UNITED STATES INTERNATIONAL TRADE COMMISSION

EXTRUDED RUBBER THREAD
Investigation No. TA-201-72

DETERMINATION AND VIEWS OF THE COMMISSION
(USITC Publication No. 3375, December 2000)

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EXTRUDED RUBBER THREAD

DETERMINATION

On the basis of the information in the investigation, the Commission determines, pursuant to section 202(b) of the Trade Act of 1974, that extruded rubber thread[1] is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury to the domestic industry producing an article like or directly competitive with the imported article.

BACKGROUND

Following receipt of a properly filed petition on June 5, 2000, by counsel on behalf of North American Rubber Thread, Fall River, MA, the Commission instituted investigation No. TA-201-72, *Extruded Rubber Thread*, under section 202 of the Trade Act of 1974 to determine whether extruded rubber thread is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article

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Notice of the institution of the Commission's investigation and of the scheduling of public hearings 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 June 22, 2000 (65 FR 38856). The hearing in connection with the injury phase of the investigation was held on September 6, 2000, in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

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[1] For purposes of this investigation, extruded rubber thread is defined as vulcanized rubber thread, obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm (which is 0.007 inch or 140 gauge) to 1.42 mm (which is 0.056 inch or 18 gauge) in diameter. Such extruded rubber thread is classified in heading 4007.00 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS category is provided for convenience and Customs purposes, the written description of the merchandise is dispositive.

VIEWS OF THE COMMISSION

I. INTRODUCTION

Pursuant to section 202(b) of the Trade Act of 1974 ("Trade Act") (19 U.S.C. § 2252(b)), we determine that extruded rubber thread ("ERT") is not being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing ERT.[2]

In making determinations under section 202, the Commission analyzes the three criteria set forth in the statute. Specifically, the Commission must find that –

(1) imports of the subject article are in *increased quantities* (either actual or relative to domestic production);

(2) the domestic industry producing an article that is like or directly competitive with the imported article is *seriously injured or threatened with serious injury*; and

(3) the article is being imported in such increased quantities as to be a *substantial cause* of serious injury or threat of serious injury to the domestic industry.

The Commission must find that all three criteria are satisfied to make an affirmative determination.

II. BACKGROUND

The Commission instituted this investigation effective June 22, 2000, following receipt of a petition filed by North American Rubber Thread Co., Inc. ("North American"). The petition alleged that ERT is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat of serious injury, to the domestic ERT industry.[3]

The imported article that is the subject of this investigation is vulcanized rubber thread, obtained by extrusion of stabilized or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm (0.007 inch or 140 gauge) to 1.42 mm (0.056 inch or 18 gauge) in diameter. Such merchandise is provided for in heading 4007.00.00 of the Harmonized Tariff Schedule of the United States.

During the period examined, two companies produced ERT in the United States: North American and Globe Manufacturing Co. ("Globe"), both of Fall River, Massachusetts.[4] Globe announced its exit

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[2] Chairman Koplan did not find the domestic industry to be seriously injured. His dissenting views on serious injury follow. He joins in the portions of the views of the Commission relating to the domestic industry, increased imports, and threat of serious injury.

Commissioner Bragg renders separate determinations with regard to defining the domestic like product and the domestic industry. *See* n.13.

[3] Petition at 2.

[4] Petition at 3.

from the ERT business on March 17, 2000,[5] leaving North American as the sole U.S. producer.[6] By July 30, 2000, North American had purchased all five of Globe's ERT lines, plus Globe's fine-gauge winding department.[7] The Commission collected data from both Globe and North American.

Malaysian, Indonesian, and Thai ERT producers accounted for most of the ERT imported into the United States between 1995 and 1999. More than 70 percent of all ERT imported into the United States during the period was sourced from Malaysia and Indonesia alone, while Thailand supplied between 1 and 10 percent of imports.[8]

The Commission has investigated imports of ERT on several prior occasions. In September 1992, in an investigation under the U.S. antidumping law, the Commission determined that an industry in the United States was materially injured by reason of imports from Malaysia of ERT that were found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value.[9] Later that same year, in an investigation under the U.S. safeguard law, the Commission was equally divided as to whether ERT was being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing ERT.[10] The President provided no relief at that time. In May 1999, in another antidumping investigation, the Commission determined that an industry in the United States was not materially injured, but was threatened with material injury, by reason of imports from Indonesia of ERT that were found by Commerce to be sold in the United States at less than fair value.[11] [12] As a result of the two affirmative

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[5] Confidential Staff Report ("CR") at II-7 and II-13, Public Report ("PR") at II-5 and II-8.

[6] CR at II-7, PR at II-5.

[7] CR at II-7-8, PR at II-5.

[8] Table 2, CR at II-11, PR at II-7.

[9] *See Extruded Rubber Thread From Malaysia*, Inv. No. 731-TA-527 (Final), USITC Pub. 2559 (Sept. 1992). Commerce issued the antidumping duty order on ERT imports from Malaysia on Oct. 7, 1992. 57 Fed. Reg. 46150 (Oct. 7, 1992). Commerce also issued a countervailing duty order on ERT from Malaysia on Aug. 25, 1992. 57 Fed. Reg. 38472 (Aug. 25, 1992). The countervailing duty order was revoked on July 28, 1998. 63 Fed. Reg. 41544 (Aug. 4, 1998).

[10] *Extruded Rubber Thread*, Inv. No. TA-201-63, USITC Pub. 2563 (Dec. 1992).

[11] The Commission excluded Globe from the domestic industry in the 1999 antidumping duty investigation because "Globe imported a substantial volume of ERT from Indonesia during the period of investigation." The Commission determined that Globe had restructured its operations to focus on producing high-value products in the United States, such as fine-gauge and heat resistant ERT, and to substitute imports from Indonesia for its production of standard grades of ERT, which were competing head-to-head with North American's domestic product. As a result, Globe significantly reduced its domestic production while significantly increasing the volume of its imports. The Commission found that these facts suggested that Globe's primary interest lay in importation and consequently determined that appropriate circumstances existed to exclude Globe and to define the domestic industry as consisting of only North American. *Extruded Rubber Thread From Indonesia*, Inv. No. 731-TA-787 (Final), USITC Pub. 3191 (May 1999) at 5-6. Commissioner Askey did not find that appropriate circumstances existed to exclude Globe from the industry. *Id.* at 25-26.

[12] Commerce issued an antidumping duty order on imports from Indonesia on May 21, 1999. 64 Fed. Reg. 27755 (May 21, 1999).

determinations under the antidumping law, imports of ERT from both Malaysia and Indonesia remain subject to antidumping duty orders.[13]

III. DOMESTIC INDUSTRY[14]

Like or Directly Competitive Product

Statutory Framework and Commission Practice. Section 202(b)(1)(A) of the Trade Act requires that we determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to "the domestic industry producing an article like or directly competitive with the imported article."[15]

The legislative history of the Trade Act defines the term "like" to mean those articles which are "substantially identical in inherent or intrinsic characteristics (*i.e.*, materials from which made, appearance, quality, texture, etc.)" and the term "directly competitive" to mean those articles which are "substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefor."[16] The decision regarding like or directly competitive product is a factual determination.[17]

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[13] The antidumping duty order with respect to Malaysia was continued pursuant to a full five-year review in July 2000. *Extruded Rubber Thread from Malaysia*, Inv. No. 731-TA-527 (Review), USITC Pub. 3327 (July 2000).

[14] Commissioner Bragg notes that, in this investigation, the record indicates that over the POI there was no domestic commercial production of food-grade ERT. CR at II-36, PR at II-15. Importantly, in the recent sunset review of ERT from Malaysia, the Commission, upon finding that there was no domestic commercial production of food-grade ERT, determined that food-grade ERT was not an appropriate candidate for a separate like product determination. *Extruded Rubber Thread from Malaysia*, USITC Pub. 3327 (July 2000) at 5. The Commission then considered whether food-grade ERT was a product that was "most similar in characteristics and uses with" the subject merchandise (and concluded that it was). *Id.* In contrast, in section 201 investigations, the Commission applies a different like product standard, *i.e.*, whether the domestic product is "like or directly competitive with the imported article." 19 U.S.C. § 2252(b)(1)(A). Applying the "directly competitive" standard to the facts of this investigation, and in the absence of any domestic commercial production of food-grade ERT, Commissioner Bragg renders a negative determination with regard to food-grade ERT. She notes, however, that as a practical matter, the industry which she finds to be seriously injured is the same whether defined as domestic producers of all ERT or only of non-food grade ERT.

[15] 19 U.S.C. § 2252(b)(1)(A).

[16] *Trade Reform Act of 1973; Report of the Committee on Ways and Means, House of Representatives, To Accompany H.R. 10710,* H.R. Rep. No. 571, 93rd Cong., 1st Sess., at 45 (1973); and *Trade Reform Act of 1974, Report of the Committee on Finance, United States Senate, Together With Additional Views on H.R. 10710*, S. Rep. No. 1298, 93rd Cong., 2d Sess., at 121-122 (1974).

