

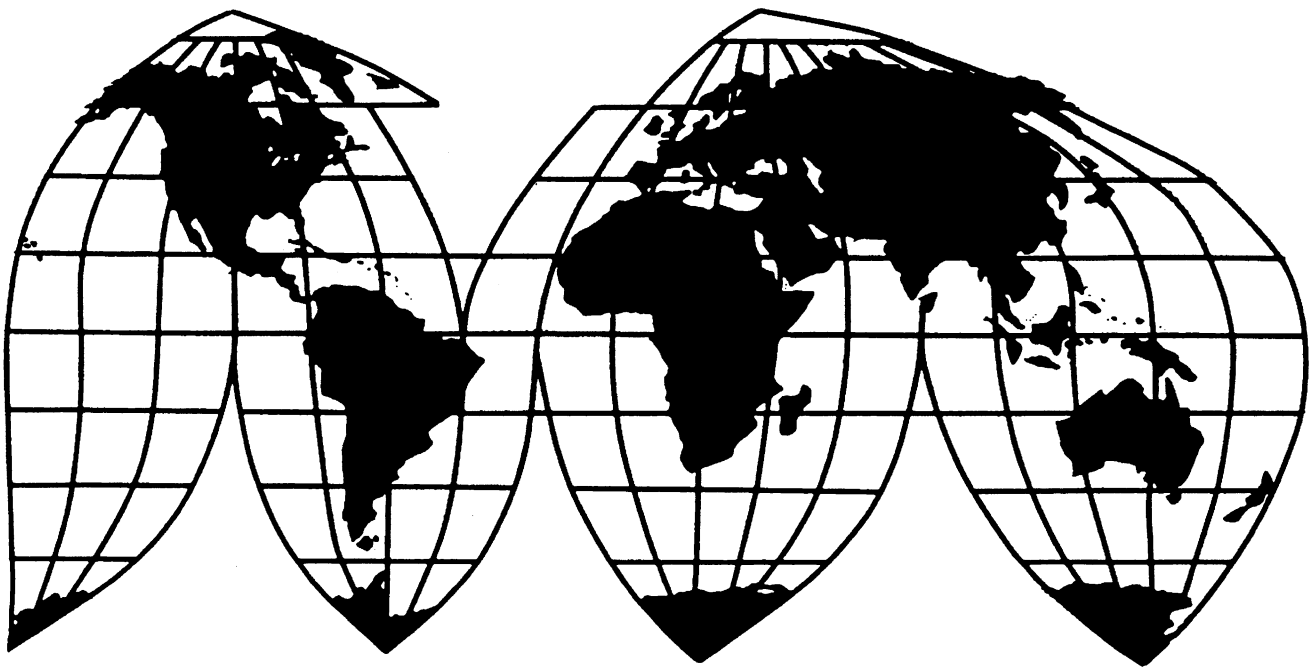
Nitrile Rubber From Japan

Investigation No. 731-TA-384 (Review)

Publication 3233

September 1999

U.S. International Trade Commission



U.S. International Trade Commission

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Note.—Information that would reveal the confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

GLOSSARY

| | |
|-----------------------------|---|
| B.F. Goodrich | B.F. Goodrich Co. |
| C.i.f. | Cost-insurance-freight |
| Commerce | U.S. Department of Commerce |
| Commission (or USITC) | U.S. International Trade Commission |
| Copolymer | Copolymer Rubber, Inc. |
| Customs | U.S. Customs Service |
| DSM Copolymer | DSM Copolymer, Inc. |
| FR | <i>Federal Register</i> |
| G&E | Goldsmith and Eggleton, Inc. |
| Goodyear | Goodyear Tire & Rubber Co. |
| HTS | Harmonized Tariff Schedule of the United States |
| IISRP | International Institute of Synthetic Rubber Producers |
| JETRO | Japan Export Trade Organization |
| JSR | Japan Synthetic Rubber Co., Ltd. |
| Nichimen America | Nichimen America, Inc. |
| Nichimen Industrial | Nichimen Industrial Co., Ltd. |
| Nippon Zeon | Nippon Zeon Co., Ltd. |
| PRWs | Production and related workers |
| <i>Response</i> | Response to the Commission's Notice of Institution |
| SG&A | Selling, general, and administrative |
| Takeda Chemical | Takeda Chemical Industries, Ltd. |
| TIOS | Trade Information On-Line Service |
| TSUSA | Tariff Schedules of the United States (Annotated) |
| Uniroyal | Uniroyal Chemical Co., Inc. |
| Zeon | Zeon Chemicals, L.P. |

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-384 (Review)

NITRILE RUBBER FROM JAPAN

DETERMINATION

On the basis of the record¹ developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on nitrile rubber from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

BACKGROUND

The Commission instituted this review on April 1, 1999 (64 F.R. 15788, April 1, 1999) and determined on July 2, 1999 that it would conduct an expedited review (64 F.R. 38475, July 16, 1999).

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

VIEWS OF THE COMMISSION

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (“the Act”), that revocation of the antidumping duty order covering nitrile rubber from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

I. BACKGROUND

In June 1988, the Commission determined that an industry in the United States was materially injured by reason of imports of nitrile rubber from Japan that were sold at less than fair value.² In that same month, the Department of Commerce issued an antidumping duty order on imports of nitrile rubber from Japan.³ The Commission instituted this five-year review on April 1, 1999.⁴

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.⁵ If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In this review, one domestic producer, Zeon Chemicals L.P. (“Zeon”), filed a response to the notice of institution. No other domestic producer, foreign producer, U.S. importer, or other interested party responded to the Commission’s notice of institution. On July 2, 1999, the Commission determined that the domestic and respondent interested party group responses were both inadequate.⁶ Pursuant to section

² Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Final), USITC Pub. 2090 (June 1988) (“Original Det.”).

³ 53 Fed. Reg. 22553 (June 16, 1988).

⁴ 64 Fed. Reg. 15788 (Apr. 1, 1999).

⁵ See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

⁶ 64 Fed. Reg. 38475, 38476 (July 16, 1999). The Commission split evenly regarding the adequacy of the individual domestic producer response submitted by Zeon. Vice Chairman Miller and Commissioners Hillman and Koplan determined that the individual response submitted by Zeon was adequate. They nonetheless found that the domestic interested party group response was inadequate because Zeon accounted for a small percentage of overall domestic production in 1998. In reaching this conclusion, they examined Zeon’s production alone and did not include in this total any production of DSM Copolymer, Inc. Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Review), Explanation of Commission Determination on Adequacy.

Chairman Bragg and Commissioners Crawford and Askey determined that Zeon’s individual response was inadequate because Zeon failed to include in its response domestic like product-specific production data, as required by the Commission in its notice of institution in this review. Moreover, Zeon failed to correct this error, although it was given an opportunity to do so by the Commission. Accordingly, because the only response received from a domestic party was inadequate, these Commissioners also concluded that the domestic interested party

(continued...)

751(c)(3)(B) of the Act,⁷ the Commission voted to conduct an expedited review of this antidumping duty order.

No interested party filed written comments pursuant to 19 C.F.R. § 207.62(d) in this review. However, in its response to the notice of institution, Zeon asserted that revocation of the antidumping duty order on nitrile rubber from Japan would be likely to lead to a recurrence of material injury to the domestic industry within a reasonably foreseeable time.⁸

II. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”⁹ 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 under this subtitle.”¹⁰ In its final five-year review determination, Commerce defined the subject merchandise as:

butadiene acrylonitrile copolymer synthetic rubber (“nitrile rubber”) not containing fillers, pigments, or rubber-processing chemicals from Japan. Nitrile rubber refers to synthetic rubber that is made from the polymerization of butadiene and acrylonitrile, and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product. Latex rubber is excluded from this order.¹¹

Nitrile rubber is a synthetic rubber used as an intermediate product in the production of gaskets, oil seals, shoe soles, industrial belting, and other specialty rubber products.¹² Nitrile rubber is characterized

⁶ (...continued)
group response was inadequate. Id.

Because a majority of the Commission did not find that the individual response filed by Zeon was inadequate, the Commission determined that the domestic producer was considered to have filed an adequate response for purposes of this expedited review.

⁷ 19 U.S.C. § 1675(c)(3)(B).

⁸ We also recently completed an antidumping investigation involving imports of nitrile rubber from Korea, Inv. No. 731-TA-827 (Preliminary), USITC Pub. 3210 at 4-7 (July 1999) (“Korean Determination”). In that investigation, we found no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of nitrile rubber from Korea allegedly being sold in the United States at less than fair value. Id.

⁹ 19 U.S.C. § 1677(4)(A).

¹⁰ 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

¹¹ 64 Fed. Reg. 42668 (August 5, 1999). Nitrile Rubber is currently classifiable under item number 4002.59.000 of the Harmonized Tariff Schedule (“HTS”) of the United States.

¹² Confidential Staff Report (“CR”), dated August 9, 1999, at I-5; Public Staff Report (“PR”) at I-4-5.

by being highly resistant to petroleum chemicals and by superior flexibility at low temperatures.¹³ The degree to which a nitrile rubber product exhibits both of these characteristics depends on its acrylonitrile content. Nitrile rubbers with a higher acrylonitrile content have an increased resistance to petroleum-based products; those with a lower acrylonitrile content have an increased low temperature flexibility.¹⁴

In its original determination, the Commission defined the domestic like product as nitrile rubber, as defined above.¹⁵ Zeon -- the only party to file a response in this proceeding -- stated in its response that it agreed with this definition of the domestic like product for this proceeding. None of the additional information collected in this review warrants a departure from that definition. Accordingly, based on the facts available, we define the domestic like product as nitrile rubber.

