

EXTRUDED RUBBER THREAD FROM MALAYSIA

Determination of the Commission in
Investigation No. 731-TA-527
(Final) Under the Tariff Act of 1930,
Together With the Information
Obtained in the Investigation



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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-527 (Final)

EXTRUDED RUBBER THREAD FROM MALAYSIA

Determination

On the basis of the record¹ developed in the subject investigation, the 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 materially injured by reason of imports from Malaysia of extruded rubber thread,^{2 3} provided for in heading 4007.00.00 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). The Commission also determines, pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. § 1673d(b)(4)(A)), that critical circumstances do not exist with respect to imports of such merchandise; thus, the retroactive imposition of antidumping duties is not necessary.

Background

The Commission instituted this investigation effective April 1, 1992, following a preliminary determination by the Department of Commerce that imports of extruded rubber thread from Malaysia were being sold at LTFV within

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 The merchandise covered by this investigation is vulcanized rubber thread obtained by extrusion, of stable or concentrated natural rubber latex, of any cross-sectional shape, measuring from 0.18 millimeter (0.007 inch or 140 gauge) to 1.42 millimeters (0.056 inch or 18 gauge), inclusive, in diameter.

³ Vice Chairman Watson, Commissioner Brunsdale, and Commissioner Crawford dissent with respect to food grade extruded rubber thread.

the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 29, 1992 (57 F.R. 18164). The hearing was held in Washington, DC, on August 18, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF CHAIRMAN NEWQUIST AND
COMMISSIONERS ROHR AND NUZUM
Investigation No. 731-TA-527 (Final)

Based on the record in this final investigation, Chairman Newquist and Commissioners Rohr and Nuzum find that an industry in the United States is materially injured by reason of imports of extruded rubber thread from Malaysia that the Department of Commerce ("Commerce") has determined to be sold at less than fair value ("LTFV").¹

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

To determine whether there is material injury or threat of material injury to a domestic industry by reason of dumped imports, the Commission first defines the "industry." The term "industry" is defined as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."² "Like product" is defined as a "product that is like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation."³

¹ Respondents have raised the issue of material retardation of the establishment of an industry with respect to food grade extruded rubber thread. See, e.g., Respondents' Post-Hearing Brief at 12-13, Exhibit 5; Transcript of Hearing at 107-08. We, however, have not found food grade extruded rubber thread to be a separate like product; thus, material retardation will not be discussed further.

² 19 U.S.C. § 1677(4)(A).

³ 19 U.S.C. § 1677(10). The Commission's decision regarding the appropriate like product is essentially a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. See Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int'l Trade 1990), aff'd., 938 F.2d 1278 (Fed. Cir. 1991). In defining the like product, the Commission generally considers a number of factors including: (1) physical characteristics and end uses; (2) interchangeability of the products; (3) channels of distribution; (4) producer and customer perceptions; (5) common manufacturing facilities, production

(continued...)

Commerce has defined the imported article that is the subject of this investigation 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.⁴

A. Varieties of Extruded Rubber Thread⁵

Domestic manufacturers produce a variety of extruded rubber thread products that generally fall into distinct market segments such as talced, talcless, heat resistant, fine gauge, and food grade.⁶ A small amount of heavier gauge domestically produced extruded rubber thread also falls outside

³(...continued)

processes, and production employees; and, where appropriate, (6) price. Calabrian Corp. v. United States, Slip Op. 92-69 (Ct. Int'l Trade, May 13, 1992). No single factor is necessarily dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. Generally, the Commission requires "clear dividing lines among possible like products" and disregards minor variations among them. Torrington Co., 747 F. Supp. at 748-749.

⁴ 57 Fed. Reg. 38465 (Aug. 25, 1992).

⁵ We do not include either spandex or cut rubber thread within the like product. Information obtained in the investigation highlights the many differences between extruded rubber thread and the other two articles, including differences in physical characteristics (different in their elasticity, appearance, and durability); applications and end uses; customers' perceptions of the products; manufacturing processes and costs (different materials and equipment used); channels of distribution; and price. See Report at I-5-12; Respondents' Post-Hearing Brief Exhibit 6; Petitioner's Post-Hearing Brief at 12-17; Transcript of Hearing at 37-38, 59-60, 80, 120-23; Post-Hearing Submission of Elastic Corporation of America at 2-3; Petition at 13. Respondents and petitioner agree that neither spandex nor cut rubber thread is part of the like product. See Respondents' Pre-Hearing Brief at 50; Respondents' Post-Hearing Brief Exhibit 6; Petitioner's Post-Hearing Brief at 12-17; Transcript of Hearing at 120.

⁶ Report at I-4-12; Petition at 6-13. The food grade product is used to manufacture netting for food packaging, such as alimentary nettings to store cured meats (e.g., salami, bologna, arrostiti). See Report at I-5 n.10; see also Petition Exhibit 5 at 21.

the 18 to 140 gauge range of products identified in the petition.⁷

Petitioner asserts that heavier gauge extruded rubber thread should not be included in the like product. Petitioner argues that the heavier gauge products cannot substitute for 18 to 140 gauge range extruded rubber thread in textile applications for which such finer rubber thread is used.⁸ Petitioner asserts that heavier gauge extruded rubber thread is sold to only one customer, which uses the product to make novelty toys.⁹ Petitioner also states that the production process for this heavier gauge thread differs from the 18 to 140 gauge thread in "significant respects"¹⁰ and is priced higher.¹¹ Respondents argue that the heavier gauge thread should be included in the like product and that diameter of thread does not divide extruded rubber thread into separate like products.¹²

Respondents, on the other hand, argue that food grade extruded rubber thread should be a separate like product from other extruded rubber thread¹³

⁷ See, e.g., Petition at 6.

⁸ Petitioner's Pre-Hearing Brief Exhibit 1 at 3.

⁹ Id. Exhibit 1 at 2.

¹⁰ Id. Exhibit 1 at 3-4. Petitioner points to the following differences: raw material used; process ("Machine conditions far outside of normal must be used"); equipment used ("Mechanical drives must be changed to perform under extreme conditions"); operators ("Supervisors and operators require special training because of the extreme conditions under which production occurs"). Id.

¹¹ Petitioner's Pre-Hearing Brief Exhibit 1 at 3.

¹² See Respondents' Pre-Hearing Brief at 43.

¹³ Id. at 44. Respondents assert that talced, talcless, heat resistant, and fine and heavier gauge extruded rubber thread constitute one like product and that food grade extruded rubber thread constitutes a separate like product. However, because respondents raised these arguments for the first time during
(continued...)

on the basis of, among other things, alleged differences in physical characteristics,¹⁴ end uses,¹⁵ customer perceptions,¹⁶ production process,¹⁷ and lack of interchangeability between the two products.¹⁸ Petitioner argues that the food grade extruded rubber thread should be included in the same like product as other varieties of extruded rubber thread.¹⁹ The parties agree, with the exception of the heavier gauge extruded rubber thread and the food grade product, that all varieties of extruded rubber thread should be part of

¹³(...continued)

the final investigation, the Commission did not seek separate data for the food grade extruded rubber thread from the domestic industry. Draft questionnaires were also sent to counsel for respondents, but respondents did not request that such information be obtained by the Commission.

¹⁴ Food grade extruded rubber thread may be treated so that it does not impart a taste to foods. Also, it must have lower levels of nitrosamine agents, which can become carcinogenic when exposed to elements found in meats. Report at I-5 n. 10; Respondents' Pre-Hearing Brief at 48-49; Petitioner's Post-Hearing Brief Exhibit 3; Transcript of Hearing at 89-94.

¹⁵ Parties commented that food grade extruded rubber thread is the wrong color to be used in certain textile applications for which specific colors are preferred. Respondents' Post-Hearing Brief at 11; see also Transcript of Hearing at 95.

¹⁶ Customers perceive food grade extruded rubber thread as being quite different from other extruded rubber thread. Transcript of Hearing at 89-94; Respondents' Post-Hearing Brief at 11-12.

¹⁷ Respondents argue that food grade extruded rubber thread has a different production process than other varieties of rubber thread in that different additives and other special formulations are used. Respondents' Post-Hearing Brief at 11; Respondents' Pre-Hearing Brief at 48-49.

¹⁸ Respondents assert that the special characteristics of food grade extruded rubber thread foreclose any interchangeability between food grade extruded rubber thread and other varieties of extruded rubber thread. They note that the U.S. Food and Drug Administration (FDA) currently requires purchasers of extruded rubber thread for use in food netting to use only certain approved formulations of food grade extruded rubber thread. Respondents' Post-Hearing Brief at 11; Respondents' Pre-Hearing Brief at 48-49.

¹⁹ See Petitioner's Post-Hearing Brief at 10-12.

a single like product.

We find that although the diameter of heavier gauge extruded rubber thread differs from the 18 to 140 gauge product, both exhibit many of the same characteristics, e.g., similar elasticity characteristics and the same appearance and texture, and both are made of virtually the same chemicals and additives. Moreover, the heavier gauge extruded rubber thread is produced using a similar production process, on the same machinery, using the same employees as the 18 to 140 gauge extruded rubber thread, and is composed of primarily natural rubber latex.²⁰ Indeed, differences in diameter of thread depend on an adjustment of factors a producer must always go through to alter the diameter of its thread -- no matter what the gauge.²¹

It appears that the end uses of the different gauge ranges of extruded rubber thread are distinct. The heavier gauge cannot substitute for the 18 to 140 gauge extruded rubber thread in most applications because it would be far too bulky for the textile purposes for which such finer rubber thread is used.

Notwithstanding this distinction in uses, based on the significant similarities among the different gauges of extruded rubber thread, we do not draw a distinction between the gauge ranges for purposes of defining the like product in this investigation. Indeed, within the ranges of 18 to 140 gauge extruded rubber thread, there are differences in end use; distinct gauges cannot be substituted for other gauges.

Similarly, we do not define food grade extruded rubber thread as a separate like product, but include it among the other varieties of extruded

²⁰ Report at I-8-10; see also Petitioner's Post-Conference Brief at 3-4.

²¹ See Report at I-10 n. 22.

rubber thread. Respondents emphasize the special physical characteristics of food grade extruded rubber thread. However, the overall physical characteristics of food grade extruded rubber thread are largely similar to those of other varieties of extruded rubber thread (e.g., size, stretch consistency, elasticity strength, etc.). The only differences in physical characteristics that exist appear to be minor. Such differences exist for all varieties of extruded rubber thread depending on the special end use requirements of the product. (e.g., resistance to heat in dry cleaning for heat resistant extruded rubber thread and the ability to flow freely through textile knitting machinery for talced or talcless (silicone) extruded rubber thread).

The manufacturing process and machinery used for all extruded rubber thread is generally the same, using the same basic latex extrusion process. The basic formulation (or recipe) for all varieties of extruded rubber thread, including food grade, is largely similar, with 80 percent to 85 percent of the inputs composed of natural rubber latex.²² Although there are differences in additives used and the formulation of food grade extruded rubber, this situation is not unique or persuasive; other specialty rubber threads, such as heat resistant extruded rubber thread, must also be differently formulated to impart special qualities. Finally, prices for food grade extruded rubber thread vary only slightly from other varieties of extruded rubber thread.²³

Respondents emphasize the FDA regulatory requirements for food grade extruded rubber thread. We recognize that the FDA has recently placed

²² See *id.* at I-8 n. 19.

²³ See *id.* at I-5 n. 10, I-6 n.11.

restrictions on the use of extruded rubber thread as a food netting, requiring food grade extruded rubber thread producers to receive prior approval of their product formulation from the FDA before their extruded rubber thread may be used for food netting.²⁴ Thus, these restrictions currently act as a legitimate business cost factor affecting the decision to produce food grade extruded rubber thread. However, the bulk of U.S. commercial production of food grade extruded rubber thread preceded the enforcement of these FDA restrictions,²⁵ thus, the restrictions have only recently become a factor affecting production of the product. We find that the similarities in other factors involved in the like product analysis predominate.

Any of the variations in food grade extruded rubber thread appear to be minor and generally subdivide the product into a nonexclusive market segment but do not create a separate like product.²⁶ Indeed, respondents took this position in the preliminary investigation.²⁷ Among the varieties of extruded

²⁴ Id. at I-5 n. 10.

²⁵ See, e.g., id. at I-12 n. 32, I-6 n. 12; Transcript of Hearing at 22, 33-36, 56.

²⁶ See Report at I-4-12; Petition at 6-13.

²⁷ Respondents' Post-Conference Brief at 3-4. Respondents stated in the preliminary investigation that "[t]he basic physical characteristics (e.g., elasticity, appearance, size) of food grade thread are basically identical to regular thread." Id. at 6. They also indicated that the variations among different types of extruded rubber thread (including food grade) "are minor, and generally sub-divide extruded rubber thread into various non-exclusive market segments" based on certain characteristics and "do not create separate like products." Id. at 3-4. They also indicated that "[a]lthough there are variations within the category of extruded rubber thread, the basic uses and characteristics of rubber thread are the same for all segments." Id. at 7. Addressing channels of distribution, the respondents indicated that "[s]ome of the specialty products such as food grade or colored rubber thread are sold directly to customers not associated with the textile industry. These specialty products, however, are sold by the same companies." Id. at 7.

(continued...)

rubber thread, there are a multiplicity of minor distinctions involving the Commission's traditional six like product factors, with the distinctions varying only slightly. The multiplicity of minor distinctions among different varieties of extruded rubber thread demonstrate no "clear dividing lines" which distinguish one variety of extruded rubber thread (including food grade) from any other.²⁸

Accordingly, we find that there is one like product consisting of all extruded rubber thread. Concomitantly, we define the domestic industry to include all domestic producers of extruded rubber thread.

B. Related Parties

Under section 771(4)(B) of the Tariff Act of 1930, producers who are "related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise" ("related parties") may be excluded from the domestic industry.²⁹ Exclusion of related parties is within the Commission's discretion based on the facts presented in each

²⁷(...continued)

Finally, they indicated that "[a]ll forms of extruded rubber thread are manufactured on the same machinery using the same basic manufacturing process." Id. at 8.

²⁸ See, e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Inv. Nos. 303-TA-19 and 20, 731-TA-391-399 (Final), USITC Pub. 2185 at 28-33 (May 1989) (specialty products not considered separate like products because no clear dividing lines separated them from other types of antifriction bearings); accord Sony Corp. of America v. United States, 712 F. Supp. 978, 983 (Ct. Int'l Trade 1989) (color picture tubes not separate like products from other picture tubes, despite certain unique qualities).

²⁹ 19 U.S.C. § 1677(4)(B).

investigation.³⁰ If producers are related parties as defined in section 771(4)(B), the Commission determines whether "appropriate circumstances" exist to exclude these producers from the domestic industry.³¹ The Commission has consistently held that appropriate circumstances exist for the exclusion of related parties from the domestic industry when they are shielded from the competitive effects of imports,³² thus distorting the domestic industry data and ultimately the Commission's analysis.³³

In analyzing whether appropriate circumstances exist to exclude related parties, the Commission principally examines three factors:

- (1) the percentage of domestic production attributable to related producers;
- (2) the reasons why the related producers chose to import the product under investigation -- to benefit from the unfair trade practice or to enable them to continue production and compete domestically; and
- (3) the competitive position of the related producers vis-a-vis other domestic producers.³⁴

³⁰ Torrington Co. v. United States, Slip Op. 92-49 at 12 (Ct. Int'l Trade April 3, 1992); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

³¹ 19 U.S.C. § 1677(4)(B).

³² See, e.g., Sulfur Dyes from China, India, and the United Kingdom, Inv. Nos. 731-TA-548, 550, and 551 (Preliminary), USITC Pub. 2514 (May 1992).

³³ See Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand, Inv. No. 731-TA-520 and 521, USITC Pub. 2528 at 8-9 (June 1992).

³⁴ Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, The Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom, Inv. Nos. 701-TA-319-354, 731-TA-573-620 (Preliminary), USITC Pub. 2549 at 30 (Aug. 1992); see also, e.g., Torrington Co. v. United States, Slip Op. 92-498 at 10 and 11 (Ct. Int'l Trade April 3, 1992) (upholding the Commission's practice of examining these factors in deciding that appropriate circumstances did not exist to exclude a related
(continued...)

The Commission also has considered whether related companies keep separate books and whether the interests of related producers lie mainly in importation or domestic production.³⁵

Qualitex, Inc. and North American Rubber Thread Co., Inc. imported extruded rubber thread from Malaysia during the period of investigation³⁶ and, as a result, they are related parties.³⁷ Thus, we must determine whether appropriate circumstances exist to exclude these firms from our analysis.

The record demonstrates that North American imported to compete domestically rather than to benefit from LTFV imports.³⁸ Evidence in the record of this investigation also shows that the company was not shielded from the competitive effects of LTFV imports.³⁹ In addition, because North American accounted for a substantial portion of domestic production,⁴⁰ excluding them would delete from our analysis crucial data depicting the condition of the industry. For these reasons, we find that appropriate circumstances do not exist to exclude North American from the domestic

³⁴(...continued)

party); Empire Plow, 675 F. Supp. at 1353-54 (declaring the Commission's approach reasonable in light of the legislative history).

³⁵ See Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 at 12 (Jan. 1986); see also Heavy Forged Handtools, USITC Pub. 2357 at 19 (Feb. 1991); Torrington Co., at 10-11.

³⁶ Report at I-17-19.

³⁷ Other confidential reasons exist for considering Qualitex a related party. However, as these reasons are confidential, they are not further discussed but are incorporated into these views.

³⁸ Report at I-18.

³⁹ See, e.g., id. Tables 4-7, 9, 15.

⁴⁰ Id. at I-6, Tables 2, 4, 5.

industry as a related party.

Respondents argue that Qualitex should be excluded because it was shielded from the competitive effects of imports.⁴¹ Respondents present reasons other than competitive imports from Malaysia for Qualitex's closure in October 1990.⁴² Petitioner counters that import competition, including competition from extruded rubber thread Qualitex itself imported, forced Qualitex to stop production.⁴³

Evidence demonstrates that Qualitex, like North American, was not shielded from the competitive effects of imports.⁴⁴ Indeed, other information indicates that Qualitex appears to have closed because of import competition.⁴⁵ The record further suggests that Qualitex imported simply to continue production,⁴⁶ and excluding Qualitex would distort the data because its financial data amplifies similar trends exhibited by the other domestic producers. For these reasons, we do not exclude Qualitex from the domestic industry.

⁴¹ Respondents' Pre-Hearing Brief at 6-10; Respondents' Post-Hearing Brief at 2-4, Exhibit 1.

⁴² Respondents' Pre-Hearing Brief at 11-13; Respondents' Post-Hearing Brief at 3-4, Exhibit 1.

⁴³ Petition at 5 & Exhibit 1; Transcript of Hearing at 12, 41-42; Petitioner's Pre-Hearing Brief at 14-20, Exhibits 9 & 10; Petitioner's Post-Hearing Brief at 17-20.

⁴⁴ See, e.g., Report Tables 3-7, 9, 15; see also Memorandum INV-P-154 (Sept. 17, 1992) at 8.

⁴⁵ See, e.g., Report Tables 3-7, 9, 15; see also Memorandum INV-P-154 (Sept. 17, 1992) at 8.

⁴⁶ See, e.g., Report at I-17 n. 50, Tables 3-7, 9, 15; see also Memorandum INV-P-154 (Sept. 17, 1992) at 8.

III. CONDITION OF THE INDUSTRY

The domestic industry producing extruded rubber thread consisted of three firms in 1989; however, one firm, Qualitex, exited the industry in October 1990. Qualitex's departure accounts for a substantial portion -- but not all -- of the declines shown in production, shipments, and employment data during the period 1989-91. Qualitex's financial condition was also significant in terms of the overall industry's financial performance.⁴⁷ The record shows that the remainder of the industry derived some benefit from Qualitex's departure in the form of some new (formerly Qualitex) customers and sales.⁴⁸

The reasons for Qualitex's exit from the market have been an issue of debate in this investigation. Petitioner alleges that import competition was the cause of the company's closure,⁴⁹ whereas respondents deny that imports were a consideration.⁵⁰ On balance, we conclude that competition from the Malaysian product played an important role in the decision to close the

⁴⁷ The specifics of Qualitex's financial performance are confidential. See Report at I-34-35, Table 9.

⁴⁸ Id. at I-35; Petitioner's Pre-Hearing Brief at 8.

⁴⁹ Petition at 5 & Exhibit 1; Transcript of Hearing at 12, 41-42; Petitioner's Post-Hearing Brief at 17-20; Petitioner's Pre-Hearing Brief at 14-20, Exhibits 9 & 10 (reprinting letters from Qualitex which contradict respondents' claims and explain, according to petitioner, that Qualitex indeed ceased production due to competitive Malaysian products); see also Report Appendix D.

⁵⁰ See Respondents' Pre-Hearing and Post-Hearing Briefs; Transcript of Hearing (confidential portion) at 140-43, 146-47. The specifics of respondents arguments are confidential. See Report at I-25-28. The Commission requested further information from respondents (see Transcript of Hearing at 114, 142-43) but such information was not provided.

Qualitex facility,⁵¹ although there may have been other considerations as well. Thus, we do not entirely discount the declines in aggregate data accounted for by Qualitex's departure.⁵²

We recognize, however, that the decision to shut down rather than simply reduce operations may have been affected by considerations other than import competition. Thus, the observed aggregate declines and losses may have been exacerbated by factors other than the subject imports. We view the condition of the industry in the context of these conditions of competition.⁵³

In evaluating the condition of the domestic industry, the statute directs us to consider "all relevant economic factors which have a bearing on the state of the industry in the United States."⁵⁴ Specifically, we consider, among other factors, domestic consumption, production, shipments, market share, capacity utilization, employment, wages, productivity, domestic prices, profits, cash flow, the ability to raise capital, investment, and development and production efforts.⁵⁵ In addition, the Commission considers the

⁵¹ The specific evidence supporting petitioner is confidential. See Report at I-17 n. 50, Tables 3-7, 9, 15, Appendix D.

⁵² We note, however, that the remainder of the industry also showed deteriorating performance during the period of investigation.

⁵³ Although the Commission may take into account the departures from an industry as indicating injury, we assess the condition of the industry as a whole, and not on a company-by-company basis. See, e.g., Metallwerken Nederland B.V. v. United States, 728 F. Supp. 730, 736 (Ct. Int'l Trade 1989); National Ass'n of Mirror Mfrs. v. United States, 696 F. Supp. 642, 647-48 (Ct. Int'l Trade 1988); Copperweld Corp. v. United States, 682 F. Supp. 552, 569 (Ct. Int'l Trade 1988); see also Iwatsu Electric Co., Ltd., v. United States, 758 F. Supp. 1506, 1510 (Ct. Int'l Trade 1991) (not all indicators must be negative to support a Commission negative determination). Thus, the departure of Qualitex alone is not dispositive, but is a part of our injury analysis.

⁵⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁵ Id.

particular nature of the industry under investigation, including any "business cycle and conditions of competition that are distinctive to the affected industry."⁵⁶ Due to the limited number of producers, much of our discussion is necessarily general to maintain the confidentiality of business proprietary information. This constraint particularly limits our discussion of the interim periods (January-March 1991 and January-March 1992).

Apparent domestic consumption of extruded rubber thread increased steadily from 1989 to 1991, and from interim period 1991 to interim 1992.⁵⁷ However, the market share of extruded rubber thread held by the domestic manufacturers decreased consistently and significantly during the period of investigation, falling from 82 percent in 1989 to a much lower percentage in 1991 (and dropping further in interim period 1992).⁵⁸

Aggregate domestic capacity of extruded rubber thread manufacturers decreased steadily during 1989-91, particularly from 1990 to 1991.⁵⁹ Capacity increased between interim 1991 and 1992,⁶⁰ appearing to reflect improved productivity, not expansion. Domestic production of extruded rubber thread decreased significantly and steadily throughout the period of investigation, leading to corresponding reductions in capacity utilization levels.⁶¹

⁵⁶ Id.; see also H.R. Rep. No. 317, 96th Cong., 1st Sess. 36 (1979); S. Rep. 249, 96th Cong., 1st Sess. at 88 (1979). None of the parties suggested the existence of a business cycle unique to this industry.

⁵⁷ Report Table 3.

⁵⁸ Id. Table 15.

⁵⁹ Id. Table 4.

⁶⁰ Id.

⁶¹ Id.

Domestic shipments of extruded rubber thread manufacturers, by both quantity and value, followed a trend similar to that for production.⁶² Unit values of domestic shipments decreased from 1989 to 1990, then increased slightly in 1991, but not to 1989 levels.⁶³ Unit values of domestic shipments increased from interim 1991 to interim 1992, but again not to 1989 levels.⁶⁴

End-of-period inventory levels for all domestic extruded rubber thread manufacturers decreased each year from 1989 to 1991.⁶⁵ However, end-of-period inventory levels as a percentage of total shipments rose steadily from 1989 to 1991, and from interim period 1991 to interim period 1992.⁶⁶

Employment in the domestic industry producing extruded rubber thread declined from 1989 to 1991, as measured by the number of production and related workers, the total hours worked, and the total compensation paid to such workers.⁶⁷ The comparable employment indicators were virtually unchanged from interim 1991 to interim 1992.⁶⁸

The financial performance of the industry producing extruded rubber thread was poor throughout the period of investigation. Net sales decreased consistently each full year throughout the period.⁶⁹ The domestic industry

⁶² Id. Table 5.

⁶³ Id. We note that the relatively high unit value in 1989 was partly a reflection of historically high input costs.

⁶⁴ Report Table 5.

⁶⁵ Id. Table 6.

⁶⁶ Id.

⁶⁷ Id. at I-31 & nn. 91-92, Table 7.

⁶⁸ Id. at I-42, Table 7.

⁶⁹ Id. Tables 8 & 9.

reported operating losses during the period of investigation, both in absolute dollars and as a share of net sales.⁷⁰

Virtually every indicator demonstrates that the condition of the domestic industry has deteriorated significantly during the period of investigation. Based upon the data available in this final investigation, Chairman Newquist and Commissioner Rohr find that the domestic industry producing extruded rubber thread is materially injured.

IV. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In making a final determination in an antidumping duty investigation, the Commission is to determine whether an industry in the United States is materially injured by reason of the imports under investigation.⁷¹ When making that determination, the statute provides that the Commission consider in each case:

(I) the volume of imports of the merchandise which is the subject of the investigation,⁷²

(II) the effect of imports of that merchandise on prices in the United States for like products,⁷³ and

⁷⁰ Id.

⁷¹ 19 U.S.C. § 1673d(b)(1).

⁷² In evaluating the volume of imports of merchandise, the statute directs 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." 19 U.S.C. § 1677(7)(C)(i).

⁷³ In evaluating the price effect of subject imports, the statute states that the Commission:

shall consider whether -

(I) there has been significant price underselling by the imported merchandise as compared with the price of like products of the United States, and

(continued...)

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations in the United States.⁷⁴

In making this determination, the Commission may consider "such other economic factors as are relevant to the determination" ⁷⁵ Although we may consider information that indicates that injury to the industry is caused by factors other than LTFV imports, we do not weigh causes.⁷⁶ We note that the Commission need not determine that dumped imports are "the principal, a substantial or a significant cause of material injury."⁷⁷ Rather, a finding that imports are a cause of material injury is sufficient.⁷⁸

The volume of LTFV imports of extruded rubber thread from Malaysia increased significantly throughout the period of investigation, more than doubling from 1989 to 1990, and then continuing to increase substantially from 1990 to 1991.⁷⁹ The unit values of extruded rubber thread imports from Malaysia fluctuated, decreasing significantly from 1989 to 1990, and rising

⁷³(...continued)

(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.

