# Nitrile Rubber from Korea

Investigation No. 731-TA-827 (Preliminary)

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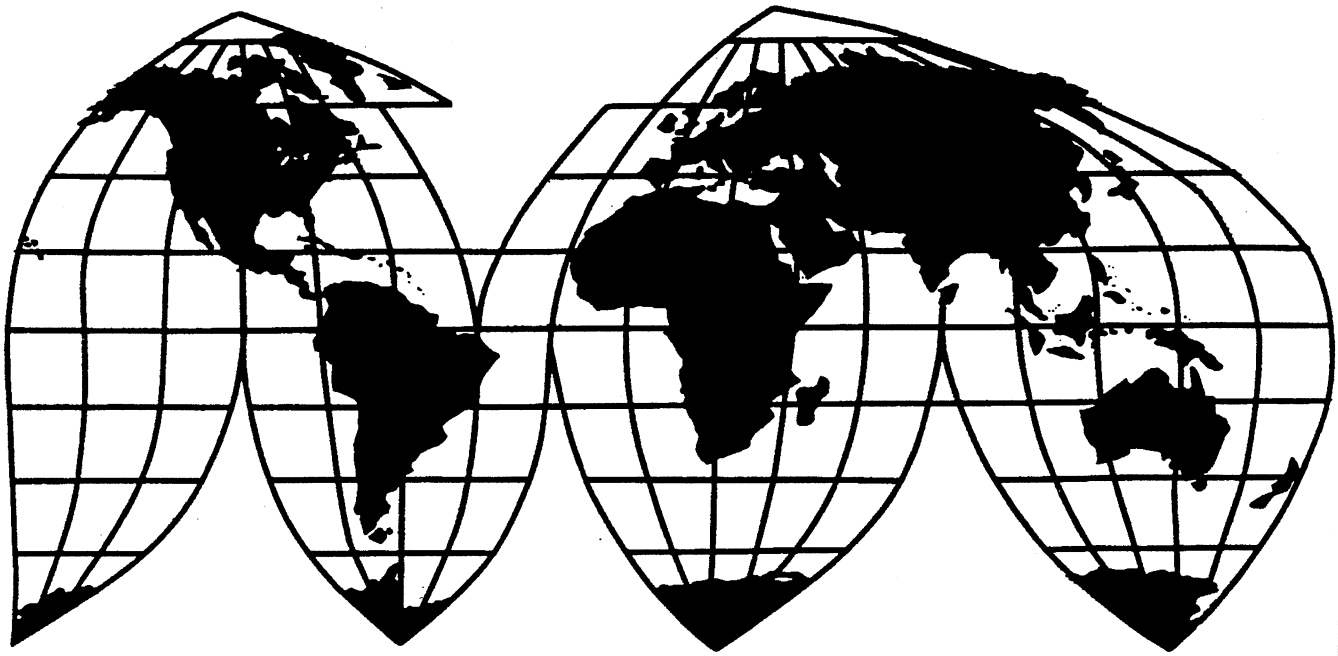
U.S. International Trade Commission



Washington, DC 20436

# U.S. International Trade Commission

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## UNITED STATES INTERNATIONAL TRADE COMMISSION

### Investigation No. 731-TA-827 (Preliminary)

### NITRILE RUBBER FROM KOREA

## DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Korea of acrylonitrile-butadiene rubber (nitrile rubber),[2] provided for in subheading 4002.59.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

## BACKGROUND

On May 27, 1999, a petition was filed with the Commission and the Department of Commerce by Zeon Chemicals, L.P., Louisville, KY, and Uniroyal Chemical Company, Inc., Middlebury, CT, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of nitrile rubber from Korea. Accordingly, effective May 27, 1999, the Commission instituted antidumping investigation No. 731-TA-827 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 4, 1999 (64 FR 30059). The conference was held in Washington, DC, on June 17, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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[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] For purposes of this investigation, Commerce has defined "nitrile rubber" as the synthetic rubber produced by the copolymerization of butadiene and acrylonitrile, not in latex form, and not containing additives, rubber processing chemicals, and/or other materials used for further processing beyond the copolymerization process.

## VIEWS OF THE COMMISSION

Based on the record in this investigation, we find no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of nitrile rubber from Korea that are allegedly sold in the United States at less than fair value ("LTFV").

## I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or the establishment of an industry is materially retarded, by reason of the allegedly LTFV imports.[1] In applying this standard, the Commission weighs the evidence before it and determines whether "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation."[2]

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. In General

To determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the "domestic like product" and the "industry."[3] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a {w}hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[4] In turn, the Act defines "domestic like product" as: "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[5]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[6] [7] No single factor is dispositive, and the Commission

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[1] 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT __, Slip Op. 96-51 at 4-6 (March 11, 1996).

[2] American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994). We note that information was obtained in these investigations from all of the domestic industry, all subject foreign producers, and virtually all U.S. importers. Confidential Report ("CR") at I-2, II-1, VII-1, and VII-4, Public Report ("PR") at I-2, II-1, and VII-1.

[3] 19 U.S.C. § 1677(4)(A).

[4] Id.

[5] 19 U.S.C. § 1677(10).

[6] See, e.g., NEC Corp. v. Department of Commerce, Slip Op. 98-164 at 8 (Ct. Int'l Trade, Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); 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) ("every like product determination 'must be

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.[8] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[9] Although the Commission must accept the determination of the Department of Commerce ("Commerce") as to the scope of the imported merchandise allegedly sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[10]

## B. Product Description

In its notice of initiation, Commerce defined the imported merchandise within the scope of this investigation as follows:

> {T}he product covered by this investigation is commonly referred to as acrylonitrile butadiene rubber or nitrile rubber ("NBR"). NBR is a synthetic rubber produced by the copolymerization of butadiene and acrylonitrile. NBR is sold in bale, slab, crumb, powder and latex form. NBR in the latex form is excluded from the scope of this investigation. Also excluded from the scope of this investigation is NBR containing additives, NBR containing rubber processing chemicals, and NBR containing other materials used for further processing beyond the copolymerization process. The merchandise subject to this investigation is classified in the Harmonized Tariff Schedules of the United States ("HTSUS") at subheading 4002.59.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.[11]

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[6] (...continued)
made on the particular record at issue' and the 'unique facts of each case'"). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[7] Although the Commission must base its domestic like product determination on the record in this investigation and is not bound by prior determinations, we note that the Commission found a single like product, defined as "all nitrile rubber, regardless of acrylonitrile content, excluding nitrile rubber products that contain additives, rubber processing chemicals, or other material that is used for functions beyond the copolymerization of acrylonitrile and butadiene" in Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Final), USITC Pub. 2090 at 6 (June 1988).

[8] See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

[9] Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249, at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.").

[10] Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

[11] Initiation of Antidumping Duty Investigation: Acrylonitrile Butadiene Rubber from the Republic of Korea, 64 Fed. Reg. 33461 (June 23, 1999).

Nitrile rubber, also called acrylonitrile butadiene rubber or nitrile butadiene rubber, is a synthetic rubber created by the copolymerization of acrylonitrile and butadiene. The reaction creates a milky emulsion known as latex nitrile rubber. Solid nitrile rubber crumb is produced from the latex through a coagulation process. The crumb is put through washing, de-watering, and drying processes and then, most commonly, pressed into 25 kilogram bales.[12]

Nitrile rubber is an intermediate product characterized by a high degree of resistance to oils (e.g., petroleum chemicals, gasoline, diesel and other fuels, and fats) and superior heat resistance.[13] Consequently, it is used in products where one or the other, or both, of those characteristics are desirable.[14] To be used in such products, it must be further processed, e.g., heated and mixed with carbon black or other extenders and fillers, oils, other additives and/or other types of rubber.[15] The resultant compounded mixture (termed a "masterbatch") is pressed or extruded into the desired form and then vulcanized, by heating, to fix the product's shape, flexibility and elasticity.[16] Such further processing allows nitrile rubber to become useable in producing finished goods.[17]

### C. Domestic Like Product Issues

Petitioner has proposed a single like product definition mirroring the scope definition. This domestic like product would include all nitrile rubber regardless of its acrylonitrile content, and would exclude nitrile rubber in the latex form and nitrile rubber products that contain additives or compounding ingredients.[18] Respondents do not take a position concerning the definition of the domestic like product.[19]

Applying the various like product factors, we find a single domestic like product identical to Commerce's scope definition.

*Physical Characteristics and Uses.* All nitrile rubber is a copolymer of the monomers acrylonitrile and butadiene. Further, all nitrile rubber is used for the same general purpose, i.e., to provide resistance to oils (e.g., petroleum chemicals, gasoline, diesel and other fuels, and fats) and

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[12] CR at I-3; Conference Transcript ("Conf. Tr.") at 10-11. In addition to being produced and packaged in the form of compressed bales of crumb, nitrile rubber can be produced and marketed in a crumb form, or in powder or particulate forms. No party has argued that the definition of the like product should depend in any way upon these forms of the product.

[13] CR at I-3, Conf. Tr. at 8, 13.

[14] CR at I-2, II-2; Conf. Tr. at 12, 31.

[15] CR at I-3.

[16] CR at I-3.

[17] A detailed description of the production process and end uses of nitrile rubber is included in the staff report. CR at I-2 through I-6.

[18] E.g., Petitioners' Postconference Brief at 2-5.

[19] Tr. at 89-90; i.e., there is no challenge to Petitioners' proposed exclusion of latex and nitrile rubbers that contain any of the various types of additives. We also note that the Commerce Department's scope definition above includes nitrile rubber in compressed bale form, as well as slab, crumb or powder forms. No party has argued that any of those forms should be found to be a separate domestic like product under the six-factor test.

temperature extremes.[20] It is an intermediate product that is compounded in further manufacture with other substances to produce articles in which oil and heat resistance are desirable, such as automotive parts, gaskets, oil seals and packings, o-rings and grommets, hoses, industrial belting, conveyor belts, wired cable covers, oil field parts, tank linings, print rolls, adhesives and coatings, walk-off mats, flotation equipment, and shoe soles.[21]

There are numerous grades of nitrile rubber, generally distinguished on the basis of acrylonitrile content, which can determine the potential range of end uses for which a specific nitrile rubber product is suitable.[22] Acrylonitrile content, by weight, can range from 15 to 51 percent, with the most common nitrile rubber grades containing between 28 percent and 40 percent acrylonitrile, and commodity grades containing from 31 to 35 percent acrylonitrile.[23]

*Interchangeability.* Nitrile rubber within a certain acrylonitrile-content range is interchangeable, and there is some interchangeability even between grades.[24] A grade that provides oil or temperature resistance superior to that required in a particular application might be used in place of a lower performance grade, although that may be impractical from a cost perspective.[25] On the other hand, wide variations among the acrylonitrile content of various nitrile rubber grades can effectively limit interchangability. For instance, an acrylonitrile content suitable for cold temperature performance may be totally unsuitable where high temperature performance is desired.[26]

*Channels of Distribution.* Although one producer uses distributors to distribute a small portion of its nitrile rubber, the majority of U.S. market sales of nitrile rubber are made directly to end users or custom mixers, which add compounding ingredients and perform other value-added processing to transform the nitrile rubber into forms for a specific end use.[27]

*Common Manufacturing Facilities, Production Processes and Employees.* All nitrile rubber, regardless of acrylonitrile content, is produced on common manufacturing equipment using common production employees, and either a batch or a continuous process.[28]

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[20] CR at I-3, Conf. Tr. at 13, 91.

[21] CR at I-2, II-2; Conf. Tr. at 12, 31.

[22] E.g., CR at I-6; Conf. Tr. at 7, 15, 17, 64, 92.

[23] CR at I-4; Conf. Tr. at 15, 64, 92. Petitioners state that an acrylonitrile content of 28 to 35 percent constitutes a medium grade, which represents 65 percent of total production of subject nitrile rubber. CR at I-4.

[24] CR at I-6; Conf. Tr. at 13

[25] E.g., Conf. Tr. at 92-93.

[26] Conf. Tr. at 13, 91 (resistance to higher temperatures with higher acrylonitrile content; better cold temperature flexibility with acrylonitrile content below 30 percent by weight).

[27] CR at I-7, II-1.

[28] Conf. Tr. at 9-11 (the continuous process is better suited to long production runs and, therefore, production of the higher sales volume, mid-range acrylonitrile-content grades; the batch process is better suited to shorter runs and production of the more specialized and custom grades). There are indications that nitrile rubber in forms other than compressed bales (i.e., crumb, powder and particulate) may require additional physical processing and different drying processes (CR at I-3; Conf. Tr. at 57-58).

*Producer and Customer Perceptions.* With respect to customer or producer perceptions, while customers purchase nitrile rubber product having the chemical or heat resistance properties needed for what can be highly customized or specialized applications,[29] the bulk of nitrile rubber, in the medium acrylonitrile-content grades, is perceived as fungible, and is suited for a number of less-specialized product applications.

*Price.* Nitrile rubber is priced below other potential substitute synthetic rubber; the cost of other products is generally a multiple of the cost of nitrile rubber.[30] The middle range acrylonitrile content products, which are produced in larger quantities, are generally priced below both the lower and higher acrylonitrile content products. The greater the deviation from the middle range, the less likely the production runs or batches will be large and, thus, the more likely costs and prices will be higher. Outside the middle range, the higher acrylonitrile content products tend to be priced higher than the lower acrylonitrile content products.[31] There are, however, no distinct points at which acrylonitrile content or production features have a sudden or dramatic effect on price.

*Conclusion.* We conclude that the record does not indicate any clear dividing lines between the various grades of nitrile rubber. Nitrile rubber consists of a continuum of products with differing acrylonitrile content. Although products become less interchangeable as the disparity between acrylonitrile content rises, we find there is a significant degree of interchangeability within ranges and across adjacent ranges along the continuum. All nitrile rubber is produced at the same facilities by the same employees using similar processes, and is generally sold through the same channels of distribution. Customers appear to perceive all grades of the product as providing significant heat and oil resistance, at a price significantly below those of alternative synthetic rubbers.

We find, therefore, a single domestic like product consistent with Commerce's scope definition, consisting of all nitrile rubber regardless of acrylonitrile content.[32]

## D. Domestic Industry

The domestic industry is defined as "domestic 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 that product . . . ."[33] In defining the domestic industry, the Commission's general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[34]

Based on our finding that the domestic like product consists of all nitrile rubber, we find that the domestic industry consists of the four domestic producers of nitrile rubber: Zeon Chemicals (Zeon),

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[29] CR at I-6.

[30] CR at II-3; Conf. Tr. at 16-17.

[31] See, e.g., CR at V-5 - V-8.

[32] Our definition of the like product, therefore, excludes nitrile rubber in latex form, and nitrile rubber containing additives, processing chemicals, or other materials used for further processing beyond the copolymerization process.

[33] 19 U.S.C. § 1677(4)(A).

[34] See, e.g., Certain Carbon Steel Plate from China, Russia, South Africa and Ukraine, Inv. Nos. 731-TA-753-756 (Final), Pub. 3076 at 9 (Dec. 1997).

Uniroyal Chemical Company (Uniroyal), Goodyear Tire & Rubber Co. (Goodyear), and DSM Copolymer, Inc. (DSM).[35]

## III. NO REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.[36] [37] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[38] The statute defines "material injury" as "harm which is not inconsequential, immaterial or

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[35] CR at I-1, I-2, VI-1. Uniroyal and Zeon are the Petitioners. Uniroyal is to have closed all U.S. nitrile rubber production facilities in the United States by June 1999. E.g., CR at III-9. Zeon has a long term manufacturing arrangement with DSM under which DSM manufactures nitrile rubber at Zeon's direction and Zeon markets the nitrile rubber production of DSM. E.g., Conf. Tr. at 36.

[36] 19 U.S.C. § 1673b(a).

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

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

[38] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each {such} factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

unimportant."[39] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[40] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[41]

For the reasons discussed below, we determine that there is no reasonable indication that the domestic industry producing nitrile rubber is materially injured by reason of subject imports from Korea.

