company during the POI which had payments due during the POI, we compared the interest rate charged by the related company to the benchmark rate. Based on this comparison, we determine the interest rate paid by GEL was less than the benchmark and, hence, that these loans were not on commercial terms.

Provision of Machinery

GEL's related company manufactured and sold certain machinery to GEL during its start-up period. The related company calculated the sales price based on the cost of design, materials, fabrication, assembly and profit in an amount equal to the related company's profit ratio from the prior fiscal year. The costs of producing the machinery and the profit amount were audited by an outside accountant and the sales prices were certified by the accountant to be the assessable value of the machinery. The GOI requires an outside audit of financial transactions between related companies because such sales

are subject to the excise tax and a sales tax. At verification, we found that the related company actually charged GEL the prices certified by the outside accountant.

We consider the related company's method for setting the sales prices to be a reasonable method of determining a commercial price. However, GEL has not paid its related company for the machinery and will not be required to do so until after its start-up period has concluded. In fact, it appears that GEL will not be required to pay for the machinery until it has sufficient cash flow to do so. Moreover, although GEL is required to pay interest on this debt, which has already been outstanding for a considerable period, it has not done so, nor does it appear that GEL is required to pay interest on the outstanding interest.

Because of the length of time that this debt has been outstanding, the open-ended terms of the debt, and the fact that GEL is not currently paying interest on it, we determine that the financing for GEL's purchases of machinery from its related company is not on commercial terms.

Provision of Technical Advice

GEL also received technical advice from its related company's engineers during its start-up period. The related company invoiced GEL for this technical advice based on the related company's appraisal of the cost of providing the technical advice required for each particular project plus an amount for profit and taxes. As with the purchases of machinery from the related company, an outside engineer certified these costs for excise tax and sales tax purposes. At verification, we found that GEL's related company actually charged GEL the prices certified by the outside engineer.

Petitioners assert that the technical advice from GEL's related company was provided at below market rates. They cite a 1996 Price Waterhouse report which states that the GOI requires accountants and engineers to certify transfer prices between related companies to prevent companies from overstating their costs on sales to related companies as a means of reducing the net profit to be reported for income tax purposes. (See Petitioners' February 2, 1999 submission, Exhibit 1.)

At verification, we found that the prices charged to GEL by its related company for technical advice were certified by an outside engineer as the correct assessable value for excise tax purposes. Our review of the engineer's certification of the related company's price for technical advice and our

review of the related company's costs of providing the advice and profit confirmed that the related company's method of establishing a price was a reasonable one.

We consider the related company's method for setting the sales prices to be a reasonable method of determining a commercial price. However, GEL has not paid its related company for the technical advice and will not be required to do so until after its start-up period has concluded. In fact, it appears then that GEL will not be required to pay for the technical advice until it has sufficient cash flow to do so. Moreover, although GEL is required to pay interest on this debt, which has already been outstanding for a considerable period, it has not done so, nor does it appear that GEL is required to pay interest on the outstanding interest.

Because of the length of time that this debt has been outstanding, the open-ended terms of the debt, and the fact that GEL is not currently paying interest on it, we determine that the financing for GEL's purchases of technical advice from its related company is not on commercial terms.

Loan Guarantees

GEL's related company guaranteed several of GEL's medium-term loans and charged no fee for the guarantees. During verification, we discussed loan guarantee practices with an official from the UTI Bank Ltd., a commercial bank in New Delhi. The official indicated that it is not uncommon for a parent company to guarantee a loan received by a subsidiary or for a company to guarantee a loan to a related company. The official also said that it was also not uncommon for the guarantor in these cases not to charge a fee for the loan guarantee. Based on these discussions, we determine that the loan guarantees received by GEL from its related company are consistent with commercial considerations.

Petitioners claim that the related company's guarantee of GEL's loans without charging a guarantee fee is inconsistent with commercial considerations.

We disagree. As explained above, we confirmed at verification that such a practice is not uncommon in India. Therefore, we find the related company's provision of guarantees to GEL free of any fees consistent with commercial considerations. (See section 351.506(a)(2) of Countervailing Duties; Final Rule (63 FR 65348, November 25, 1998) (Countervailing Duty Regulations) (although not in effect for this investigation).)

Provision of Supplies

GEL purchased diesel fuel and other supplies from its related company during the POI and paid an amount for these supplies equivalent to the related company's cost of acquiring them. GEL purchased these supplies through its related company as a convenience. At verification, we found that the prices paid by GEL's related company for the supplies, as reflected on its purchase invoices, were the prices which the related company charged GEL for the supplies.

Based on our review of the purchase invoices, we determine that the sales were at arm's length and that the prices were market prices for the supplies in question. We found no evidence at verification indicating that GEL could not have purchased the supplies at the same price as its related company. Therefore, we determine that GEL's purchases of supplies from its related company were made on commercial terms.

Petitioners claim that the price for supplies was not a market price because it did not include a mark-up for general, selling and administrative expenses incurred by GEL's affiliate in purchasing supplies. For this reason, GEL's purchases of supplies were not made on commercial terms.

GEL paid market prices for the supplies provided by its affiliate and could have purchased these supplies at the same market prices on its own. Therefore, we find that the fact that GEL was not required to pay a price which included a share of the affiliate's general, selling and administrative expenses does not make the price which it did pay to be on terms inconsistent with commercial considerations. It is not uncommon for affiliates to provide services such as this without charging an additional fee.

Subsidies Received by GEL's Related Company

On January 11, 1999, we issued a countervailing duty questionnaire to the affiliated company. On January 16, 1999, we received a response from the affiliated company indicating that all of the programs that it used during the POI were tied to its production and not to the subject merchandise.

At verification, we examined documentation regarding each of the programs that GEL's related company had used during the POI. With the exception of the Income Tax Exemption Scheme, we determine that benefits under the programs used by GEL's related company, which does not produce subject merchandise, were tied

to the products produced and sold by the related company. (Our bases for finding these benefits tied to non-subject merchandise are discussed more fully below.) Because we find the programs used by GEL's related company, with the exception of the Income Tax Exemption Scheme, to be tied to the production and sale of non-subject merchandise, we determine that they confer a benefit only on those products and do not benefit the production or sale of the subject merchandise.