[17] *See, e.g., Crabmeat from Swimming Crabs*, Inv. No. TA-201-71, USITC Pub. 3349 (Aug. 2000) at I-6; *Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (Dec. 1999) at I-10; *Certain Steel Wire Rod*, Inv. No. TA-201-69, USITC Pub. 3207 (July 1999) at I-9; *Lamb Meat*, Inv. No. TA-201-68, USITC Pub. 3176 (Apr. 1999) at I-10; *Wheat Gluten*, Inv. No. TA-201-67, USITC Pub. 3088 (Mar. 1998) at I-9.

In determining what constitutes the like or directly competitive domestic product, the Commission traditionally has taken into account such factors as the physical properties of the product, its customs treatment, where and how it is made (*e.g.*, whether products are manufactured in separate facilities), its uses, and the marketing channels through which the product is sold. Each of the factors is relevant, but the weight given to each individual factor will depend upon the facts in the particular case. The Commission traditionally has looked for clear dividing lines among possible products and has disregarded minor variations.[18]

***Arguments of the Parties*.** Petitioner argues that all domestically produced ERT is "like or directly competitive" with imported ERT.[19] With respect to physical properties, petitioner states that both the imported and domestic articles are produced from natural rubber latex and share the same inherent physical characteristic of elasticity. Petitioner also asserts that the quality, manufacturing processes and uses are the same for both domestic and imported ERT. With respect to substitutability, petitioner argues that imported and domestic ERT are interchangeable.[20]

Petitioner asserts that there is one imported and domestic product consisting of all grades of ERT. Although petitioner acknowledges that the imports include food and non-food grade ERT, and that there is no domestic commercial production of food grade ERT, petitioner urges that the Commission not find that food grade and non-food grade ERT are separate products. Petitioner argues that food grade ERT can be used interchangeably with non-food grade ERT in any application "from the standpoint of mechanical compatibility." Petitioner asserts that it is made on the same equipment as non-food grade ERT, the essential characteristic of food grade (elasticity) is the same as non-food grade ERT, and the prices of food grade and non-food grade ERT are about the same.[21]

Respondents argue that the Commission should distinguish food grade ERT from non-food grade ERT. They contend that food and non-food grade ERT are significantly different products based on differing physical characteristics, end uses, U.S. Food and Drug Administration ("FDA") regulations, and producer/consumer perceptions. They assert that food grade and non-food grade ERT are not interchangeable, primarily because food grade ERT requires FDA approval to be utilized in netting that is used to wrap meat. Respondents also argue that the purchasers of food grade and non-food grade ERT differ, since the main customers of food-grade ERT are manufacturers of meat netting, while non-food grade ERT is primarily sold to the textile industry.[22] Some respondents assert that since the FDA has not approved any domestic producer to manufacture food grade ERT, "no 'like or direct competition' for food

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[18] *See, e.g., Crabmeat from Swimming Crabs,* at I-6; *Circular Welded Carbon Quality Line Pipe* at I-10; *Certain Steel Wire Rod* at I-9; *Lamb Meat* at I-10; *Wheat Gluten* at I-9.

[19] Petitioner states that "only relatively small quantities" of under 18 gauge ERT are made domestically. *See* Petition at 2.

[20] *See* Petitioner's Posthearing Br. at 22-26, and Petition at 2. Petitioner notes that the Commission found one like product in the investigations that led to the antidumping duties on imports of ERT from Malaysia and Indonesia, and that three of the six Commissioners reached a comparable result in the 1992 ERT safeguard investigation.

[21] Petitioner's Posthearing Br. at 26.

[22] Rubberflex and Flexfil Posthearing Br. at 4-5, Heveafil and Filati Prehearing Br. at 6, and Exh. 1, and Posthearing Br. at 14.

grade ERT exists, and it should be considered to be a separate like product."[23] Other respondents assert that the Commission should exclude the product from the investigation or, if it includes food grade ERT, make a negative determination with respect to food grade ERT.[24]

Finding. We find that domestic ERT is "like" the imported ERT that is the subject of this investigation and that there is one like product. The facts in this investigation support a finding that domestic ERT is substantially identical to imported ERT in its inherent and intrinsic characteristics. In terms of physical properties, all foreign and domestic ERT is vulcanized and produced by low-pressure extrusion of compounded natural rubber latex to which certain chemicals are added to ensure homogeneity.[25] Properties of any given type of ERT are standardized worldwide.[26] Moreover, all ERT is generally manufactured on similar equipment and sold by both U.S. and foreign manufacturers in standard sizes.[27] The parties agree that imported and domestic ERT are basically identical in appearance, meaning typically black or white, although the product is also available from U.S. sources in colors such as blue, red and cream. The specialty products produced by both U.S. and foreign manufacturers are also similar, in that they are produced according to certain specifications for specific end uses, such as fine-gauge ERT, which is normally used for hosiery, and heat-resistant ERT, which is manufactured for use primarily in underwear waistbands, where its resistance to heat retards degradation when laundered.[28]

For the most part, U.S.-produced and imported ERT are used interchangeably[29] and are sold through similar channels of distribution. All ERT is sold directly to unrelated manufacturers of the final products in which the ERT is used.[30] Both domestic and imported ERT are primarily used in the textile industry, where such ERT is processed into panty hose, women's apparel, underwear waistbands, sock tops, jogging suits, disposable diapers, furniture webbing, and toys or "koosh" balls.[31] Overall, there is a moderate to high degree of substitutability between domestic and imported ERT, depending on such factors as relative prices and the extent of product differentiation between articles from other countries.[32]

The evidence in the Commission's record thus indicates that domestic and imported ERT share the same basic physical characteristics, manufacturing processes, channels of distribution, and uses, and are

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[23] Rubberflex and Flexfil Posthearing Br. at 5.

[24] Heveafil and Filati Posthearing Br. at 15.

[25] CR at II-4-6, PR at II-3-4.

[26] CR at II-5, PR at II-3.

[27] CR at II-4 and I-7, PR at II-3 and II-5.

[28] CR at II-5, PR at II-4.

[29] CR at II-54, PR at II-25, noting that this response from both U.S. producers and importers echoed those of purchasers of ERT in the 2000 Malaysian antidumping review.

[30] CR at II-7, PR at II-5.

[31] CR at II-5, PR at II-4.

[32] CR at II-51, PR at II-23.

viewed by both U.S. producers and importers as being interchangeable.[33] While we recognize there are some differences in interchangeability and uses between different gauges and certain types of ERT such as food grade, fine-gauge and heat-resistant ERT, we do not view these different gauges or types of ERT to be separate like products.[34] Rather we find all gauges and types of ERT to be part of a broad continuum of product, within which there are no clear dividing lines.[35] The evidence indicates that producers can manufacture a range of ERT products in the same facilities, on the same equipment, and sell them through similar channels of distribution[36] to unrelated end users.[37] All ERT receives the same tariff treatment and is classified in heading 4007.00.00 of the HTS.[38] Moreover, although there is a range of prices for ERT (often based on gauge), even food grade ERT is believed to be priced at approximately the same levels as other forms of ERT.[39] Consequently, based on the significant similarities among all gauges and types of ERT, we find that all domestically produced ERT is "like" imported ERT.[40]

Domestic Industry

Statutory framework and Commission practice. The Trade Act defines the term "domestic industry" to mean "the producers as a whole of the like or directly competitive article or those producers whose collective production of the like or directly competitive article constitutes a major proportion of the total domestic production of such article."[41]

The focus of this inquiry is on which firms produce the like or directly competitive product. If the Commission has found that there is domestic production of one like or directly competitive product, it will find a single domestic industry and evaluate the impact of the pertinent imports on the facilities and

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[33] CR at II-4-7 and 54, PR at II-3-5 and II-25.

[34] Only insignificant quantities of food-grade ERT and under 18 gauge rubber thread are sold in the United States. Petition at 2; CR at II-7, PR at II-5, Table 15, CR at II-38, PR at II-16.

[35] In deciding what constitutes the like or directly competitive product, the Commission traditionally has looked for clear dividing lines among possible products and has disregarded minor variations. *See Circular Welded Carbon Quality Line Pipe*, Inv. No. TA-201-70, USITC Pub. 3261 (Dec. 1999) at I-11 (Commission found that "the various grades and sizes of line pipe are [part] of a continuum, with no clear dividing line between any particular products within the continuum.").

[36] CR at II-4, II-6-7, PR at II-3-4-5.

[37] CR at II-7, PR at II-5.

[38] CR at II-7, PR at II-5.

[39] CR at II-36, at PR II-15.

[40] Commissioner Askey notes that no parties argued that there are directly competitive products in this proceeding. She finds that the record does not indicate that any non-ERT products are directly competitive with ERT.

