Slip Op. 02-36

UNITED STATES COURT OF INTERNATIONAL TRADE

Before: Judge Judith M. Barzilay

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THE COMMITTEE OF DOMESTIC	:	
STEEL WIRE ROPE AND SPECIALTY	:	
CABLE MANUFACTURERS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
THE UNITED STATES,	:	**Court No. 01-00209**
Defendant,	:	**Public Version**
	:	
and	:	
	:	
COOPER TOOLS, INC., DRAGON	:	
TRADING INC., and THE INDUSCO	:	
GROUP,	:	
	:	
and	:	
	:	
USHA MARTIN INDUSTRIES, LTD	:	
and USHA MARTIN AMERICAS, INC.,	:	

:

and :

:

NANTONG WIRE ROPE CO. and :

NANTONG ZHONGDE STEEL WIRE ROPE :

:

Defendant-Intervenors. :

_____ :

[Plaintiff's Motion for Judgment Upon the Agency Record denied.]

Decided: April 5, 2002

Harris Ellsworth and Levin, (Herbert E. Harris II), Jeffrey S. Levin, for Plaintiff.

(*Lyn M. Schlitt*), General Counsel, (*James M. Lyons*), Deputy General Counsel, (*Michael Diehl*), Office of the General Counsel, U.S. International Trade Commission, for Defendant.

Grunfeld, Desiderio, Lebowitz, Silverman, & Klestadt LLP, (Bruce M. Mitchell), Jeffrey S. Grimson, for Defendant-Intervenors Cooper Tools, Inc., Dragon Trading Inc., and the Indusco Group.

Wilkie, Farr & Gallaher, Christoper A. Dunn, for Defendant-Intervenors USHA Martin Industries, Ltd and USHA Martin Americas, Inc.

Manatt, Phelps & Phillips, LLP, (Jeffrey S. Neely), for Defendant-Intervenors Nantong Wire Rope Company and Zhongde Steel Wire Rope.

OPINION

BARZILAY, JUDGE:

Plaintiff in this case is a committee of domestic steel wire rope producers challenging the United States International Trade Commission's ("ITC" or "Commission") final negative

determination in *Steel Wire Rope from China and India*, 66 Fed. Reg. 18,509 (April 9, 2001), in which the Commission ascertained that steel wire rope imported from China and India caused neither material injury nor threat of material injury to the domestic industry. The Commission's reasoning was set forth in *Steel Wire Rope From China and India,("Final Determination")*, Inv. Nos. 731-TA-868-869, (Final), USITC Pub. 3406 (March 2001). Before the court is Plaintiff's USCIT R. 56.2 *Motion for Judgment Upon the Agency Record*. Plaintiff brings this action pursuant to 19 U.S.C. § 1516a(a)(2)(B)(ii) (1994); the ITC opposes Plaintiff's motion. Defendant-Intervenors Cooper Tools, Inc., Dragon Trading, Inc., and the Indusco Group ("Cooper Tools") and Nantong Wire Rope Company and Nantong Zhongde Steel Wire Rope ("Nangtong") also filed briefs opposing Plaintiff's motion. The court exercises jurisdiction pursuant to 28 U.S.C. § 1581(c) (1994).[1] For the reasons set out in the following opinion, the court denies Plaintiff's *Motion for Judgment Upon the Agency Record*.

II. BACKGROUND

On March 1, 2000, Plaintiff filed with the U.S. Department of Commerce ("Commerce" or "ITA") and the International Trade Commission a petition alleging that imports of steel wire rope from India, Malaysia, the People's Republic of China ("China"), and Thailand were being, or were likely to be sold, in the United States at less than fair value ("LTFV") within the meaning of section 731 of the Tariff Act of 1930 and that such imports were the cause of material injury to an industry in the United States. *See Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers Mem. in Supp. of Its Rule 56.2 Mot. for J. on the Agency R. ("Pl.'s Br.")* at 2-3. The ITC initiated a preliminary investigation on March 1, 2000, in response to the petition by instituting antidumping duty investigations Nos. 731-TA-868-871. On March 17, 2000, Commerce initiated antidumping duty investigations to determine whether imports of steel wire rope from China, India, Malaysia and Thailand were being sold, or were likely to be sold, in the United States at LTFV.[2] *Initiation of Antidumping Duty Investigations: Steel Wire Rope From India, Malaysia, the People's Republic of China,*

[1] 28 U.S.C. § 1581(c) provides: "The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A of the Tariff Act of 1930."