## A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in this investigation. First, because nitrile rubber is a component of compounds ("master batches") used to produce various rubber products, the demand for nitrile rubber is derived from consumption of finished rubber articles.[42]

Second, the domestic industry producing and offering for sale domestically-produced nitrile rubber has been quite concentrated and has become even more concentrated over the period of investigation. Uniroyal decreased domestic production in the United States over the period and is to have ceased all production of nitrile rubber in the United States as of June 1999. Moreover, DSM no longer markets its own production. Instead, it has an arrangement with Zeon under which Zeon purchases and resells all nitrile rubber DSM produces. Accordingly, all sales of domestic production (to, e.g., distributors, end users and mixers) are currently made by or through Zeon and Goodyear.

Finally, imports from countries not subject to the investigation play an increasingly important role in the U.S. nitrile rubber market. Uniroyal, one of the two Petitioners and one of the four producers comprising the domestic industry, relied increasingly over the period upon imports from Mexico in place of its own domestic production to supply its U.S. customers. Uniroyal's imports were initially from the production of the Mexican chemical company GIRSA and its subsidiary Industrias Negromex AS de CV under a 1996 manufacturing agreement. [43] Imports of nitrile rubber from Mexico have grown in each year of the period of investigation and the average unit values of nitrile rubber imports from Mexico have been consistently below those of any other country, including Korea.[44] As of June 1999, Uniroyal is to have ceased production in the United States entirely and is shifting all production to its operations in Mexico.[45]

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[39] 19 U.S.C. § 1677(7)(A).

[40] 19 U.S.C. § 1677(7)(C)(iii).

[41] Id.

[42] CR at I-2 - I-3.

[43] E.g., Conf. Tr. at 28 (Uniroyal referring to the arrangement as a purchase of the nitrile rubber business of the Mexican company).

[44] Document INV-W-152, July 7, 1999. Imports of nitrile rubber from Mexico grew from 690,000 pounds in 1996 to 7,039,000 pounds in 1997 to 17,183,000 pounds in 1998. Id. at Table 1. In the first quarter of 1999, imports from Mexico totaled 8,942,000 pounds, compared with 3,662,000 pounds in the first quarter of 1998. Id. The average unit value of the Mexican product was $0.65 in 1996, $0.50 in 1997, $0.49 in 1998, and $0.46 in the first quarter of 1999. Id. Imports of nitrile rubber from Mexico grew, on a quantity basis, from 0.5 percent of U.S. apparent consumption in 1996 to 4.8 percent in 1997, 11.2 percent in 1998, and 21.1 percent in the first quarter of 1999. Id. at Table 2. The record indicates that *** during the period of investigation.

[45] E.g., Conf. Tr. at 20.

In that regard, Uniroyal and GIRSA are opening a new joint venture facility in Mexico with substantial production capacity.[46]

Imports from Taiwan represent a part of the nitrile rubber sold by the other Petitioner, Zeon, to its customers in the United States. There was significant growth in imports from Taiwan during the investigation period, with import quantities far exceeding subject imports from Korea.[47]

Nonsubject imports, such as those from Mexico and Taiwan, have been identified by both importers and domestic producers as interchangeable with the domestic product within similar grade ranges.[48]

## B. Volume of the Subject Imports

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[49]

The volume of subject imports from Korea increased from 616,000 pounds in 1996, to 1,481,000 pounds in 1997 and to 3,168,000 pounds in 1998.[50] In the first quarter of 1999, imports from Korea totaled 1,624,000 pounds compared with 265,000 pounds in the first quarter of 1998. Likewise, the value of imports from Korea grew from $433,000 in 1996 to $928,000 in 1997, and $1,811,000 in 1998. In the first quarter of 1999, imports of nitrile rubber from Korea totaled $924,000, compared with $154,000 in the first quarter of 1998.[51]

Subject imports from Korea represented, however, only 0.5 percent of apparent consumption in 1996, 1.0 percent in 1997, and 2.1 percent in 1998.[52] At their peak level, in the first quarter of 1999, the subject imports represented only 3.8 percent of apparent consumption. At the same time, nonsubject imports represented 42.1 percent, 49.7 percent and 54.9 percent of apparent U.S. consumption in 1996,

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[46] E.g., Conf. Tr. at 20; "Uniroyal Chemical to Build Plant in Mexico," *Chemical Business Newsbase: Plastics News* (Dec. 14, 1998).

[47] Document INV-W-152, July 7, 1999. Imports of nitrile rubber from Taiwan grew from 6,217,000 pounds in 1996 to 10,079,000 pounds in 1997 and 9,061,000 pounds in 1998. Id. at Table 1. The average unit import value of the Taiwanese product was $0.73 in 1996 and 1997, $0.66 in 1998, and $0.63 in the first quarter of 1999. Imports of nitrile rubber from Taiwan grew on a quantity basis, from 4.7 percent of U.S. apparent consumption in 1996 to 6.8 percent in 1997, 5.9 percent in 1998, then decreased to 4.0 percent in the first quarter of 1999. Id. at Table 2.

[48] CR at II-5; Conf. Tr. at 20.

[49] 19 U.S.C. § 1677(7)(C)(i).

[50] CR at Table IV-2. Data on the subject imports is based on Department of Commerce, Bureau of the Census trade statistics. We consider these official statistics to be more reliable than the divergent data, showing considerably higher volumes, supplied in foreign producers' and, to a lesser extent, in importers' responses to questionnaires in this investigation. Although these official statistics may themselves somewhat overstate imports of the subject merchandise by including nitrile rubber with additives, they represent the narrowest statistical category available and indications are that any overstatement is relatively minor. E.g., foreign producers' fax of July 8, 1999. As discussed, infra, for data comparability reasons, we have considered the foreign producers' reported data for portions of our analysis of threat of material injury.

[51] CR at Table IV-2.

[52] CR at Table IV-3.

1997 and 1998, respectively, and grew in the first quarter of 1999 to represent 60.3 percent of apparent U.S. consumption.[53]

In light of the small volume and market share of the subject imports, we find that the volume of imports of the subject merchandise from Korea is not significant.[54] [55]

### C. Price Effects of the Subject Imports

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

> the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[56]

The record indicates that price is a significant factor in purchasing decisions for nitrile rubber, although a number of conditions of sale (e.g., discounts, rebates, lead times between order and delivery, and payment terms) are also important.[57] Subject imports and the domestic like product are used interchangeably.[58] Although there was underselling[59] and some confirmation of sales lost to the subject imports due to their lower prices,[60] there is no evidence that the subject imports depressed prices or prevented price increases that otherwise would have occurred to any significant extent.

The Commission collected quarterly pricing data for three product categories of nitrile rubber. Weighted-average prices reported by U.S. producers of nitrile rubber showed relative price stability over

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[53] Id.

[54] Chairman Bragg determines that subject import volume, and the increase in that volume over the period of investigation, are not significant in conjunction with her determination that subject imports have not caused significant price suppression or depression in the U.S. nitrile rubber markets.

[55] Commissioner Crawford joins only in the factual, numerical discussion of the volume of imports here. She does not rely on any analysis of trends in the market share of subject imports or other factors in her determination of material injury by reason of the subject imports. She makes her finding of the significance of volume in the context of the price effects and impact of the subject imports. For the reasons discussed below, she finds that the volume of the subject imports is not significant in light of its price effects and impact.

[56] 19 U.S.C. § 1677(7)(C)(ii).

[57] See CR at II-4. The report notes that the "quality" of the nitrile rubber is also an important factor and that the term "quality," in that regard, refers to the oil and heat resistance level of the rubber. As already noted, however, heat and oil resistance is determined by the rubber's acrylonitrile content, a characteristic that determines the "grade" of the product. Therefore, "grade" would appear to be a more accurate term to describe oil and heat resistance than "quality." Thus, we do not view quality, in the usual sense in which that term is used, to be a factor affecting substitutability. With respect to the grades of the nitrile rubber, the report notes that, within grades, the subject and nonsubject imports are interchangeable with each other and with the domestic nitrile rubber. Id. at II-4 - II-5.

[58] CR at II-4.

[59] CR at V-5 - V-10.

[60] CR at V-11 - V-15.

the period of investigation.[61] The average unit value data is consistent with the price data. The unit value of domestic producers' shipments remained in the range of $0.92 to $0.94 per pound over the period. More specifically, the average unit values were $0.93 in 1996, $0.94 in 1997, and $0.92 in 1998.[62] While prices remained relatively stable over the period, cost of goods sold declined. Unit costs of goods sold was $0.58 in 1996, $0.61 in 1997, and $0.52 in 1998, a decline of 10% from 1996 to 1998.[63] The decline in the cost of goods sold is attributable, at least in part, to a significant decline in the cost of the nitrile rubber material inputs over the period. In this regard, the record shows that nitrile rubber prices are directly affected by the prices of the primary inputs in the production of nitrile rubber, acrylonitrile and butadiene, because contract prices are directly linked to those products' prices.[64] Acrylonitrile prices dropped from $0.35 per pound in the first quarter of 1996 to $0.19 per pound in the first quarter of 1999. Butadiene prices fell from about $0.18 per pound to $0.12 per pound over the same period.[65] Thus, any suppression or depression of domestic producer prices would reflect to a significant degree the impact of competition following the declines in the costs of the two main production inputs.

Additionally, there was a significant downward trend in the average unit value of all nitrile rubber imports, subject and nonsubject, from $0.83 in 1996 to $0.69 in the first quarter of 1999.[66] There were no significant downward effects on U.S. producers' prices, however. Although, as discussed above, the volume of imports from Korea was not significant, total imports represented 42.6 percent, 50.7 percent

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[61] CR at V-5.

[62] CR at Table C-1. The average unit value of shipments in the first quarter of 1999 was $0.91, but prior year data does not suggest that this indicates a downward trend. The first quarter 1998 unit value of domestic producer shipments was $0.90, compared with $0.92 for full year 1998. (The General Information, Instructions, and Definitions for Commission Questionnaires defines shipment values as net values (i.e., gross purchase values less all discounts, allowances, rebates, prepaid freight and the value of returned goods), f.o.b. U.S. producing establishment.)

The unit value of net sales similarly was between $0.88 and $0.89 in each year of the period, including the first quarter of 1999. CR at Table C-1.

[63] CR at Table C-1.

[64] Even when domestic sales are made under long term contracts, price is not usually specified in the contract; rather, "prices are set generally by informal agreement, *subject to changes in material costs.*" Petition at 26 (emphasis added). Spot market and price list sales would all permit responses to changes in raw material costs. Two of the four domestic producers base a majority of their sales on informal contracts, which typically last between six months and one year. In the informal agreements, which generally include a meet or release provision, the price and quantity generally are not fixed, even when identified. The other two producers report that a majority of their sales are made on a spot basis. CR at V-4. Two of the producers and one importer also reported using price lists. CR at V-3. One domestic producer starts negotiations with a price list, and about half of its sales come from the price list. One importer also uses a price list for warehouse shipments, but 60 percent of its sales are made under contracts, typically on a quarterly basis but renegotiated as necessary, and 40 percent of its sales are made on a spot basis. CR at V-3 - V-4. Thus, with some amount of lag time, fluctuations in material costs may be reflected in the sales price under each of these arrangements.

The impact of raw materials prices upon producers' costs, and the prices that they may be able to charge for their nitrile rubber production is highlighted by the fact that, at least at certain times during the period of investigation, material inputs accounted for, on average, between 45 percent and 50 percent of cost of goods sold (and as much as 70 percent of cost of goods sold for one domestic producer in the period). CR at V-1.

[65] CR at V-1 - V-2 (data extracted from *Chemical Week*, Jan. 1996-Mar. 1999). These are spot prices, but contract prices have followed similar trends.

[66] CR at Table IV-2; Document INV-W-152 at Table 2.

and 56.9 percent of apparent U.S. consumption in 1996, 1997 and 1998, respectively, and grew in the first quarter of 1999 to 64.2 percent of apparent U.S. consumption.[67]

Moreover, while the subject imports grew from a 0.5 percent share of apparent consumption in 1996 to a first quarter of 1999 share of 3.8 percent, nonsubject imports from Mexico grew from the same starting point, i.e., a 0.5 percent share of apparent consumption in 1996, to a 21.1 percent share in the first quarter of 1999,[68] representing an increase in Mexican penetration that was 5.6 times that of the subject imports. Also significant in this regard, over the period, the average unit value of the Mexican product was significantly below that of the imports from Korea.[69] [70] [71]

In sum, we find that the subject merchandise and the domestic like product are generally interchangeable and that there was some underselling of the domestic product by the subject imports. We find, however, that the volume of the subject imports is not significant compared with total U.S. apparent consumption and the volume of nonsubject imports, which also undersold the domestic product. Declines in the prices of domestic nitrile rubber would have been consistent with declines in the costs of the key raw material inputs over the period of investigation. Moreover, despite all of these downward price pressures in the U.S. market, the average unit value of domestic producers' shipments remained fairly constant throughout the period of investigation.

For these reasons, we find that the subject imports did not adversely affect prices for the domestic like product to any significant degree.

### D. Impact of the Subject Imports on the Domestic Industry

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, "shall evaluate all relevant economic factors which have a bearing on the state of the industry." These factors include output, sales, inventories, capacity utilization, market

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[67] CR at Table IV-3.

[68] Document INV-W-152 (July 7, 1999) at Table 2. Imports of nitrile rubber from Mexico grew from 690,000 pounds in 1996 to 7,039,000 pounds in 1997 to 17,183,000 pounds in 1998. Id. at Table 1. In the first quarter of 1999, imports from Mexico totaled 8,942,000 pounds, compared with 3,662,000 pounds in the first quarter of 1998. Id.

[69] Document INV-W-152 at Table 2; see also CR at Table IV-2.

[70] We note the heavy penetration of nonsubject imports at prices, particularly from Mexico, considerably below the prices of the subject imports. Although the prices of imports from Mexico may be akin to transfer prices (Conf. Tr. at 34), we note that an importer of such low-priced merchandise from Mexico (Uniroyal) would enjoy considerable flexibility in setting prices vis-a-vis pricing of subject imports, nonsubject imports, and domestic like product.

[71] Commissioner Crawford concurs that the subject imports are not having significant effects on domestic prices. She has given Petitioners the benefit of the doubt and assumed that none of the subject imports would have been sold in the U.S. market at fairly traded prices, and therefore that all of the demand for them would have shifted to other sources. The largest volume of the subject imports was 3.8 percent of the U.S. market in interim 1999, and thus the shift in demand away from the subject imports would have been quite small. Nonsubject imports, including a large volume of competitive Mexican imports, dominated the market with a 60.3 percent market share in interim 1999. Thus, the nonsubject imports would have captured a substantial portion of the small shift in demand away from the subject imports. Therefore, the shift in demand towards the domestic product would have been even smaller. This increase in demand for the domestic product would have been too small to have enabled the domestic industry to increase its prices, had the subject imports been fairly traded. Consequently, Commissioner Crawford concludes that the subject imports are not having significant effects on domestic prices.

share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[72] [73] [74]

Consistent with our findings that the volume of the subject imports was not significant, and that the subject imports did not have significant effects on prices for domestically produced nitrile rubber, we find that the subject imports are not having a significant impact on the domestic industry.

Although the domestic industry experienced decreased shipment levels,[75] declining market share,[76] production,[77] and employment levels[78] over the period of investigation, those declines are consistent both with Uniroyal's gradual reduction and cessation of production in the United States and commensurate reliance upon nonsubject imports from Mexico, and with Zeon's increased imports from Taiwan.[79]

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[72] 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25, n.148 (Feb. 1999).

[73] As part of its consideration of the impact of imports, the statute specifies that the Commission is to consider "the magnitude of the margin of dumping" in an antidumping proceeding. 19 U.S.C. § 1677(7)(C)(iii)(V). In its notice of initiation, Commerce identified estimated dumping margins for Korea ranging from 83.81 percent to 102.20 percent. 64 Fed. Reg. at 33462.

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

[75] U.S. producers' domestic shipments, on a quantity basis, declined from 75.4 million pounds in 1996 to 73 million pounds in 1997, to 65.9 million pounds in 1998. The first quarter of 1999 shipments totaled 15.1 million pounds compared with 20.1 million pounds in the first quarter of 1998. CR at Table C-1. On a value basis, U.S. producers' shipments declined from $70.3 million in 1996, to $68.6 million in 1997, to $60.6 million in 1998. First quarter 1999 shipments totaled $13.8 million compared with $18.1 million in the first quarter of 1998.

