

NITROCELLULOSE FROM FRANCE

Determination of the Commission in
Investigation No. 701-TA-190 (Final)
Under the Tariff Act of 1930,
Together With the Information
Obtained in the Investigation

USITC PUBLICATION 1390

JUNE 1983



UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information which would disclose confidential operations of individual firms may not be published and therefore has been deleted from this report. These deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

Investigation No. 701-TA-190 (Final)

NITROCELLULOSE FROM FRANCE

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, 2/ pursuant to section 705(b)(1) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)(1)), that an industry in the United States is materially injured by reason of imports of nitrocellulose 3/ which have been found by the Department of Commerce to be subsidized by the Government of France.

Background

The Commission instituted this investigation effective March 22, 1983, following a final determination by the Department of Commerce that subsidies were being provided to Societe Nationale des Poudres et Explosifs, a producer and exporter of nitrocellulose in France.

Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on April 6, 1983 (48 F.R. 15018). The hearing was held in Washington, D.C. on May 9, 1983, and all persons who requested the opportunity were permitted to appear in person or by counsel.

1/ The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i), 47 F.R. 6190, Feb. 10, 1982).

2/ Commissioner Stern dissenting.

3/ For purposes of this investigation, nitrocellulose is provided for in item 445.25 of the Tariff Schedules of the United States.

VIEWS OF CHAIRMAN ALFRED E. ECKES AND
COMMISSIONER VERONICA A. HAGGART

On the basis of the record in investigation No. 701-TA-190 (Final), 1/ we determine that an industry in the United States is materially injured by reason of imports of nitrocellulose from France which have been found by the Department of Commerce to be subsidized by the Government of France. 2/

Domestic industry

We find that the like product in this investigation is soluble industrial nitrocellulose. Therefore, we find the domestic industry to be Hercules, Incorporated (Hercules), the sole domestic producer. Our conclusions regarding the appropriate like product and the domestic industry in this investigation are the same as those in both the preliminary countervailing duty and antidumping investigations regarding nitrocellulose from France. 3/

1/ A parallel preliminary antidumping investigation of nitrocellulose from France resulted in an affirmative determination. Nitrocellulose from France, Inv. No. 731-TA-96 (Preliminary), USITC Pub. No. 1280 (1982). The Commission will make its final injury determination in the antidumping investigation by July 25, 1983. The transcript of the conference and the post-conference briefs in that investigation have been incorporated into the record in the instant investigation at the request of the parties. See Letter to the Secretary of the Commission dated September 29, 1982 from all parties.

2/ In its final determination, Commerce found that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to Societe Nationale des Poudres et Explosifs (SNPE), the sole producer and exporter of French nitrocellulose. 48 Fed. Reg. 11971 (March 22, 1983).

3/ For a full discussion of our conclusions regarding this issue, see Inv. No. 731-TA-96, supra note 1, at 2-4 and Inv. No. 701-TA-190 (Preliminary), USITC Pub. No. 1304 (1982). The rationale for these conclusions will not be repeated herein.

Condition of the domestic industry 4/

Decreased production, shipment and employment data, increased inventories, and a declining trend in the relevant profit and loss data demonstrate the existence of material injury to this industry. Although Hercules' total nitrocellulose production increased from 1979 to 1981, it declined substantially in 1982 and remained unchanged in the first quarter of 1983 when compared with the corresponding period in 1982. 5/

Domestic shipments declined irregularly from 1979 to 1981 with a significant decrease beginning in 1982 and continuing through the first quarter of 1983 when compared with the first quarter of 1982. 6/ U.S. inventories of nitrocellulose increased dramatically from 1979 to 1980, and then nearly doubled in 1981. Inventories showed some decline in 1982 but remained above 1980 levels. 7/ Employment statistics for production and related workers engaged in the production of nitrocellulose also declined irregularly over the 1979-1982 period with a substantial decrease in 1982. 8/

Current capacity remains significantly underutilized. 9/ Any analysis of capacity utilization data is complicated in this investigation by increases in

4/ Industry data have been designated confidential because there is only one domestic producer and only one exporter of French nitrocellulose. Consequently, the discussion of the condition of the domestic industry and the impact of the imports necessarily focuses on generalized trends.

5/ Report at A-9-10 and Table 2.

6/ Id. at A-11 and Table 4. Export shipments increased irregularly in the corresponding period, as well as the ratio of exports to total commercial shipments by Hercules. Id. at A-12, Table 5.

7/ Report at A-14.

8/ Id. at A-15-16 and Table 8. Figures for the first quarter of 1983 are unavailable.

9/ Report at A-9-10 and Table 2. It has been argued by SNPE that a cause of injury to the domestic industry was Hercules' overexpansion of capacity in 1980. Prehearing Brief of Respondent at 21-25.

domestic capacity during the period of investigation. Hercules increased its capacity in 1980 10/ following the withdrawal of the only other domestic producer, DuPont. 11/ The decline in production in 1982 however was so significant that capacity utilization even when calculated on pre-expansion capacity levels still demonstrates significant decline. Thus, increases in capacity do not account for declining utilization trends. 12/

Financial data received from Hercules reveal a decline in profit and loss indicators for the period under investigation. Despite a decline in sales volume, Hercules' total net sales of nitrocellulose increased from 1979 through 1981 primarily as a result of increased selling prices. 13/ However, in 1982, net sales decreased significantly because prices remained stable while sales volume continued to decline. Because selling prices did not keep pace with the cost of goods sold, operating profits fell consistently throughout the period under investigation. Similarly, the ratio of operating profit to net sales, and ratio of operating profit to original cost, book value and replacement cost of fixed assets all consistently decreased from 1979 through 1981, with an even larger decrease in 1982 compared with the 1981 level. 14/

10/ Report at A-9.

11/ See id. at A-50, Appendix C.

12/ Id. at A-10. Moreover, Hercules' current expanded capacity is less than the combined capacity of Hercules and DuPont in 1977, the last year of full production by DuPont. Inv. No. 701-TA-190, supra note 3, at A-10.

13/ Report at A-17-18 and Table 10.

14/ Id. The financial indicators remain unfavorable even if the costs related to capacity expansion are eliminated from the profit-and-loss data. See Investigations Memorandum INV-G-097 (May 27, 1983) at 1.

Material injury by reason of subsidized imports

Section 771(7)(B) of the Tariff Act of 1930 directs the Commission to consider, among other factors, (1) the volume of imports of merchandise under investigation, (2) the effect of such imports on domestic prices, and (3) the impact of such imports on the domestic industry. 15/ 16/ 17/

15/ 19 U.S.C. § 1677(7)(B).

16/ Chairman Eckes notes that depreciation of the French franc in terms of the U.S. dollar may well have contributed to the price competitiveness of nitrocellulose imported from France. In fact, in this and other unfair import investigations exchange rates may be a more important cause of underselling than unfair trade practices. However, Congress has directed the Commission not to weigh the causes of material injury. Also, since the Department of Commerce has determined that imported nitrocellulose is subsidized and the Commission has found evidence of underselling and lost sales based on price, it is not the Commission's responsibility to examine and weigh the reasons for underselling. To do so, would be to set aside the statutory bifurcation of responsibilities under the Trade Agreements Act of 1979 and involve the Commission in activities beyond its mandate.

17/ Commissioner Haggart notes that SNPE argues in this final investigation that the decline of the franc against the dollar for the most part accounted for SNPE's price advantage over Hercules. See Post-Hearing Brief of SNPE at 9, Hearing Transcript at 81, 90-92. In other words, SNPE is arguing that we should attribute the margins of underselling to the devaluation of the franc and conclude that any injury sustained by the domestic industry is not caused by subsidized imports of nitrocellulose from France.

The fact that a favorable exchange rate may translate into lower prices for the subsidized imports does not alter the fact that subsidized imports may be a cause of material injury to the domestic industry. Similarly, the fact that subsidized imports may have benefited from lower costs of production and are thus priced lower than domestic products does not alleviate the need to assess the impact of the subsidized imports on the domestic industry. It is the intent of Congress that the Commission focus on the impact of these subsidized imports once they are in the U.S. market and determine whether these imports are a cause of material injury.

Under the relevant statutory scheme, subsidized imports which cause material injury to the domestic industry should not be permitted to compete in the U.S. market without the subsidy being offset. If countervailing duties are imposed under these circumstances, the subject imports are still permitted access to the market and purchasers may still be able to benefit from favorable rates of exchange. The imports, however, will not be competing with the benefit of a subsidy.

At the same time the domestic industry was experiencing material injury, French imports were increasing both in absolute terms, as well as relative to domestic consumption. The absolute volume of imports from France increased irregularly from 1979 through 1982. 18/ Apparent U.S. consumption declined throughout the entire period, including the first quarter of 1983. 19/ Market penetration of nitrocellulose from France has increased consistently since 1980. 20/ The decrease in both absolute imports and market penetration in the first quarter of 1983 occurred since the institution of this investigation.

Weighted average prices of nitrocellulose 21/ were compared on f.o.b. U.S. point of shipment and delivered bases. 22/ While domestic prices increased irregularly during the period from 1980 through 1982, prices of French imports increased at a slower rate for the same period. 23/ As noted previously, the cost of goods sold for the domestic producers increased dramatically from 1980 through March 1983; however, domestic prices failed to keep pace with these increases and resulted in losses for the domestic industry. 24/

Purchasing decisions are especially price sensitive on fungible commodities such as the commercially-interchangeable domestic and imported

18/ Report at A-12-13 and Table 6.

19/ Id. at A-14 and Table 7.

20/ Id. at A-21 and Table 13.

21/ Id. at A-19.

22/ Id. at A-29-30 and Table 16, A-33 and Table 19.

23/ Id. at A-29-30 and Table 16. As noted above, changes in the foreign producer's pricing practices have occurred since the institution of this investigation.

24/ Report at A-18 and Table 10.

nitrocellulose that is the subject of this investigation. 25/ In a survey of firms reporting some purchase of French nitrocellulose, price was mentioned as one of the most important factors in their purchasing decisions. 26/ Moreover, in investigating allegations of lost sales, interviews with purchasers confirmed the importance of price in purchasing decisions. Based on the fungible nature of nitrocellulose, together with the demonstrated importance of price in purchasing decisions, the small margins of underselling reported in this investigation are particularly significant. 27/

Lost sales information developed during the course of this investigation confirmed allegations of sales lost to French imports because of lower prices. Information provided by nitrocellulose customers accounting for over 95 percent of alleged lost sales shows a substantial increase of these customers' purchases of French imports both in absolute terms and as a share of their total nitrocellulose purchases for the period 1980 through 1982. 28/ Eleven of the sixteen purchasers contacted indicated that they switched because of the lower price of the French product or more favorable credit terms. Five of these eleven firms switched from Hercules to the French importer as their primary source of supply for nitrocellulose during 1982 when imports were increasing as a share of apparent consumption. 29/

Conclusion

In making our affirmative determination, we have found a sufficient causal nexus between the subsidized imports and material injury to the

25/ Id. at A-5.

26/ Id. at A-22.

27/ Id. at A-31-33 and Tables 16 and 19.

28/ Id. at A-23 and Table 14.

29/ Id. at A-24-29.

domestic industry as demonstrated by import trends and margins of underselling, together with confirmed information regarding lost sales. 30/ We therefore determine that the domestic industry is materially injured by reason of imports of nitrocellulose from France upon which bounties or grants are paid.

30/ The Commission does not weigh injury from imports against other factors which may be contributing to the overall injury to the domestic industry. See S. Rep. No. 249, 96th Cong., 1st Sess. 57 (1979) and H.R. Rep. No. 317, 96th Cong., 1st Sess. 47 (1979).

VIEWS OF COMMISSIONER PAULA STERN

I determine that the domestic nitrocellulose industry is not being materially injured or threatened with material injury by reason of subsidized imports of nitrocellulose from France. 1/

Imports from France are small in volume and market share, and have not increased significantly during the period under investigation. The price effect of these imports is mixed. To the extent that these imports have undersold the domestic product, the margins of underselling are very small, and many are less than what would clearly result in a lost sale. In addition, imports from France enjoy a price advantage related to exchange rates that eclipses any price effect that could be attributed to the net subsidy. More fundamentally, many sales that have been lost to imports from France have been made to assure a source of supply other than the single domestic producer. Finally, although petitioners allege that prices of the imports have suppressed domestic prices, the record indicates that the domestic producer has been able to raise prices substantially during this period. To the extent it has

1/ Since there is an established domestic industry, the question of whether imports have materially retarded the establishment of a domestic industry is not relevant to this investigation.

not been able to fully implement price increases, this appears to be a function of resistance on the part of customers to price increases for both the domestic and imported products, and of normal market competition involving imports from Japan and other sources as well as from France.

Definition of the Domestic Industry

I concur with the analysis contained in the majority's views.

Condition of the Domestic Industry 2/

Since 1978, Hercules, Inc. (Hercules) has been the only domestic producer of nitrocellulose. Prior to 1978, E.I. DuPont de Nemours & Co. (DuPont) was also a domestic producer. At that time, Hercules and DuPont each held approximately half of the domestic market. 3/ In July 1977, DuPont announced that it would phase out its nitrocellulose production by December of that year because needed capital

2/ Because there is only one domestic producer, much of the data relevant to this analysis are confidential. Therefore, my analysis necessarily must be made in general terms.

3/ Staff Report at A-8.

investments were "not economically justified in the face of current and forecast demand for industrial nitrocellulose. 4/

In 1976, the last full year of production by DuPont, Hercules' capacity could substantially, but not completely, meet domestic demand. 5/ Thus, there was a shortage of nitrocellulose in the U.S. market during 1978 and 1979, and many customers were put on allocation. To help preserve its market from competition from substitute products, Hercules encouraged SNPE, the French producer, to enter the U.S. market. SNPE did so beginning in 1978.

In late 1978, when Hercules held a very substantial portion of the U.S. market, 6/ it announced that it would expand its capacity to produce nitrocellulose by approximately 50 percent. Only a portion of the expanded capacity was necessary to satisfy domestic demand at the time. 7/ The capacity expansion was completed in late 1980. However, by 1980, domestic demand for nitrocellulose had fallen sharply below that of 1976 and 1977. 8/ Domestic consumption

4/ July 19, 1977 Mailgram from DuPont to Customer, reprinted in Staff Report, App. C.

5/ Report at Tables 2 and 7.

6/ The exact figure is confidential information. See Report at Table 13. Hercules has publicly stated that today it holds as much as 85 percent of the domestic market. Chemicals Week (March 9, 1983) at 15.

7/ Hercules acknowledges that capacity was expanded to such an extent in part to meet possible future surges in domestic demand. Petitioner's May 13, 1983 Post Conference Submission at 3.

8/ Report at Table 7.

increased slightly between 1980 and 1981, but fell between 1981 and 1982 to a level lower than 1980. 9/ Thus, the 1976-1982 period was one of a substantial net drop in consumption.