B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”¹⁶ Given our finding with respect to the domestic like product, we find that the domestic industry includes all firms that produced nitrile rubber during the period of review: Zeon, DSM Copolymer, Inc., Goodyear Tire & Rubber Co., and Uniroyal Chemical Company, Inc.¹⁷

In defining the domestic industry in this review, we have considered whether Zeon should be excluded from the domestic industry pursuant to the related parties provision in section 771(4)(B) of the Act.¹⁸ Zeon is a wholly-owned subsidiary of a subject producer, Nippon Zeon, and imported a small

¹³ Id.

¹⁴ Id. at I-5-6, PR at I-5-6.

¹⁵ Original Det. at 4-6.

¹⁶ 19 U.S.C. § 1677(4)(A).

¹⁷ We note that Uniroyal has reportedly ceased all production of nitrile rubber in the United States as of June 1999. CR at I-8, n. 24, PR at I-6, n.24.

¹⁸ 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case. See Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d without opinion*, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic

(continued...)

volume of subject merchandise in 1998.¹⁹ Therefore, Zeon is a related party. However, we find that appropriate circumstances do not exist to exclude Zeon from the industry. Zeon accounted for approximately *** percent of aggregate domestic production in 1998.²⁰ Further, Zeon imported only a small amount of subject merchandise in 1998, equaling only *** percent of its domestic production of nitrile rubber.²¹ Accordingly, based on the record evidence,²² we find that Zeon's primary interest lies in domestic production and not in the importation of the subject merchandise and that Zeon should not be excluded from the domestic industry.

III. REVOCATION OF THE ORDER ON NITRILE RUBBER IS NOT LIKELY TO LEAD TO CONTINUATION OR RECURRENCE OF MATERIAL INJURY WITHIN A REASONABLY FORESEEABLE TIME

A. Legal Standard

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order "would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time."²³ The Uruguay Round Agreements Act ("URAA") Statement of Administrative Action ("SAA") states that "under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports."²⁴ Thus, the likelihood standard is prospective in nature.²⁵ The statute states that "the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time."²⁶ According to the SAA, a "'reasonably foreseeable time' will vary from case-to-case, but normally will

¹⁸ (...continued)
production or importation. *See, e.g., Sebacic Acid from the People's Republic of China*, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

¹⁹ CR at I-8 & I-10, PR at I-6 & I-8..

²⁰ CR at I-8, PR at I-6.

²¹ CR at I-10, n. 28, PR at I-8, n. 28.

²² The record of this sunset review contains no information on whether Zeon has benefitted from its importations when compared to the rest of the industry.

²³ 19 U.S.C. § 1675a(a).

²⁴ SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that "[t]he likelihood of injury standard applies regardless of the nature of the Commission's original determination (material injury, threat of material injury, or material retardation of an industry)." SAA at 883.

²⁵ While the SAA states that "a separate determination regarding current material injury is not necessary," it indicates that "the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked." SAA at 884.

²⁶ 19 U.S.C. § 1675a(a)(5).

exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”^{27 28}

Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”²⁹ It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.^{30 31}

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”^{32 33} As noted above, only one of four domestic producers and no respondent interested

²⁷ SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

²⁸ In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplán examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation. In making this assessment, they consider all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, their analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

²⁹ 19 U.S.C. § 1675a(a)(1).

³⁰ 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

³¹ Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption finding in this case. 64 Fed. Reg. 42668 (Aug. 5, 1999).

³² 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. *Id.*

³³ Chairman Bragg and Commissioners Koplán and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the

(continued...)

parties responded to the Commission's notice of institution. Accordingly, we have relied on the facts available in this review, which consist primarily of the record in the original investigation, limited information collected by the Commission since the institution of this review, and information submitted by Zeon.

For the reasons stated below, we determine that revocation of the antidumping duty order on nitrile rubber from Japan would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

B. Conditions of Competition

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."³⁴ In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for nitrile rubber.

First, nitrile rubber is a component of compounds used to produce various rubber products and thus demand for nitrile rubber is derived from consumption of finished rubber articles.³⁵ Apparent consumption of nitrile rubber was generally comparable in 1996 to that consumed during the original period of investigation.³⁶ Nevertheless, between 1996 and 1998 apparent consumption of nitrile rubber increased by 17 percent, from 131.4 million pounds in 1996 to 153.1 million pounds in 1998.³⁷ Moderate growth in demand can be expected through the reasonably foreseeable future.³⁸

Second, the domestic industry has become increasingly concentrated. As in the original investigation, there were only four domestic producers during the period of review.³⁹ However, Uniroyal decreased its domestic production in the United States over the period and, as noted earlier, has ceased all

³³ (...continued)

Commission of its obligation to consider the record evidence as a whole in making its determination. "[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations." SAA at 869 [emphasis added]. Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties' suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. "In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the evidence it finds most persuasive." Id.

³⁴ 19 U.S.C. § 1675a(a)(4).

³⁵ CR at I-14, PR at I-11; Korean Determination at I-2-3.

³⁶ CR and PR at Table I-3.

³⁷ CR and PR at Table I-3.

³⁸ In the recent Korean investigation, petitioners reported that demand generally increases 1 to 2 percent per year. Korean Determination at II-2.

³⁹ CR at I-7-8, PR at I-6.

production of nitrile rubber in the United States as of June 1999.⁴⁰ Moreover, DSM Copolymer no longer markets its own production. Instead, it has an arrangement with Zeon under which Zeon purchases and resells all of the nitrile rubber DSM produces.⁴¹ Accordingly, all sales of domestic production (to, e.g., distributors, end users, and mixers) are currently made by or through Zeon and Goodyear.

Third, since the original investigation, Japanese production capacity has increased significantly, and a new Japanese producer has entered the market in Japan.⁴² Japanese production capacity has more than doubled since the period covered by the original investigation.⁴³ However, as discussed above, Nippon Zeon -- the Japanese producer that was responsible for nearly all of the subject imports to the United States during the original investigation -- now owns a nitrile rubber production facility in the United States that accounted for *** percent of domestic production in 1998.⁴⁴ The other large Japanese producer, JSR (Tokyo), exported only minimal amounts of nitrile rubber to the United States during the original period of investigation.⁴⁵

Fourth, non-subject imports have played an increasingly important role in the U.S. nitrile rubber market. Apparent consumption of non-subject imports increased by fifty-five percent during the period from 1996 to 1998, while their market share increased by nearly fifteen percentage points during that same period.⁴⁶ Moreover, the increasingly important role of non-subject imports in the market reflects, in part, sourcing decisions made by members of the domestic industry. For example, during the period from 1996 to 1998, Uniroyal has relied increasingly upon imports from Mexico in place of its own domestic production to supply its U.S. customers.⁴⁷ Imports of nitrile rubber from Mexico have grown in recent years and the limited record data indicate that average unit values of nitrile rubber imports from Mexico have been consistently below those of any other country.⁴⁸

The limited record in this review also indicates that the subject imports and the domestic like product are likely to be used interchangeably,⁴⁹ indicating that there is at least a moderate level of substitutability between the domestic and subject merchandise. In addition, the record also indicates that price is a significant factor in purchasing decisions for nitrile rubber.⁵⁰ However, a number of conditions of sale (e.g., discounts, rebates, lead times between order and delivery, and payment terms) are also important in the purchase decision.⁵¹ Finally, the limited record in this review indicates that nitrile rubber

⁴⁰ CR at I-8, n. 24, PR at I-6, n.24.

⁴¹ CR at I-7, PR at I-6.

⁴² CR at I-16, PR at I-13.

⁴³ CR and PR at Table I-4.

⁴⁴ CR at I-7-8, PR at I-6. The facility is that formerly owned by B.F. Goodrich, a member of the domestic industry during the original investigation. Id.

⁴⁵ CR at I-16, PR at I-13. The new Japanese producer, Shimutzu, only accounts for *** percent of Japanese production capacity. Id.

⁴⁶ CR and PR at Table I-3.

⁴⁷ Korean Determination at 9.

⁴⁸ Korean Determination at 9.

⁴⁹ CR at I-6-7, PR at I-5.

⁵⁰ Korean Determination at 11.

⁵¹ Korean Determination at 11.

prices are directly affected by the prices of the primary inputs in the production of nitrile rubber, acrylonitrile and butadiene. In fact, contract prices are directly linked to the prices of those products.⁵²

C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.⁵³ In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.⁵⁴

In its original determination, the Commission found that the volume and market share of the subject imports from Japan had been significant and increasing during the period of investigation.⁵⁵ In particular, the Commission found that the volume of the subject imports had increased by more than ten percent from 1984 to 1987 and by more than twenty percent from 1985 to 1987. Moreover, the Commission found that the subject imports had increased their market share in the United States by more than ten percent from 1984 to 1987.⁵⁶ The Commission also noted that the effect of the subject imports was magnified by a decline in consumption that occurred in the market during the period of investigation and that these volume increases had been accompanied by vast increases in subject inventories, which indicated that the subject producers had the ability to increase their presence in the U.S. market.⁵⁷

In this review, several factors lead us to conclude that subject import volumes are not likely to be significant if the order is revoked. First, although the subject producers have more than doubled their capacity since the original period of investigation, they are now operating at very high capacity utilization rates.⁵⁸ The record also suggests that the Japanese producers made these substantial capacity additions in order to serve increased demand in their home and third country markets, rather than the U.S. market, especially given that the antidumping duty order was in place in this country during the period in which these increases occurred.

In this regard, it is significant that Nippon Zeon -- the Japanese producer that produced nearly all of the subject merchandise imported into the United States during the original period of investigation -- purchased the U.S. nitrile rubber production facilities of B.F. Goodrich in 1989 and its wholly-owned

⁵² Korean Determination at 12.

⁵³ 19 U.S.C. § 1675a(a)(2).

⁵⁴ 19 U.S.C. § 1675a(a)(2)(A)-(D).

⁵⁵ Original Det. at 10.