[76] U.S. producers' shipments as a percent of apparent consumption, on a quantity basis, declined from 57.4 percent in 1996, to 49.3 percent in 1997 and to 43.1 percent in 1998. In the first quarter of 1999, it declined further to 35.8 percent. On a value basis, the decline went from 60.2 percent in 1996 to 54.1 percent in 1997 to 48.7 percent in 1998 and to 42.2 percent in first quarter 1999. CR at Table IV-3.

[77] U.S. producers' production declined from 99.3 million pounds in 1996 to 89.2 million pounds in 1997 to 88.3 million pounds in 1998 to 16.7 million pounds in the first quarter of 1999 (compared with 23.3 million pounds in the first quarter of 1998).

[78] The number of production workers declined by two percent, from 272 in 1996 to 266 in 1998. CR at Table C-1.

[79] Uniroyal's decision to import from and shift production to Mexico, and Zeon's decision to import from Taiwan, preceded in time and do not appear related in any discernable degree to the subject imports from Korea. See, e.g., Conf. Tr. at 33-35; Petitioners' Postconference Brief at 26-27; see also "Uniroyal Chemical to Build Plant in Mexico," *Chemical Business Newsbase: Plastics News* (Dec. 14, 1998) ("A joint venture nitrile synthetic rubber facility will be constructed between Tampico and Altamira in Mexico by Uniroyal Chemical Co. Inc. and the Mexican chemical company GIRSA. The state-of-the-art unit will have a workforce of around 50 and a capacity of 40,000 tonnes/y Paracril-brand nitrile rubber and should be phased into operation late in 1999. Uniroyal's Painsville, OH, unit, which has a workforce of 125 and once turned out 20,000 tonnes/y Paracril, will be closed in the middle of 1999, which will involve an estimated pretax write off of around (USDollar) 30 M for 4Q. In 1996 Uniroyal acquired the NBR operations of GIRSA's subsidiary Industrias Negromex SA de CV at

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Indeed, U.S. producers' shipments decreased by 9.5 million pounds from 1996 to 1998,[80] while nonsubject imports from Taiwan and Mexico (attributable in whole or substantial part to the Petitioners, Zeon and Uniroyal, respectively) increased by nearly the same amount, i.e., 9.4 million pounds, in that period.[81] That is, these increased nonsubject imports were not simply a supplement to U.S. producer shipments of domestic product as Petitioners have asserted;[82] rather, they replaced the decline in U.S. producer shipments. The same general phenomenon, i.e., replacement of U.S. product with nonsubject imported product, is evident in the domestic production and production capacity data.[83] [84]

The domestic industry's financial data do not suggest that subject imports are having a significant adverse impact on the industry. The domestic industry's total operating income declined over the period of investigation, from $6.7 million in 1996 to $4.0 million in 1997, then recovered somewhat to $4.9 million in 1998.[85] While operating income in the first quarter of 1999 was $1.6 million, compared with $1.8 million in the first quarter of 1998, that result was on a much smaller base of net sales. Operating income to net sales, therefore, after declining from 7.8 percent in 1996 to 6.7 percent in 1998, rose to 10.6 percent in the first quarter of 1999, compared with 8.2 percent in the first quarter of 1998.[86] Similarly, unit operating income, after declining from $0.07 in 1996 to $0.04 in 1997, rebounded to $0.06 in 1998 and to $0.09 in the first quarter of 1999, compared with $0.07 in the first quarter of 1998.[87] At the same time that selling, general and administrative (SG&A) expenses increased absolutely and on a per unit basis, costs of goods sold declined, both on an absolute basis and on a per unit basis.[88]

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[79] (...continued)
Tampico and started manufacturing 6,000 tonnes/y Paracril; output was raised to 12,000 tonnes/y in 1998." (emphasis added).) See also Respondents' Postconference Brief at 9-14 and Exhibits 1-3.

[80] CR at Table C-1 (shipments of 75.4 million pounds in 1996 and 65.9 million pounds in 1998).

[81] Document INV-W-152 at Table 1.

[82] E.g., Petitioners' Postconference Brief at 10-11.

[83] Between 1996 and 1998 domestic production capacity declined by 9.3 million pounds (from 130.5 million pounds to 121.2 million pounds) and domestic production decreased by about 10 million pounds (from 99 million pounds to 89 million pounds), while imports from Taiwan and Mexico increased by 9.4 million pounds. U.S. producers' sales declined on a quantity basis from 96 million pounds in 1996 to 83.2 million pounds in 1998. CR at Table C-1.

[84] Commissioner Crawford concurs that the subject imports are not having a significant impact on the domestic industry. As noted, had the subject imports been fairly traded the increase in demand for the domestic product would have been too small to have enabled the domestic industry to increase its prices. The increase in demand for the domestic product also would have been so small that the domestic industry would not have been able to increase its output or sales, and therefore its revenues, significantly. Therefore, the subject imports are not having a significant impact on the domestic industry. Consequently, Commissioner Crawford concludes that the domestic industry would not have been materially better off if the subject imports had not been dumped.

[85] CR at Table C-1.

[86] Id.

[87] Id.

[88] CR at Table C-1. SG&A increased from $8.2 million in 1996 to $8.9 million in 1998, then declined in the first quarter of 1999 to $2 million compared with $2.2 million in the first quarter of 1998. SG&A on a per unit basis rose from $0.09 in 1996 to $0.11 in 1998 and to $0.12 in the first quarter of 1999, compared with $0.11 in the first quarter of 1998. Cost of goods sold decreased with the decreasing production from $70.3 million in 1996 to $59 million in 1998 and to $11.6 million in the first quarter of 1999, compared with $17.9 million in the first

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Thus, the financial data present a mixed picture regarding the health of the domestic industry. However, given our negative findings on volume and price effect, and given the activities of Uniroyal and Zeon, we find no reasonable indication that the subject imports materially contributed to any negative performance by the domestic industry over the period examined.

### E. Conclusion

For the reasons stated above, we find that there is no reasonable indication that the domestic industry is materially injured by reason of subject imports from Korea.

## IV. NO REASONABLE INDICATION OF THREAT OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[89] The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."[90] In making our determination, we have considered all factors that are relevant to this investigation.[91]

Based on an evaluation of the relevant statutory factors, we find no reasonable indication that the domestic industry is threatened with material injury by reason of the subject imports from Korea.

We note at the outset that the U.S. industry has been in a generally healthy condition during the period of investigation, particularly in 1998 and the first quarter of 1999.[92] [93] Moreover, as would be

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[88] (...continued)
quarter of 1998. Cost of goods sold per unit declined from $0.73 in 1996 to $0.71 in 1998 and to $0.67 in the first quarter of 1999, compared with $0.70 in the first quarter of 1998.

[89] 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

[90] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). See also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

[91] 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).

[92] See CR at Table C-1; see also discussion of impact of subject imports in the material injury section of these views, *supra*. The Federal Circuit in Suramerica de Aleaciones Laminadas, C.A. v. United States, 44 F.3d 978 (Fed. Cir. 1994) indicates that the present condition of the industry is among the "relevant economic factors" in a threat determination.

[93] The Federal Circuit held that 19 U.S.C. § 1677(7)(F)(I) requires the Commission to consider "all relevant factors" that might tend to make the existence of a threat of material injury more probable or less probable, including domestic industry support for the petition and the views of other interested parties such as consumers. Suramerica, 44 F.3d at 984. The court stated that the Commission "may use its sound discretion in determining the weight to afford these and all other factors, but . . . cannot ignore them." Id. at 984. The Commission cannot
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expected, the U.S. industry's transition over the period to increasing reliance upon nonsubject imports adversely affected its performance indicators.

We also find that the evidence does not indicate the likelihood of substantially increased nitrile rubber imports from Korea.[94] The record indicates that the producers in Korea have been increasing their production capacity utilization rates. Capacity utilization was *** percent in 1996, *** percent in 1997, *** percent in 1998, and *** percent in the first quarter of 1999, compared with *** percent in the first quarter of 1998.[95] Nitrile rubber production capacity has *** at *** million pounds from 1996 through the period of investigation.[96] Korean nitrile rubber exports to the United States as a share of total Korean production has *** in recent years, *** percent in 1997 and *** percent in 1998.[97] We find, therefore, that Korean producers' capacity and capacity utilization levels do not indicate that the subject imports are likely to increase substantially in the imminent future.

We find that the rate of increase of the volume or market penetration of imports of the subject merchandise does not indicate the likelihood of substantially increased imports.[98] Although there were increases in the volume and market share of the subject imports during the period of investigation, the magnitude of the percentage increase is a function of the small 1996 base level of imports.[99] As already indicated, notwithstanding these increases, imports from Korea were not at significant levels in the period of investigation and did not have significant price effects or adversely impact the domestic industry. Moreover, these increases were dwarfed by increases in the volume and market share of nonsubject imports, in particular from Mexico and Taiwan. Accordingly, we find that the recent volume trends exhibited by the subject imports, and projected increases, do not of themselves indicate a likelihood that there will be a significant increase in the subject imports in the near term.

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[93] (...continued)
limit its analysis to the enumerated statutory criteria when there is other pertinent information in the record. Id. In the instant investigation, petitioners representing *** of reported 1998 domestic production support the petition. ***. CR at III-1.

[94] 19 U.S.C. § 1677(7)(F)(I)(II).

[95] CR at Table VII-1. The Korean producers' capacity utilization is projected to be *** percent in full year 1999 and *** percent in full year 2000.

[96] CR at Table VII-1. Based on data submitted in response to Commission questionnaires, production capacity in Korea is projected *** in full year 1999 and 2000. Accordingly, exports from Korea to the United States can be estimated to increase by *** percent in 1999, compared with 1998 levels, and by *** percent over 1999 levels in 2000.

[97] CR at Table VII-1. Exports to the United States as a share of total Korean production of the subject merchandise is estimated to be *** percent in full year 1999 and *** percent in 2000. The level of exports to the United States included in Table VII-1 is derived from the Korean questionnaire responses. The volume and value of exports in the responses are higher than those shown in the official import statistics. For purposes of our analysis of material injury we have relied upon the official statistics only, viewing them in this context as the more reliable source of actual imports. For purposes of the threat analysis, however, which looks toward the imminent future, we rely upon the reported U.S. export information, together with the other information reported and projected by the Respondents to permit comparability of data.

[98] 19 U.S.C. § 1677(7)(I)(III).

[99] Imports, based on the official statistics, were 616,000 pounds in 1996, 1.48 million pounds in 1997, and 3.17 million pounds in 1998. CR at Table IV-2.

The inventory levels of the subject merchandise in Korea [100] generally declined between 1996 and 1998. [101] Moreover, although the level of U.S. importers' inventories fluctuated during the period, they remained relatively stable in 1998 compared with 1996, both considered on an absolute level and as a ratio to total imports.[102] Indeed, the overall inventory level in 1998 was relatively minimal compared to the size of the overall market for nitrile rubber in the United States.[103] Therefore, we do not find that inventory levels of the subject merchandise support a finding of a reasonable indication of threat of material injury.

We find that there is no evidence of "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."[104] Although the Korean facilities are "swing" plants, theoretically capable of producing either nitrile rubber or styrene butadiene rubber, there is no record evidence to suggest that the Korean producers will actually shift production away from the other product to nitrile rubber.[105] Accordingly, the record contains no indication that the subject producers will shift production and increase shipments to the United States.

We find that the subject imports are not likely to have a significant depressing or suppressing effect on domestic prices.[106] As we explained in the above discussion of material injury by reason of subject imports, the subject imports have not had significant effects on the price of domestic merchandise. The record does not suggest a change in the imminent future in the manner in which prices are set and price competition occurs in this market. Accordingly, we find it unlikely that the imports will have significant price-depressing or price-suppressing effects on domestic prices in the imminent future or that the subject import prices are likely to increase the demand for further imports.[107]

We have also examined the statutory criterion concerning 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.[108] The record indicates no significant impact by subject imports on the domestic industry. Accordingly, the subject imports have had, and will continue to have, no significant impact on the industry's ability to finance production and development efforts.[109]

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[100] 19 U.S.C. § 1677(7)(F)(I)(V).

[101] CR at Table VII-2. The Korean producers' inventory levels are projected to remain at stable levels in 1999.

[102] CR at Table VII-2.

[103] CR at Tables IV-3 & VII-2.

[104] 19 U.S.C. § 1677(7)(F)(I)(VI).

[105] CR at I-6, VII-3; see also Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico, Invs. Nos. 731-TA-794-796 (Final), USITC Pub. 3190 (May 1999) (determination of no material injury or threat thereof to U.S. industry producing ESBR by reason of subject imports; accordingly, no antidumping duty order is in place against styrene-butadiene rubber from Korea and any incentive for shifting production to nitrile rubber that such an order might have engendered is not present).

[106] 19 U.S.C. § 1677(7)(F)(I)(III).

[107] As noted above, there was significant penetration by nonsubject imports at prices, particularly from Mexico, considerably below the prices of the subject imports. Even if resale prices of nonsubject imports were higher than the prices of the subject imports in the U.S. market, as alleged, e.g., by Uniroyal, the importers of low value nonsubject merchandise have considerable discretion in setting prices.

[108] 19 U.S.C. § 1677(7)(F)(I)(VIII).

[109] See, e.g., CR at Table C-1.

Finally, the record in this investigation does not indicate any other demonstrable adverse trends that indicate a probability that the subject imports will likely materially injure the domestic industry.[110] [111]

In sum, we determine that there is no reasonable indication the domestic industry producing nitrile rubber is threatened with material injury by reason of the subject imports from Korea.

## CONCLUSION

For the foregoing reasons, we determine that there is no reasonable indication that the domestic industry producing nitrile rubber is materially injured or threatened with material injury by reason of the subject imports from Korea.

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[110] 19 U.S.C. § 1677(7)(F)(I)(IX).

[111] The record indicates that India has issued a dumping order against Korean nitrile rubber, effective July 1997. CR at VII-3. No increases in Korean exports to the United States are projected as a result of that action and Petitioners have not argued an expected increase on that basis.

# PART I: INTRODUCTION

## BACKGROUND

This investigation results from a petition filed by Zeon Chemicals, L.P., Louisville, KY (Zeon), and Uniroyal Chemical Company, Inc., Middlebury, CT (Uniroyal), on May 27, 1999, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of acrylonitrile-butadiene rubber (nitrile rubber)[1] from Korea. Information relating to the background of the investigation is provided below.[2]

| *Date* | *Action* |
|---|---|
| May 27, 1999 ..... | Petition filed with Commerce and the Commission;[3] institution of Commission investigation (64 FR 30059, June 4, 1999) |
| June 16, 1999 ..... | Commerce's initiation of investigation (64 FR 33461, June 23, 1999) |
| June 17, 1999 ..... | Commission's conference[4] |
| July 9, 1999 ..... | Commission's vote |
| July 12, 1999 ..... | Commission determination transmitted to Commerce |

### Related Commission Investigations and Existing Orders

Nitrile rubber imported from Japan is currently subject to an antidumping duty order. The order results from investigations conducted by Commerce and the Commission in response to a petition filed by Uniroyal on September 1, 1987. Commerce issued an antidumping duty order on June 16, 1988 (53 FR 22553). Commerce has not conducted any administrative reviews of the order since its publication.[5]

Further, on April 1, 1999 the Commission instituted inv. No. 731-TA-384 (Review) under section 751(c) of the Tariff Act of 1930 (the Act), to determine whether revocation of the above-mentioned order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. On July 2, 1999 the Commission determined to conduct an expedited review of the order (see the Commission's web site for details (http://www.usitc.gov)).

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[1] For purposes of this investigation, nitrile rubber is the synthetic rubber produced by the copolymerization of butadiene and acrylonitrile, not in latex form, and not containing additives, rubber processing chemicals, and/or other materials used for further processing beyond the copolymerization process. Nitrile rubber is provided for in subheading 4002.59.00 of the Harmonized Tariff Schedule of the United States (HTS). Imports from Korea are free of duty.

[2] *Federal Register* notices cited in the tabulation are presented in app. A.

[3] The petition alleged LTFV margins ranging between 97 and 145 percent. Commerce recalculated petitioners' estimates of export price and normal value, yielding margins ranging from 84 to 102 percent.

[4] A list of witnesses appearing at the conference is presented in app. B.

[5] Commerce did not conduct administrative reviews because, with one exception, none were requested by interested parties. The one request that Commerce received (in 1997) was subsequently withdrawn.