1. Export Promotion Capital Goods Scheme

The Export Promotion Capital Goods Scheme provides for duty reductions or exemptions and an exemption from the excise tax on imports of capital equipment. At verification, the applications, approvals and licenses for this scheme clearly showed that the machinery imported under the scheme was for the production of merchandise produced by GEL's related company. On each of these documents, the products to be produced with the imported machinery were specifically named. The products that had to be exported to satisfy the related company's export obligation under the license were also specifically named on the license. These products were the related company's products, not subject merchandise. In addition, from our observation at verification of GEL's machinery for producing ERT and from our review of machinery imports by GEL's related company, it was clear that the machinery imported by GEL's related company was not the machinery we observed in GEL's plant.

2. Export Oriented Unit (Duty-Free Import of Inputs)

The application, approvals and licenses to obtain this benefit clearly showed that the inputs imported duty-free were inputs to be used in the production of the related company's products. On these documents, the inputs that may be entered duty free are specifically stated. These inputs are inputs used to produce the related company's products and could not be used to produce subject merchandise. Further, the finished products to be produced from these inputs are also clearly stated on these documents. Our review of importations made under the scheme confirmed that the imported inputs were inputs to the related company's products and could not have been used to produce the subject merchandise. Therefore, we find that benefits from this scheme are tied to non-subject merchandise.

3. Pre-Shipment Export Financing

The loan applications and accompanying list of purchase orders from the related company's customers in foreign markets which served as the basis for the loans plainly showed that the products being ordered were the related company's own products.

4. Post-Shipment Export Financing

The loan applications and attached invoices clearly showed that the financing was to enable GEL's related company to extend credit on sales of its products to customers in foreign markets.

5. Duty Drawback of Excise Taxes

The applications, approvals and licenses of GEL's related company clearly showed that the inputs for which duty drawback was claimed were inputs to be used in the production of the related company's products. Our review of importations made under the scheme confirmed that the imported inputs were inputs to the related company's products and could not have been used to produce the subject merchandise.

6. Exemption From the Tax on Interest on Export Credits

During the POI, GEL's related company was not required to pay the interest tax on export credits. GEL's related company received export credits under the Pre-Shipment and Post-Shipment Export Financing programs discussed above. As explained above, these loan programs were tied to the production and sale of GEL's related company's products. Because the interest tax exemption was granted with respect to interest on loans found to be tied to GEL's related company's products, the benefit from the interest tax exemption is also tied to those products.

7. Special Benefits for Trading Houses and Super Star Trading Houses

Although GEL's related company had trading house status during the POI, it did not use its special import license to import restricted merchandise nor did it sell this license during the POI. Because GEL's related company did not benefit from this license during the POI, it was not necessary to determine whether benefits to companies with Trading Houses and Superstar Trading House status are tied to the products produced and sold by these companies.

8. Income Tax Exemption Scheme

During the POI, GEL's related company received benefits under section 80HHC of the Income Tax Exemption Scheme, which provides an

income tax exemption for the profits earned on export sales. Respondents argue that the Department verified that section 80HHC benefits are tied to the production and export of non-subject merchandise. Because section 80HHC provides income tax exemptions to companies based on their total export profits, without regard to the products which earned the profits, we determine that 80HHC benefits are untied export subsidies. See *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Countervailing Duty Administrative Review*, 62 FR 53306, 13-16 (October 14, 1998); *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 70 (June 14, 1996); *Final Negative Countervailing Duty Determination: Silicon Metal from Brazil*, 56 FR 26988 (June 21, 1991).

We normally attribute a subsidy received by a company to the products produced by that company. However, as discussed above, untied subsidies received by one company may be allocated to a related company, if the company receiving the subsidies transfers them to the company producing the subject merchandise. In GEL's case, as discussed above, its related company provided loans and financing for machinery and technical advice on non-commercial terms. These non-commercial transactions indicate that a portion of the untied subsidies received by GEL's related company should be allocated to GEL.

To determine the portion attributable to GEL, we first calculated the benefit received by GEL's related party under the Income Tax Exemption Scheme. We then calculated GEL's share by multiplying the total benefit by GEL's share of the total sales of both companies. We used this method to determine GEL's share because, although this is an export subsidy to GEL's related company, it should not be considered an export subsidy to GEL for allocation purposes. This is because it was not GEL's exports that gave rise to the portion of the benefit which GEL received but, rather, the short-term loans it received from its affiliate on terms inconsistent with commercial considerations. Since the portion of the subsidy transferred to GEL is untied, and the benefit to GEL is calculated using GEL's total sales, we have used total sales of the two companies as the basis for calculating the share to be allocated to each company. For the countervailable subsidy to GEL, see section below on the Transfer of Income Tax Exemption Scheme Benefits to GEL.

Programs Determined To Be Countervailable

With regard to GEL, based on the information provided in the responses and the results of verification, we find the following programs to be countervailable:

A. *Export Promotion Capital Goods Scheme*

The Export Promotion Capital Goods Scheme (EPCGS) provides for a reduction or exemption of customs duties and an exemption from excise taxes on imports of capital goods. A reduction of customs duties and an exemption from excise taxes are provided under the Concessional EPCGS. Under this scheme, producers may import capital goods at reduced rates of duty and must undertake to earn convertible foreign exchange equal to four times the value of the capital goods within a period of five years. For failure to meet the export obligation, a company is subject to payment of all or part of the duty reduction, depending on the extent of the export shortfall, plus interest on the amount of the payment. (See the section below on the *Excise Tax Exemption under the EPCGS* for our treatment of this tax exemption.)

In 1995, GEL received a license under the Concessional EPCGS to import certain machinery to be used in the production of ERT. GEL met the portion of its export undertaking applicable to the POI and has not had to pay duty or interest on the duty reduction which it received under the EPCGS.