Although the immediate cause of decreased consumption is apparently the recession, 10/ it is believed that demand for nitrocellulose is undergoing a continuous long-term decline. 11/

Production figures indicate that only a small fraction of the additional capacity was utilized in 1980 and 1981. 12/ In 1982, production was below the level of pre-expansion capacity. 13/ The same will probably be true for 1983 as well. 14/

The costs of this expansion have had a heavy impact on Hercules' profitability. Hercules enjoyed a robust operating profit margin in 1979, presumably because it was operating at full capacity. 15/ In 1980, the first year in which the added capacity came partly on stream, sales increased, but the depreciation costs and the cost of goods sold increased by substantially more. 16/ Thus, the ratio of operating profit to net sales fell sharply. Nevertheless, the ratio was a healthy figure.

9/ Id.

10/ Id.

11/ Id. at A-15.

12/ Id. at Table 2.

13/ Id.

14/ Id. This is based on annualizing data for the first quarter of 1983.

15/ Id. at Table 2.

16/ Id. at Table 10.

In 1981, Hercules' production and shipments increased in line with the increase in domestic consumption. 17/ The value of sales increased at a rate substantially greater than the increase in production and shipments. 18/ Nevertheless, substantial increases in depreciation costs and costs of goods sold resulted in declines in operating profit and its operating profit margin. 19/ Even so, its operating profit margin, though smaller than previous years, was nevertheless respectable. 20/

In 1982, as consumption fell, Hercules' shipments declined by the same percentage. 21/ Production declined, but inventories declined also. 22/ Sales declined somewhat, but operating profit plunged several-fold such that the ratio of operating profit to net sales was extremely small. 23/ The decline in sales for 1982 clearly had an impact on operating profits. However, as Hercules admits, the added costs attributable to the expansion of capacity affected the price of its product and its profitability. 24/

17/ Id. at Tables 3 and 7.

18/ Id. at Table 10.

19/ Id. at Table 10.

20/ Id.

21/ Id. at Table 7.

22/ Id. at Table 2 and A-14.

23/ Id. at Table 6.

24/ Tr. at 51. Hercules argues that the price effect of the increased capacity equals a certain amount. May 13, 1983 Confidential submission at 2. Staff estimates that the total additional costs per pound was substantially higher than Hercules' figure. May 27, 1983 Memorandum INV-G-097 at 1.

Staff estimates indicate that if Hercules had not expanded capacity, its profit margins in 1981 and 1982 would have been substantially higher. 25/ Hercules' decision to increase capacity may yet prove to have been a wise business decision. Nevertheless, it is clear that the lion's share of the financial difficulties currently experienced by the firm is attributable to the added capital and production costs related to the expansion of capacity. Hercules has also made additional large investments in new equipment and machinery for its nitrocellulose operations in 1981 and 1982. 26/ Hercules is experiencing a temporary decline in profitability related to

25/ See May 27, 1983 Memorandum to the Commission from Director, Office of Investigations re Supplemental Information (INV-G-097) at 2. The domestic producer could not allocate its overall interest expenses to its nitrocellulose product line. Thus, the profit and loss information on Table 10 of the Report does not include interest expense. Correspondingly, the most conservative estimate of the operating profit margin for 1981 does not include interest expense. Even so, the estimated operating profit margin for 1981 is substantial, and the margin for 1982, though small, is several times greater than its post-expansion margin for 1982. Furthermore, had interest expense been included, the estimated operating profit margins would be substantially greater. The majority will presumably point out that the 1982 estimates are nevertheless below the average for firms in the chemical industry. Since we know that demand for and sales of this product has been particularly hard hit by the recession, I do not find the chemical industry aggregate figures particularly relevant.

26/ Report at A-19.

its decision to make substantial capital investments. 27/

However, rather than an industry hobbled by imports, I see one that is gearing up for increased and more efficient production in the long term.

Material Injury or Threat of Injury
by Reason of Subsidized Imports

The statute instructs us that an industry may be found to be suffering material injury by reason of subsidized imports even if it is suffering additional, or even greater, injury for other reasons. "Material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant." 28/ In making its determination, the Commission considers the volume and market share of the subject imports, the impact of the imports on the price of the domestic product, the effect of the imports on the domestic industry, and any other factors it deems relevant.

27/ I note in this regard that Hercules has used the double declining balance method of depreciating the capital investment related to its capacity expansion. Therefore, depreciation costs, which alone had significant impact on profitability, can be expected to steadily decrease in the future.

28/ 19 U.S.C. section 1677(7)(A).

Since DuPont's exit from the market, Hercules has increased its domestic market share as much as 85 percent.

29/ Imports from France and Japan account for most of the imports of nitrocellulose. 30/ Imports entered the U.S. market in 1978, when Hercules alone could not satisfy domestic demand. Many domestic purchasers began to buy imports during the shortage period, and have maintained this secondary source relationship as a guarantee against future shortages due to strikes, or other unexpected occurrences. 31/ In addition, purchasers have indicated that they wish to maintain secondary sources to improve their bargaining position with Hercules as a result of several substantial price hikes in recent years. 32/ Thus, it is clear that Hercules cannot expect to capture 100 percent of the domestic market for nitrocellulose. It is not clear how much more of the domestic market, if any, Hercules could now gain given purchasers' preferences for alternative sourcing.

Imports from France entered the U.S. market in 1978. The share of the domestic market held by these imports declined in 1980 compared to 1979, but increased in 1981 and 1982 to a

29/ See n. 6 at p. 13.

30/ A small amount is imported from West Germany and various other countries. Report at Table 6.

31/ See, e.g., purchaser no. 3, Report at A-24, Respondents' May 6, 1983 Confidential Purchasers Survey, customer nos. 6, 7, 18 and 19.

32/ See, e.g., Respondent's Survey, purchaser nos. 5 and 15.

level slightly above that of 1979. 33/ Nevertheless, it is a relatively small figure, and has not deviated more than three percentage points during the 1979-1982 period.

Hercules' chief argument as to why it is materially injured by imports from France is that prices of imports from France during parts of the period under investigation did not increase as much as those for Hercules' product.

Imports from France were priced higher than the domestic product through the third quarter of 1980, when Hercules' additional capacity came on stream. 34/ At that time, the franc began to decline relative to the U.S. dollar, and the price of imports from France declined slightly. 35/ In April 1981, Hercules announced a substantial price increase. 36/ Later that year, the French producer, Societe Nationale des Poudres et Explosifs (SNPE), and Fayette Chemical Corp. (Fayette), the exclusive importer of nitrocellulose from SNPE,

33/ Id. at Table 13.

34/ Id. at Table 16 and Tr. at 13.

36/ Report, Attachment C.

36/ Petition at 18 and Report at Table 16.

also raised prices substantially, although slightly less than those of Hercules. 37/ In February 1982, Hercules again raised its list price substantially. 38/ SNPE claims it also attempted to raise prices again in February 1982, but opposition by Fayette and its customers resulted in the increase being delayed until September 1982. 39/ Thus, we have the curious situation that in a period of declining consumption and oversupply, prices of both the domestic supplier and the importer, on an overall basis, have increased substantially. 40/ I believe that it is necessary to evaluate the price competition between the imports and the domestic product in light of these circumstances.

The Commerce Department has determined that the final subsidy for these imports is 3.60 percent ad valorem. 41/ Imports from France were priced higher than the domestic product in several quarters during the period under investigation.

37/ Report at Tables 16 and 18; Tr. at 100.

38/ Petition at 18. Hercules claims that it was not able to fully implement the last price increase, and that it has been offering discounts off list price in order to meet the prices of French imports.

39/ Tr. at 101.

40/ See Report at A-29 and Tables 16 and 18.

41/ June 2, 1983 letter to Chairman Eckes from Gary N. Horlick, Dep. Asst. Sec'y for Import Administration, U.S. Department of Commerce at 2. The Commission did not receive written confirmation of this figure until after the vote. However, this letter confirms the figure which was given to the Commission's staff by phone on the day of the vote, and told to us by staff before the vote.

There are particularly clear indications of overselling in 1980, the end of 1982, and the first quarter of 1983. 42/ Furthermore, prices based on domestic producers and importers' f.o.b. prices indicate that the margins by which imports from France undersold the domestic product have been tiny. 43/ Data on delivered prices indicate slightly larger margins of underselling in some quarters, yet in all but two quarters these margins were also very small. 44/

In fact, the margins for almost all quarters in both sets of data are even smaller than the 2 - 10 cents per wet-pound range which the petitioner's representative indicated might result in a lost sale. 45/ Thus, to the extent imports have undersold the domestic product, it is not the "significant" underselling required by the statute. 46/

42/ Report at Tables 16 and 15.

43/ Id. at Table 16.

44/ Id. at Table 18.

45/ Report at Tables 16 and 18; Tr. at 41.

46/ 19 U.S.C. section 1677(7)(C)(ii)(I).

In addition, there is no causal nexus between the subsidy and the margins of underselling. Since late 1980, when the franc declined significantly relative to the U.S. dollar, SNPE's effective exchange rate advantage 47/ has been at least twelve percent, or four times that of the net subsidy. 48/ In addition, the French importer has benefitted from cost advantages related to a decline in duties. 49/ Therefore, the French producer and importer apparently are not experiencing the same degree of pressure to raise price as is the domestic producer which is beset with excess capacity costs. Thus, the information on the record indicates that the net subsidy is

47/ Staff estimates that this advantage may be as much as 15-20 percent. See transcript of May 31, 1983 Commission vote.
48/ The relevance of the exchange rate factor to any given investigation will necessarily vary depending upon the circumstances of each case. I note that in this case, there has been a substantial and sustained downward trend in the decline of the French franc relative to the U.S. dollar, and indications are that this trend will continue. Also, the effective exchange rate advantage enjoyed by these imports is several times the amount of the net subsidy. Thus, it is clear that the effect of the net subsidy is insignificant, in light of this and other cost advantages. Furthermore, the domestic producer and purchaser responses confirm that the exchange rate advantage clearly had a beneficial effect on the pricing of the French product. Tr. at 33, 51; Report at A-24, Purchaser 2.
49/ See Report at Table 1.

irrelevant to the pricing of the French imports because it is overshadowed by much more substantial cost advantages. In other words, even without the subsidy, SNPE could have substantially undersold Hercules based on the effective exchange rate advantage alone, had it chosen to. Therefore, the effect of the French imports on the domestic producer would have been the same with or without the subsidy.

Petitioner has provided several examples of lost sales, price depression, or price suppression to bolster its case. In the preliminary investigation, the staff report contained eight instances of confirmed lost sales. 50/ Information contained in the present report discloses a much more complicated situation. Analysis of this information clearly shows that customers accounting for at least half of the total represented purchases of nitrocellulose bought the French product for secondary sourcing or other non-price reasons, or that their purchases of imports from France were insignificant in comparison to purchases of the domestic product. 51/ In

50/ Nitrocellulose from France, Inv. No. 701-TA-190 (Preliminary) (USITC Pub 1304) (October 1982) at A-18-A-19.

51/ See Report at A-34-A-42. Total estimated yearly purchases represent more than one-third of annual consumption in 1982. This calculation is based on the purchases of companies nos. 2, 3, 6 and 8, beginning on page A-34. It is a very conservative estimate which does not include purchases that were even arguably injurious to the domestic producer. For example, purchasers that claimed secondary sourcing as the primary factor, but whose purchases reflect amounts substantially greater than would appear necessary for secondary sourcing were not included in this calculation.

addition, other purchaser responses confirm that alternative sourcing is a major factor in the domestic marketing of nitrocellulose. 52/ These responses also indicate that exchange rate differentials have resulted in a significant price advantage for imports from countries other than France that are priced close to, if not below, imports from France.

53/

Finally, the record indicates that any price suppression was limited to the extent that the domestic producer and the importer both increased their prices substantially during the period. 54/ Also, the inability of the domestic producer to fully implement price increases is not clearly attributable to the price of imports from France. The record indicates that strong purchaser resistance to price increases resulted in the failure of both the domestic producer and the French producer to implement price increases. 55/ Furthermore, imports from countries other than France are priced lower than the domestic product, and have also been a source of price competition in the domestic market. 56/ Thus, it appears that the failure of the domestic producer to fully implement price increases resulted from it attempting to obtain prices that the market wouldn't bear.

52/ See id. at A-30.

53/ See purchaser nos. 2 and 3; Report at A-34.

54/ See n. 40, at p. 19.

55/ See Customer Letters, Respondents' Pre-Conference Brief, App. 2.

56/ Tr. at 102; Report at A-35; purchaser no. 3; Customer Letter No. 5, Respondents' Pre-Conference Brief, App. 2.

Competition per se is not synonymous with "material injury." Given the small market share, and the small margins of underselling, as well as purchasers' preferences for an alternative source of supply, I find that the limited competition posed by imports from France does not constitute "material injury."

Threat of Injury

There is also no indication that imports from France are threatening the domestic industry. My discussion of the "material injury" issue is applicable to the issue of threat of material injury as well. In addition, I note that the French producer is currently producing near full capacity and that its inventories are down substantially in 1982 over 1981. 57/ Furthermore, although the French producer exports a substantial amount of its production, it has major export markets other than the United States. 58/ Because of the exchange rate advantage of the French franc in relation to the currencies of its other trading partners, there is no reason to believe that sales to these markets will not continue. 59/

57/ Report at A-27.

58/ Id. at A-28.

59/ See Tr. at 125.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

Following a final determination by the U.S. Department of Commerce that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to Societe Nationale des Poudres et Explosifs (SNPE), a producer and exporter in France of industrial nitrocellulose, 1/ the U.S. International Trade Commission instituted investigation No. 701-TA-190 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1617d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such subsidized nitrocellulose. Notice of the institution of the Commission's final investigation and of the public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the Federal Register on April 6, 1983 (48 F.R. 15018). 2/ The hearing was held in Washington, D.C., on May 9, 1983. 3/

The Department of Commerce published its final determination as to the question of subsidized sales in this investigation on March 22, 1983. 4/ The applicable statute directs that the Commission make its final injury determination within 75 days after publication of Commerce's notice, or by June 6, 1983.

On September 14, 1982, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce on behalf of Hercules, Inc., Wilmington, Del., alleging that firms in France receive, directly or indirectly, bounties or grants on the production and/or exportation of industrial nitrocellulose within the meaning of the U.S. countervailing duty laws. The Commission therefore instituted a preliminary countervailing duty investigation to determine whether there was a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of the allegedly subsidized imports of industrial nitrocellulose from France. On October 29, 1982, the Commission determined, on the basis of the record 5/ developed during the course of that preliminary investigation, that there was such a reasonable indication of material injury (47 F.R. 51024).

1/ Industrial nitrocellulose is provided for in item 445.25 of the Tariff Schedules of the United States (TSUS).

2/ A copy of the Commission's notice is presented in app. A.