I-1

## SUMMARY DATA

A summary of data collected in the investigation is presented in appendix C, tables C-1 through C-3. Table C-1 presents data on nitrile rubber that is within the scope of this investigation. Table C-2 presents data on nitrile rubber in latex form, which is outside the scope of the investigation. Table C-3 presents a summation of data in tables C-1 and C-2. Except as noted, U.S. industry data are based on questionnaire responses of four firms that accounted for 100 percent of U.S. production of nitrile rubber during 1998. U.S. imports are based on official Commerce statistics.

## THE SUBJECT PRODUCT

The product that is the subject of this investigation consists of emulsion-polymerized, solid nitrile rubber (nitrile rubber), and includes only small amounts of chemicals or additives used to stabilize the material before it can be further processed. Nitrile rubber is produced, shipped, and imported as an intermediate product, and is further processed into custom "masterbatches" and rubber compounds, which are in turn used to produce gaskets, oil seals, shoe soles, industrial belting, and miscellaneous specialty rubber products.

There are four domestic producers of nitrile rubber: the two petitioners, Goodyear Tire & Rubber Co., Akron, OH; and DSM Copolymer, Inc., Baton Rouge, LA. The four producers primarily produce a compressed bale form of nitrile rubber, although other physical forms of the product include powdered, particulate, and crumb nitrile rubber.

### Physical Characteristics and Uses

The subject nitrile rubber is a synthetic rubber produced beginning with the polymerization of two readily available commodity chemicals, acrylonitrile and butadiene. The reaction produces a milky-white emulsion known as latex nitrile rubber, a product similar in physical properties to natural rubber latex. Solid nitrile rubber is subsequently produced from the latex as a dry, crumb-like material, pressed into bales, and packaged for sale. It is distinguished from other types of nitrile rubber by its relative purity and the fact that it does not contain oils, carbon black, or chemicals or additives.

The majority of shipments of nitrile rubber are in the form of compressed bales. Other physical forms of nitrile rubber exist, including crumb, powdered, and particulate grades. These forms do not compete with mainstream bale-form nitrile rubber. Crumb, powdered, and particulate forms of nitrile rubber are generally used for specialized applications, including coatings and adhesive rubber products.

End users produce finished products containing subject nitrile rubber by heating and mixing the rubber with carbon black or other extenders and fillers, oils, and/or additives to impart resistance to oxidation or degradation, or other types of rubber, and pressing or extruding the compounded mixture (termed a "masterbatch") into desired shapes and forms. Vulcanization, by heating, is used during the final phase of production of rubber goods to "fix" the products so that they will retain their shape, flexibility, and elasticity.

Nitrile rubber possesses the favorable characteristic of being very resistant to petroleum oils, gasoline, diesel, and other fuels. The oil resistance is largely determined by the acrylonitrile content of the nitrile rubber. According to the petitioner, variation in the degree of oil resistance has led to the



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development and marketing of different grades of nitrile rubber. The petitioner also states that grades produced by a particular company may be somewhat different from those produced by another.[6]

According to the International Institute of Synthetic Rubber Producers (IISRP), the amount of acrylonitrile used in the production of the latex can vary widely (from 15 to 51 percent by weight of acrylonitrile), resulting in a great number of grades of nitrile rubber produced that are designed to suit a particular set of specifications in a rubber product. The most common grades of nitrile rubber contain between 28 percent and 40 percent by weight of acrylonitrile; the most common composition of nitrile rubber is 33 percent.[7] Petitioner states that an acrylonitrile content of 28 to 35 percent constitutes a "medium" range, which makes up roughly 65 percent of total production of subject nitrile rubber.[8]

**Manufacturing Facilities and Production Employees**

The production of nitrile rubber has a history dating back to World War II, arising from demand for rubber with oil-resistant properties not available in natural rubber.[9] Nitrile rubber, like other synthetic and natural rubbers, is coagulated from a latex emulsion. The latex emulsion is generally too unstable (without further processing) to be transported, so it is not sold as a means to produce the subject product. There are, however, specialized end uses where thin coatings of rubber are applied using the latex emulsion, such as in carpet backings, paper bindings, and leather processing.[10] Latex nitrile rubber is also experiencing increased demand for use in disposable latex gloves, arising from recent rulings concerning the potential hazards of natural rubber latex.[11]

Latex nitrile rubber is produced by either a "hot" or "cold" polymerization process from a controlled reaction of an emulsion of styrene, butadiene, water, and other chemicals used as emulsifiers, stabilizers, and modifiers in either batch or continuous production. Batch processing is useful for producing a variety of specialized latexes and finished rubber products, while continuous processing is more useful for producing higher volumes of standard grades of material.[12]

The reaction is stopped at a predetermined point through the use of a chemical known as a "short stop." At this point, the emulsion resembles natural rubber latex. The latex can be stabilized and stored at this point if necessary; petitioners state that latex may be stored for about a week.[13] Neither the petitioners nor respondents sell latex nitrile rubber on the open market. Zeon states that it cannot sell its

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[6] Petition, p. 6.

[7] International Institute of Synthetic Rubber Producers, *The Synthetic Rubber Manual*, 14th Edition, January 1999, pp. 70-89; also see "Elastomers, Synthetic (Nitrile Rubber)," *Kirk-Othmer Encyclopedia of Chemical Technology*, 4th Ed., (c. 1993 by John Wiley & Sons, Inc.) vol. 8, p. 1,006.

[8] Petition, p. 9.

[9] Morton, Maurice, *Rubber Technology* (2nd Ed., c. 1973 by Van Nostrand Reinhold Company), pp. 302-321.

[10] Id., p. 321. Other manufacturers that do not produce nitrile rubber itself produce the latex used in those applications. Transcript of public conference (conference transcript), pp. 36-39.

[11] See "Safeskin gets approval for nitrile gloves," Rubber and Plastics News, Jan. 20, 1997, p. 5; also "Innovations likely in glove market," Rubber and Plastics News, Jan. 25, 1999, p. 15.

[12] Petition, app. 15 ("Elastomers, Synthetic," *Kirk-Othmer Encyclopedia of Chemical Technology*, 4th Ed., (c. 1993 by John Wiley & Sons, Inc.), vol. 8, pp. 1,008-1,009.)

[13] Conference transcript, p. 57.



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latex, because the latex is too unstable and would coagulate upon exposure to air and agitation during shipment; also, additional capital investment would be required to market its latex.[14]

When desired, the latex may be blended with other additives and coagulated using a mildly acidic coagulant. As the latex coagulates, particles of solid nitrile rubber begin to form and separate from the water medium. The coagulated rubber is filtered, neutralized and washed, and dried. Prior to shipping the nitrile rubber particles are usually pressed into bales weighing 55 pounds (25 kg) each, covered with plastic shrink wrap, and palleted. Other physical forms of nitrile rubber, including powdered and particulate, are produced from the unbaled crumb nitrile rubber. Zeon states that other chemicals may be used to coat the rubber particles to make them easier to process by their customers.[15] Zeon also states that the powdered or particulate form of nitrile rubber is technically different in its chemical structure from the normal bale form, and has very specialized end uses.[16]

Some of the subject nitrile rubber is produced at what are termed "multi-purpose plants" or "swing plants." At these plants, the same production equipment and employees may be used to produce many different types of subject or nonsubject nitrile rubber, or entirely different types of rubber not subject to this investigation. According to the IISRP, DSM and Goodyear operate multipurpose plants.[17] One of the respondents, Kumho, produces solid nitrile rubber at a multipurpose plant.[18] Petitioner states that all grades of nitrile rubber are produced throughout the world using the same types of production equipment, facilities, and employees.[19] Zeon states that nitrile rubber can be produced on equipment used to produce other rubbers, with the exception of certain pieces of equipment because of potential contamination.[20] Respondents state that Kumho operates a "swing plant," producing both styrene butadiene rubber (SBR) and nitrile rubber, but nitrile rubber is produced on a completely separate line of equipment.[21]

## Interchangeability

The IISRP currently identifies 356 types of solid form nitrile rubber.[22] The physical characteristics of each type of rubber are the result of careful tailoring of subject nitrile rubber to end users' requirements, as well as offering a variety of grades of nitrile rubber that are acceptable for specific applications. Petitioners state that every producer of nitrile rubber can manufacture all of the most commonly available grades, so that products of all companies are interchangeable, and most grades within a range are interchangeable as well.[23] Other, nonsubject rubber types, such as polychloroprene, epichlorohydrin, and hydrogenated nitrile rubber provide characteristics similar to nitrile rubber.

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[14] Conference transcript, pp. 36-38; field visit with Zeon, June 8, 1999.

[15] Conference transcript, pp. 43-44.

[16] Zeon states that additional processing of powdered nitrile rubber induces crosslinking of the rubber polymers, making it unsuitable for most general uses. Conference transcript, p. 58.

[17] Institute of Synthetic Rubber Producers, Inc., *Worldwide Rubber Statistics 1998*, p. 83.

[18] Institute of Synthetic Rubber Producers, Inc., *The Synthetic Rubber Manual*, 14th Ed., p. 67.

[19] Petition, p. 7.

[20] Conference transcript, p. 59.

[21] Id., p. 82.

[22] Institute of Synthetic Rubber Producers, Inc., *The Synthetic Rubber Manual*, 14th Ed., pp. 70-95.

[23] Petition, p. 8; conference transcript, p. 13.



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Alternative synthetic rubbers, however, have a different blend of heat and fuel resistance than does nitrile rubber, making them unsuitable for applications in which nitrile rubber is used to meet specific heat and fuel resistance requirements.[24] Moreover, nitrile rubber with additives is not directly interchangeable with "pure" nitrile rubber, for similar reasons. The additives alter the chemical composition of the product and, in certain cases, alter the physical appearance and texture of the product.[25]

### Customer and Producer Perceptions

Petitioners state that the automotive and light truck industries are the largest users of nitrile rubber products.[26] Petitioners noted that both customers and producers perceive "pure" nitrile rubber and nitrile rubber with additives to be distinctly different products.[27] In general, products will be perceived as interchangeable when they meet equivalent specifications and perform similarly in tests. Zeon asserts that customers and producers perceive nitrile rubber to be unique in comparison to other kinds of synthetic rubbers.

### Channels of Distribution

The subject nitrile rubber is sold directly or through distributors to end users, although direct sales are far more common, particularly for large-volume sales.[28] Petitioners indicate that nitrile rubber is perceived to be an industrial commodity product.[29] Petitioners also state that the channels of distribution of nitrile rubber are the same for both domestic and imported product.[30] Petitioners assert tht the customers for nitrile rubber with additives are often different from those who purchase nitrile rubber that is free of additives.[31]

### Price

According to responses received from Commission questionnaires, prices for nitrile rubber are set based on competition in the open market. In 1996, the unit value of U.S. producers' U.S. shipments of nitrile rubber in the U.S. market was $0.93 per pound. Unit values increased to $0.94 per pound in 1997 and decreased to $0.92 per pound in 1998. Actual transaction prices in each of the years tended to be within a range of prices above or below the averages cited above, depending on the grade of nitrile rubber and the type of transaction (*e.g.*, spot or formula sales contract). More detailed information on prices is presented in Part V of this report.

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[24] Petitioners' postconference brief, p. 4.

[25] Id.

[26] Petition, p. 10.

[27] Petitioners postconference brief, p. 5; questionnaire response of Uniroyal.

[28] Conference transcript, pp. 48-49. In 1998, 96 and 98 percent, respectively, of U.S. producers' and importers' shipments were sold to end users.

[29] Petition, p. 10.

[30] Petition, p. 9.

[31] Petitioners' postconference brief, p. 4.



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Petitioners state that none of the nonsubject rubber types compete with nitrile rubber on the basis of price.[32] As for the various grades of nitrile rubber, petitioners state that there are price differences, although a higher price is associated with a corresponding higher acrylonitrile content.[33] They conclude that the different grades of nitrile rubber, sold at different prices, are traded in distinctly separate markets.[34]

[32] Conference transcript, p. 16-17; petitioners' postconference brief, p. 4.

[33] Petition, p. 10.

[34] Id.

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

## CHANNELS OF DISTRIBUTION

The majority of sales of nitrile rubber in the U.S. market have generally been made directly to end users or custom mixers, which add compounding ingredients and other value-added processing to transform the nitrile rubber into forms for a specific end use. One producer uses distributors to distribute a small proportion of its nitrile rubber.[1]

## SUPPLY AND DEMAND CONSIDERATIONS

### U.S. Supply

The sensitivity of the domestic supply of nitrile rubber to changes in price depends upon such factors as the existence of excess capacity, the levels of inventories in relation to sales, the ease of shifting facilities to the production of other products, and the existence of export markets. These factors suggest that U.S. producers of nitrile rubber have some ability to adjust output in response to changes in the price of nitrile rubber. Supply elasticity is enhanced by some available excess capacity and high inventory levels. Export markets and the ability of producers to manufacture other products on the same machinery also enhances the supply elasticity.

#### Industry Capacity

U.S. producers' capacity to produce nitrile rubber decreased by 7.1 percent during 1996-98 and actual production decreased by 11.1 percent. Capacity utilization, therefore, dropped from 76.1 to 72.8 percent. The industry capacity has decreased since the first quarter of 1999, when Uniroyal closed its domestic facility and moved its production to Mexico.[2]

#### Inventories

The ratio of end-of-period inventories to shipments decreased from *** percent in 1996 to *** percent in 1997 and then increased to *** percent in 1998.

#### Production Alternatives

Some U.S. producers are able to shift their facilities from production of nitrile rubber to other products in response to changing market conditions. Those producers with a continuous production process are able to produce styrene butadiene rubber ("SBR") using the same machinery, equipment, and workers.[3] Producers employing the batch production process can produce nitrile rubber containing

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[1] *** uses distributors for approximately *** percent of its production.

[2] Petition, exhibit 14.

[3] Plants that actually produce both on the same equipment are sometimes called swing plants. Conference transcript, pp. 38-39.



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additives[4] and other specialty products,[5] but the batch production process makes it difficult to produce other products.

### Export Markets

The overall ratio of exports to total shipments increased from 21.5 in 1996 to 23.3 percent in 1997 and decreased to 20.8 percent in 1998. The domestic producers' principal export markets are Europe, Canada, Japan, Latin America, and the Far East.

## U.S. Demand

### Demand Characteristics

The overall demand for nitrile rubber depends upon the demand for a variety of end-use applications. Nitrile rubber is an intermediate product and is used in the production of seals and packings, o-rings and grommets, gaskets, hose, tank linings, print rolls, adhesives and coatings, oil field parts, walk-off mats, and shoe soles. The automobile and truck industry is the biggest consumer of this product. Nitrile rubber is a mature product with little increase in demand. According to petitioners, demand generally increases 1 to 2 percent per year, although apparent U.S. consumption, as compiled from Commission questionnaires, increased by 16.6 percent from 1996 to 1998.

The sensitivity of the overall demand for nitrile rubber to changes in price depends upon the availability of substitute products and the cost of the rubber as an input in final products. Since much of the nitrile rubber marketed in the United States faces little competition from substitutes, price changes are likely to have little overall effect on the demand for nitrile rubber. The relative cost share of nitrile rubber, however, in end-use products varies and the sensitivity of demand to changes in the price of nitrile rubber depends on the end-use applications.

## Substitute Products

Domestic producers report very few substitutable products for nitrile rubber. With nitrile rubber's oil and heat resistant properties, it is more economical than other possible rubber products. One producer reported that chlorinated and fluorinated rubber compete on performance.[6] Importers listed several substitute products: polychloroprene in blends with SBR, epoxidised natural rubber, hydrogenated nitrile rubber, silicone rubbers, epichlorohydrin, NBR/PVC, and ethylene vinyl acetate rubbers. According to petitioners, however, there are no cost-effective substitutes.

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[4] *** produces nitrile rubber containing additives.

[5] Uniroyal produces nitrile rubber products with additives called Royaltuf and Paracril ozo; petitioners' postconference brief, pp. 5, 11.

[6] *** reported these substitutes in response to Commission questionnaires.