⁵⁶ Original Det. at 11.

⁵⁷ Original Det. at 11-12.

⁵⁸ The capacity levels of the subject producers increased from *** million pounds in 1987, the last year of the original period of investigation, to 189.9 million during 1996 through 1998. CR at Table I-4. The subject producers operated at a capacity utilization rate of more than 87 percent in 1996 and 1997. Id.

subsidiary Zeon now produces nitrile rubber domestically.⁵⁹ Consequently, there is little incentive for Nippon Zeon to increase its shipments of subject merchandise to the United States significantly if the order were revoked, since such shipments would be in competition with the production of its own subsidiary and with the DSM Copolymer product Zeon has agreed to market.⁶⁰ In addition, we find it unlikely that the other large subject producer, JSR, would begin shipping significant volumes of subject merchandise to the United States if the order were revoked, given that it did not export significant volumes to the United States even during the original period of investigation.⁶¹

Second, the limited record of this review suggests that the Japanese producers have substantial amounts of nitrile rubber in inventory in Japan.⁶² However, the record also indicates that these inventories have remained relatively stable since December 1996 and that these high inventory levels have not resulted in a substantial shift in Japanese export patterns. Thus, while existing inventory levels might suggest that the Japanese producers have the ability to increase shipments somewhat, the consistent levels at which inventories are maintained suggests that they are not likely to do so.

Third, there are no reported tariff or non-tariff barriers to trade in countries other than the United States for nitrile rubber exports from Japan.⁶³ Indeed, the Japanese producers have shipped the large bulk of their production not consumed in their home market to third-country markets other than the United States.⁶⁴ There is no basis to conclude that this pattern is likely to change in the reasonably foreseeable future.

Finally, the record indicates that two Japanese producers, Nippon Zeon and JSR, have the ability to shift at least some production capacity from the production of non-subject merchandise to the production of nitrile rubber.⁶⁵ However, we do not find that this is likely to happen within the reasonably foreseeable future. As we note above, it is unlikely that Nippon Zeon would shift production to nitrile rubber for the purpose of increasing its shipments to the United States because these shipments would be competing in significant part with those of Zeon, its U.S. subsidiary. Similarly, although JSR may have the ability to undertake this sort of production shifting, we find that JSR is not likely to do so because it has not exported significant volumes of merchandise to the United States previously.

Based on the foregoing findings, we conclude that subject import volumes are not likely to reach significant levels if the antidumping order is revoked.

D. Likely Price Effects of Subject Imports

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the

⁵⁹ CR at I-7-8, PR at I-6.

⁶⁰ Zeon and DSM Copolymer have entered into an agreement under which Zeon will purchase and sell all of DSM's Copolymer's nitrile rubber production, CR at I-7-8, PR at I-6. In addition, the limited available record indicates that Nippon Zeon is operating at very high capacity utilization rates (in excess of *** percent), CR and PR at Table I-4, n. 1.

⁶¹ CR at I-16, PR at I-13.

⁶² CR at I-17, n. 39, PR at I-13, n. 39.

⁶³ CR at I-17, PR at I-13.

⁶⁴ CR and PR at Table IV-4.

⁶⁵ CR at I-16, PR at I-13.

United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.⁶⁶

In its original determination, the Commission found that the subject imports from Japan had significant price effects.⁶⁷ The Commission found that the subject imports had consistently undersold, by wide margins, the domestic merchandise during the period of investigation and that both domestic and Japanese prices had exhibited significant declines during the period.⁶⁸ The Commission also noted that the average unit prices of the subject merchandise were consistently below those of non-subject imports and that the Japanese products were the price leaders in the U.S. market.⁶⁹ Finally, the Commission noted that the large number of confirmed lost sales and revenues allegations evidenced the adverse price effects of the subject imports.⁷⁰

There is a limited amount of information available with respect to price competition between the subject and domestic merchandise in this review. The limited record indicates that price is an important factor in the purchase decision⁷¹ and that there is at least a moderately high level of substitutability between the domestic merchandise and the subject imports.⁷² Although these facts might suggest that the subject imports could have an adverse effect on domestic prices, we find that, overall, the subject merchandise will not have significant adverse effects on domestic prices within a reasonably foreseeable time.

First, and most importantly, as we stated above, there will not be a significant increase in the volume of the subject imports within the reasonably foreseeable future if the order is revoked. As a result of these anticipated minimal import levels, it is unlikely that the subject imports will have a significant adverse impact on domestic prices in the reasonably foreseeable future if the order is revoked.

Moreover, even if the subject imports re-enter the market to some degree, it is not likely that they would have a significant adverse effect on domestic prices in this market if the order were revoked. First, movements in the price of nitrile rubber in the U.S. market are directly affected by movements in the price of acrylonitrile and butadiene, the primary raw materials for nitrile rubber.⁷³ Second, non-subject imports are a significant and increasing presence in the U.S. market for nitrile rubber. In 1998, non-subject imports accounted for approximately fifty-seven percent of the market.⁷⁴ Finally, to the extent that Nippon Zeon ships merchandise to the U.S. market, we find that the relationship between the two firms makes it unlikely that Nippon Zeon will undersell the merchandise marketed by its subsidiary, Zeon.

Given the influence of raw material prices on domestic prices, the significant presence of non-subject imports in the U.S. market, Nippon Zeon's relationship with the domestic producer Zeon, and our

⁶⁶ 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

⁶⁷ Original Det. at 12.

⁶⁸ Original Det. at 12.

⁶⁹ Original Det. at 13.

⁷⁰ Original Det. at 13.

⁷¹ Korean Determination at 11.

⁷² CR at I-6-7, PR at I-5; Korean Determination at 11.

⁷³ As we found in the recently completed antidumping investigation covering nitrile rubber from Korea, the price of the raw materials directly affects nitrile rubber prices because contract prices for nitrile rubber are linked to the prices of these materials. Korean Determination at 12.

⁷⁴ CR and PR at Table I-3.

finding that the increase in the volume of the subject imports would not be significant, we find that it is not likely that the subject imports would undersell the domestic merchandise significantly or enter the United States at prices that would have significant depressing or suppressing effects on the prices for the domestic like product if the order is revoked.

E. Likely Impact of Subject Imports

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.⁷⁵ All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.⁷⁶ As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.⁷⁷

In its original determination, the Commission found that the domestic industry was materially injured by reason of the subject imports.⁷⁸ It found that the industry's financial indicators declined significantly during the original period of investigation, including its revenue, profitability, employment, and production levels.⁷⁹ The Commission found that the significant and increasing volume and market penetration of the subject imports, coupled with the decline in prices for the domestic product during most of the period of investigation, significant underselling, and lost sales and revenues, indicated that the domestic industry was materially injured by reason of the subject imports.⁸⁰

The record of this review provides a mixed picture with regard to the state of the industry's health and any improvement in the industry's condition since the antidumping duty order was issued in 1988. For example, the domestic industry's overall share of the U.S. market for nitrile rubber has declined significantly

⁷⁵ 19 U.S.C. § 1675a(a)(4).

⁷⁶ 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Under that provision of the statute, Commerce found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at margins of 146.50 percent for all Japanese manufacturers and exporters. 64 Fed. Reg. 42668 (Aug. 5, 1999).

⁷⁷ The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

⁷⁸ Original Det. at 7.

⁷⁹ Original Det. at 7-9.

⁸⁰ Original Det. at 10-11.

since 1987, the last year of the original period of investigation.⁸¹ Moreover, its market share has decreased significantly even during the recent period from 1996 to 1998.⁸² Similarly, the industry's production, shipments, and sales revenue levels have declined significantly since the original period of investigation.⁸³ The industry's production, shipment and revenue levels declined as well during the period from 1996 to 1998, despite the fact that apparent U.S. consumption increased during the same period.⁸⁴ At the same time, however, other industry indicators have remained stable or improved. For example, the industry's current capacity utilization rates are similar to the levels in existence during the last three years of the original period of investigation,⁸⁵ as are its current employment levels.⁸⁶ More importantly, the industry's profitability levels during 1996 to 1998 compare favorably with the levels seen during the last three years of the original period of investigation.⁸⁷

Although issuance of the antidumping order may have reduced the volume of subject imports to minimal levels and the industry remains profitable, a number of the industry's financial indicators (including market share) have declined and non-subject imports have assumed increasing significance in this market. Accordingly, it is unclear that the issuance of the order has itself caused any improvement in the industry's condition. However, in light of the current profitable condition of the industry, we do not find that it is vulnerable to the impact of the subject imports.

We find that the subject imports are not likely to adversely impact the domestic nitrile rubber industry if the antidumping duty order is revoked. We concluded above that revocation of the antidumping duty order is not likely to lead either to significant additional volumes of subject imports or significant price effects. These findings in turn indicate that the subject imports are not likely to have a significant adverse

⁸¹ The industry's share of the market was *** percent in 1984, *** percent in 1985, *** percent in 1986, and *** percent in 1987. CR and PR at Table I-3. The industry's share of the market was 57.4 percent in 1996, 49.3 percent in 1997, and 43.1 percent in 1998. CR and PR at Table I-3.

⁸² Id.

⁸³ The industry's production levels were 132.7 million pounds in 1984, 103.9 million pounds in 1985, 112.6 million pounds in 1986, and 128.7 million pounds in 1988. Its production levels were 99.3 million pounds in 1996, 89.2 million pounds in 1997, and 88.3 million pounds in 1998. CR and PR at Table I-1. The industry's shipments were 109 million pounds in 1984, 97.7 million pounds in 1985, 95.9 million pounds in 1986, and 93 million pounds in 1988. Its shipments were 75.4 million pounds in 1996, 73 million pounds in 1997, and 65.9 million pounds in 1998. CR and PR at Table I-1. The industry's net sales revenues were \$114 million in 1984, \$96.8 million in 1985, \$91.4 million in 1986, and \$96.1 million in 1987. The industry's net sales revenues were \$85.2 million in 1996, \$84.8 million in 1997, and \$72.8 million in 1998. CR and PR at Table I-1.