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

4/ A copy of Commerce's final determination, as published in the Federal Register of Mar. 22, 1983 (48 F.R. 11971), is presented in app. B.

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

Background

On December 22, 1982, Commerce made a negative preliminary subsidy determination concerning industrial nitrocellulose from France (47 F.R. 58330). After further investigation, however, Commerce issued an affirmative final subsidy determination in the case on March 22, 1983. Most final countervailing duty investigations conducted by the Commission begin at the time of an affirmative preliminary subsidy determination by Commerce, and last 120 days. Because Commerce's preliminary determination was negative in this case, the Commission did not institute its final investigation until Commerce made its affirmative final determination, and the length of the case will be 75 days rather than 120 (see 19 U.S.C. §§ 1671d(b)(2) and 1571d(b)(3)).

Other Commission Investigation Concerning Industrial Nitrocellulose

The Commission is also currently conducting an antidumping investigation concerning industrial nitrocellulose from France. On July 2, 1982, a petition was filed on behalf of Hercules, Inc., Wilmington, Del., alleging that an industry in the United States was materially injured or threatened with material injury by reason of imports of industrial nitrocellulose from France which were allegedly being sold in the United States at less than fair value. On August 16, 1982, the Commission made an affirmative determination in that investigation (No. 731-TA-96 (Preliminary)). The record of investigation No. 731-TA-96 (Preliminary) has been incorporated into the record of the present investigation.

On December 23, 1982, the Department of Commerce determined preliminarily that industrial nitrocellulose from France was not being, and was not likely to be, sold at less than fair value in the United States. Commerce extended the period for final determination in this case to allow additional time in order that a proper analysis could be completed. In its final determination, delivered to the Commission on May 10, 1983, Commerce found that industrial nitrocellulose from France is being sold in the United States at less than fair value. Because Commerce had made a negative preliminary determination in the investigation, the Commission must make its final injury determination within 75 days of its receipt of Commerce's final determination, or by July 25, 1983. The overall weighted-average dumping margin on all industrial nitrocellulose sales was found to be 1.38 percent.

Nature and Extent of Subsidies

In its final determination, Commerce found that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930 are being provided to SNPE, a manufacturer and exporter in France of industrial nitrocellulose. ^{1/} The estimated net subsidy is 3.60 percent ad valorem (revised from the initial estimate of 3.25 percent ad valorem by letter from Commerce, dated June 1, 1983).

^{1/} SNPE is a Government-owned company, created by the French Government in 1971. A-2

The following programs were found to confer subsidies:

Grant from the Ministry of Defense;
Cross-subsidization through military sales;
Assumption of labor costs; and
Regional development incentives.

The Product

Description and uses

The imported product which is the subject of this investigation is soluble industrial nitrocellulose (also known as cellulose nitrate). SNPE is the only producer of such nitrocellulose in France, and Hercules is the only U.S. producer.

Soluble industrial nitrocellulose (hereinafter referred to as nitrocellulose) is a white, amorphous, plastics material prepared commercially by reacting cellulose, from cotton linters or wood pulp, with an aqueous mixture of nitric acid and sulfuric acid. ^{1/} In the Hercules process, the cellulose and mixed nitrating acids are fed continuously and simultaneously into a vessel, where nitration of the cellulose takes place. After nitration, the slurry of nitrocellulose and spent acid is passed into a centrifuge, which removes the spent acids and water. After removal from the centrifuge, the product is boiled for stability and fed into a continuous digester for proper molecular weight control. Upon completion of the boiling and digesting procedure, the water-wet nitrocellulose is charged into hydraulic presses that compress it into a cylindrical block and remove the water (dehydration) and replace it with alcohol (ethyl, isopropyl, or n-butyl alcohol). The cylindrical alcohol-wet nitrocellulose block is then granulated and packaged into steel drums for shipment. A flow chart of Hercules' production process is presented on page A-4.

^{1/} There is another, quite different type of nitrocellulose known as smokeless nitrocellulose, or guncotton. Smokeless nitrocellulose is used in explosives and is generally more viscous and higher in nitrogen content (12.6 to 13.4 percent compared with 10.8 to 12.2 percent) than is industrial nitrocellulose. Both the industrial and explosive nitrocellulose are produced in similar equipment up through the nitration step. Beyond nitration, however, the facilities for industrial and explosive nitrocellulose are distinct. Smokeless nitrocellulose is not included within the scope of this investigation.

There is installed explosive nitrocellulose production capacity at five U.S. facilities, located in Holstein, Tenn.; Indiana Army Ammunition plant, Ind.; Parlin, N.J.; Radford, Va.; and Sun Flower, Kansas. The facility at Radford, Va., is one of only two now operational. It is a Government-owned facility which is operated under contract by Hercules. Hercules produces explosive nitrocellulose for civilian and commercial use at its plant in Parlin, N.J.

Nitrocellulose: Hercules' production process

* * * * *

Since it is hazardous to ship or store nitrocellulose in the dry form because of its flammable and even explosive nature, it is usually shipped or stored wet with 30 percent or more alcohol, as required by the U.S. Department of Transportation. The specific alcohol used to wet the nitrocellulose may vary, and, depending on customers' requirements, water, plastic, or other wetting agents may be used instead of alcohol.

Nitrocellulose is used principally in the manufacture of fast-drying, durable, lacquer coatings. These nitrocellulose lacquers provide a high-luster shine to the coated articles. For over 60 years, nitrocellulose lacquers have been used by the furniture industry because of their ease of application, fast drying, and ease of repairability.

Both imported and domestic nitrocellulose are available in the following commercial grades:

<u>Product</u>	<u>Nitrogen content</u> <u>(percent)</u>
SS-type -----	10.8-11.2
AS-type -----	11.3-11.7
RS-type -----	11.8-12.2

The RS-type nitrocellulose accounts for approximately *** percent of domestic production of nitrocellulose and the vast majority of the imports of nitrocellulose from France. 1/ The compatibility of RS-type nitrocellulose with many synthetic resins accounts for its widespread use in the production of lacquer coatings. According to both Hercules and SNPE's exclusive U.S. agent, Fayette Chemical Corp., the domestic and imported RS-type nitrocellulose are commercially interchangeable with each other.

AS-type nitrocellulose is soluble in the same solvents as RS-type nitrocellulose, but tolerates higher proportions of alcohols in the solvent blend. SS-type nitrocellulose is preferred in rotogravure and flexographic inks due to its solubility in solvent systems with high alcohol contents.

U.S. tariff treatment

Nitrocellulose of the type subject to this investigation is classified in the TSUS under the residual or "basket" category for synthetic cellulosic plastics material other than cellulose acetate, TSUS item 445.25. 2/ The rates of duty applicable to nitrocellulose entered under TSUS item 445.25 are

1/ RS-Type nitrocellulose imports from France accounted for *** percent of total imports from France in 1982.

2/ The smokeless type of nitrocellulose is classified under TSUS item 485.30, smokeless powders.

6.8 percent ad valorem (col. 1) 1/ and 34.5 percent ad valorem (col. 2). 2/ The current column 1 rate became effective on January 1, 1983, and is the fourth of eight stages of annual rate reductions resulting from concessions granted by the United States in the Tokyo round of the Multilateral Trade Negotiations (MTN) under the General Agreement on Tariffs and Trade (GATT). The final (eighth) stage will result in a duty of 5.2 percent ad valorem in 1987. Imports of nitrocellulose under TSUS item 445.25, if entered from least developed developing countries (LDDC's), 3/ are dutiable at 5.2 percent ad valorem; however, there have been no known imports of nitrocellulose from LDDC's in recent years. Imports of nitrocellulose under TSUS item 445.25 from all designated beneficiary countries are also eligible for duty-free entry under the Generalized System of Preferences (GSP). 4/

The following table shows the pre-MTN rate and staged-rate modifications for item 445.25.

Table 1.--Cellulosic plastics materials other than cellulose acetate: Pre-MTN rate of duty and staged rate-of-duty modifications, 1980-87

TSUS item No.	Pre-MTN col. 1 rate of duty <u>1/</u>	Rates of duty <u>2/</u> effective with respect to articles entered on and after Jan. 1--								
		1980 <u>3/</u>	1981	1982	1983	1984	1985	1986	1987	
445.25	9.7¢ per lb. (8.3% ad valorem <u>4/</u>)	7.9%	7.5%	7.1%	6.8%	6.4%	6.0%	5.6%	5.2%	

1/ Rate effective prior to July 1, 1980.

2/ The symbol "%" indicates "percent ad valorem."

3/ The first rate reduction became effective July 1, 1980.

4/ Represents the ad valorem equivalent rate of duty of the specific pre-MTN col. 1 rate. Staged reductions were based on this figure.

1/ The rates of duty in rate-of-duty col. 1 are most-favored-nation rates and are applicable to imported products from all countries except those Communist countries and areas enumerated in general headnote 3(f) of the TSUS. However, such rates would not apply to products of developing countries which are granted preferential tariff treatment under the Generalized System of Preferences (GSP) or under the "LDDC" rate-of-duty column.

2/ The rates of duty in rate-of-duty col. 2 apply to imported products from those Communist countries and areas enumerated in general headnote 3(f) of the TSUS.

3/ The preferential rates of duty in the "LDDC" column reflect the full U.S. MTN concession rates implemented without staging for particular items which are the products of least developed developing countries, enumerated in general headnote 3(d) of the TSUS. Where no rate of duty is provided in the "LDDC" column for an item, the rate of duty in col. 1 applies.

4/ The GSP, enacted as title V of the Trade Act of 1974, provides duty-free treatment for specified eligible articles imported directly from designated beneficiary developing countries. GSP, implemented by Executive Order No. 11888 of Nov. 24, 1975, applies to merchandise imported on or after Jan. 1, 1976, and is scheduled to remain in effect until Jan. 4, 1985. A-6

U.S. Market and Channels of Distribution

As mentioned earlier, nitrocellulose is used principally in the manufacture of lacquer coatings. Industry sources report the following end uses and approximate 1982 market shares for nitrocellulose lacquers:

<u>End use</u>	<u>Percentage distribution of market share</u>
Furniture and wood products-----	35
Flexographic inks-----	10
Rotogravure inks-----	10
Automotive refinishing-----	10
Cellophane coating-----	5
Fingernail polish-----	5
Leather coating-----	5
Miscellaneous applications-----	20
Total-----	100

In the past few years the demand for nitrocellulose by the furniture industry has been shrinking due to the increased use of molded plastic components instead of natural wood in furniture manufacturing. Such components do not use nitrocellulose lacquer finishes. In addition, other market changes have affected the demand for nitrocellulose by the furniture industry. Homebuilders have reduced new home square footage in order to provide more affordable housing. Consequently, household furniture is gradually being downsized to accommodate this trend toward dwellings with decreased living space. The escalated cost of housing, automobiles, and other major items has forced consumers to allocate a smaller share of their discretionary income to purchases of new furniture and to hold on to what they've got longer.

According to Hercules, all of its nitrocellulose sales go to end-use customers. Similarly, Fayette, the primary importer of French nitrocellulose, reports sales to end users only.

All nitrocellulose is shipped wet, usually in a mixture containing 70 percent dry weight nitrocellulose and 30 percent alcohol/water. U.S.-produced nitrocellulose is packed in 55-gallon open-head steel drums. These zinc-coated steel drums are returnable and, upon reconditioning, can be reused for 5 to 20 trips. The cost of packaging the nitrocellulose in this method is estimated to be *** to *** cents per wet pound.

French-produced nitrocellulose is packed in a polyethylene conductive bag placed inside a 217-liter (57-gallon) fiber drum, with a weather-proof plastic outer layer. Fayette did not estimate the cost of packaging in this manner, but indicated that the fiber container is cheaper than a steel container, even when the steel container is used on a returnable basis.

U.S. Producers

Since 1978, Hercules has been the only U.S. producer of nitrocellulose. Hercules has produced nitrocellulose at a plant in Parlin, N.J., for over 60 years. The firm is a multinational corporation with 80 production plants in the United States and various parts of the world. In 1981, the company had approximately 23,000 employees and sales of approximately \$2.7 billion. Hercules has historically specialized in the production of chemicals, but in recent years has increasingly diversified its product line into other areas.

Prior to 1978, E.I. du Pont de Nemours & Co., Wilmington, Del., produced nitrocellulose at a plant in Carney's Point, N.J. On July 19, 1977, Du Pont announced to its customers that it was phasing out the sale of industrial nitrocellulose by December 30, 1977. The reason Du Pont discontinued producing nitrocellulose was the company's view that capital expenditures to modernize its production plant and meet environmental regulations were not justified because the nitrocellulose market would continue to shrink in future years. ^{1/} According to industry sources, Du Pont held approximately *** percent of the U.S. nitrocellulose market in 1977. Hercules controlled the other *** percent, as imports were nonexistent in the U.S. market at the time.

U.S. Importers and Foreign Producers

After Du Pont left the U.S. market in 1977, there was a shortage of nitrocellulose. Purchasers of nitrocellulose were put on allocation by Hercules, and many of these purchasers started to use imported nitrocellulose to replace the Du Pont product. Hercules, to alleviate the nitrocellulose shortage, joined with several purchasers of the product and requested that Congress temporarily suspend the duties on imported nitrocellulose until Hercules' nitrocellulose production facilities could be expanded to meet the increase in demand. However, the duty on imported nitrocellulose was never suspended. In 1978 and 1979, imported nitrocellulose began to appear in the U.S. market. The French producer, SNPE, was the first large supplier of imported nitrocellulose in the U.S. market, but German and Japanese producers soon followed SNPE as suppliers to the U.S. market.

In 1978, SNPE contracted with Fayette Chemical Corp., Woodridge, N.J., to be its exclusive agent in the United States. ^{2/} Fayette, along with Cellofilm of New Jersey, Cellofilm of Illinois, and Cellomer Corp., Newark, N.J., compose the chemical group of Polychrome Corp., Yonkers, N.Y. All of the companies composing the Polychrome chemical group are wholly owned subsidiaries of Polychrome. Polychrome is, in turn, a wholly owned subsidiary of DaiNippon Ink & Chemical Co. of America, New York, N.Y., which is owned by DaiNippon Ink of Japan.

^{1/} A copy of Du Pont's announcement is set forth in app. C.

^{2/} *** other U.S. companies had previously signed contracts with SNPE in 1977, and SNPE reserved the right to continue to sell directly to these companies. However, only *** of these companies, ***, *** still supplied directly by SNPE.

Fayette acts as an importer and broker for the other companies within the Polychrome chemical group. The Cellofilm divisions are some of the largest users of nitrocellulose in the United States. Currently, Fayette has warehouses in New Jersey and Chicago, Ill., to service its customers.