¹⁹ U.S.C. § 1677(7)(C)(ii).

⁷⁴ Id. § 1677(7)(B)(i).

⁷⁵ Id. § 1677(7)(B)(ii).

⁷⁶ E.g., Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988); S. Rep. No. 249 at 57; H.R. Rep. No. 317 at 47.

⁷⁷ S. Rep. No. 249, 96th Cong., 1st Sess. 57, 74 (1979).

⁷⁸ E.g., Metallverken Nederland B.V. v. United States, 728 F.Supp. 730, 740 (Ct. Int'l Trade 1989); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

⁷⁹ Report Table 14.

slightly in 1991, but not to 1989 levels.⁸⁰ Unit values were virtually unchanged from interim 1991 to interim 1992.⁸¹

Market penetration of LTFV imports from Malaysia, by quantity, also increased dramatically and consistently during the period of investigation, rising from considerably less than 20 percent of U.S. consumption in 1989 to well over 50 percent in 1991.⁸² Data for interim period 1992 demonstrate an even larger presence in the U.S. market.⁸³ Market penetration by value exhibited a similar trend, but at a lower absolute value, reflecting the lower average unit value of LTFV import shipments compared with domestic shipments.⁸⁴

The prices for the six selected gauges of imported and U.S.-produced extruded rubber thread for which pricing data were obtained⁸⁵ fell over the period covered with the exception of one product which only North American produced and which remained unchanged.⁸⁶ Prices decreased most dramatically after the first quarter of 1989, due to the fall in the price of natural rubber latex.⁸⁷ Because of this fall in input costs, we have looked less at

⁸⁰ Id. We note that the relatively high unit value in 1989 was partly a reflection of historically high input costs.

⁸¹ Report Table 14.

⁸² Id. Table 15.

⁸³ Id.

⁸⁴ Id.

⁸⁵ Qualitex could not provide price data for the requested products; therefore, all domestic pricing data concern data reported by Globe Manufacturing Company and North American.

⁸⁶ Report Tables 16-17 & I-1.

⁸⁷ Id.

actual price declines than at relative price declines. The record reflects that the decline in prices for the LTFV imports of extruded rubber thread from Malaysia were much greater than those of the domestic industry, particularly after the time period during which natural rubber latex prices were falling.⁸⁸ Indeed, prices of extruded rubber thread from Malaysia continued to decline at a steady pace during the remainder of the period of investigation.

Significantly, in each quarterly period for which price comparisons were possible, LTFV imports from Malaysia undersold the domestic product, by margins generally in excess of 30 percent.⁸⁹ Margins of underselling for the Malaysian product in the thicker gauges ranged from 7.4 percent in one quarter to as much as 56.4 percent in another quarter.⁹⁰ Margins of underselling for the finer gauge thread ranged from 0.3 percent to 29.0 percent.⁹¹ We thus find significant underselling by the imports from Malaysia.⁹² There is also

⁸⁸ Id.

⁸⁹ Id. Information gathered in these investigations indicates that the domestic producers are able to maintain some sales at higher prices than Malaysian competitors. See Report at I-48-49, 63-67; Transcript of Hearing at 18-29. Domestic producers serve market segments in which the Malaysians do not compete as effectively and in which domestic producers are able to take advantage of their ability to satisfy short supply orders more quickly than the Malaysians. See Report at I-48-49, 63-67; Transcript of Hearing at 18-29; Respondents' Pre-Hearing Brief at 31-32. However, it appears that the domestic producers were relegated to these market segments due to intensely competitive pricing of imports from Malaysia in the overall U.S. market. Thus, we are not convinced by respondents' arguments that imports from Malaysia do not compete in the U.S. market with the domestic product.

⁹⁰ Report Table 17.

⁹¹ Id.

⁹² We note that the industry has been able to capture certain sales from Qualitex's closure. See Report Table 9; Petitioner's Pre-Hearing Brief at 8. This fact, coupled with the industry's ability to sustain itself with sales to particular market segments, does not lead to a conclusion that LTFV imports

(continued...)

evidence that prices have been suppressed relative to cost.⁹³

We further note that there is evidence that the domestic industry lost sales to subject imports due to the lower price of those imports from Malaysia.⁹⁴ Purchasers reported no significant differences in the quality of U.S.-produced and imported Malaysian extruded rubber thread.⁹⁵ Most end users were unaware of the country of origin of the product.⁹⁶ Price was a major factor in their buying decisions.⁹⁷

In light of the condition of the domestic industry, the increasing volumes and market share of LTFV imports, underselling, and lost sales due to the unfairly traded extruded rubber thread imports from Malaysia we conclude that the subject imports are a cause of injury to the domestic industry.

⁹²(...continued)

are not adversely affecting the domestic industry: "an industry's economic recovery can also be stymied by low-priced imports which expand their share of the recovering market and create artificially low prices." National Ass'n of Mirror Mfrs. v. United States, 696 F. Supp. 642, 647 (Ct. Int'l Trade 1988); see also USX Corp. v. United States, 655 F. Supp. 487, 490 (Ct. Int'l Trade 1987).

⁹³ Report Table 8.

⁹⁴ Id. at I-55-57; Transcript of Hearing at 19.

⁹⁵ Report at I-83-87;

⁹⁶ Id.

⁹⁷ Transcript of Hearing at 26-29; Report at I-83-87.

V. CRITICAL CIRCUMSTANCES

Commerce has found that critical circumstances exist with respect to LTFV imports from Rubberflex.⁹⁸ When Commerce makes an affirmative determination with respect to critical circumstances, the Commission is required to determine, for each domestic industry for which it makes an affirmative injury determination, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."⁹⁹ The statute directs the Commission to evaluate whether "the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed."¹⁰⁰ An affirmative critical circumstances determination by the Commission results in the retroactive application of the antidumping order for a period 90 days prior to the suspension of liquidation.¹⁰¹

The purposes of the critical circumstances provision are set out in the legislative history. The Ways and Means Committee Report to the Trade Agreements Act of 1979 states that the provision is designed to: (1) provide prompt relief for the domestic industry suffering from large volumes of imports or a surge in imports over a short period; and (2) deter exporters

⁹⁸ To reach its determination that there has been a "massive" increase in imports, Commerce compared the three months immediately following the filing of the petition (Aug. 29, 1991 to Nov. 29, 1991) with the immediately prior three month period. Commerce found that the weight-averaged dumping margin of Rubberflex exceeded the benchmark percentage that Commerce uses to impute knowledge of dumping. 57 Fed. Reg. 38468 (Aug. 25, 1992).

⁹⁹ 19 U.S.C. § 1673d(b)(4)(A)(i).

¹⁰⁰ Id. § 1673d(b)(4)(A)(ii).

¹⁰¹ Id. § 1673d(c)(4).

from attempting to circumvent the antidumping statute.¹⁰² A surge in imports can occur as a result of an attempt to circumvent the antidumping statute immediately after the initiation of an investigation and, where Commerce finds critical circumstances, we would be required to consider that surge. The adverse impact of such a surge can continue to affect the domestic industry during and after the 90-day period during which retroactive duties can be imposed. If, however, the surge itself dissipates before that 90-day period begins, retroactive imposition of duties cannot meaningfully "prevent recurrence of material injury" resulting from that surge since the duties cannot reach those imports, and, therefore, cannot affect the impact of those LTFV imports on the domestic industry.

In making its critical circumstances determination, Commerce compared the three-month period immediately following the filing of the petition with the immediately preceding three-month period.¹⁰³ Because Commerce's preliminary investigation was extended and not published until April 2, 1992, the three month period it analyzed to make its critical circumstances finding is not the period for which retroactive duties would be collected. The suspension of liquidation occurred when Commerce published its preliminary determination on April 2, 1992;¹⁰⁴ thus, the period for which retroactive suspension would occur would include the 90-day period immediately prior to April 2, 1992.

¹⁰² See H. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

¹⁰³ See 57 Fed. Reg. 38468 (Aug. 25, 1992).

¹⁰⁴ 57 Fed. Reg. 11287 (April 2, 1992). We note that the petition in these investigations was filed on August 29, 1991 and the Commission's preliminary affirmative determination was issued on October 15, 1991.

The evidence demonstrates that although imports were at high levels, there was no surge during the 90-day period for which retroactive application of suspension of liquidation -- and imposition of duties -- would apply. Retroactive imposition and collection of duties on imports entering during this 90-day period is not necessary to prevent the recurrence of the material injury caused by such LTFV imports,¹⁰⁵ and we find that the effectiveness of the antidumping order on extruded rubber thread from Malaysia will not be materially impaired by declining to impose retroactive duties on such LTFV imports.

¹⁰⁵ See Magnesium from Canada, Inv. Nos. 701-TA-309, 731-TA-528 (Final), USITC Pub. 2550 at 20-23 (Aug. 1992).

VIEWS OF VICE CHAIRMAN WATSON
AND COMMISSIONERS BRUNSDALE AND CRAWFORD
Investigation No. 731-TA-527 (Final)
September 30, 1992

Based on the evidence gathered in this investigation, we find that the domestic industry producing extruded rubber thread, not including food grade extruded rubber thread, is materially injured by reason of dumped imports from Malaysia. We find that no domestic industry is materially injured or threatened with material injury by reason of dumped imports of food grade extruded rubber thread from Malaysia.¹

I. LIKE PRODUCT

The like product is defined as a "product that is like, or in the absence of like, most similar in characteristics and uses with the article subject to investigation."² The Department of

¹ Material retardation is not an issue in this investigation because food grade extruded rubber thread was produced domestically during the period of investigation. Domestic producers may not currently sell food grade extruded rubber thread in the United States; however, production facilities remain in place and R&D efforts are ongoing.

² 19 U.S.C. § 1677(10). The Commission's decision regarding the appropriate like product is essentially a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. See Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (CIT 1990), aff'd., 938 F.2d 1278 (Fed. Cir. 1991). In analyzing like product issues, the Commission has traditionally considered a number of factors including: (1) physical characteristics and end uses; (2) interchangeability of the products; (3) channels of distribution; (4) producer and customer perceptions; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. Calabrian Corp. v. United States, Slip Op. 92-69 (Ct. Int'l Trade, May 13, 1992). The Commission may consider other factors it deems relevant based upon

(continued...)

Commerce (Commerce) has defined the imported article covered in this investigation 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.³

In the preliminary investigation, the Commission determined that the domestic product like the imports subject to investigation was all extruded rubber thread within the gauge defined by Commerce's scope determination.⁴

In the final investigation there were three major like product issues: whether the like product should include heavy gauge extruded rubber thread outside the Commerce scope, whether cut rubber thread and spandex should be included in the domestic like product, and whether food grade extruded rubber thread should be considered as a separate like product.⁵

An important consideration for establishing which products produced domestically should be defined as the like product is substitutability. The traditional six-to-eight factors usually considered by the Commission are key determinants of substitutability. Substitutability provides a framework in which to evaluate the individual factors in making the like product

²(...continued)

the facts of a particular investigation. Generally, the Commission requires "clear dividing lines among possible like products" and disregards minor variations among them. Torrington Co., 747 F. Supp. at 748-749.

³ 57 Fed. Reg. 38465 (Aug. 25, 1992).

⁴ USITC Pub. 2441 at 9-10 (Oct. 1991).

⁵ The food grade product is used to manufacture netting for food packaging, such as alimentary netting to store cured meats (e.g., salami, bologna, arrostiti). See Report at I-5 n. 10; see also Petition Exhibit 5 at 21.

determination. For example, physical appearance, end uses, functionally interchangeability of the products, and customer perceptions affect demand-side substitutability (substitutability from the point of view of buyers), whereas common manufacturing facilities and production employees affect supply-side or production substitutability. Looking at each factor in isolation and finding a like product based on a majority of factors without some discussion of why those particular factors are important in a certain case can lead to arbitrary or subjective decisions. Therefore, we discuss the traditional Commission factors in the context of demand-side and supply-side substitutability.

A small amount of domestically produced extruded rubber thread falls outside the 18-to-140 gauge range of products identified in the petition.⁶ Petitioner argued that the heavier and wider extruded rubber thread is not like other extruded rubber thread because it is used only to make novelty toys, it is produced by a different production process, and it is sold at a relatively higher price.⁷ Respondents argued that all gauges of extruded rubber thread should be included in the like product because the different diameter does not create a clear dividing line between products.⁸

We believe that the heavier and wider extruded rubber thread should be included in the like product. Extruded rubber thread

⁶ See Petition at 6.

⁷ Pre-Hearing Brief of Petitioner, North American Rubber Thread Company at 9 and Exhibit 1 at 2-4.

⁸ Respondents' Pre-Hearing Brief at 43.

is made in many different diameters and there is no clear dividing line between 18-140 gauge and all other gauges. The wider rubber thread is virtually identical to narrower extruded rubber thread in all respects other than thickness and width. Moreover, the heavier and wider gauge extruded rubber thread is produced by the same employees, on the same machinery as the 18-to-140 gauge extruded rubber thread, requiring only a slight adjustment to switch among gauges.⁹

The preliminary investigation did not include spandex or cut rubber thread in the like product. The additional information gathered in this final investigation supports the Commission's earlier decision and highlights the many differences between extruded rubber thread and the other two products.¹⁰ End users testified that different physical characteristics made spandex and cut rubber thread more appropriate for different end uses than is extruded rubber thread. In addition, they testified that in applications where those materials are also appropriate, it would be considerably more expensive to use spandex or cut rubber thread.¹¹ Therefore, as a practical matter, these other products are not close substitutes and should not be considered as part of the like product.

⁹ See Report at I-8-10.

¹⁰ Respondents and petitioner agree that spandex and cut rubber thread are not the same like products as extruded rubber thread. See Respondents' Pre-Hearing Brief at 50; Respondents' Post-Hearing Brief Exhibit 6; Petitioner's Post-Hearing Brief at 12; Hearing Transcript at 120.

¹¹ Hearing Transcript at 37-38, 59-60, 80, 120-23; See also Report at I-6, I-10-11; Respondents' Post-Hearing Brief, Exhibit 6; Petitioner's Post-Hearing Brief at 12-17; Post-Hearing Submission of Elastic Corporation of America at 2-3 (hereinafter "ECA's Post-Hearing Submission"); Petition at 13.

Respondents argued in the final investigation that food grade extruded rubber thread is a separate like product.¹² They asserted that it has different physical characteristics than other types of extruded rubber thread, is perceived by consumers as a distinct product, does not impart a taste to meats, and has lower levels of nitrosamines (chemicals that can become carcinogenic when exposed to meats).¹³ These special characteristics, they argue, foreclose any interchangeability between food grade extruded rubber thread and other varieties of extruded rubber thread. In addition, evidence suggests that food grade extruded rubber thread that is not colored cannot be used in certain textile applications.¹⁴

The manufacturing process and machinery used for all extruded rubber thread is generally the same basic latex extrusion process. However, there are differences in the additives and other special formulations used to make food grade extruded rubber thread so that it does not impart an unpleasant taste to meats.¹⁵ More important, food grade extruded rubber thread must satisfy FDA requirements for use as a food wrap.¹⁶

Regardless of any physical similarities between food grade and other extruded rubber thread or similarities in price, buyers

¹² Respondents' Pre-Hearing Brief at 44. Respondents assert that talced, talcless, heat resistant, and fine and large gauge extruded rubber thread constitute one like product and that food grade extruded rubber thread constitutes a separate like product.

¹³ Respondents' Pre-hearing Brief at 48-49; Respondents' Post-Hearing Brief at 11-12.

¹⁴ See Transcript of Hearing at 95. Respondents Post Hearing Brief at 11.

¹⁵ See Report at I-7-I-10, Tables 16-17 & Appendix I.

¹⁶ See Report at I-5 n. 10, I-6 n. 11.

of food grade rubber thread are prohibited by law from using other extruded rubber thread to wrap meats. Doing so would leave meat packers open to criminal prosecution and liability.

Consumers simply may not use other types of extruded rubber thread as an alternative to food grade rubber thread.

On the supply side, the traditional Commission criteria may be misleading. While U.S. producers claim that they could make food grade extruded rubber thread using the same machinery, equipment, and workers that they use to make other extruded rubber thread, their product can no longer be sold legally as meat packing material unless it is approved by the FDA.¹⁷ Nor have they sought to use one of the two approved formulas. Without recounting the entire legal history of the FDA decision, suffice it to say that because domestic producers have not yet filed a petition with the FDA for approval of their food grade rubber thread, they may not sell it in the United States now or in the foreseeable future.¹⁸ Thus, physical substitutability on the production side is irrelevant to supply side substitutability in the marketplace.

For the reasons outlined above, we find a like product that includes all extruded rubber thread except for food grade extruded rubber thread. We find two domestic industries based on our like product definition--food grade extruded rubber thread and all other extruded rubber thread.

¹⁷ According to a FDA official, it takes about two years to get a formula for food-grade rubber thread approved. See Report at I-5, n. 10.

¹⁸ See Report at I-5.

II. RELATED PARTIES

We determine that Qualitex is a related party within the meaning of the statute¹⁹ and that appropriate circumstances exist to exclude Qualitex from the domestic extruded rubber thread industries, as defined above.

The Commission traditionally has applied the related parties provision in two steps.²⁰ First, the Commission determines whether a domestic producer meets the definition of a related party. Second, if a producer meets that test, the Commission may exclude that producer in "appropriate circumstances". The statute does not provide a definition of "appropriate circumstances" and little guidance is given in the legislative history as to the meaning of that term.²¹ Exclusion of a related party is within the Commission's discretion based upon the facts presented in each case.²²

The Commission has found appropriate circumstances where a foreign producer exports to the United States in a manner so as

¹⁹ 19 U.S.C. § 1677 (4)(B).

²⁰ See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383 at 17 (May 1991).

²¹ See S. Rep. No. 249, 96th Cong., 1st Sess. at 83 (1979). The Senate Report merely states that:

Thus, for example, where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry.

²² See, e.g., Torrington Co. v. United States, Slip Op. 92-49 at 10 (CIT April 3, 1992); Sandvik AB V. United States, 721 F. Supp. 1322, 1331-32 (CIT 1989), aff'd without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT 1987).

not to compete with a related U.S. producer. In determining whether a particular U.S. producer is receiving such a competitive advantage and thus being "shielded" from the effects of the subject imports, the Commission has traditionally looked at the percentage of domestic production attributable to the importing producer, the reasons the U.S. producer has decided to import the product subject to investigation, and the position of the related producer vis-a-vis the rest of the industry.²³

The Commission also has considered other factors in determining whether appropriate circumstances might exist to exclude a particular related party. The Commission has expressed concern about excluding companies that account for a significant share of domestic production because exclusion could impair the accuracy of its determination.²⁴ The Commission also has expressed concern about including companies in the domestic industry where inclusion would skew the economic data available to the Commission,²⁵ or present a distorted view of the industry.²⁶

Evidence in the record indicates that two of the three domestic producers, Qualitex and North American, imported

²³ See Torrington Co. v. United States, Slip Op. 92-49 at 11 (CIT April 3, 1992) (affirming Commission's application of the related party provision).

²⁴ See Rock Salt from Canada, Inv. No. 731-TA-239, USITC Publication No. 1798 at 13 (January 1986); and Certain Table Wine from France and Italy, Inv. Nos. 701-TA-210,211 (Preliminary) and 731-TA-167, 168 Preliminary, USITC Publication No. 1502 at 10 (March 1984).

²⁵ Certain Table Wine From France and Italy, Publication No. 1502, at 11.

²⁶ Ball Bearings, Mounted or Unmounted, and Parts Thereof, from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia, Inv. Nos 701-TA-307 and 731-TA-498-511, USITC Pub. 2374 at 17 (May 1989).

extruded rubber thread from Malaysia during the period of investigation. On that basis alone, we determine that they are related parties. This leaves only the issue of whether appropriate circumstances exist to exclude either or both from the domestic industry as related parties.

North American, the petitioner, imported a small amount of extruded rubber thread from a Malaysian producer, during the period of investigation.²⁷ Neither the petitioner nor respondents suggested excluding North American from this investigation as a related party. North American's imports accounted for a very small portion of its total shipments,²⁸ and the record contains no evidence that North American imported the product to benefit from LTFV imports or that it was in any way shielded from the competitive effects of LTFV imports. Moreover, because North American accounted for a substantial portion of domestic production throughout the entire period of investigation, excluding it would delete from our analysis crucial data on the condition of the industry. For these reasons, we do not find that appropriate circumstances exist to exclude North American from the domestic industry as a related party.

The circumstances surrounding Qualitex are very different. We determine that appropriate circumstances do exist to exclude Qualitex from the domestic industry producers as a related party.

²⁷ Report at I-18.

²⁸ Confidential Staff Report at I-21 and I-24.

We exclude Qualitex from both the food grade and non-food grade extruded rubber industries. Respondents support the exclusion of Qualitex as a related party while the petitioner objects.³⁰ The information and data gathered by the Commission regarding the operations of Qualitex and the reasons for its withdrawal from the extruded rubber thread industry are confidential and may not be discussed here. One important factor we considered in analyzing whether appropriate circumstances exist to exclude Qualitex from the domestic industry is the degree to which it was "shielded" from the effects of the subject imports. Qualitex's imports in 1990 were relatively substantial and represented a significant percentage of its net sales.³¹ Evidence in the record also indicates that Qualitex imported a type of the subject product that complemented, but did not compete with, its own domestic production.³² Considering the size of Qualitex and its position vis-a-vis the rest of the industry, there can be little doubt that Qualitex was provided with a significant

³⁰ ***. ***. ***. ***. ***.

³¹ Confidential Staff Report at I-26-27, ***.

³² Id. at I-27-28.

competitive advantage over its domestic competition as a direct result of its importing activities.³³

Another important factor is the degree to which inclusion of Qualitex would result in a distorted picture of the aggregate industry data gathered by the Commission. We determine that it would seriously do so. The record indicates that the decision to close Qualitex was the result of unique and complex circumstances.³⁴ Statements by former corporate officers of Qualitex, indicating that Qualitex closed merely because of a flood of low-priced imports, are unpersuasive in the face of other confidential evidence in the record.³⁵

A review of the evidence reveals that the closure and liquidation of Qualitex's assets in 1990 had a strong negative effect on Qualitex's balance sheet in that year.³⁶ The record indicates that Qualitex sold most of its assets to a foreign

³³ ***. ***. ***.

³⁴ ***. ***. ***.

³⁵ Confidential Staff Report at I-26.

³⁶ Office of Investigations, Confidential Memorandum INV-P-154, September 17, 1992 at 8. This memorandum was prepared for the Commission using data from the Confidential Staff Report and from the Preliminary Staff Report. Data taken from the Preliminary Staff Report is for the year 1988 and has been verified by Commission staff.

producer in October 1990.³⁷ A comparison of the aggregate financial data of the industry with and without the inclusion of Qualitex emphasizes the substantial effect closure of Qualitex had on the domestic industry as a whole during the period of investigation.³⁸ We determine, therefore, based on unique circumstances in this case that the inclusion of Qualitex in the domestic industry would result in a distorted picture of the industry and prevent an accurate assessment of the effect of the subject imports on the domestic industry.

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In making its determination, the statute directs the Commission to consider the volume of subject imports, the effect of subject imports on domestic prices, and the impact of subject imports on the domestic industry. In addition, it "may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports."³⁹

³⁷ ***. Confidential Staff Report at I-22. ***. Hearing Transcript at 74-76,94; see also Confidential Staff Report at I-22.

³⁸ Id. at Tables 1,2. The picture of the industry including Qualitex is further distorted by the fact that Qualitex ceased operations in 1990 but the period of investigation runs through 1991. We also note that Qualitex was one of three domestic producers of extruded rubber thread during the first two years of the period of investigation and while it accounted for a large percentage of domestic production, that share decreased substantially in 1990.

³⁹ 19 U.S.C. § 1677(7)(B).

A. NON-FOOD GRADE EXTRUDED RUBBER THREAD

1. Conditions of Competition

The statute directs the Commission to evaluate relevant economic factors in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."³⁹

The respondents alleged that any material injury suffered by the domestic industry was due to Malaysian producers' natural cost advantage resulting from direct access to sources of Malaysian rubber latex. Malaysian producers of extruded rubber thread are able to purchase rubber latex on the spot market without middleman markup, and have shorter and thus less costly inventory requirements.⁴⁰ The price of extruded rubber thread is significantly dependent on the cost of latex and evidence in the record indicates that Malaysian producers are able to obtain latex at significantly lower costs than U.S. producers. This cost advantage clearly provides the Malaysian importers with more flexibility in their pricing strategies.

2. Volume Effects

In determining whether subject imports have caused material injury to the domestic industry, the statute directs the Commission to consider "whether the volume of imports of the merchandise, or any increase in that volume, either in absolute

³⁹ 19 U.S.C. § 1677(7)(C).

⁴⁰ Respondents' Post Conference Brief at 8.

terms or relative to production or consumption in the United States, is significant."⁴¹

In terms of both volume and value, LTFV imports of extruded rubber thread from Malaysia increased significantly throughout the period of investigation.⁴² The volume and value of LTFV imports of extruded rubber thread from Malaysia, excluding food grade extruded rubber thread, increased substantially during the period to a 1991 level that accounts for a substantial portion of U.S. apparent consumption.⁴³ Interim 1992 subject import shipments also increased significantly over the same period of 1991. We recognize that the increases in subject imports in 1990 and 1991 were partially due to the relocation of Qualitex's production to Malaysia and the switch to supplying customer requirements from import sources rather than from Qualitex's domestic production.

Market penetration of the less-than-fair-value Malaysian imports, by quantity, also increased substantially during the period of investigation, rising to a substantial share of 1991 U.S. apparent consumption.⁴⁴ Market penetration by value exhibited a similar trend, but at a lower absolute value, reflecting the lower average unit value of LTFV import shipments compared with domestic shipments.⁴⁵

⁴¹ 19 U.S.C. § 1677(7)(C)(i).

⁴² 1988 shipment data were unavailable for extruded rubber thread excluding food grade rubber thread.

⁴³ See Staff memoranda, INV-P-154 and INV-P-155.

⁴⁴ See Staff memoranda, INV-P-154 and INV-P-155.

⁴⁵ Preliminary Investigation Staff Report Table 15; Report Table 15.

3. Price Effects

In evaluating the effect of subject imports on the price of the domestic like product, the statute directs the Commission to consider whether there is significant price underselling by the subject imports and whether the subject imports depress prices to a significant degree, or prevent to a significant degree, price increases that otherwise would have occurred.⁴⁶

a. Substitutability Between the Domestic Like Product and Subject Imports

Substitutability is a critical factor in determining the volume, price effects, and impact of the subject imports on the domestic like product. Price is almost always important in any purchase decision and was cited by all parties in this investigation as a significant factor in purchasers' sourcing decisions.

Several nonprice factors, however, also were cited by parties as important considerations that have a bearing on sourcing decisions. These factors include delivery terms, availability of product, terms of sale, and technical support. No significant differences in quality between the subject imports and domestic product were reported. Our examination of these nonprice factors indicates that differences between the subject imports and the domestic like product were not significant and

⁴⁶ 19 U.S.C. § 1677(7)(C)(ii).

are unlikely to have significantly affected the degree of substitution between the imported and domestic product.

Two nonprice factors deserve special consideration. Parties as well as purchasers indicated that end users do not care or may not even be aware of the country of origin of the extruded rubber thread purchased. However, purchasers of the domestic product also indicated that "Buy American" purchasing policies were a primary consideration in their sourcing decision. We note that this statement appears inconsistent with the indifference to the country of origin statements made in the record. Furthermore, we note that purchasers usually contact only one or two suppliers before making a purchase and rarely change suppliers.⁴⁷ Based on the evidence in the record, including pricing data, we conclude that these Buy American policies may have limited, somewhat, substitution between the subject imports and domestic product for some end users.