⁸⁴ Total apparent consumption increased from 131 million pounds in 1996 to 153 million pounds in 1998. CR and PR at Table I-3.

⁸⁵ The industry's capacity utilization rate was 69.0 percent in 1985, 73.2 percent in 1986, and 79.7 percent in 1987. Its capacity utilization rate was 76.1 percent in 1996, 72.7 percent in 1997, and 72.8 percent in 1998. CR and PR at Table I-1.

⁸⁶ The number of workers employed by the industry was 264 in 1984, 250 in 1985, 242 in 1986 and 241 in 1987. The number of workers employed by the industry was 272 in 1996, 260 in 1997 and 266 in 1998. CR and PR at Table I-1. The number of hours worked was 549 thousand in 1984, 483 thousand in 1985, 475 thousand in 1986, and 487 thousand in 1987. The number of hours worked was 542 thousand in 1996, 503 thousand in 1997, and 489 thousand in 1998. CR and PR at Table I-1.

⁸⁷ The industry's operating income (loss) as a percentage of sales was 13.7 percent in 1984, (0.5) percent in 1985, 6.0 percent in 1986, and 3.8 percent in 1987. Its operating income as a percentage of sales was 7.8 percent in 1996, 4.7 percent in 1997 and 6.7 percent in 1998. CR and PR at Table I-1.

impact on the domestic industry as a whole in the reasonably foreseeable future if the order is revoked. Accordingly, we conclude that revocation of the antidumping order would not be likely to lead to significant declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, or have likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and the domestic industry's development and production efforts within a reasonably foreseeable time.

We reiterate that only one of four domestic producers (representing *** percent of production) responded to the notice of institution. Thus, most of the industry did not express an interest in maintaining the order and did not provide information concerning the likely effects of revocation. This fact suggests to us that the industry as a whole is indifferent as to the likely effects of revocation of the order on the subject merchandise from Japan.⁸⁸ Consequently, we find that the subject imports are not likely to have a significant impact on the domestic industry if the order is revoked.

CONCLUSION

For the foregoing reasons, we determine that revocation of the antidumping duty order on nitrile rubber from Japan would not be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

⁸⁸ Chairman Bragg and Commissioner Askey base their conclusion on the entirety of the record in this review. They do not base their conclusion on the fact that three of the four members of the domestic industry did not participate in this review. *See supra* note 32.

INFORMATION OBTAINED IN THE REVIEW

INTRODUCTION

On April 1, 1999, the Commission gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on nitrile rubber from Japan would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.¹ On July 2, 1999, the Commission determined that the domestic interested party response to its notice of institution was adequate;² the Commission also determined that the respondent interested party response was inadequate. Further, it found no other circumstances that would warrant a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)).³ The Commission voted on this review on September 3, 1999, and notified Commerce of its determination on September 10, 1999.⁴

The Original Investigation

The Commission completed the original investigation⁵ in June 1988, determining that an industry in the United States was materially injured by reason of imports of nitrile rubber from Japan that were sold at less than fair value. The Commission found the relevant domestic industry to consist of producers of 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.⁶ After receipt of the Commission's determination, Commerce issued an antidumping duty order on imports of nitrile rubber from Japan.⁷

¹ 64 FR 15788, Apr. 1, 1999. All interested parties were requested to respond to this notice by submitting the information requested by the Commission.

² The Commission received one submission in response to its notice of institution. It was filed on behalf of Zeon (Louisville, KY), a U.S. producer of nitrile rubber. Zeon estimated that it represents approximately *** percent of 1998 U.S. production of nitrile rubber. (Included in Zeon's estimate is the production of nitrile rubber by DSM Copolymer, a captive producer for Zeon. Also included is nonsubject nitrile rubber that contains certain additives.) The Commission, with Chairman Bragg and Commissioners Crawford and Askey dissenting, found the response submitted by Zeon to be individually adequate.

³ 64 FR 38475, July 16, 1999. The Commission's notice of its expedited review appears in app. A. See the Commission's web site (<http://www.usitc.gov>) for Commissioner votes on whether to conduct an expedited or full review. The Commission's statement on adequacy is presented in app. B.

⁴ Subsequent to the institution of this review and in response to a petition filed by Zeon and Uniroyal, the Commission also instituted a preliminary phase antidumping investigation concerning allegedly dumped imports of nitrile rubber from Korea (inv. No. 731-TA-827 (Preliminary)). 64 FR 30059, June 4, 1999. On July 12, 1999, the Commission made a negative determination in inv. No. 731-TA-827 (Preliminary). *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. 3.

⁵ The original investigation resulted from a petition filed by Uniroyal on Sept. 1, 1987.

⁶ *Nitrile Rubber from Japan*, USITC Pub. 2090, June 1988, p. 6.

⁷ 53 FR 22553, June 16, 1988. This order required the posting of cash deposits equal to the estimated weighted-average antidumping duty margin, which was 146.50 percent for Nippon Zeon and all others. In determining its weighted-average antidumping duty margin, Commerce compared the U.S. price with the foreign market value. The U.S. price was represented by the invoiced price of Nippon Zeon's subject merchandise, as adjusted. Foreign market value was based on Nippon Zeon's packed delivered prices to unrelated customers in the home market, as adjusted. 83 FR 15436, Apr. 29, 1988. Nippon Zeon was the principal producer of nitrile rubber in Japan and accounted for nearly all exports of the product to the United States.

(continued...)

Commerce's Final Results of Expedited Sunset Review

On August 5, 1999, the Commission received Commerce's "Final Results of Expedited Sunset Review" concerning nitrile rubber from Japan.⁸ Commerce determined that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins (*in percent*) listed below:⁹

| <u>Company</u> | <u>Margin</u> |
|-------------------|---------------|
| Nippon Zeon | 146.50 |
| All others | 146.50 |

THE PRODUCT

Scope

The imported product covered by this review is butadiene acrylonitrile copolymer synthetic rubber (nitrile rubber) not containing fillers, pigments, or rubber-processing chemicals. Latex rubber is excluded from this order. The products are currently classified under HTS item number 4002.59.0000¹⁰ and enter under the column 1 general rate duty-free. The HTS item number is provided for convenience and for Customs purposes; the written description remains dispositive as to the scope of the product coverage.

Description and Uses¹¹

Subject nitrile rubber is a synthetic rubber that is produced, shipped, and imported as an intermediate product, which, in turn, is processed into custom "masterbatches" and rubber compounds, from which gaskets, oil seals, shoe soles, industrial belting, and other specialty rubber products are manufactured.¹² Nitrile rubber is produced by the copolymerization of two readily available commodity chemicals, acrylonitrile and butadiene, with the addition of only small amounts of additives in order to stabilize the material before it can be further processed. The reaction produces a milky-white emulsion

⁷ (...continued)

There have been no completed administrative reviews of the subject order. One administrative review of JSR, a producer of nitrile rubber in Japan, was initiated by Commerce on Aug. 1, 1997, but was terminated after the company withdrew its request for a review. 62 FR 54822, Oct. 22, 1997.

⁸ 64 FR 42668, Aug. 5, 1999. The *Federal Register* notice of Commerce's final results is presented in app. A.

⁹ Commerce determined that the margins calculated in the original investigation reflect the behavior of Japanese producers and exporters without the discipline of the order and are probative of their behavior if the order were revoked.

¹⁰ HTS subheading 4002.59.00 is virtually identical to the scope of this investigation. Nitrile rubber with additives may also be imported under this HTS subheading, but imports of this product are believed to be minimal. *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. IV-2, n. 4, citing conversation with counsel for Zeon, June 29, 1999.

¹¹ All of the discussion in this section is from the original investigation, unless otherwise noted. *Staff Report of May 26, 1988*, pp. A-3 through A-6.

¹² *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. I-2.

known as latex nitrile rubber,¹³ 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 55- to 70-pound bales, and packaged for sale. Smaller amounts of nitrile rubber are also sold in the form of slabs, crumbs, or powder according to the preferences of individual buyers.¹⁴

Nitrile rubber is characterized primarily by a high degree of resistance to petroleum chemicals (oils, fuels, and solvents) and by superior flexibility at low temperatures, with the properties varying depending upon the acrylonitrile content of a particular batch. According to the 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.¹⁵ Nitrile rubber that has a higher-than-average acrylonitrile content is used primarily for products requiring high resistance to crude petroleum and fuel, such as oil well parts, engine seals, and fuel hoses. Nitrile rubber with lower-than-average acrylonitrile content is used where low temperature flexibility and resilience is more important than crude petroleum resistance, such as in adhesives, footwear, and industrial belts.

At the time of the original investigation, the vast bulk (approximately 70 percent) of both U.S.-produced and imported product was of medium acrylonitrile content (with an acrylonitrile content of 28 to 35 percent), from which most seals, hoses, and gaskets for the automobile industry are produced. This remains the case today, at least with respect to "production."¹⁶ Further, the imported product (from Japan) included low-, medium-, and high-grade nitrile rubber and was found during the original investigation to compete with the domestic product in each of these three product subgroups.¹⁷ Interchangeability among the various sources of nitrile rubber remains evident. During the Commission's recent investigation concerning imports of nitrile rubber from Korea (inv. No. 731-TA-827 (Preliminary)), producers and importers agreed that nitrile rubber products are interchangeable among domestic, Korean, and other imports within similar grade ranges. Respondents also alleged in that investigation "that other countries are selling their products for less than the price of Korean products."¹⁸

¹³ During the time of the original investigation, about 10 percent of nitrile rubber, known as latex, was sold in this form. However, such latex was not included within the scope of the original investigation (*Staff Report of May 26, 1988*, p. A-8, n. 1), nor was it included within the scope of the recent investigation concerning imports of nitrile rubber from Korea (*Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. I-1, n. 1).