The customs duty reduction under the EPCGS represents revenue foregone by the GOI and confers a benefit on GEL. In addition, the duty reduction benefit is specific because its receipt was contingent upon anticipated export performance. Therefore, we determine that duty reduction under the EPCGS is a countervailable subsidy within the meaning of section 771(5) of the Act.

Petitioners claim that GEL did not receive a benefit from the duty exemption under the EPCGS until GEL satisfied its export obligation as required by the scheme. Petitioners state that because GEL's exports during the POI served to satisfy this export obligation, GEL realized the entire duty exemption during the POI. Petitioners also claim that the benefit cannot be allocated to the period before GEL began commercial production because allocating a benefit to a pre-production period would create a loophole in the countervailing duty law because the subsidy could not be countervailed during a period when nothing was exported.

Respondents claim that it is the Department's established practice to expense customs duty exemptions in the year of receipt. Respondents cite *Porcelain-on-Steel Cookware from Mexico: Final Results of Countervailing Duty Administrative Review* (57 FR 562, 564; January 7, 1992) (Cookingware from Mexico), as a case in which the Department rejected the Government of Mexico's claim that the benefit of an import duty exemption on machinery should be allocated over the useful life of the machinery. Respondents assert that in this case, the Department should follow its usual practice and expense the benefit in the year of receipt.

GEL may be obligated to pay the duties on its imported capital equipment in each year or in any given year during the five-year period following importation. Thus, we find that the waived duties are properly viewed as a contingent liability loan because GEL has the use of funds from the waived duties interest free for a five-year period, assuming it meets its export obligation. Where a government provides a long-term, interest free loan and the obligation for its repayment is contingent upon subsequent events, our practice is to treat any balance on the loan outstanding during a year as an interest-free short-term loan (in the amount of the duty waived) that is rolled over each year. (See *Final Negative Countervailing Duty Determination: Fresh Atlantic Salmon from Chile*, 63 FR 31437, 42-43 (June 1998); see also section 351.505(d)(1) of the *Countervailing Duty Regulations*. Although GEL met the portion of its export obligation applicable to the POI, we cannot be certain at this point that it will continue to do so in the future. Therefore, we have considered the full amount of the customs duty reduction to be an interest free loan that was outstanding during the POI.

In *Cookingware from Mexico*, although exporters were subject to forfeiting a portion of benefits if they sold production domestically, receipt of the benefits was not dependent upon exporting a specified amount, the duty exemption received by the company was not contingent on the company's meeting an export obligation for a number of years, nor did it require that duty be paid if the company failed to meet the export obligation. Therefore, the Department did not treat the duty exemption as a contingent liability but countervailed the full amount of the exemption in the POR. As described above, however, the duty exemption under the EPCGS, is contingent on a company's meeting a specific export obligation for a period of five years.

Therefore, we properly countervailed it as a short-term interest-free loan, which is rolled over for a period of five years.

Because we consider the loans to be rolled over from year to year, we used a short-term interest rate as our benchmark for measuring the subsidy. We calculated the benefit as the difference in the interest that GEL paid on the zero-rate loan received as a result of the duty reduction under the EPCGS and the interest GEL would have paid at the benchmark rate. We divided this benefit by GEL's total exports of all products because the capital equipment imported under the Concessional EPCGS was used in the production of all of GEL's products. On this basis, we calculated a subsidy of 1.53 percent ad valorem.

B. Transfer of Income Tax Exemption Scheme Benefits to GEL

As discussed above, GEL's related company received an income tax exemption under section 80HHC of the Income Tax Exemption Scheme on profits from exports during the POI. The 80HHC exemption received by GEL's related company represents revenue foregone by the GOI. In addition, the exemption is specific within the meaning of section 771(5A)(B) of the Act because it is contingent on export performance. Therefore, we determine that the 80HHC exemption received by GEL's related company during the POI is a countervailable subsidy within the meaning of section 771(5) of the Act.

As explained above in the Income Tax Exemption Scheme section, the benefit of the 80HHC exemption is attributable to both GEL and its related company. Accordingly, we have calculated the subsidy for ERT by dividing the amount of the income tax savings from the 80HHC attributable to GEL by GEL's total sales of all products. On this basis, we calculated a subsidy of 0.18 percent ad valorem for GEL during the POI.

Programs Determined To Be Not Countervailable

A. Exemption From Excise Tax on Imports of Capital Goods

In addition to providing for a reduction or exemption of customs duties, the EPCGS also provides for an exemption from excise duties on imports of capital goods. In its February 16, 1999 response, GEL reported that its benefit under the EPCGS was the sum of the customs duty reduction and the excise duty exemption. However, at verification, GEL officials claimed that the excise duty exemption was not a benefit because had GEL not received the exemption but instead paid the

excise duty, it would then have received excise credits in the amount of the excise duty payment. Specifically, when GEL purchases inputs or capital goods in the domestic market or in foreign markets (other than under the EPCGS), GEL pays the excise duty or tax. When GEL sells finished products in the domestic market, it collects the excise tax from its customers and remits it to the GOI. In computing the amount of excise tax it must remit to the GOI, GEL gets a credit for the amount of excise taxes it paid on its purchases of inputs and capital goods. In this way, manufacturers are ultimately not burdened by the excise tax. It is essentially a tax on the consumer.

Petitioners claim the Department should not offset the benefit of the excise tax exemption on imports of capital equipment under the EPCGS because respondents did not claim this offset until verification. In addition, petitioners state that the Department's practice precludes consideration of the secondary tax effect on the subsidy provided by the EPCGS.

Respondents claim that at verification, GEL provided information that demonstrates that the excise duty exemption should not be considered a subsidy because payment of the tax results in a credit that can be used against excise taxes owed. In Ball Bearings and Parts Thereof from Thailand: Final Results of Countervailing Administrative Review (60 FR 52371, 52373; October 6, 1995) (Bearings from Thailand—Final), the Department stated that under the VAT system, companies receive credit for the VAT paid on the purchase of inputs and, as a result, no VAT is effectively paid by companies on these purchases. Therefore, the exemption from the VAT was found not to be a countervailable subsidy.