Other large importers of nitrocellulose are as follows:

<u>Importer</u>	<u>Source</u>
E.T. Horn Co., LaMirada, Calif.	Japan
Toyomenka America, Inc., San Francisco, Calif.	Japan
Scholle Chemical Co., Chicago, Ill.	France, West Germany

The industrial nitrocellulose imported from Japan is produced primarily by Asahi Chemical Industry, Ltd., Tokyo, Japan, ***. West Germany's largest exporter of industrial nitrocellulose to the United States is ***.

Consideration of Material Injury or Threat Thereof

U.S. production, capacity, and capacity utilization

Hercules' total nitrocellulose production declined by *** percent between 1979 and 1982, from *** pounds to *** pounds. Total production remained unchanged at *** pounds in the first quarter of 1983, when compared with that in the corresponding period of 1982 (table 2). During the period under investigation, Hercules, in response to the nitrocellulose shortage created by Du Pont's exit, increased its capacity from *** pounds in 1979 1/ to *** pounds. This expansion of capacity was completed in 1980 and represents a *** percent increase from the capacity Hercules maintained in 1979. Hercules' annual nitrocellulose capacity remains at *** pounds in 1983. Hercules' capacity utilization rate, however, declined each year during 1979-82, from the high of *** percent in 1979 to *** percent in 1982. In January-March 1983, Hercules' capacity utilization rate remained unchanged at *** percent, when compared with its utilization rate in January-March 1982.

At the public hearing held on May 9, 1983, and in their posthearing brief, 2/ counsel for SNPE argued that Hercules made a strategic error in increasing its nitrocellulose capacity during a recession and at a time when excess capacity already existed worldwide. SNPE contends that this overexpansion has caused underutilization of Hercules' production facilities and the subsequent profit erosion.

1/ Hercules' capacity was also *** pounds in 1977 and 1978.

2/ Transcript of the proceedings of the Commission's hearing, pp. 80, 83-87; and posthearing brief on behalf of SNPE, p. 1.

Table 2.--Nitrocellulose: U.S. production, capacity, and capacity utilization, 1979-82, January-March 1982, and January-March 1983

Period	Production	Capacity	Capacity utilization
	-----1,000 wet pounds-----		Percent
1979-----	***	***	***
1980-----	***	***	***
1981-----	***	***	***
1982-----	***	***	***
January-March 1/-			
1982-----	***	***	***
1983-----	***	***	***

1/ Quarterly production data represent estimates provided by Hercules.

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

A tabulation showing the capacity utilization rate Hercules would have attained during January 1979-March 1983 had they not undertaken the expansion is as follows:

Period	Production (1,000 wet pounds)	Capacity (1,000 wet pounds)	Capacity utilization rate (percent)
1979-----	***	***	***
1980-----	***	***	***
1981-----	***	***	***
1982-----	***	***	***
January-March--			
1982-----	***	***	***
1983-----	***	***	***

At the hearing and in a posthearing submission, 1/ Hercules defended its decision to expand capacity. Testimony was heard from Coopers & Lybrand characterizing Hercules' decision to expand in 1978 as reasonable and based upon conservative market assumptions. In addition, the petitioner presented an analysis undertaken by Hercules in 1978 examining the projected effect on cost of goods sold of the proposed capacity expansion. In this analysis they estimated the additional costs per pound that would be incurred from this capital investment if none of the added capacity was utilized as *** cents per wet pound (total cost of production in January-March 1983 was estimated to be *** cents per wet pound).

Hercules' industrial nitrocellulose operation consists of the production of RS-, AS-, and SS-type nitrocellulose. However, as shown in table 3, the RS-type has accounted for about *** percent of Hercules' nitrocellulose production during the period under investigation.

1/ Transcript of the proceedings of the Commission's hearing, pp. 22-29; and posthearing submission on behalf of Hercules, dated May 13, 1983.

Table 3.--Nitrocellulose: U.S. production, by grades,
1979-82 and January-March 1983

(In thousands of wet pounds)				
Period	RS	AS	SS	
1979-----	***	***	***	***
1980-----	***	***	***	***
1981-----	***	***	***	***
1982-----	***	***	***	***
1983 (January-March)-----	***	***	***	***

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

Domestic shipments and export shipments

In terms of quantity shipped, Hercules' domestic nitrocellulose shipments declined each year during the period under investigation, except for 1981. Such shipments fell from *** pounds in 1979 to *** pounds in 1980, or by *** percent. Domestic shipments increased by *** percent to *** pounds in 1981, before declining in 1982 to *** pounds, or by *** percent. In January-March 1983, domestic shipments declined by *** percent to *** pounds, compared with the *** pounds shipped in January-March 1982 (table 4).

The value of Hercules' domestic shipments of nitrocellulose rose by *** percent during 1979-81, from *** to ***, then declined by *** percent to *** in 1982. For the first quarter of 1983, Hercules' domestic shipments were valued at ***.

The average unit value of Hercules' domestic shipments increased each year during the period under investigation, from *** per wet pound in 1979 to *** per wet pound in 1982.

Table 4.--Nitrocellulose: U.S. producer's domestic shipments, 1979-82,
January-March 1982, and January-March 1983

Period	Quantity	Value	Average unit value
	(1,000 wet pounds)	(1,000 dollars)	(Per wet pound)
1979-----	***	***	***
1980-----	***	***	***
1981-----	***	***	***
1982-----	***	***	***
January-March--			
1982-----	***	***	***
1983-----	***	***	***

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

Hercules' nitrocellulose exports increased sharply during 1979-81, rising by *** percent. However, export shipments by Hercules declined by *** percent in 1982, and by another *** percent in January-March 1983 compared with those reported in the corresponding period of 1982 (table 5). *** and *** are the largest foreign markets for U.S.-produced nitrocellulose.

Table 5.--Nitrocellulose: Domestic shipments, export shipments, and total commercial shipments, 1979-82, January-March 1982, and January-March 1983

(In thousands of wet pounds)					
Period	Domestic shipments	Export shipments	Total commercial shipments	Ratio of exports to commercial shipments	
				Percent	
1979-----	***	***	***		***
1980-----	***	***	***		***
1981-----	***	***	***		***
1982-----	***	***	***		***
January-March--					
1982-----	***	***	***		***
1983-----	***	***	***		***

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

U.S. imports

Total U.S. imports of nitrocellulose increased from the 11.9 million wet pounds reported in 1979 and 1980 to 13.0 million wet pounds in 1981. In 1982, imports declined by 6 percent from the level reported in 1981; they then declined by another 26 percent in the first quarter of 1983 compared with those in the corresponding period of 1982, as shown in the following tabulation (in millions of wet pounds):

<u>Period</u>	<u>Imports</u>
1979-----	11.9
1980-----	11.9
1981-----	13.0
1982-----	12.2
January-March--	
1982-----	3.5
1983-----	2.6

The two main sources of U.S. imports of nitrocellulose are France and Japan. Such imports from France declined from *** wet pounds in 1979 to *** wet pounds in 1980, but then increased by *** percent to *** wet pounds in 1981. Imports of nitrocellulose from France declined slightly to *** wet pounds in 1982, and continued to decline in January-March 1983 compared with those in the corresponding period of 1981 (table 6).

Imports from Japan increased from *** wet pounds in 1979 to *** wet pounds in 1980, but then declined to *** wet pounds in 1981 and *** wet pounds in 1982.

As shown in table 6, RS-type nitrocellulose accounted for approximately *** percent of all nitrocellulose imports in 1982. The AS-type has been imported only from West Germany.

Table 6.--Nitrocellulose: U.S. imports for consumption, by sources and by types, 1979-82, January-March 1982, and January-March 1983

(In thousands of wet pounds)							
Source and type	1979	1980	1981	1982	January-March--		
					1982	1983	
France: 1/							
RS-type-----	***	***	***	***	***	***	***
AS-type-----	***	***	***	***	***	***	***
SS-type-----	***	***	***	***	***	***	***
Subtotal-----	***	***	***	***	***	***	***
Japan:							
RS-type-----	***	***	***	***	***	***	***
AS-type-----	***	***	***	***	***	***	***
SS-type-----	***	***	***	***	***	***	***
Subtotal-----	***	***	***	***	***	***	***
West Germany:							
RS-type-----	***	***	***	***	***	***	***
AS-type-----	***	***	***	***	***	***	***
SS-type-----	***	***	***	***	***	***	***
Subtotal-----	***	***	***	***	***	***	***
Other countries:							
RS-type-----	***	***	***	***	***	***	***
AS-type-----	***	***	***	***	***	***	***
SS-type-----	***	***	***	***	***	***	***
Subtotal-----	***	***	***	***	***	***	***
Total, all sources:							
RS-type-----	***	***	***	***	***	***	***
AS-type-----	***	***	***	***	***	***	***
SS-type-----	***	***	***	***	***	***	***
Total-----	11,855	11,852	12,999	12,243	3,512	2,598	

1/ Revised from data presented in the Commission's prehearing report.

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

U.S. inventories

Hercules' yearend inventories of nitrocellulose increased dramatically, from *** wet pounds in 1979 to *** wet pounds in 1980, and then nearly doubled to *** wet pounds in 1981. End-of-period inventories declined to *** wet pounds in 1982, and, as of March 31, 1983, inventories had fallen to *** wet pounds, as shown in the following tabulation:

<u>Period</u>	<u>Ratio of inventories</u>	
	<u>Inventories</u> (1,000 wet pounds)	<u>to sales</u> (percent)
1979-----	***	***
1980-----	***	***
1981-----	***	***
1982-----	***	***
January-March--		
1982-----	***	*** 1/
1983-----	***	*** 1/

1/ Based on annualized total commercial shipments.

The ratio of Hercules' inventories to sales followed a similar trend, increasing from *** percent in 1979 to *** percent in 1981, then falling to *** percent in 1982.

Apparent U.S. consumption

Apparent U.S. consumption of nitrocellulose declined by *** percent from *** wet pounds in 1979 to *** wet pounds in 1980. In 1981, apparent consumption rebounded to *** pounds, but was still *** percent below the 1979 level. However, in 1982, apparent consumption fell by *** percent from that reported in 1981, as shown in table 7.

Table 7.--Nitrocellulose: U.S. producer's domestic shipments, imports for consumption, and apparent U.S. consumption, 1979-82, January-March 1982, and January-March 1983

Period	Domestic shipments	Total imports	Apparent U.S. consumption
	-----1,000 wet pounds-----		
1979-----	***	11,855	***
1980-----	***	11,852	***
1981-----	***	12,999	***
1982-----	***	12,243	***
January-March--			
1982-----	***	3,512	***
1983-----	***	2,598	***
			A-14

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

As mentioned earlier, the largest single end use for industrial nitrocellulose is in the manufacture of lacquers used in the furniture and wood-products industry. Expenditures on furniture are closely related to home sales and new residential construction activity. The general decline in the housing market, with fewer starts and decreased sales coupled with a record decline in the number of households changing residence, has adversely impacted sales of household furniture. 1/ Household-furniture shipments declined in 1980 and 1981, and continued downward in 1982, as the residential housing sector experienced its third year of decline. 2/ Furniture is a postponable expenditure which has been negatively affected by the high cost of borrowed money and a lack of consumer confidence due to the lingering recession.

Other end-use products manufactured with nitrocellulose are broadly used throughout the economy and, consequently, the recession that has plagued the U.S. economy has adversely affected the demand for nitrocellulose.

In 1976, the last full year of production by Du Pont, apparent U.S. consumption of nitrocellulose was estimated at *** wet pounds. Hercules supplied *** wet pounds in that year, and Du Pont supplied an estimated *** pounds. 3/

Employment and wages

Table 8 shows that the average total employment at Hercules' reporting U.S. establishment in which nitrocellulose is produced increased by *** percent during 1979-82, to a high of *** employees, and that the average number of production and related workers engaged in the production of all products increased by *** percent to *** workers. Conversely, the average number of production and related workers engaged in the production of nitrocellulose declined by *** percent during that same period.

The number of hours worked by production and related workers engaged in the production of all products increased by *** percent between 1979 and 1981, then fell by *** percent in 1982. Hours worked by production and related workers producing nitrocellulose increased by *** percent between 1979 and 1981, before declining by *** percent in 1982.

Wages paid to production and related workers making nitrocellulose increased from *** in 1979 to *** in 1981. Wages paid during 1982 were ***, which represented a ***-percent decline from those paid during 1981.

1/ See Supplement to Summary of Trade and Tariff Information on furniture, USITC Publication 841, Control No. 7-4-9, November 1982.

2/ U.S. Department of Commerce, U.S. Industrial Outlook 1983, pp. 42-48.

3/ These data were supplied by Hercules and Du Pont.

Table 8.--Nitrocellulose: Average number of employees, total and production and related workers, and hours worked by the latter, 1979-82

Item	1979	1980	1981	1982
Average number of employees				
All persons-----	***	***	***	***
Production and related workers				
producing--				
All products-----	***	***	***	***
Nitrocellulose-----	***	***	***	***
Hours worked				
Production and related workers				
producing--				
All products-----1,000 hours--	***	***	***	***
Nitrocellulose-----do-----	***	***	***	***

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

The following tabulation, which is based on data submitted in response to the Commission's questionnaire, shows average hourly wages paid to production and related workers employed at Hercules' reporting establishment:

<u>Average hourly wages paid to production and related workers engaged in the production of--</u>		
	<u>All products</u>	<u>Nitrocellulose</u>
1980-----	***	***
1981-----	***	***
1982-----	***	***

The tabulation shows that in all periods, the average hourly wages paid to production and related workers producing nitrocellulose were lower than the average hourly wages paid to production and related workers engaged in the production of all products. Average hourly wages paid to the former workers increased by *** percent in 1981 and by *** percent in 1982.

Data on labor productivity, hourly compensation, and unit labor costs in the production of nitrocellulose are presented in table 9.

Table 9.--Nitrocellulose: Labor productivity, hourly compensation, and unit labor costs, 1979-82.

Item	1979	1980	1981	1982
Labor productivity:				
Quantity-----wet pounds per hour--:	***	***	***	***
Percentage change-----:	***	***	***	***
Hourly compensation:				
Value-----dollars per hour--:	***	***	***	***
Percentage change-----:	***	***	***	***
Unit labor costs:				
Value-----cents per wet pound--:	***	***	***	***
Percentage change-----:	***	***	***	***

1/ Not available.

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

Labor productivity, measured in wet pounds per man-hour, declined by *** percent from 1979 to 1981, then increased by *** percent in 1982. Hourly compensation reported in 1979 was higher than that reported in 1980. This was due to a greater number of hours paid at overtime rates in 1979. For 1979-82, hourly compensation increased a total of *** percent. Unit labor costs increased continuously throughout the period, from *** per pound in 1979 to *** in 1982, or by *** percent.

All the production workers at the Parlin, N.J., facility are covered by collective bargaining agreements, with the majority represented by the International Chemical Workers Union (ICW). Labor and management have maintained a relatively harmonious relationship over the years, with no workstoppages since the early sixties. The ICW advised the Commission 1/ of its concern about the decline in employment, noting that it supports the Hercules petition in this investigation.