[2] Section 732(b)(1) of the Tariff Act of 1930, codified at 19 U.S.C. § 1673a(b)(1) (1994), provides:
An antidumping proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title files a petition with the administering authority, on behalf of an industry, which alleges the elements necessary for the imposition of the duty imposed by section 1673 of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

and Thailand, 65 Fed. Reg. 16,173 (March 27, 2000). The Commission issued a preliminary injury determination on April 17, 2000, finding by a 6 to 0 vote that steel wire imports from China, India and Malaysia materially injured, or threatened to materially injure, the U.S. steel wire rope industry. *Steel Wire Rope from China, India, Malaysia and Thailand*, 65 Fed. Reg. 24,505 (April 26, 2000).

On July 7, 2000, the Committee requested that Commerce postpone the issuance of its preliminary determination as to whether the steel wire rope was sold or likely to be sold in the United States at LTFV. On July 13, 2000, Commerce granted the request and postponed the issuance of its preliminary determination until September 25, 2000. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Steel Wire Rope from India, Malaysia, and the People's Republic of China*, 65 Fed. Reg. 45,037 (July 20, 2000). On September 25, 2000, Commerce issued an affirmative preliminary determination that steel wire rope from India and China were being sold in the United States for LTFV; however, Commerce issued a negative determination regarding steel wire imports from Malaysia. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia*, 65 Fed. Reg. 58,736 (October 2, 2000). In accordance with 19 U.S.C. § 1673d(b), Commerce notified the Commission of its preliminary determinations and the Commission began the final phase of its investigations. *See Steel Wire Rope From China, India, and Malaysia*, 65 Fed. Reg. 67,402 (November 9, 2000).

In its final determination, Commerce found that steel wire rope from India and China was being sold, or was likely to be sold, in the United States at less than fair market value and that steel wire rope from Malaysia was not being sold in the United States at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia, ("Commerce's Final Determination")*, 66 Fed. Reg. 12,759 (February 28, 2001). Additionally, Commerce found that steel wire rope produced by one of the Chinese respondents, Fasten, was not being sold in the United States at LTFV. Commerce determined that the final estimated dumping margins on the subject imports from China ranged from 42.23% to 58% and the final estimated dumping margin for subject imports from India was 38.63%. *Id.* at 12,761.

On March 21, 2001, the Commission determined by a vote of 6 to 0 that an industry in the United States was neither materially injured nor threatened with material injury by reason of imports of steel wire rope and transmitted its negative determination to Commerce. The Commission determined that a "reasonable overlap" of competition existed between the subject imports and the domestic like product and cumulated the subject imports from India and China. However, in its injury analysis, the Commission determined that the competition between the subject imports and the domestic like product was "attenuated" and therefore, did not materially injure or threaten to materially injure an industry in the United States.

The Committee argues that the Commission: (1) applied varying, inconsistent and irreconcilable characterizations regarding the degree of competition which existed in the U.S. steel wire rope market between the subject imports and the domestic like product, (2) improperly concluded that "attenuated" competition existed between subject imports and the domestic like product, and (3) failed to consider the magnitude of the dumping margins established by Commerce in its material injury and threat of material injury analysis. *See Pl.'s Br.* at 6-8. Specifically, the Committee asserts that the Commission was inconsistent in determining that a "reasonable overlap" of competition existed for cumulation purposes, and at the same time finding that "attenuated" competition existed between the domestic product and subject imports, and therefore, concluding that the subject imports did not materially injure or threaten to materially injure the domestic industry. The Committee also asserts that the Commission's finding of "attenuated" competition between the subject imports and the domestic like product was flawed because it was not supported by substantial evidence. The Committee claims that "[t]here is little or no evidence on the record to indicate that Indian imports carry the same qualitative shortcoming claimed by the exporters and importers of steel wire rope from China" and "the Commission's analysis did not account for substantial evidence on the administrative record that establishes subject imports from both China and India are in direct competition in the U.S. marketplace." *Pl.'s Br.* at 7. Additionally, the Committee argues that the Commission failed to take into account the final estimated dumping margins that were determined by Commerce.