[41] 19 U.S.C. § 2252(c)(6)(A)(i).

workers producing that product.[42] We find that the domestic ERT industry consists of all domestic producers of ERT.

IV. INCREASED IMPORTS[43]

Statutory Framework and Commission Practice. The first of the three statutory criteria for an affirmative determination under section 201 is that imports must be in "increased quantities." Under section 202 of the Trade Act, imports are considered to have increased when the increase is "either actual or relative to domestic production."[44] In determining whether imports have increased the Commission considers imports from all sources. The Commission traditionally has considered import trends over the most recent 5-year period as a framework for its analysis, but can consider longer or shorter periods and may focus on the most recent period as it deems appropriate. A simple increase in imports is sufficient to satisfy this statutory requirement.

Finding. Imports of ERT increased from 16.2 million pounds in 1995 to 17.3 million pounds in 1996, 19.6 million pounds in 1997, and 20.8 million pounds in 1998, but then declined to 18.6 million pounds in 1999, a level below that in 1997 and 1998.[45] This decline continued in interim 2000, with imports in January-June 2000 at 8.5 million pounds, as compared to 8.9 million pounds in January-June 1999.[46] In actual terms, imports increased by 28 percent from 1995 to 1998, but then declined by 11 percent in 1999.[47] [48]

The ratio of imports to domestic production also increased from 1995 to 1999, rising in each year between 1995 and 1998, but then declining in 1999. The ratio increased from *** percent in 1995 to *** percent in 1996, *** percent in 1997, and *** percent in 1998 (an increase of *** percentage points over the 1995 level). However, the ratio of imports to domestic production then declined to *** percent in 1999, a level significantly lower than that in 1998. The ratio was *** percent in January-June 2000, as compared to *** percent in January-June 1999.[49]

In view of the above, we find that imports are in increased quantities. We take into account in our causation analysis below the fact that the quantity of imports decreased in absolute and relative terms in

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[42] *See, e.g.*, *Crabmeat from Swimming Crabs* at I-8-9; *Circular Welded Carbon Quality Line Pipe* at I-12-13; *Certain Steel Wire Rod* at I-10, I-36.

[43] Commissioner Bragg joins the remainder of this opinion.

[44] 19 U.S.C. § 2252(c)(1)(C).

[45] Table 1, CR at II-9, PR at II-6, Table 2, CR at II-11, PR at II-7, Table 3, CR at II-13, PR at II-9.

[46] Table C-2, CR at C-5, Table D-1, CR at D-3.

[47] Table C-1, CR at C-3, PR at C-3, CR at II-9, PR at II-6. Respondents attribute the 1999 ***. See 57 Fed. Reg. 46150 (Oct. 7, 1992). Heveafil and Filati Prehearing Br. at 20-21.

[48] The bulk of the increase occurred through 1998, prior to the issuance of the U.S. antidumping duty order on ERT from Indonesia in May 1999. Table 1, CR at II-9, PR at II-6, Table 2, CR at II-11, PR at II-7, Table 3, CR at II-13, PR at II-9. ERT imports from Indonesia increased by over 60 percent between 1996 and 1998, from 5.9 million pounds to 9.5 million pounds. Table 2, CR at II-11, PR at II-7, Table C-1, CR at C-3, PR at C-3.

[49] Table 3, CR at II-13, PR at II-9.

1999 (to below 1997 levels in absolute terms).[50]

V. SERIOUS INJURY

Statutory framework. The second of the three statutory criteria concerns whether the domestic industry is seriously injured or threatened with serious injury. The statute, which defines "serious injury" to mean "a significant overall impairment in the position of a domestic industry,"[51] identifies specific economic factors that the Commission must consider, including: (1) the significant idling of productive facilities in the domestic industry; (2) the inability of a significant number of firms in the industry to carry out domestic production operations at a reasonable level of profit; and (3) significant unemployment or underemployment within the domestic industry.[52] The Commission is not limited to consideration of these factors, and it considers all economic factors that it finds relevant. The presence or absence of any of the statutory factors is not "necessarily dispositive" of whether there is serious injury or threat of serious injury.[53] We discuss threat of serious injury in Section VII below.

Finding. For the reasons set forth below, we find that the domestic industry is seriously injured; that is, we find "a significant overall impairment in the position" of the domestic industry.[54] In finding that the domestic industry is seriously injured, we have considered carefully evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development ("R&D") expenditures. Considered in their entirety, these factors reflect a significant overall impairment in the condition of the industry which constitutes "serious injury" within the meaning of section 202 of the Trade Act.

Overview of the Domestic ERT Industry

Two firms produced ERT in the United States during the period examined, North American and

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[50] In general, Commissioner Askey concurs with the Commission's finding with respect to increased imports and accordingly joins the analysis set forth above. However, she notes that, while it is true that the volume of imports increased absolutely and relative to domestic production during the Commission's traditional five year period of review, the record also establishes that there has been a decline in the absolute level of imports during the last three years of the period, with import levels falling from 19.6 million pounds in 1997 to 18.621 million pounds in 1999, and that this decline has continued during interim 2000. Similarly, she notes that the record indicates the ratio of imports to domestic production declined between the last two full years of the period, falling from *** percent of domestic production in 1998 to *** percent in 1999, when an antidumping order on ERT from Indonesia was imposed. Given the foregoing, she believes that it is not entirely clear that the trends in import volumes reflect a sufficient increase during the period of investigation to satisfy the first criteria of the Commission's statutory analysis in a safeguard action.

[51] 19 U.S.C. § 2252(c)(6)(C).

[52] 19 U.S.C. § 2252(c)(1)(A).

[53] 19 U.S.C. § 2252(c)(3).

[54] Based on evidence in the record of this investigation, Chairman Koplan finds that the domestic industry is not seriously injured. *See* Dissenting Views on Serious Injury of Chairman Koplan. Chairman Koplan does not join the remainder of this section.

Globe.[55] Globe was the larger U.S. producer of ERT before ceasing production in March 2000.[56] Prior to the imposition of antidumping duties on imports of ERT from Indonesia in May 1999, Globe had focused increasingly on the manufacture of tubed fine-gauge and heat-resistant ERT[57] while importing low-cost, commodity-grade ERT from Indonesia.[58] The company continued to offer commodity-grade ERT, as well as fine gauge and heat-resistant ERT, because of customer demand for a full product line.[59] According to petitioner, Globe was the only U.S. producer of fine-gauge ERT[60] and historically operated at a profit on the fine gauge product because it did not face significant competition in that segment of the market.[61] Globe also manufactured spandex, a product that, in recent years, ***.[62]

On May 21, 1999, Commerce issued the antidumping duty order on imports of ERT from Indonesia as a result of a petition filed by North American. On March 17, 2000, Globe announced its exit from the ERT business due to ***.[63] Within approximately four months, North American had purchased all of Globe's ERT lines as well as its fine-gauge winding department.[64]

Analysis of Factors

Domestic production of ERT was at its highest point in 1995 but declined by *** percent in 1996, then remained relatively stable until Globe halted production in 2000.[65] Overall, domestic production declined between 1995 and 1999 by *** percent.[66]

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[55] CR at II-7, PR at II-5.

[56] CR at II-14, PR at II-8.

[57] Tr. at 37-40, 75, 104-105.

[58] *See* Petitioner's Prehearing Br. at 11; *Extruded Rubber Thread from Indonesia*, USITC Pub. 3191 at 7, 11 (May 1999).

[59] Tr. at 147.

[60] Petition at 8; Petitioner's Prehearing Br. at 7.

[61] Petition at 8; Petitioner's Prehearing Br. at 7.

[62] CR at II-14, PR at II-8.

[63] CR at II-13, PR at II-8.

[64] CR at II-7, PR at II-5.

[65] Production declined from *** pounds in 1995, to *** pounds in 1996, increased slightly to *** pounds in 1997, and fell to *** pounds in 1998, before rising again to *** pounds in 1999. Table 4, CR at II-16, PR at II-10. The domestic industry's production in interim 2000 of *** pounds was markedly lower than its production level of *** pounds in interim 1999. Table C-2, CR at C-6, PR at C-6.

[66] CR at II-14, PR at II-9. Table 4, CR at II-16, PR at II-10.

Total domestic capacity was *** pounds in 1995.[67] Capacity increased slightly to *** pounds in 1996 and stayed at that same level each year from 1997 through 1999.[68] Similarly, domestic capacity remained steady at *** pounds both in interim 1999 and in interim 2000.[69] After exiting the ERT business on March 17, 2000, Globe sold all of its ERT lines and its fine-gauge winding department to North American, which increased North American's capacity to *** pounds a week.[70]

Capacity utilization fell sharply between 1995 and 1996, then fluctuated throughout the remainder of the period. Capacity utilization declined from *** percent in 1995 to *** percent in 1996. It then rose to *** percent in 1997, fell to *** percent in 1998, and increased to *** percent in 1999,[71] reflecting an overall decline of *** percentage points between 1995 and 1999.[72] Capacity utilization declined in the first half of 2000 to *** percent as compared to *** percent in the first half of 1999.[73] In view of this information, we find a significant idling of productive facilities in the industry resulting in significant part from the departure of Globe from the industry. However, as we have indicated previously, North American purchased Globe's facilities in the first half of 2000 and has begun production of ERT on those lines, which indicates that the idling of Globe's facilities may be only temporary.