We do not view the excise tax as a prior stage cumulative tax (see item (h) of the Illustrative List of Export Subsidies, Annex I of the Agreement on Subsidies and Countervailing Measures (Illustrative List). The excise tax, like a value added tax, is treated as being passed on to the consumer. (See Ball Bearings and Parts Thereof from Thailand: Preliminary Results of a Countervailing Duty Administrative Review, 60 FR 42532 (August 16, 1995)) (Bearings from Thailand—Preliminary). Indian Companies pay the excise tax on purchases of inputs and capital goods and collect it on sales of finished goods. When a company pays the tax it enters a tax credit in its excise tax book. When a company sells finished goods it enters a debit in its excise tax book. Periodically, the company remits in

cash any excess excise tax debits over credits to the GOI and receives a rebate for any excess of tax credits over debits. Therefore, because GEL does not ultimately bear the excise tax, we determine that the exemption from the excise tax under EPCGS is not a countervailable benefit.

B. Drawback of Customs Duties

In the preliminary determination of the companion antidumping duty investigation, the Department found that respondents had not provided sufficient information to demonstrate that drawback was tied to import duties paid and should, therefore, be added to U.S. price. (Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Determination of Critical Circumstances: Elastic Rubber Tape from India (64 FR 5025, 5028; February 2, 1999) (Preliminary Anti-Dumping Determination)). On the basis of this finding, petitioners allege that GEL received impermissible drawback and claim that the Department should include this program in its countervailing duty investigation.

Under this program, exporters may file a drawback claim after the exportation of finished goods to recover import duties paid on imported inputs used to produce the export goods. Exporters may claim drawback at the all-industry rate or the brand rate. The all-industry rate is an average rate calculated for a product or group of products. The brand-rates are applicable to products of specified description and technical characteristics, which are exported by specific exporters, and permit reimbursement of actual duties paid. Companies may use the all-industry rate or apply for the brand rate and supply the documentation necessary to establish the brand rate.

In 1997, GEL filed an application for a brand-rate to be used in calculating the drawback on export shipments of ERT for inputs imported prior to the POI. At verification, we examined GEL's drawback application. The application included copies of the import entries on which the drawback was based, which showed payment of customs duties on the imported inputs, a bill of materials showing the quantity of each input used by GEL to produce one metric ton of ERT, the duty per kilogram of each input, and the duty borne by each input per metric ton of ERT. The quantities were certified by company officials and by an outside accountant.

An officer from a regional office of the Central Board of Excise and Customs (CBEC) audited GEL's application. As a result of the audit, the quantity of ERT on which GEL could claim drawback

was reduced because the quantity of inputs imported by GEL was sufficient for the production of only this reduced quantity. In addition, the drawback rate was adjusted downward slightly to take into account waste.

At verification, we were unable to review the audit of GEL's application because GOI officials indicated that it had been archived. Instead, we reviewed two recent audits of brand rate drawback applications from other companies producing products other than ERT to determine how the GOI audited these applications. Each of the audits appeared thorough, took several days to complete, and were described in detail in a lengthy audit report. The quantities of inputs necessary to produce a given quantity of each of these companies' outputs was checked by the CBEC officer against each company's actual stock issuance records and batch production cards.

The drawback of customs duties paid on inputs, which are consumed in the production of goods for export, is a permissible rebate and not countervailable provided it is not excessive. (See Item (i) of the Illustrative List: See Ball Bearing from Thailand—Final). Based on our review of GEL's application for brand rate drawback and the GOI's procedures for auditing such claims, we determine that GEL's adjusted brand rate of drawback provides a non-excessive rebate of customs duties paid on imported inputs, *i.e.*, the duty rebates which GEL received on exports of its finished products did not exceed the duty paid on the imported inputs. Therefore, we determine that the drawback received by GEL under the brand rate of drawback is not countervailable.

Because GEL submitted a published input/output norm with its drawback application, petitioners claim that GEL's drawback claim was based on standard input/output norms rather than on the quantities of inputs GEL actually used to produce a unit of ERT. Therefore, they assert, drawback paid on these inputs is based on an estimate of the duties paid rather than on actual duties. Petitioners also claim that based on this standard norm, GEL's exports qualify for drawback whether the ERT is produced from imported or domestic inputs.

GEL is the only producer of ERT in India. The bill of materials listing the quantities of each input needed to produce a unit of ERT was based on GEL's own production experience. (See the March 19, 1999, verification report on GEL, Exhibit 35 at page 3). At verification, we found that auditors from the regional offices of CBEC audit the applications of companies applying

for brand-rate drawback. We also found that they audited the input/output ratios based on companies' actual usage as reflected on inventory and production records. The reason that the GOI publishes norms is so they can be disseminated to customs offices throughout the country.

We disagree with petitioners' claim that GEL may receive drawback even if it uses domestic inputs. At verification we found that GEL had applied to receive drawback on a certain quantity of ERT exports. The GOI reduced this quantity to correspond to the quantity GEL was able to produce based on the quantities of inputs it had imported. In addition, GEL was required to include with its application copies of the import entries of each of the imported inputs indicating that duties had been paid on these inputs. Thus, it is clear that GEL's inputs were imported inputs and not domestic ones.

C. Advance Licenses

The Advance Licenses Program allows for the duty-free importation of inputs to be incorporated into finished products for export. Companies importing under advance licenses are obligated to export the products produced using the duty-free imports. GEL received an advance license late in 1997. With this license, GEL was authorized to import duty free a given quantity of the raw materials needed to produce ERT and was obligated to export the ERT produced with these inputs. The quantity to be exported was also specified on the license.

In *Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review* (62 FR 32297, 32306; June 13, 1997) (1995 Castings Final), the Department found the advance license system to accomplish what a drawback system is intended to accomplish, *i.e.*, to allow finished products produced with imported inputs to be exported free of the import duties assessed on the imported inputs. In the 1995 Castings Final, the Department concluded that because the imported inputs were used to produce castings which were subsequently exported, the duty-free importation of these inputs under the advance license was not a countervailable subsidy.