Financial experience of Hercules, Inc.

Financial data received from Hercules on its nitrocellulose operations are presented in table 10. Hercules' net sales of nitrocellulose ***. The quantity of sales ***. In 1982, net sales ***.

Operating profit ***. In the same period, the ratio of operating profit to net sales ***. Cost of goods sold as a share of net sales ***. As a share of net sales, general, selling, and administrative expenses ***.

1/ Letter dated July 22, 1982, from the International Chemical Workers Union.

Table 10.--Selected financial data for Hercules, Inc., on its nitrocellulose operations, 1979-82

Item	1979	1980	1981	1982
Net sales-----1,000 dollars--	***	***	***	***
Cost of goods sold-----do----	***	***	***	***
Gross profit-----do----	***	***	***	***
General, selling, and administrative expenses-----do----	***	***	***	***
Operating profit-----do----	***	***	***	***
Depreciation and amortization-----do----	***	***	***	***
Cash flow from operations <u>1/</u> -----do----	***	***	***	***
Ratio of operating profit to net sales-----percent--	***	***	***	***
Fixed assets employed in the production of nitrocellulose:				
Original cost-----1,000 dollars--	***	***	***	***
Book value-----do----	***	***	***	***
Replacement cost-----do----	***	***	***	***
Ratio of operating profit to-- Original cost of fixed assets percent--	***	***	***	***
Book value of fixed assets-----do----	***	***	***	***
Replacement cost of fixed assets-----do----	***	***	***	***

1/ Defined as operating profit plus depreciation and amortization expense.

2/ Not available.

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

*** reported interest expense, as shown in the following tabulation, ***.

Item	1979	1980	1981	1982
For working capital----1,000 dollars--	***	***	***	***
For capital investment-----do----	***	***	***	***
Total-----do----	***	***	***	***

* * * * *

According to Hercules, its expansion of capacity for nitrocellulose was authorized in August of 1978 for an original estimated cost of ***. The actual cost for the expansion was ***, incurred mainly during *** and ***. As the expansion of capacity was completed in the fall of 1980, the financial data presented for 1981 and 1982 are based on the same capacity level (*** wet pounds) and thus are comparable with each other, but not comparable with data for 1979 and 1980. 1/

The ratios of operating profit to original cost, book value, and replacement cost of fixed assets are also presented in table 10. The return on fixed assets based on each of the three methods of valuation followed the same trend as did the ratio of operating profit to net sales.

Hercules' sales and operating profit for its domestic and export operations on nitrocellulose are presented in the following tabulation:

Item	:	1979	:	1980	:	1981	:	1982
Domestic operations:	:	:	:	:	:	:	:	:
Net sales-----1,000 dollars--:	:	***	:	***	:	***	:	***
Operating profit-----do-----:	:	***	:	***	:	***	:	***
Ratio of operating profit to	:	:	:	:	:	:	:	:
net sales-----percent--:	:	***	:	***	:	***	:	***
Export operations:	:	:	:	:	:	:	:	:
Net sales-----1,000 dollars--:	:	***	:	***	:	***	:	***
Operating profit-----do-----:	:	***	:	***	:	***	:	***
Ratio of operating profit to	:	:	:	:	:	:	:	:
net sales-----percent--:	:	***	:	***	:	***	:	***

***. Exports of nitrocellulose by Hercules increased, in terms of quantity, by *** percent from 1979 to 1981. In 1982, export sales declined by *** percent, ***. ***.

Consideration of the Threat of Material Injury

Foreign capacity and production

SNPE's current maximum annual capacity to produce nitrocellulose is reported to be *** wet pounds (*** dry pounds). 2/ Details of SNPE's production process at their Bergerac plant are set forth in appendix E. SNPE's production of nitrocellulose increased from *** wet pounds in 1978 to *** wet pounds in 1979, and then declined to *** wet pounds in 1980 and 1981. French production of nitrocellulose continued to decline in 1982, falling another *** percent from the previous year's level. In January-March 1983, SNPE's production decreased by *** percent from that in the corresponding period of 1982 (table 11). RS-type nitrocellulose accounted for *** percent of SNPE's production in 1981, ***.

1/ In its prehearing brief (p. 24) SNPE calculated estimates of the impact of Hercules' capacity expansion on its profitability. This issue is addressed in memorandum No. INV-G-097, dated May 27, 1983, from the Director of the Office of Investigations to the Commission.

2/ Statement of Philippe Le Roy on behalf of Societe Nationale des Poudres et Explosifs at the preliminary conference (investigation No. 731-TA-96 (Preliminary)) on July 27, 1982.

Table 11.--Nitrocellulose: SNPE's production, by types,
1978-82, January-March 1982, and January-March 1983

(In thousands of wet pounds)						
Period	RS	AS	SS	Total		
1978-----	***	***	***	***		
1979-----	***	***	***	***		
1980-----	***	***	***	***		
1981-----	***	***	***	***		
1982-----	***	***	***	***		
January-March--						
1982-----	***	***	***	***		
1983-----	***	***	***	***		

1/ Not available.

Source: Confidential submission of SNPE.

Based on SNPE's maximum production capacity, the French producer experienced an ***-percent capacity utilization level in 1980 and 1981, declining to *** percent in 1982. In January-March 1983, SNPE operated its nitrocellulose production facility at an ***-percent capacity utilization level.

French domestic shipments and exports

As shown in table 12, SNPE's domestic shipments of nitrocellulose in France declined from *** wet pounds in 1979 to *** wet pounds in 1980, but then rebounded to *** wet pounds in 1981. In 1982, SNPE's domestic shipments declined once again, falling to the lowest level reported during the period under investigation. In January-March 1983, SNPE's domestic shipments decreased by *** percent over the level of its shipments in the corresponding period of 1982.

Table 12.--Nitrocellulose: SNPE's domestic shipments in France and export shipments, 1979-82, January-March 1982, and January-March 1983

(In thousands of wet pounds)				
Period	Domestic shipments	Total export shipments	Total	
1979-----	***	***	***	
1980-----	***	***	***	
1981-----	***	***	***	
1982-----	***	***	***	
January-March--				
1982-----	***	***	***	
1983-----	***	***	***	

1/ Not available.

Source: Confidential submission of SNPE.

During 1979-82, exports of nitrocellulose accounted for *** to *** percent of SNPE's total shipments. Besides the United States, SNPE's largest export markets for nitrocellulose were *** in 1981. SNPE's yearend inventories of nitrocellulose declined irregularly from *** wet pounds in 1978 to *** wet pounds in 1981, and to *** wet pounds in 1982, as shown in the following tabulation:

	<u>Quantity</u> <u>(1,000 wet pounds)</u>
As of Dec. 31--	
1978-----	***
1979-----	***
1980-----	***
1981-----	***
1982-----	***

Consideration of the Causal Relationship Between Subsidized Imports from France and the Alleged Injury

Market penetration of subsidized imports

U.S. imports of nitrocellulose from France captured an increasing share of a declining U.S. market during 1979-82. Such imports increased as a share of apparent U.S. consumption from *** percent in 1979 to *** percent in 1981, and to *** percent in 1982. In January-March 1983, French imports as a share of the U.S. market declined to *** percent, which represented a ***-percent decrease from the level reported in the corresponding period of 1982 (table 13). During the same period, total imports of nitrocellulose increased their share of the U.S. market from *** percent in 1979 to *** percent in 1982, and then fell to *** percent in January-March 1983.

Table 13.--Nitrocellulose: U.S. producer's domestic shipments, imports for consumption from France and from all countries, and apparent consumption, 1979-82, January-March 1982, and January-March 1983

Period	: Domestic shipments :	: Imports from France :	: All other imports :	: Total imports :	: Apparent consumption :	: Ratio of imports to consumption : France : Total imports
:	: -----1,000 wet pounds----- :	:	:	:	:	: ---Percent---
1979-----:	*** :	*** :	*** :	*** :	*** :	*** : *** :
1980-----:	*** :	*** :	*** :	*** :	*** :	*** : *** :
1981-----:	*** :	*** :	*** :	*** :	*** :	*** : *** :
1982-----:	*** :	*** :	*** :	*** :	*** :	*** : *** :
Jan.-Mar-- :	:	:	:	:	:	:
1982-----:	*** :	*** :	*** :	*** :	*** :	*** : *** :
1983-----:	*** :	*** :	*** :	*** :	*** :	*** : *** :
:	:	:	:	:	:	:

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

Purchasing patterns

Questionnaires were sent to 32 firms that were identified by Hercules and/or Fayette as purchasers of nitrocellulose during the period of January 1, 1980, to March 31, 1983. Responses were received from 26 of these firms, all of which were end users utilizing nitrocellulose in their manufacturing process. Each was asked to rate factors, on a scale of 1 (low) to 5 (high), that were important in their decision to purchase nitrocellulose from a particular supplier. Those factors rated as most important (rating of 5) are presented in the following tabulation:

<u>Factor</u>	<u>Number of times the factor was rated high</u>
Quality of product-----	20
Price-----	15
Delivery time-----	14
Availability of service-----	10
Alternative source of supply-----	5
Credit terms or limits-----	5
Packaging-----	4
Proximity of vendor firm-----	4

Twenty-two firms reported some purchases of French nitrocellulose. Each of these was asked to list in order of importance the factors that led to the decision to buy French nitrocellulose. The factors listed as most important are presented in the following tabulation:

<u>Factor</u>	<u>Number of times the factor was mentioned</u>
Alternative source of supply-----	8
Price-----	6
Availability of service-----	5
Credit terms or limits-----	2
Delivery time-----	2
Quality of product-----	2
French nitrocellulose specified by customer-----	1

Each firm was asked to identify any products it considered substitutable for nitrocellulose. Of the 26 firms responding, only three reported using any substitute. One of these firms used cellulose acetate propionate to replace nitrocellulose in certain ink processing. The other two firms mentioned cellulose acetate butyrate. The reported advantage to using this material was that it provided improved color retention and a decreased sensitivity with vinyl fabrics. This material reportedly faces a cost disadvantage with nitrocellulose and appears to be limited to specified applications.

Lost sales

The Commission requested the sole U.S. producer to provide information concerning sales lost to imports of nitrocellulose from France. Hercules specified 31 instances during the period January 1982 through March 1983 where sales were allegedly lost to French competition. These lost sales involved 19 customers for a total of over *** wet pounds, at a value estimated by the petitioner to be in excess of ***.

All 19 firms were contacted; and responses were received from 16. These 16 accounted for over 95 percent of the total lost sales alleged by the petitioner. Purchases by these firms of nitrocellulose produced by SNPE and by Hercules increased 16 percent in 1981, then declined 4 percent in 1982 (table 14). During 1980-82, SNPE's share of these sales increased each year. From 19 percent in 1980, French nitrocellulose accounted for 23 percent in 1981 and 28 percent in 1982. Consequently, Hercules saw its share decline repeatedly during this period.

Table 14.--Nitrocellulose: Purchases by firms to which Hercules has allegedly lost sales, 1980-82, January-March 1982, and January-March 1983

Item	Purchases		
	French product	U.S. product	French and U.S. product
Quantity:			
1980-----1,000 wet pounds--	***	***	***
1981-----do-----	***	***	***
1982-----do-----	***	***	***
January-March--			
1982-----do-----	***	***	***
1983-----do-----	***	***	***
Share of purchases of French and U.S. products:			
1980-----percent--	18.7	81.3	100.0
1981-----do-----	22.9	77.1	100.0
1982-----do-----	28.1	71.9	100.0
January-March--			
1982-----do-----	35.2	64.8	100.0
1983-----do-----	21.7	78.3	100.0
Change in quantity:			
1980 to 1981--1,000 wet pounds--	***	***	***
1981 to 1982-----do-----	***	***	***
January-March 1982 to January-March 1983-----do-----	***	***	***

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

A summary of the responses of each of these 16 firms is presented in the following sections. In addition, table 15 details the actual quantity bought by each firm and can be referred to as an aid in assessing the petitioner's lost sales allegations.

Table 15.--Nitrocellulose: Alleged lost sales, January 1982 through March 1983, and purchases, 1980-82, January-March 1982, and January-March 1983, by firms

* * * * *

.--. ^{1/} Its purchases of nitrocellulose fluctuated slightly during 1980-82, but averaged *** wet pounds annually. During this period only Hercules and SNPE supplied nitrocellulose to ***. The petitioner alleged lost sales totaling *** wet pounds during January 1982-March 1983. Hercules's share of total nitrocellulose purchased by *** declined each year, from a high of 56 percent in 1980 to a low of 5 percent in 1982. Developing dual sources of supply was stated as the most important factor leading to sourcing from the French. Price, packaging, and quality of the French material were reported as additional factors influencing the decision to source from SNPE.

.--. This firm's purchases of nitrocellulose increased each year during 1980-82, averaging *** wet pounds per year. The petitioner alleged lost sales to the French totaling *** wet pounds during January 1982 through March 1983. *** purchased nitrocellulose from four countries during January 1980-March 1983. The following tabulation shows the share of total purchases accounted for by each source (in percent).

<u>Source</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>January-March 1983</u>
U.S. produced-----	51	81	79	84
France-----	26	14	9	-
Japan-----	23	-	-	-
West Germany-----	-	5	12	16

SNPE's share of nitrocellulose purchased by *** declined throughout the period examined. ***.

.--. ***'s purchases of nitrocellulose fluctuated during 1980-82, but averaged *** wet pounds per year. The petitioner alleged lost sales totaling *** wet pounds during January 1982-March 1983.

*** sourced nitrocellulose from four countries during January 1980-March 1983. The following tabulation shows the share of total purchase accounted for by each source (in percent).

^{1/} ***.

<u>Source</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>January-March 1983</u>
U.S. produced----	73	79	79	88
France-----	13	8	5	2
Japan-----	14	12	10	6
Yugoslavia-----	0	1	6	4

*** stated that during the period after Du Pont's exit, Hercules could not supply all of its nitrocellulose requirements. Consequently, in order to secure material from other sources, long-term contracts had to be entered into. Even though these contracts ended in the third quarter of 1981, these suppliers were retained as secondary sources.

.---. This firm has reduced its purchases of nitrocellulose annually since 1980 to satisfy customer demand for water-type ink systems instead of solvent/nitrocellulose-type systems. ***'s total purchases of nitrocellulose declined *** percent during 1980-82, but averaged *** wet pounds per year. The petitioner alleged lost sales to this firm totaling *** wet pounds during January 1982-March 1983.

During 1980-82, Hercules' share of ***'s total purchases declined from 77 percent in 1980 to 16 percent in 1981. In 1982, as Hercules' price became more competitive as a result of discounting, its share rose to 42 percent. Fayette was the only other supplier of nitrocellulose to *** during this period. *** and *** were the primary reasons given for making the French the principal source of supply. Price, followed by quality, were stated as additional factors in this decision.