¹⁴ 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. *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. I-2.

¹⁵ 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. IISRP, *The Synthetic Rubber Manual*, 14th Edition, Jan. 1999, pp. 70-89; also see "Elastomers, Synthetic (Nitrile Rubber)," *Kirk-Othmer Encyclopedia of Chemical Technology*, 4th Edition, (c. 1993 by John Wiley & Sons, Inc.), Vol. 8, p. 1006.

¹⁶ The petitioner in the recent investigation concerning imports of nitrile rubber from Korea (inv. No. 731-TA-827 (Preliminary)) stated that nitrile rubber with medium-range acrylonitrile content makes up roughly 65 percent of total production of subject nitrile rubber. *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. I-3, citing the petition, p. 9.

¹⁷ *Nitrile Rubber from Japan*, USITC Pub. 2090, June 1988, p. 4, n. 7.

¹⁸ *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. II-3.

THE INDUSTRY IN THE UNITED STATES

U.S. Producers

During the period examined during the original investigation, there were four domestic producers of nitrile rubber: B.F. Goodrich (at a plant in Louisville, KY), Copolymer (at a plant in Baton Rouge, LA), Goodyear (at plants located in Houston, TX, and Akron, OH), and Uniroyal (at a plant in Painesville, OH).¹⁹ Goodyear and Uniroyal continue the manufacture of nitrile rubber at present, although Goodyear ceased producing nitrile rubber in Akron in the mid to late 1980s.²⁰ Zeon began manufacturing nitrile rubber in the United States with its purchase of B.F. Goodrich's nitrile rubber facility in October 1989. Further, at the end of 1998, DSM Copolymer became a captive producer for Zeon, pursuant to a contractual arrangement, such that Zeon now "owns" all of DSM Copolymer's U.S. production of nitrile rubber.²¹ Except for Goodyear, all firms are wholly owned subsidiaries of other companies. DSM Copolymer 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, Tokyo, Japan, the sole responding foreign producer in the original investigation.²²

Zeon, the only producer that responded to the Commission's notice of institution, accounted for *** percent of total domestic production of nitrile rubber in 1998. DSM Copolymer, Goodyear, and Uniroyal accounted for *** percent, *** percent, and *** percent, respectively.²³ Zeon states that Uniroyal plans to begin sourcing its nitrile rubber from a "non-domestic" company and will close its nitrile rubber production facilities by the end of 1999.²⁴

¹⁹ As noted earlier, Uniroyal was the petitioner in the original investigation; Copolymer supported the petition and B.F. Goodrich and Goodyear did not take a position. Petitioner Uniroyal accounted for *** percent of U.S. production in 1987; B.F. Goodrich, Copolymer, and Goodyear accounted for about *** percent, *** percent, and *** percent, respectively. All of these firms, with the exception of Copolymer, were large multinational corporations and all manufactured rubber products other than nitrile—some, particularly styrene rubber, with the same equipment. *Staff Report of May 26, 1988*, p. A-8.

²⁰ IISRP, *Worldwide Rubber Statistics 1986 and Worldwide Rubber Statistics 1987*.

²¹ *Response of Zeon*, p. 2. Under the terms of the Mar. 22, 1999 contract, Zeon has the exclusive right to purchase nitrile rubber products from DSM Copolymer. William Niederst, President and CEO of Zeon, stated in a press release that "The addition of the DSM Copolymer {nitrile rubber} product lines to the Zeon family will substantially strengthen Zeon's market presence and will greatly complement our existing business." *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. VI-1.

²² *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. III-1.

²³ Data compiled during inv. No. 731-TA-827 (Preliminary), *Nitrile Rubber from Korea*, and incorporated into the instant record. See memorandum INV-W-147, July 2, 1999.

²⁴ *Response of Zeon*, p. 7. Uniroyal reported to the Commission during its investigation concerning imports of nitrile rubber from Korea (inv. No. 731-TA-827 (Preliminary)) that its Painesville, OH plant will be closed as of June 1999. Uniroyal will become a partner in a joint venture to build the world's largest nitrile rubber plant in Mexico. Uniroyal discussed its joint venture in Mexico and the closing of its Painesville, OH, plant in its 10K public report for the year ending Dec. 31, 1998. It indicated that there was a relationship between its new joint venture and the closing of the Painesville, OH plant: "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." *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, pp. III-4, VI-1, and VI-3 (citing the Uniroyal Chemical 10K report for the year ending Dec. 27, 1998, p. 22).

U.S. Production, Capacity, and Shipments

Data reported by U.S. producers of nitrile rubber in the Commission's original investigation and in response to questionnaires issued in connection with the recently completed investigation concerning imports of nitrile rubber from Korea (inv. No. 731-TA-827 (Preliminary)) are presented in table I-1.²⁵

| Table I-1 | | | | | | | |
|--|---------|---------|---------|---------|---------|---------|---------|
| Nitrile rubber: U.S. producers' trade, employment, and financial data, 1984-87 and 1996-98 | | | | | | | |
| Item | 1984 | 1985 | 1986 | 1987 | 1996 | 1997 | 1998 |
| Trade data: | | | | | | | |
| Production (1,000 pounds) | 132,734 | 103,908 | 112,617 | 128,681 | 99,267 | 89,241 | 88,280 |
| Capacity (1,000 pounds) | 146,720 | 150,700 | 153,750 | 161,460 | 130,478 | 122,691 | 121,212 |
| Capacity utilization (percent) | 90.5 | 69.0 | 73.2 | 79.7 | 76.1 | 72.7 | 72.8 |
| U.S. shipments: | | | | | | | |
| Quantity (1,000 pounds) | 109,021 | 97,718 | 95,909 | 93,038 | 75,407 | 72,956 | 65,932 |
| Value (1,000 dollars) | 106,305 | 91,161 | 85,066 | 81,557 | 70,339 | 68,590 | 60,601 |
| Unit value (per pound) | \$0.98 | \$0.93 | \$0.89 | \$0.88 | \$0.93 | \$0.94 | \$0.92 |
| Employment data: | | | | | | | |
| Number of PRWs | 264 | 250 | 242 | 241 | 272 | 260 | 266 |
| Hours worked by PRWs (1,000 hours) | 549 | 483 | 475 | 487 | 542 | 503 | 489 |
| Productivity (pounds per hour) | 241.8 | 215.1 | 237.1 | 264.2 | 183.1 | 177.4 | 180.5 |
| Financial data: | | | | | | | |
| Total sales (1,000 dollars) | 114,041 | 96,753 | 91,437 | 96,057 | 85,195 | 84,793 | 72,834 |
| Cost of goods sold (1,000 dollars) | 88,893 | 87,571 | 76,242 | 82,301 | 70,313 | 72,517 | 59,046 |
| Gross profit (1,000 dollars) | 25,148 | 9,182 | 15,195 | 13,756 | 14,882 | 12,276 | 13,788 |
| SG&A expenses (1,000 dollars) | 9,502 | 9,710 | 9,752 | 10,138 | 8,201 | 8,264 | 8,919 |
| Operating income/loss (1,000 dollars) | 15,646 | (528) | 5,443 | 3,618 | 6,681 | 4,012 | 4,869 |
| Ratio of operating income/loss to net sales (percent) | 13.7 | (0.5) | 6.0 | 3.8 | 7.8 | 4.7 | 6.7 |
| Source: <i>Staff Report of May 26, 1988</i> , pp. A-10, A-14, A-17, and A-22 (for 1984-87 data); <i>Nitrile Rubber from Korea</i> , USITC Pub. 3210, July 1999, p. C-3 (for 1996-98 data). | | | | | | | |

²⁵ All four U.S. producers responded to both the questionnaires issued in connection with the Commission's original investigation and those for its preliminary investigation on nitrile rubber from Korea (inv. No. 731-TA-827 (Preliminary)). Accordingly, the figures presented in this report are representative of the total U.S. nitrile rubber industry.

The domestic industry reported lower levels of capacity, production, and U.S. shipments of nitrile rubber for 1996-98 than during the original investigation. Capacity utilization ratios for 1996-98 were comparable to those reported for every year except the first examined during the original investigation. However, employment levels in 1996-98 slightly exceeded those reported during most of 1984-87, resulting in lower reported productivity ratios. Recent financial performance compared favorably to figures shown for the original investigation.

Minimal information on pricing is available. The average unit U.S. shipment values of nitrile rubber in 1996-98 were somewhat higher than those shown for 1986-87, but did not reach the point reported at the beginning of the 1984-87 period examined during the original investigation.

U.S. IMPORTS AND CONSUMPTION

U.S. Imports

During the original investigation, most Japanese nitrile rubber was imported by one firm and sold to an exclusive but unrelated distributor which in turn sold to custom mixers and users.²⁶ Zeon states that, today, it is not aware of any "currently operating U.S. importers of subject merchandise."²⁷ However, in 1998, Zeon reported that it made a single importation of *** pounds of nitrile rubber from Japan on a specialized basis for one U.S. customer.²⁸ In addition, two of the four U.S. producers of nitrile rubber, Zeon and Uniroyal, reported nonsubject imports during January 1996 to March 1999 in response to questionnaires issued in connection with the recent investigation on imports of nitrile rubber from Korea. Zeon reported importing primarily from Taiwan, whereas Uniroyal reported substantial quantities of imports from Mexico.²⁹

As shown in table I-2, U.S. imports of nitrile rubber from Japan increased irregularly by 12 percent from 1984 to 1987. Following the imposition of the order in June 1988, subject imports dropped to much lower levels for the years 1988 and 1989, then decreased to negligible levels in the years that followed (figure I-1). In 1998, there were 628,000 pounds of nitrile rubber reportedly imported from Japan. However, even these comparatively low levels may be overstated in that Zeon cites TIOS information that the great majority of imports reported under the HTS subheading for nitrile rubber (HTS 4002.59.00) have been misclassified and are, in fact, ***. According to Zeon, these materials ***.³⁰ U.S. imports from nonsubject sources, particularly Canada, continue to enter the United States in large amounts (table I-2). In 1987, imports from countries other than Japan accounted for 82 percent of total imports; today, virtually all imports of nitrile rubber are nonsubject product.