In addition, domestic producers indicated that the subject imports have forced domestic producers into niche markets while the subject imports have dominated the high-volume commodity market segments. Evidence in the record supports this position. For this reason, the degree of substitutability currently exhibited in the market may be an underestimate of the true degree of substitutability between the subject imports and the domestic like product. Based on all evidence presented in this

⁴⁷ Staff report at I-47.

investigation, we conclude that the domestic product and subject imports are relatively close substitutes for each other.

b. Price Depression and Suppression

The prices for the six selected gauges of U.S.-produced extruded rubber thread for which pricing data were obtained⁴⁸ generally declined over the period in which the data were gathered, except for one product that only North American produced whose price remained unchanged. The price of extruded rubber thread peaked in early 1989 as the result of a temporary shortage of natural rubber latex. Prices decreased dramatically after the first quarter of 1989, due to the fall in price of the principal raw material, natural rubber latex, an event unrelated to the dumped imports.⁴⁹ However, prices of extruded rubber thread continued to decline during the remainder of the period of investigation with domestic prices receding to levels near or below prevailing 1988 levels by 1991. The record further indicates that the subject import prices in each of the five categories for which import data were available declined more rapidly than did domestic product prices.

⁴⁸ Qualitex could not provide price data for the requested products; therefore, all domestic pricing data concern data reported by Globe and North American.

⁴⁹ See Report Tables 16-17 & I-1.

c. Underselling

LTFV imports from Malaysia were priced below the domestic product in each of the 58 quarters for which price comparisons were possible.⁵⁰ Margins of underselling for the Malaysian product equalled or exceeded 30 percent in 39 of the 58 comparisons and were consistently high throughout the period of investigation.⁵¹ These significant margins of underselling were confirmed by purchaser questionnaire data.

We recognize the cost advantage held by the Malaysian imports and the resulting increased flexibility in setting a pricing strategy. We find that this cost advantage may explain some of the substantial margins apparent in the underselling data. Although we recognize that the Malaysian product benefitted from a cost advantage and the consequent increased pricing flexibility, the margins of underselling evident in the record cannot be fully accounted for by this cost advantage or differences in market focus, i.e., niche markets.

More significant, we are persuaded by the testimony in the record from various industry witnesses that the Malaysian importers were engaged in a "price war" affecting all major world extruded rubber thread markets, including the United States.⁵²

⁵⁰ Report Tables 16-17 & I-1. Information gathered in these investigations indicates that the domestic producers are able to maintain some sales, albeit at higher prices than Malaysian competitors, because domestic producers serve market segments in which the Malaysians do not compete as effectively and because they are able to take advantage of their ability to satisfy short supply orders more quickly than the Malaysians.

⁵¹ Staff report at I-52.

⁵² Hearing Transcript at 23-24; Petitioner's Pre-Hearing Brief, Exhibit 2.

Existence of aggressive pricing behavior is supported by statements made in the purchaser questionnaire responses.⁵³

4. Impact of the LTFV Imports on the Domestic Industry

In evaluating the condition of the domestic industry, the statute directs us to consider "all relevant economic factors which have a bearing on the state of the industry in the United States."⁵⁴ Specifically we consider, among other factors, domestic consumption, production, shipments, market share, capacity utilization, employment, wages, productivity, domestic prices, profits, cash flow, the ability to raise capital, investment, and development and production efforts.⁵⁵ In addition, the Commission considers the particular nature of the industry under investigation, including any "business cycle and conditions of competition that are distinctive to the affected industry."⁵⁶

In this investigation, the Commission did not request complete data on the food grade extruded rubber thread industry. The information it gathered is confidential but indicates that the domestic industry produced some food grade rubber thread in

⁵³ See Confidential Staff report at I-86.

⁵⁴ 19 U.S.C. § 1677(7)(C)(iii).

⁵⁵ Id.

⁵⁶ Id.; see also H.R. Rep. No. 317, 96th Cong., 1st Sess. 36 (1979); S. Rep. 249, 96th Cong., 1st Sess. at 88 (1979). None of the parties suggested the existence of a business cycle unique to this industry.

1989 and 1990.⁵⁷ We find that after 1990, domestic production of this product was terminated at least in part due to new FDA requirements.⁵⁸ As a result of the insignificant amount of domestic food grade extruded rubber thread production and shipments during the period of investigation,⁵⁹ we note that data for the extruded rubber thread industry excluding food grade rubber thread will be virtually the same as data including food grade rubber thread. In the discussion of the condition of the industry that follows, therefore, we consider data obtained by the Commission for the entire extruded rubber thread industry excluding Qualitex. We also find it appropriate to consider 1988 data compiled in the preliminary investigation, and subsequently verified by staff in addition to subsequent years.^{60,61}

Due to the limited number of producers in the domestic industry, much of our discussion is necessarily general to maintain the confidentiality of business proprietary information. With regard to the industry excluding Qualitex and considering

⁵⁷ Witnesses testified at the hearing that food grade extruded rubber thread comprised less than 5 percent of the total domestic consumption of extruded rubber thread. Transcript of Hearing at 33-34.

⁵⁸ In July of 1991, the FDA determined that unacceptably high levels of nitrosamine were present in existing formulations of food grade extruded rubber thread and sought to ban rubber netting from food use. After several companies filed suit to protect their due process rights, a settlement was reached allowing certain existing suppliers to file a petition with the FDA to continue production with a reformulated product as well as a protocol for food additive testing of rubber netting. Transcript of Hearing at 33-34, 124-125; Petitioner's Posthearing Brief, Exhibit 3.

⁵⁹ See Confidential Staff Report at I-5-7; see also Questionnaire Responses.

⁶⁰ We note that the Commission is not required to limit the period of its investigation to three years.

⁶¹ Commissioner Brunsdale, in evaluating the condition of the industry looks only at three full years of data and the interim data. In this case she relied on the 1989-1991 and interim 1992 data.

1988 data, average capacity levels for the domestic industry increased steadily each year from 1988 to 1991, remaining relatively stable in interim period 1992.⁶² From 1988 to 1991, capacity utilization decreased significantly and steadily each year, and was lower in interim period 1991 than in interim period 1992.⁶³ Domestic shipments by quantity and value decreased from 1988 to 1990.

End-of-period inventory levels fluctuated, increasing from 1988 to 1989, and again in 1990, then falling slightly in 1991 and in interim period 1992.⁶⁴ Production decreased from 1988 to 1990, then remained flat in 1991 and in interim period 1992.⁶⁵ The total number of production and related workers declined from 1988 to 1991, with interim period 1992 showing a slight increase over interim 1991.⁶⁶ The hours worked declined from 1988 to 1990, increased slightly in 1991, and declined again in interim period 1992 compared with interim period 1991.⁶⁷ Productivity measured in pounds per hour declined irregularly from 1988 to 1991, and increased in interim period 1992.⁶⁸

Although showing gradual improvement, the domestic industry reported operating losses during the period of investigation,

⁶² Memorandum to the Commission (INV-P-154) (hereinafter Memorandum), Table 2, which included verified data for 1988 and included data from the Confidential Staff Report, Table E-2.

⁶³ Memorandum, Table 2.

⁶⁴ Memorandum, Table 2.

⁶⁵ Memorandum, Table 2.

⁶⁶ Memorandum, Table 2.

⁶⁷ Memorandum, Table 2.

⁶⁸ Memorandum, Table 2.

both in absolute dollars and as a share of net sales.⁶⁹ Net sales increased from 1988 to 1989, decreased from 1989 to 1990 (to below 1988 levels), and then registered a modest gain from 1990 to 1991, but to a level well below that of 1988 and 1989. Sales also increased in the interim period 1992 as compared with the interim period 1991.⁷⁰

We determine that the domestic industry producing non-food grade extruded rubber thread is materially injured by reason of subject imports from Malaysia. In making this determination, we note that the U.S. Department of Commerce found dumping margins of 10.68 percent for Heveafil, 22.00 percent for Rubberflex, and 15.16 percent for all other Malaysian importers. These margins were calculated using a foreign market value based on constructed value for sales made below the cost of production, and foreign market values based on sales in a third country, Hong Kong, for sales made above the cost of production.

The effect of the dumped imports is reflected in the substantial market share held by Malaysian imports and significant operating losses for the domestic industry, despite the domestic industry's efforts to mitigate some of the impact by moving into niche, and often temporary, high profit markets, such as customers that manufacture toys. The domestic industry's difficulties in obtaining financing for R&D projects and investments to upgrade manufacturing facilities is symptomatic of

⁶⁹ Memorandum, Table 2.

⁷⁰ Memorandum, Table 2.

the effects of unfair import competition in this particular investigation.

For this reason we determine that the domestic industry is materially injured by reason of the LTFV imports of non food grade extruded rubber thread from Malaysia.

B. FOOD GRADE EXTRUDED RUBBER THREAD

No U.S. firm is currently producing food grade rubber thread that is approved by the FDA, nor are any petitions by U.S. producers to produce food grade extruded rubber thread pending at the FDA. Domestic producers ceased production of food grade rubber thread for a combination of reasons and not because of imports.⁷¹ While some U.S. producers claim that they are not producing food grade extruded rubber thread because of low import prices, the fact remains that they have not received FDA approval to sell food grade extruded rubber thread, and in fact, would be prohibited from selling this product even if there were no imports of this product.

Food grade extruded rubber thread accounted for less than 3 percent of domestic and imported shipments of extruded rubber thread in 1991.⁷² Given the regulatory burden of producing this product, it is not surprising that U.S. producers have not actively pursued this market. David Sullivan, sales manager of North American Rubber Thread said "It's not really worth it to

⁷¹ See Transcript Hearing at 91-94.

⁷² See Staff report at I-6.

get involved in this because the cost would be prohibitive."⁷³ Mr. Girrier of Globe stated that Globe has manufactured food grade thread and that the nitrosamine issue is something that they were aware of and had their chemists working on.

Even if a domestic manufacturer could produce food grade rubber thread tomorrow, it would take a long time to get its formula approved. In addition, because it has not filed a petition or sought to license the approved formulas, it could not produce food grade while waiting for FDA approval, as Heveafil did. Therefore, imports of food grade extruded rubber thread are having no effect on domestic producers, nor could they have an effect in the foreseeable future.

IV. CRITICAL CIRCUMSTANCES

Commerce has found that critical circumstances exist with respect to LTFV imports from Rubberflex. No critical circumstances were found to exist with Heveafil and other Malaysian producers. When Commerce makes an affirmative determination with respect to critical circumstances, the Commission is required to determine, for each domestic industry for which it makes an affirmative determination, "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a

⁷³ See Hearing transcript at 32.

relatively short period of time." ⁷⁴ The statute directs the Commission to evaluate whether "the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed."⁷⁵ A surge in imports can occur as a result of an attempt to circumvent the antidumping statute immediately after the initiation of an investigation and, where Commerce finds critical circumstances, the Commission is required to consider that surge. The adverse impact of such a surge can continue to affect the domestic industry during and after the 90-day period for which retroactive duties can be imposed. If, however, the surge itself dissipates before that 90-day period begins, retroactive imposition of duties cannot meaningfully "prevent recurrence of material injury" resulting from that surge since the duties cannot reach those imports and, therefore, cannot affect the impact of those LTFV imports on the domestic industry.

In making its critical circumstance determination, Commerce compared the three months immediately following the filing of the petition with the immediate prior three-month period. Because Commerce's preliminary investigation was extended, the three-month period it analyzed in its critical circumstance determination, is not the period for which retroactive duties would be collected.

⁷⁴ 19 U.S.C. § 1673d(b)(4)(A)(i).

⁷⁵ Id. § 1673d(b)(4)(A)(ii).

The evidence demonstrates that any increase in imports during the 90-day period for which retroactive application of suspension of liquidation--and imposition of duties--would apply was insufficient to warrant imposition of retroactive duties. Moreover, we find that retroactive imposition and collection of duties would not reach any of the imports of extruded rubber thread from Malaysia that accounted for any post-petition surge during the months of October to December. As such, retroactive action would be of marginal, if any, value in preventing the recurrence of the material injury caused by that surge.⁷⁶

Accordingly, we determine that the effectiveness of the antidumping order on extruded rubber thread from Malaysia will not be materially impaired by electing not to impose retroactive duties on such LTFV imports.

⁷⁶ See Magnesium from Canada, Inv. Nos. 701-TA-309, 731-TA-528 (Final), USITC Pub. 2550 at 20-23 (Aug. 1992).

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

Following a preliminary determination by the U.S. Department of Commerce (Commerce) that imports of extruded rubber thread¹ from Malaysia are being, or are likely to be, sold in the United States at less than fair value (LTFV) (57 F.R. 11287, April 2, 1992), the U.S. International Trade Commission, effective April 1, 1992, instituted investigation No. 731-TA-527 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on April 29, 1992 (57 F.R. 18164).² The Commission's hearing was held in Washington, DC, on August 18, 1992.³

Commerce's final LTFV determination was made on August 17, 1992 (57 F.R. 38465, August 25, 1992). The applicable statute directs that the Commission make its final injury determination within 45 days after the final determination by Commerce.

BACKGROUND

This investigation results from a petition filed by North American Rubber Thread Co., Inc. (North American) on August 29, 1991, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of rubber thread from Malaysia. In response to that petition the Commission instituted investigation No. 731-TA-527 (Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) and, on October 15, 1991, determined that there was a reasonable indication of such material injury.⁴

¹ The merchandise covered by this investigation is vulcanized rubber thread obtained by extrusion, of stable or concentrated natural rubber latex, of any cross-sectional shape, measuring from 0.18 millimeter (0.007 inch or 140 gauge) to 1.42 millimeters (0.056 inch or 18 gauge), inclusive, in diameter. Vulcanized rubber thread is provided for in heading 4007.00.00 of the Harmonized Tariff Schedule of the United States (HTS).

² Copies of cited Federal Register notices are presented in app. A.

³ A list of witnesses appearing at the Commission's hearing is presented in app. B.

⁴ The petition also alleged that the U.S. industry is being injured by reason of subsidized imports of rubber thread from Malaysia. Although Malaysia is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930, rubber thread from Malaysia was eligible for duty-free entry under the Generalized System of Preferences (GSP), and Malaysia is a contracting party of the General Agreement on Tariffs and Trade. Therefore, the Commission instituted countervailing duty investigation No. 303-TA-22 (Preliminary) under section 303(a) of the Act and subsequently

(continued...)

The Commission has conducted no previous investigations on extruded rubber thread. However, on June 23, 1992, in response to a petition filed by North American, the Commission instituted investigation No. TA-201-63 under section 202 of the Trade Act of 1974, also involving extruded rubber thread (57 F.R. 31387, July 15, 1992).

THE PRODUCT

Product Description

The imported product subject to this investigation is extruded rubber thread (rubber thread). This rubber thread (a monofilament elastic fiber, of any cross-sectional shape or gauge) is vulcanized and is produced by a low-pressure extrusion of compounded natural rubber latex.⁵ Rubber thread usually is manufactured and sold by both U.S. and foreign manufacturers in sizes ranging in diameter from 0.007 inch (140 or fine gauge) to 0.056 inch (18 or heavy gauge).^{6 7} (One U.S. producer also manufactures a heavier gauge thread

⁴ (...continued)

determined that there is a reasonable indication that an industry in the United States is materially injured by reason of the subject imports. On Dec. 30, 1991, Commerce issued a preliminary affirmative countervailing duty determination and the Commission, in turn, instituted countervailing duty investigation No. 303-TA-22. (Final) (57 F.R. 4479, Feb. 5, 1992).

On Mar. 12, 1992, the President of the United States determined that it was appropriate to withdraw the duty-free entry afforded under the GSP to extruded rubber thread that is the product of Malaysia (57 F.R. 9041, Mar. 16, 1992). Therefore, Malaysia was no longer entitled to an injury determination under section 303 of the Act with regard to the countervailing duty investigation and, accordingly, the Commission discontinued its countervailing duty investigation (57 F.R. 27064, June 17, 1992).

On Aug. 25, 1992, Commerce issued a final affirmative countervailing duty determination and countervailing duty order (57 F.R. 38472), finding final subsidy margins of 4.21 percent ad valorem for Rubfil Sdn. Bhd. and 9.63 percent ad valorem for all other manufacturers or exporters.

⁵ See app. C for definitions of technical terms.

⁶ The size of an individual thread is usually expressed in "gauge" or "count," terms that refer to the number of threads which would, if set down side-by-side, produce a ribbon 1 inch wide. For example, low counts are used for furniture webbing and high counts for socks and stockings.

⁷ In addition, the industry often identifies the product in terms of "yield." Yield refers to the number of yards of rubber thread drawn from a pound of natural rubber latex and varies according to the gauge of the thread. For example, a pound of natural rubber yields 1,150 yards of 34 gauge rubber thread or 1,800 yards of 40 gauge thread.

(under 18 gauge) for limited uses.) Most rubber thread, however, is produced in sizes ranging from 26 gauge to 42 gauge.⁸

Rubber thread is typically black or white in color; however, it is also available in such colors as light blue, red, and cream. In addition to gauge and color, another important characteristic is the type of lubricant used to 'detackify' rubber thread (which, otherwise, would stick together). The traditional lubricant is talcum powder. In 1969, a silicone-based lubricant was developed as an alternative to talcum powder. (Thread coated with talcum powder is referred to as "talced;" "talless" rubber thread uses the silicone-based lubricant.)⁹ Both types of thread are produced domestically and in Malaysia, although a high-quality talless product did not become available from Malaysian producers until about 1990 or 1991. There are also a number of specialty rubber thread products, including fine gauge, heat-resistant, and food grade rubber thread.¹⁰ With the exception of the higher-valued fine

⁸ For ease of handling and shipment, manufacturers generally bond the rubber threads temporarily together in the form of a ribbon, or wind the thread onto a bobbin. The width of the ribbon varies depending on the thread diameter and number of threads per ribbon. Ribbons can be made from 2 to more than 90 threads; however, ribbons of 40 and 48 threads are most common.

⁹ Talced and talless rubber thread usually can be used interchangeably. However, for a number of reasons, the talless product gradually is replacing talced thread. The buildup of talcum powder (from using talced rubber thread) can cause excessive machine wear on purchasers' equipment, leading to increased production costs for replacement needles and machine downtime. Also, there are environmental problems with talced rubber thread. *** of *** expects that because of such concerns, more, or perhaps all, rubber thread will be produced in the talless form in the future. Staff conversation with *** July 27, 1992.

¹⁰ Fine gauge thread is defined by the industry as thread with a gauge greater than 75 and is usually used for hosiery. Heat-resistant rubber thread has a different chemical formulation (often antioxidant and vulcanizing agent chemicals will be altered) that provides better tolerance to heat compared to conventional thread.

Food grade rubber thread is also specially formulated and, at this time, must be approved by the Food and Drug Administration (FDA) for use as a meat-packing material. Food grade thread is manufactured into an elastic netting that then is used to pack (usually) boneless meats. The FDA and U.S. Department of Agriculture (USDA) currently are examining its use after the USDA found high levels of nitrosamines (a carcinogen) in meat packaged in rubber thread netting. A group, which includes Heveafil (a Malaysian producer and U.S. importer of rubber thread) and The American Meat Institute (AMI), has filed a petition with the FDA for approval to supply food grade thread to the U.S. meat-packing industry. At present, only rubber thread using the Heveafil or AMI formulation can be used. New market entrants cannot sell a food grade thread (unless it matches the Heveafil/AMI formulations) until this matter is resolved, which, according to an FDA official, is likely to take a total of two years. Staff conversation with ***; FDA, Aug. 13, 1992.

gauge rubber thread, the unit values of the various thread types are comparable.¹¹

The following tabulation (based on data submitted in response to Commission questionnaires) lists the shares of the different types of rubber thread shipped in 1991, by source (in percent of quantity):

	<u>U.S. shipments of</u>			<u>U.S. shipments of</u>	<u>Overall</u>
	<u>product produced by--</u>		<u>Weighted</u>		
	<u>North</u>	<u>Globe</u>	<u>average</u>	<u>in Malaysia</u>	<u>average</u>
	<u>American</u>				
Talced.....	***	***	***	***	23.4
Talcless.....	***	***	***	***	55.5
Fine gauge.....	***	***	***	***	10.2
Heat-resistant..	***	***	***	***	8.3
Food grade.....	***	***	***	***	2.6
Total.....	100.0	100.0	100.0	100.0	100.0

Note.--Specialty threads (e.g., fine gauge, heat-resistant, and food grade rubber thread) also, as a general rule, are finished as a talced product. Such rubber thread is classified only in the appropriate specialty category in the above calculation and, thus, is not double-counted.

As shown, U.S. producers (specifically ***) produced proportionally greater quantities of the fine gauge and heat-resistant rubber thread for the U.S. market than did the Malaysian producers. In 1991, all shipments of food grade thread were of the product manufactured in Malaysia.¹²

¹¹ The following tabulation (based on data submitted in response to Commission questionnaires) lists the unit values in 1991 of the different types of rubber thread (in dollars per pound):

	<u>U.S. shipments of</u>		<u>Weighted</u>
	<u>product produced</u>	<u>product produced</u>	
	<u>by North American</u>	<u>in Malaysia</u>	
Talced.....	\$***	\$***	\$1.19
Talcless.....	***	***	1.23
Fine gauge.....	***	***	2.08
Heat-resistant.....	***	***	1.35
Food grade.....	***	***	1.16
Weighted average..	***	***	1.25

Note.--Qualitex, Inc. (a U.S. producer) did not manufacture rubber thread in 1991. The other domestic producer, Globe, was ***.

¹² ***. Globe has also produced and sold a food grade product.

End Uses

The largest user of extruded rubber thread is the textile industry (table 1). Nontextile applications include food processing (for meat netting), furniture webbing, toys (for Koosh balls and ***), and elastic power cord (for bungee cords and tie-downs).

Table 1

End-use applications for extruded rubber thread and estimated market shares and gauge ranges, 1989 and 1991

End-use application	Share of consumption--		Gauge range and yield by application
	1989	1991	
	-----Percent-----		

* * * * * * *

Source: North American.

Traditional customers for rubber thread in the textile industry include coverers, weavers, braiders, and knitters. Coverers wrap rubber thread with a rigid fiber, such as nylon or cotton, to limit elongation and maintain the thread under constant tension. Using varying manufacturing techniques, the weavers, braiders, and knitters incorporate rubber thread, bare or covered, into their production of narrow fabric and sell their output to apparel makers.¹³

In addition to the development of talcless thread, other innovations in rubber thread production include the development of brightly colored rubber thread, the manufacture of thicker threads (below 18 gauge), and the development of fused tape for ***.¹⁴ Such innovations have been pioneered by U.S. manufacturers, reportedly to enter new markets that are not supplied by rubber thread manufactured by foreign sources.¹⁵

¹³ Rubber thread is a principal component of narrow elastic fabrics, accounting for about 23 percent of the cost or selling price of the finished product. Testimony by John H. Elliott, president, Rhode Island Textile Co. Transcript of the hearing (transcript), pp. 81-82.

¹⁴ Fused tape consists of individual threads permanently fused together in a ribbon.

¹⁵ In its response to the Commission's questionnaire in inv. No. TA-201-63, North American stated that ***. ***. ***. (Permission granted by counsel for the petitioner to incorporate information into the record for the instant investigation.)

Manufacturing Process

Figure 1 shows a flowchart of a typical rubber-thread-manufacturing process, ***. All forms of subject rubber thread are manufactured on the same machinery using the same basic manufacturing process. The exact recipe for the thread will vary depending on the desired performance characteristics, but the basic process is the same.¹⁶

Production of rubber thread begins with the preparation of the rubber latex mixture. Producers add a variety of chemicals¹⁷ in small amounts to the natural rubber latex to impart desired physical properties¹⁸ in the end product and to prepare the latex mix for vulcanization. These chemical additives are blended thoroughly with the liquid latex to ensure homogeneity. The latex mix¹⁹ is then "matured" in an activation tank. The maturing process is usually carried out at 77°-95° F for 1 to 5 days; it produces a product free of lumps and blisters that does not show "necking" when dried and vulcanized.²⁰ After the maturation process, the latex is passed through a homogenizer, which removes any lumps in the mixture.²¹ The vacuum/feed tank removes air bubbles and adjusts the feed rate through the extruder (i.e., capillary nozzles or spinnerets) to the acid bath in order to ensure a uniform viscosity of the latex mix. Viscosity affects the rate of flow of the latex mix through the spinnerets; thus, if viscosity changes, the diameter of the thread will change.

¹⁶ Respondents' prehearing brief, p. 47.

¹⁷ These chemical additives may include all or some of the following: stabilizers, pigments, antioxidants, extenders, vulcanizing agents, accelerators, activators, and dispersing agents (defined in app. C).

¹⁸ Such as tensile strength, elongation at room temperature, and resilience or rebound elasticity. According to the petitioner (petition, p. 10), the following physical properties have become de facto industry standards worldwide:

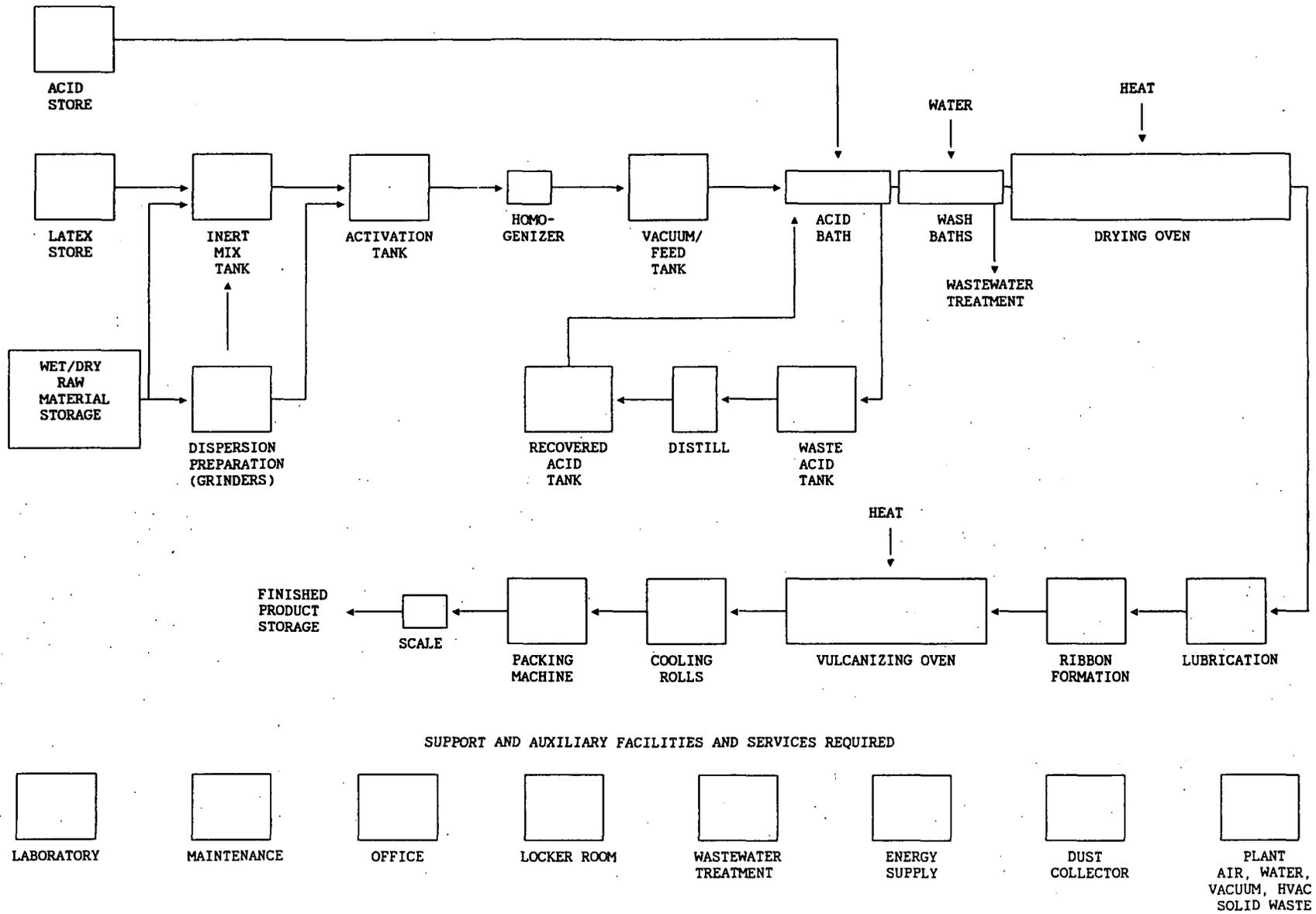
<u>Physical properties</u>	<u>Acceptable levels</u>
Elongation at break	650 to 775 percent
Tensile at break	3,000 pounds per square inch (PSI) minimum
Modulus (i.e., the "Schwartz" test)	130 to 170 PSI

¹⁹ Natural rubber latex is the principal component of rubber thread, accounting for about 80 to 85 percent by weight of the finished product (and for at least 40 percent of its cost). Domestic manufacturers purchase the raw material from ***. (North American noted that it ***) ***.