GEL's advance license allows for the duty-free importation of the inputs needed to produce ERT. We verified that GEL did not transfer this license but used it to import inputs that were subsequently used in the production of ERT. At verification, we reviewed customs entries of imported inputs, entries in GEL's inward shipping

register, entries in GEL's stock receipt and issuance register and in GEL's batch production card to confirm that imported inputs were used by GEL to produce ERT. From our examination of the import entries and these inventory control records, it was clear that GEL used the imported inputs to produce ERT. It was also clear from our review of export entries that GEL was exporting the ERT produced from the imported inputs thereby satisfying its export obligation under the license. Because GEL used the duty-free imported inputs to produce ERT which was subsequently exported, we do not consider the Advance License program to be countervailable.

Petitioners argue that the advance license is based on standard input/output norms rather than on a producer's actual input/output experience and, therefore, under the Department's practice, countervailable. Further, petitioners indicate that under the Advance License Scheme, inputs are merely assumed to be imported.

Citing *Iron Metal Castings from India*, respondents argue that Advance Licenses were found not to be countervailable because the Advance License Scheme is a drawback scheme which provides duty rebates commensurate with the duties paid on imported inputs used to produce the exported product.

We agree with respondents that the Advance License Program has been found not countervailable in the past because under this program the drawback of import duties was not excessive. See *1995 Castings Final*. Despite petitioners' assertions, the Advance License is not based on standard input/output norms. GEL's Advance License specified the quantity of inputs permitted to be imported under the license and the quantity of finished goods to be exported. As explained above, in the section of this notice on Duty Drawback on Exports, we found at verification that the bill of materials (input/output formula) which GEL used was based on its actual experience not a standard norm. This input output/formula was also used to determine GEL's obligation under the Advance License. Therefore, we find that GEL used actual production experience rather than a standard norm for purposes of the Advance License Scheme. Also, under the Advance License Scheme, inputs are not merely assumed to be imported, but must be demonstrated to be imported on the basis of evidence of importations of the inputs required to produce the export product.

Programs Determined Not To Be Used

Based upon the information provided in the responses and our verification, we determine that GEL did not apply for or receive benefits under the following programs during the POI:

- A. Passbook Scheme/Duty Entitlement Passbook Scheme.
- B. Export Processing Zones/Export Oriented Units Programs.
- C. Income Tax Exemption Scheme.
- D. Pre-Shipment Export Financing.
- E. Post-Shipment Export Financing.
- F. Import Mechanism (Sale of Import Licenses).
- G. Exemption of the Interest Tax on Export Credits.
- H. Re-discounting of Export Bills Abroad.
- I. Programs Operated by the Small Industries Development Bank of India.
- J. Special Imprest Licenses.
- K. Market Development Assistance.
- L. Special Benefits to Export Houses, Trading Houses and Super Star Trading Houses.
- M. Duty Drawback on Excise Taxes.
- N. Pre-Shipment Export Financing in Foreign Currency.

Programs Determined Not To Exist

Based on information provided by the GOI and the results of verification, we determine that the following program does not exist: Preferential Freight Rates.

Interested Party Comments*Comment 1: Use of Facts Available*

Petitioners argue that GEL's related company did not properly respond to the Department's questionnaire. Therefore, if the Department determines that any of the financial transactions between the two parties were made on terms inconsistent with commercial considerations, the Department should apply adverse facts available. Petitioners claim that in its January 11, 1999 questionnaire to GEL's related company, the Department informed GEL's related company that it must either respond to the questionnaire by February 11, 1999, or risk facts available being used if it determined that the transactions between the two companies were not on commercial terms. GEL, on behalf of its related company, responded late to the Department on February 16, 1999. In this late submission, petitioners argue that GEL listed the programs used by its related company rather than providing a full description, and merely stated that all of the benefits received were directly tied to non-subject merchandise. In addition, petitioners argue that GEL's related company failed to certify the submission.

Petitioners assert that GEL has falsely certified its responses by simply asserting that the financial transactions with its related company were made on commercial terms and subsequently not responding to the Department's questionnaire. If GEL and its related company had been more forthright in their initial responses, petitioners claim they would have been able to comment fully on the issues and the Department would have been able to issue supplemental questionnaires more readily. Because of these failures, facts available is warranted.

Petitioners assert that at a minimum, the Department should apply facts available to the related company's use of the EPCGS program because GEL never completely answered the Department's questions regarding this program. As such, it is unclear whether the related company benefitted from this program. Petitioners argue that the Department should make adverse inferences regarding certain transactions between GEL and its related company and find that benefits transferred to GEL from the affiliate's use of the EPCGS.

Respondents assert that petitioners' request that the Department apply facts available to GEL is unfounded. They state that they have cooperated fully in this investigation by responding to all of the Department's requests for information and cooperating fully during verification.

Regarding petitioners' claim that GEL failed to accurately respond to the Department's September 18, 1998 questions regarding the EPCGS program, respondents assert that their responses were accurate and complete. Respondents argue that GEL responded that it did not use or benefit from the EPCGS program during the POI based on the Department's previous treatment of such programs as benefitting companies at the time the duty on imports was actually paid. Because GEL received benefits from this program outside of the POI, it did not report the benefits. However, respondents point out that they did provide the information once the Department informed the company of its possible change in methodology.

Respondents also argue that GEL should not be penalized for petitioners' failure to include the Drawback of Customs Duties program and Advance License Scheme in their petition. Because these programs have been previously found not countervailable by the Department, respondents claim that petitioners are required to provide new evidence to suggest that the Department's prior decisions were incorrect or that the programs are

otherwise countervailable. Petitioners provided no such evidence.

Furthermore, according to respondents, GEL's related company should not be penalized for not providing a separate response to the Department's questionnaire. Because the related company believed its financial transactions with GEL were made on commercial terms and all of the programs it used were tied to the production and export of non-subject merchandise, it was unnecessary for it to respond on its own.

Respondents point out that they filed a certificate of accuracy on March 4, 1999, regarding its February 16, 1999 response.