.---. Its purchases of nitrocellulose fluctuated sharply during 1980-82, but averaged *** wet pounds per year. The petitioner alleged lost sales to the French totaling *** wet pounds during January-September 1982.

*** purchased nitrocellulose from three sources during January 1980-March 1983. The share of ***'s total purchases supplied by each source is presented in the following tabulation (in percent):

<u>Source</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>January-March 1983</u>
U.S. produced-----	67	64	68	100
France-----	33	28	26	0
West Germany-----	0	8	6	0

Availability of material and price were stated as the most important factors influencing ***'s decision to buy French nitrocellulose.

.---. Its purchases of nitrocellulose increased each year during 1980-82, and on an annual basis averaged *** wet pounds.

The petitioner alleged lost sales of *** wet pounds to *** during January-September 1982. Hercules supplied all the nitrocellulose *** purchased in 1980. In 1981, Hercules' share dropped to 93 percent, and it fell further to 91 percent in 1982. Fayette supplied the remainder of this firm's nitrocellulose requirements in 1981 and 1982. The purchaser's primary motivation in sourcing from Fayette was to develop an alternative source of supply. Quality and price of the French nitrocellulose were mentioned as secondary factors in this decision.

.--. Its total purchases of nitrocellulose fluctuated during 1980-82, but averaged *** wet pounds per year. Alleged lost sales by the petitioner totaled *** wet pounds during January 1982 through March 1983.

*** purchased nitrocellulose from three sources during January 1980-March 1983. The following tabulation shows the share of total purchases each accounted for in the periods specified (in percent):

<u>Source</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>January-March 1983</u>
U.S. produced---	50	23	17	37
France-----	5	34	44	34
Japan-----	46	43	39	29

Price was stated as the most important factor influencing ***'s decision to buy French nitrocellulose. Quality of the material and the French offer of extended price protection were also mentioned as influencing factors in its decision.

.--. Its nitrocellulose purchases fluctuated during 1980-82, but averaged *** wet pounds per year. The petitioner alleged lost sales equal to *** wet pounds during October 1982-March 1983.

During 1980-82, *** sourced exclusively from Hercules. In the first quarter of 1983, *** reported that it had purchased *** wet pounds of French nitrocellulose, representing 8 percent of its total requirements. Developing an alternative source of supply was stated as the most important factor leading to the decision to source from Fayette. The quality of the French nitrocellulose and its price were secondary considerations according to ***. *** also purchased nitrocellulose from West Germany, equal to 9 percent of its total purchases of nitrocellulose, in January-March 1983.

.--. ***'s purchases of nitrocellulose fluctuated during 1980-82, and averaged *** wet pounds annually. The petitioner alleged lost sales totaling *** wet pounds during January-September 1982.

Hercules' share of the total nitrocellulose purchased by *** fluctuated during the period covered in this investigation, rising from 72 percent in 1980 to 86 percent in 1981, and then falling to 70 percent in 1982. The French were the only other supplier of nitrocellulose to *** during this period. Listed in order of importance, the following four factors were stated as influencing its decision to source from Fayette: alternate source of supply, price, quality, and proximity of the vendor firm.

.--. This firm's need for nitrocellulose declined each year during 1980-82, but averaged *** wet pounds annually. The petitioner alleged lost sales equal to *** wet pounds during January-September 1982.

Hercules' share of ***'s total nitrocellulose purchases declined each year during 1980-82, from 100 percent in 1980, to 91 percent in 1981, and 83 percent in 1982. French nitrocellulose from Fayette once again was the only other source of this material. Developing an alternative source of supply was stated as the most important factor encouraging sourcing from Fayette. More favorable credit limits and price were stated as secondary considerations.

.--. This firm's purchases of nitrocellulose almost tripled during 1980-82. From the *** wet pounds purchased in 1980, *** increased purchases to *** pounds in 1982. The petitioner alleged lost sales totaling *** wet pounds during January 1982-March 1983.

Hercules' share of this firm's total nitrocellulose purchases remained steady at 92 percent for both 1980 and 1981, but fell to 76 percent in 1982. Since SNPE was the only other supplier, its share increased from 8 percent in 1980 and 1981 to 24 percent in 1982. Maintaining an alternative source of supply was listed as the most important factor influencing the decision to source from the French, followed by price and availability of service. In the first quarter of 1983, Hercules' share rose to 85 percent and Fayette supplied the remainder.

.--. This firm's purchases of nitrocellulose fluctuated sharply during 1980-82, but averaged *** wet pounds annually. The petitioner alleged lost sales to the French totaling *** wet pounds during January 1982-March 1983.

Hercules supplied a decreasing share of ***'s total nitrocellulose purchases during January 1980-March 1983, as shown in the following tabulation (in percent of total purchases):

<u>Source</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>January-March 1983</u>
U.S. produced-----	93	80	63	83
France-----	5	18	28	8
West Germany-----	2	2	9	9

Price was listed as the most important factor influencing ***'s decision to buy French nitrocellulose, with quality and packaging indicated as additional factors. *** also purchased nitrocellulose from West Germany. This material is composed of 82 percent nitrocellulose/18 percent plasticizer. Neither Hercules nor Fayette offers this alcohol-free nitrocellulose for sale in the United States at the present time.

.--. ***'s purchases of nitrocellulose increased each year during 1980-82, but averaged *** wet pounds per year. The petitioner alleged lost sales totaling *** pounds during January-September 1982.

Hercules supplied an increasing share of the nitrocellulose purchased by *** during 1980-82. From 67 percent in 1980, Hercules increased its share to 73 percent of the total in 1981 and 92 percent in 1982. The remaining shares were supplied by the French. In the first quarter of 1983, *** sourced 100 percent of its nitrocellulose from Hercules. Price, followed by maintaining an alternate source of supply, were listed as the most important reasons for sourcing from Fayette.

.--. This firm's purchases of nitrocellulose fluctuated, but averaged *** wet pounds annually during 1980-82. The petitioner alleged lost sales to the French totaling *** wet pounds during January 1982-March 1983.

In 1980, *** sourced 89 percent of its nitrocellulose from Hercules. Hercules' share dropped sharply in 1981, falling to 32 percent, and by 1982 U.S.-produced nitrocellulose accounted for less than 1 percent of total purchases. During this same period, Fayette supplied an increasing share of ***'s nitrocellulose requirements. French-produced material accounted for 11 percent of this firm's nitrocellulose purchases in 1980, 68 percent in 1981, and over 99 percent in 1982. In the first quarter of 1983, *** sourced solely from Fayette. In 1980, Hercules put this firm on a cash-on-delivery basis. Fayette offered more favorable credit terms, which led to an increasing share of this firm's business. Quality of product, alternative source of supply, and packaging method were also mentioned as factors influencing sourcing from Fayette.

.--. Total purchases of nitrocellulose by this company fluctuated sharply during 1980-82, but averaged *** wet pounds per year. The petitioner alleged lost sales to the French totaling *** wet pounds during January 1982-March 1983. Hercules and SNPE were the only suppliers of nitrocellulose to this firm during January 1980-March 1983. From a high of 83 percent in 1980, Hercules' share declined to 57 percent in 1981, and 22 percent in 1982. Consequently, SNPE's share rose from 17 percent in 1980 to 78 percent in 1982. *** listed five factors, all equal in importance, which influenced their decision to purchase from SNPE. They were availability of service, delivery time, quality of product, price, and credit terms. In January-March 1983, Hercules accounted for 39 percent of this firm's nitrocellulose requirements, and SNPE supplied 61 percent.

.--. This firm's purchases of nitrocellulose fluctuated during 1980-82, but averaged *** wet pounds annually. The petitioner alleged lost sales totaling *** wet pounds during January 1982-March 1983.

Hercules supplied 100 percent of the nitrocellulose *** purchased in 1980 and 1981. In 1982, Hercules' share dropped to 73 percent, with Fayette supplying the remaining 27 percent. Price was mentioned as the primary inducement to buying French nitrocellulose from Fayette. Quality of product, alternative source of supply, and delivery time were also cited as additional factors. In the first quarter of 1983, ***'s only purchase of nitrocellulose was from ***.

Lost Revenues

The Commission asked Hercules to provide information citing instances where it had to reduce prices or rollback announced price increases so as to avoid losing sales to competitors selling nitrocellulose.

The petitioner provided 33 instances of alleged price suppression involving *** wet pounds of nitrocellulose during 1982 and January-March 1983. The effect of this price suppression, according to Hercules, translated into lost revenues of over ***'. The Commission's staff was able to examine 28 of these allegations. While poundage and price figures detailed by Hercules did not always match, it was apparent from purchaser's questionnaires that Hercules did reduce delivered prices in 18 of these instances during the period under investigation.

Hercules increased its list price three times during May 1980-June 1982, for a combined increase of *** percent. Hercules did not announce any rollbacks of announced list prices as a response to French competition; instead it chose to confront any lower priced competition on a firm-to-firm basis.

Prices

Prices charged by the domestic producer and importers/distributors of RS-type nitrocellulose on sales to their largest customers were requested on an f.o.b. and delivered basis, by quarters, for the period from January 1980 through March 1983. RS-type nitrocellulose was selected for price comparisons since it accounts for at least *** percent of domestic production and imports from France.

Hercules provided both f.o.b. and delivered prices, but Fayette, which imports and distributes the French product, and Toyomenka, Inc., Mitsui, Inc. and Horn, Inc., which import and distribute the Japanese product, provided prices on an f.o.b. U.S. point-of-shipment basis only. Therefore, only f.o.b. prices of domestic and imported nitrocellulose could be compared.

Trends in prices.--Weighted-average domestic prices of nitrocellulose increased during January 1980-March 1983, from *** cents to *** cents per wet pound, or by *** percent (table 16). These prices rose from *** cents per pound in January-March 1980 to *** cents per pound in April-June 1980, and then remained stable for four additional quarters before increasing to *** cents per pound during July-December 1981. Prices then declined to *** cents in January-March 1982, and remained at that level through January-March 1983.

The overall increase of *** percent in domestic prices during the period of investigation was larger than the increase in prices of related products. During this timespan, the Bureau of Labor Statistics' Index of prices of all paint material increased by an average of 18 percent. ^{1/}

^{1/} Estimated since BLS index prices are available through January 1983 only.

Table 16.--Nitrocellulose: Domestic producer's and importer's weighted-average prices, f.o.b. point of shipment, and margins of underselling, by quarters, January 1980-March 1983

Period	Hercules' product	Imports from France	Imports' margins of underselling
	---Cents per wet pound---		Percent
1980:			
January-March-----	***	***	***
April-June-----	***	***	***
July-September-----	***	***	***
October-December-----	***	***	***
1981:			
January-March-----	***	***	***
April-June-----	***	***	***
July-September-----	***	***	***
October-December-----	***	***	***
1982:			
January-March-----	***	***	***
April-June-----	***	***	***
July-September-----	***	***	***
October-December-----	***	***	***
1983:			
January-March-----	***	***	***

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

Note.--Prices were rounded to the nearest cent.

Prices of imported nitrocellulose from France increased less than prices of the domestic product during the period of investigation. Import prices rose from *** cents per wet pound in January-March 1980 to *** cents per pound in January-March 1983, or by *** percent. The smaller increase of *** percent in the prices of French-produced nitrocellulose relative to an increase of *** percent in prices of the domestic product between January 1980 and March 1983 may be partly a result of the continuing depreciation of the French franc during that period. The franc declined in nominal terms by 40 percent in terms of the U.S. dollar from January-March 1980 to 1983. In real terms the franc decreased in value by 35 percent over the 1980-82 period, as French industrial prices increased by 28 percent relative to an increase in U.S. wholesale prices of 16 percent (table 17).

Table 17.--Indexes ^{1/} of exchange rates of the French franc relative to the U.S. dollar, by quarters, January 1980-March 1983

Period	Nominal	Real
1980:		
January-March-----	100.0 :	100.0
April-June-----	98.5 :	97.2
July-September-----	100.6 :	96.7
October-December-----	93.8 :	91.4
1981:		
January-March-----	85.4 :	82.0
April-June-----	76.7 :	75.1
July-September-----	71.4 :	72.4
October-December-----	73.4 :	76.0
1982:		
January-March-----	69.2 :	73.1
April-June-----	66.1 :	71.4
July-September-----	59.7 :	65.4
October-December-----	58.7 :	64.9
1983:		
January-March-----	60.2 :	<u>2/</u>

^{1/} January-March 1980=100.0.

^{2/} Not available.

Source: Compiled from official statistics of the International Monetary Fund.

Note.--The exchange-rate indexes are based on the value of the franc relative to the dollar. The real exchange rate was constructed by deflating changes in the nominal exchange rates by changes in industrial goods prices in France and wholesale prices in the United States.

Margins of underselling.--A comparison of prices for domestic and imported (French) nitrocellulose indicates that underselling by imports occurred in 7 of 13 quarters compared. Margins of underselling ranged from *** to *** percent. Imports undersold the domestic product by *** percent in October-December 1980, by *** to *** percent during 1981, and by *** percent in April-September 1982. Domestic prices were lower than import prices by *** to *** percent during January-September 1980, by *** percent in October-December 1982, and by *** percent in January-March 1983.

Prices of imports from Japan.--Prices of imported nitrocellulose from Japan are shown in table 18. Prices charged by the three importers increased steadily from January-March 1980 through April-June 1982, then declined during the remainder of the period.

Table 18.--Nitrocellulose: Prices of imports from Japan, by quarters, January 1980-March 1983

Period	Mitsui, Inc.	Horn, Inc.	Toyomenka, Inc.
	Cents per pound		
1980:			
January-March-----	<u>1/</u>	***	***
April-June-----	<u>1/</u>	***	***
July-September-----	***	***	***
October-December-----	***	***	***
1981:			
January-March-----	***	***	***
April-June-----	<u>1/</u>	***	***
July-September-----	***	***	***
October-December-----	<u>1/</u>	***	***
1982:			
January-March-----	***	***	***
April-June-----	<u>1/</u>	***	***
July-September-----	<u>1/</u>	***	***
October-December-----	<u>1/</u>	***	***
1983:			
January-March-----	<u>1/</u>	***	***

1/ No data reported for this time period.

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

Mitsui's prices rose from *** cents per wet pound in July-September 1980 to *** cents in January-March 1982, or by *** percent. Horn's prices rose steadily from *** cents per pound in January-March 1980 to *** cents in April-June 1982, or by *** percent, then declined to around *** cents in October-December 1982. Toyomenka's prices rose steadily from *** cents per pound in January-March 1980 to *** cents in April-June 1982, then declined to *** cents per pound in July-September 1982.

Mitsui's prices were higher than domestic prices in the 5 periods in which prices were reported, by *** to *** cents per pound. Horn's prices were lower than domestic prices in one period only, July-September 1981, by *** cents per pound. Toyomenka's prices were consistently higher than domestic prices throughout the period of investigation, by *** to *** cents per pound. Prices of imports from Japan were lower than prices of imports from France during January-September 1980, by *** to *** cents. Prices of the Japanese products then ***.