²⁰ "Necking" refers to irregular thickening seen upon extension and retraction of the thread.

²¹ Lumps cause clogging of the capillary nozzles, which may lead to thread breakage.

Figure 1
Schematic diagram of the extruded rubber thread manufacturing process



Source: North American Rubber Thread Co., Inc.

The mix is extruded at low pressure through glass capillary nozzles into an aqueous acetic acid solution. The acid acts as a coagulant to solidify the liquid latex into a continuous thread. The speed of the extrusion process depends on the oven length available for drying and curing the thread and on the diameter of the thread; the larger diameter thread is processed more slowly than is the smaller diameter thread. It is possible to adjust the thread diameter by adjusting the speed of the draw-off roller. Therefore, with a given latex mix and a particular set of spinnerets, the thread diameter is controlled by the pressure head feeding the latex to the manifold and by the rate of pull-off of the thread by the rollers. As a consequence, a manufacturer can produce the whole range of rubber thread using only two diameters of capillary nozzles.²²

The newly formed thread passes into a hot wash bath (i.e., 140°-215° F), where the excess acetic acid is washed off. The rubber thread then enters the drying oven (set at 190°-200° F), which lowers moisture in the thread to about 5 percent. At this point, the thread is sticky, so a lubricant or antiblocking agent (i.e., talcum powder or silicone-based lubricant) is applied to 'detackify' each thread. After lubrication, the threads are lightly bonded together in ribbons to form flat tapes. The ribbons then enter the vulcanizing oven which is maintained at temperatures from 250° F to 285° F. Depending on the temperature of the oven, the ribbons are rotated in the oven for up to 20 minutes. The ribbons then pass over cooling rollers and are either wound onto bobbins or packaged in boxes.

Substitute Products

Other products that could be substituted for extruded rubber thread in some textile applications include cut rubber thread and spandex. Cut rubber thread can be made from either natural rubber (like extruded rubber thread) or from synthetic rubber, whereas spandex is made from a synthetic polymer.

Cut rubber thread²³ is manufactured from sheets of solid rubber (in contrast to extruded rubber thread, which is made from liquid latex). The rubber first is calendered²⁴ into sheets of varying thicknesses depending on the desired width of the thread, then usually is layered or rolled before a final cutting process. A key difference between cut rubber thread and extruded rubber thread is the cross-sectional shape of the thread--extruded rubber has a round cross-section, whereas cut rubber thread is rectangular or

²² The diameter of the thread made in the extrusion process depends on the following factors: (a) the total solids content and specific gravity of the mix; (b) the diameter of the capillary tube; (c) the rate of flow of latex through the spinneret, itself dependent on the diameter and length of the glass capillary tube, the viscosity of the latex, and the pressure from the hydrostatic head feeding the latex to the manifold; and (d) the rate of pull-off of the thread by the rollers.

²³ Cut rubber thread is the oldest of the elastomeric fibers. Production of such thread reportedly started in the late 1800s.

²⁴ Calendering is a process of forming sheet by passing material through a series of double rollers.

square in cross section. Consequently, cut rubber thread cannot be used easily on much of the machinery (specifically, knitting and weaving machinery) used by customers for the subject product.²⁵ Cut rubber thread that is made from synthetics (which will not degrade as easily as natural rubber) often is used in elastics that must withstand dry cleaning.²⁶

Spandex²⁷ is a monofilament or, more often, a multifilament elastomeric yarn made from a synthetic polymer using a production process that differs significantly from that used for extruded rubber thread.²⁸ Alternating soft and hard blocks along the polymer chain provide the stretch associated with this fiber. Its chemical composition imparts certain properties that make spandex superior in certain characteristics to extruded rubber thread. For example, spandex has good resistance to abrasion, ultra-violet, oxidation, and chlorine; it is easily dyed; has better stretch recovery; does not need yarn covering for usage; is lighter in weight; and can be made into finer threads compared to extruded rubber thread. The major end uses for spandex are in swim suits, athletic apparel, foundation garments, and hosiery.

The substitutability of cut rubber thread and spandex for extruded rubber thread is reportedly limited to a small number of applications.²⁹ The inherent physical properties of natural rubber latex make extruded rubber thread uniquely suited for certain end uses. Although cut rubber thread and spandex possess desirable properties, their higher cost relative to extruded rubber thread has limited their use in many applications typically served by extruded rubber thread.³⁰

²⁵ Petitioner's posthearing brief, pp. 14-15.

²⁶ Cut rubber thread, like extruded rubber thread, often is covered with a yarn before being incorporated into a garment. The typical textile applications of cut rubber thread are in braids and narrow fabrics; it also is used in food applications and in the production of golf balls. Heat-resistant cut rubber thread also is available.

²⁷ Spandex is manufactured in the United States by E.I. du Pont de Nemours & Co. (Du Pont) in Waynesboro, VA, under the trade name *Lycra* and by Globe under the trade names *Cleerspan* and *Glospan S-1* and *S-5*. Commercial spandex operations reportedly began in the early 1960s.

²⁸ Petitioner's posthearing brief, p. 14.

²⁹ Walter Coyne, Flexfil Corporation (a U.S. importer), conference transcript, p. 46. Referring to the subject product and to cut rubber thread and spandex, Mr. Coyne stated that "...in most cases, probably 95 percent of the cases, they are not like products." Both domestic producers of extruded rubber thread corroborated this statement and added that ***.

³⁰ Spandex can cost 3 to 20 times more per pound than extruded rubber thread. Due to a more costly production process for cut rubber thread, that product is sold for one and one-third to twice the price of extruded rubber thread. Petitioner's posthearing brief, pp. 14 and 17.

Like Product Positions

Petitioner maintains that all extruded rubber thread (including food grade rubber thread) is one like product.³¹ Respondents contend that most types of extruded rubber thread (with the exception of the food grade product,³² but including rubber thread under 18 gauge in diameter) constitute a single like product for the purposes of the Commission's analysis.^{33 34} Both petitioners and respondents state that spandex and cut rubber thread are not like the subject extruded rubber thread.³⁵

³¹ Posthearing brief, p. 10. Petitioner argued in the preliminary investigation that heavier gauge thread (less than 18 gauge in diameter) is not a domestic like product due to the inherent differences between such thread and other rubber thread in terms of manufacture, price, and marketing. (Petitioners' postconference brief, pp. 2-4.) North American produces a limited amount of *** gauge thread and has experimented with a number of ***. Sales by North American of the ***. ***. Prehearing brief, pp. 21-22. The product is not produced in Malaysia or by the other U.S. producers.

In the petition (and in the Commission's subsequent institution notice and Commerce's final antidumping determination), the subject product is defined as thread that measures from 140 gauge to 18 gauge, inclusive, in diameter. (There is no thread produced that is finer than 140 gauge in diameter; it is probably not technically possible to do so.) Because information on North American's manufacture of heavier gauge thread was obtained late in the preliminary investigation and respondents were unable to comment, the Commission deferred its decision on whether or not the heavier gauge should be considered a like product until its final investigation. Industry data by gauge range are presented in an appendix to this report.

³² Respondents maintain that because there is no domestic production of food grade rubber thread, the Commission should use a material retardation analysis. Such analysis, respondents argue, would show that the U.S. industry has failed to demonstrate a commitment to the production of the food grade product. Globe currently is preparing a petition for FDA approval to permit the use of its food grade thread by the domestic food industry. Transcript of the hearing in inv. No. TA-201-63, p. 171. Also, as noted earlier, there have been sales of domestically produced food grade thread by *** in 1989 and 1990.

³³ Prehearing brief, pp. 43-50.

³⁴ Respondents also claimed that food grade rubber thread is a separate like product during the antidumping proceeding at Commerce, maintaining that the petitioner does not have standing to file an antidumping petition on the product because it does not produce or "wholesale" such thread. Commerce determined that the petitioner produces a product like the imported product, noting that (with reference to food grade rubber thread) it is "in agreement with the ITC's 'like product' determination" in its preliminary investigation (57 F.R. 38465, Aug. 25, 1992).

³⁵ Petitioner's posthearing brief, pp. 12-17 and respondents' prehearing brief, p. 50.

U.S. Tariff Treatment

Since January 1, 1989, imports of the subject extruded rubber thread have been classified in heading 4007.00.00 (covering vulcanized rubber thread and cord) of the HTS. The column 1-general rate of duty is 4.2 percent ad valorem. Imports of vulcanized rubber thread and cord from enumerated sources are eligible for duty-free entry under the GSP, and Malaysia was eligible for GSP benefits for this product until March 1992.³⁶ Malaysia is ineligible for other preferential tariff programs.

THE WORLD INDUSTRY

Historically, Italy was the major producer of rubber thread; a large portion of the technology and machinery was developed by Italian firms.³⁷ During the last 5 years, Italian producers gradually have abandoned their manufacturing facilities in Italy and shifted production to plants located in Malaysia, the source of the subject imports. At least partially as a result of this shift, rubber thread production in Malaysia has increased tremendously over the past 20 years. The first plant began operating during the 1970s and, as of 1990, there were six firms that reportedly supplied about 84 percent of the world demand for rubber thread.^{38 39}

³⁶ On June 1, 1991, North American filed a petition before the GSP subcommittee, Trade Policy Staff Committee, Office of the U.S. Trade Representative, requesting the withdrawal of duty-free treatment for products from Malaysia entering the United States under HTS heading 4007.00.00. On Mar. 12, 1992, the President determined that Malaysia no longer should be treated as a beneficiary developing country with respect to HTS heading 4007.00.00 for purposes of the GSP, and duty-free entry was therefore withdrawn. (57 F.R. 9041, Mar. 16, 1992.)

³⁷ May, Ngam Su, "How Long Latex Thread Boom?," *Malaysian Business*, Feb. 16, 1990, p. 40.

³⁸ Ibid, p. 37.

³⁹ The following firms currently manufacture rubber thread in Malaysia:

Filati Lastex Elastofibre (Filati),
 Filmax Sdn. Bhd. (Filmax)/Heveafil Sdn. Bhd. (Heveafil),
 Hulme Industries,
 Rubfil Sdn. Bhd. (Rubfil),
 Rubberflex Sdn. Bhd. (Rubberflex), and
 Rubber Thread Industries (M) Sdn. Bhd.

The locations of world producers of rubber thread since January 1, 1987 (and an estimate of their capacity to produce) are listed in the following tabulation:

<u>Country</u>	<u>Number of extrusion lines in operation in--</u>		<u>Nominal capacity (1,000 pounds)</u>
	<u>1987</u>	<u>1992</u>	
Asia:			
Malaysia.....	10	36	108,000
All other countries.....	16	21	35,000
Subtotal.....	26	57	143,000
Europe:			
Italy.....	8	0	0
All other countries.....	18	14	13,000
Subtotal.....	26	14	13,000
North America:			
United States.....	15	7	25,000
Mexico.....	6	0	4,000
Subtotal.....	21	7	29,000
South America.....	24	8	13,000
South Africa.....	2	1	1,000
Total.....	99	87	199,000

Note.--This information was provided by *** in its response to the Commission's questionnaire in inv. No. TA-201-63. (Permission granted by *** to incorporate information into the record for the instant investigation.) *** notes that the data were prepared from circulating industry reports and are not necessarily definitive. (There are slight discrepancies between this information and that provided separately to the Commission on U.S. and Malaysian capacity.)

As shown above, there have been major shifts in the locations of producing firms during this period, with a demonstrated increase in capacity to produce rubber thread in Asia (primarily Malaysia) and a corresponding decrease in capacity in Europe and in North and South America. A number of countries (including Italy) that produced rubber thread in 1987 no longer do so. Some of this shift (especially from producing locations in Europe to Malaysia) is due to *** that is discussed in greater detail below. However, for other countries, the decrease in production capacity may be attributed to competition with exports from Malaysia and, possibly, Thailand.⁴⁰

⁴⁰ In the course of inv. No. TA-201-63, the Commission sent cables to U.S. embassies located in major producing countries.

The response from the U.S. Embassy in Seoul, South Korea, indicated that until 1989, there were four firms in South Korea that imported latex and produced rubber thread. The response stated: "Since the latter half of the 1980's, Korean industry has been under increasing pressure as natural rubber exporting countries have developed processing operation lines and moved to

(continued...)

In order to understand better the developments and changes in the world rubber thread industry, it is necessary to address the interrelationships among world producers. ***. ***.⁴¹ ***.⁴² ***.

* * * * *

40 (...continued)

export vulcanized rubber thread, rather than unprocessed latex. All four have closed their production lines of vulcanized rubber thread, because the rapid increases of cheaper imports from Malaysia and Thailand since 1990 have eroded their competitiveness in the domestic market. The Korean industry informs us that the price of raw material (latex) is 30 percent higher in the domestic market than in those exporting countries."

The response from the U.S. Embassy in Taipei, Taiwan, indicated that only a few firms still produce rubber thread in Taiwan. A representative of one of the remaining firms, Rich Yu Sheng Rubber Industrial Co., Ltd., stated to an embassy official that "because of wage increases and foreign competition from Malaysia and Thailand, which have cheap domestic sources of latex and rubber material, the number of firms has declined from around 30 to 6 or 7 currently. Many remaining firms plan to either move abroad or close."

Similarly, a response from the U.S. Embassy in Tokyo, Japan stated that exports of Japanese-produced rubber thread to the United States have declined in the past few years "apparently because of competition from low-priced Malaysian products."

⁴¹ Respondents' post-conference brief, Exhibit 1.

⁴² ***. ***.

⁴³ Respondents' prehearing brief, pp. 8-9. Respondents contend that price underselling in the U.S. market is the result of its significant comparative cost advantage, at least partially attributable to producing rubber thread at the source of rubber latex. They state that Malaysian producers pay substantially less in transporting rubber thread to the United States than U.S. producers pay to import rubber latex, which contains 40-percent water by weight, and provide data demonstrating an overall per unit manufacturing cost significantly less than that of U.S. manufacturers. Prehearing brief, pp. 24-26, exhibit 4, and posthearing brief, exhibit 1. In addition, respondents report that they purchase rubber latex for a price *** less than that paid by North American. Posthearing brief, p. 8 and exhibits 2 and 3. (Respondents also cite their ability to purchase latex on a spot basis, the lower cost of labor in Malaysia, and ***. Prehearing brief, pp. 34-35).

Petitioner disagrees with, among other items noted above (and, to support their position, provides an analysis of), respondents' position on transportation costs. Posthearing brief, p. 21 and exhibit 5. In addition, as the petitioner points out in its posthearing brief (p. 27), Commerce recently determined that the manufacture of rubber thread (including the price of the input rubber latex) is subsidized by the Government of Malaysia. Additional information on Commerce's findings is presented in the section of this report on "The Nature and Extent of Sales at LTFV."

THE U.S. MARKET

U.S. Producers

The Commission received completed questionnaire responses from North American Rubber Thread Company, Inc.; Globe Manufacturing Co.; and Qualitex, Inc., the three firms that have produced rubber thread in the United States since 1989. North American and Globe support the petition; Qualitex ***. Table 2 shows producing firms, plant locations, their shares of 1991 production, and types of rubber thread produced. A brief description of each firm and its manufacturing operations follows.

Table 2

Extruded rubber thread: U.S. producers, their shares of total U.S. production in 1991, and types of rubber thread produced

Firm	Plant location	Share of total U.S. production in 1991 <u>Percent</u>	Type of rubber thread currently produced
Petitioner:			
North American ¹	Fall River, MA..	***.....	Talced Talcless Heat-resistant
Other U.S. manufacturers:			
Globe Manufacturing Co. ¹ ..	Fall River, MA..	***.....	Talced Talcless Fine gauge Heat-resistant
Qualitex, Inc. ²	Johnston, RI....	(3).....	(4)

¹ ***.

² Qualitex reported in its questionnaire response that it is ***. ***.

³ No longer in operation. Qualitex's manufacturing operations accounted for *** percent of U.S. production in 1989 and *** percent in 1990.

⁴ Prior to its closure, Qualitex produced talced, talcless, fine gauge, and food grade rubber thread.

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

North American began producing rubber thread in March 1987 when it purchased the thread production facilities of Pilgrim Latex Thread Co. (Pilgrim Latex).⁴⁴ In addition to rubber thread, North American also produces small

⁴⁴ Respondents contend that, when acquired by North American, Pilgrim Latex's facilities were obsolete and that North American's undercapitalization has hampered modernization and, thus, productive efficiency. Prehearing brief, pp. 37-38.

quantities of shock cord from scrap material generated in the manufacture of the thread product.⁴⁵

As shown in table 2, Globe is currently the *** U.S. producer of rubber thread. The firm, which was established in 1945, also manufactures spandex and in recent years ***.⁴⁶ Globe is negotiating with an Indonesian firm to produce rubber thread in Indonesia through a joint venture. A representative of Globe indicated that ***.⁴⁷

The final U.S. producer, Qualitex, operated a plant in Johnston, RI. The company exited the rubber thread industry in October 1990 with the sale of its ***.⁴⁸ ⁴⁹ There is considerable debate among parties as to the actual reasons for the closing of Qualitex. Petitioner claims that Qualitex was forced out of business by low-priced imports.⁵⁰ Respondents, in contrast, state that *** and argue that the closure of Qualitex was part of the *** discussed earlier in this report. Additional information on the relationship between Qualitex and Heveafil is presented in the section entitled "Related Party Issues."

U.S. Importers

A handful of firms imported rubber thread from Malaysia during the period of investigation. The Commission received nine completed importer questionnaires, which are believed to account for virtually all imports of rubber thread from Malaysia and approximately 90 percent of imports from all sources. The principal importers are Heveafil Sdn. Bhd. USA Branch, Inc. (Heveafil USA) and Flexfil Corp. (Flexfil), based in Charlotte and Hickory, NC, respectively. Heveafil USA markets Malaysian rubber thread produced by its Malaysian affiliates, Heveafil and Filmax Sdn. Bhd. (Filmax), primarily to apparel manufacturers in the narrow fabric industry. The firm offers products in all of the product categories. Heveafil USA first began direct sales of rubber thread in the U.S. market in late 1990. Prior to that time, Qualitex

⁴⁵ Shock cord accounted for *** percent of North American's overall sales revenue in 1991. The company reports its movement of rubber thread scrap to its shock cord profit center at a transfer price of \$*** per pound.

⁴⁶ Spandex accounted for *** percent of Globe's overall sales revenue in 1989, *** percent in 1990, and *** percent in 1991.

⁴⁷ ***. ***. ***.

⁴⁸ Respondents' prehearing brief, p. 12.

⁴⁹ ***. ***. Respondents' postconference brief, exhibit 1. ***. ***. ***. ***.

⁵⁰ An official of Qualitex stated in a letter dated Oct. 30, 1990, that the closure of the firm was "brought about as a direct result of the arrival of foreign goods...in the last two years...from the far east" that were purchased in "ever increasing quantities." The letter goes on to say that the "price erosion that has occurred as a result of the introduction of these goods...has reached the point that Qualitex Inc. can no longer be competitive." A copy of this letter is presented in app. D.

reportedly acted as the *** U.S. importer and distributor for Heveafil and Filmax.⁵¹

Flexfil is the U.S. affiliate of the Malaysian rubber thread maker Rubberflex Sdn. Bhd. (Rubberflex). Rubberflex used to sell rubber thread through Sher & Mishkin, Inc., of Kutztown, PA, and Hickory, NC, a wholesale distributor to the apparel industry. However, the Malaysian producer terminated this relationship in 1989 in order to import directly into the United States through its subsidiary.⁵² Rubberflex has also sold some quantities of rubber thread directly to U.S. end users, specifically ***⁵³ and ***. *** manufactures covered rubber yarns; *** purchases food grade rubber thread for the manufacture of meat netting.⁵⁴

North American imported a *** amount of rubber thread from ***, a Malaysian producer, in ***.⁵⁵ ***.⁵⁶

The only other known importers of rubber thread--Fletcher International, Inc. (Fletcher), Southern Pines, NC, and FLE-USA, Inc. (FLE), West Warwick, RI--purchased rubber thread from Filati Lastex Elastofibre, S.p.A. (Filati), an Italian manufacturer. Fletcher ***.⁵⁷ FLE began importing from its parent firm, Filati, in ***.⁵⁸

⁵¹ Qualitex imported *** from Heveafil in 1989 and 1990.

⁵² ***. The firm also reported a limited quantity of imports from ***.

***.

⁵³ ***. Importer questionnaire response.

⁵⁴ ***. ***. The petitioner estimates that food grade thread accounts for 1 to 3 percent of total U.S. rubber thread consumption.

⁵⁵ ***.

⁵⁶ The imports from these two countries combined totalled *** pounds in 1989 and *** pounds in 1990.

⁵⁷ Response by *** to the Commission's importers' questionnaire.

⁵⁸ Response by *** to the Commission's importers' questionnaire.

In its questionnaires, the Commission also requested that firms report imports of (or contracts to import) rubber thread after March 31, 1992. The following information was provided:

<u>Firm</u>	<u>Quantity</u> <u>(Pounds)</u>	<u>Time period of</u> <u>order and/or receipt</u>
*	*	*

Related Party Issues

In the subject investigation, the question has arisen of whether the Commission should exclude Qualitex's manufacturing operations from its analysis of the U.S. industry. Respondents state in their prehearing brief (pp. 3-13) that Qualitex ***⁵⁹ and was, itself, an importer of the subject product during much of the period of investigation.⁶⁰ Production by Qualitex accounted for a large, though *** share of total U.S. production. In 1989, *** percent of domestic production was attributable to Qualitex; in 1990, its operations accounted for *** percent of U.S. production. The firm began importing from Heveafil (in Malaysia) in ***; prior to ***, Qualitex imported rubber thread from ***.⁶¹ The following tabulation (based on responses to Commission questionnaires) presents data on U.S. shipments of rubber thread from Qualitex's manufacturing and importing operations (in 1,000 pounds):

<u>Item</u>	<u>1989</u>	<u>1990</u>	<u>1989/90</u>
Product produced in the United States..	***	***	***
Product imported from Malaysia.....	***	***	***
Total.....	***	***	***

Note.--***.

As shown, import operations by Qualitex accounted for slightly less than *** of its total shipments for 1989 and 1990 combined. However, the import share of its total U.S. shipments of rubber thread *** from *** percent in 1989 to *** percent in 1990.

The firm shut down both its manufacturing and importing operations on October 26, 1990, following a decision that, according to ***, was made by ***.⁶²

⁵⁹ ***. ***. ***. ***. ***. ***. ***. As noted earlier, Qualitex reported ***.

⁶⁰ ***.

⁶¹ As noted earlier in this report, Heveafil indicates that it began ***.

⁶² ***. ***. ***.

Respondents also have emphasized in their presentations to the Commission that the operations of Qualitex ***.⁶³ More specifically, respondents state that Qualitex imported ***.⁶⁴ This is confirmed by the response by Qualitex to the Commission's importers' questionnaire: in both 1989 and 1990, Qualitex imported ***. However, as petitioner notes (exhibit 12 to its prehearing brief), Qualitex also manufactured talced rubber thread (in addition to talcless rubber thread).⁶⁵ In addition, shipments of talcless rubber thread produced by Heveafil were first made to Heveafil USA in the United States starting in ***.^{66 67}

⁶³ The following tabulation presents U.S. shipments of all types of rubber thread by *** from both producing locations, i.e., by Qualitex in the United States and by Heveafil in Malaysia (in 1,000 pounds):

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
U.S. shipments of--					
Product produced in the United States by Qualitex.....	***	***	***	***	***
Product imported from Malaysia by Qualitex.....	***	***	***	***	***
Product imported from Malaysia by Heveafil USA.....	***	***	***	***	***
Total.....	***	***	***	***	***

As shown, U.S. shipments of rubber thread produced by *** were *** from 1989 to 1991; however, such shipments *** by *** percent in interim 1992 (as compared to interim 1991):

⁶⁴ Prehearing brief, p. 9.

⁶⁵ In 1989, Qualitex shipped ***; in 1990, *** were shipped.

⁶⁶ ***.

⁶⁷ In any case, petitioner (citing *** and testimony by David Sullivan, former vice president of sales at Qualitex and current sales manager at North American) maintains that it was imports from Rubberflex (an unrelated Malaysian manufacturer) that were especially damaging to the operations of Qualitex. Prehearing brief, pp. 14-19. In 1989, the rubber thread produced by Rubberflex that was shipped into the United States) was ***. However, in 1990, almost *** of U.S. shipments by Flexfil (the U.S. distributor of the Rubberflex thread) were ***.

The following tabulation presents total U.S. shipments (in 1,000 pounds) of rubber thread by Qualitex, Heveafil USA, and Flexfil and shares accounted for (in percent) by talced and talcless rubber thread during 1989-91:

<u>Source and year</u>	<u>Total U.S. shipments</u>	<u>Talced</u>	<u>Talcless</u>	<u>Total</u>
Qualitex:				
Product produced in the United States:				
1989.....	***	***	***	100.0
1990.....	***	***	***	100.0
1991.....	***	***	***	-
Product imported from Malaysia:				
1989.....	***	***	***	100.0
1990.....	***	***	***	100.0
1991.....	***	***	***	-
Heveafil USA:				
1989.....	***	***	***	-
1990.....	***	***	***	100.0
1991.....	***	***	***	100.0
Flexfil:				
1989.....	***	***	***	100.0
1990.....	***	***	***	100.0
1991.....	***	***	***	100.0

Note.--Data on specialty products (i.e., fine-gauge, food grade, or heat-resistant rubber thread are not included.)