DOC Position

We disagree with petitioners' claim that GEL's related company did not respond adequately to our countervailing duty questionnaire and that its response was not filed on time. Based on the evidence, pursuant to section 776(a) of the Act, we find that facts available are unwarranted because respondents did not (1) withhold information, (2) did not fail to provide information by the due dates required in the form and manner requested or (3) did not significantly impede the investigation. The February 16, 1999 questionnaire response of GEL's related company was filed timely. The original due date for this response was extended from February 11, 1999 to February 16, 1999, by the case analyst in a telephone conversation with respondents. Thus, although petitioners were not notified of the extension as they should have been, respondents were timely in their submission.

Although respondents did not initially file a certification of accuracy with the related company's questionnaire response, they did file one on March 6, 1999. We do not find this delayed certification, in and of itself, grounds for applying fact available under section 776(a) of the Act. Moreover, the related company's response, which was filed as an exhibit to GEL's February 16, 1999 SQR, did contain a certificate (in proper form) of accuracy from GEL. Moreover, both GEL and the related company responded to our questionnaires and were fully cooperative at verification. Furthermore, at verification, we were able to confirm the accuracy of their responses. Therefore, we find no basis for using facts available in this case.

We also disagree with petitioners' assertion that GEL falsely certified its responses by simply asserting that the financial transactions with its related company were on terms consistent with

commercial considerations. Although GEL maintained that it had no commercially inconsistent transactions, as defined in the questionnaire, with related companies in its questionnaire response. GEL did inform the Department of financial transactions it had with its related company by briefly listing them in its response and thereafter supplied the Department with additional information as requested, which we later verified. Because GEL was forthright in its response regarding these transactions, we see no grounds for applying facts available in this circumstance.

Petitioners are mistaken in stating that capital goods which GEL's related company transferred to GEL were imported under the EPCGS. At verification, we confirmed that all of the capital goods imported under the EPCGS by the related company were tied to the production of the related company's products. The capital goods in question were identified in Attachment 3 of GEL's December 23, 1998 questionnaire response. As we confirmed at verification, these capital goods could not be used in producing the related company's merchandise but were produced by GEL's related company for GEL and sold to GEL at market prices. These capital goods were not imported under the EPCGS. (See the March 16, 1999 verification report on GEL's related company at page 9.)

We agree with respondents' claim that they should not be penalized for failure to include the Drawback of Customs Duties and the Advance License schemes in their response. Because the petition did not allege that respondent benefitted from Drawback of Customs Duties and the Advance License schemes, the original questionnaire did not include questions about the Advance License or the Drawback of Customs Duties. The subject of drawback arose only after the preliminary determination in the antidumping investigation where the Department disallowed respondents' claim that drawback be added to the U.S. price. (See Preliminary Antidumping Determination). It was not until after the preliminary determination in this investigation that petitioners alleged these programs. Because their allegation was timely, however, we then sent a supplementary questionnaire to respondent with regard to this scheme. In an SQR dated February 16, 1999, GEL reported that it had imported natural rubber under the Advance License Scheme to be used in the production of elastic rubber tape for export. At verification, as described above, we reviewed this scheme fully.

Therefore, we conclude that the information provided by respondents on these programs was adequate and that use of facts available is not warranted.

We also agree with respondents' claim that GEL's related company should not be penalized for not providing a separate questionnaire response. As required under section 782(e) of the Act, the Department cannot decline to consider information necessary to the determination even though it may not meet all of the requirements established provided that the information is submitted by the deadline, can be verified, is not so incomplete that it cannot be used, and the interested party has demonstrated that it has acted to the best of its ability. As described above, because GEL and its affiliate answered our questionnaire and supplemental responses in a timely fashion, and the information was verified and usable, we find that GEL and its affiliate acted to the best of their ability. Therefore, facts available are unwarranted. Pursuant to section 776(a) of the Act, even though GEL did not provide a full description of the programs its related company benefitted from during the POI, GEL did provide sufficient timely information. This permitted us to verify fully whether any of the benefits received by GEL's related company were tied to its products and not transferred to GEL. Therefore, we find that GEL's related company responded sufficiently and we find no basis for using facts available in this determination.

Comment 2: Excise Rebates

Petitioners argue that the Department should countervail the excise rebates reported in GEL's 1997/98 financial statements. They assert that because GEL failed to provide a copy of its financial statements for the POI in a timely manner, the Department was unable to fully investigate whether the line item entitled "Other Income" from "Excise Rebate Received Export" constitutes a countervailable subsidy. Therefore, the Department should apply facts available and countervail these rebates.

DOC Position

We disagree with petitioners since we received GEL's financial statements in sufficient time to review them prior to verification. At verification, we confirmed that the excise rebates referred to in the financial statements were, in fact, permissible rebates of the excise tax, as discussed above in the *Exemption from Excise Tax under the EPCGS* section of this notice.

Comment 3: Income Tax Exemption Scheme

Respondents argue that the Income Tax Exemption Scheme ("ITES") is tied to the production of the related company's products such that the benefits earned under a tax deduction from ITES could be attributed to a related company. Respondents cite to section 351.525(b)(5) of the countervailing duty regulations saying that "subsidies tied to the production, sale, or export of a particular product will be attributed only to that product." Respondents also state that in cross-ownership situations, only untied subsidies may be allocated to a subsidiary. Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada, 62 FR 54972, 54981 (Oct. 22, 1997). Respondents further point to Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) from Canada, 62 FR 5201, 5202 (February 4, 1997) to state the fact that even when the Department treats several companies as one, it will not countervail a subsidy that was received for non-subject merchandise. Finally, respondents argue that because of the Department's position on fungibility of money, the Department would refuse "to trace the use of specific funds to determine whether the funds were used for their stated purpose."

DOC Position

It is the Department's consistent and long-standing practice to attribute the benefit from an export subsidy that is not tied to a particular product or market to all export sales. See e.g., Certain Iron-Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review; 63 FR 64050, 055 (Nov. 18, 1998); Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey, 61 FR 30366, 30370 (June 1996). Where, as here, the tax exemption applies to all export profits, we find that it is not tied to a particular product or market and therefore is an untied export subsidy. See Silicon Metal From Brazil (tax exemption from profits of export sales a subsidy to all exports).