Purchasers' prices.--Of the 26 purchasers who responded to the questionnaire sent out by the Commission, 16 submitted comparable data on their "delivered" prices paid for their purchases of nitrocellulose from the domestic producer and Fayette. Purchasers' weighted-average prices and margins of underselling are shown in table 19.

Table 19.--Nitrocellulose: Purchasers' weighted-average delivered prices for the domestic and imported products, by quarters, January 1981-March 1983

Period	Hercules' product	Imports from France	Imports margins of underselling
	-----Cents per wet pound----		Percent
1981:			
January-March-----	***	***	***
April-June-----	***	***	***
July-September-----	***	***	***
October-December-----	***	***	***
1982:			
January-March-----	***	***	***
April-June-----	***	***	***
July-September-----	***	***	***
October-December-----	***	***	***
1983:			
January-March-----	***	***	***

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

Purchasers' prices for the domestic product increased irregularly from *** cents per wet pound in January-March 1981 to *** cents per pound in January-March 1983, or by *** percent. In 1981, domestic prices increased from *** cents in January-March to *** cents per pound in July-December. In 1982, prices declined by *** cents in the first quarter to *** cents per pound, rose in July-September by *** cents to *** cents, but then declined to *** cents per pound in October-December. Prices rose slightly to *** cents in January-March 1983.

Import prices increased irregularly, from *** cents per wet pound in January-March 1981 to *** cents per pound in January-March 1983, or by *** percent. In 1981, import prices dropped from *** cents per pound in January-March to *** cents in April-June. Prices then rose during the remainder of the year, reaching *** cents per pound in October-December. In 1982, prices dropped during the first three quarters to *** cents per pound in July-September, and then rose to *** cents per pound in October-December 1982. In 1983, prices rose to *** cents per pound, or by *** cents per pound. Purchasers' prices for imports were lower than domestic prices from April-June 1981 to October-December 1982, by margins ranging from *** to *** percent. In two periods--January-March 1981 and January-March 1983--import prices were higher than domestic prices, by *** and *** percent, respectively.

Three purchasers reported very limited price data on their purchases of nitrocellulose from Japan and West Germany. Two purchasers reported prices on imports from Japan. One reported a price of *** cents per pound for January-June 1981 and the other reported prices in January-March 1983 of *** cents per pound. One purchaser reported delivered annual average price data on imports from West Germany of *** cents per pound in 1981, *** cents per pound in 1982, and *** cents per pound in 1983.

APPENDIX A

NOTICE OF INVESTIGATION BY THE INTERNATIONAL TRADE COMMISSION
AND LIST OF WITNESSES APPEARING AT THE COMMISSION'S HEARING

[Investigation No. 701-TA-190 (Final)]**Nitrocellulose From France**

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

EFFECTIVE DATE: March 22, 1983.

SUMMARY: On March 22, 1983, the U.S. Department of Commerce made an affirmative final determination that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930 (19 U.S.C. 1671) are being provided by the Government of France to Societe Nationale des Poudres Explosifs, a producer and exporter of industrial nitrocellulose, provided for in item 445.25 of the Tariff Schedules of the United States. Accordingly, the United States International Trade Commission hereby gives notice of the institution of investigation No. 701-TA-190 (Final) under section 705(b) of the act (19 U.S.C. 1671d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. The Commission will make its final injury determination by June 6, 1983 (19 CFR 207.35).

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Rausch (202-523-0286), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:**Background**

On October 29, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of allegedly subsidized imports of nitrocellulose

from France. The preliminary investigation was instituted in response to a petition filed on September 14, 1982, by counsel for Hercules, Inc., Wilmington, Del.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than 21 days after the publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on April 25, 1983, pursuant to § 207.21 of the Commission's Rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on May 9, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 22, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on April 25, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is May 4, 1983.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR § 207.22, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be

limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 16, 1983.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 16, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207, as amended by 47 FR 33682, Aug. 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: March 29, 1983.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-8968 Filed 4-5-83; 8:45 am]

BILLING CODE 7020-02-M

CALENDAR OF PUBLIC HEARING

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

Subject : Nitrocellulose from France

Inv. No. : 701-TA-190 (Final)

Date and time: May 9, 1983 - 10:00 a.m.

Sessions were held in connection with the investigation in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., in Washington.

In support of the imposition of countervailing duties:

Dow, Lohnes & Albertson--Counsel
Washington, D.C.
on behalf of

Hercules Incorporated

Eugene D. Crittenden, Jr., Ph.D., Divisional Vice
President

Edwin S. Moler, Director-Nitrocellulose

Coopers & Lybrand

Lucinda Lewis, Ph.D.

William Silverman)
Edward M. Lebow)--OF COUNSEL

- more -

In opposition to the imposition of countervailing duties:

Busby, Rehm and Leonard, P.C.--Counsel
Washington, D.C.
on behalf of

Société Nationale des Poudres et Explosifs (SNPE)

Daniel Porquet, Director-Financial and Legal Affairs,
Société Nationale des Poudres et Explosifs

Stanley Eysmann, President, Fayette Chemical Corporation
and Cellofilm Corporation

ICF Incorporated

John G. Reilly, Principal

P. Lance Graef, Project Manager

Will E. Leonard)
Ruth H. Bale)--OF COUNSEL
Larry E. Klayman)

APPENDIX B

COMMERCE'S FINAL DETERMINATION

DEPARTMENT OF COMMERCE
International Trade Administration
**Final Affirmative Countervailing Duty
Determination; Industrial
Nitrocellulose From France**

AGENCY: International Trade
Administration, Commerce.

ACTION: Final affirmative countervailing
duty determination.

SUMMARY: We have determined that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to Societe Nationale des Poudres et Explosifs, a producer and exporter in France of industrial nitrocellulose described in the "Scope of Investigation" section of this notice. The estimated net subsidy is 3.248 percent *ad valorem*. The U.S. International Trade Commission will determine whether imports are materially injuring or threatening to materially injure a U.S. industry, within 75 days after publication of this notice.

EFFECTIVE DATE: March 22, 1983.

FOR FURTHER INFORMATION CONTACT:
Gary Taverman, Office of
Investigations, Import Administration,
International Trade Administration, U.S.
Department of Commerce, 14th Street
and Constitution Avenue, N.W.,
Washington, D.C. 20230, telephone: (202)
377-0161.

SUPPLEMENTARY INFORMATION: Based
upon our investigation, we have

determined certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to Societe nationale des Poudres et Explosifs (SNPE), a manufacturer and exporter in France of industrial nitrocellulose as described in the "Scope of Investigation" section of this notice.

The following programs are found to confer subsidies:

- Grant from the Ministry of Defense;
- Cross-subsidization through military sales;
- Assumption of labor costs;
- Regional development incentives.

We determine the net subsidy to be 3.248 percent *ad valorem*.

Case History

On September 14, 1982, we received a petition from counsel for Hercules Incorporated (Hercules), a U.S. producer of industrial nitrocellulose. The petition alleged certain benefits constituting subsidies within the meaning of section 701 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in France of industrial nitrocellulose.

We found the petition sufficient and initiated a countervailing duty investigation on October 4, 1982 (47 FR 44807). We stated we expected to issue a preliminary determination by December 8, 1982. We subsequently determined the investigation is "extraordinarily complicated," as defined in section 703(c) of the Act, and postponed our preliminary determination 14 days until December 22, 1982 (47 FR 53441). At that time we stated we expected to issue a final determination by February 21, 1983. However, due to the complex nature of the investigation, and in accordance with section 705(a) of the Act, we subsequently determined we would issue our final determination by March 15, 1983.

Since France is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. Therefore, we notified the International Trade Commission (ITC) of our initiation. On October 29, 1982, the ITC determined there is a reasonable indication these imports are materially injuring, or threatening to materially injure, a U.S. industry (47 FR 51024). We presented questionnaires concerning the allegations to the government of France, and to counsel for SNPE, in Washington, D.C. We received the response to the

questionnaire on November 17, 1982. A supplemental response was received from SNPE on December 15, 1982.

On December 22, 1982, we preliminarily determined that the government of France was providing SNPE with certain benefits constituting subsidies within the meaning of the countervailing duty law. However, the estimated net subsidy was *de minimis*, and, therefore, our preliminary determination was negative (47 FR 58330).

On January 17-21, 1983, we verified in France the questionnaire response submitted by the government of France and SNPE.

We held a public hearing on January 28, 1983. Both Hercules and SNPE participated.

Scope of investigation

The merchandise covered by this investigation consist of industrial nitrocellulose containing between 10.8 percent 12.2 percent nitrogen, not to be confused with explosive grade nitrocellulose which contains over 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. It is extremely flammable, so it is stored and shipped wet with alcohol. Industrial nitrocellulose comes in several viscosities and is used to form films and lacquers, coatings, furniture finishes and printing ink. This product is currently classified as cellulosic plastic materials, other than cellulose acetate, under item number 445.2500 of the *Tariff Schedules of the United States Annotated*. Explosive grade nitrocellulose is classified differently.

SNPE is the only known producer and exporter in France of the subject merchandise exported to the United States. The period for which we are measuring subsidization is the calendar year 1981.

Analysis of Programs

Based upon our analysis of the petition, responses to our questionnaires, verification, and comments received before, during, and after the public hearing held on January 28, 1983, we determine the following:

I. Programs Determined To Confer Subsidies

We have determined subsidies are being provided under the programs listed below to SNPE, a manufacturer, producer, and exporter in France of industrial nitrocellulose included in this investigation.

A. Grant from the Ministry of Defense. SNPE reported receipt of a

grant from the Ministry of Defense (MOD). The purpose was to aid modernization of the company's plant facilities at Bergerac, the site at which industrial nitrocellulose is produced. Since this grant was limited to a specific enterprise (and specifically benefited production of industrial nitrocellulose), we determine it constitutes a subsidy within the meaning of the countervailing duty law.

The subsidy rate for this grant is calculated according to the Department's usual methodology. As indicated in several recent determinations, our allocation technique is a present value analysis based on the concept that a sum of money to be received in the future does not have the same value as that sum received today. The present value of any series of payments under this program is calculated using a risk-free discount rate. For this rate, we used the average annual yield of public and semi-public sector bonds on the secondary market in France published by the Organization for Economic Cooperation and Development (OECD) because it represents the best estimate of the risk-free rate in France. Dividing the present value of the 1981 benefit by SNPE's 1981 industrial nitrocellulose sales, we calculated an *ad valorem* benefit of 0.345 percent.

B. Cross-Subsidization Through Military Sales. Petitioner alleges SNPE's close ties to the French military establishment provide a framework for indirect subsidization of industrial nitrocellulose production. In effect, earnings from a guaranteed, profitable market for military sales establish a pool of cash from the government which can be drawn upon to purchase assets for use in the production of industrial nitrocellulose.

To test the allegation, we requested that we be provided with specific data to be used in constructing a profit and loss provide for industrial nitrocellulose. Our rationale was that if we could verify the independent profitability of SNPE's industrial nitrocellulose operations, there would be no economic or business reason for supporting industrial production from earnings on military sales.

After repeated requests for this data, we were informed by the government of France that it would not approve release of the requested information because it was "not necessary" for our investigation (letter of February 25, 1983, from M. Francois David, Sous-Directeur—Ministry of Economics and Finance). In addition, SNPE was unable to provide us with the value of purchases of fixed assets used in the

production of industrial nitrocellulose from 1972 through 1981, but did provide the total purchases of fixed assets by year for the same period. (We note that this incomplete response is in contrast to the cooperation otherwise given in this case by both SNPE and the government of France.)

In view of respondent's refusal to furnish the information required to prove or disprove the petitioner's allegation that military sales are used to provide a subsidized basis for industrial nitrocellulose, we must assume its validity.

Under section 776(b) of the Act, in the event of refusal of requested information, we are required to use the best information otherwise available.¹ In our view, such information is the respondent's to the extent we have been able to verify it, and supplemented where necessary by other information. We note that in this case, petitioner's submissions regarding this issue do not contain the type of information readily applicable to our methodology for calculating the potential subsidy. Finally, there is precedent in Departmental practice for using information derived from respondent's submissions as the best information available. (See, e.g., *Michelin X-Radial Steel Belted Tires from Canada: Final Results of Administrative Review of Countervailing Duty Order* (46 FR 48739) (1981)).

To calculate the potential subsidy on industrial nitrocellulose production from sales of the military product of the government of France, we applied a methodology which measures subsidies arising from government purchases as a

¹ In this respect, it is important to point out what we perceive as a valid distinction between a refusal of information based on the assertion of national security considerations and an outright denial of requested information. Under Article XXI of the GATT, any contracting party has the right to refuse disclosure of information where it considers such disclosure contrary to its security interests. In our view, while national security considerations cannot serve as a blanket excuse for non-cooperation, nor for non-compliance with our countervailing duty and antidumping laws, the legitimate national security interests of a respondent government must be taken into account in any decision regarding what constitutes best information available. Where access to information deemed relevant to an investigation is barred by legitimate claims of national security, resort to "best information available" supporting the most adverse assumptions or results would give every appearance of punishing the respondent for its invocation of a right recognized by the GATT and by general principles of international law and sovereignty.

In this specific aspect of this investigation, the denial of information requested has not been based on any claim of national security. Consequently, there are none of the constraints discussed above on our determination regarding best information available.

form of equity. An equity based methodology was used because cash infusions by means of government purchases of military products at premium or "excess" prices may, when such prices are paid to a wholly government-owned company, properly be viewed as infusions of equity. The use of this methodology was required by the novel situation presented and the need to work within the limits imposed by the verified information available to us. The formula used to calculate the potential subsidy has three basic elements: (1) The respondent's company-wide rate of return on equity, (2) the rate of return achieved on industrial nitrocellulose, which was compared against the respondent's company-wide rate of return on equity, and (3) the results of these comparisons applied against purchases of fixed assets associated with industrial nitrocellulose production.

The return on equity through income earned on operations is considered the appropriate benchmark because it would reflect the effect of subsidies through military purchases. Earnings from military sales at advantageous prices would augment income, and this would be reflected in a higher rate of return. The return on equity through income earned on operations is also useful because we believe it provides an accurate measure of company performance free of distortions resulting from extraordinary events.

As for the second element, the rate of return achieved on industrial nitrocellulose is relevant because the product under investigation represents only a small portion of SNPE's total operations. In effect, by comparing the return on industrial nitrocellulose with the company-wide return, we have a measure of whether industrial operations perform at a level which would justify support from other operations. In this case, since SNPE was unable to provide us with the financial data needed to evaluate the performance of its industrial nitrocellulose operations during the relevant period, we have assumed a return of zero.