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### Cost Share

Nitrile rubber accounts for a varied percentage of the total cost of end-use products. In hoses or tubing, where an extrusion process is used, the amount of nitrile rubber is higher, in the 30-40 percent range. For molded parts, the percentage is smaller, approximately 25 percent. In addition, the end products may have varying amounts of rubber in each part. The quantity of rubber could be very rich in compounds that have lower performance criteria. For example, a product could contain a large amount of carbon black which can lower the percentage cost of rubber in the end-use products.[7]

## SUBSTITUTABILITY ISSUES

The degree of substitution between domestic and imported nitrile rubber depends on many factors. Relative prices are an important factor, as well as the conditions of sale (e.g., price discounts/rebates, lead times between order and delivery dates, payment terms, etc.). Another important factor is the quality of the nitrile rubber. Quality characteristics that differentiate the products are the level of oil and heat resistance.

### Comparisons of Domestic Products and Subject Imports

U.S. producers and importers reported that their products are used interchangeably with Korean imports of nitrile rubber. They reported that products are interchangeable within grades and especially in general purpose applications, but products are not generally interchangeable between grades. Korean imports generally consist of the medium grades and are interchangeable with domestic medium grades of nitrile rubber.

U.S. producers and importers of nitrile rubber reported no difficulties in supplying the end users with products. There were no reported plant closures or prolonged shutdowns due to strikes or equipment failures. The average reported lead time ranged from 3 to 5 days for U.S. producers from 1 to 60 days for importers.

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

Imports from nonsubject countries accounted for a significant percentage of total imports during 1996-98. Imports from other countries decreased in quantity from 98.9 percent of total imports in 1996 to 98.0 percent in 1997 and decreased further to 96.4 percent in 1998, although total imports increased from 1996-98. Other countries that export nitrile rubber to the United States include Argentina, Belgium, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Malaysia, Mexico, the Netherlands, Romania, Spain, Switzerland, Taiwan, Thailand, and the United Kingdom. These countries increased their quantities sold in the United States from 1996 to 1998.[8] Japan is the only country that has decreased exports to the United States.

Producers and importers agree that nitrile rubber products are interchangeable among domestic, Korean, and nonsubject imports within similar grade ranges. Respondents allege that other countries are selling their products for less than the price of Korean products.

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[7] Conference transcript, pp. 50-51.

[8] India, Indonesia, Malaysia, Spain, and the United Kingdom did not export nitrile rubber to the United States in 1996, but increased such exports from 1997 to 1998.



II-3

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

The Commission analyzes a number of factors in making injury determinations (see 19 U.S.C. §§ 1677(7)(B) and 1677(7)(C)). Information on the alleged margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V. Information on the other factors specified is presented in this section and/or Part VI and (except as noted) is based on the questionnaire responses of four firms that accounted for 100 percent of U.S. production of nitrile rubber (as defined by the scope of this investigation) during 1998.[1]

## U.S. PRODUCERS

Uniroyal and Zeon, the two petitioners in this investigation, along with DSM and Goodyear, non-petitioning firms, account for virtually all known domestic production of nitrile rubber. Responding firms, with their plant locations and shares of reported 1998 U.S. production, are shown in the tabulation below:

| Firm | Plant location | Percent of reported production | Position on petition |
|---|---|---|---|
| DSM | Baton Rouge, LA | *** | *** |
| Goodyear | Houston, TX | *** | *** |
| Uniroyal | Painesville, OH | *** | Supports |
| Zeon | Louisville, KY | *** | Supports |
| | | 100.0 | |

Except for Goodyear, all responding firms are wholly owned subsidiaries of other companies. DSM is a subsidiary of DSM N.V., the Netherlands. Uniroyal is a wholly owned subsidiary of Crompton & Knowles, a diversified conglomerate headquartered in Stamford, CT. Zeon is 100-percent owned by Nippon Zeon, Ltd., Tokyo, Japan.[2]

*** and *** reported imports of nitrile rubber from *** and ***, respectively.[3] Neither firm imported nitrile rubber from Korea during the period examined.

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

Data on U.S. firms' production capability, production levels, and capacity utilization for nitrile rubber are presented in table III-1. No responding producer reported any problem in obtaining labor, capital, or raw materials during the period examined.[4]

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[1] Information on nitrile rubber in latex form is presented in app. C, table C-2.

[2] Nippon Zeon was the sole responding foreign producer in the 1988 investigation concerning nitrile rubber from Japan. Since that time, it has shipped minimal quantities of nitrile rubber to the United States.

[3] In addition, ***. Zeon commented that it imports from Taiwan to supplement its product line. Conference transcript, p. 40.

[4] Zeon noted that ***. Field visit with Zeon, June 8, 1999.



III-1

**Table III-1**
**Nitrile rubber: U.S. capacity, production, and capacity utilization, by firms, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

| Firm | Calendar year | | | Jan.-Mar. | |
|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1998 | 1999 |
| | Capacity (*1,000 pounds*) | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Total | 130,478 | 122,691 | 121,212 | 29,960 | 28,740 |
| | Production (*1,000 pounds*) | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Total | 99,267 | 89,241 | 88,280 | 23,257 | 16,743 |
| | Capacity utilization (*percent*) | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Average | 76.1 | 72.7 | 72.8 | 77.6 | 58.3 |

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

Total reported domestic production of nitrile rubber declined from 1996 to 1998, and continued to fall when the interim January-March periods are compared. Production declines over the 3-year period were experienced primarily by ***, with a marked decline demonstrated by *** in January-March 1999 from its January-March 1998 level. Industry-wide capacity also fell during the period examined. Capacity utilization declined only slightly over the 3-year period, but fell sharply in January-March 1999, when compared to the corresponding period of 1998.



III-2

Zeon noted that in March 1999, it entered into an exclusive agreement with DSM to market DSM's production of nitrile rubber. Thus, as of the end of the period examined, DSM functioned as a captive supplier for Zeon. Zeon indicated that ***.[5]

## U.S. PRODUCERS' SHIPMENTS

All four responding producers reported data on their U.S. shipments (both commercial shipments and company transfers) and export shipments of nitrile rubber. These data are presented in table III-2.

Table III-2
Nitrile rubber: U.S. producers' U.S. and export shipments, by firms, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

* * * * * * *

As seen in the table, U.S. commercial shipments declined throughout the period examined, both from 1996 to 1998 and when the interim periods are compared. During the 3-year period, domestic shipment declines were most marked for ***. Value data show a similar pattern. Unit values fluctuated without demonstrating any discernible trend. Export shipments also dropped significantly during the period examined. ***'s exports were priced below their domestic shipments, whereas ***'s were priced above its domestic shipments.

### Captive Consumption by U.S. Producers

Captive consumption of nitrile rubber for the production of downstream products by responding producers amounted to *** percent of the volume of U.S. producers' aggregate U.S. shipments of nitrile rubber in 1996, *** percent in 1997, and *** percent in 1998. Of the four producers, only Goodyear consumed nitrile rubber captively during the 3-year period.

Goodyear captively consumed *** percent of the volume of its U.S. shipments of nitrile rubber in 1996, *** percent in 1997, and *** percent in 1998. Goodyear noted that ***.[6]

## U.S. PRODUCERS' INVENTORIES

Data on end-of-period inventories of nitrile rubber during the period examined, as supplied by all four responding producers, are presented in table III-3. Total inventory levels first declined from 1996 to 1997, then increased in 1998 to a level slightly below that of 1996. Inventories at the end of first-quarter 1999 were markedly higher than at the end of first-quarter 1998. As a ratio to preceding-period U.S. shipments, the 3-year trend was similar, although the 1998 level was 4 percentage points higher than that of 1996.

According to Zeon, ***.[7] No responding firm reported any unusual occurrences having an impact on inventory levels.

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[5] Field visit with Zeon, June 8, 1999.

[6] Conversation with counsel for Goodyear, June 30, 1999.

[7] Field visit with Zeon, June 8, 1999.



III-3

**Table III-3**
**Nitrile rubber: End-of-period inventories of U.S. producers, by firms, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

| Firm | Calendar year | | | Jan.-Mar. | |
|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1998 | 1999 |
| | Quantity (*1,000 pounds*) | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Total | 26,524 | 20,723 | 25,830 | 18,423 | 25,239 |
| | Ratio to U.S. shipments (*percent*) | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Average | 35.2 | 28.4 | 39.2 | 23.0 | 41.6 |

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

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

All producers provided data on the number of production and related workers (PRWs) engaged in the production of nitrile rubber, the total hours worked by such workers, and the wages paid to such workers during the period examined (table III-4). The data show little movement in total employment, but indicate declines in hours worked and wages. Other employment indicators showed no clear pattern. Productivity was markedly higher, and unit labor costs commensurately lower, for *** than for the other three producers.[8]

Uniroyal noted that its Painesville, OH plant will be closed as of June 1999. No other producer reported any plant shutdowns or changes in operations affecting overall employment levels.

[8]***. Phone conversation with ***, June 29, 1999.



III-4

Table III-4
Average number of production and related workers producing nitrile rubber, hours worked,[1] wages paid to such employees, and hourly wages,[2] productivity, and unit labor costs, by firms, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999[3]

| Firm | Calendar year | | | Jan.-Mar. | |
|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1998 | 1999 |
| | Number of PRWs | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Total | 272 | 260 | 266 | 263 | 265 |
| | Hours worked by PRWs (*1,000 hours*) | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Total | 542 | 503 | 489 | 116 | 104 |
| | Wages paid to PRWs (*$1,000*) | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Total | 12,016 | 11,040 | 11,077 | 2,644 | 2,490 |
| | Hourly wages paid to PRWs | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Average | $22.17 | $21.95 | $22.65 | $22.79 | $23.94 |
| | Productivity (*pounds per hour*) | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Average | 183.1 | 177.4 | 180.5 | 200.5 | 161.0 |
| | Unit labor costs (*per 1,000 pounds*) | | | | |
| DSM | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** |
| Zeon | *** | *** | *** | *** | *** |
| Average | $0.12 | $0.12 | $0.13 | $0.11 | $0.15 |

[1] Includes hours worked plus hours of paid leave time.
[2] On the basis of total wages paid.
[3] Firms providing employment data accounted for 100 percent of reported total U.S. shipments in 1998.

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



III-5

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

## U.S. IMPORTERS

In this investigation the Commission sent importers' questionnaires to a total of 22 firms. These comprised all firms alleged in the petition to be importing nitrile rubber into the United States, along with several firms that, based on a review of U.S. Customs Service data, may have imported nitrile rubber during the period examined.[1]

The Commission received usable data on imports of nitrile rubber from nine companies. In addition, four firms reported that they did not import nitrile rubber from any source.[2] Accordingly, eight firms failed to respond to the questionnaire, or submitted data that were unusable because they were not timely submitted. Two of these firms, ***, are believed to be significant importers of the subject merchandise from Korea.

Two of the four U.S. producers of nitrile rubber, Zeon and Uniroyal, reported imports during the period examined.[3] Importers are spread fairly evenly throughout the country, and there is no indication of any particular geographical concentration of imports. Several importers reporting data are subsidiaries of, or related to, larger domestic or foreign companies. All of these firms reported 100 percent ownership by their parent firms. These firms, and their parent companies, are presented in table IV-1.

**Table IV-1**
**Nitrile rubber: Importers and their parent companies**

| Firm | Parent company |
|---|---|
| *** | *** |
| *** | *** |
| *** | *** |
| *** | *** |
| Uniroyal | Crompton & Knowles |
| Zeon | Nippon Zeon Ltd. (Japan) |

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

[1] Nitrile rubber, other than latex, is provided for subheading 4002.59.00 of the HTS. Customs data indicated approximately 50 firms importing under this category. From these firms, the Commission selected those that made significant imports under this category and sent questionnaires to those firms. Imports were considered significant if they amounted to $100,000 or more in any calendar year. The Commission also sent importers' questionnaires to the four firms that received a producer's questionnaire.

[2] One additional firm could not be reached with a questionnaire.

[3] Zeon reported imports primarily from Taiwan, whereas Uniroyal reported substantial quantities of imports from Mexico. In 1998, imports by Zeon were ***, valued at $***, and representing *** percent of its U.S. production, by volume. For its part, 1998 imports by Uniroyal from Mexico were *** pounds, valued at $***, and representing *** percent of its U.S. production, by volume.



IV-1

## U.S. IMPORTS

As noted in the preceding section, imports of nitrile rubber are provided for under HTS subheading 4002.59.00. Because this HTS subheading is virtually identical to the scope of these investigations, data in this section regarding the quantity and value of U.S. imports of nitrile rubber are based on Commerce statistics.[4] Data based on responses to Commission questionnaires are presented in appendix D.

Imports of nitrile rubber from Korea showed a steady increase during the period examined, more than doubling in quantity each year between 1996 and 1998 (table IV-2). In value terms, such imports also increased overall during the period, exhibiting a similar pattern. When the interim periods are compared, increases were very sharp, exceeding fivefold for both quantity and value. Unit values declined throughout the period examined, but only marginally when the January-March periods are compared.

**Table IV-2**
**Nitrile rubber: U.S. imports, by sources, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

| Source | Calendar year | | | Jan.-Mar. | |
|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1998 | 1999 |
| | Quantity (*1,000 pounds*) | | | | |
| Korea | 616 | 1,481 | 3,168 | 265 | 1,624 |
| All others | 55,331 | 73,675 | 84,032 | 22,121 | 25,535 |
| Total | 55,947 | 75,156 | 87,200 | 22,387 | 27,158 |
| | Value (*$1,000*) | | | | |
| Korea | 433 | 928 | 1,811 | 154 | 927 |
| All others | 46,007 | 57,182 | 62,011 | 16,663 | 17,899 |
| Total | 46,440 | 58,110 | 63,822 | 16,817 | 18,826 |
| | Unit value (*per pound*) | | | | |
| Korea | $0.70 | $0.63 | $0.57 | $0.58 | $0.57 |
| All others | 0.83 | 0.78 | 0.74 | 0.75 | 0.70 |
| Average | 0.83 | 0.77 | 0.73 | 0.75 | 0.69 |

**Source: Compiled from official Commerce statistics.**

[4] Nitrile rubber with additives may also be imported under this HTS subheading, but imports of this product are believed to be minimal. Conversation with counsel for Zeon, Jun. 29, 1999.



IV-2

## Negligibility

Under the Act, imports from a subject country that are less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition are to be deemed negligible.[5] Based on official statistics, imports for consumption of nitrile rubber from Korea during the period May 1, 1998 through April 30, 1999, which amounted to 4.94 million pounds, were 5.39 percent of total imports for consumption amounting to 91.6 million pounds.

## MARKET PENETRATION OF IMPORTS

Shares of apparent U.S. consumption are presented in table IV-3. In 1998, U.S. producers held 43.1 percent, by quantity, of the U.S. market for nitrile rubber, a 14.4-percentage point drop from the 57.4 percent share held in 1996. U.S. producer market share declined further in first quarter 1999, when compared to first quarter 1998. Market share held by imports from Korea rose from less than 1 percent, in terms of quantity, in 1996 to 2.1 percent in 1998. Korean market share in interim 1999, however, was 3.8 percent. Market share of nonsubject imports also increased substantially, increasing from 42.1 percent in 1996 to 54.9 percent in 1998.

[5] 19 U.S.C. § 1677(24)(A)(i).