Apparent U.S. Consumption

The data in table 3 on apparent U.S. consumption of rubber thread consist of domestic shipments reported by U.S. producers and U.S. importers in response to Commission questionnaires.⁶⁸ Apparent consumption (in terms of quantity) increased steadily, by almost 24 percent, from 1989 to 1991. Consumption rose 13.8 percent in the first 3 months of 1992 in comparison with the same period in 1991.⁶⁹ The trend in apparent consumption in terms of value varied when compared with the trend in quantity for the period 1989 to 1990 due to the comparatively high price of rubber thread in 1989. (Price trends and their underlying causes are addressed in the "Prices" section of this report.)

⁶⁸ See app. E for summary data on the U.S. market.

⁶⁹ John Friar, President of North American, testified at the Commission's hearing that increases in U.S. shipments do not reflect increased consumption of rubber thread by end users, stating that, "U.S. rubber thread consumption has been fairly stable over the last few years. But rubber consumers who have been rapidly switching to the Malaysian product, have been inventorying more product. ... The reason for the significant increase in customer inventories is that the Malaysians generally ship the product in container-load quantities. ... Further, many customers believe that the Malaysian prices are only temporarily low, and that they will return to much higher levels." Transcript, pp. 13-14.

Table 3

Extruded rubber thread: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
<u>Quantity (1,000 pounds)</u>					
Producers' U.S. shipments:					
North American and Globe . .	***	***	***	***	***
Qualitex	***	***	***	***	***
Total	20,824	16,831	***	***	***
Importers' U.S. shipments:					
Malaysia	***	9,617	***	***	***
Other sources	***	957	***	***	***
Total	4,573	10,575	***	***	***
Apparent consumption . .	25,398	27,406	31,360	7,730	8,799
<u>Value¹ (1,000 dollars)</u>					
Producers' U.S. shipments:					
North American and Globe . .	***	***	***	***	***
Qualitex	***	***	***	***	***
Total	47,926	30,534	***	***	***
Importers' U.S. shipments:					
Malaysia	***	10,639	***	***	***
Other sources	***	1,146	***	***	***
Total	7,419	11,785	***	***	***
Apparent consumption . .	55,345	42,319	45,852	11,373	13,352

¹ F.o.b. U.S. shipping point.

Note.--Because of rounding, figures may not add to the totals shown.

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

Channels of Distribution

Domestic producers and importers of rubber thread generally sell rubber thread directly to unrelated manufacturers of elasticized intermediate goods, such as round or flat braid, knitted or woven narrow fabric, and covered rubber yarns.⁷⁰ U.S. producers and importers of rubber thread did not report any sales to distributors in 1991. Small quantities of imported rubber thread are often purchased directly from importers' stock in U.S. warehouses. Larger purchases (i.e., full container loads of 22,000 pounds) of imported rubber

⁷⁰ However, certain specialty products, such as food grade rubber thread, are shipped directly to nontextile customers (e.g., C & K) and used by those firms in their internal manufacturing operations.

thread usually are shipped directly from the overseas production facilities to the buyer's facilities in the United States.

THE NATURE AND EXTENT OF SALES AT LTFV

Sales at LTFV

Effective August 25, 1992, Commerce determined that rubber thread from Malaysia is being, or is likely to be, sold in the United States at LTFV (57 F.R. 38465, August 25, 1992).⁷¹ Commerce's final margins are presented in the following tabulation (in percent ad valorem):

<u>Firm</u>	<u>LTFV margin</u>
Heveafil/Filmax Sdn. Bhd.....	10.68
Rubberflex Sdn. Bhd.....	22.00
All others.....	15.16

In order to obtain the estimated dumping margins of rubber thread imported from Malaysia, Commerce compared the United States price (USP) of such product with its foreign market value (FMV) during the period March 1, 1991, through August 31, 1991. Commerce based USP, for both Heveafil/Filmax and Rubberflex, on the purchase price of container sales made directly to unrelated customers in the United States, and on the exporter's sales price (ESP) of sales made from the warehouses of related U.S. distributors. There were insufficient sales of rubber thread in the home market to serve as a viable basis for calculating

⁷¹ Effective Aug. 25, 1992, in its concurrent countervailing duty investigation concerning imports of rubber thread from Malaysia, Commerce also determined that net ad valorem bounties or grants are being provided to Rubfil Sdn. Bhd. in the amount of 4.21 percent and to all other manufacturers or exporters in the amount of 9.63 percent (57 F.R. 38472). The countervailable programs included: (1) subsidizing rubber latex (in the form of rebates) for use in rubber thread for export and (2) a series of other export subsidies, namely, export credit financing, electricity discounting for exporters, the abatement of income tax based on the ratio of export sales to total sales, the abatement of 5 percent of the value of indigenous Malaysian materials used in exports, an industrial building allowance for warehouses used to store exports (or imported raw materials for use in such exports), and a double deduction for export promotion expenses. Commerce also found that Rubberflex's use of the pioneer status program was countervailable. Under the program, companies petition for pioneer status for products that have already been approved as pioneer products. Approval of "pioneer status" provides exemptions from specified taxes. Although in past investigations Commerce did not find the program to be countervailable, it determined that an export subsidy was conveyed in this instance because Rubberflex received pioneer status on the basis that "the domestic market is saturated and will no longer support additional producers and because that company agrees to export a certain percentage."

FMV. Commerce, therefore, selected Hong Kong as a third-country market to use for comparison purposes.⁷²

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of rubber thread from Malaysia. Commerce found evidence of "massive" imports by both Filmax and Rubberflex during the 3-month period following the filing of the petition (i.e., such imports increased by at least 15 percent when compared to the 3-month period that immediately preceded the filing date). However, only the dumping margin for Rubberflex exceeded the minimum benchmark percentage considered sufficient to believe that the importers knew or should have known that the product was being sold at LTFV.⁷³ ⁷⁴ Because the Commerce Department made an affirmative determination with respect to critical circumstances, the Commission is required to determine "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."⁷⁵ The Commission is to make an evaluation as to whether the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed.⁷⁶ If the Commission finds either no material injury or only a threat of material injury, it need not reach a critical circumstances determination.

An affirmative critical circumstances determination by the Commission is a finding that, absent retroactive relief, the surge of imports that occurred after the case was filed, but before Commerce issued its preliminary determination, will prolong or will cause a recurrence of material injury to the domestic industry.⁷⁷ The purpose of this provision is to provide relief

⁷² Both Heveafil and Rubberflex had their largest sales volumes of rubber thread in Hong Kong. In a cost of production (COP) investigation (initiated Feb. 27, 1992), Commerce found that respondents made a certain percentage of their sales in Hong Kong at prices below their total COP and, accordingly, disregarded such below-cost sales in calculating FMV. Where all sales of a specific product were below cost, Commerce based FMV on constructed value (CV). The margins in its preliminary determination did not include the COP and CV data. Preliminary margins were 2.62 percent for Heveafil/Filmax, 2.22 percent for Rubberflex, and 2.47 percent for all other firms.

⁷³ Normally, in purchase price sales, Commerce considers estimated margins of 25 percent or greater to be sufficient; in exporter price sales, margins of 15 percent or greater are sufficient to impute knowledge of dumping. In this investigation, there were both types of sales and Commerce, accordingly, weight-averaged the 25-percent and 15-percent benchmarks by the volume of sales in each category to arrive at a weighted-average benchmark percentage.

⁷⁴ In its countervailing duty investigation, Commerce found that critical circumstances exist for Filmax, Rubberflex, and Filati (57 F.R. 38472, Aug. 25, 1992).

⁷⁵ 19 U.S.C. § 1673d(b)(4)(A)(i).

⁷⁶ *Id.* § 1673d(b)(4)(A)(ii).

⁷⁷ See *ICG Industries, Inc. v. United States*, 632 F. Supp. 36, 40 (Ct. Int'l Trade 1986), *aff'd*, 812 F.2d 694 (Fed. Cir. 1987).

from effects of the massive imports and to deter importers from attempting to circumvent the dumping laws by making massive shipments immediately after the filing of an antidumping petition.⁷⁸ However, Congress was aware that critical circumstances determinations can be difficult and are not susceptible to precise mathematical calculations.⁷⁹ Rather, Congress stated that the Commission is to focus on whether the effectiveness of the antidumping duty order would be materially impaired by failing to impose retroactive duties on the massive imports.⁸⁰

The statute requires that the Commission consider the following factors in evaluating the effectiveness of the antidumping duty order absent the retroactive imposition of antidumping duties:

- (I) *The condition of the domestic industry;*
- (II) *Whether massive imports of the merchandise in a relatively short period of time can be accounted for by efforts to avoid potential imposition of antidumping duties;*
- (III) *Whether foreign economic conditions led to the massive imports of the merchandise; and*
- (IV) *Whether the impact of the massive imports of the merchandise is likely to continue for some period after issuance of the antidumping duty order under this part.*^{81 82}

The following tabulation provides monthly data on U.S. imports by Flexfil and ***⁸³ (in thousands of pounds) of rubber thread during January 1991-March 1992:

⁷⁸ H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

⁷⁹ H.R. Rep. No. 576, 100th Cong., 2d Sess. 612 (1988).

⁸⁰ *Id.* at 611.

⁸¹ 19 U.S.C. § 1673d(b)(4)(A)(iii).

⁸² Congress has further stated that the Commission should examine the injury suffered as a result of the dumped imports. In addition, efforts by exporters to unload massive excess supply on the domestic market when international prices are depressed constitute a means for transferral of economic hardship and may call for retroactive duties if they materially increase the extent of injury suffered by the domestic industry. H.R. Rep. No. 576 at 611.

⁸³ ***. ***. ***.

<u>Period</u>	<u>Selected</u> <u>U.S. imports</u> <u>(1,000 pounds)</u>
January 1991....	***
February 1991...	***
March 1991.....	***
April 1991.....	***
May 1991.....	***
June 1991.....	***
July 1991.....	***
August 1991 ¹	***
September 1991..	***
October 1991....	***
November 1991...	***
December 1991...	***
Total.....	***
January 1992....	***
February 1992...	***
March 1992 ²	***
Total.....	***

¹ The petition in the subject investigation was filed on Aug. 29, 1991.

² Commerce's preliminary determination was issued on Apr. 2, 1992.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Data reported in response to the Commission's questionnaires in inv. No. TA-201-63. (Permission granted by respondents to incorporate information into the record for the instant investigation.)

Approximate imports of rubber thread manufactured by Rubberflex were *** pounds during January-March 1992 (the 3-month period prior to Commerce's preliminary determination), or *** percent *** than such imports in the preceding 3-month period (October-December 1991) and *** percent *** than such imports in January-March 1991. Respondents state that Rubberflex did not increase its shipments in order to avoid duties. ***. Increased imports were made to ***.^{84 85}

CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The following information pertains to all U.S. producers of rubber thread during January 1989 to March 1992. North American and Globe provided data for the entire period, and former Qualitex officials completed information covering the period prior to the company's termination of manufacturing and sales on October 26, 1990. Consequently, there is 100-percent data coverage

⁸⁴ Respondents' posthearing brief, pp. 13-14 and exhibit 12.

⁸⁵ In making its critical circumstances determination in past investigations, the Commission has also examined the inventory level of imports (table 13 in this report) and prices and price comparisons (tables 16 and 17).

for all industry indicators. The term "rubber thread" or "extruded rubber thread" as used in this section includes rubber thread in all gauges. Separate data for rubber thread measuring 18 to 140 gauge in diameter and for that less than 18 gauge in diameter are presented in appendix F to this report. In addition, data for North American and Globe are subtotaled or presented separately in tables and tabular presentations, permitting an assessment of a U.S. industry that is defined to exclude the operations of Qualitex.

U.S. Production, Capacity, and Capacity Utilization

Table 4 lists production, capacity, and capacity utilization for the three U.S. producers, by company. Production of rubber thread by, and utilization of capacity in, the U.S. rubber thread industry declined during 1989-91, whether or not data for Qualitex are included. U.S. production declined by *** percent from 1989 to 1991; if operations by Qualitex prior to its closing in October 1990 are excluded, U.S. production declined by *** percent. (Overall output in January-March 1992 was comparable to that for January-March 1991, as a ***) Capacity utilization decreased irregularly for *** during the period examined, although that reported by ***.

Total U.S. industry capacity to produce decreased by *** percent from 1989 to 1991 and then climbed ***, (by *** percent), in interim 1992. Capacity for North American and Globe combined increased steadily from 1989 to 1991.⁸⁶

U.S. Producers' Shipments

During the period examined, U.S. producers did not report any company transfers⁸⁷ and *** amount of exports. Domestic and export shipments are presented, by firm, in table 5. The trend in domestic shipments by U.S. producers for calendar years 1989-91 closely follows the trend in production, decreasing by *** percent over the 3 years. However, unlike production, shipments continued to decline between January-March 1991 and January-March 1992 (down *** percent). The unit value of domestic shipments fluctuated, but was fairly consistent throughout the period with the exception of 1989. This short-lived peak in unit value reflects a jump in the price of natural rubber latex that affected the general level of rubber thread prices worldwide.⁸⁸ Unit value in the first quarter of 1992 was up, but not to 1989 levels. The unit value of U.S. shipments reported by Globe was *** higher than that reported by either North American or Qualitex.⁸⁹

⁸⁶ North American stated in its questionnaire response that the ***. ***.

⁸⁷ None of the producers manufactures a downstream product that contains rubber thread.

⁸⁸ Speculation on the impact of AIDS on future latex demand drove the price of latex to all-time highs in late 1988 and early 1989. See figure 5 in the "Prices" section.

⁸⁹ At the Commission's hearing, William Girrier, Marketing Manager for Globe, testified that the firm produces a number of higher-priced specialty compounds and a relatively large amount of fine gauge rubber thread. (As the gauge narrows, the cost per pound to produce rubber thread increases.) Transcript, p. 62.

Table 4

Extruded rubber thread: U.S. capacity, production, and capacity utilization, by firms, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	January-March--	
				1991	1992
<u>Average-of-period capacity (1,000 pounds)</u>					
North American ^{1 2}	***	***	***	***	***
Globe ³	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex ⁴	***	***	***	***	***
Total	31,822	29,965	***	***	***
<u>Production (1,000 pounds)</u>					
North American ⁵	***	***	***	***	***
Globe	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex	***	***	***	***	***
Total	22,565	17,326	***	***	***
<u>Average-of-period capacity utilization (percent)</u>					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Average	***	***	***	***	***
Qualitex	***	***	***	***	***
Average	70.9	57.8	***	***	***

¹ The capacity data for North American are based on the operation of ***.

² North American developed the capability to produce rubber thread under 18 gauge in diameter in 1990. Neither Globe nor Qualitex reported the capability to produce such thread.

³ The capacity data for Globe are based on the operation of ***.

⁴ The capacity data for Qualitex are based on the operation of ***.

⁵ Although the overall production level of North American *** from 1990 to 1992, its manufacture of ***.

⁶ Not applicable.

Note.--Because of rounding, figures may not add to the totals shown.

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

Table 5
 Extruded rubber thread: U.S. producers' shipments, by firms,¹ 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	January-March--	
				1991	1992
Quantity (1,000 pounds)					
Domestic shipments:					
North American ²	***	***	***	***	***
Globe	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex	***	***	***	***	***
Total	20,824	16,831	***	***	***
Export shipments: ³					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Total	***	***	***	***	***
Value (1,000 dollars)					
Domestic shipments:					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex	***	***	***	***	***
Total	47,926	30,534	***	***	***
Export shipments; ²					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Total	***	***	***	***	***
Unit value (per pound)					
Domestic shipments:					
North American ⁴	\$***	\$***	\$***	\$***	\$***
Globe	***	***	***	***	***
Average	***	***	***	***	***
Qualitex	***	***	***	***	***
Average	2.30	1.81	***	***	***
Export shipments:					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Average	***	***	***	***	***

¹ ***.

² The *** majority of the thread shipped by North American was 18 gauge and over in diameter. Shipments of heavier gauge thread (under 18 gauge) ***.

³ The principal export markets were ***.

⁴ The unit value for rubber thread under 18 gauge is *** compared to that reported for rubber thread 18 gauge and over.

⁵ Not applicable.

Note.--Because of rounding, figures may not add to the totals shown. Unit values are calculated from the unrounded figures.

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

Exports averaged only *** percent of total shipments during the period examined. Both North American and Globe experienced ***.

U.S. Producers' Inventories

Table 6 provides U.S. producers' end-of-period inventories since 1989. Inventory levels for all three firms declined by *** percent during 1989-91, then *** minimally in the interim comparison. The ratios of inventories to production and shipments increased from about 7 percent in 1989 to over *** percent (roughly a 3-week supply of goods) in the first quarter of 1992.

Table 6
Extruded rubber thread: End-of-period inventories of U.S. producers, by firms, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	January-March--	
				1991	1992
Quantity (1,000 pounds)					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex	***	***	***	***	***
Total	1,562	***	***	***	***
Ratio to production (percent)					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex	***	***	***	***	***
Average	6.9	***	***	***	***
Ratio to total shipments (percent)					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex	***	***	***	***	***
Average	***	***	***	***	***

¹ Not applicable.

Note.--Because of rounding, figures may not add to the totals shown. Part-year inventory ratios are annualized.

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

U.S. Employment, Wages, and Productivity

All three domestic producers provided usable data on employment and wages. Table 7 presents these data.⁹⁰ The number of workers producing rubber thread, and the hours worked by and total compensation paid to such workers fell steadily throughout the period from 1989 to 1991, for net decreases of *** percent, *** percent, and *** percent, respectively.⁹¹ (The sharpest declines occurred from 1990 to 1991 as a result of the shutdown in operations by Qualitex.) Employment (and hours worked and total compensation paid) in the interim periods was ***. Productivity declined steadily during 1989-91, by *** percent overall, while unit labor costs rose by *** percent. *** reported significantly higher productivity than the industry average; unit labor costs also varied somewhat among producers.

Financial Experience of U.S. Producers

Three U.S. producers--Globe, North American, and Qualitex--accounting for all U.S. production of extruded rubber thread since 1989 provided income-and-loss data on their extruded rubber thread operations and on their establishment operations.⁹² Qualitex discontinued its production and sales of extruded rubber thread in October 1990.

Operations on Extruded Rubber Thread

Aggregate income-and-loss data of the three producers on their rubber thread operations are shown in table 8. (See appendix tables F-5 and F-6 for income-and-loss data by gauge ranges).⁹³ Table 9 presents selected income-and-loss indicators for these same operations by firms.

⁹⁰ North American's employment figures from 1990 on include ***. North American reports that *** and that there has been no net increase in U.S. employment associated with rubber thread production as a result of ***.

⁹¹ In addition, North American reported a permanent reduction of *** employees in 1989 due to ***, and temporary decreases in ***. The petitioner also noted a temporary reduction ***. Globe reported ***.

⁹² ***. ***. ***. ***. ***.

⁹³ ***.

Table 7

Average number of production and related workers at firms producing extruded rubber thread, hours worked, total compensation paid to such employees, hourly wages, productivity, and unit labor costs, by firms, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	January-March--	
				1991	1992
Number of production and related workers (PRWs)					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex	***	***	***	***	***
Total	205	190	***	***	***
Hours worked by PRWs (1,000 hours)					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex	***	***	***	***	***
Total	369	343	***	***	***
Total compensation paid to PRWs (1,000 dollars)					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Subtotal	***	***	***	***	***
Qualitex	***	***	***	***	***
Total	5,434	4,994	***	***	***
Hourly wages paid to PRWs					
North American	\$***	\$***	\$***	\$***	\$***
Globe	***	***	***	***	***
Average	***	***	***	***	***
Qualitex	***	***	***	***	***
Average	11.34	11.33	***	***	***
Productivity (pounds per hour)					
North American	***	***	***	***	***
Globe	***	***	***	***	***
Average	***	***	***	***	***
Qualitex	***	***	***	***	***
Average	61.1	50.5	***	***	***
Unit labor costs (per pound)					
North American	\$***	\$***	\$***	\$***	\$***
Globe	***	***	***	***	***
Average	***	***	***	***	***
Qualitex	***	***	***	***	***
Average24	.29	***	***	***

Note.--Because of rounding, figures may not add to the totals shown.

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

Table 8
Income-and-loss experience of U.S. producers on their operations producing extruded rubber thread, calendar years 1989-91, January-March 1991, and January-March 1992¹

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
Quantity (1,000 pounds)					
Net sales	22,033	17,662	***	***	***
Value (1,000 dollars)					
Net sales	50,140	31,686	***	***	***
Cost of goods sold.	46,298	31,548	***	***	***
Gross profit.	3,842	138	***	***	***
Selling, general, and administrative expenses	5,273	2,776	***	***	***
Operating income or (loss).	(1,431)	(2,638)	***	***	***
Shutdown expense.	***	***	***	***	***
Interest expense.	***	***	***	***	***
Other income or (loss), net	***	***	***	***	***
Net income or (loss) before income taxes.	(2,257)	(3,202)	***	***	***
Depreciation and amorti- zation included above	1,334	1,319	***	***	***
Cash flow ²	(923)	(1,883)	***	***	***
Share of net sales (percent)					
Cost of goods sold.	92.3	99.6	***	***	***
Gross profit.	7.7	0.4	***	***	***
Selling, general, and administrative expenses	10.5	8.8	***	***	***
Operating income or (loss).	(2.9)	(8.3)	***	***	***
Net income or (loss) before income taxes.	(4.5)	(10.1)	***	***	***
Value (per pound)					
Net sales	\$2.28	\$1.79	\$***	\$***	\$***
Cost of goods sold.	2.10	1.79	***	***	***
Gross profit.	0.17	0.01	***	***	***
Selling, general, and administrative expenses	0.24	0.16	***	***	***
Operating income or (loss).	(0.06)	(0.15)	***	***	***
Net income or (loss) before income taxes.	(0.10)	(0.18)	***	***	***
Number of firms reporting					
Operating losses.	***	***	***	***	***
Net losses.	***	***	***	***	***
Data.	3	3	2	2	2

¹ The three firms are Globe, North American, and Qualitex. The fiscal year of North American ends Mar. 31, and the fiscal year of the other two firms ends Dec. 31, but data were collected on a calendar year basis from all three producers. Qualitex closed its rubber thread operations in October 1990.

² Cash flow is defined as net income or loss plus depreciation and amortization.

Note--Because of rounding, figures may not add to the totals shown.

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

Table 9
Selected income-and-loss data of U.S. producers on their operations producing extruded rubber thread, by firms, calendar years 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	January-March--	
				1991	1992
Value (1,000 dollars)					
Net sales:					
Globe.....	***	***	***	***	***
North American.....	***	***	***	***	***
Subtotal.....	***	***	***	***	***
Qualitex.....	***	***	***	***	***
Total.....	50,140	31,686	***	***	***
Operating income or (loss):					
Globe.....	***	***	***	***	***
North American.....	***	***	***	***	***
Subtotal.....	***	***	***	***	***
Qualitex.....	***	***	***	***	***
Total.....	(1,431)	(2,638)	***	***	***
Book value of fixed assets:					
Globe.....	***	***	***	***	***
North American.....	***	***	***	***	***
Subtotal.....	***	***	***	***	***
Qualitex.....	***	***	***	***	***
Total.....	***	***	***	***	***
Ratio to net sales (percent)					
Operating income or (loss):					
Globe.....	***	***	***	***	***
North American.....	***	***	***	***	***
Average, 2 firms.....	***	***	***	***	***
Qualitex.....	***	***	***	***	***
Average, 3 firms.....	(2.9)	(8.3)	***	***	***
Return on book value of fixed assets (percent)					
Operating income or (loss):					
Globe.....	***	***	***	***	***
North American.....	***	***	***	***	***
Average, 2 firms.....	***	***	***	***	***
Qualitex.....	***	***	***	***	***
Average, 3 firms.....	***	***	***	***	***
Return on total assets (percent)					
Operating income or (loss):					
Globe.....	***	***	***	***	***
North American.....	***	***	***	***	***
Average, 2 firms.....	***	***	***	***	***
Qualitex.....	***	***	***	***	***
Average, 3 firms.....	***	***	***	***	***

¹ Qualitex stopped production and sales of extruded rubber thread in October 1990.

² Not applicable.

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

Net sales of extruded rubber thread declined by 37 percent from \$50.1 million in 1989 to \$31.7 million in 1990. Such sales further fell by *** percent to \$*** million in 1991 from 1990 (when Qualitex exited from the industry). ***. Globe's sales in 1991 were *** 1989 levels, and North American's were ***. During January-March, the combined net sales of two firms--Globe and North American--***. During this period, net sales ***.

Net sales of extruded rubber thread in pounds dropped by *** percent from 1989 to 1991 and further fell by *** percent in January-March 1992 compared with the same period of 1991. From 1989 to 1990, average selling price per pound dropped by 21 percent, whereas average cost of goods sold per pound declined by 15 percent, resulting in a much lower gross profit (\$0.01 per pound compared with \$0.17 per pound). From 1990 to 1991 average selling price per pound increased by *** percent but average cost of goods sold per pound declined by *** percent, raising gross profits to \$*** per pound. From January-March 1991 to the same period in 1992, average selling price per pound rose by *** percent, while average cost of goods sold per pound increased by only *** percent. This resulted in gross profits of \$*** per pound in January-March 1992. During 1989, the higher average costs and prices reflect the increased price of natural rubber latex, the major raw material.⁹⁴

The rubber thread industry reported operating losses ***. The operating losses increased from \$1.4 million, or 2.9 percent of net sales, in 1989 to \$2.6 million, or 8.3 percent of net sales, in 1990, mainly because of ***. Such aggregate losses ***. In 1991, Globe reported ***, whereas North American reported ***. In January-March 1992, the remaining two firms reported aggregate *** of \$***, or *** percent of net sales, compared with *** of \$***, or *** percent of net sales, during the corresponding period of 1991. During January-March, Globe's financial performance ***.

Qualitex reported ***. The firm stopped production and sold its accounts receivable of \$*** and inventory of \$*** to the Malaysian rubber thread producer, Heveafil, in October 1990. Qualitex incurred expenses of ***.

North American reported ***. North American indicated in its questionnaire response that "***." The sale of rubber thread for ***. ***. The company said that it did not have to compete with imported product in the *** market, and it averaged about \$*** per pound profit on the sale of rubber thread for ***.

North American's net sales ***. ***. The company indicated that "***. ***. ***. ***."

Item	1989	1990	1991	Jan-Mar. --	
				1991	1992
Total raw materials cost:					
North American.....	\$***	\$***	\$***	\$***	\$***
Globe.....	***	***	***	***	***

***, Globe, accounted for *** percent of total industry sales in 1989, *** percent in 1990, *** percent in 1991, *** percent in January-March 1991, and *** percent in January-March 1992. ***.

Overall Establishment Operations

Income-and-loss data on overall establishment operations are presented in table 10. Qualitex produced *** in its establishment. North American's rubber thread sales accounted for over *** percent of its establishment sales. Its establishment trends in sales and operating income are similar to those of its operations on rubber thread. Globe's rubber thread sales as a share of its total establishment sales ***. Globe's operations relating to its major product, spandex thread, were ***. Its sales of spandex thread accounted for *** percent or more of its aggregate establishment sales during the reporting periods. Hence, trends in aggregate establishment operating income and income margins are *** those for rubber thread operations. Globe *** on its rubber thread and spandex thread operations.

Table 10

Income-and-loss experience of U.S. producers on the overall operations of their establishments wherein extruded rubber thread is produced, calendar years 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
	*	*	*	*	*

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

Investment in Productive Facilities

The value of property, plant, and equipment and total assets of the reporting firms are presented in table 11. The return on the book value of fixed assets and the return on total assets are also shown in that table. Operating and net returns for rubber thread on the book value of fixed assets and on total assets generally followed the same trend as did the ratios of operating and net income to net sales during the period examined. Total assets declined because of the sale by Qualitex of its accounts receivable and inventory in 1990. Data for 1991 and both interim periods are for two firms--North American and Globe--as Qualitex exited the industry.