We disagree with respondents that all subsidies received by GEL's affiliate were tied to the production and sale of products produced by GEL's affiliate. As described above, although six of the seven programs investigated were tied to the particular products produced by GEL's affiliate, we find the ITES, which

exempts all of a firm's export profits from the income tax, is not tied to a particular product.

In determining whether a benefit is or is not tied, we examine whether the company's application, the government's approval notice, and the benefits disbursement documents specify the product or products that qualify to receive the benefit. If the production and sale of a particular product is specified on these documents, we generally regard the benefit as tied to that product. In the case of this scheme, we saw no evidence at verification of the application or approval forms for receipt of the benefit because the benefit was claimed directly on the income tax return.

As discussed elsewhere in this notice, because there were transactions between GEL and its affiliate, which we find were not on market terms, we find both companies have benefitted from this subsidy. Respondents do not dispute that it is the Department's practice to allocate subsidies in between related parties where the subsidies are untied nor the Department's authority in this regard. See e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom; Final Results of Countervailing Duty Administrative Review, 62 FR 53306, 3313-16 (Oct. 1998); Final Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring From Canada, 62 FR 5201, 02 (Feb. 1997); Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Canada, 62 FR 54972 (Oct. 1997). Rather, respondents agree that our practice of allocating only untied subsidies between two companies is consistent with the Department's basic principle of tying.

Respondents rely upon the Department's new regulations for the proposition that export subsidies are tied subsidies which may be attributed only to products exported by the company directly receiving the subsidy. While we note that these regulations are not in effect for this investigation, there is nothing in our view, as discussed above, of how to treat export subsidies that is contradicted by our new regulations. See 19 CFR 351.525(b)(2). In addition, respondents themselves acknowledge that under our new regulations we have codified our practice of allocating untied subsidies between related companies (*i.e.*, companies with cross-ownership) in a circumstance where one company is not producing subject merchandise. See 19 CFR 351.525(b)(6)(v).

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed our standard verification procedures, including meeting with government officials and examination of relevant government records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099 of the Main Commerce Building).

Summary

In accordance with section 705(a)(3) of the Act, we determine that the total estimated net countervailable subsidy rate is 1.71 percent ad valorem which is *de minimis*. Therefore, we determine that no countervailable subsidies are being provided to the production or exportation of elastic rubber tape from India. Pursuant to section 705(c)(2) of the Act, this investigation will be terminated upon publication of the final negative determination in the Federal Register.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is issued and published pursuant to section 705(d) and 777(i) of the Act.

Dated: April 12, 1999.

Richard W. Moreland,
Acting Assistant Secretary for Import Administration.
[FR Doc. 99-9761 Filed 4-16-99; 8:45 am]
BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041499A]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of

Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This request is being submitted under the emergency processing procedures of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration.
Title: Large Pelagic Fishing Survey.
Agency Form Number(s): None.
OMB Approval Number: None.
Type of Request: New collection—emergency clearance requested.

Burden: 4,752 hours.
Number of Respondents: 21,500 (multiple responses).

Avg. Hours Per Response: Ranges between 2 and 15 minutes depending on the requirement.

Needs and Uses: The Large Fishing Survey consists of dockside and telephone surveys of recreational anglers and headboats fishing for large pelagic species (tunas, sharks, and billfish) in the Atlantic Ocean. The summer fisheries for bluefin tuna and marlin begin in June. Catch monitoring in these two fisheries and collection of catch and effort statistics for all large pelagic fish is required under the Atlantic Tunas Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. Information collected through the survey is essential for the U.S. to meet its reporting obligation to the International Commission for the Conservation of Atlantic Tunas.

Affected Public: Individuals, businesses or other for-profit organizations.

Frequency: On occasion.
Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker,
(202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent no later than April 30, 1999 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: April 12, 1999.
Linda Engelmeier,
Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99-9727 Filed 4-16-99; 8:45 am]
BILLING CODE 3510-22-F A-16

can be obtained by contacting the TDD terminal on (202-205-1810).

BACKGROUND: In its letter, the Committee noted that the President imposed economic sanctions on India and Pakistan in May 1998 under section 102 of the Arms Export Control Act ("Glenn Amendment"), which was enacted in 1994 (22 U.S.C. 2799aa(b)-1); U.S. economic sanctions were imposed automatically once the President determined that India and Pakistan had detonated nuclear explosive devices. In July 1998, Congress passed section 902 of the India-Pakistan Relief Act of 1998 (Pub. L. 105-277), which authorized the President to waive application of U.S. sanctions on India and Pakistan. On December 1, 1998, the President waived the India and Pakistan sanctions, after determining that such a waiver would increase the likelihood of progress toward U.S. nuclear non-proliferation objectives (Presidential Determination No. 99-7). By law, the President's waiver authority ends on October 21, 1999.

In anticipation of Congressional action during 1999 on sanctions reform legislation and consideration of possible renewal of section 902 of the India-Pakistan Relief Act, the Committee requested that the Commission complete a report by September 17, 1999, providing an overview and analysis of the economic impact of U.S. sanctions policy with respect to India and Pakistan. The Committee specifically requested that the Commission's report:

(1) Identify U.S. industries, including U.S. agricultural commodities, which were affected by economic sanctions on India and Pakistan under sec. 102 of the Arms Export Control Act, and the impact on each industry;

(2) Analyze, to the extent data are available, the economic impact of U.S. sanctions on U.S. exports, U.S. imports, jobs, consumers, and investment in the affected industries;

(3) Assess the likely economic impact on the United States if U.S. economic sanctions against India and Pakistan are re-imposed, including the U.S. products and sectors which would be significantly affected, the availability of alternative foreign suppliers for leading U.S. exports, and the likely impact of U.S. sanctions on the reputation of the United States as a reliable supplier of food, technology, other products, and on U.S. competitiveness in the affected industries; -

(4) Assess the impact of the reimposition of U.S. economic sanctions against India and Pakistan on U.S. agriculture, including the likelihood of

retaliation, the specific commodities most likely to be affected, potential alternative foreign suppliers, the likely impact on the incomes of U.S. agricultural producers, and the likely impact on the U.S. reputation as a reliable supplier of agricultural commodities;

(5) Analyze the likely impact of unilateral U.S. economic sanctions on the Indian and Pakistani economies; and

(6) Summarize the instances where U.S. sanctions have affected humanitarian activities as well as the activities of multinational institutions in India and Pakistan.