The quantity and value of U.S. shipments fluctuated during the period examined but fell overall between 1995 and 1999.[74] [75] The share of the domestic market held by U.S. producers (as measured by quantity of shipments) was *** percent in 1995, *** percent in 1996, *** percent in 1997, *** percent in 1998, and *** percent in 1999.[76] U.S. producers' market share increased slightly from *** percent in

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[67] CR at II-14, PR at II-9.

[68] Table C-1, CR at C-4, PR at C-4.

[69] Table C-2, CR at C-6, PR at C-6.

[70] CR at II-8, PR at II-5.

[71] Table 4, CR at II-16, PR at II-10.

[72] Table C-1, CR at C-4, PR at C-4.

[73] Table C-2,CR at C-6, PR at C-6.

[74] U.S. shipments fell from *** pounds in 1995 to *** pounds in 1996, rising to *** pounds in 1997, and falling sharply again to *** pounds in 1998, and remained at that level in 1999. Table C-1, CR at C-4, PR at C-4. U.S. shipments in interim 1999 and 2000 were nearly identical, measuring *** pounds in interim 1999 and *** pounds in interim 2000. Table C-2, CR at C-6, PR at C-6. The value of U.S. shipments fell from $*** in 1995 to $*** in 1996. Table C-1, CR at C-4, PR at C-4. U.S. shipments' value then increased to $*** in 1997, but fell to $*** in 1998 and declined further to $*** in 1999. Table C-1, CR at C-4, PR at C-4. The value of U.S. shipments in interim 2000 ($***) was *** percent lower than the value in interim 1999 ($***). Table C-2, CR at C-6, PR at C-6.

[75] Net sales of ERT were highest in 1995 at *** pounds, but fell to *** pounds in 1996, rose to *** pounds in 1997, fell again to *** pounds in 1998, and rebounded to *** pounds in 1999. Table 5, CR at II-18, PR at II-11, Table C-1, CR at C-4, PR at C-4. Sales in interim 2000 were *** pounds as compared to *** in interim 1999. Table C-2, CR at C-6, PR at C-6.

[76] Table 13, CR at II-33, PR at II-14, Table C-1, CR at C-3, PR at C-3.

interim 1999, to *** percent in interim 2000,[77] but never returned to its level at the beginning of the investigation period.

We also examined profit and loss data for domestic producers on their ERT operations. Operating income as a ratio to net sales increased from a *** of *** percent in 1995 to an operating *** of *** percent in 1997, but fell thereafter, exhibiting a *** of *** percent in 1999. Operating *** as a ratio to net sales grew *** percentage points between interim 1999 and interim 2000.[78] On the basis of this information, we find that the industry was unable to carry out its domestic ERT operations at a reasonable level of profit.[79]

Employment, hours worked, and total wages paid decreased over the period examined. The average number of production and related workers (PRWs) employed by ERT producers ranged from a high of *** in 1995 to a low of *** in 1998.[80]

Industry productivity as measured in pounds per hour stayed fairly constant between 1995 and 1998, fluctuating between *** pounds per hour in 1996 and *** pounds per hour in 1997, but fell to *** pounds per hour in 1999.[81] Productivity was *** percent lower in interim 2000 than in interim 1999.[82]

In evaluating the question of serious injury, we also considered inventories, levels of capital investment, and R&D expenses. The U.S. producers' end of period inventories increased by nearly *** percent between 1995 and 1999, while the ratio of domestic producer inventories to total shipments

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[77] Table C-2, CR at C-5, PR at C-5.

[78] Table C-2, CR at C-6, PR at C-6.

[79] While the industry's gross profits increased from $*** in 1995 to $*** in 1997, they fell sharply to $*** in 1998, and declined further to $*** in 1999. Table 5, CR at II-18, PR at II-11. Operating income, which exhibited a *** of $*** in 1995 and $*** in 1996, rose in 1997 to a *** of $*** but fell thereafter, to a *** of $*** in 1998, with the industry recording a significant *** of $*** in 1999. Table 5, CR at II-18, PR at II-11. The industry experienced an operating *** of $*** in interim 1999, compared to an operating *** of $*** in interim 2000. Table C-2, CR at C-6, PR at C-6.

[80] CR at II-15, PR at II-10. There were *** workers in 1996, *** workers in 1997, and *** workers in 1999. Table C-1, CR at C-4, PR at C-4. Workers in interim 1999 totaled ***, compared to *** in interim 2000. Table C-2, CR at C-6, PR at C-6. The number of hours worked in 1995 was ***, and in 1996 was ***. Table C-1, CR at C-4, PR at C-4. In 1997, the number increased to ***, but fell to *** in 1998. Table C-1, CR at C-4, PR at C-4. In 1999, it rose to ***. Table C-1, CR at C-4, PR at C-4. ERT employees worked *** hours in interim 1999, compared with *** in interim 2000. Table C-2, CR at C-6, PR at C-6. Hours worked were therefore *** percent lower in interim 2000 than in interim 1999. Table C-2, CR at C-6, PR at C-6. Total wages paid in 1995 were $***, but fell to $*** in 1996, increasing to $*** in 1997, before falling again to $*** in 1998. Table C-1, CR at C-4, PR at C-4. In 1999, wages paid increased to $***. Table C-1, CR at C-4, PR at C-4. Wages were *** percent less in interim 2000 than during the same period in 1999. Table C-2, CR at C-6, PR at C-6.

[81] Table 4, CR at II-16, PR at II-10, Table C-1, CR at C-4, PR at C-4.

[82] Table C-2, CR at C-6, PR at C-6.

increased by *** percentage points between 1995 and 1999.[83] The industry's capital expenditures fluctuated between 1995 and 1999,[84] while its research and development expenditures fluctuated between 1995 and 1998 before declining sharply in 1999.[85]

In summary, there has been a deterioration in the condition of the domestic industry during the period examined. Production, shipments, and capacity utilization declined significantly, end-of-period inventories increased markedly, and the industry went from *** to ***. Consequently, the evidence demonstrates a "significant overall impairment" in the position of the domestic industry. As a result, and consistent with the overall record, we find that the domestic industry is seriously injured.

Although we find that the industry as a whole is suffering serious injury, we note that the record shows a significant divergence in the performance of the two domestic producers. The *** sustained by the industry at the end of the period are attributable entirely to the financial condition of Globe. By contrast, North American was *** in each year examined. North American's operating ratio in interim 2000 exceeded its ratio in each of the previous full years examined. Similarly, the idling of facilities and employee reductions that occurred in 2000 reflect the idling of the Globe facilities.[86] [87] We discuss the circumstances pertaining specifically to Globe in the following section on causation.

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[83] CR at II-15, PR at II-10. Table 4, CR at II-16, PR at II-10. End of period inventories increased from *** pounds in 1995 to *** in 1999. The ratio of domestic inventories to total shipments rose from *** percent in 1995 to *** percent in 1999. Table 4, CR at II-16, PR at II-10, Table C-1, CR at C-4, PR at C-4.

[84] The industry spent $*** on capital expenditures in 1995, $*** in 1996, $*** in 1997, $*** in 1998, and $*** in 1999. Table 9, CR at II-25, PR at II-12.

[85] R&D expenditures declined from $*** in 1995 to $*** in 1996, and then rose to $*** in 1997. While these expenditures then increased in 1998 to $***, they fell sharply to $*** in 1999. Table 9, CR at II-25, PR at II-12.

[86] We again note that the idling of these facilities may be temporary.

[87] Although Commissioner Askey concurs in the Commission's finding with respect to serious injury and joins in the discussion outlined above, she notes there is conflicting evidence as to whether the industry is suffering serious injury. While the record does establish that there has been a decline in many of the trade and financial indicators of the industry (such as production, shipments, capacity utilization, market share, and operating income) during the Commission's traditional five-year period of investigation, the bulk of these declines occurred between 1995 and 1996. During the last four years of the period (1996 to 1999), the industry's production, shipments, sales, market share, employment, and capacity utilization levels remained relatively stable. Moreover, although the industry's operating income ratio dropped from *** percent in 1998 to *** percent in 1999, the industry's operating *** in 1999 is not significantly below its operating *** level of *** percent in 1995, the first year of the period of investigation. In addition, of the two domestic producers, only Globe experienced *** during the period. Globe contends that it was not suffering serious injury at the time of its exit from the industry in March 2000.