Table 11

Value of assets and return on assets of U.S. producers' establishments wherein extruded rubber thread is produced, calendar years 1989-91, January-March 1991, and January-March 1992

Item	As of the end of calendar			As of March 31--	
	1989	1990	1991	1991	1992
	*	*	*	*	*

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

Capital Expenditures

The capital expenditures incurred by North American and Globe are shown in the following tabulation (in thousands of dollars):

Item	1989	1990	1991	January-March--	
				1991	1992
All establishment products...	***	***	***	***	***
Rubber thread	***	***	***	***	***

Globe indicated that the majority of its capital expenditures of \$*** for rubber thread in 1990 were for ***. North American spent \$*** for pollution-abatement equipment mandated by PL 92-500, the Federal Clean Water Act, in 1991. North American mentioned that it was able to purchase some of ***. Qualitex did not provide data on capital expenditures.

Research and Development Expenses

The research and development (R&D) expenses reported by North American and Globe are shown in the following tabulation (in thousands of dollars):

Item	1989	1990	1991	January-March--	
				1991	1992
All establishment products...	***	***	***	***	***
Rubber thread.....	***	***	***	***	***

Qualitex reported *** R&D expenditures. North American indicated in its questionnaire that "***. ***."

Impact of Imports on Capital and Investment

The Commission requested each producer to describe any actual and/or potential negative effects of imports of rubber thread from Malaysia on its growth, investment, and ability to raise capital, or on its existing development and production efforts (including efforts to develop a derivative or improved version of its products). Appendix G presents the producers' responses.

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors⁹⁵--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

⁹⁵ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.⁹⁶

Agricultural products (item (IX)) are not an issue in this investigation. The available information on subsidies (item (I)) is presented in the section of this report entitled "The Nature and Extent of Sales at LTFV;"⁹⁷ information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented

⁹⁶ Section 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT-member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

⁹⁷ Although the petition alleged that the U.S. industry is being injured by reason of subsidies, the removal of Malaysian rubber thread from the list of nondutiable goods under the GSP means that Malaysia is no longer entitled to an injury determination under section 303 of the Act; accordingly, the Commission discontinued its countervailing duty investigation in June 1992. The Malaysian respondents in this case have filed a suit with the Court of International Trade, claiming that the Commission's discontinuation of its countervailing duty investigation is "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law." (Heveafil Sdn. Bhd. et al. v. United States court No. 92-07-00468).

in appendix G. Available information follows on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets.

**Ability of Foreign Producers to Generate Exports and
the Availability of Export Markets Other Than the United States**

The Industry in Malaysia

Information on foreign capacity, production, and shipments of rubber thread was provided by counsel for the Malaysian respondents and is presented in table 12. Appendix H presents data for each individual producer. Data are included for the following five firms:

Filati Lastex Elastofibre (Filati),
Filmax Sdn. Bhd. (Filmax),
Heveafil Sdn. Bhd. (Heveafil),
Rubfil Sdn. Bhd. (Rubfil), and
Rubberflex Sdn. Bhd. (Rubberflex).⁹⁸

The combined operations of these manufacturers account for almost all of Malaysian production and exports of rubber thread to the United States.⁹⁹ 100 Rubber thread accounted for *** of the total sales of each firm.

⁹⁸ As discussed earlier in this report, each of the Malaysian producers (with the exception of Rubfil) imports into the United States through its U.S. affiliate. Filati is affiliated with FLE, the U.S. importer. (FLE is owned and controlled by Filati Malaysia Holding Company (AUSCHEM S.P.A. of Italy)). Rubberflex currently imports rubber thread into the United States through Flexfil, its *** subsidiary. Filmax and Heveafil are related firms (Filmax is owned by Heveafil) and both import rubber thread into the United States through Heveafil USA, a *** subsidiary of Heveafil. ***.

⁹⁹ The petition also lists two other significantly smaller Malaysian rubber thread producers. These companies--Rubber Thread Industries (M) Sdn. Bhd., and Hulme Industries--appear not to be actively involved in the U.S. market.

¹⁰⁰ The production facilities of Filmax and Heveafil are located on the same site in Malaysia. According to an industry article ("How Long Latex Thread Boom?" in *Malaysian Business*), Filmax was established by Heveafil as a separate corporation in order to receive "pioneer status" and tax incentives no longer available to Heveafil.

Rubberflex was established in 1986 by former Heveafil executives. ("How Long Latex Thread Boom?" *Malaysian Business*). An industry article submitted to the Commission by the petitioner (Prehearing brief, exhibit 2) describes an ongoing price war among the Malaysian producers: "Since the battle started in earnest around 1989, industry executives estimate that the price of rubber thread has plummeted by almost 50 per cent depending on the product range." Furthermore, "talks with industry officials seem to suggest that the crux of the matter is the rivalry between Heveafil and Rubberflex, the two largest players." ("Price Joust Hits Hard," *Malaysian Business*, Apr. 1992).

Table 12

Extruded rubber thread: Malaysian producers' capacity, production, shipments, and inventories, 1989-91, January-March 1991, January-March 1992, and projected 1992-93^{1 2}

Item	1989	1990	1991	January-March--		Projections	
				1991	1992	1992	1993
<u>Quantity (1,000 pounds)</u>							
Capacity ³	***	106,173	126,030	31,844	34,170	128,514	145,798
Production.....	***	101,373	121,905	30,576	33,610	124,379	138,423
Shipments:							
Home market.....	***	***	***	***	***	***	***
Exports to--							
United States.....	***	***	***	***	***	***	***
All other export markets ⁴	***	***	***	***	***	***	***
Total exports.....	***	***	***	***	***	***	***
Total shipments..	***	98,087	121,805	29,602	31,345	123,926	136,574
Ending inventories.....	***	5,378	5,879	6,365	7,908	5,891	7,740
<u>Ratios and shares (percent)</u>							
Capacity utilization...	***	95.5	96.7	96.0	98.4	96.8	94.9
Inventories to production.....	***	5.3	4.8	5.2	5.9	4.7	5.6
Share of total quantity of shipments:							
Home market.....	***	***	***	***	***	***	***
Exports to--							
United States.....	***	***	***	***	***	***	***
All other markets..	***	***	***	***	***	***	***

¹ Data for the following firms are included in this table: Heveafil, Filati, Filmax, Rubfil, and Rubberflex.

² Data reported are for rubber thread measuring from 18 to 140 gauge in diameter. No firm reported production of rubber thread under 18 gauge.

³ The capacity data for firms are reported on the following basis: Heveafil (operating *** hours per week, *** weeks per year); Filati (operating *** hours per week, *** weeks per year); Filmax (operating *** hours per week, *** weeks per year); Rubfil (operating *** hours per week, *** weeks per year); and Rubberflex (operating *** hours per week, *** weeks per year).

⁴ Other export markets reported include Hong Kong, China, Taiwan, Korea, Italy, France, Spain, Germany, the United Kingdom, the Middle East, Iran, Pakistan, India, Mexico, and the Philippines.

Note.--Because of rounding, figures may not add to the totals shown.

Source: Compiled from data submitted by counsel for the respondents.

As shown in table 12, overall capacity and production more than doubled from 1989 to 1991 and future increases in capacity and production are projected for 1992 and 1993. (The projected increases for 1993 are especially significant, and are almost entirely due to ***) The industry has operated at virtually full capacity utilization throughout the period. The following tabulation presents production and exports to the United States (in thousands of pounds), and lists the number of extrusion lines, by firm:

<u>Firm</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>
Production:			
Filati.....	***	***	***
Filmax.....	***	***	***
Heveafil.....	***	***	***
Rubfil.....	***	***	***
Rubberflex.....	***	***	***
Total.....	***	101,373	121,905
Number of extrusion lines:			
Filati.....	***	***	***
Filmax.....	***	***	***
Heveafil.....	***	***	***
Rubfil.....	***	***	***
Rubberflex.....	***	***	***
Total.....	18	27	34
Exports to the United States..			
Filati.....	***	***	***
Filmax.....	***	***	***
Heveafil.....	***	***	***
Rubfil.....	***	***	***
Rubberflex.....	***	***	***
Total.....	***	***	***

Note.--Because of rounding, figures may not add to the totals shown.

As is demonstrated by the above tabulation, production operations in Malaysia have been characterized by ongoing expansion throughout the 1989-91 period. Three new firms of significant size (Filati, Filmax, and Rubfil) have begun the manufacture of rubber thread, and ***.¹⁰¹ (The entrance of Filmax can be viewed as an expansion of operations by Heveafil, its parent.) The addition of Filati, Filmax, and Rubfil to the industry (and an increase in production by ***) led to an increase in production of over *** percent in 1990 alone.

¹⁰¹ However, with the exception of ***.

The data in table 12 also show a dramatic rise in exports to the United States. Slightly under *** pounds of rubber thread were exported to the United States in 1989; such shipments quadrupled to over *** pounds by 1991. A comparison of interim-period numbers, however, reveals only a slight increase of U.S.-bound exports, and U.S. export projections for 1992 and 1993 are 5.6 and 9.6 percent higher, respectively, than 1991 levels.¹⁰² As shown in the above tabulation, *** and *** are the source of the largest volume of exports to the United States; in 1991, each firm shipped approximately *** percent of its total shipments to the United States.

U.S. Importers' Inventories

U.S. importers' inventories of rubber thread that were held in the United States are reported in table 13. (No foreign producer reported maintaining U.S. inventories of the product.) The level of inventories increased sharply throughout the period, reflecting the larger amounts of product entering the United States. (The ratio of inventories to imports actually declined somewhat during 1989-91, due to a larger increase in imports than in inventories).

Table 13

Extruded rubber thread: End-of-period inventories of U.S. importers, by sources, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
	*	*	*	*	*

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

¹⁰² Data presented in table 12 also document the *** share of exports destined for the United States. While other markets, especially the traditional textile manufacturing countries of Hong Kong, Japan, and Italy, command the lion's share of Malaysia's exports, the United States has accounted for a *** share of total shipments. In 1989 the U.S. market consumed *** percent of Malaysia's rubber thread shipments; by interim 1992, that figure stood at *** percent. Home market shipments are small for all producers.

Government Actions or Investigations in Third Country Markets

The Government of Brazil has issued an affirmative countervailing duty determination on rubber thread imports from Malaysia.¹⁰³ Also, Indonesia and Thailand have recently imposed remedial tariffs of 30 to 80 percent ad valorem.^{104 105} In addition, a ***.^{106 107}

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

Table 14 provides data on imports of rubber thread into the United States since 1989. As shown, the vast majority of imports were from Malaysia. The quantity of rubber thread imported from Malaysia increased markedly between 1989 and 1991, more than *** in 1990 and rising an additional *** percent in 1991. A comparison of interim 1991 to interim 1992 shows an increase of *** percent. ***. ***. ***.

Market Penetration of Imports

Shares of apparent U.S. consumption are presented in table 15. Over the period of investigation and, in particular, after the closing of Qualitex in 1990, U.S. producers supplied a rapidly decreasing share of U.S. apparent consumption. In 1989, their share of the quantity of apparent domestic consumption stood at 82.0 percent; in January-June 1992, U.S. producers accounted for *** percent of U.S. consumption. (The share of apparent U.S. consumption of a U.S. industry that excludes Qualitex also decreased, in terms of quantity, by *** percentage points from 1989 to January-March 1992.) In turn, market penetration of imports (particularly from Malaysia) increased substantially in terms of both quantity and value. Market penetration in terms of value was consistently lower as a result of a generally lower price level for the imported product.

¹⁰³ After determining that Brazilian imports of rubber thread from Malaysia were subsidized and had increased by 2,530 percent between 1989 and 1990, Brazil's Economic Ministry imposed a countervailing duty of 15.9 percent ad valorem on rubber thread from all Malaysian producers. (Petition, exhibit 15, in inv. No. TA-201-63. Permission granted by counsel for the petitioner to incorporate information into the record for the instant investigation.)

¹⁰⁴ Transcript, p. 15.

¹⁰⁵ Respondents argue that since shipments of the Malaysian product into these markets has been small (Heveafil and Rubberflex estimate that approximately *** percent of their total shipments have been directed to Brazil, Thailand, and Indonesia), any diversion from these markets would not be significant enough to establish a threat of material injury. Posthearing brief, p. 10.

¹⁰⁶ Petitioner's postconference brief, pp. 14-15.

¹⁰⁷ ***. ***. ***. ***. ***. Response by U.S. Embassy in *** to Commission request for information.

Table 14

Extruded rubber thread: U.S. imports, by sources, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
Quantity (1,000 pounds)					
Malaysia	***	10,889	***	***	***
Other sources	***	850	***	***	***
Total	5,426	11,738	***	***	***
Value ¹ (1,000 dollars)					
Malaysia	***	10,382	***	***	***
Other sources	***	1,008	***	***	***
Total	7,740	11,390	***	***	***
Unit value (per pound)					
Malaysia	\$***	\$0.95	\$***	\$***	\$***
Other sources	***	1.19	***	***	***
Average	1.43	.97	***	***	***

¹ Landed, duty-paid at the U.S. port of entry, including ocean freight and insurance costs, brokerage charges, and import duties.

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

Table 15

Extruded rubber thread: Shares of the quantity and value of U.S. apparent consumption accounted for by U.S. shipments of domestic product and U.S. shipments of imports, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	January-March--	
				1991	1992
Share of the quantity of U.S. consumption (percent)					
Producers' U.S. shipments:					
North American and Globe	***	***	***	***	***
Qualitex	***	***	***	***	***
Subtotal	82.0	61.4	***	***	***
Importers' U.S. shipments:					
Malaysia	***	35.1	***	***	***
Other sources	***	3.5	***	***	***
Subtotal	18.0	38.6	***	***	***
Total	100.0	100.0	100.0	100.0	100.0
Share of the value of U.S. consumption ¹ (percent)					
Producers' U.S. shipments:					
North American and Globe	***	***	***	***	***
Qualitex	***	***	***	***	***
Subtotal	86.6	72.2	***	***	***
Importers' U.S. shipments:					
Malaysia	***	25.1	***	***	***
Other sources	***	2.7	***	***	***
Subtotal	13.4	27.8	***	***	***
Total	100.0	100.0	100.0	100.0	100.0

¹ Based on f.o.b. U.S. shipping point values.

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

Prices

Market Characteristics

Domestic producers and importers of rubber thread from Malaysia typically sell their product to manufacturers of elasticized intermediate goods such as round or flat braid, knitted or woven narrow fabric, and covered rubber yarns.¹⁰⁸ These intermediate goods are used to produce end products such as hosiery, active wear, medical garments, and undergarments. Domestic producers and importers of Malaysian rubber thread generally sell directly to the manufacturer, and the imports are shipped either from stock in U.S. warehouses or directly from the production facilities in Malaysia.¹⁰⁹

Prices for domestic and imported Malaysian rubber thread are typically quoted on a delivered basis. Globe reported that it issues price lists, as did Qualitex before it closed; these are generally used as starting points in price negotiations. The other U.S. producer, North American, and the importers of Malaysian rubber thread do not issue price lists. Globe offers *** and ***-percent discounts for payment within *** days. North American occasionally offers discounts for payment within *** days. One importer of Malaysian rubber thread, Flexfil, offers a ***-percent quantity discount to customers who buy full containers of rubber thread shipped directly to their plants. Domestic producers typically offer sales terms of net 30-60 days, whereas importers of Malaysian rubber thread offer sales terms of net 45-60 days and, in a few cases, net 90 days.

Domestic producers and importers sell both on a contract and a spot basis. Globe sells *** percent of its rubber thread on a contract basis. Globe's contracts ***. North American sells *** of its rubber thread on a spot basis. Flexfil sells *** of its imported Malaysian rubber thread by contract and *** on a spot basis. Flexfil's contracts ***. Sher & Mishkin sold *** percent of its imported Malaysian rubber thread on a contract basis and the remaining *** percent on a spot basis.¹¹⁰ Sher & Mishkin's contracts ***. Heveafil sells *** of its imported Malaysian rubber thread on the spot market. FLE *** sells *** of its imported Malaysian rubber thread on the spot market.

Although prices are quoted on a delivered basis, domestic producers and importers of Malaysian rubber thread reported that transportation costs are not an important factor in their customers' sourcing decisions. Average U.S. transportation costs of U.S. and imported Malaysian rubber thread are 2-6 percent of net delivered prices, depending on the distance that the thread must be shipped. Extruded rubber thread is typically shipped by truck, and the U.S. producers and importers of Malaysian rubber thread generally pay the transportation costs.

¹⁰⁸ Extruded rubber thread is also used in the production of dust masks, bungee cords, and toys (such as Koosh balls).

¹⁰⁹ In both cases, the customer is buying rubber thread from the importer and is not the importer of record.

¹¹⁰ Sher & Mishkin no longer sells extruded rubber thread (see the "U.S. Importers" section).

The average lead times for delivery of U.S.-produced rubber thread are 6-21 days, whereas lead times for the imported Malaysian product vary depending on whether the rubber thread is delivered from the importers' U.S. warehouses or shipped directly from Malaysia to the customer. Deliveries of small shipments from the importers' U.S. warehouses can be made overnight, whereas deliveries of container loads (approximately 22,000 pounds) of imported rubber thread shipped directly from Malaysia to the customer's plant require 56-90 days.

Most purchasers reported that there are no significant differences in the quality of U.S.-produced and imported Malaysian extruded rubber thread. In general, the end users of extruded rubber thread are not interested in or aware of the country of origin of the product. Purchasers reported that importers of the Malaysian product offer better payment terms¹¹¹ and service,¹¹² and significantly lower prices than U.S. producers. Those purchasers that bought the domestic product even though the imported product was available at a lower price cited factors such as better availability and "Buy American" preferences.

Purchasers generally buy extruded rubber thread either weekly or irregularly. Purchasers usually contact only one or two suppliers before making a purchase and rarely change suppliers.¹¹³

Several purchasers reported that spandex and cut rubber thread can be substituted for extruded rubber thread in some generic, non-specialized end uses. However, extruded rubber thread is generally used whenever possible because it is typically much less expensive than the other products.¹¹⁴

¹¹¹ One purchaser reported that importers of Malaysian extruded rubber thread offer open-account, net 30-days or net 60-days payment terms, whereas their domestic counterpart required cash before delivery. Another purchaser reported 5-percent, 60-days payment terms for the Malaysian product vs. 3-percent, 15-days payment terms for the domestic product.

¹¹² Three purchasers reported that the Malaysian salesmen make more frequent contact with them than domestic salesmen.

¹¹³ Several purchasers reported that they contact only one supplier before making a purchase and have never changed suppliers.

¹¹⁴ One purchaser, accounting for *** percent of extruded rubber thread consumption in 1991, reported that it uses a lot of cut rubber thread and could use this in all areas where it now uses extruded rubber thread. However, cut rubber thread costs nearly twice as much as extruded rubber thread. When the price of extruded rubber thread went over \$2.30 per pound in 1989, this firm switched to cut rubber thread for some items. When extruded rubber thread prices fell, the firm switched back to using extruded rubber thread.

Questionnaire Price Data

The Commission requested U.S. producers and importers to provide quarterly net delivered selling price data for each firm's largest sale during January 1989-March 1992 for the six representative products listed below:¹¹⁵

- Product 1: Talced extruded rubber thread in the gauge range of 24-34, with a yield of 650-1,150 yards per pound.
- Product 2: Talced extruded rubber thread in the gauge range of 37-44, with a yield of 1,250-2,300 yards per pound.
- Product 3: Talcless extruded rubber thread in the gauge range of 24-34, with a yield of 650-1,150 yards per pound.
- Product 4: Talcless extruded rubber thread in the gauge range of 37-44, with a yield of 1,250-2,300 yards per pound.
- Product 5: Talcless extruded rubber thread in the gauge range of 14-16, with a yield of 220-280 yards per pound.
- Product 6: Talcless extruded rubber thread in the gauge range of 95-105, with a yield of 7,700-8,200 yards per pound.

Two U.S. producers, North American and Globe, reported price data.¹¹⁶ North American reported complete price data for sales of products 1-5, and Globe reported complete price data for products 1-4 and 6.¹¹⁷ North American and Globe accounted for 100 percent of 1991 domestic production of rubber thread.¹¹⁸ Price data reported by North American and Globe were for products that represented *** percent of total reported 1991 domestic production of rubber thread.

Six importers, ***, reported price data. *** reported complete price data for products 1-4 and 6, and 1 and 2, respectively. *** reported limited price data for recent sales, and *** could only report price data for its sales ***. *** accounted for *** percent of reported 1991 imports of Malaysian

¹¹⁵ David Sullivan, sales manager, North American, reported that rubber thread in the 26-34 gauge range (corresponding to yield rates of 650-1,150 yards per pound) is sold at the same price. Mr. Sullivan reported that the price of rubber thread in the 36-44 gauge range (corresponding to yield rates of 1,250-2,300 yards per pound) varies by approximately \$0.05 per pound. Conference transcript, p. 38. Walter Coyne, President of Flexfil, stated that rubber thread in the yield range of 650-1,250 yards per pound is the same product. Conference transcript, p. 75.

¹¹⁶ The third U.S. producer, Qualitex, could not provide price data for the requested products.

¹¹⁷ Globe reported quarterly average delivered prices for its sales to its *** largest customers. These *** customers accounted for over *** percent of Globe's sales in 1991.

¹¹⁸ Qualitex sold domestic rubber thread products 2-5 during 1989-90, before leaving the industry in October 1990.

rubber thread.¹¹⁹ Price data reported by *** were for products that represented *** percent of total reported 1991 imports of Malaysian rubber thread.

The domestic and imported product 3 was the single largest volume product reported, accounting for *** percent of the quantity of domestic products and *** percent of the quantity of Malaysian products for which price data were reported. Domestic and imported products 1, 2, and 4 were also large-volume products for which the pricing data were reported. The domestic product 5 and domestic and imported product 6 were much smaller volume products, together accounting for about *** percent of the domestic products and *** percent of the Malaysian products for which price data were reported.

The Commission also requested purchasers to report delivered purchase prices for the U.S. and imported Malaysian products 1-6 during January 1989-March 1992. Based on extruded rubber thread products 1-4 for which price data were reported, purchase quantities of U.S. products were *** percent of sales quantities reported by U.S. producers, and purchase quantities of the imported products were *** percent of sales quantities reported by U.S. importers. Weighted-average delivered purchase prices of products 1-4 are presented in appendix I. U.S. purchase prices generally mirrored U.S. sales prices, while Malaysian purchase prices were similar to Malaysian sales prices if they were lagged 1-4 quarters, depending on the product.

Price trends

As shown in table 16 and figures 2-4, delivered selling prices of the domestic and imported Malaysian extruded rubber thread products sold to end users by U.S. producers and importers generally fell over the periods reported. The only exception involved prices of domestic product 5, reported ***, which remained unchanged during the period reported. Declines in prices of the imported products were generally much greater than those of U.S. producers. Declines in prices of the U.S. products ranged from *** percent for the domestic product 6 to *** percent for the domestic product 3,¹²⁰ while declines in prices of the imported Malaysian products ranged from *** percent for the imported product 3 to *** percent for the imported product 2.

¹¹⁹ ***, ***, ***, ***,

¹²⁰ U.S. producer prices fell at the same time that prices of their principal raw material input, natural rubber latex, fell. The quarterly raw material prices, as reported by North American, fell sharply in 1989, by *** percent, and more modestly thereafter to end in the first quarter of 1992 about *** percent lower than in the first quarter of 1989.

Table 16

Extruded rubber thread: Weighted-average net delivered prices and total quantities of U.S.-produced and imported Malaysian rubber thread sold to end users, by specified products and by quarters, January 1989-March 1992

* * * * *

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

Figure 2

Extruded rubber thread: Weighted-average net delivered prices of U.S.-produced and imported products 1 and 2 sold to end users, January 1989-March 1992

* * * * *

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

Figure 3

Extruded rubber thread: Weighted-average net delivered prices of U.S.-produced and imported products 3 and 4 sold to end users, January 1989-March 1992

* * * * *

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

Figure 4

Extruded rubber thread: Weighted-average net delivered prices of U.S.-produced and imported products 5 and 6 sold to end users, January 1989-March 1992

* * * * *

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

United States.--Prices of U.S. product 1 began at \$*** per pound in January-March 1989, rose \$*** per pound by July-September 1989, and *** the following quarter. Prices of the domestic product 1 then fell to \$*** per pound in January-March 1990 and generally continued their downward path before ending at \$*** per pound in January-March 1992, or *** percent below the initial-period value.

Prices of U.S. product 2 started at \$*** per pound in January-March 1989 and fell to \$*** per pound by January-March 1990. Prices then fluctuated around the \$*** level during the rest of the period, ending at \$*** per pound in January-March 1992, or *** percent below the initial-period value. Prices of U.S. product 3 started at \$*** per pound in January-March 1989, fell to \$*** per pound by April-June 1990, then increased to \$*** per pound in July-September 1991. Prices fell abruptly to \$*** per pound in October-December 1991, before ending the period at \$*** per pound in January-March 1992, or *** percent below the initial-period value.

Similar to product 3 price trends, prices of U.S. product 4 started at \$*** per pound in January-March 1989, fell to \$*** per pound by July-September 1990, then increased to \$*** per pound in April-June 1991. Prices fell to \$*** per pound in October-December 1991, then increased in the following quarter to end the period at \$*** per pound in January-March 1992, or *** percent below the initial-period value.

Prices of U.S. product 5 *** at \$*** per pound during the period reported, January 1990-March 1992. Prices of U.S. product 6 started at \$*** per pound in January-March 1989, then fell to \$*** per pound by April-June 1990. Prices *** through the rest of 1990 and then rose irregularly to end the period at \$*** per pound in January-March 1992, or *** percent below the initial-period value.

Malaysia.--Prices of the imported product 1 started from \$*** per pound in January-March 1989, fell throughout 1989, and hit \$*** per pound in January-March 1990. Prices of product 1 then rose irregularly to end the period at \$*** per pound in January-March 1992, or *** percent below the initial-period value.

Prices of the imported product 2 started at \$*** per pound in January-March 1989, fell to \$*** by October-December 1989, and then *** to \$*** per pound in the following quarter. Prices then fluctuated during the rest of the period, falling to \$*** per pound in January-March 1992, or *** percent below the initial-period value.

Prices of the imported product 3 started at \$*** per pound in July-September 1989, then dropped sharply to \$*** per pound in the following quarter. Prices increased slightly to \$*** per pound in April-June 1990 and remained at this level during the rest of 1990. Prices fell to \$*** per pound in October-December 1991, then increased to \$*** per pound in January-March 1992 to end the period *** percent below the initial-period value.¹²¹

Prices of the imported product 4 started at \$*** per pound in July-September 1989, dropped suddenly to \$*** per pound in the following quarter, rose irregularly to \$*** per pound by April-June 1991, and then fell to \$*** per pound in October-December 1991. Prices rebounded to \$*** per pound in

¹²¹ During July 1989-March 1992, prices of the U.S. product 3 fell by *** percent.

January-March 1992 to end the period *** percent below the initial-period value.¹²²

Prices of the imported product 6 started at \$*** per pound in July-September 1989, fluctuated downward to \$*** per pound in July-September 1991, and then rose to end the period at \$*** per pound in January-March 1992, or *** percent below the initial-period value.¹²³

Price comparisons

Price comparisons of U.S. net delivered prices of U.S.-produced and imported Malaysian rubber thread products 1-4 and 6 are presented in table 17. Importers of Malaysian extruded rubber thread did not report any sales of product 5 during January 1989-March 1992. The products are differentiated by non-price factors such as payment terms, customer service, and availability.