²⁶ *Staff Report of May 26, 1988*, p. A-7.

²⁷ *Response of Zeon*, p. 10.

²⁸ According to Zeon, the amount imported was only *** percent of its total domestic production in 1998. However, this figure appears to be calculated as a percentage of Zeon's total nitrile rubber production, including nonsubject product. *Response of Zeon*, pp. 11-12. When calculated as a percentage of Zeon's nitrile rubber production as reported in the Commission's recently completed investigation on nitrile rubber from Korea, the imports amount to *** percent of its total domestic production in 1998 (of *** pounds). Data reported during inv. No. 731-TA-827 (Preliminary), Nitrile Rubber from Korea, and incorporated into the instant record. *See* memorandum INV-W-147, July 2, 1999. Zeon states that it imported the shipment "merely to satisfy the demand of a single customer on a specialized basis." As noted earlier, Zeon's parent company is the Japanese producer of subject merchandise, Nippon Zeon. *Supplemental Response of Zeon*, pp. 2-3.

²⁹ *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. IV-1, n. 3.

³⁰ *Response of Zeon*, pp. 3-4.

Table I-2
Nitrile rubber: U.S. imports, 1984-87 and 1996-98

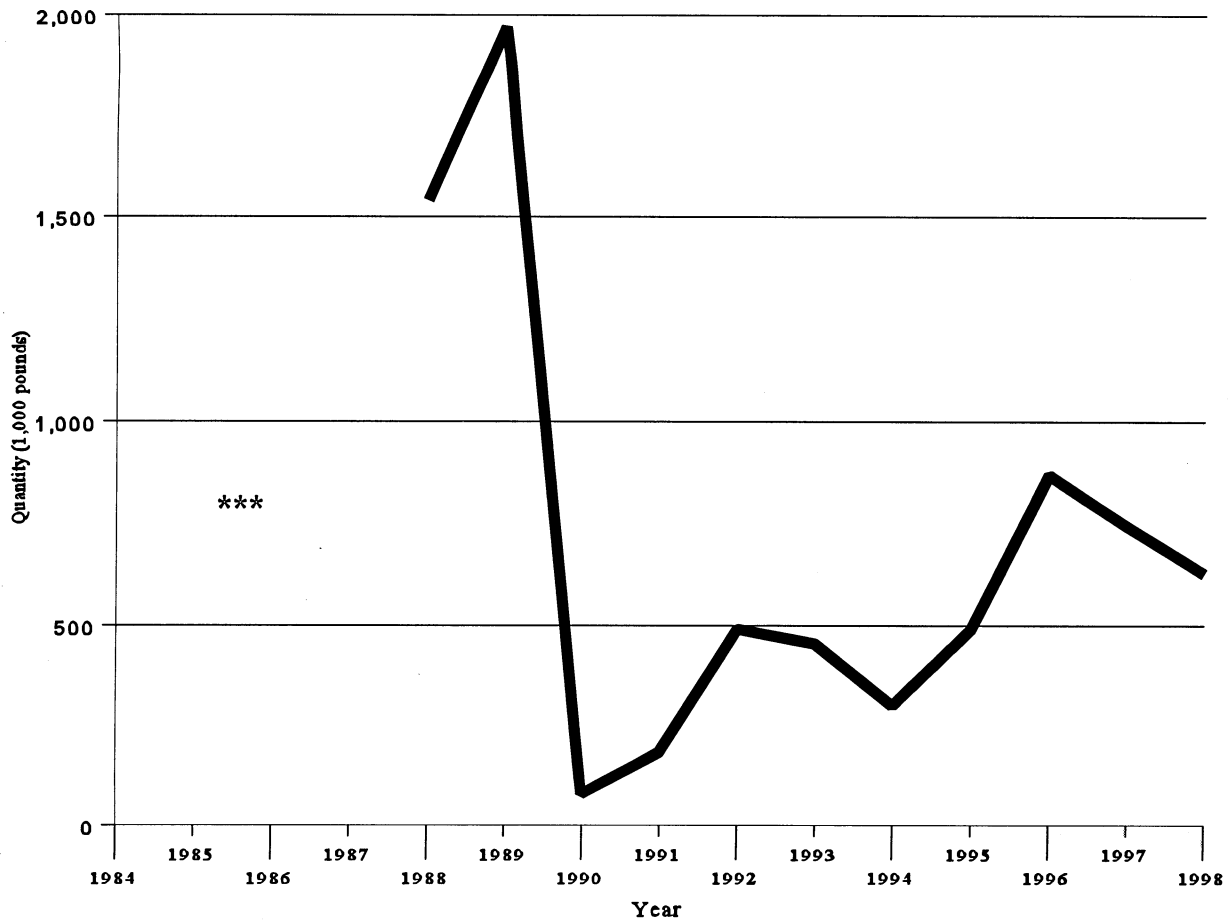
| Source | 1984 | 1985 | 1986 | 1987 | 1996 | 1997 | 1998 |
|----------------------------|--------------------------------------|--------|--------|--------|--------|--------|--------|
| | <i>Quantity (1,000 pounds)</i> | | | | | | |
| Japan | *** | *** | *** | *** | 871 | 745 | 628 |
| Canada | 18,572 | 17,154 | 19,218 | 22,162 | 28,613 | 29,608 | 29,771 |
| Korea | 0 | 0 | 0 | 0 | 616 | 1,481 | 3,168 |
| Other sources ¹ | 4,222 | 3,417 | 4,707 | 9,600 | 25,847 | 43,322 | 53,633 |
| Total | *** | *** | *** | *** | 55,947 | 75,156 | 87,200 |
| | <i>C.i.f. value (1,000 dollars)</i> | | | | | | |
| Japan | *** | *** | *** | *** | 904 | 790 | 696 |
| Canada | 15,771 | 13,909 | 14,914 | 16,915 | 22,041 | 608 | 21,882 |
| Korea | 0 | 0 | 0 | 0 | 432 | 927 | 1,811 |
| Other sources ¹ | 3,519 | 2,380 | 3,516 | 7,571 | 3,062 | 4,785 | 39,433 |
| Total | *** | *** | *** | *** | 46,440 | 58,110 | 63,822 |
| | <i>C.i.f. unit value (per pound)</i> | | | | | | |
| Japan | \$*** | \$*** | \$*** | \$*** | \$1.04 | \$1.06 | \$1.11 |
| Canada | 0.85 | 0.81 | 0.78 | 0.76 | 0.77 | 0.73 | 0.74 |
| Korea | - | - | - | - | 0.70 | 0.63 | 0.57 |
| Other sources ¹ | 0.83 | 0.70 | 0.75 | 0.79 | 0.89 | 0.80 | 0.74 |
| Average | *** | *** | *** | *** | 0.83 | 0.77 | 0.73 |

¹ In addition to Canada, the primary other source was Taiwan during 1984-87. For 1996-98, the primary other sources, in addition to Canada, were Taiwan and Mexico. Imports of nitrile rubber from Mexico increased from 691 thousand pounds in 1996 to 17.2 million pounds in 1998.

Note.—Data on the value of annual imports reviewed by Customs that are subject to the antidumping duty order are as follows: \$40,882 for FY 1993, \$15,684 for FY 1994, and \$*** for FY 1997. Data for FY 1995 and FY 1996 are confidential, and not currently available to the Commission. *Antidumping/Countervailing Duty Annual Report*.

Source: *Staff Report of May 26, 1988*, p. A-36, for imports from Japan (which were from questionnaire data since imports from Japan were understated in official statistics due to misclassification) for 1984-87 data; official Commerce statistics for sources other than Japan for 1984-87 data and for all sources for 1996-98 data.

Figure I-1
Nitrile rubber: U.S. imports from Japan, by quantity, 1984-98



Note.—Trends for the periods 1987 to 1988 and also from 1988 to 1990 are somewhat suspect due to the use of multiple data sources. Data through 1987 are based on questionnaire data that corrected for the misclassification of some subject product. While all data from 1988 onward are derived from unadjusted official statistics, the United States switched from using the TSUSA to the HTS in 1990. As shown in this figure, it is in 1990 that imports of nitrile rubber first fell to a negligible amount. (Part, but probably not all, of the decline shown for 1990 is due to the exclusion for the first time of nonsubject nitrile rubber in latex form from the statistical item numbers for nitrile rubber.)

Source: *Staff Report of May 26, 1988*, p. A-36, for 1984-87 (which were from questionnaire data), and official Commerce statistics for 1988-98.

Since there are currently minimal subject imports, the only pricing data provided by Zeon in its *Response* was a unit value derived from its commercial sales of nitrile rubber from Japan to its one U.S. customer.³¹ As shown in table I-2, the unit values of imports of nitrile rubber from Japan were substantially less than the unit values reported for imports from nonsubject sources during 1984-87; however, the reverse is the case for current average unit values, with the unit values of subject nitrile rubber much higher than those from other sources. Zeon argues that “the subject merchandise is highly fungible, and U.S. purchasers of nitrile rubber can quickly switch suppliers based primarily on price.”³²

Apparent U.S. Consumption

Nitrile rubber reportedly is a mature product with minimal annual increases in demand. As shown in table I-3, apparent U.S. consumption of nitrile rubber fluctuated only slightly during the period examined during the original investigation. Further, the amount of nitrile rubber consumed in the United States in 1996 was generally comparable to that used during 1984-87; however, apparent U.S. consumption then increased by 17 percent from 1996 to 1998.³³ The overall demand for nitrile rubber depends upon the demand for a variety of end-use applications. The single largest user of nitrile rubber is the automobile and truck industry, which uses the product in the manufacture of parts such as O-rings, gaskets, oil seals, and hoses.³⁴

The share of the U.S. market for nitrile rubber held by domestic producers fell steadily during the period examined during the original investigation (from *** percent in 1984 to *** percent in 1987), and by 1996 had reached 57 percent. Subsequently, U.S. producers’ market share continued to decline to less than 50 percent, as imports from nonsubject sources entered the United States in increasing amounts.