VI. SUBSTANTIAL CAUSE OF SERIOUS INJURY

Statutory Framework. The third statutory criterion concerns whether the subject article is being imported in such increased quantities as to be a "substantial cause" of serious injury or threat thereof. The term "substantial cause" is defined in section 202(b)(1)(B) to mean "a cause which is important and not less than any other cause."[88] Thus, increased quantities of imports must be both an important cause of the serious injury or threat thereof *and* a cause that is equal to or greater than any other cause.

In determining whether increased imports are a substantial cause of serious injury or threat of serious injury, the statute directs that we take into account all relevant economic factors, including but not limited to ". . . an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers."[89] The statute also directs that we consider "the condition of the domestic industry over the course of the relevant business cycle." We may not aggregate the causes of declining demand associated with a recession or economic downturn in the U.S. economy into a single cause of serious injury or threat of serious injury.[90] Also, the statute directs that we examine factors other than imports that may be a cause of serious injury or threat of serious injury to the domestic industry and include such findings in our report.[91] Neither the statute nor the legislative history rules out consideration of any other possible causes of injury.[92]

Arguments of the Parties. Petitioner argues that imports are a substantial cause of serious injury and threat of serious injury to the domestic industry, and that massive and increasing imports are significantly underselling the U.S. product. Petitioner asserts that ERT is a commodity product and that, although quality is an important purchase factor, U.S. and imported ERT are generally comparable in quality, making price, therefore, the most important purchasing factor. The import surge, according to petitioner, has consequently resulted in massive underselling of the U.S. product.[93]

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[88] 19 U.S.C. § 2252(b)(1)(B).

[89] Section 202(c)(1)(C), 19 U.S.C. § 2252(c)(1)(C).

[90] Section 202(c)(2)(A), 19 U.S.C. § 2252(c)(2)(A).

[91] As we have found the domestic industry to be seriously injured, we discuss causation in the context of present injury in this section. *See* Section VII for a discussion of causation in the context of threat.

[92] Section 202(c)(2)(B), 19 U.S.C. § 2252(c)(2)(B). The legislative history of the Trade Act includes examples of other causes "such as changes in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management," which, if found to be more important causes of injury than increased imports, would require a negative determination. *Trade Reform Act of 1974, Report of the Committee on Finance on H.R. 10710*, S. Rept. 93-1298, 93rd Cong., 2d Sess. (1974), at 121.

[93] In response to a question posed at the hearing on alleged alternative causes of serious injury, petitioner further argued that U.S. demand for ERT is not falling significantly and that, in fact, apparent U.S. consumption is higher than it was 10 years ago. With respect to whether U.S. customers prefer Globe's (now North American's) tubed fine gauge ERT over imported ribboned fine gauge, petitioner points to evidence on the record that U.S. end-users are willing to pay a *** premium for tubed ERT. Petitioner also cites evidence that end-users regard the Globe/North American product and imported ERT as at least comparable in quality, and asserts that charges that Globe's quality started to deteriorate as it began to exit the business are a sign of the serious injury caused by imports. Petitioner does not agree that spandex is becoming an important substitute for ERT. Petitioner's Posthearing Br. at 19-23.

The respondents argue that imports are not a substantial cause of serious injury or threat of serious injury, asserting that both Globe and North American benefitted from imports over the investigation period. They argue that Globe imported because it ***, and that imports contributed positively to Globe's operations during the five-year period. They point out that Globe imported commodity grade ERT to complement its U.S. production of fine gauge and heat-resistant ERT, and that imports enabled Globe to ***.[94] The respondents also point to alternative, more important causes of injury to the domestic industry, including reduced U.S. demand for ERT due to substitution by spandex and other synthetic elastics, concerns about allergic reactions to the latex protein that is contained in end products made from ERT (particularly those used in medical applications), and the movement of ERT end-users abroad to take advantage of trade preferences and low-cost labor. Respondents argue that declines in U.S. ERT prices were due to the declining cost of latex and note that U.S. producers are at a comparative disadvantage compared to foreign producers. They describe Globe's decision to exit the ERT market as unrelated to increased imports but a business decision to increase efficiency and competitiveness by focusing on the spandex market. They argue that the U.S. industry's problems have been largely self-inflicted because North American has chosen to purchase obsolete facilities, has never been adequately capitalized, and has continued to offer a limited product range, focusing almost exclusively on standard gauge ERT.[95]

Finding. Based on the evidence before us, we find that increased imports of ERT are not a "substantial cause" of serious injury to the domestic ERT industry. Specifically, we find that increased imports are neither an important cause of such injury to the domestic industry, nor a cause that is equal to or greater than any other cause. Our findings with respect to threat of serious injury, including causation, are provided in Section VII below.

Conditions of Competition

In making our finding, we considered the following conditions of competition that affected the competitiveness of domestic and imported ERT in the U.S. market.[96]

Demand for ERT is principally derived from demand for the products in which ERT is used, such as women's apparel, underwear waistbands, sock tops, netting used to wrap meat as well as other non-food items, hospital garments, bandages and other medical supplies, disposable diapers, furniture webbing, and shock cords.[97] Primary consumers of ERT include a large number of small purchasers for which the cost of ERT can be a relatively large share of the total cost of their products.[98]

Apparent U.S. consumption of ERT increased markedly prior to the period examined in this investigation, rising by 55 percent between 1989 and 1994.[99] Indeed, 1993 and 1994 were the peak years

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[94] Heveafil and Filati Prehearing Br. at 19-22.

[95] Heveafil and Filati Prehearing Br. at 28-40; Rubberflex and Flexfil Posthearing Br. at 9-13.

[96] *See* 19 U.S.C. § 2252(c)(2)(A).

[97] CR at II-5, PR at II-4.

[98] CR at II-45, PR at II-20.

[99] CR at II-45, n.51, PR at II-20.

in apparent U.S. consumption of ERT since 1989.[100] Between 1995 and 1999, apparent U.S. consumption fluctuated between *** and *** pounds, reaching a high point in 1997 but declining by *** percent overall.[101] Apparent U.S. consumption was also *** percent lower in the first half of 2000 than in the first half of 1999.[102] This is reasonably consistent with the experiences of the purchasers that responded to the Commission's questionnaires, eight of which reported declining demand; six of which reported no change in demand; and four of which reported increasing demand. Most purchasers reporting declining demand attributed this trend to latex-related health concerns about ERT; a shift towards spandex and other synthetic products; and increasing imports of finished goods incorporating ERT.[103]

Although substitutability between ERT and other products is somewhat limited,[104] some purchasers of end-use products have moved towards spandex in certain instances due to its finer gauge and other superior properties. Hosiery, underwear, and intimate apparel applications are end uses where the substitution to spandex has been most important.[105] ERT substitutes other than spandex, which is more expensive than ERT and most competitive in the fine-gauge applications previously mentioned, include neoprene and cut rubber tape.[106]

The domestic industry was concentrated during the period examined and, with the departure of Globe, now consists of only one firm, North American. Before its exit from the market, Globe was the largest of the producers and accounted for *** percent of domestic production in 1999. However, in March 2000, Globe announced that it was exiting the business due to significant financial losses. North American has purchased Globe's assets and hired some of its work force.

The domestic industry lacked sufficient capacity to supply the entire U.S. ERT market during the period examined, given that its overall capacity of *** million pounds was substantially smaller than the average level of apparent U.S. consumption.[107] Apparent U.S. consumption ranged between *** and *** million pounds.[108] In 1995, U.S.-produced ERT accounted for *** percent of the U.S. market.[109] That share declined to *** percent in 1996, and continued to decline to *** percent in 1998 before rising to *** percent in 1999 and *** percent in the first half of 2000.[110]

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[100] CR at II-45, n.51, PR at II-20.

[101] Table 1, CR at II-9, PR at II-6, CR at II-8, PR at II-6.

[102] Tables C-2 at C-5, PR at C-5.

[103] CR at II-46-47, PR at II-21.

[104] CR at II-48, II-50, PR at II-22-23.

[105] CR at II-48-49, PR at II-22-23.

[106] CR at II-48-49, PR at II-22-23.

[107] Table 1, CR at II-9, PR at II-6.

[108] Table 1, CR at II-9, PR at II-6.

[109] Table C-1, CR at C-3, PR at C-3.

[110] Table C-2, CR at C-5, PR at C-5.