The reported price data for U.S. producers' and importers' sales to unrelated customers during January 1989-March 1992 resulted in 58 price comparisons. Prices for imported Malaysian rubber thread were below prices for U.S.-produced rubber thread in all 58 instances. In general, margins of underselling were high, equalling or exceeding 30 percent in 39 of the 58 comparisons. Margins of underselling were generally higher for products 1 and 2 than for the other three products.

The reported purchaser price data also indicate that, in most cases, prices for imported Malaysian rubber thread were significantly lower than prices for domestic rubber thread. Purchasers reported 72 instances during which they bought both domestic and imported Malaysian rubber thread. The Malaysian product was priced below the domestic product in 59 of these instances. Margins of underselling were 20 percent or greater in 32 of the 59 comparisons in which the Malaysian product was lower-priced.

¹²² During July 1989-March 1992, prices of the U.S. product 4 fell by *** percent.

¹²³ During July 1989-March 1992, prices of the U.S. product 6 fell by *** percent.

Table 17
 Extruded rubber thread: Margins of underselling, by products and by quarters,
 January 1989-March 1992

(In percent)

Period	Product 1	Product 2	Product 3	Product 4	Product 6
1989:					
Jan.-Mar...	7.4	17.2	-	-	-
Apr.-June..	22.6	29.6	-	-	-
July-Sept..	36.6	31.8	13.4	16.5	0.3
Oct.-Dec...	43.5	30.0	39.5	46.1	-
1990:					
Jan.-Mar...	56.4	46.5	33.6	42.0	11.5
Apr.-June..	53.7	39.6	27.1	29.5	12.7
July-Sept..	51.5	41.8	32.9	30.0	24.0
Oct.-Dec...	51.1	42.6	32.8	37.2	21.3
1991:					
Jan.-Mar...	38.7	43.1	37.2	40.9	18.1
Apr.-June..	43.4	45.2	36.4	35.8	20.7
July-Sept..	39.9	41.0	40.1	44.8	28.9
Oct.-Dec...	44.9	48.3	31.0	39.4	29.0
1992:					
Jan.-Mar...	36.4	49.2	26.8	39.3	27.6

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

Comparison of U.S. extruded rubber thread prices and rubber latex input costs

Natural rubber latex is the most important input in the production of rubber thread, accounting for 80-85 percent by weight of the finished rubber thread product.¹²⁴ The latex input cost accounted for *** percent of North American's and *** percent of Globe's 1991 cost of goods sold for the production of extruded rubber thread; thus, the price of latex influences the price of extruded rubber thread.¹²⁵ North American reported quarterly delivered prices for its contract purchases of natural rubber latex during January 1988-March 1992 from its principal supplier, ***. Latex prices were stable during the first three quarters of 1988, increasing slightly from \$*** per pound in the first quarter of 1988 to \$*** per pound in the third quarter of 1988. Prices rose to \$*** per pound in the fourth quarter of 1988, then increased sharply to \$*** per pound in the first quarter of 1989. Prices fell sharply in the second and third quarters of 1989, ending the year approximately at 1988 levels, and continued to fall gradually during the rest of the period.

¹²⁴ Petition, p. A-8, and conference transcript, p. 52.

¹²⁵ Conference transcript, pp. 39 and 55.

A comparison of U.S. extruded rubber thread prices and North American's rubber latex input costs¹²⁶ is shown in figure 5. Prices for products 1-4 and 6 all declined in the second quarter of 1989, along with the input costs. The product 5 price series did not begin until the first quarter of 1990. Prices for products 3 and 4 and those for latex continued to decline during the remainder of 1989. Prices for products 1, 2, and 6, however, remained near or slightly above second-quarter levels during the rest of 1989, before falling in 1990. Prices for products 1-5 followed the relatively stable rubber latex prices during 1991 and the first quarter of 1992, fluctuating around the 1990 price levels. Prices for product 6, however, increased during 1991 and the first quarter of 1992.

Figure 5

Extruded rubber thread: Weighted-average net delivered prices of U.S.-produced products 1-6 and North American's rubber latex input costs, January 1989-March 1992

* * * * *

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

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January 1989-March 1992 the nominal value of the Malaysian ringgit appreciated 4.2 percent overall relative to the U.S. dollar, as shown in the following tabulation:¹²⁷

¹²⁶ Since one pound of extruded rubber thread requires approximately 0.8 pound of natural rubber latex, the rubber latex cost per pound of extruded rubber thread was estimated by multiplying the price per pound of rubber latex by 0.8.

¹²⁷ International Financial Statistics, July 1992.

	<u>Ringgit</u> <u>per dollar</u>	<u>Index</u> ¹
1989:		
Jan.-Mar-----	0.3656	100.0
Apr.-June-----	.3688	100.9
July-Sept-----	.3721	101.8
Oct.-Dec-----	.3702	101.3
1990:		
Jan.-Mar-----	.3692	101.0
Apr.-June-----	.3686	100.8
July-Sept-----	.3705	101.3
Oct.-Dec-----	.3705	101.3
1991:		
Jan.-Mar-----	.3679	100.6
Apr.-June-----	.3618	99.0
July-Sept-----	.3603	98.6
Oct.-Dec-----	.3645	99.7
1992:		
Jan.-Mar-----	.3810	104.2

¹ Jan.-Mar. 1989 = 100

Official data on producer price movements in Malaysia are not available. Therefore, a real exchange rate index cannot be calculated.

Lost Sales and Lost Revenues

During the final investigation, North American reported *** allegations of lost sales involving *** customers. The lost sales allegations involved *** pounds of rubber thread valued at \$***. North American also alleged that it lost revenues of \$*** during April 1990-March 1992 because of competition from imported Malaysian rubber thread, ***. Globe also reported that it had lost sales and revenues during January 1989-March 1992 because of competition from imported Malaysian rubber thread, ***. Staff contacted *** customers to investigate *** allegations representing \$*** in alleged lost sales.

*** was cited by *** for an *** 1991 lost sale of *** pounds of rubber thread worth \$***. ***, a representative of ***, could not confirm or deny the specific allegation. However, *** reported that *** had previously bought from *** at \$*** per pound, but switched to *** in 1991 because of lower prices. *** first bought from *** in *** 1991, buying *** pounds for \$*** per pound. *** then offered to cut the price to \$*** per pound if *** bought a full container (22,000 pounds) delivered directly from Malaysia. On *** 1991, *** accepted this offer. *** placed another order at the end of *** 1991 for a container load priced at \$*** per pound to be delivered at the end of *** 1991. If *** buys from ***'s warehouse in ***, the price is \$*** per pound. *** reported that the service and the quality of the domestic and imported Malaysian rubber thread are comparable.

*** was named by *** in an *** 1990 lost sales allegation involving *** pounds of rubber thread worth \$***. ***, a representative of ***, was unable

to confirm or deny the specific allegation. *** reported that *** bought extruded rubber thread from *** during 1990. *** bought the majority of its rubber thread from importers of Malaysian rubber thread at prices of \$***-\$*** per pound for full container loads; *** paid \$***-\$*** per pound for the U.S. product.

*** was cited by *** in a *** 1991 lost sales allegation involving *** pounds of rubber thread valued at \$***. ***, a representative of ***, was unable to confirm or deny the specific allegation. *** reported that *** had been buying from *** until the end of *** 1990. *** stopped buying from *** because the firm could not deliver a particular order of rubber thread on time. Since the beginning of 1991, *** has been buying *** pounds of rubber thread per week. Currently, *** buys approximately *** percent of its rubber thread from importers of Malaysian product and the remaining *** percent from ***. Depending on the quantity purchased, *** pays \$***-\$*** per pound for Malaysian rubber thread and was paying \$***-\$*** per pound for the *** product before it switched to imports from Malaysia. *** reported that price is an important consideration; currently, the difference between the prices of U.S.-produced and imported Malaysian rubber thread accounts for a 3-percent margin on ***'s bottom line. *** had been loyal to *** previously because *** had given *** favorable credit terms when it first began its operations.

*** was named by *** in a *** 1991 lost sales allegation involving *** pounds of rubber thread valued at \$***. ***, a representative of ***, could neither confirm nor deny the specific allegation. *** reported that during 1991 *** bought both U.S.-produced and imported Malaysian rubber thread. *** buys Malaysian rubber thread from the importer *** and bases its purchasing decisions on quality, price, and delivery. U.S.-produced rubber thread is priced 10-30 percent higher than Malaysian rubber thread, and the U.S. producers have had problems delivering rubber thread to ***.

*** was cited by *** in a *** 1991 lost sales allegation involving *** pounds of rubber thread worth \$***. ***, a representative of ***, would not confirm or deny the specific allegation. *** reported that *** currently buys U.S.-produced and Malaysian rubber thread. At one time, *** only bought U.S.-produced rubber thread. However, about 1-1/2 years ago, the AIDS scare pushed the price of latex up, resulting in higher rubber thread prices. *** looked for alternatives to U.S.-produced rubber thread and began to import directly from Malaysia. Eventually, *** began to buy imported Malaysian rubber thread through U.S. importers. Price and availability are both factors in the purchase decision; domestic producers could not supply rubber thread in bulk quantities. *** noted that the quality of U.S.-produced and imported Malaysian rubber thread is comparable.

*** was named by *** in a *** 1991 lost sales allegation involving *** pounds of rubber thread valued at \$***. ***, a representative of ***, could not confirm or deny the specific allegation. *** reported that *** has been buying *** pounds of imported Malaysian rubber thread per month since the beginning of 1991. During that time, *** has not bought any domestic product. *** buys the imported Malaysian product instead of the domestic product because of the difference in prices (U.S.-produced rubber thread is priced at \$*** per pound, whereas the imported Malaysian product is priced at \$*** per pound). The quality of the U.S.-produced and imported Malaysian rubber thread

is the same. *** has agreed to buy several container loads of rubber thread to be shipped directly from ***'s Malaysian production facilities. *** recently learned that *** has offered rubber thread priced at \$*** per pound. Once *** satisfies its obligations to ***, *** may switch to *** if the price difference still exists. *** reported that *** told him that *** intended to drive the domestic rubber thread producers out of the market.

*** was cited by *** in *** 1991 lost sales allegations involving *** pounds of rubber thread valued at \$***. ***, ***, could not confirm or deny ***'s specific lost sales allegations. *** reported that, during 1988-90, *** bought only U.S.-produced rubber thread. *** bought *** pounds of rubber thread per week in 1988, *** pounds per week in 1989, and *** pounds per week in 1990. *** did not buy imported Malaysian rubber thread in 1988-90 because the Malaysian producers did not offer talcless, silicone-treated rubber thread during that period. However, at the beginning of 1991, the Malaysian producers began to supply the U.S. market with talcless rubber thread. *** tested the talcless Malaysian product and determined that it satisfied ***'s quality standards. In *** 1991, *** began to buy talcless rubber thread from Malaysia in quantity and, since then, has bought approximately *** pounds of the Malaysian product per week while significantly reducing its purchases of U.S. product. Since *** 1991, *** has purchased approximately *** pounds of U.S.-produced rubber thread per week.

*** cited a number of reasons for switching to the Malaysian product. *** primarily bases its rubber thread purchasing decisions on quality, delivery, and price. The quality of the U.S.-produced and the imported Malaysian talcless rubber thread is comparable. The importers of the Malaysian product offer better delivery terms than the U.S. producers. For relatively small shipments, importers of the Malaysian product offer next day delivery from their U.S. warehouses; domestic producers generally cannot deliver product as quickly. Currently, U.S.-produced rubber thread is priced 15-65 percent higher than imported Malaysian rubber thread, depending on the quantities, delivery terms, and specific companies involved in the transaction.

APPENDIX A
FEDERAL REGISTER NOTICES

527 (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 is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Malaysia of extruded rubber thread,¹ provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States. The Commission also gives notice of the schedule to be followed in this antidumping investigation and the ongoing countervailing duty investigation regarding imports of extruded rubber thread from Malaysia (inv. No. 303-TA-22 (Final)), which the Commission instituted effective December 30, 1991 (57 FR 4479, February 5, 1992). The schedules for the subject investigations will be identical, pursuant to Commerce's alignment of its final subsidy and dumping determinations (57 FR 3163, January 28, 1992).

For further information concerning the conduct of these 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: April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-205-3188), 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.

SUPPLEMENTARY INFORMATION:

Background

The subject antidumping investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of extruded rubber thread from Malaysia are being sold in the United States at less than fair value within the meaning of section 733 of the act (19

¹ The merchandise covered by this investigation is vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross-sectional shape, measuring from 0.18 millimeter (0.007 inch or 140 gauge) to 1.42 millimeters (0.056 inch or 18 gauge) in diameter.

U.S.C. 1673b). The Commission instituted the subject countervailing duty investigation effective December 30, 1991 (57 FR 4479, February 5, 1992). Both investigations were requested in a petition filed on August 29, 1991, by North American Rubber Thread Co., Fall River, MA.

Participation in the Investigations and Public Service List

Any person having already filed an entry of appearance in the countervailing duty investigation is considered a party in the antidumping investigation. Any other persons wishing to participate in the 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, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations upon the expiration of the period for filing entries of appearance.

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

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on August 5, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on August 18, 1992, 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 August 11, 1992. A nonparty who has testimony

[Investigations Nos. 303-TA-22 (Final) and 731-TA-527 (Final)]

Extruded Rubber Thread From Malaysia

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation and scheduling of the ongoing countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-

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 August 13, 1992, 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 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the commission's rules; the deadline for filing is August 12, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is August 26, 1992; witness testimony must be filed no later than three (3) 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 August 26, 1992. 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 §§ 201.8, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.18(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document of filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: April 23, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-9976 Filed 4-28-92; 8:45 am]

BILLING CODE 7020-02-M

FOR FURTHER INFORMATION CONTACT:
Debra Baker (202-205-3180), Office of
Investigations, U.S. International Trade
Commission, 500 E Street SW.,
Washington, DC 20438. 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.

Authority: This action is taken under
authority of the Tariff Act of 1930, section 303
and title VII.

Issued: June 10, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-14200 Filed 6-16-92; 845am]

BILLING CODE 7020-02-0

[Investigation No. 303-TA-22 (Final)]

**Extruded Rubber Thread From
Malaysia**

AGENCY: United States International
Trade Commission.

ACTION: Notice of discontinuation of
investigation.

SUMMARY: On August 29, 1991, the North
American Rubber Thread Company filed
a petition with the Commission and the
U.S. Department of Commerce seeking
the imposition of countervailing duties
on imports of extrude rubber thread
from Malaysia. Although Malaysia is
not a "country under the Agreement"
within the meaning of section 701(b) of
the Tariff Act of 1930 (the Act), extruded
rubber thread from Malaysia was
nondutiable under the Generalized
System of Preferences (GSP), and
Malaysia is a contracting party of the
General Agreement on Tariffs and
Trade. Therefore, the U.S. International
Trade Commission instituted
preliminary countervailing duty
investigation No. 303-TA-22
(Preliminary) (56 FR 43938, September 5,
1991) under section 303(a) of the Act and
determined that there is a reasonable
indication that an industry in the United
States is materially injured by reason of
the subject imports. Following an
affirmative preliminary determination
by Commerce, the U.S. International
Trade Commission instituted final
countervailing duty investigation No.
303-TA-22 (Final) (57 FR 4479, February
5, 1992).

On March 12, 1992, the President of
the United States determined that it was
appropriate to withdraw the duty-free
treatment afforded under the GSP to
imports from Malaysia of extruded
rubber thread (57 FR 9041, March 16,
1992). Therefore, Malaysia is no longer
entitled to an injury determination under
section 303 of the Act with regard to the
countervailing duty investigation that
has been initiated by the Department of
Commerce on extruded rubber thread.
Accordingly, the Commission gives
notice that its countervailing duty
investigation concerning extruded
rubber thread from Malaysia
(investigation No. 303-TA-22 (Final)) is
discontinued.

EFFECTIVE DATE: June 9, 1992.

**INTERNATIONAL TRADE
COMMISSION**

[Investigation No. 731-TA-527 (Final)]

**Extruded Rubber Thread From
Malaysia; 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 in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for August 18, 1992, *in camera*. See Commission rules 207.23(a), 201.13, and 201.35 through 201.39 (19 CFR 207.23(a), 201.13, and 201.35 through 201.39). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the 10-day advance notice of the change to a meeting was not possible. See Commission rules 201.35(c)(1) and 201.37(b) (19 CFR 201.35(c)(1) and 201.37(b)).

FOI FURTHER INFORMATION CONTACT: Lyle B. Vander Schaaf, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3107. 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 good cause exists in this investigation to hold a short portion of the hearing *in camera*. The *in camera* portion of the hearing will be for the purpose of addressing business proprietary information (BPI) as part of respondents' presentation-in-chief, and therefore properly the subject of an *in camera* hearing pursuant to Commission rule 201.36(b)(4) (19 CFR 201.36(b)(4)). In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will include public presentations by petitioner and respondents, with questions from the Commission. After respondents' public presentation, the Commission will hold an *in camera* session, during which time respondents will continue their presentation to the Commission and cover business proprietary information, followed by questioning by the Commissioners and time for rebuttal by petitioners regarding such information. For the *in camera* portion of the hearing, 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 who are included on the Commission's APO service list in this investigation. See Commission rule 201.35(b) (19 CFR 201.35(b)). All those planning to attend the *in camera* portion 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 *Extruded Rubber Thread from Malaysia*, Inv. No. 731 TA-527 (Final), may be closed to the public to prevent the disclosure of business proprietary information.

Issued: August 17, 1992.

By order of the Commission.

Paul R. Bardoe,
Acting Secretary.

[FR Doc. 92-19965 Filed 8-20-92; 8:45 am]

BILLING CODE 7530-02-01

verified questionnaire responses. We received briefs from interested parties on July 27, 1992, and rebuttal briefs on August 3, 1992.

Scope of the Investigation

The product covered by this investigation is extruded rubber thread from Malaysia. 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. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Standing

The International Trade Commission (ITC) has preliminarily determined in this proceeding that there is one like product, which includes all of the merchandise defined by the scope of this investigation, including food grade rubber thread. We have analyzed the information on the record concerning this issue and have concluded that we are in agreement with the ITC's "like product" determination. Accordingly, we determine that petitioner produces a product like the imported product and, hence, has standing to file on behalf of the U.S. industry.

Period of Investigation

The period of investigation (POI) is March 1, 1991, through August 31, 1991.

Such or Similar Comparisons

We have determined that extruded rubber thread comprises a single category of such or similar merchandise. Comparisons were made on the basis of the following criteria: Gauge, type of finish, color and other special qualities. We made adjustments for differences in the physical characteristics of the merchandise, where appropriate, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We found that more than ten percent of respondents' third country sales were at

prices below the total cost of production (COP) and that less than 90 percent were below cost. Respondents provided no indication that these costs would be recovered over a reasonable period of time. Therefore, we have disregarded the below-cost sales in calculating FMV.

In order to compare sales of comparable quantities, we compared direct container sales for export to the United States with direct container sales for export to Hong Kong, and we compared sales from U.S. branch office warehouses to sales from Hong Kong branch office warehouses, in accordance with 19 CFR 353.58. We did not make fair value comparisons on U.S. sales of second quality merchandise or samples, since the volume of seconds and samples sold in the U.S. market during the POI was negligible.

On warehouse sales made by related overseas branch offices in both the United States and Hong Kong, we used invoice date as the date of sale because that date was either the same as the order confirmation date or followed it by one to three days. Moreover, respondents did not retain any record of the order confirmation date on warehouse sales.

On direct container sales the order confirmation date may precede the invoice date by as much as a month or more. Whereas order confirmation date frequently serves as the date of sale, we found, during verification, that the price and/or quantity frequently changed between the order confirmation date and the bill of lading date (for Rubberflex) or the invoice date (for Heveafil). Therefore, we are using the invoice date or the bill of lading date as the date of sale on direct container shipments.

United States Price

A. Heveafil Sdn. Bhd./Filmex Sdn. Bhd.

Heveafil Sdn. Bhd. (Heveafil) and Filmex Sdn. Bhd. (Filmex) are related companies, each producing extruded rubber thread. Heveafil also performs the selling an administrative functions for both companies. Filmex is solely a production company. For purposes of this fair value investigation, we are treating these two companies as one company.

For container sales made directly to unrelated U.S. customers by Heveafil and Filmex, we based USP on purchase price in accordance with section 772(b) of the Act because all container sales were made directly to unrelated parties prior to importation into the United States. Exporter's sales price (ESP) methodology was not appropriate for

International Trade Administration (A-557-906)

Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia

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

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT:

Vincent Kane, Gary Bettger, or Margo Lanouette, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815, 377-2239, or 377-0160, respectively.

Final Determination

The Department of Commerce (the Department) determines that extruded rubber thread from Malaysia is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our preliminary determination in the **Federal Register** on April 2, 1992, (57 FR 11287), the following events have occurred. From April 5 through June 15, 1992, we

direct container sales because the subject merchandise was not introduced into the inventory of the U.S. branch and the branch office acted essentially as a processor of sales-related documentation and as a communications link with unrelated U.S. customers.

We calculated purchase price based on packed, c.i.f. delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, containerization, ocean freight, marine insurance, U.S. brokerage, and inland freight, in accordance with section 772(d)(2) of the Act. In addition, where appropriate, we made deductions for rebates and discounts.

For sales made from the U.S. warehouse by Heveafil's U.S. branch office, we based USP on ESP, in accordance with section 772(c) of the Act, because the first sales to unrelated parties occurred after importation into the United States.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and brokerage, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage, entry fees and, where appropriate, rebates. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for advertising, credit, and indirect selling expenses. Indirect selling expenses consist of warehouse costs, inventory carrying costs and general indirect selling expenses incurred in Malaysia and the United States with respect to U.S. sales.

B. Rubberflex

For container sales made directly to unrelated U.S. customers by Rubberflex, we based USP on purchase price in accordance with section 772(b) of the Act, because all container sales were made directly to unrelated parties prior to importation into the United States. ESP methodology was not appropriate for direct container sales because the subject merchandise was not introduced into the inventory of Rubberflex's U.S. distributor and the distributor acted only as a processor of sales-related documentation and as a communications link with unrelated U.S. customers.

We calculated purchase price based on packed, c.i.f. delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, ocean freight, marine insurance, U.S. brokerage, entry fees,

and inland freight. In accordance with section 772(d)(2) of the Act. In addition, where appropriate, we made deductions for rebates.

For sales made from the U.S. warehouse by Rubberflex's U.S. branch, we based USP and ESP, in accordance with section 772(c) of the Act because the first sales to unrelated parties occurred after importation into the United States.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, handling and brokerage, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage, U.S. entry fees and, where appropriate, rebates. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for advertising, credit, and indirect selling expenses. Indirect selling expenses consist of warehouse costs, inventory carrying costs and general indirect selling expenses incurred in Malaysia and the United States with respect to U.S. sales.

Foreign Market Value

In order to determine whether there were sufficient sales of extruded rubber thread in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1)(B) of the Act. None of the respondents had viable home markets during the POL. In selecting which third country market to use for comparison purposes, we first determined which third-country markets had "adequate" volumes of sales, within the meaning of 19 CFR 353.48(a). We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise to that country exceeded or was equal to five percent of the volume sold to the United States. In selecting which of the third country markets with adequate sales volumes was the most appropriate for comparison purposes, we selected Hong Kong, the third country market to which Heveafil and Rubberflex had their largest volumes of sales, in accordance with 19 CFR 353.49(b)(2).

Based on petitioner's allegations, we investigated whether Heveafil's or Rubberflex's sales to Hong Kong were made at less than the COP.

A. Heveafil

In order to determine whether third country prices were above COP, we calculated the COP based on the sum of Heveafil's cost of materials, labor, other

fabrication costs, and general expenses. As discussed above, we disregarded below-cost sales in calculating FMV. Where all the sales of a specific product were below cost, we based FMV on constructed value (CV), calculated in accordance with section 773(e) of the Act.

We relied on the submitted COP and CV information, except in the following instances, where the costs were not appropriately quantified or valued:

1. For COP and CV, we adjusted direct materials to account for an increase in certain chemical costs.
2. For COP and CV, we recalculated labor and other fabrication costs, allocating them based on standard production hours rather than actual production hours. We also adjusted direct labor and variable overhead to account for certain expenses which had been deducted twice from labor and incorrectly included in variable overhead. We adjusted cost of manufacturing (COM) to include royalty payments that were made for product line research and development (R&D).
3. For COP and CV, we revised the variable and fixed overhead of Heveafil by reclassifying certain expenses from variable overhead to fixed overhead.
4. For COP and CV, we revised Heveafil's general and administrative expenses (G&A) and cost of goods sold to include the auditor's adjustments to the financial statements which were not available at the time the costs were submitted.
5. For COP and CV, we revised Heveafil's net interest expense to reflect the auditor's adjustments to the financial statements which were not available at the time the costs were submitted.

In accordance with section 773(e)(1)(B)(i) of the Act, we calculated CV using Heveafil's reported general expenses, adjusted as detailed above, because they exceeded the statutory minimum of ten percent of the COM. For profit on CV, we used the statutory minimum of eight percent of the total of COM and general expenses because Heveafil's actual profit on third country sales was less than eight percent.

Where CV was compared to purchase price transactions, we made a circumstance of sale adjustment for credit expenses. Where CV was compared to exporter sales price transactions, we deducted direct and indirect selling expenses, including credit and inventory carrying costs. The deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses

incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Where FMV was based on third country prices, we based FMV for purchase price transactions on c.i.f. port prices to unrelated Hong Kong customers purchasing full container loads shipped direct. We based FMV for ESP transactions on delivered prices for sales from the Hong Kong branch warehouse to unrelated customers in accordance with section 773(a)(1)(B) of the Act.

We made deductions, where appropriate, for Malaysian inland freight, brokerage and handling charges, ocean freight, marine insurance and rebates. We made circumstance of sale adjustments, where appropriate, for differences in credit, pursuant to 19 CFR 353.56. We deducted third country packing costs and added U.S. packing costs. When FMV was compared with ESP, we also deducted freight-in and freight-out charges, inland insurance, and indirect selling expenses including inventory carrying expenses, warehousing expenses, and other indirect selling expenses. The deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses with respect to sales in the U.S. market, in accordance with 19 CFR 353.56(b).

Because Heveafil failed to report manufacturing cost for all items as requested in the cost questionnaire, we used the highest weighted-average margin, excluding aberrations, for those U.S. sales without appropriate cost information.

B. Rubberflex

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of Rubberflex's cost of materials, labor, other fabrication costs, and general expenses. As discussed above, we disregarded below-cost sales in calculating FMV. Where all the sales of a specific product were below cost, we based FMV on CV, calculated in accordance with section 773(e) of the Act.

We relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. For COP and CV, Rubberflex originally submitted fabrication costs based on normalized production time because of what it termed an "extraordinary event" which occurred during the POL. Rubberflex complied with the Department's request to revise costs based on actual production time. We calculated fabrication costs based on actual production hours and included

only the offsets which related to the costs of production. We also adjusted COM to include royalty payments that were made for product line R&D.

2. For COR and CV, we revised Rubberflex's G&A to include the auditor's adjustments to the financial statements which were not available at the time the costs were submitted. We also reclassified certain expenses from G&A to fixed overhead.

3. For COP and CV, we revised Rubberflex's net interest expense to reflect the auditor's adjustments to the financial statements which were not available at the time the interest expense was submitted.