³¹ *Response of Zeon*, p. 12.

³² *Id.*

³³ This increase is somewhat at odds with petitioners’ statement in the Commission’s recently completed investigation on imports of nitrile rubber from Korea (inv. No. 731-TA-827 (Preliminary)) that demand generally rises 1 to 2 percent per year. *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. II-2.

³⁴ *Staff Report of May 26, 1988*, p. A-41, and *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. II-2.

Table I-3
Nitrile rubber: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption, on the basis of quantity, 1984-87 and 1996-98

| Item | 1984 | 1985 | 1986 | 1987 | 1996 | 1997 | 1998 |
|--------------------------------|---------------------------------------|--------|--------|--------|---------|---------|---------|
| | Quantity (1,000 pounds) | | | | | | |
| U.S. producers' U.S. shipments | 109,021 | 97,718 | 95,909 | 93,038 | 75,407 | 72,956 | 65,932 |
| U.S. imports: | | | | | | | |
| Japan | *** | *** | *** | *** | 871 | 745 | 628 |
| Canada | 18,572 | 17,154 | 19,218 | 22,162 | 28,613 | 29,608 | 29,771 |
| Korea | 0 | 0 | 0 | 0 | 616 | 1,481 | 3,168 |
| Other sources | 4,222 | 3,417 | 4,707 | 9,600 | 25,847 | 43,322 | 53,633 |
| Total | *** | *** | *** | *** | 55,947 | 75,156 | 87,200 |
| Apparent U.S. consumption | *** | *** | *** | *** | 131,354 | 148,112 | 153,132 |
| | Share of consumption (percent) | | | | | | |
| U.S. producers' U.S. shipments | *** | *** | *** | *** | 57.4 | 49.3 | 43.1 |
| U.S. imports: | | | | | | | |
| Japan | *** | *** | *** | *** | 0.7 | 0.5 | 0.4 |
| Canada | *** | *** | *** | *** | 21.8 | 20.0 | 19.4 |
| Korea | *** | *** | *** | *** | 0.5 | 1.0 | 2.1 |
| Other sources | *** | *** | *** | *** | 19.7 | 29.2 | 35.0 |
| Total imports | *** | *** | *** | *** | 42.6 | 50.7 | 56.9 |

Source: *Staff Report of May 26, 1988*, pp. A-36 and A-40, and official Commerce statistics for 1984-87 data (of which import data were from questionnaire data for Japan and official Commerce statistics for other sources); U.S. producers' shipments are from *Nitrile Rubber from Korea*, USITC Pub. 3210, July 1999, p. C-3; and 1996-98 imports are from official Commerce statistics.

THE INDUSTRY IN JAPAN

Two firms produced nitrile rubber in Japan during the original investigation, Nippon Zeon (Tokyo) and JSR (Tokyo). Both companies exported nitrile rubber to the United States. However, the vast bulk (***) percent) of the nitrile rubber exported to the United States from Japan was produced by Nippon Zeon, exported by the trading company Nichimen Industrial (Tokyo), and imported by its marketing subsidiary, Nichimen America, a chemical-products distributor in New York, NY. Nearly all of the nitrile rubber that Nichimen America imported was then resold, without further processing, to G&E, Akron, OH, another chemical-products distributor, which, in turn, distributed the unprocessed material to various rubber processors and rubber-product manufacturers.³⁵

There are now three Japanese producers of nitrile rubber: JSR, Nippon Zeon, and Takeda Chemical. The IISRP lists the following production capacities for plants in Japan: Yokkaichi (owned by JSR), 40,000 metric tons; Kawasaki and Tokuyama (owned by Nippon Zeon), 20,000 and 25,000 metric tons, respectively; and Shimitzu (owned by Takeda Chemical), 900 metric tons.³⁶ According to Zeon, Japan's largest nitrile rubber production plant, JSR's Yokkaichi facility, is a "swing plant" capable of manufacturing other synthetic rubbers, and "therefore extra production capacity exists for producing more nitrile rubber for export to the United States in the event the dumping order is lifted."³⁷ The same appears to be true for the Nippon Zeon plants.³⁸

Zeon further states that Japanese producers of nitrile rubber use the "continuous batch" method of production, which permits them to produce larger quantities quickly and efficiently: "The result of this high output method has been production of larger and seemingly uncontrolled quantities. As a result, Japanese producers have stockpiled inventories of nitrile rubber. Also, in the wake of the Asian financial crisis, Japanese stockpiles of subject merchandise have grown significantly, creating a greater incentive for the Japanese producers to unload the subject merchandise at less than fair market value in jurisdictions where demand is high, such as the United States."³⁹ According to the IISRP, world consumption of "nitrile rubber" is projected to increase worldwide from 343,000 metric tons (actual) in 1997 to 386,000 metric tons in 2002.⁴⁰

Available data on the nitrile rubber industry in Japan are presented in table I-4. Data shown for 1984-87 are only for Nippon Zeon, which, as noted earlier, accounted for the *** majority of exports of nitrile rubber to the United States; therefore, such data are not comparable to figures presented for 1996-98. Japan currently exports nitrile rubber to a number of countries. As listed in table I-4, the vast majority of those exports are to Asian markets. There are no antidumping orders in place, other than in the United States, for nitrile rubber produced in Japan.⁴¹

³⁵ *Staff Report of May 26, 1988*, pp. A-8 through A-9.

³⁶ IISRP, *Worldwide Rubber Statistics 1998*, p. 68. IISRP data include some nitrile rubber products which are not subject to this review.

³⁷ *Response of Zeon*, p. 4.

³⁸ The IISRP lists these plants as "multi-purpose." IISRP, *Worldwide Rubber Statistics 1998*, p. 68.

³⁹ *Response of Zeon*, p. 13. To support its claim of "substantial inventories," Zeon cites the following inventory data for "nitrile rubber" published by the Synthetic Rubber Industry Association of Japan: 27.4 million pounds in December 1994, 38.9 million pounds in December 1995, 46.0 million pounds in December 1996, 42.9 million pounds in December 1997, 46.0 million pounds in December 1998, 49.2 million pounds in January 1999, and 48.7 million pounds in February 1999. *Response of Zeon*, p. 5.

⁴⁰ IISRP, *Worldwide Rubber Statistics 1998*, p. 6.

⁴¹ World Trade Organization (www.wto.org).

| Table I-4 Nitrile rubber: Japan's capacity and shipments, 1984-87 and 1996-98¹ | | | | | | | |
|--|--|------------------|------------------|------------------|------------------|------------------|--------------------|
| Item | 1984 | 1985 | 1986 | 1987 | 1996 | 1997 | 1998 |
| | <i>Quantity (1,000 pounds, unless noted otherwise)</i> | | | | | | |
| Production | *** | *** | *** | *** | 165,587 | 165,347 | (3) |
| Capacity | *** ² | *** ² | *** ² | *** ² | 189,377 | 189,377 | 189,377 |
| Capacity utilization | *** | *** | *** | *** | 87.4 | 87.3 | (3) |
| Shipments: Home market | *** | *** | *** | *** | (3) | (3) | (3) |
| Exports: United States | *** | *** | *** | *** | *** ⁴ | *** ⁴ | 6,299 ⁴ |
| Other | *** | *** | *** | *** | *** ⁵ | *** ⁵ | 69,605 |
| Total exports | *** | *** | *** | *** | *** | *** | 75,904 |
| Total shipments | *** | *** | *** | *** | (3) | (3) | (3) |

¹ Data for 1984-87 are only for Nippon Zeon; data for 1996-98 are believed to be representative of the entire Japanese nitrile rubber industry (but include a certain amount of nonsubject nitrile rubber). Capacity for Nippon Zeon alone in 1997 was *** million pounds and production was *** million pounds. (It should be pointed out that these figures were obtained from different data sources and it may be imprecise to compare them.)

² ***.

³ Not available.

⁴ Although reported under the same HTS number utilized for U.S. imports of nitrile rubber from Japan, reported Japanese exports of nitrile to the United States far exceed the reported imports.

⁵ China is, by far, the largest destination for exports of nitrile rubber from Japan, followed by Hong Kong, Korea, Thailand, the United States, Malaysia, and Italy.

Source: *Staff Report of May 26, 1988*, p. A-34, for 1984-87 data (which was provided by counsel for Nippon Zeon); Yano Research Institute for 1996-97 production figures; IISRP, *Worldwide Rubber Statistics 1998* for 1996-98 capacity figures; official UN statistics for 1996-97 exports; and official Japanese export statistics obtained through JETRO for 1998 exports. (Official UN statistics are copyrighted and not to be distributed outside the U.S. Government.)

APPENDIX A
FEDERAL REGISTER NOTICES

**INTERNATIONAL TRADE
COMMISSION****Investigation No. 731-TA-384 (Review)****Nitrile Rubber From Japan****AGENCY:** United States International Trade Commission.**ACTION:** Scheduling of an expedited five-year review concerning the antidumping duty order on nitrile rubber from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on nitrile rubber from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at <http://www.usitc.gov/rules.htm>.