In addition to the domestic producers, the primary sources of supply of ERT in the U.S. market have been Malaysia and Indonesia, which accounted for more than 70 percent of all imports of ERT during 1995-99.[111] Thailand is a growing source of ERT, while Italy and India have supplied substantial quantities of ERT to the United States on a sporadic basis.[112] The domestic industry has been responsible for a reasonably significant percentage of imports during the period examined. Globe's imports from Indonesia accounted for *** percent to *** percent of the volume of total imports during

1995-99.[113] North American accounted for a much smaller share -- its imports from *** accounted for *** percent to *** percent of the volume of total imports during 1997-99.[114]

ERT produced in the United States is regarded by producers, importers, and purchasers as being physically interchangeable with imported ERT.[115] Purchase decisions typically are based on three primary factors: quality, price, and availability,[116] with quality generally being rated the most important factor in the purchase decisions. Imported ERT is more likely to have an advantage in price, while the domestic product is more likely to have an advantage in availability. Views on quality are mixed, with many purchasers considering U.S.-produced ERT to be lower in quality than ERT from Indonesia, but higher than or comparable in quality to ERT from Malaysia.[117]

Both U.S.-produced and imported ERT compete in the commodity-grade market.[118] Certain product niches, however, are dominated by either U.S.-produced ERT (*e.g.*, heat-resistant ERT) or by imported ERT (*e.g.*, food-grade ERT). However, U.S. producers have seen their fine-gauge ERT niche erode over time.[119]

The prices of both imported and domestic ERT are affected by the cost of raw materials, including rubber latex, which is the primary material input in the production of ERT and accounts for between *** and *** percent of the total cost of producing ERT.[120] The price of rubber latex fluctuated during the

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[111] CR at II-9, PR at II-6.

[112] Table D-1, CR at D-3-4, PR at D-3-4.

[113] CR at II-12, PR at II-8.

[114] CR at II-12, PR at II-8.

[115] CR at II-54, PR at II-25.

[116] CR at II-52, PR at II-24, Table 17, CR at II-54, PR at II-26.

[117] CR at II-56-57, PR at II-27, Table 18, CR at II-60, PR at II-29.

[118] Tr. at 152. *See also* Petitioner's Prehearing Br. at 11; *ERT from Indonesia*, Inv. No. 731-TA-787 (Final) USITC Pub. 3191 at 7, 11 (May 1999).

[119] Table 14, CR at II-35, PR at II-15. We reach no conclusion on whether tubed fine gauge ERT is superior to ribboned fine-gauge ERT. It is clear, however, that the increased level of quality offered by imported ERT has led to greater competitiveness of imported ERT. *See* CR at II-84 and II-86, PR at II-39, 40, identifying the importance of improved quality.

[120] CR at II-62, PR at II-30.

period examined but declined significantly between 1997 and 1999 for both U.S. and foreign producers.[121] Unit raw material costs for both of the U.S. producers decreased continuously from 1995 to 1999 as their latex costs fell.[122] ERT prices also declined between 1997 and 1999.[123]

Finally, as noted above, antidumping and countervailing duty orders were imposed on imports of ERT from Malaysia in 1992,[124] and an antidumping duty order was imposed on imports of ERT from Indonesia in 1999. While the countervailing duty order was revoked in 1998,[125] the antidumping orders remain in effect.

Analysis of Causation as to Present Injury

Although we have determined that the evidence in the record indicates that the domestic industry is experiencing serious injury, we find that increased imports of ERT are neither an important cause of serious injury to the domestic industry, nor a cause that is equal to or greater than any other cause.

Imports of ERT did increase from 16.2 million pounds in 1995, to 20.8 million pounds in 1998, but declined to 18.6 million pounds in 1999, a level below that in 1997 and 1998.[126] This decline continued in interim 2000 with imports in January-June 2000 at 8.5 million pounds, as compared to 8.9 million pounds in January-June 1999.[127]

In concluding that the increased imports are not an important cause of serious injury, we found no evidence of correlation between changes in the domestic ERT industry's financial condition during the period examined and import volume trends. Specifically, the record indicates that the industry experienced

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[121] Prices of rubber latex for domestic producers increased from around $*** per pound in the latter part of 1994 to between $*** and $*** per pound by the third quarter of 1996. CR at II-62, PR at II-30-31. However, rubber latex prices then fell to under $*** per pound in 1997, and then fell further ***. CR at II-62-63, PR at II-29. Prices of rubber latex for foreign producers fell from $*** per pound in 1997, to $*** per pound in 1998, and to $*** per pound in 1999. CR at II-63, PR at II-29-31.

[122] CR at II-19, PR at II-11, Table 7, CR at II-23, PR at II-11.

[123] CR at II-83, PR at II-39.

[124] In September 1992, the Commission determined under section 731(b) of the Tariff Act of 1930 ("the Act"), 19 U.S.C. § 1673d(b), that the domestic industry was materially injured by reason of less than fair value ("LTFV") imports of ERT from Malaysia. Commerce imposed an antidumping duty order on imports from Malaysia on October 7, 1992. In June 2000, the Commission, in a full five-year review of the order on Malaysia, determined under section 751(c) of the Act, 19 U.S.C. § 1675(c), that revocation of the antidumping duty order on ERT imports from Malaysia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[125] In June 1998, the Commission determined under section 753 of the Act, 19 U.S.C. § 1575b(a)(1), (2), that an industry in the United States was not likely to be materially injured if the countervailing duty order on ERT imports from Malaysia were revoked. Subsequently, on July 28, 1998, Commerce revoked the countervailing duty order on ERT imports from Malaysia.

[126] Table 1, CR at II-9, PR at II-6, Table 2, CR at II-11, PR at II-7, Table 3, CR at II-13, PR at II-9.

[127] Table C-2, CR at C-5, Table D-1, CR at D-3.

its best performance when ERT imports were increasing. For example, U.S. import volumes of ERT reached their highest levels during 1997 and 1998.[128] Nonetheless, in 1997, U.S. production rose to *** pounds, and the U.S. industry's capacity utilization rate rose to its highest post-1995 level at *** percent. In addition, the industry's net sales, gross profits, and operating income were also at their highest points at this time. Indeed, Globe experienced its highest *** in 1997,[129] when it imported its greatest volume of Indonesian ERT.[130] North American experienced its greatest *** in 1998, when U.S. imports were at their zenith. The number of production and related workers also rose in 1997 to nearly the highest point during the period at ***, as did worker productivity.[131]

Although still somewhat robust compared to the rest of the period, in 1998, the industry's financial condition began to deteriorate following the filing by North American of an antidumping duty petition against imports of ERT from Indonesia. The industry experienced its most significant profitability declines in 1999 and interim 2000, despite the fact that imports decreased significantly in 1999 as compared to 1998, both absolutely and relative to domestic production, and fell slightly from interim 1999 to interim 2000. The lack of correlation between increased imports and serious injury indicates the lack of a causal nexus.

Moreover, we note that when the Commission requested information from U.S. producers regarding which factors they believed adversely affected the industry, Globe--the only producer experiencing *** during the period--responded by ***.[132] Indeed, ***.[133]

We have also considered petitioner's argument attributing the declining prices of ERT, particularly in 1998-1999, to increased quantities of low-priced imports. We conclude, to the contrary, that price declines reflect in part the declining raw material costs of latex, acknowledged to be the main raw material used in producing ERT. The cost of rubber latex fell between 1997 and 1999, resulting in a decline of $*** per pound in the industry's raw material costs from 1997 to 1999.[134] This decline contributed to the domestic price decline from 1997 to 1999.[135] More ERT suppliers agreed that the decreased cost of rubber latex was a very important cause of the decline in ERT prices than agreed on the importance of any other cause.[136]

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[128] Table 3, CR at II-13, PR at II-9.

[129] Table 5, CR at II-18, PR at II-11.

[130] CR at II-12, PR at II-8. Globe imported *** pounds of ERT in 1997, valued at $***.

[131] Workers were producing *** pounds per hour in 1997, the highest level during the period. Table 4, CR at II-16, PR at II-10.

[132] CR at II-82, PR at II-38.

[133] Globe Producers' Questionnaire Response at 2.

[134] Table 7, CR at II-23, PR at II-11.

[135] Table V-6, CR at II-83-84, PR at II-33-39.

[136] CR at II-84, PR at II-39.

In finding that increased imports are not an important cause of serious injury to the domestic industry nor a cause that is equal to or greater than any other cause, we also considered other evidence in the record of alternative causes. We note in this regard Globe's business decision to shift the focus of its production-related resources from commodity-grade ERT to more profitable spandex and fine-gauge ERT products. The decision caused Globe to rely principally on imports of ERT from Indonesia to supply its commodity-grade ERT customers.[137] When Indonesian imports declined after antidumping duties were imposed in 1999, Globe lost its assured source of low-cost commodity-grade ERT. In order to continue to supply a full product line to its customers, Globe then increased its commodity-grade production to levels *** than levels earlier in the period.[138] These levels proved unsustainable. Consequently, in March 2000, Globe announced its decision to withdraw from the ERT business altogether,[139] sold its ERT lines to North American, and began to concentrate solely on spandex production.

We also examined fluctuations in demand for ERT over the period examined due in part to substitution by spandex and other synthetic elastomers due to environmental and health considerations, and end users' relocation of their production facilities outside the United States to gain ready access to lower cost ERT.

In sum, given the lack of correlation between the U.S. industry's worsening condition and increased imports, as well as the evidence in the record of other factors that contributed importantly to the domestic industry's condition, we find that increased imports are not an important cause of serious injury, nor a cause that is equal to or greater than any other cause. We therefore conclude that increased imports are not a substantial cause of serious injury to the U.S. ERT industry.