IV-3

**Table IV-3**
**Nitrile rubber: Apparent U.S. consumption and market shares, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

| Item | Calendar year | | | Jan.-Mar. | |
|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1998 | 1999 |
| | Quantity (*1,000 pounds*) | | | | |
| Apparent consumption | 131,354 | 148,112 | 153,132 | 42,455 | 42,320 |
| | Value (*$1,000*) | | | | |
| Apparent consumption | 116,779 | 126,700 | 124,423 | 34,946 | 32,593 |
| | Share of quantity (*percent*) | | | | |
| U.S. producers' shipments | 57.4 | 49.3 | 43.1 | 47.3 | 35.8 |
| Imports from-- | | | | | |
| Korea | 0.5 | 1.0 | 2.1 | 0.6 | 3.8 |
| All others | 42.1 | 49.7 | 54.9 | 52.1 | 60.3 |
| Total imports | 42.6 | 50.7 | 56.9 | 52.7 | 64.2 |
| | Share of value (*percent*) | | | | |
| U.S. producers' shipments | 60.2 | 54.1 | 48.7 | 51.9 | 42.2 |
| Imports from-- | | | | | |
| Korea | 0.4 | 0.7 | 1.5 | 0.4 | 2.8 |
| All others | 39.4 | 45.1 | 49.8 | 47.7 | 54.9 |
| Total imports | 39.8 | 45.9 | 51.3 | 48.1 | 57.8 |

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



IV-4

# PART V: PRICING AND RELATED INFORMATION

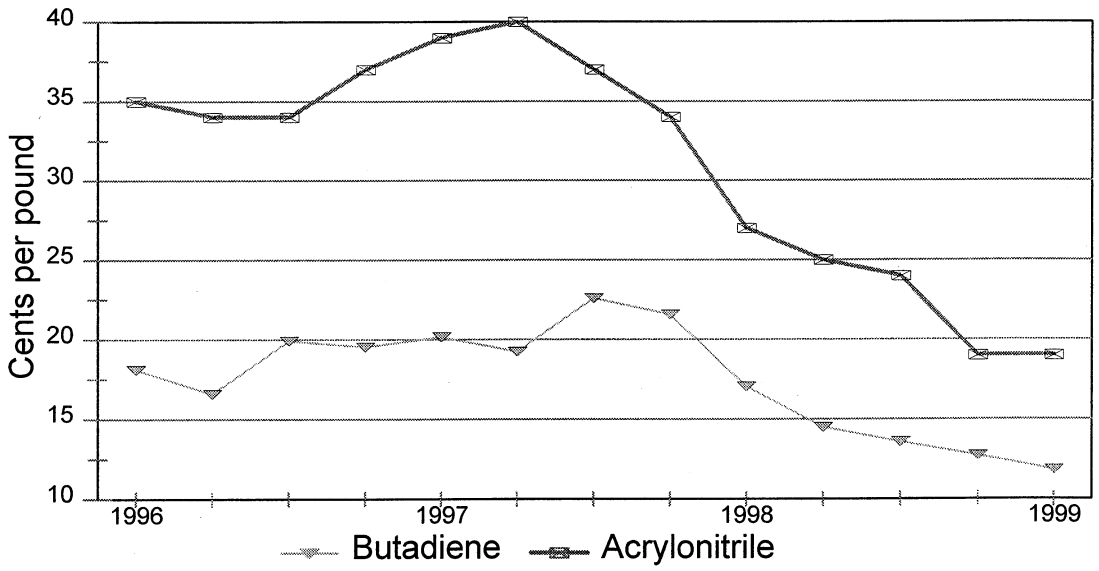
## FACTORS AFFECTING PRICES

### Raw Material Costs

The two main inputs into the production of nitrile rubber are acrylonitrile and butadiene. There are other material inputs used in the production process, but the quantities used are much smaller in comparison.[1] The raw material inputs (acrylonitrile, butadiene and the other "salt and pepper" inputs) account for approximately 45 to 50 percent on average, of production costs.[2] These percentages have fallen during January 1996-March 1999 as input prices have fallen.

Figure V-1 shows the price trends in the spot market for acrylonitrile and butadiene from first quarter 1996 through first quarter 1999. Acrylonitrile and butadiene are petroleum-based products whose prices depend on the price of oil. Acrylonitrile was priced at $0.35 per pound (spot) in the first quarter of 1996 and dropped to $0.19 per pound in the first quarter of 1999. Butadiene has fallen from approximately $0.18 to $0.12 per pound over the same period.[3] Contract prices have followed similar trends.

Figure V-1
Nitrile rubber: Raw material prices, Jan.-Mar. 1996-Jan.-Mar. 1999




Source: *Chemical Week,* Jan. 1996-Mar. 1999. Data taken from weekly issues and averaged into quarterly data.

[1] These materials are referred to as "salt and pepper" ingredients; conference transcript, p. 11.

[2] ***'s raw materials as a percentage of cost of goods sold are approximately 70 percent.

[3] Data extracted from *Chemical Week,* Jan. 1996-Mar. 1999.

## U.S. Inland Transportation Costs

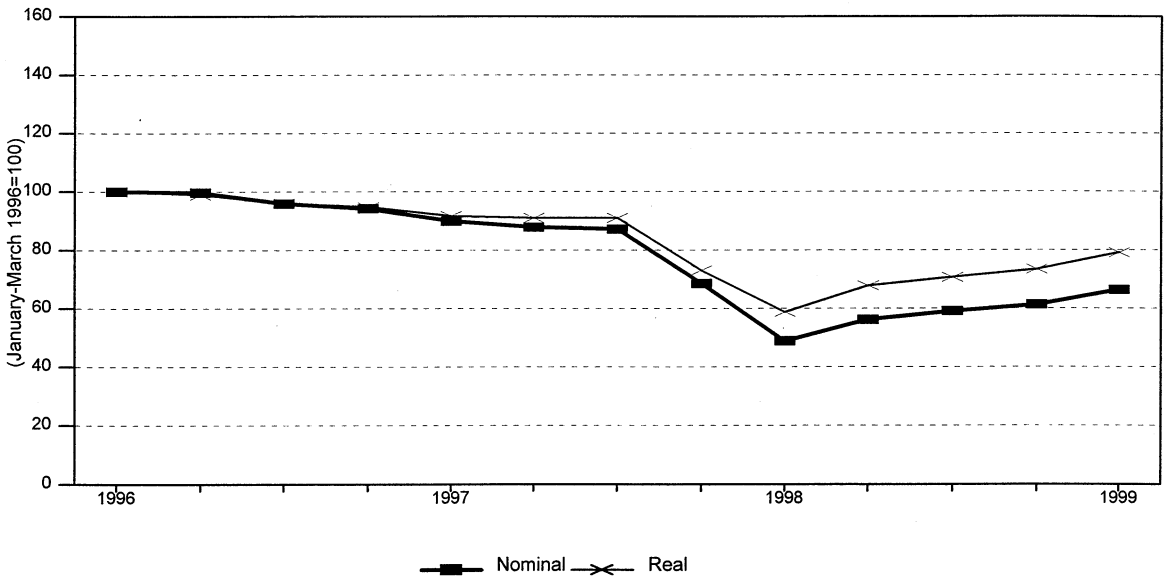
Producers and importers were asked to estimate the percentage of their total shipments that were made within specified distances. U.S. producers reported that between 1 and 10 percent of their nitrile rubber shipments were within 100 miles of their storage or production facility and that 75 to 90 percent of their shipments were within 1,000 miles. Importers had more varied responses. They reported that between 5 and 90 percent of their shipments were made within 100 miles and between 70 and 100 percent were made within 1,000 miles.

Inland transportation costs for delivery of nitrile rubber within the United States vary widely. U.S. producers reported that these costs ranged from 4 to 6 percent of the delivered price. For importers, reported values ranged from 5 to 10 percent.

## Exchange Rates

Quarterly nominal and real exchange rate data for Korea during first quarter 1996 through first quarter 1999 are presented in figure V-2. The Korean won generally depreciated, in both nominal and real terms, relative to the dollar.

Figure V-2
Exchange rates: Indices of the nominal and real exchange rates of the Korean won in relation to the U.S. dollar, by quarters, Jan. 1996-Mar. 1999




Source: IMF, International Financial Statistics, Apr. 1999.



V-2

## PRICING PRACTICES

### Pricing Methods

Prices are generally determined through a negotiation process between buyer and seller. Suppliers may offer discounts for large volumes. Prices are also based on end-use applications, raw material content, and competitive pricing. Two of four domestic producers and one importer reported using price lists. One domestic producer, ***, starts negotiations with a price list, with about half of their sales coming from the price list. One importer, ***, also uses a price list for warehouse shipments.[4]

Prices for nitrile rubber vary with the acrylonitrile content and Mooney viscosity of each grade of nitrile rubber produced. The higher the weight proportion of acrylonitrile compounds, the higher the production costs. For higher-grade products, price differences reflect these production cost differences.[5]

Two U.S. producers of nitrile rubber report that they base a majority of their sales on informal contracts, which typically last between six months and one year. Prices and quantities are generally identified, but not fixed. In most cases, a meet-or-release provision is contained in the contracts. Quantity requirements are generally one full skid, with a 25- to 30-percent penalty for sub-minimum shipments. The other two producers reported that a majority of their sales are on a spot basis. Three importers reported that 100 percent of their sales are on a spot basis. One importer, ***, bases 60 percent of its sales on contracts and 40 percent on spot sales. A typical *** contract is quarterly and is renegotiated as needed. Prices and quantities are fixed and a meet-or-release provision is not contained in the contract. *** has a 20-percent penalty for sub-minimum shipments.

### Sales Terms and Discounts

All domestic producers give annual volume discounts. These discounts can come from rebates at specific volume targets or assumed volume targets. *** gives a lower price for full truckloads and will also give discounts in order to be competitive.[6] Three importers reported giving annual volume discounts; three others reported giving none.

U.S. producers quote their prices differently. Two quote f.o.b. warehouse, one quotes delivered, and another quotes f.o.b. plant. Three importers quote f.o.b. warehouse and one quotes f.o.b. port of entry. In general, producers and importers require payment to be made within 30 days.

## PRICE DATA

U.S. producers and importers were asked to provide quarterly quantity and value data on an f.o.b. basis for January 1996-March 1999 for their shipments of each of three product categories. The product categories are as follows:

***Product 1*.-- Nitrile rubber (NBR) with an acrylonitrile content of 28 percent or greater to and including 31 percent, and a Mooney viscosity of 30 or above**

---

[4] *** response to Commission's importer questionnaire.

[5] Petition, p. 10.

[6] *** also gives discounts in order to be competitive.

***Product 2***.-- **Nitrile rubber (NBR) with an acrylonitrile content greater than 31 percent to and including 35 percent, and a Mooney viscosity of 30 or above**

***Product 3***.-- **Nitrile rubber (NBR) with an acrylonitrile content greater than 35 percent to and including 42 percent, and a Mooney viscosity of 30 or above**

Four U.S. producers and four importers provided usable pricing data for sales of the requested products, although not necessarily for all products or all quarters.

## Price Trends

Tables V-1 to V-3 and figures V-3 to V-4 show the weighted-average prices and margins of underselling/(overselling) for U.S.-produced and imported nitrile rubber from the first quarter of 1996 through the first quarter of 1999. Weighted-average prices reported by U.S. producers of nitrile rubber showed relative price stability during the period January 1996 through March 1999. Most of the Korean imports fall in the product 2 category. Product 2 is considered a commodity type product that is used in general purpose applications.[7] The Korean imports consistently undersold domestic products in all but one quarter.

Table V-1
Product 1: Weighted-average f.o.b. prices and quantities reported by U.S. producers and importers and margins of underselling, by quarters, Jan. 1996-Mar. 1999

* * * * * * *

Table V-2
Product 2: Weighted-average f.o.b. prices and quantities reported by U.S. producers and importers and margins of underselling, by quarters, Jan. 1996-Mar. 1999

* * * * * * *

Table V-3
Product 3: Weighted-average f.o.b. prices and quantities reported by U.S. producers and importers and margins of underselling/(overselling), by quarters, Jan. 1996-Mar. 1999

* * * * * * *

[7] There are two types of production processes, batch and continuous. The continuous production process can make larger production runs of the commodity type products more efficiently, such as product 2. Petitioners agreed that products are more costly to produce using the batch process; conference transcript, p. 49. ***'s plants are batch production plants. ***'s plants are continuous. The combined average unit values of nitrile rubber for *** are substantially lower than those of the batch producers ***. Korean production processes are continuous.

Figure V-3
Nitrile rubber: Weighted-average prices for nitrile rubber products 1 and 2, by products and by quarters, Jan. 1996-Mar. 1999

* * * * * * *

Figure V-4
Nitrile rubber: Weighted-average prices for nitrile rubber product 3, by quarters, Jan. 1996-Mar. 1999

* * * * * * *

## LOST SALES AND LOST REVENUES

Four U.S. producers indicated that they lost sales and/or reduced prices due to competition from nitrile rubber imports from Korea. Total reported lost sales and lost revenues are shown in the following tabulation.

* * * * * * *

The Commission sent a brief survey to each of the purchasers named in the allegations requesting their comments. The specifics of the allegations to which purchasers responded are shown in tables V-4 and V-5. Where available, additional purchaser comments based on the allegations are presented following the tables.

Table V-4
Nitrile rubber: U.S. producers' lost sale allegations

* * * * * * *

Table V-5
Nitrile rubber: U.S. producers' lost revenue allegations

* * * * * * *

### Lost Sale Allegations

*** confirmed the allegation.[8] *** disagreed with the allegation. *** stated that he never received a quote for Korean products at $*** per pound. He did receive quotes for Italian, Brazilian, and Mexican products that ranged from $*** to $*** per pound however. In 1997, *** bought *** products at $*** delivered. In 1998 the company bought *** products at $*** per pound and it also bought *** products at $*** per pound f.o.b. Houston. In 1997, the company bought approximately *** pounds of nitrile from *** at $*** per pound delivered. In 1998, it bought *** pounds of nitrile from *** at $*** per pound delivered, and it also bought *** pounds at $*** per pound delivered. *** stated that *** told

[8] Fax from ***, June 6, 1999.



V-5

him they were in a sold-out position on nitrile for most of 1997 and 1998. In general, *** makes large purchases between September and January, which is the busy season for ***.[9]

*** partly agreed with the allegation. It disagreed with the quantity alleged in the lost sale. Since October 1998, the firm has purchased *** pounds from a domestic supplier at $*** and it has purchased *** pounds of Korean nitrile. It buys the Korean nitrile because of its lower price.[10]

*** disagreed with the allegation. To the best of the company's knowledge, it did not receive a quote for $*** per pound from any Korean representative in 1997. It did, however, purchase *** pounds of Korean material in 1993. The material was consumed in its operation during 1993-95. It has not purchased Korean material since that time.[11]

**Lost Revenue Allegations**

*** did not want to comment on the allegation.[12] *** confirmed the allegation.[13] *** disagreed with the allegations. According to ***, the accepted quote for the domestic product was for a special order. The price was uncorrelated to any import price.[14] *** confirmed the allegations.[15, 16] *** did not want to comment at this time.[17]

*** disagreed with the allegations. The firm stated that it rejected a quote of $*** per pound from *** in March 1998 and accepted a quote of $*** per pound in October 1998. The firm did receive a quote for Korean products at $*** per pound in March 1998. It stated further that they generally purchase *** pounds annually, with *** coming from Korea and the balance from ***.[18]

*** disagreed with the allegation, stating that it starts negotiations at a low position as is customary at the beginning of a negotiation. The firm did not alter its position on available volume for *** in the spring of 1998. The firm had allocated one-third of its requirements at its *** plant. The remaining two-thirds were with *** at that plant. In January 1999, due to production problems in Korea, the firm made available to *** up to one half its annual volume at its *** plant. *** lowered its prices for increased volumes and also gained market share within *** over that of ***, who was offering a lower price. The firm did this to assure supply for the coming year.[19]

*** disagreed with the allegation. To the best of the company's knowledge, it did not receive a quote for $*** per pound from any Korean representative in 1997. It did, however, purchase *** pounds of Korean material in 1993. The material was consumed in its operation during 1993-95. It has not purchased Korean material since this time.[20]

---

[9] Fax from ***, June 21, 1999, and follow-up phone conversation on the same day.

[10] ***, ***'s general counsel, submitted a letter, dated June 17, 1999 in response to the allegation. This was also clarified with a phone conversation to *** on the same day.

[11] Fax from ***, June 17, 1999, along with phone conversation on the same day.

[12] Phone conversation with ***, June 21, 1999.

[13] Fax and phone conversation with ***, June 8, 1999.

[14] Phone conversation with ***, June 24, 1999.

[15] Fax from ***, June 10, 1999.

[16] Fax from ***, June 11, 1999.

[17] Phone conversation with ***, June 21, 1999.

[18] Fax from ***, June 14, 1999.

[19] Letter from ***, June 14, 1999.

[20] Fax from ***, June 17, 1999, along with phone conversation on the same day.



V-6

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

## BACKGROUND

Four producers (DSM, Goodyear, Uniroyal, and Zeon), accounting for all U.S. production of nitrile rubber in 1998, supplied financial data on their nitrile rubber operations.