The Commission and Defendant-Intervenors argue that the Commission's findings were consistent. The Commission argues that in *both* the cumulation and injury determinations the Commission found "attenuated" competition between the subject imports and the domestic like product. However, the statutory standards used for cumulation and injury determinations

differ and it is consistent to find that the level of product fungibility and competition may satisfy the "reasonable overlap" standard of cumulation yet still be insufficient to support a finding that the subject imports caused material injury to the domestic industry. *See Def.'s Br.* at 13-18. The Commission asserts that substantial evidence on the record supports a finding that competition between subject imports and the domestic like product was "attenuated" due to differences in quality and product mix. Additionally, the Commission argues that its findings took into account all record evidence, which included the characteristics of the subject imports from India and all record evidence that was contrary to a finding of "attenuated" competition. *See Id.* at 17-18. In response to the Committee's claim that the estimated dumping margins were not considered in the *Final Determination*, the Commission claims "[t]he Commission need not discuss every statutory factor or party argument. Rather, it must address the most relevant factors and arguments such that the agency's path can reasonably be discerned." *Id.* at 3. Therefore, the Committee's argument that the Commission did not take into account dumping margins determined by Commerce "misapprehends the Commission's obligations in explaining the basis for its determinations." *Id.*

III. STANDARD OF REVIEW

The Committee asks the court to hold that the Commission's *Final Determination* is unlawful. The court must evaluate whether the finding in question is supported by substantial evidence on the record or is otherwise in accordance with law. See 19 U.S.C. § 1516a(b)(1)(B). Substantial evidence is "[m]ore than a mere scintilla;" it is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. of New York v. NLRB, 305 U.S. 197, 229 (1938); *Matsushita Elec. Indus. Co., Ltd. v. United States*, 750 F.2d 927, 933 (Fed. Cir. 1984). This court noted, "[i]n applying this standard, the court affirms [the agency's] factual determinations so long as they are reasonable and supported by the record as a whole, even if there is some evidence that detracts from the agency's conclusions." *Olympia Indus., Inc. v. United States*, 22 CIT 387, 389, 7 F. Supp.2d 997, 1000 (1998) (citing *Atlantic Sugar, Ltd. v. United States*, 744 F. 2d 1556, 1563 (Fed. Cir. 1984).

The court may not reweigh the evidence or substitute its own judgment for that of the agency. *See Granges Metallverken AB v. United States*, 13 CIT 471, 474, 716 F. Supp. 17, 21 (1989). Substantial evidence is "something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative

agency's finding from being supported by substantial evidence." *Id.*, 13 CIT at 475, 716 F. Supp. at 21 (citations omitted). Additionally, absent a showing to the contrary, the agency is presumed to have considered all of the evidence in the record. *Nat'l Ass'n of Mirror Mfrs. v. United States*, 12 CIT 771, 779, 696 F. Supp. 642, 648 (1988). Thus, "to prevail under the substantial evidence standard, a plaintiff must show either that the Commission has made errors of law or that the Commission's factual findings are not supported by substantial evidence." *Id.*, at 774, 696 F. Supp. at 644.

IV. DISCUSSION

A. The Commission's material injury and threat of material injury analysis was in accordance with law and supported by substantial evidence.

To determine if the steel wire rope industry was materially injured by reason of the subject imports, the Commission had to first define the industry and the domestic like product.[3] Additionally, the Commission was required by 19 U.S.C. § 1677(7)(G)(i) (1994) to cumulatively assess the volume and price effects of imports from all countries with respect to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and the domestic like product. In assessing whether to cumulate, the Commission applied the four-factor test it developed to determine if a "reasonable overlap" of competition existed between the subject imports and the domestic like product.[4] *See Final Determination* at 10. In the final phase of the antidumping

[3] 19 U.S.C. § 1677(4)(A) states: "[t]he term 'industry' means the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."
19 U.S.C. §1677(10) states: "[t]he term 'domestic like product' means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." The Commission's definitions of the industry and domestic like product are not in dispute, therefore, the court need not focus on that portion of the Commission's determination.