VII. INCREASED IMPORTS ARE NOT A SUBSTANTIAL CAUSE OF THE THREAT OF SERIOUS INJURY

Statutory Framework. The statute defines "threat of serious injury" as "serious injury that is clearly imminent."[140] In considering whether the industry is threatened with serious injury, we considered all relevant economic factors, including the statutory threat factors:

> (i) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,
>
> (ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,
>
> (iii) the extent to which the United States market is the focal point for the diversion of exports of

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[137] *See Extruded Rubber Thread from Indonesia*, USITC Pub. 3191at 7 (May 1999). *See also* Heveafil and Filati Prehearing Br. at 20, stating "***." *See also* Petitioner's Posthearing Br. at 11, which asserts "***."

[138] Table 21, CR at II-73, PR at II-36.

[139] CR at II-7, II-13, PR at II-5, II-8.

[140] 19 U.S.C. § 2252(c)(6)(D).

the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets.[141]

Some of the factors set out in the statute overlap with factors already discussed in our finding of serious injury. We summarize briefly the facts pertinent to those overlapping factors. We then discuss the other statutory factors as well as other economic factors that we find to be relevant in this investigation.

The domestic industry's market share declined from *** percent in 1995 to *** percent in 1998, before increasing to *** percent in 1999. Industry market share increased slightly from interim 1999 to interim 2000.[142] U.S. capacity utilization also declined between 1995 and 1996, from *** percent to *** percent, and fluctuated thereafter.[143] The domestic industry's production, sales, and productivity also fluctuated during the period, ending at levels in 1999 that were below the levels recorded in 1995.[144] Further declines occurred in interim 2000, as compared to interim 1999, coinciding with the cessation of ERT production by Globe and the purchase of its assets by North American.[145] The industry's operating profitability moved from a *** in 1995, to a *** ratio in 1997 equal to *** percent of industry sales, to a *** ratio of *** percent in 1999.[146] The number of production workers fluctuated over the period but were at similar levels in both 1995 and 1999,[147] before dropping off significantly during the transitional period of 2000.[148] Wages paid were *** percent higher in 1999 than in 1995,[149] but, again, decreased (by *** percent) in interim 2000 as compared to interim 1999 as Globe reduced, and then halted, its ERT production.[150] Inventories held by domestic producers increased significantly from 1995 to 1999,[151] but were more than *** percent lower in interim 2000 than in interim 1999.[152]

These facts, among others, were sufficient for us to conclude that the domestic industry was seriously injured.[153] However, our analysis of the following factors leads us to the conclusion that imports

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[141] 19 U.S.C. § 2252(c)(1)(B).

[142] Table C-2, CR at C-5, PR at C-5.

[143] Table 4, CR at II-16, PR at II-10.

[144] Table 4, CR at II-16, PR at II-10.

[145] Table C-2, CR at C-6, PR at C-6.

[146] Table C-1, CR at C-4, PR at C-4.

[147] Table C-1, CR at C-4, PR at C-4.

[148] Table C-2, CR at C-6, PR at C-6.

[149] Table C-1, CR at C-4, PR at C-4.

[150] Table C-2, CR at C-6, PR at C-6.

[151] Table C-1, CR at C-4, PR at C-4.

[152] Table C-2, CR at C-6, PR at C-6.

[153] Chairman Koplan did not find the domestic industry to be seriously injured.

do not pose the threat of serious injury to the domestic industry.

First, antidumping duties are being applied to imports of ERT from Malaysia and Indonesia to offset sales at less than fair value in the United States.[154] The order with respect to Malaysia recently was continued pursuant to a full five-year review in July 2000,[155] and the order issued with respect to ERT from Indonesia was initially imposed in May 1999.[156] Barring changed circumstances or unforeseen developments, the orders therefore will be in effect for approximately four more years and can be expected to constrain to some extent the behavior of the bulk of ERT imports entering the United States, particularly since ERT imports from Malaysia and Indonesia constitute 70 percent of all ERT imported into the United States.[157]

Second, imports decreased in absolute terms both from 1998 to 1999, and again from interim 1999 to interim 2000. The decline in imports in the most recent periods strongly suggests that imports do not present a threat of serious injury to the domestic industry that is clearly imminent.

Third, North American has been able to generate adequate capital to finance the modernization of its operations, and those operations are already experiencing enhanced performance. Since March 21, 2000, North American has been operating Globe's facility under an informal rental agreement[158] and has now secured financing enabling it to complete its acquisition of all of Globe's ERT operations for $***.[159] Petitioner states in its posthearing brief that North American would ***, and that the merger is already providing beneficial effects.[160] Petitioner further states that it plans to move *** soon to begin producing ***, "which will reduce its cost of production substantially"[161] and will make North American

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[154] *Extruded Rubber Thread from Malaysia*, USITC Pub. 3327 (July 2000) (revocation of antidumping order would likely result in adverse volume and price effects); *Extruded Rubber Thread from Malaysia*, Inv. No. 753-TA-34, USITC Pub. 3112 (Jun. 1998), USITC Pub. 3112 (Jun. 1998) at 10 ("The continued existence of the antidumping order on ERT from Malaysia is likely to constrain any increase in subject import volumes."). Malaysia exported 25.0 million pounds of ERT to the United States prior to 1992; 22.0 million pounds in 1992 (the year in which the antidumping duty order was issued); 10.4 million pounds in 1996; and 9.3 million pounds in 1999. Tr. at 173, CR at Table D-1, CR at D-3, PR at D-3. ERT imports from Indonesia fell from 9.5 million pounds in 1998 to 4.7 million pounds in 1999, and were 53 percent lower in interim 2000 than in interim 1999. Table C-2, CR at C-5, PR at C-5.

[155] *Extruded Rubber Thread from Malaysia*, USITC Pub. 3327 (July 2000).

[156] 64 Fed. Reg. 27755 (May 21, 1999).

[157] CR at II-9, PR at II-6.

[158] CR at II-14, PR at II-8.

[159] CR at II-14, PR at II-8.

[160] Petitioner's Posthearing Br. at 12-15.

[161] Petitioner's Posthearing Br. at 13.

"***."[162] Petitioner confirms that none of the new lines acquired from Globe is surplus,[163] and that its acquisition of the company has already resulted in the following benefits: (1) North American's combined cost per pound is now significantly lower relative to previous levels for each facility because the company's general and administrative expenses are spread between the two locations; (2) the cross-fertilization of technology is proving helpful to the company in both the short- and long- term; and (3) the company is now selling a broader range of product.[164] North American indicates its acquisition of Globe has also caused it to incur the burden of managing two plants: the expense of maintaining the services of the two plants until they are consolidated; and the expense of consolidating them.[165] On balance, we find that North American's ability to finance its acquisition of Globe supports a finding that increased imports do not pose a threat of serious injury to the domestic ERT industry.

Fourth, the domestic industry has maintained existing levels of expenditures for research and development. North American benefitted substantially from its purchase of Globe in this respect, since ***.[166] The two companies were able to maintain their existing R&D expenditure levels during the entire period except for a decrease in Globe's expenditures in 1999. However, with the purchase of Globe's assets by North American, we do not find this one-year decline to be indicative of a future threat of serious injury by imports.[167]

Fifth, while there is significant aggregate productive capacity, and arguably significant excess capacity, in Indonesia, Malaysia, and Thailand, and some projections for increased capacity, these circumstances have existed throughout the period examined but have not led, as discussed previously, to increased imports being a substantial cause of serious injury. In fact, imports have decreased in the most recent periods. In light of all the factors discussed, we do not find that available foreign capacity alone is sufficient to indicate a clearly imminent threat of serious injury.

Sixth, inventories of ERT in the U.S. and foreign markets are declining. U.S. inventories were more than *** percent lower in interim 2000 than in interim 1999,[168] and foreign producers' end-of-year inventories as a percentage of their production fell from *** percent in 1995 to *** percent in 1999.[169]

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[162] Petitioner's Posthearing Br. at 14.

[163] Petitioner's Posthearing Br. at 14.

[164] Petitioner's Posthearing Br. at 14.

[165] Petitioner's Posthearing Br. at 14.

[166] Globe spent $*** on research and development in 1995, $*** in 1996, $*** in 1997, $*** in 1998, and $*** in 1999. In contrast, North American spent $*** in 1995, $*** in 1996, $*** in 1997, $*** in 1998, and $*** in 1999. Table 9, CR at II-25, PR at II-12.

[167] ***. Respondents point out that *** may relate more to Liberia's troubled political condition than to the state of North American, and that North American made similar claims about its Liberian rubber plantation in the previous safeguard investigation of ERT in 1992. On balance, we do not find North American's arguments concerning its Liberian plantation to be persuasive.

[168] Table C-2, CR at C-6, PR at C-6.

[169] CR at II-44, PR at II-19.