EFFECTIVE DATE: July 2 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202-205-3180), 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

On July 2, 1999, the Commission determined that both the domestic interested party group response and respondent interested party group response to its notice of institution (64 F.R. 15788, April 1, 1999) of the subject five-year review were inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.¹ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on August 9, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before August 12, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by August 12, 1999. If comments contain business proprietary information (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.

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

² The Commission, with Chairman Bragg and Commissioners Crawford and Askey dissenting, has found the response submitted by Zeon Chemicals L.P. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

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

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99-18149 Filed 7-15-99; 8:45 am]

BILLING CODE 7020-02-P

order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Result of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1698 or (202) 482-1560, respectively.

EFFECTIVE DATE: August 5, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The subject merchandise under consideration is butadiene acrylonitrile copolymer synthetic rubber ("nitrile rubber") not containing fillers, pigments, or rubber-processing chemicals from Japan. Nitrile rubber refers to the synthetic rubber that is made from the polymerization of butadiene and acrylonitrile, and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product. Latex rubber is excluded from this order.

Nitrile rubber is currently classifiable under item number 4002.59.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and Customs purposes only. The written product description of the scope of this order remains dispositive.

History of the Order

The antidumping duty order on nitrile rubber from Japan was published in the *Federal Register* on June 16, 1988 (53 FR 22553). In that order, the Department estimated that the weighted-average dumping margins for Nippon Zeon Co., Ltd. ("Nippon") as well as for "all-

others" were 146.50 percent. The Department has not conducted any administrative review since that time.¹ The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On April 1, 1999, the Department initiated a sunset review of the antidumping duty order on nitrile rubber from Japan (64 FR 15727) pursuant to section 751(c)(6)(A)(i) of the Act. The Department received a Notice of Intent to Participate on behalf of Zeon Chemicals, L.P. ("Zeon") on April 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Zeon claimed interest party status under section 771(9)(C) of the Act as a domestic producer of nitrile rubber.

We received a complete substantive response from Zeon on May 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Zeon noted that although Zeon did not exist at the time of the original antidumping determination, from which the present proceeding is derived, Zeon is currently the largest producer of nitrile rubber in the United States (see May 3, 1999, Substantive Response of Zeon at 3). Zeon further noted that the parent company of Zeon, the Japanese firm Nippon, had participated in the original investigation as a respondent interested party (see *id.*). Also, Zeon indicated that Zeon previously changed its name from "Zeon Chemicals Incorporated" to "Zeon Chemicals, L.P." (See *id.*). We did not receive a substantive response from any respondent interested parties to this proceeding. Consequently, pursuant to section 351.218(e)(1)(ii)(C) of the *Sunset Regulations*, the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of

¹ There has been only a single review requested by a Japanese firm, Japan Synthetic Rubber Co., Ltd. That request, however, was timely withdrawn by the same firm. Consequently, the Department terminated the review. See *Termination of Antidumping Duty Administrative Review*, 62 FR 54822 (October 22, 1997).

DEPARTMENT OF COMMERCE

International Trade Administration
[A-588-706]

Final Results of Expedited Sunset Review: Nitrile Rubber From Japan

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

ACTION: Notice of final results of expedited sunset review: Nitrile rubber from Japan.

SUMMARY: On April 1, 1999, the Department of Commerce (the "Department") initiated a sunset review of the antidumping order on nitrile rubber from Japan (64 FR 15727) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty

the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Zeon's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103-316, vol. 1 (1994), the House Report, H.R. Rep. No. 103-826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (see section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (see section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In its substantive response, Zeon argues that dumping of the subject merchandise would resume if the antidumping duty order were revoked (see, May 3, 1999 Substantive Response

of Zeon at 3). In support of its assertion, Zeon notes that the volume of imports of the subject merchandise immediately and dramatically decreased after the discipline of the antidumping order was put into effect. In addition, Zeon points to the existence of continued dumping above the *de minimis* level throughout the life of the order.

In addition to argument related to previously calculated dumping margins and the volume of imports before and after the issuance of the order, Zeon asserts that there are other facts that support a determination that revocation would result in resumption of dumping. Zeon notes that Japanese companies continue to manufacture the subject merchandise for export. Furthermore, Zeon asserts that the U.S. market has proven highly penetrable to imports of nitrile rubber. In conclusion, Zeon asserts that because nitrile rubber is highly fungible (and, therefore, U.S. purchasers quickly switch suppliers based on a small price changes), Japanese producers could easily regain customers by resuming dumping were the order revoked.

The Department agrees with Zeon's argument that imports have declined significantly since imposition of the order. Statistics drawn from U.S. Census Bureau IM146 reports ("IM146"), Import Special Information Service of the Journal of Commerce ("ISIS"), and Trade Information On-Line Service ("TIOS") support Zeon's assertion that there was a substantial decrease of imports of the subject merchandise immediately after the issuance of the antidumping duty order. For instance, between 1987 and 1988 the imports of the subject merchandise fell 61 percent.² Moreover, between 1988 and 1998, the average volume of imports of the subject merchandise is a mere 18 percent of the pre-order level, some variations notwithstanding.³

With respect to the weighted-average dumping margins, as noted above, there has not been any administrative review with respect to the antidumping order under consideration. Consequently, the only weighted-average dumping margin available to the Department is the one that was determined in the original investigation: 146.50 percent. As a result, the Department finds that since

² As noted above, the antidumping duty order was issued on June, 1988.

³ For example, in 1989, imports of the subject merchandise increased 28 percent compared to the reduced 1988 imports volume; however, this is still less than 50 percent of the pre-order level. More significantly, during the period from 1994 to 1998, the annual average import volume of the subject merchandise has fallen to 12 percent of the pre-order import volume.

the issuance of the antidumping duty order, imports of nitrile rubber from Japan have continued to be assessed the weighted-average dumping margin of 146.50 percent, which is significantly above *de minimis*.

In conclusion, considering the facts that respondent parties waived their right to participate in instant review, that dumping margins above *de minimis* level continued since the issuance of the order, and that import volumes substantially decreased after the issuance of the order, the Department finds that continuation or recurrence of dumping is likely if the antidumping duty order is revoked.

Since the Department based this determination on the facts that the import volume of the subject merchandise decreased substantially and that dumping continued at levels above *de minimis*, it is not necessary to address Zeon's additional arguments.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (See section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its notice of the antidumping duty order on nitrile rubber from Japan, established both company-specific and country-wide weighted-average dumping margins of 146.50 percent for all imports of the subject merchandise from Japan (53 FR 22553, June 16, 1988). We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, Zeon asserts that revocation of the antidumping duty order would result in a resumption of dumping order at 146.50 percent, which is the weighted-average margin found in the investigation. Zeon argues that this is consistent with the SAA and *Sunset Policy Bulletin*, particularly in a case such as this where no administrative review has been conducted. In conclusion, Zeon argues that the decline in imports following the issuance of the order coupled with the fact that there

have been no administrative reviews further suggests that the margins from the order accurately reflect the minimum level of dumping that Japanese companies must maintain to sell nitrile rubber in the U.S. market.

The Department agrees with the Zeon. Absent argument and evidence to the contrary, the Department finds the margins calculated in the original investigation are probative of the behavior of Japanese producers/exporters if the order were revoked, as they are the only margins which reflect their behavior absent the discipline of the order. Therefore, the Department will report to the Commission the company-specific and all other margins reported in the "Final Results of Review" section of this notice.

Final Results of Review

Based on the above analysis, the Department finds that the revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

| Manufacturer/exporter | Margin (percent) |
|---------------------------|------------------|
| Nippon Zeon Co. Ltd | 146.50 |
| All others | 146.50 |

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

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APPENDIX B
STATEMENT ON ADEQUACY

EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY
in

Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Review)

On July 2, 1999, the Commission determined that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Act, 19 U.S.C. §1675(c)(3)(B).

The Commission received a response to the notice of institution from one domestic producer, Zeon Chemicals L.P. ("Zeon"). The Commission unanimously determined that the domestic interested party group response was inadequate, but split evenly regarding the adequacy of the individual domestic producer response.¹

Vice Chairman Miller and Commissioners Hillman and Koplun determined that the individual response submitted by Zeon was adequate.² They nonetheless found that the domestic interested party group response was inadequate because Zeon accounted for a small percentage of overall domestic production in 1998.³ In reaching this conclusion, they examined Zeon's production alone and did not include in this total any production of DSM Copolymer, Inc. Although Zeon entered an arrangement to market all of DSM Copolymer's production, DSM Copolymer continues to be the producer of the domestic like product. DSM Copolymer did not file a response to the notice of institution in this proceeding.

Chairman Bragg, Commissioner Crawford and Commissioner Askey determined that the individual response from the domestic producer Zeon was inadequate because Zeon failed to include in its response domestic like product-specific production data, as required by the Commission in its notice of institution in this review. Moreover, Zeon failed to correct this error, although it was given an opportunity to do so by the Commission. Accordingly, because the only response received from a domestic party was inadequate, these Commissioners also concluded that the domestic interested party group response was inadequate.

The Commission did not receive a response from any respondent interested party. Accordingly, the Commission determined that the respondent interested party group response was inadequate. The Commission did not find any circumstances that would warrant conducting a full review. The Commission therefore determined to conduct an expedited review.

¹ Because a majority of the Commission did not find that the individual response filed by Zeon was inadequate, the domestic producer is considered to have filed an adequate response for purposes of this expedited proceeding.

² Zeon provided a response to each of the items in the notice of institution other than the requested data regarding its production of the domestic like product and an estimate of total U.S. production of the domestic like product. However, Zeon provided a reasonable explanation of the reason it did not supply those data.

³ Uniroyal closed its domestic nitrile rubber production facilities in June 1999. However, Zeon represented a small percentage of domestic production even excluding Uniroyal's 1998 production from the calculation.