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW, Washington, DC 20436, beginning at 9:30 a.m. on June 22, 1999 (and continuing on June 23, 1999, if necessary). All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed in writing with the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436, no later than 5:15 p.m. on June 8, 1999. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is no later than 5:15 p.m. on June 8, 1999. The deadline for filing posthearing briefs or statements is 5:15 p.m. on July 6, 1999. Any confidential business information included in such briefs or statements or to be submitted at the hearing must be submitted in accordance with the procedures set forth in section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). In the event that, as of 5:15 p.m. on June 8, 1999, no witnesses have filed a request to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202-205-1806) after June 8, 1999, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business

Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than COB July 6, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

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>).

Issued: April 19, 1999.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 99-10536 Filed 4-26-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-383 (Final)]

Elastic Rubber Tape From India

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On April 19, 1999, the Department of Commerce published notice in the *Federal Register* of a negative final determination of subsidies in connection with the subject investigation (64 FR 19125).

Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the Commission's countervailing duty investigation concerning elastic rubber tape from India (investigation No. 701-TA-383 (Final)) is terminated.

EFFECTIVE DATE: April 19, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Yost (202-205-3432), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-

impaired individuals are advised that information on this matter can be obtained 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>).

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

Issued: April 20, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-10537 Filed 4-26-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-805 (Final)]

In the Matter of Elastic Rubber Tape From India; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents Garware Elastomerics Limited and Elastomer, Inc. (collectively "Respondents"), the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for April 20, 1999, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202-205-3095, e-mail mdiehl@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that Respondents have justified the need for a closed session. Respondents seek a closed session to allow purchasers to fully discuss their experiences with domestic producers and to allow testimony regarding the effects of the subject imports on the domestic producers of elastic rubber tape. Because such discussions will necessitate disclosure of business proprietary information (BPI), they can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioners and by Respondents, with questions from the Commission. In addition, the hearing will include an in camera session for a confidential presentation by Respondents and for questions from the Commission relating to the BPI, followed by an in camera rebuttal presentation by petitioners. For any in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Elastic Rubber Tape from India, Inv. No. 731-TA-805 (Final), may be closed to the public to prevent the disclosure of BPI.

Issued: April 20, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-10538 Filed 4-26-99; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-418]

In the Matter of Certain Rodent Bait Stations and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Withdrawal of the Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (ID) of the presiding administrative law judge (ALJ) terminating the above-captioned investigation without prejudice on the basis of complainant's withdrawal of its complaint.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3104. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 25, 1999 (64 FR 3716) based on a complaint filed by Bell Laboratories, Inc. (Bell), of Madison, Wisconsin. Aegis Research Ltd. of the United Kingdom and Aegis Research Ltd., U.S. of Delaware (collectively, Aegis) were named as respondents.

On February 26, 1999, Bell and Aegis filed a joint motion to terminate the investigation based on withdrawal of the complaint without prejudice. The Commission investigative attorney supported the joint motion on March 1, 1999. On March 16, 1999, the ALJ issued an ID granting the motion and terminating the investigation without prejudice. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rules 210.42(h), 19 CFR 210.42(h).

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

APPENDIX B
CALENDAR OF THE PUBLIC HEARING

**In Opposition to the Imposition of
Antidumping Duties:**

White & Case, LLP
Washington, D.C.
on behalf of

Garware Elastomerics, Limited
Elastomer, Incorporated

Ramesh Garware, President, Garware Elastomerics, Limited

Diya Garware, Sales Consultant, Elastomer, Incorporated

Vayu Garware, Director, Garware Wall Ropes, Limited

Walter J. Spak)
Adams C. Lee)-OF COUNSEL
Amy E. Farrell)

CLOSING REMARKS

Petitioners (**F. David Foster, Ablondi, Foster, Sobin & Davidow, P.C.**)
Respondents (**Walter J. Spak, White & Case, LLP**)

-END-

APPENDIX C
SUMMARY DATA

Table C-1
Elastic rubber tape: Summary data concerning the U.S. market, 1996-98

* * * * *

APPENDIX D
COMPAS PRESENTATION

ASSUMPTIONS

The COMPAS model is a supply and demand 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 policy analysis and are used extensively for the analysis of trade policy changes both in partial and general equilibrium. Based on the discussion contained in Part II of this report, the staff selects a range of estimates that represent price-supply, price-demand, and product-substitution relationships (i.e. supply elasticity, demand elasticity and substitution elasticity) in the U.S. elastic rubber tape market. The model uses these estimates with data on market shares, Commerce's margins of dumping, transportation costs, and current tariffs to analyze the likely effect of unfair pricing of subject imports on the U.S. domestic like product industry.

FINDINGS¹

Estimated effects of the LTFV imports on the U.S. elastic rubber tape industry are as follows:

*** percent to *** percent reduction in revenues, *** percent to *** percent reduction in output, and *** percent to *** percent reduction in prices. More detailed effects of the dumping margins and the full range of scenarios are shown in table D-1.

¹ Estimates are based on 1998 data. Commerce's period of investigation for the antidumping investigations was July 1997 - June 1998.

Table D-1
COMPAS ver. 1.4 (DUMPING) -- THE EFFECTS OF LTFV PRICING OF IMPORTS (6/1/93)

* * * * *

APPENDIX E
FISCAL YEAR DATA OF THE U.S. PRODUCERS

Table E-1

Results of operations of U.S. producers on their operations producing elastic rubber tape, fiscal years 1996-98

* * * * *

Table E-2

Results of operations of Elastotec on its operations producing elastic rubber tape, fiscal years 1996-98

* * * * *