Projections indicate that inventories in Indonesia in particular are expected to decline in the near future.[170]

Seventh, there is no evidence that other nations maintain restraints on exports of ERT to third country markets, or on imports of ERT into third country markets, that could cause ERT to be diverted to the United States. Furthermore, evidence in the record of the investigation indicates that foreign producers sell the bulk of their ERT in markets outside of Malaysia and the United States,[171] primarily in Asia and Europe.[172] Reported foreign shipments to the United States accounted for only *** percent of total shipments reported by foreign producers.[173]

We therefore conclude that there is no causal connection between increased imports and any alleged threat of serious injury to the domestic industry, and that increased imports are therefore not a substantial cause of the threat of serious injury to the domestic industry.

VIII. CONCLUSION

For the reasons stated herein, we find that increased imports are not a substantial cause of serious injury, or the threat of serious injury, to the domestic industry producing ERT.

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[170] CR at II-44, PR at II-19.

[171] CR at II-43, PR at II-18.

[172] CR at II-43, PR at II-18.

[173] CR at II-43, PR at II-18.

Dissenting Views on Serious Injury of Chairman Koplan

As noted above, I join the Views of the Commission concerning the domestic industry, increased imports, and no threat of serious injury. However, I dissent from the Views of the Commission concerning serious injury and find that the domestic industry is not seriously injured. In finding that the domestic industry is not seriously injured, I have considered the evidence in the record relating to the enumerated statutory factors, as well as evidence relating to domestic production, capacity, capacity utilization, shipments, market share, profit and loss data, plant closings, wages and other employment-related data, productivity, inventories, capital expenditures, and research and development expenditures. Considered in their entirety and in the context of the analysis discussed below, I do not find these factors reflect a significant overall impairment of the condition of the industry which constitutes "serious injury" within the meaning of section 202 of the Trade Act.[174]

The domestic industry as a whole has experienced declines in several key factors over the years examined in this investigation, including a decline in domestic production[175], in capacity utilization[176], in the number of employees[177], hours worked[178], wages paid[179], and productivity[180]. Over the period examined, the operating income fluctuated, with *** reported in 1995 and 1996, the most *** reported in 1997, and another *** in 1999.[181] Viewed in isolation, the industry may appear to be seriously injured.

While I considered the data for the industry as a whole, and while these data suggest that the industry is seriously injured, a closer analysis of the condition of the industry, viewed in the context of the Commission's recent decision in the antidumping investigation regarding Extruded Rubber Thread ("ERT") from Indonesia and the Commission's findings in that investigation regarding the domestic industry, lead me to find that the industry is not seriously injured.

Two firms, North American and Globe, produced ERT in the United States during the period examined.[182] Prior to its departure from the domestic industry in March 2000, Globe was the larger U.S. producer of ERT; the domestic industry now consists of one firm.[183] Prior to the imposition of antidumping duties on imports of ERT from Indonesia in May 2000, Globe focused increasingly on the manufacture of

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[174] 19 U.S.C. § 2252(c)(6)(C).

[175] Domestic ERT production declined by *** percent from 1995 to 1999. CR at I-14, PR at II-9.

[176] Capacity utilization fell by *** percentage points from 1995 to 1999. Table C-1, CR at C-4, PR at C-4.

[177] Table C-1, CR at C-4, PR at C-4.

[178] Ibid.

[179] Ibid.

[180] Ibid.

[181] Table 6, CR at I-22, PR at II-11.

[182] CR at I-7, PR at II-5.

[183] CR at I-14, PR at II-8.

tubed fine-gauge and heat-resistant ERT[184] and substituted imports from Indonesia for its production of standard grades of ERT. The volume of those imports of ERT from Indonesia were substantial and competed head-to-head with North American's product.[185] Due in part to those substantial imports, the Commission concluded in the antidumping investigation concerning Indonesia that Globe's

primary interest lay in importation, and the Commission found appropriate circumstances existed to exclude Globe from the domestic industry.[186]

On May 21, 1999, Commerce issued an antidumping duty order on imports of ERT from Indonesia as a result of a petition filed by North American. On March 17, 2000, Globe announced its exit from the ERT business[187], and within approximately four months, North American had purchased all of Globe's ERT production lines plus its fine-gauge winding department.[188] North American has begun production on those lines, indicating that the idling of Globe's facilities may be temporary.

I find the divergence in the data of the two domestic firms to be significant, especially since the Commission, in a recent investigation of this industry, found that Globe's primary interest was in importation and excluded Globe from its analysis of the domestic industry.[189] For the industry as a whole, operating income as a percent of sales fell from *** percent in 1997 to *** percent in 1998, and to *** percent in 1999.[190] Between January-June 1999 ("interim 1999") and January-June 2000 ("interim 2000"), operating income as a percent of sales fell from *** percent to *** percent.[191] However, ***. North American was *** in each year examined, and in the latter part of the period of investigation, as the profitability of the industry declined, North American's profitability ***. North American's operating income to sales ratio was *** percent in 1997, rose to *** percent in 1998, and then declined to *** percent in 1999.[192] In the interim 2000, North American's operating income to sales ratio was *** percent, a level higher than in each of the previous full years examined in this investigation.[193] From 1998 to 1999 Globe's

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[184] Tr. at 37-40, 75, 104-105.

[185] *Extruded Rubber Threat from Indonesia*, Inv. No. 731-TA-787 (Final), USITC Pub. 3191 (May 1999) at 5-6.

[186] Ibid.

[187] CR at I-13, PR at II-8.

[188] CR at I-7, PR at II-5.

[189] *Extruded Rubber Threat from Indonesia*, Inv. No. 731-TA-787 (Final), USITC Pub. 3191 (May 1999) at 5.

[190] Table 6, CR at I-22, PR at II-11.

[191] Table C-2, CR at C-6, PR at C-6.

[192] Table 6, CR at I-22, PR at II-11.

[193] Calculated from data submitted by North American on September 15, 2000.

operating income to sales ratio fell from *** percent to ***.[194] In interim 2000, this ratio had ***.[195] Similarly, the idling of facilities and employee reductions that occurred in 2000 reflect the idling of Globe's facilities.

More importantly, the industry recently received relief from less than fair value imports of ERT from Indonesia that were threatening the domestic industry with material injury. As background, on March 31, 1998, North American filed a petition alleging ERT imports from Indonesia were being sold in the U.S. at less than fair value, and those imports were causing material injury to the domestic industry. On May 21, 1999, Commerce issued an antidumping duty order as a result of this investigation. Already at the time of its final determination in that investigation, the Commission stated that it "believed that North American's stronger performance in 1998 *** related to some extent to the pendency of the investigation".[196] That order appears to be effectively eliminating the less than fair value imports from Indonesia. Imports from Indonesia accounted for 45.5 percent of imports of ERT in 1998, and *** percent of U.S. apparent consumption.[197] From 1998 to 1999, imports from Indonesia declined by 50.3 percent, a loss of *** percentage points of U.S. apparent consumption.[198] Between the interim periods, imports from Indonesia declined by 53.3 percent, a *** percentage point loss by imports from Indonesia of U.S. apparent consumption.[199] In addition, the unit value of those imports increased by 16.8 percent between 1998 and 1999 and by 26.6 percent between the interim periods.[200] Thus, the antidumping duty order appears to have remedied the unfairly traded ERT imports in the domestic market that were threatening the domestic industry with material injury.[201]

Thus, while the record evidences that the industry was in a weakened condition over the period of investigation, I find that this weakened condition resulted in part from the effects of less than fair value imports. Given that the current antidumping duty orders on ERT from Indonesia and Malaysia appear to be effective, I do not find the domestic industry is currently seriously injured.

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[194] Table 6, CR at I-22, PR at II-11.

[195] Calculated from data submitted by Globe on September 12, 2000.

[196] *Extruded Rubber Threat from Indonesia*, Inv. No. 731-TA-787 (Final), USITC Pub. 3191 (May 1999) at 11.

[197] Table 2, CR at I-11, PR at II-7; Table C-1, CR at C-4, PR at C-4.

[198] Ibid.

[199] Table C-2, CR at C-6, PR at C-6.

[200] Table C-1, CR at C-4, PR at C-6; Table C-2, CR at C-6, PR at C-6.

[201] I note that in July 2000, the Commission concluded a five-year review of the antidumping duty order on ERT from Malaysia, and found that revocation of that antidumping duty order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *Extruded Rubber Thread from Malaysia*, Inv. No. 731-TA-527 (Review), USITC Pub. 3327 (July 2000). Thus, there currently are antidumping duties being applied to imports of ERT from Malaysia and Indonesia. I also note that between 1995 and 1999 imports from Indonesia and Malaysia accounted for 71.7 - 94.2 percent of all imports of ERT to the United States and *** percent of U.S. apparent consumption. Table 2, CR at I-11, PR at II-7; Table C-1, CR at C-4, PR at C-4.