Uniroyal's nitrile rubber plant is in Painesville, OH and it is closing the plant in June 1999. Uniroyal will be a partner in a joint venture to build the world's largest nitrile rubber plant in Mexico. Uniroyal Chemical, the parent company, was acquired by Crompton & Knowles in 1996 and became a wholly owned subsidiary. Goodyear produces nitrile rubber at its Houston, TX plant. Zeon (formerly B.F. Goodrich) produces nitrile rubber at its Louisville, KY plant. DSM, which produces nitrile rubber at its Baton Rouge, LA plant, sold its nitrile rubber business to Zeon effective March 22, 1999. A press release by Zeon stated the following:

> "Zeon Chemicals L.P. announced today that it has completed its previously announced acquisition of DSM Copolymer's Nysyn NBR business. The official conversion will commence on March 22 and will include business assets, such as customer lists, product technology, contractual arrangements, and trademark licensing. This transaction closed earlier than expected due to the cooperation of both companies and the timeliness of required government approvals.
>
> Under the terms of the contract, Zeon has the exclusive right to purchase NBR products from DSM Copolymer. The manufacture of these products will continue to take place in the DSM Copolymer facility. Zeon is now responsible for worldwide marketing and sales of these products as well as for customer service and technical service.
>
> According to William Niederst, President and CEO of Zeon Chemicals L.P., "The addition of the DSM Copolymer NBR product lines to the Zeon family will substantially strengthen Zeon's market presence and will greatly complement our existing business." Customers will benefit from a consolidated supplier base and will continue to be provided with first class customer service and technical service."[1]

## OPERATIONS ON NITRILE RUBBER

The results of operations of the U.S. producers of nitrile rubber are presented in table VI-1.[2] ***.

* * * * * * *

[1] Zeon Chemicals L.P. press release, Mar. 19, 1999.
[2] ***.



VI-1

**Table VI-1**
**Results of operations of U.S. producers in the production of nitrile rubber, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

| Item | | | | Jan.-Mar. | |
|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1998 | 1999 |
| | Quantity (*1,000 pounds*) | | | | |
| Trade sales | *** | *** | *** | *** | *** |
| Company transfers | *** | *** | *** | *** | *** |
| Total sales | 96,064 | 95,097 | 83,173 | 25,556 | 17,331 |
| | Value (*$1,000*) | | | | |
| Trade sales | *** | *** | *** | *** | *** |
| Company transfers | *** | *** | *** | *** | *** |
| Total sales | 85,195 | 84,793 | 72,834 | 21,845 | 15,282 |
| Cost of goods sold | 70,313 | 72,517 | 59,046 | 17,870 | 11,644 |
| Gross profit | 14,882 | 12,276 | 13,788 | 3,975 | 3,638 |
| SG&A expenses | 8,201 | 8,264 | 8,919 | 2,187 | 2,023 |
| Operating income or (loss) | 6,681 | 4,012 | 4,869 | 1,788 | 1,615 |
| Interest expense | 1,444 | 1,104 | 1,004 | 346 | 301 |
| Other expense | 1,959 | 1,799 | 1,741 | 360 | 393 |
| Other income items | 108 | 92 | 98 | 23 | 131 |
| Net income or (loss) | 3,386 | 1,201 | 2,222 | 1,105 | 1,052 |
| Depreciation/amortization | 2,725 | 2,437 | 2,814 | 503 | 838 |
| Cash flow | 6,111 | 3,638 | 5,036 | 1,608 | 1,890 |
| | Ratio to net sales (*percent*) | | | | |
| Cost of goods sold | 82.5 | 85.5 | 81.1 | 81.8 | 76.2 |
| Gross profit | 17.5 | 14.5 | 18.9 | 18.2 | 23.8 |
| SG&A expenses | 9.6 | 9.7 | 12.2 | 10.0 | 13.2 |
| Operating income or (loss) | 7.8 | 4.7 | 6.7 | 8.2 | 10.6 |
| Net income or (loss) | 4.0 | 1.4 | 3.1 | 5.1 | 6.9 |
| | Number of firms reporting | | | | |
| Operating losses | 0 | 1 | 1 | 1 | 0 |
| Data | 4 | 4 | 4 | 4 | 4 |

Note.--Fiscal years for DSM, Goodyear, and Zeon end Dec. 31. The fiscal year for Uniroyal ends the last Saturday in December.

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



VI-2

The results of operations, by firm, are presented in table VI-2. As shown in the table, ***.

Table VI-2
Results of operations of U.S. producers in the production of nitrile rubber, by firms, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

* * * * * * *

***. Referring to the DSM and Zeon relationship, the President of DSM discussed the efficiency of its plant as follows:

> "The transaction will allow DSM Copolymer to focus on its manufacturing core competency in their highly efficient, multi-purpose plant, while leveraging Zeon's strength in sales and service."[3]

***. Both domestic volume and export volume declined sharply between 1997 and 1998 and between the two interim periods. Domestic trade unit sales values were equal in 1996 and 1998, at a level slightly below that of 1997. Export unit sales values were considerably lower than the domestic unit values.

Uniroyal discussed its joint venture in Mexico and the closing of its Painesville, OH plant in its 10K public report for the year ending December 31, 1998. It indicated that there was a relationship between its new joint venture and the closing of the Painesville, OH plant, as follows:

> "In November 1998, the Company announced the formation of a joint venture with GIRSA, a subsidiary of DESC, S.A. de C.V. to produce nitrile rubber products in Mexico. The joint venture will result in the closure of the Company's existing nitrile rubber facility in Painesville, Ohio. In connection with the facility closure the Company incurred a charge of $33.6 million."[4]

As discussed in Part V of this report there was a sharp decline in raw material costs (butadiene and acrylonitrile) between 1996 and interim 1999. The aggregate unit raw material costs (included in the cost of goods sold in table VI-2) declined from $0.38 per pound in 1996 to $0.30 per pound in interim 1999. Over the same period direct labor costs increased from $0.16 per pound to $0.17 per pound and other factory costs increased from $0.19 per pound to $0.20 per pound.

A variance analysis showing the effects of prices and volume on the producers' net sales of nitrile rubber and of costs and volume on their total costs is shown in table VI-3. Because of the product mix and the lower unit values of exports, the variance analysis may not be meaningful for this investigation.

---

[3] Zeon Chemicals L.P. press release, Mar. 19, 1999, p. 3. Statement by Larry Powell, President and CEO of DSM Copolymer.

[4] Uniroyal Chemical 10K report for the year ending Dec. 27, 1998, p. 22. ***.



VI-3

**Table VI-3**
**Variance analysis for nitrile rubber operations, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1998**

| Item | 1996-98 | 1996-97 | 1997-98 | Jan.-Mar. 1998-99 |
|---|---|---|---|---|
| | Value (*$1,000*) | | | |
| Trade sales: | | | | |
| Price variance | *** | *** | *** | *** |
| Volume variance | *** | *** | *** | *** |
| Total trade sales variance | *** | *** | *** | *** |
| Company Transfers: | | | | |
| Price variance | *** | *** | *** | *** |
| Volume variance | *** | *** | *** | *** |
| Total transfer variance | *** | *** | *** | *** |
| Total net sales: | | | | |
| Price variance | (929) | 455 | (1,327) | 468 |
| Volume variance | (11,432) | (857) | (10,632) | (7,031) |
| Total net sales variance | (12,361) | (402) | (11,959) | (6,563) |
| Cost of sales: | | | | |
| Cost variance | 1,832 | (2,911) | 4,378 | 475 |
| Volume variance | 9,435 | 707 | 9,093 | 5,751 |
| Total cost variance | 11,267 | (2,204) | 13,471 | 6,226 |
| Gross profit variance | (1,094) | (2,606) | 1,512 | (337) |
| SG&A expenses: | | | | |
| Expense variance | (1,818) | (145) | (1,691) | (540) |
| Volume variance | 1,100 | 82 | 1,036 | 704 |
| Total SG&A variance | (718) | (63) | (655) | 164 |
| Operating income variance | (1,812) | (2,669) | 857 | (173) |
| Summarized as: | | | | |
| Price variance | (929) | 455 | (1,327) | 468 |
| Net cost/expense variance | 14 | (3,057) | 2,687 | (65) |
| Net volume variance | (896) | (67) | (503) | (575) |

Note: Unfavorable variances are shown in parentheses; all others are favorable.

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



VI-4

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

The value of fixed assets (property, plant, and equipment), capital expenditures, and research and development expenses for nitrile rubber are shown in table VI-4.

Table VI-4
Value of assets, capital expenditures, and research and development expenses of U.S. producers of nitrile rubber, fiscal years 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

* * * * * * *

## CAPITAL AND INVESTMENT

The Commission requested the producers to describe any actual or potential negative effects of imports of nitrile rubber from Korea on their growth, investment, ability to raise capital, and/or their development efforts (including efforts to develop a derivative or more advanced version of the product). Their responses are shown in appendix E.



VI-5

# PART VII: THREAT CONSIDERATIONS

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

## THE INDUSTRY IN KOREA

The Commission received information from the two Korean firms that are believed to account for all of the production of nitrile rubber in that country: Hyundai Petrochemical Co., Ltd. (Hyundai), and Korea Kumho Petrochemical (Kumho). Inasmuch as both firms were represented by counsel, the Commission requested counsel to provide data on the industry's capacity, production, shipments, and inventories of nitrile rubber. The data obtained are presented in table VII-1.

As seen from the table, Korean production of nitrile rubber grew steadily from 1996 to 1998, and more strongly in January-March 1999, when compared to the corresponding period of 1998. Such production is expected to continue its increase in calendar years 1999 and 2000. Capacity remained constant over the period examined, resulting in trends in capacity utilization that were identical to those in production. Capacity utilization was low during 1996-98, but is predicted to rise to more than *** percent in 1999 and 2000. Shipments to the home market fluctuated over the 3-year period, while exports increased steadily; both are expected to be substantially higher in calendar years 1999 and 2000. Exports to the United States were consistently smaller than exports to markets other than the United States throughout the period examined.

Table VII-1
Nitrile rubber: Korean capacity, production, inventories, capacity utilization, and shipments, 1996-98, Jan-Mar. 1998, Jan-Mar. 1999, and projected 1999 and 2000

* * * * * * *

Kumho was *** of the two producers of nitrile rubber in Korea during 1998. Its capacity and production accounted for *** and *** percent of total Korean capacity and production, respectively, during 1998. Kumho is also the ***. Nitrile rubber accounts for slightly less than *** percent of Kumho's total sales, and approximately *** percent of Hyundai's sales.

Both Kumho and Hyundai produce styrene-butadiene rubber (SBR) on the same equipment and machinery used for production of nitrile rubber. Further, the firms reported that their nitrile rubber is subject to an antidumping finding in India, which became effective in July 1997.



VII-1

## U.S. INVENTORIES OF KOREAN NITRILE RUBBER

Several U.S. importers of the subject product from Korea reported keeping inventories of nitrile rubber in the United States during the period examined. These U.S. importers' inventories of Korean nitrile rubber that were held in the United States are reported in table VII-2.

**Table VII-2**
**Nitrile rubber: U.S. importers' end-of-period inventories of imports from Korea, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

| Item | Calendar year | | | Jan.-Mar. | |
|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1998 | 1999 |
| End-of-period inventories (*1,000 pounds*) | *** | 1,220 | 1,292 | *** | *** |
| Ratio to imports (*percent*) | *** | 39.6 | 28.3 | *** | *** |
| Ratio to U.S. shipments of imports (*percent*) | *** | 57.6 | 28.7 | *** | *** |
| **Source: Compiled from data submitted in response to Commission questionnaires.** | | | | | |

End-of-period inventories held by U.S. importers increased overall from *** in 1996 to 1.3 million pounds in 1998. The ratio of inventories to imports fluctuated very slightly upward during the 3-year period, while the ratio of inventories to U.S. shipments of such imports also fluctuated, but fell overall.

In its questionnaire the Commission requested importers to list any expected deliveries of nitrile rubber from Korea after March 31, 1999. Only two importers, *** and ***, reported such deliveries, estimated at *** pounds and *** pounds, respectively.[5]

[5] Phone conversation with ***.



VII-2

# APPENDIX A

## *FEDERAL REGISTER* NOTICES



A-1

A-2

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731-TA-827 (Preliminary)]**

### Nitrile Rubber From Korea

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

**ACTION:** Institution of antidumping investigation and scheduling of a preliminary phase investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-827 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that 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 from Korea of acrylonitrile-butadiene rubber (nitrile rubber), provided for in subheading 4002.59.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by July 12, 1999. The Commission's views are due at the Department of Commerce within five business days thereafter, or by July 19, 1999.

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

**EFFECTIVE DATE:** May 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Seiger (202-205-3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

### Background

This investigation is being instituted in response to a petition filed on May 27, 1999, by Zeon Chemicals, L.P., Louisville, KY, and Uniroyal Chemical Company, Inc., Middlebury, CT.

### Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

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

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven 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.

### Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 17, 1999, at the U.S. International Trade Commission Building, 500 E Street S.W., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202-205-3183) not later than June 15, 1999, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

### Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 22, 1999, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the

public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 28, 1999.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 99-14202 Filed 6-3-99; 8:45 am]

**BILLING CODE 7020-02-P**



A-4

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-840]

## Initiation of Antidumping Duty Investigation: Acrylonitrile Butadiene Rubber From the Republic of Korea

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

**EFFECTIVE DATE:** June 23, 1999.

**FOR FURTHER INFORMATION CONTACT:** Marian Wells, Annika O'Hara, or Ryan Langan, Office One, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-6309, 482-3798, and 482-1279, respectively.

### Initiation of Investigation

*The Applicable Statute and Regulations*

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

*The Petition*

On May 27, 1999, the Department of Commerce ("the Department") received a petition filed in proper form by Zeon Chemicals L.P. and Uniroyal Chemical Company, Inc., hereinafter collectively referred to as "the petitioners."

In accordance with section 732(b) of the Act, the petitioners allege that imports of acrylonitrile butadiene rubber from the Republic of Korea ("Korea") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are both materially injuring and threatening material injury to an industry in the United States.

The Department finds that the petitioners filed this petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and because the petitioners have demonstrated that they represent, at a minimum, the required proportion of the United States industry (*see* "Determination of Industry Support for the Petition" section, below).

*Scope of the Investigation*

The product covered by this investigation is commonly referred to as acrylonitrile butadiene rubber or nitrile rubber ("NBR"). NBR is a synthetic rubber produced by the copolymerization of butadiene and acrylonitrile. NBR is sold in bale, slab, crumb, powder and latex form. NBR in the latex form is excluded from the scope of this investigation. Also excluded from the scope of this investigation is NBR containing additives, NBR containing rubber processing chemicals, and NBR containing other materials used for further processing beyond the copolymerization process. The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 4002.59.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the scope of the investigation with the petitioners to ensure that the scope language accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to our regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of its preliminary determination.

*Determination of Industry Support for the Petition*

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as "the producers as a whole of a domestic like product." Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1] Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the analysis of the domestic like product begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product identified in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. Therefore, the Department has adopted this definition of the domestic like product.

In this case, the Department has determined that the petition contains evidence of sufficient industry support. Therefore, polling was not necessary. *See* Initiation Checklist dated June 16, 1999 (the public version is on file in the Central Records Unit of the Department of Commerce, Room B-099). Based on the record evidence, the producers who

[1] See *Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

support the petition account for more than 50 percent of the production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9)(C), (D), (E) or (F) of the Act has expressed opposition on the record to the petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

On June 15, 1999, the Department received a letter from counsel for the potential respondents who argued that the Department should not initiate this investigation unless it determines, through polling, that the petition is supported by the U.S. industry. The basis for this request was the potential respondents' claim that one of the petitioners, Uniroyal, will cease its production of the subject merchandise in the United States in mid-1999 and move all of its production to Mexico. Thereby, Uniroyal would not be a U.S. producer, according to respondents. This fact was argued as outcome determinative that there was no industry support.

The Department has decided to continue to treat Uniroyal as a petitioner and interested party in this investigation. First, Uniroyal was producing the subject merchandise in the United States at the time the petition was filed and, to the best of our knowledge, the planned move to Mexico had not yet taken place at the time of this initiation of the investigation. Second, if we were to exclude Uniroyal, the companies supporting the petition would still exceed the required 25 percent of total production and more than 50 percent of the production produced by that portion of the industry expressing support for, or opposition to, the petition. If we were to accept the argument that Uniroyal no longer is a U.S. producer, we would exclude its production from both the numerator and the denominator in our calculation of industry support. Thus, it would not change industry support substantially and the Department's determination regarding industry support, mentioned above, would stand.