[4] The four factors considered are:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

(2) the presence of sales or offers to sell in the same geographic markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

investigation, the ITC was required to consider the volume of the subject imports, their effect on prices for the domestic like product and other economic factors that are relevant to its determining whether the steel wire rope industry in the United States was materially injured or threatened with material injury from the subject imports. See 19 U.S.C. § 1677(7)(B)(i) (1994); 19 U.S.C. § 1677 (7)(C)(iii) (1994).

In determining to cumulate, the Commission analyzed the subject imports from China and India in relation to each other and the domestic like product and found that there was a "reasonable overlap" of competition. However, the Commission noted that

[t]he record is . . . mixed regarding whether there is reasonable overlap of competition among the domestic like product and the subject imports from China and India. The subject imports and the domestic like product are sold through overlapping channels of distribution, and were present throughout the period of investigation, and in all geographic areas of the United States. Fungibility among the products is limited by the lower quality of subject imports from China and, to a lesser extent, subject imports from India. The subject imports' higher concentration in galvanized carbon steel wire rope also limits fungibility. Nevertheless, producers, importers, and purchasers generally indicated that the subject product from China and India and the domestic like product are all at least sometimes interchangeable, and are often used in the same applications.

Final Determination at 20. To support its conclusion, the Commission detailed the conditions of competition in the United States market and cited this information in its determination. *See Final Determination* at 19-20 n. 79-84 (citing to Part II of the *Confidential Staff Report Steel Wire Rope From China and India*, Inv. Nos 731-TA- 868-869 (Final) (March 9, 2001), *Administrative Record*, List 2, Doc. 169 ("*Staff Report*"). The Commission analyzed the channels of distribution, supply and demand considerations, substitutability issues, and the supply and demand elasticity in the United States market. *Id.* Although the Commission did find that there was "reasonable overlap" of competition which statutorily required that the

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(4) whether the subject imports are simultaneously present in the market.

Final Determination at 15 (citing *Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan*, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), *aff'd Fundicao Tupy, S.A. v. United States*, 12 CIT 231, 678 F. Supp. 898, *aff'd* 859 F.2d 915 (Fed. Cir. 1988)).

subject imports from China and India be cumulated, the Commission recognized that competition between the domestic like product and the subject imports was "attenuated" due to quality and product mix issues. *See Determination* at 16. This finding became particularly relevant for the Commission's injury analysis in the final phase of the investigation.

In the injury determination analysis, the Commission is required to consider (1) the volume of the imports, (2) their effect on prices for the domestic product, (3) their impact on domestic producers of the domestic like product, but only in the context of production operations within the United States, and (4) other economic factors that are relevant to the injury determination.[5] In this case, the Commission determined that the domestic industry was not materially injured by reason of the subject imports sold in the United States at less than fair value.

The Commission, in evaluating the volume of imports, found that the increase in volume of imports from China and India did not adversely affect the United States producers' market share. It did, however, find that the market shares for nonsubject imports were negatively impacted by the increased volume of subject imports.

The record also indicates that subject imports accounted for [ ] percent of U.S. apparent consumption in interim 1999, and [ ] percent in interim 2000. The U.S. producers' share, however, remained [ ] during the same period, at [ ] percent in interim 1999, and [ ] percent in interim 2000. The increase in share by the subject imports between interim 1999 and interim 2000 therefore came at the expense of nonsubject imports. That subject imports displaced nonsubject imports is consistent with record evidence that galvanized carbon steel wire rope

[5] 19 U.S.C. § 1677(7)(B) (1994) provides:
(B) Volume and consequent impact
In making determinations under sections 1671b(a), 1671d(b), 1673b(a), and 1673d(b) of this title, the Commission, in each case--
(i) shall consider--
(I) the volume of imports of the subject merchandise,
(II) the effect of imports of that merchandise on prices in the United States for domestic like products, and
(III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and
(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.
In the notification required under section 1671d(d) or 1673d(d) of this title, as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

made up more than one-half of subject imports, and almost half of nonsubject imports, but only a small share of domestic production.