In accordance with section 773(e)(1)(b)(i) of the Act, we calculated CV using Rubberflex's reported general expenses, adjusted as detailed above, because they exceeded the statutory minimum of ten percent of the COM. For profit on CV, we used the statutory minimum of eight percent of the total of COM and general expenses because Rubberflex's actual profit on third country sales was less than eight percent.

Where CV was compared to purchase price transactions, we made a circumstance of sale adjustment for credit expenses. Where CV was compared to exporters sales price transactions, we deducted direct and indirect selling expenses, including credit and inventory carrying costs. The deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Where FMV was based on third country prices, we based FMV for purchase price transactions on c.i.f. port prices for direct shipments to unrelated Hong Kong customers purchasing full container loads. We based FMV for ESP transactions on delivered prices for sales made from the Hong Kong branch warehouse to unrelated customers, in accordance with section 773(a)(1)(B) of the Act.

We made deductions, where appropriate, for Malaysian inland freight, brokerage and handling charges, ocean freight and marine insurance. We made circumstance of sale adjustments, where appropriate, for differences in credit costs pursuant to 19 CFR 353.56(a). We deducted third country packing costs and added U.S. packing costs. When FMV was to be compared with ESP, we also deducted indirect selling expenses including inventory carrying expenses, warehousing expenses, and other indirect selling expenses. This deduction for third country indirect selling expenses was

capped by the amount of indirect selling expenses with respect to sales in the U.S. market, in accordance with 19 CFR 353.56(b).

Because Rubberflex failed to report manufacturing cost for all items as requested in the cost questionnaire, we used the highest weighted-average margin, excluding aberrations, for those U.S. sales without appropriate cost information.

Currency Conversion

In accordance with 19 CFR 353.60, we converted foreign currency into the equivalent amount of United States currency using the official exchange rates in effect on the appropriate dates. All currency conversions were made at rates certified by the Federal Reserve Bank.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of extruded rubber thread from Malaysia. Section 735(a)(3) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect that:

(1) There is a history of dumping in the United States or elsewhere of the same class or kind of merchandise which is the subject of the investigation, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair market value; and

(2) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on respondents' shipment data for equal periods immediately preceding and following the filing of the petition.

Pursuant to section 735(a)(3)(B) of the Act, and 19 CFR 353.16(f), we examined a period beginning in the month in which the petition was filed and ending three months later. Thus, we selected the period from August 29, 1991 (the day the "proceeding began") to November 29, 1991 as the comparison period.

We then compared the quantity of imports during the comparison period for each respondent to the quantity of imports during the immediately preceding period (the "base period") of comparable duration. Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during

the base period, we will not consider the imports "massive." Our analysis indicates that shipments from Filmax and Rubberflex have increased by considerably more than 15 percent.

Because these companies show evidence of massive imports over a relatively short period of time, we need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. We examined past antidumping investigations and found no findings of dumping in the United States or elsewhere on the subject merchandise by Malaysian producers.

We then examined the magnitude of the dumping margins in this investigation, since it is our standard practice to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act, when the estimated margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, in purchase price sales, we consider estimated margins of 25 percent or greater to be sufficient, and in exporter's sales price sales, margins of 15 percent or greater to be sufficient to impute knowledge of dumping. See, e.g., Preliminary Determination of Sales at Less than Fair Value: Oscillating and Ceiling Fans from the People's Republic of China, 56 FR 66834 (December 26, 1991). In this investigation, there were both purchase price sales and exporter's sales price sales. Accordingly, we weight-averaged the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales, respectively, to arrive at a weighted-averaged benchmark percentage for imputing knowledge. Because the weight-averaged dumping margin for Rubberflex exceeds the weight-averaged benchmark, we found that importers either knew or should have known that this company was selling the subject merchandise at less than its fair value.

Therefore, based on the imputation of knowledge on behalf of importers of sales at less than fair value and massive imports, we determine that critical circumstances exist with respect to imports of Malaysian extruded rubber thread from Rubberflex.

Verification

Pursuant to section 776(b) of the Act, we verified information used in reaching our final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original documents

provided by respondents. Our verification results are outlined in detail in the public version of our verification reports, which are on file in the Central Records Unit (room B-099) of the Main Commerce building.

Interested Party Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

Comment 1: Respondents claim that food grade rubber thread is a separate like product, and that petitioner does not have standing to file an antidumping petition on food grade rubber thread because the petitioner does not produce or wholesale a like product in the United States. Respondents base their claim on each of the factors considered by the ITC in making like product determinations. Respondents assert that: Food grade thread has a different chemical composition than other types of rubber thread; food grade thread is sold to different customers than rubber thread used in the textile industry; and, other types of rubber thread cannot be used interchangeably with food grade rubber thread. Respondents also assert that customers perceive food grade as a distinct market segment.

Petitioner claims that respondents originally testified at the ITC that extruded rubber thread, including food grade rubber thread, constitutes a single like product. Respondents testified that the basic physical characteristics of food grade rubber thread are the same as those of other rubber thread, that they are sold through the same channels of distribution, and that all rubber thread is manufactured on the same machinery using the same basic manufacturing process. Therefore, the product under investigation constitutes one like product. The ITC agreed with petitioner's analysis. Further, Globe Manufacturing, another U.S. producer of rubber thread, produces food grade rubber thread and supports the petition.

DOC Position: After reviewing the ITC's preliminary determination and respondents' submissions, the Department agrees with the ITC's preliminary like product determination. Therefore, we determine that food grade rubber thread does not constitute a separate like product for purposes of this investigation, and that the petitioner properly has standing to file the petition on behalf of the industry producing the domestic like product.

Comment 2: Respondents have reported second quality sales and sample sales for export to the United States, but have requested that we

exclude these sales from the analysis because they are in negligible quantities and are not in the ordinary course of trade. Rubberflex did not have any second quality sales in Hong Kong and Heveafil had a very small number.

DOC Response: The purpose of a less than fair value investigation is to estimate whether dumping exists and, if so, the extent of the dumping, in order to establish a cash deposit rate. No actual assessment of antidumping duties occurs until the Department has either completed its first administrative review or has ordered liquidation at the prevailing cash deposit rate because no review has been requested. As a result, for purposes of the less than fair value investigation, the Department need not investigate each and every U.S. sale. Because we found the volume of second quality and sample sales to be very small, we have disregarded respondents' second quality and sample U.S. sales for purposes of our analysis.

Comment 3: Respondents claim that in developing product matching criteria, the Department should not have included color as one of the criteria because the cost differences for color are negligible and have no effect on price. Further, respondents contend that the Department should not calculate separate costs for products with different colors but, instead, should determine separate costs for products with different finishes and gauges.

Petitioner disagrees with respondents' claim that differences in color are insignificant and should not be a factor in selecting model matches for comparison purposes. Petitioner states that it is not the Department's practice to consider cost or price as a basis for selecting the product matching criteria. Even if the Department were to consider these bases as appropriate, petitioner claims that the cost and price differences relating to variations in color clearly exceed the *de minimis* level. Respondents concede the importance of the color criterion by recognizing the dramatic effect the elimination of this criterion has on the product matches. Thus, because customer preference for particular colors is an important factor in marketing rubber thread, it would be inappropriate to disregard color as one of the model matching criteria.

DOC Position: The Department arrived at its model matching criteria on the basis of comments submitted by all of the parties, as well as its own assessment of the various factors that could affect product comparability. Because color can materially affect cost and can be important to the customer and to the use of the product, the

Department determined at an early stage of this investigation that color should be included among the several product matching criteria. At the time of this decision, respondents expressed no objection.

Comment 4: Respondents claim that the DOC properly treated direct sales to unrelated customers as purchase price sales and sales from U.S. warehouses made by the related branch offices as ESP sales. Direct sales were made prior to importation, never entered the inventory of a branch office, and required less involvement on the part of the branch office. Branch office participation in these sales was limited to processing of sales-related documentation and serving as a communication link between the unrelated buyer and the Malaysian producer. Therefore, purchase price should clearly apply to these sales.

Petitioner claims that direct sales in container lots made for export to the United States should be treated as ESP sales because the U.S. branches function as more than processors of sales-related documentation and a communication link. Petitioner argues that evidence in the record indicates that responsibilities of the U.S. branches do not differ on direct sales and sales from the warehouse.

DOC Position: We agree with respondents. On direct sales, the goods are purchased prior to importation, and shipped directly to the unrelated buyer without ever entering a branch office warehouse. In addition, during verification, we found no evidence that the branch office's role in direct sales went beyond that of processing sales-related documents and serving as a communication link.

The statement in the verification report referred to by petitioner was intended as an explanation of why the Department verified direct sales at the branch office rather than at the head office in Malaysia. The U.S. branch office executes and maintains all of the paperwork with respect to these sales, except the bill of lading and the order confirmation. Therefore, the source documents necessary for verification were located at the branch office rather than at the head office in Malaysia.

Comment 5: Petitioner argues that if the U.S. branch office devotes little time or resources to direct sales, as claimed by respondents, then the Department should not allocate U.S. branch office selling expenses to these sales.

Respondents claim that the U.S. branch offices process documents and serve as communications links on all sales. As such, it would be incorrect and unwarranted to allocate all of the

administrative and general selling expenses associated with these offices only to warehouse sales. Respondents also note that petitioner fails to make a similar argument with respect to the allocation of third country selling expenses.

DOC Position: The functions performed by the branch offices include receiving orders, preparing and executing order confirmations, invoices, packing lists, and other sales-related documentation, and receiving and processing payments from customers. Because the branch offices in both the United States and Hong Kong are staffed by just a few people, their roles on both direct sales and sales from warehouse generally don't extend beyond the functions described above. The one exception is warehousing, which applies only to ESP sales. Warehousing expenses, however, as a percent of total warehouse sales, were so small as to have no effect on the less than fair value margin calculation. Therefore, we have allocated branch offices' expenses across all sales.

Comment 6: Petitioner argues that the errors in Heveafil's and Rubberflex's responses are so serious that their questionnaire responses should be rejected, and the best information available (BLA) used. According to petitioner, one of these errors occurred when respondents erroneously used purchase price during the POI to value rubber latex and chemicals consumed in production instead of the actual cost of materials consumed during the POI. Petitioner claims that this is directly contrary to Department practice. Petitioner maintains that this situation is similar to the situation in the Preliminary Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Korea, 57 FR 27731, 27734 (June 22, 1992). In that case, petitioner claims, the Department disregarded the respondent's data and used BLA where Department practice was not followed. Petitioner maintains that materials, particularly latex, are the major cost components in producing rubber thread.

Petitioner also claims that Rubberflex misrepresented the date of sale as the invoice date when, in fact, the order confirmation date should have been reported as the date of sale.

Respondents disagree with petitioner's claims. Both Rubberflex and Heveafil argue that they have consistently reported actual latex costs on a consumption basis.

DOC Position: We disagree with petitioner that errors in the responses were serious enough that they should be rejected. With respect to latex costs,

both Rubberflex and Heveafil calculated the cost based on consumption during the POI and the price of the latex actually consumed, consistent with Department practice. Although Rubberflex valued its chemicals using end of the month prices, instead of average monthly prices, the difference between the two methods is insignificant. Heveafil reported its chemical costs based on the price paid for purchases rather than on chemicals consumed. The Department noted, however, that during the POI the average consumption cost was less than the average purchase cost. This is in contrast to the situation in the Preliminary Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Korea, 57 FR 27731, 27734 (June 22, 1992), where the respondent not only valued its direct materials using the price of steel purchased during the POI, but also based material cost on one type of steel rather than averaging the two types of steel used to produce the subject merchandise. In Heveafil's case, the difference between the average purchase cost and the average consumption cost of chemicals was insignificant and does not warrant a BLA adjustment.

Regarding the frequency of price and quantity changes on Rubberflex's sales after order confirmation, we note that in the limited time available during verification we were not able to establish precisely the number of times these changes occurred. However, it was clear that changes in price and quantity between order confirmation date and bill of lading date were not uncommon. After the bill of lading date, however, we found no evidence of price or quantity changes. Because we found clear evidence that price and quantity changes were not uncommon after the order confirmation date, we concluded that the bill of lading date should be treated as the date of sale.

Comment 7: Petitioner claims that respondents misreported G&A expenses because they failed to report large royalty expenses. Respondents state that they reported royalty expenses in their respective responses as direct selling expenses because these expenses are based on sales value.

DOC Position: We agree with respondents that royalty costs were reported as direct selling expenses. However, we disagree with this treatment. Although the royalty is calculated based on sales revenue, these payments are not a cost of selling. Instead, the royalty is a payment for production technology and, hence, is

properly treated as a cost of manufacturing. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles from Japan, 54 FR 5864 (January 31, 1989) (ATVs). R&D activities carried out by a related party were reimbursed based on the period sales results. The respondent argued that R&D should be allocated to the subject merchandise based on the sales value. In ATVs, the Department stated that the R&D activities by nature are associated with the manufacturing process rather than the sales process. Therefore, we recalculated respondents' royalty cost per product by dividing total royalty payments by each company's cost of goods sold and applied the percentage to each product's COM. We included the resulting amount in the COM. See, Final Determination of Sales at Less Than Fair Value: Flat Panel Displays from Japan, 56 FR 32376, 32384 (July 16, 1991).

Comment 8: Petitioner claims that respondents misclassified fixed manufacturing costs as variable costs, precluding difference in merchandise adjustments.

Respondents disagree, claiming that they reported various overhead items using their normal accounting systems. They note that the Department did not find any material problems with the cost classification at verification.

DOC Position: Rubberflex's accounting system distinguishes between variable and fixed overhead costs. We found that this company reported its costs consistent with its accounting system. Moreover, the costs were classified appropriately.

With respect to Heveafil, the company classified depreciation as fixed overhead and all other overhead items as variable because it stated that it was too time consuming to determine the fixed or variable nature of each overhead expense. The Department analyzed all overhead items and determined that maintenance expense should be reclassified as fixed overhead because it is the type of expense which remains fixed over a relevant range of production. This reclassification is reflected in the final determination.

Comment 9: Petitioner alleges that Rubberflex ignored its own accounting practices and treated certain material costs (e.g., acetic acid) as variable overhead expenses instead of as direct materials costs.

Rubberflex counters that petitioner misunderstands the proper classification of costs. Rubberflex argues that its accounting system considers many items such as packing boxes, diesel fuel and tubing to be direct materials, even though the Department has never

considered them as such. According to Rubberflex, acetic acid is not part of the finished good and, therefore, is properly classified as a variable overhead expense (i.e., something which is consumed during the production process but is not physically incorporated into the final product).

DOC Position: We agree with Rubberflex that acetic acid is properly treated as variable overhead rather than as a direct cost because it is not part of the finished good. The Department normally considers such consumable items to be variable overhead expenses.

Comment 10: Petitioner claims that Rubberflex understated fixed factory overhead and that the Department should use BIA in making the adjustment.

Rubberflex claims that it inadvertently failed to report the write-off of replacement belts in its submission. It argues that the Department should account for this write-off only once in the cost calculations, either as a G&A expense because that is where Rubberflex recorded it in accordance with its normal accounting system, or else as a fixed overhead expense. Rubberflex argues that the omission has only minimal effect because fixed overhead is a relatively small part of the COP.

DOC Position: We agree with Rubberflex that the write-off should be included only once in the cost calculations. Although Rubberflex claims that it included the write-off in G&A as part of its normal accounting system, the company had reclassified the expense from its fixed overhead accounts to G&A. The Department considers this expense to be fixed overhead and, therefore, we have added it back to fixed overhead and deducted it from G&A.

Comment 11: Petitioner alleges that Heveafil incorrectly allocated fabrication costs using actual rather than standard production hours. Additionally, petitioner claims that Heveafil reported standard color costs rather than actual costs.

DOC Position: We agree with petitioner that Heveafil incorrectly allocated fabrication costs using actual production hours in its cost response. Heveafil allocated its fabrication costs to specific products using standard production hours. However, it determined per-hour fabrication costs based on actual production hours. As a result of using two different bases for allocation, it understated fabrication costs. Therefore, the Department adjusted hourly costs using total standard production hours for the final determination.

We also agree with petitioner's assertion that Heveafil incorrectly used standard costs for color. Heveafil submitted color costs based on the standard cost for black, white, super white threads and two specialty products—food grade and heat resistant threads. The Department verified actual color costs based on consumption and made adjustments to the chemical costs for the threads.

Comment 12: Petitioner claims that Heveafil's misreporting of variable overhead warrants the use of BIA by the Department when making adjustments to the costs.

Heveafil acknowledges a clerical error with respect to its variable overhead. Heveafil claims that it inadvertently reported the fixed overhead value in the variable overhead field in its submitted summary COP and CV tables for the talc-finished threads and agrees that the error should be corrected.

DOC Position: The Department discovered this clerical error at verification, verified the correct amount and made the appropriate adjustment. The Department rejects the petitioner's argument that the Department should use BIA because the error was inadvertent and easily corrected.

Suspension of Liquidation

In accordance with section 735(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of extruded rubber thread from Malaysia, as defined in the "Scope of Investigation" section of this notice. The U.S. Customs Service shall require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Heveafil/Fimax Sdn. Bhd.....	10.68
Rubberflex Sdn. Bhd.....	22.00
All Others.....	15.16

This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This notice also 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 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: August 17, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20212 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-05-M

APPENDIX B

LIST OF WITNESSES APPEARING AT THE COMMISSION'S HEARING

CALENDAR OF PUBLIC HEARING

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

Subject : EXTRUDED RUBBER THREAD FROM MALAYSIA
Inv. No. : 731-TA-527 (Final)
Date and Time : August 18, 1992 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E St., S.W., Washington, D.C.

In support of Imposition of
Antidumping Duties:

Ablondi and Foster
Washington, D.C.
On behalf of

North American Rubber Thread Company, Inc.

John Friar, President

David Sullivan, Sales Manager

Globe Manufacturing Co.

William Girrier, Marketing Manager

Northeast Knitting Inc.

Louis E. Lavoie, President

Peter Koenig)--OF COUNSEL

In Opposition to the Imposition of
Antidumping Duties:

Wilkie, Farr & Gallagher
Washington, D.C.
On behalf of

Heveafil Sdn. Bhd.
Rubberflex Sdn. Bhd.
Filati Lastex Elastofibre
Rubfil Sdn. Bhd.
(Malaysian Producers)

Flexfil Corporation, Heveafil U.S.A. Branch,
FLE U.S.A.
(U.S. Importers)

Edward Gleadall, President, Elastic Corporation of America

Timothy Carroll, Vice-President C&K Mill

John Elliot, President, Rhode Island Textile Company

Kenneth Button, Economic Consulting Services

C. Michael Hathaway, Crowell & Moring

Walter J. Spak)
James P. Durling) --OF COUNSEL
Christopher S. Stokes)

APPENDIX C
GLOSSARY OF TECHNICAL TERMS

GLOSSARY OF TECHNICAL TERMS

Accelerators. Compounding material used to reduce vulcanization time (cure time) by increasing the rate of crosslinking.

Activator. Compounding material used in small proportions to increase the effectiveness of an accelerator.

Antioxidant. Compounding material used to retard deterioration caused by oxidation.

Coagulation. A physical or chemical change inducing transition from a fluid to a semi-solid or gel-like state.

Dispensing agents. Materials added to a suspending medium to promote and maintain the separation of discreet, fine particles of solids or liquids.

Elasticity. The property allowing matter to return to its original size and shape after removal of the stress causing deformation such as stretching, compression, or torsion. It is the opposite of plasticity. It is often loosely employed to signify the "stretchiness" of rubber. As applied to rubber, it usually refers to the phenomenal distance to which vulcanized rubber can be stretched without losing its ability to return very nearly to its original shape; in this respect rubber is the most elastic substance known.

Extender. A relatively inert substance added to a plastic or rubber compound to reduce its cost and/or to improve physical properties, particularly hardness, stiffness, and impact strength.

Extrusion. The process of forcing a plastic material through an orifice so as to obtain the material in continuous lengths of definite shape. In rubber manufacturing, extrusion is used in various operations such as rubberizing bead wire, making of tubes, preparation of tire treads, straining, and thread.

Latex. An aqueous colloidal emulsion of rubber (natural or synthetic) or certain plastics. It generally refers to the emulsion obtained from a tree or plant or produced by emulsion polymerization.

Pigment. General term for all colorants, organic and inorganic, natural and synthetic, which are insoluble in the medium in which they are used. Many fillers or extenders, among them carbon black, act as powerful pigments.

Stabilizers. An agent used to keep a compounded mixture or solution from changing its physical or chemical nature throughout processing and service life of the material and/or the parts made therefrom.

Vulcanization. An irreversible process during which a rubber compound, through a change in its chemical structure, (for example, crosslinking), becomes less plastic and more resistant to swelling by organic liquids, and elastic properties are conferred, improved, or extended over a greater range of temperature.

Source: American Society for Testing Materials, Glossary of Terms Relating to Rubber and Rubber Technology; Whittington's Dictionary of Plastics; Gessner G. Hawley, The Condensed Chemical Dictionary; and K.F. Heinisch, Dictionary of Rubber.

APPENDIX D
LETTER FROM QUALITEX, INC., REGARDING CLOSURE



QUALITEX INC.

EXTRUDED RUBBER THREADS FROM NATURAL LATEX

(401) 751-5727
TELEX 6972012

19 INDUSTRIAL LANE, JOHNSTON, R.I. 02919
POST OFFICE BOX 7008 • U.S.A.

October 30, 1990

To Whom It May Concern:

As of October 26, 1990, Qualitex Inc. of Johnston, R.I. has ceased the manufacturing and sales of rubber threads to the Textile Industry. This action was brought about as a direct result of the arrival of foreign goods here in the United States.

In the last two years we have seen the arrival of rubber thread from the far east. The market place has responded to the importation of goods by the purchase of them in ever increasing quantities. These actions have been driven by the price erosion that has occurred as a result of the introduction of these goods. This price erosion has reached the point that Qualitex Inc. can no longer be competitive in today's market place.

In consideration of the above and the projections that imports will continue to gain larger market shares, the management of the company has been forced to take the above actions.

Davide Monti
V.P. of Manufacturing

Qualitex Inc. (Corporate Office)
604 Pressley Road
Charlotte, N.C. 28217
1-(704) 525-1401

APPENDIX E
SUMMARY DATA CONCERNING THE U.S. MARKET

Table E-1

Extruded rubber thread: Summary data concerning a U.S. market that includes the manufacturing operations of Qualitex, 1989-91, January-March 1991, and January-March 1992

(Quantities in 1,000 pounds, values in 1,000 dollars, unit values and unit labor costs in dollars per pound; period changes in percent, except as noted)

Item	Reported data					
	1989	1990	1991	Jan.-Mar. 1991	Jan.-Mar. 1992	
	*	*	*	*	*	*

Source: Compiled from data presented in the body of this report.

Table E-2

Extruded rubber thread: Summary data concerning a U.S. market that excludes the manufacturing operations of Qualitex, 1989-91, January-March 1991, and January-March 1992

(Quantities in 1,000 pounds, values in 1,000 dollars, unit values and unit labor costs in dollars per pound; period changes in percent, except as noted)

Item	Reported data					
	1989	1990	1991	Jan.-Mar. 1991	Jan.-Mar. 1992	
	*	*	*	*	*	*

Source: Compiled from data presented in the body of this report.

APPENDIX F

**DATA ON EXTRUDED RUBBER THREAD, BY GAUGE RANGES,
1989-91, JANUARY-MARCH 1991, AND JANUARY-MARCH 1992**

Table F-1

Extruded rubber thread: U.S. capacity, production, and capacity utilization, by gauge ranges, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan. - Mar. --	
				1991	1992
	*	*	*	*	*

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

Table F-2

Extruded rubber thread: U.S. producers' domestic shipments, by gauge ranges, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan. - Mar. --	
				1991	1992
	*	*	*	*	*

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

Table F-3

Extruded rubber thread: End-of-period inventories of U.S. producers, by gauge ranges, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan. - Mar. --	
				1991	1992
	*	*	*	*	*

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

Table F-4

Average number of production and related workers producing extruded rubber thread, hours worked, total compensation paid to such employees, hourly wages, productivity, and unit labor costs, by gauge ranges, 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
	*	*	*	*	*

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

Table F-5

Income-and-loss experience of U.S. producers on their operations producing extruded rubber thread measuring from 18 to 140 gauge in diameter, calendar years 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
	*	*	*	*	*

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

Table F-6

Income-and-loss experience of North American on its operations producing extruded rubber thread measuring under 18 gauge in diameter, calendar years 1989-91, January-March 1991, and January-March 1992

Item	1989	1990	1991	Jan.-Mar.--	
				1991	1992
	*	*	*	*	*

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

APPENDIX G

**EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT
AND PRODUCTION EFFORTS, GROWTH, INVESTMENT,
AND ABILITY TO RAISE CAPITAL**

The Commission requested U.S. producers to describe the actual and potential negative effects of imports of rubber thread measuring from 18 to 140 gauge in diameter from Malaysia on the producers' existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), growth, investment, and ability to raise capital. The responses by the producers are shown below.

* * * * *

NORTH AMERICAN RUBBER THREAD COMPANY, INC. (NART)

Actual Negative Impact

* * * * *

* * * * *

Potential Negative Impact

* * * * *

APPENDIX H

**DATA ON MALAYSIAN PRODUCERS OF EXTRUDED RUBBER THREAD
BY FIRMS, 1989-91, JANUARY-MARCH 1991, JANUARY-MARCH 1992,
AND PROJECTED 1992 AND 1993**

Table H-1

Extruded rubber thread: Filati's capacity, production, shipments, and inventories, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

(In 1,000 pounds, except as noted)

Item	1989	1990	1991	January-March--		Projections	
				1991	1992	1992	1993
	*	*	*	*	*	*	*

Source: Compiled from data submitted by counsel for the respondents.

Table H-2

Extruded rubber thread: Filmax's capacity, production, shipments, and inventories, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

(In 1,000 pounds, except as noted)

Item	1989	1990	1991	January-March--		Projections	
				1991	1992	1992	1993
	*	*	*	*	*	*	*

Source: Compiled from data submitted by counsel for the respondents.

Table H-3

Extruded rubber thread: Heveafil's capacity, production, shipments, and inventories, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

(In 1,000 pounds, except as noted)

Item	1989	1990	1991	January-March--		Projections	
				1991	1992	1992	1993
	*	*	*	*	*	*	*

Source: Compiled from data submitted by counsel for the respondents.

Table H-4

Extruded rubber thread: Rubfil's capacity, production, shipments, and inventories, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

(In 1,000 pounds, except as noted)

Item	1989	1990	1991	January-March--		Projections	
				1991	1992	1992	1993
	*	*	*	*	*	*	*

Source: Compiled from data submitted by counsel for the respondents.

Table H-5

Extruded rubber thread: Rubberflex's capacity, production, shipments, and inventories, 1989-91, January-March 1991, January-March 1992, and projected 1992-93

(In 1,000 pounds, except as noted)

Item	1989	1990	1991	January-March--		Projections	
				1991	1992	1992	1993
	*	*	*	*	*	*	*

Source: Compiled from data submitted by counsel for the respondents.

APPENDIX I

**DATA ON THE PURCHASE PRICE OF RUBBER THREAD BOUGHT BY END USERS,
BY PRODUCTS AND BY SPECIFIED QUARTERS, JANUARY 1989-MARCH 1992**

Table I-1

Extruded rubber thread: Weighted-average delivered purchase prices and total quantities of U.S.-produced and imported Malaysian rubber thread bought by end users, by specified products and by quarters, January 1989-March 1992

* * * * *

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