*Export Price and Normal Value*

The following is a description of the allegation of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioners identified Korea Kumho Petrochemical ("Kumho") and Hyundai Petrochemical Co., Ltd. ("Hyundai") as producers and exporters of NBR to the United States. According to the petitioners, Korean producers sold NBR to unaffiliated imports/distributors in the United States and, therefore, U.S. price is calculated using the export price ("EP") methodology.

For their EP calculation, the petitioners have used multiple offers for sale of the subject merchandise by unaffiliated U.S. importer/distributors to unaffiliated purchasers in the United States between March 1998 and February 1999. In order to approximate the price paid by the U.S. importers/distributors to Korean exporters, the petitioners subtracted the importers/distributors' estimated profit, selling, general, and administrative expenses, and imputed credit expenses. The petitioners also deducted movement charges incurred in bringing the merchandise to the United States.

The Department has made several adjustments to the petitioners' calculation of net U.S. price. First, only two of the several U.S. prices presented by the petitioners are supported by source documentation in the petition. Of these two prices, one is from the anticipated period of investigation ("POI") whereas the other price dates to a period prior to the POI. Therefore Department has recalculated the U.S. price based on the price which pertained to the POI and for which the petitioners have submitted supporting documentation. Second, based on our understanding of the distribution process of the Korean product in the United States, the price paid by the unaffiliated importer/distributor in the United States can be computed by simply deducting the importers/distributors' markup (as reported in the petition) from the price charged by the importers/distributors to their unaffiliated customers. Therefore, we deducted this markup rather than the alleged expenses and profit of the importers/distributors. In addition, we subtracted Korean inland freight, ocean freight, U.S. inland freight, U.S. warehousing expenses, U.S. merchandise processing fees, and U.S. harbor maintenance fees. The resulting amount is the net U.S. export price which we have compared to normal value. *See* Initiation Checklist.

On June 16, the petitioners submitted to the Department unit import values based on U.S. import statistics for January through March 1999. As an alternative calculation of U.S. price, we have used the import values adjusted for the movement expenses above.

The petitioners have used quoted sales prices in the home market to calculate normal value. They obtained gross unit prices and multiple offers for sale in May and October of 1998 for products which were either identical or similar to those sold to the United States. The petitioners subtracted from the gross unit home market prices the estimated transportation costs to home market customers. They made adjustments for differences in circumstances of sale in the U.S. and home markets (for credit and technical services), and they applied a commission offset (corresponding to their deduction of importers/distributors' expenses and profits in calculating EP). Finally, they deducted estimated home market packing costs and added estimated U.S. (international) packing costs.

The Department has also made several adjustments to the petitioners' calculation of normal value. First, we converted the home market prices to U.S. dollars using exchange rates contemporaneous with the U.S. sales. We then computed an average home market price. Second, we did not include the commission offset computed by the petitioners because, as discussed above, no commission was reflected in the U.S. price. Following the petitioners' methodology, we made the circumstance-of-sale adjustment and adjusted for packing and freight. *See* Initiation Checklist.

*Fair Value Comparison*

Based on the data provided by the petitioners, there is reason to believe that imports of NBR from Korea are being, or are likely to be, sold at less than fair value. Based on the Department's recalculations of export price and normal value, the comparisons yield dumping margins ranging from 83.81 percent to 102.20 percent.

*Allegation and Evidence of Material Injury and Causation*

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value. The petitioners explained that the industry's injured condition is evident in the declining trends in net operating income, net sales volumes, net selling prices, and U.S., production. The allegation of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. The Department assessed the allegations and

supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist.

*Initiation of Antidumping Investigation*

Based upon our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of NBR from Korea are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determination by November 3, 1999.

*Distribution of Copies of the Petition*

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to representatives of the Government of Korea. We will attempt to provide a copy of the public version of the petition to the Korean exporters named in the petition.

*International Trade Commission Notification*

We have notified the ITC of our initiation of this investigation, as required by section 732(d) of the Act.

*Preliminary Determination by the ITC*

The ITC will determine by July 12, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of NBR from Korea. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i) of the Act.

Dated: June 16, 1999.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 99-15997 Filed 6-22-99; 8:45 am]

BILLING CODE 3510-DS-P



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# APPENDIX B

# CONFERENCE WITNESSES



B-1

B-2

CALENDAR OF THE PUBLIC CONFERENCE

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

Subject: NITRILE RUBBER FROM KOREA

Inv. Nos.: 731-TA-827 (P)

Date and Time: June 17, 1999 - 9:30 a.m.

The conference was held in connection with this investigation in the Main Hearing Room, 500 E Street, S.W., Washington, DC.

**IN SUPPORT OF THE IMPOSITION OF ANTIDUMPING DUTIES:**

Steptoe & Johnson
Washington, DC
*on behalf of*

Zeon Chemicals, Inc.
Uniroyal Chemical Company, Inc.

Everett N. Scheer, Vice President and General Manager, Acquisitions & New Business Development, Zeon Chemicals, Inc.
Jeffrey M. Lines, Worldwide Business Director, Paracril, Uniroyal Chemical Company, Inc.
Susan Manning, Capital Economics

Herbert C. Shelley--OF COUNSEL
Alice Kipel--OF COUNSEL
Ken Mack--OF COUNSEL

**IN OPPOSITION TO THE IMPOSITION OF ANTIDUMPING DUTIES:**

Shearman & Sterling
Washington, DC
*on behalf of*

Korea Kumho Petrochemical Co.
Hyundai Petrochemical Co.

Robert Calderwood, Senior Vice President, Intertex World Resources, Ltd.
Douglas Hartley, Sales and Marketing, Intertex World Resources, Ltd.
Henry Royal, H. M. Royal
Edward Choi, Agent, North America, Hyundai Petrochemical Co.
Hoon Kim, Synthetic Rubber Sales Department, Hyundai Petrochemical Co., Ltd.
Jason H. Chung, General Manager, Hyundai Petrochemical Co., Ltd.
Dong Jong Moon, General Manager, Overseas Sales Team I, Korea Kumho Petrochemical Co., Ltd.

Thomas B. Wilner--OF COUNSEL
Jeffrey M. Winton--OF COUNSEL



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B-4

# APPENDIX C

# SUMMARY TABLES



C-1

C-2

Table C-1

Nitrile rubber: Summary data concerning the U.S. market, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

(Quantity=1,000 pounds, value=1,000 dollars, unit values, unit labor costs, and unit expenses are per pound; period changes=percent, except where noted)

| Item | Reported data | | | January-March | | Period changes | | | Jan.-March |
|---|---|---|---|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1998 | 1999 | 1996-98 | 1996-97 | 1997-98 | 1998-99 |
| U.S. consumption quantity: | | | | | | | | | |
| Amount | 131,354 | 148,112 | 153,132 | 42,455 | 42,320 | 16.6 | 12.8 | 3.4 | -0.3 |
| Producers' share (1) | 57.4 | 49.3 | 43.1 | 47.3 | 35.8 | -14.4 | -8.2 | -6.2 | -11.4 |
| Importers' share (1): | | | | | | | | | |
| Korea | 0.5 | 1.0 | 2.1 | 0.6 | 3.8 | 1.6 | 0.5 | 1.1 | 3.2 |
| Other sources | 42.1 | 49.7 | 54.9 | 52.1 | 60.3 | 12.8 | 7.6 | 5.1 | 8.2 |
| Total imports | 42.6 | 50.7 | 56.9 | 52.7 | 64.2 | 14.4 | 8.2 | 6.2 | 11.4 |
| U.S. consumption value: | | | | | | | | | |
| Amount | 116,779 | 126,700 | 124,423 | 34,946 | 32,593 | 6.5 | 8.5 | -1.8 | -6.7 |
| Producers' share (1) | 60.2 | 54.1 | 48.7 | 51.9 | 42.2 | -11.5 | -6.1 | -5.4 | -9.6 |
| Importers' share (1): | | | | | | | | | |
| Korea | 0.4 | 0.7 | 1.5 | 0.4 | 2.8 | 1.1 | 0.4 | 0.7 | 2.4 |
| Other sources | 39.4 | 45.1 | 49.8 | 47.7 | 54.9 | 10.4 | 5.7 | 4.7 | 7.2 |
| Total imports | 39.8 | 45.9 | 51.3 | 48.1 | 57.8 | 11.5 | 6.1 | 5.4 | 9.6 |
| U.S. imports from: | | | | | | | | | |
| Korea: | | | | | | | | | |
| Quantity | 616 | 1,481 | 3,168 | 265 | 1,624 | 414.4 | 140.5 | 113.9 | 511.8 |
| Value | 433 | 928 | 1,811 | 154 | 927 | 318.4 | 114.3 | 95.2 | 501.7 |
| Unit value | $0.70 | $0.63 | $0.57 | $0.58 | $0.57 | -18.7 | -10.9 | -8.7 | -1.7 |
| Ending inventory quantity | *** | 1,220 | 1,292 | *** | *** | *** | *** | 5.9 | 17.4 |
| Other sources: | | | | | | | | | |
| Quantity | 55,331 | 73,675 | 84,032 | 22,121 | 25,535 | 51.9 | 33.2 | 14.1 | 15.4 |
| Value | 46,007 | 57,182 | 62,011 | 16,663 | 17,899 | 34.8 | 24.3 | 8.4 | 7.4 |
| Unit value | $0.83 | $0.78 | $0.74 | $0.75 | $0.70 | -11.2 | -6.7 | -4.9 | -6.9 |
| Ending inventory quantity | 6,469 | 9,556 | 18,255 | 12,251 | 23,661 | 182.2 | 47.7 | 91.0 | 93.1 |
| All sources: | | | | | | | | | |
| Quantity | 55,947 | 75,156 | 87,200 | 22,387 | 27,158 | 55.9 | 34.3 | 16.0 | 21.3 |
| Value | 46,440 | 58,110 | 63,822 | 16,817 | 18,826 | 37.4 | 25.1 | 9.8 | 11.9 |
| Unit value | $0.83 | $0.77 | $0.73 | $0.75 | $0.69 | -11.8 | -6.9 | -5.3 | -7.7 |
| Ending inventory quantity | *** | 10,776 | 19,547 | *** | *** | *** | *** | 81.4 | 86.7 |
| U.S. producers': | | | | | | | | | |
| Average capacity quantity | 130,478 | 122,691 | 121,212 | 29,960 | 28,740 | -7.1 | -6.0 | -1.2 | -4.1 |
| Production quantity | 99,267 | 89,241 | 88,280 | 23,257 | 16,743 | -11.1 | -10.1 | -1.1 | -28.0 |
| Capacity utilization (1) | 76.1 | 72.7 | 72.8 | 77.6 | 58.3 | -3.2 | -3.3 | 0.1 | -19.4 |
| U.S. shipments: | | | | | | | | | |
| Quantity | 75,407 | 72,956 | 65,932 | 20,068 | 15,162 | -12.6 | -3.3 | -9.6 | -24.4 |
| Value | 70,339 | 68,590 | 60,601 | 18,129 | 13,767 | -13.8 | -2.5 | -11.6 | -24.1 |
| Unit value | $0.93 | $0.94 | $0.92 | $0.90 | $0.91 | -1.5 | 0.8 | -2.2 | 0.5 |
| Export shipments: | | | | | | | | | |
| Quantity | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Value | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Unit value | *** | *** | *** | *** | *** | *** | *** | *** | *** |
| Ending inventory quantity | 26,524 | 20,723 | 25,830 | 18,423 | 25,239 | -2.6 | -21.9 | 24.6 | 37.0 |
| Inventories/total shipments (1) | 27.6 | 21.8 | 31.1 | 18.0 | 36.4 | 3.4 | -5.8 | 9.3 | 18.4 |
| Production workers | 272 | 260 | 266 | 263 | 265 | -2.2 | -4.4 | 2.3 | 0.8 |
| Hours worked (1,000s) | 542 | 503 | 489 | 116 | 104 | -9.8 | -7.2 | -2.8 | -10.3 |
| Wages paid ($1,000s) | 12,016 | 11,040 | 11,077 | 2,644 | 2,490 | -7.8 | -8.1 | 0.3 | -5.8 |
| Hourly wages | $22.17 | $21.95 | $22.65 | $22.79 | $23.94 | 2.2 | -1.0 | 3.2 | 5.0 |
| Productivity (pounds per hour) | 183.1 | 177.4 | 180.5 | 200.5 | 161.0 | -1.4 | -3.1 | 1.8 | -19.7 |
| Unit labor costs | $0.12 | $0.12 | $0.13 | $0.11 | $0.15 | 3.7 | 2.2 | 1.4 | 30.8 |
| Net sales: | | | | | | | | | |
| Quantity | 96,064 | 95,097 | 83,173 | 25,556 | 17,331 | -13.4 | -1.0 | -12.5 | -32.2 |
| Value | 85,195 | 84,793 | 72,834 | 21,845 | 15,282 | -14.5 | -0.5 | -14.1 | -30.0 |
| Unit value | $0.89 | $0.89 | $0.88 | $0.85 | $0.88 | -1.3 | 0.5 | -1.8 | 3.2 |
| Cost of goods sold (COGS) | 70,313 | 72,517 | 59,046 | 17,870 | 11,644 | -16.0 | 3.1 | -18.6 | -34.8 |
| Gross profit or (loss) | 14,882 | 12,276 | 13,788 | 3,975 | 3,638 | -7.4 | -17.5 | 12.3 | -8.5 |
| SG&A expenses | 8,201 | 8,264 | 8,919 | 2,187 | 2,023 | 8.8 | 0.8 | 7.9 | -7.5 |
| Operating income or (loss) | 6,681 | 4,012 | 4,869 | 1,788 | 1,615 | -27.1 | -39.9 | 21.4 | -9.7 |
| Capital expenditures | 2,038 | 2,577 | 2,338 | 635 | 252 | 14.7 | 26.4 | -9.3 | -60.3 |
| Unit COGS | $0.73 | $0.76 | $0.71 | $0.70 | $0.67 | -3.0 | 4.2 | -6.9 | -3.9 |
| Unit SG&A expenses | $0.09 | $0.09 | $0.11 | $0.09 | $0.12 | 25.6 | 1.8 | 23.4 | 36.4 |
| Unit operating income or (loss) | $0.07 | $0.04 | $0.06 | $0.07 | $0.09 | -15.8 | -39.3 | 38.8 | 33.2 |
| COGS/sales (1) | 82.5 | 85.5 | 81.1 | 81.8 | 76.2 | -1.5 | 3.0 | -4.5 | -5.6 |
| Operating income or (loss)/ sales (1) | 7.8 | 4.7 | 6.7 | 8.2 | 10.6 | -1.2 | -3.1 | 2.0 | 2.4 |

(1) "Reported data" are in percent and "period changes" are in percentage points.

Note.--Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis.

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



C-3

Table C-2
Nitrile rubber, in latex form: Summary data concerning the U.S. market, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

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Table C-3
Nitrile rubber (whether or not in latex form): Summary data concerning the U.S. market, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999

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C-4

# APPENDIX D

# DATA ON IMPORTS OF NITRILE RUBBER BASED ON RESPONSES TO COMMISSION QUESTIONNAIRES



D-1

D-2

**Table D-1**
**Nitrile rubber: U.S. imports, by sources, 1996-98, Jan.-Mar. 1998, and Jan.-Mar. 1999**

| Source | Calendar year | | | Jan.-Mar. | |
|---|---|---|---|---|---|
| | 1996 | 1997 | 1998 | 1998 | 1999 |
| | Quantity (*1,000 pounds*) | | | | |
| Korea | *** | 3,084 | *** | *** | *** |
| All others | 45,522 | 58,476 | 68,511 | 18,604 | 19,853 |
| Total | *** | 61,560 | *** | *** | *** |
| | Value (*$1,000*) | | | | |
| Korea | *** | 1,807 | *** | *** | *** |
| All others | 35,123 | 41,629 | 45,032 | 12,880 | 11,799 |
| Total | *** | 43,437 | *** | *** | *** |
| | Unit value (*per pound*) | | | | |
| Korea | $*** | $0.59 | $*** | $*** | $*** |
| All others | 0.77 | 0.71 | 0.66 | 0.69 | 0.59 |
| Average | *** | 0.71 | *** | *** | *** |

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



D-3

D-4

# APPENDIX E

## EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL



E-1

E-2

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

**Actual Negative Effects**

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**Anticipated Negative Effects**

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E-3