Final Determination at 25-26 (footnotes omitted).

The Commission also used record evidence to establish that the price of the subject imports did not have significant price depressing effects on the domestic like product. *Final Determination* at 28. The Commission cited to specific record evidence that substantiated its finding that the subject imports did not negatively affect domestic like product prices.

The Commission collected quarterly price information on seven types of steel wire rope, designated products 1 through 7. The volume of the sales of the domestic like product was very small in all but 1 and 2 (consisting of bright carbon steel wire rope) and product 5 (consisting of galvanized carbon wire rope). There was no clear downward trend in the price of domestically produced steel wire rope in any of these three product categories. For product 1, prices for the domestic product were highest at the end of the review. Prices for domestic product 2 increased and then fell during the period, but ended at a level [ ] above their starting point. Prices for the domestic product 5 ended [ ] lower than they began, but increased in each of the last three quarters.

Final Determination 26-27 (footnotes omitted). Additionally, the Commission noted that the substitutability between subject imports and the domestic like product was limited because

subject imports generally are lower in quality than the domestic like product. Moreover, galvanized carbon steel wire rope accounts for over half of subject imports but only a small share of domestic production. These factors limit substitutability between the domestic like product and the subject imports, and therefore limit the potential effects on subject imports domestic prices.

Final Determination at 26. Similarly, the record evidence demonstrated that (1) petitioners announced various price increases, (2) domestic producers' cost of goods sold as a percentage of net sales increased minimally, while their operating income remained stable, and (3) the "attenuated" competition between the subject imports and the domestic like product limited the ability of the subject importers to suppress price increases of the domestic like product.

We also found that subject imports did not have significant price depressing effects on the domestic like product. The record does not reflect any clear downward trend in prices for the domestic like product. Nor do we find that subject imports prevented to a significant degree price increases by the domestic industry that otherwise would have occurred. First, petitioners announced various price increases, which the record suggests were collected, in whole or in part, in at least some instances. Second, domestic producers' cost of goods sold as a percentage of net sales increased very little, while their operating income was generally stable. Third, because competition between subject imports and domestic like product is attenuated, subject imports' ability to suppress price increases is similarly limited.

Final Determination at 28-29 (footnotes omitted).

In its impact analysis, the Commission must consider all the relevant economic factors that bear on the state of the industry in the United States. *See* 19 U.S.C. § 1677(7)(C)(iii) (1994). The Commission noted that although the industry's performance was not particularly strong, the cause of the weakness was not the subject imports. In fact, the Commission found that the major reason for the domestic industry's market share loss was caused by *nonsubject* imports.

Subject imports' market share increased less than [ ] from 1998 to1999, from [ ] to [ ] percent. While subject imports' market share was the highest in interim 2000, that was also the period the industry was most profitable. In addition, prices collected on various subject products did not exhibit a clear downward trend, and AUVs (average unit values) for the subject imports decreased only [ ] from 1998 to 1999, from $[ ] per short to $[ ] per short ton. Previously, from 1997 to 1998, the domestic industry lost [ ] in market share, but nonsubject imports accounted for the bulk of the loss [ ].

Final Determination at 33-34 (footnotes omitted).

In addition to the price, volume and impact analysis, the Commission also noted in its injury analysis important conditions of competition that supported its negative injury determination. The Commission found that although domestic and imported steel wire rope both generally conform to specifications, certain factors limit competition between them. More than onehalf of subject imports are galvanized carbon steel wire rope, while less than two percent of domestic production is galvanized. Many purchasers and distributors state that only domestic product is used for so-called "critical" applications: those in which failure of the rope could

result in damage, injury or death. Similarly, various steel wire rope distributors expressed concern over liability arising out of any failure by imported steel wire rope they might sell, particularly imports from China.

Final Determination at 22 (footnotes omitted). Similarly, a contributing factor to the domestic industry's drop in capacity, which caused a drop in production in 1999, could be attributed to consolidation within the industry. In its impact analysis the Commission stated:

[t]he decline in capacity in 1999 reflects the fact that domestic producer WRCA (Wire Rope Corporation of America) retired all but one of the production facilities it acquired from Rochester and Macwhyte. Domestic production capacity was 123,715 short tons in interim 1999 and 135,535 short tons in interim 2000, consistent with [ ]. The domestic industry's production fell from 127,833 short tons in 1997, to 118,047 short tons in 1998, and to 108,655 short tons in 1999. However, production was higher in interim 2000, at 80,801 short tons, than in interim 1999, at 78,955 short tons.

Final Determination at 30-31 (footnotes omitted). Therefore, the Commission concluded that purchasers' preference for domestic product and industry consolidation were significant factors that supported a finding that subject imports did not cause material injury to the domestic industry.

Having determined that the subject imports did not cause material injury to a domestic industry, the Commission then focused its analysis to determine if the subject imports threatened material injury to the domestic industry. Under 19 U.S.C. § 1677(7)(F)(ii) (1994), the Commission is required to determine "whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted. . . ."[6]

[6] 6. 19 U.S.C. § 1677(F) states the factors the Commission is required to consider in its threat of material injury determination.

F) Threat of material injury

(i) In general

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

The Commission found that:

(I) if a countervailable 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 countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this subtitle 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 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) 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 domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

(ii) Basis for determination

The Commission shall consider the factors set forth in clause (i) as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this subtitle. The presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

[t]he record indicates that no significant increase in the volume or market penetration of subject imports is imminent. Although subject producers had the ability to increase significantly the volume of their exports to the U.S. market during the period of investigation, they did not do so. There is no persuasive evidence in the record that indicates that this behavior will change in the imminent future. We also find that subject imports are not likely to enter the United States at prices that will depress prices for the domestic like product. Prices for the subject imports are already significantly lower than prices for the domestic like product, yet prices for the latter are steady or increasing, and any market share lost by the domestic industry to subject imports has been small. We see no evidence that competition between subject imports and the domestic like product will become less attenuated in the imminent future.

Final Determination at 39-40. Therefore, the Commission concluded that the subject imports did not present a threat of material injury to the domestic industry. This determination is in accordance with law as the Commission discussed the relevant statutory factors that it considered in reaching its conclusion, namely, market penetration and volume of imports pursuant to 19 U.S.C. § 1677(F)(i)(III) and the effect of import prices on domestic prices pursuant to 19 U.S.C. § 1677(F)(i)(IV). It also cited attenuated competition between imports and domestic production as another economic factor it considered relevant, as it is required to by 19 U.S.C. § 1677(F)(i). The Commission's conclusions with regard to these economic factors find factual support in the record as well. In Part VII of its *Staff Report*, there is evidence that supported its determination that the imports from China and India did not threaten a domestic industry and these findings are included in its analysis. In examining the capacity levels of the importers as required by 19 U.S.C. § 1677(F)(i)(II) the Commission found that

[t]he record shows no indication of increased capacity in China or India during the period of investigation that would indicate the likelihood of substantially increased imports of subject merchandise, and capacity is projected to be [ ] in 2000 and 2001 as it was in 1999. Capacity utilization for the industry in China, which was estimated at [ ] percent in 1999, showed projected increases to rates of [ ] percent in 2000 and [ ] percent for 2001. For the industry in India, capacity utilization was [ ] percent in 1999, and is projected to increase to [ ] percent in both 2000 and 2001. While foreign producers' capacity utilization figures reflect some available excess capacity, unused capacity existed during the period investigated, but did not

result in materially injurious exports to the United States. Moreover, unused capacity declined late during the period of investigation, and it is projected to decline in the imminent future.

Final Determination at 37 (footnoting to the statistical tables included in Part VII of the Staff Report). Therefore, the court finds that the Commission's determination that there was no threat of injury to the domestic industry is in accordance with law and supported by substantial evidence in the record of the Commission's proceeding.