Fixed asset purchases are used because we have no accurate measure of the possible premiums or excess paid on purchases of military products. Our assumption is that the benefit to the company from premiums on military sales would be the availability of additional cash which could be used to purchase assets required for the production of industrial nitrocellulose. In addition, since SNPE was unable to provide figures reflecting the purchase

of assets devoted solely to industrial nitrocellulose production, we have arrived at a figure by allocating a proportional share of total asset purchases to industrial nitrocellulose. The allocation is based upon the ratio of industrial nitrocellulose sales to total sales on all products for the calendar year 1981.

We applied the methodology described above to asset purchases in each of the 10 years prior to and including 1981. The 10-year period represents the average useful life of assets employed in the manufacture of industrial nitrocellulose. Our selection of this useful life is based upon information gathered from both petitioner and respondent. We then allocated the 1981 subsidy figure arrived at under this methodology over total industrial nitrocellulose sales in 1981 and calculated an *ad valorem* benefit of 2.710 percent.

C. Assumption of Labor Costs. When SNPE was incorporated, all military and civilian personnel of its predecessor, Service des Poudres (SP), were placed at the disposal of the president of SNPE, as authorized by Article 5 of Law No. 575 dated July 5, 1970. After a period of one year, those employees had the option of either: (a) Being placed again at the disposal of the Minister of National Defense; or (b) being recruited by SNPE in accordance with the provisions of the labor laws. Employees with government civil service status who remained with SNPE had the option of retaining this status. Original employees of SNPE who elected to retain civil service status would continue to be subject to the terms and conditions applicable to government employees in any facility which fell under the jurisdiction of the Minister of National Defense. According to the 1982 Report of the Government of France's Auditor General's Office, there are still a number of workers with government status employed at SNPE. All new employees hired since the establishment of SNPE have no option to choose civil service status.

Petitioner alleges SNPE is relieved of the payment of certain wage costs because a portion of its workforce retains government status. We have verified that, while SNPE is responsible for the payment of the wages for all its employees (status and non-status), it is relieved of the payment of certain benefit costs (unemployment, pension, and health insurance premiums) for those workers retaining government status.

According to section 771(5)(B) of the Act, "the assumption of any costs or expenses of manufacture, production, or

distribution" by government action will be treated as a domestic subsidy if provided to a specific enterprise. SNPE's non-payment of certain benefit obligations for status workers is an assumption by the government of France to those costs and is, therefore, a counteravailable benefit within the meaning of the Act. For purposes of our subsidy calculation, the Department generally treats labor-related subsidies as untied grants. Since these are relatively small grants applied to costs normally expensed in the year they are received, we allocated them only to the year of receipt. Following this methodology, we calculated an *ad valorem* benefit for 1981 of 0.141 percent.

D. Regional Development Incentives. The government of France provides a series of tax and non-tax regional incentives to French and foreign businesses to establish new, or to expand existing businesses in certain French regions selected as those in which to promote additional development. The Delegation a l'Amenagement du Territoire et l'Action Regionale (DATAR) coordinates the programs of various government agencies and ministries. The Department has verified that, for incentive purposes, France is divided into several zones. Each zone, or part of a zone, is eligible for different types and levels of assistance. The assistance includes development grants, non-industrial grants, research and development grants, decentralization indemnities, and job training subsidies. Since the availability, kind and extent of benefits received under these programs are based upon regional preferences, we determine assistance provided through DATAR constitutes subsidies within the meaning of the Act.

SNPE reported the receipt of a grant in 1979, designated for the Bergerac plant, for the purpose of improving production facilities and general infrastructure. Using the Department's usual methodology for grants, we calculated an *ad valorem* benefit of 0.052 percent.

II. Programs Determined Not To Confer Subsidies

We have determined that subsidies are not being provided under the following programs to manufacturers, producers, or exporters in France of industrial nitrocellulose.

A. Reorganization of the Explosive Powders and Substances Industry. Prior to the creation of SNPE, the French state historically maintained a monopoly over the manufacture of and trade in powders and explosives. The monopoly

extended to industrial nitrocellulose, a co-product of explosive grade nitrocellulose. The monopoly was operated by the Service des Poudres (SP), a division of the Ministry of Defense.

Article 37 of the Treaty of Rome establishing the European Economic Community (EEC) requires Member states to:

Adjust any State monopoly of a commercial character so as to ensure that * * * no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States. The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.

In response to its obligations under Article 37, the French government, as authorized by Law No. 575 of July 3, 1970, established guidelines and regulations for reorganizing the explosive powders and substances industry. In exchange for stock, the government transferred the commercial and industrial assets and operations of SP to SNPE, a newly formed public corporation. The government, through the Ministry of Finance, remains the majority shareholder with over 99 percent of the outstanding stock.

Petitioner alleges the transfer of assets of SNPE constitutes "the provision of capital * * * on terms inconsistent with commercial considerations," as set out in section 771(5)(B)(i) of the Act, because the company acquired land, equipment, and other assets, including industrial nitrocellulose production facilities at Bergerac, from the government of France in return for equity. Petitioner contends these asset transfers should be treated as countervailable grants.

The record in this case shows that SNPE was organized in response to binding directive that certain state monopolies be adjusted to operate on a competitive, commercial basis. Indeed we have discovered no evidence that the purpose or intent of the French government was anything other than the commercialization of SP. Given that government ownership of a business is not a subsidy *per se*, the French government's decision to fulfill its treaty obligations by "spinning off" its industrial nitrocellulose operations does not, on its face, constitute subsidization of those operations.

Our conclusion that the creation of SNPE was not inconsistent with commercial considerations is supported

by several factors. First, we have verified that a proper valuation was made, in accordance with French commercial law and practice, of assets transferred to the company. The methods of valuation employed were proper under generally accepted accounting procedures in France, and met or exceeded U.S. accounting practice standards for comparable exercises. The operation of SNPE since 1972, supported by other evidence on the record, indicated that the government of France expected SNPE would function as a commercial enterprise. Insofar as we are able to determine, SNPE has been operated in a commercial fashion.² With certain exceptions discussed elsewhere in this notice, industrial nitrocellulose operations and improvements have been financed from operating revenues. Except for a small loss in 1975 stemming from the accidental destruction of one of its plants, SNPE has achieved a company-wide profit in every year since its inception. Third, since industrial nitrocellulose continues to represent a relatively small share (e.g., 9.6 percent of 1981 total sales value) of SNPE's overall activity, it does not follow that, whatever the reasons for the company's creation, they were predicated on an intent to establish an operation dedicated solely, or even primarily, to the subsidized production of industrial nitrocellulose.

In sum, viewing SNPE's industrial nitrocellulose operations within the context of the whole company, and in the larger context of the special circumstances of the company's creation, there is no evidence to suggest an intent to subsidize industrial production. To the contrary, the evidence we have gathered and verified supports the conclusion the French government has no purpose other than the fulfillment of its treaty obligation to commercialize SP. Consequently, we conclude the creation of SNPE and the transfer of assets by which it was carried out did not take place on terms inconsistent with commercial consideration and, therefore did not give rise to countervailable benefits.

²The fact SNPE, by virtue of its status as the sole supplier of certain military products, retains close business ties with the government does not necessarily lead to the conclusion that it cannot operate as a truly commercial entity. In the United States, there are a number of companies which function as independent, commercial entities even though they serve primarily or exclusively as defense contractors. Petitioner Hercules also performs defense work for the U.S. government. For example, it manages and operates the U.S. government-owned military nitrocellulose plant at Radford, Virginia.

B. Equity Infusions Not Used. Prior to the reorganization of SP, the government of France had begun a program to modernize SP facilities to comply with regulations governing pyrotechnical safety, security and environmental protection. The program was continued after reorganization, with the government covering the cost of completion in return for additional stock in SNPE. Petitioner argues these equity infusions constitute countervailable benefits to SNPE.

We have verified that these post-reorganization payments to SNPE represented later stages of the original reorganization plan and were accounted for properly as additional equity invested in SNPE. In addition, we have verified that all such post-reorganization payments were tied directly and solely to products other than industrial nitrocellulose. Therefore, we determine these payments or equity infusions do not confer countervailable benefits on the production of industrial nitrocellulose.

C. Financing from Credit National. Credit National (CN) is a major financial institution which plays an important role in the French financial banking system and has a special legal status. Though not nationalized, 36.85 percent of CN's stock is owned by nationalized institutions. The General Manager of CN is nominated by the President of France, and the government is at least indirectly represented by a majority of its board of directors. CN undertakes special operations for the government. These include extending "special procedure loans" on behalf of the government and performing certain advisory and management functions on projects designated for the government, its agencies and authorities. A substantial portion of CN's economic and financial activity is directed to sectors of French national interest. Thus, while CN is not a governmental institution, it does maintain a variety of official, semi-official and indirect ties with the government of France.

We were able to verify, however, that, while some of the loans made by CN are of a "special" nature (i.e. at interest rates set by the government and made in conjunction with medium-term credits which may be rediscounted), the majority of its loans are of the "ordinary" type. Such loans are extended on commercial terms, with interest rates similar to those of commercial banks in France.

On the basis of our analysis and verification of the terms and conditions—including interest rate, repayment obligations and security

requirements—of SNPE's loan agreement with CN, we conclude this loan was of the "ordinary" type and made on commercial terms. Therefore, in this specific instance we determine there has been no subsidy to SNPE.

D. Research and Development (R&D) Assistance. SNPE reported receiving funding for R&D projects from the French government through the Direction Generale a la Recherche et a la Technologie (DGRT), formerly the Delegation General a la Recherche scientifique et Technique, a subdivision of the Ministry of Research and Technology.

We verified that R&D funding was not targeted to a specific industry, group of industries, or to industries in specified regions, and research results are made publicly available. Therefore, we have determined the small amounts SNPE received through this program did not confer a subsidy within the meaning of the countervailing duty law.

E. Energy Assistance. SNPE received a few small grants from the Agence Pour les Economies d'Energie (AEE), referred to in our preliminary determination as the National Agency for Energy Conservation. The AEE is a government agency, created in 1974, that provides grants to foster energy conservation and energy research. Early in 1982, the AEE was merged with several other agencies to form the Agence Francaise Pour la Maitrise de l'Energie. We verified that these grants were not provided on a regional or industry-specific basis. Therefore, we have determined that the amounts received by SNPE from AEE do not constitute subsidies within the meaning of the Act.

F. Regional Anti-Pollution Agencies. Created by Law No. 64-1245 of 1964, these regional agencies known generically as "Agences Financieres de Bassin," and referred to in our preliminary determination as River Dock Agencies, provide incentives for the installation of anti-pollution devices. These incentives are generally available and do not benefit a specific industry, group of industries, or industries in specified regions. We have also verified that the agencies' operations are funded solely by dues from industrial users and that expenditures do not exceed collections.

SNPE has received funds from the Adour-Garonne Agency for its Bergerac and Toulouse plants, and from the Rhone-Mediterranee Corse Agency for its Sorgues plant. Since the funds disbursed by these agencies cannot exceed the amount of dues collected from industrial users, we find the funds received by SNPE do not confer

subsidies on users, such as SNPE, who provide the funds.

G. Labor Programs. SNPE has participated in the following labor programs:

- **Contract Emploi-Formation**—Under this program, the government provides funds for the training of young people first entering the job market.
- **Reduction of Benefit Costs**—Under this program, firms may reduce by 50 percent for up to one year the amount of payments to the government for health insurance, pensions, and family allowances on behalf of those young people who are given new jobs.

Since we have verified that assistance under these programs is not limited to a specific industry, group of industries or to industries in specified regions in France, we determine no subsidy exists.

H. Local Business Tax Reductions. Under the direction of the French Tax Authority ("Direction Generale des Impots"), all French industries are eligible for reductions in local business taxes ("taxe professionnelle") for the purpose of expansion of business activities. SNPE received local business tax reductions in 1980. Since we have verified that tax reductions under this program are not limited to a specific industry, group of industries or to industries in specified regions, we determine no subsidy exists.

I. Subvention d'Equipment. In our preliminary determination, we stated we would seek additional information on the line item in SNPE's balance sheet entitled "Subvention d'equiment," or equipment subsidies. We have since verified that the amount indicated in this line item represents the cumulative value of all government grants received by SNPE since 1975, including those grants from the Ministry of Defense and DATAR which were found to be countervailable, as well as other grants received by SNPE which were found not to be countervailable.

J. Inputs. SNPE purchases oleum, nitric acid, natural gas and electricity from companies owned by the government of France. Petitioner alleges these government-owned suppliers of energy and raw materials act as conduits for passing on subsidies in the form of lower, preferential prices to SNPE. Petitioner also alleges that SNPE, as a result of high volume discount purchases of materials used primarily to produce military products is receiving subsidies for its production of industrial nitrocellulose.

In the case of SNPE's purchases of electricity and natural gas, we have verified that the utility rates charged to SNPE are based on a standard pricing

formula which is applicable to all industrial users in the region of SNPE's Bergerac plant. We have found no evidence indicating preferential pricing practices with respect to SNPE's purchases of energy from these government-owned utility companies.

With respect to SNPE's purchases of oleum and nitric acid, we have verified that while the suppliers of these inputs are now owned by the government of France, during the period of investigation these companies were privately owned and controlled. Any countervailable benefits flowing to the company which occur outside the period for which we are measuring subsidization would be included in an annual review following any issuance of a countervailing duty order in this investigation.

Finally, a company's mere purchasing power as a function of its size is not a subsidy *per se*, even where such size or purchasing power results from a high volume of business with the government. There is no evidence SNPE obtains volume discounts because of government pressure on its suppliers. Nor is there evidence to support a finding that the terms upon which the company is able to secure volume discounts are unduly favorable to SNPE, as opposed to other large volume buyers of these inputs. In sum, we have no basis to conclude SNPE does not negotiate volume discounts at arm's length or that its agreements to purchase inputs are not arrived at on purely commercial terms. Consequently, we determine there is no basis to support the allegation that SNPE's industrial nitrocellulose production indirectly receives countervailable benefits as a result of government influence or pressure on the transactions through which SNPE is able to secure volume discounts on the purchase of inputs used primarily in the production of military products.

III. Programs Determined Not To Be Used

We determine the following programs are not used by the manufacturers, producers, or exporters in France of industrial nitrocellulose.

A. Fonds de Developpement Economique et Social (FDES). Created by the French Parliament in 1955, FDES is a fund which provides loans to businesses and corporations in order to further the French government's economic, social, industrial, and regional development objectives.

We have no evidence SNPE received

B. Caisse des Depots et Consignations (CDC). CDC is a government institution that invests funds deposited in the Caisses d'Epargne (the French savings banks), pension funds, and insurance companies' deposits. CDC makes both short- and long-term loans to various industries.

We have no evidence SNPE received benefits from CDC.

C. Fonds Special d'Adaptation Industrielle (FASAI). FSAI was established in 1978 to promote job creation and industrial diversification in various industries in France.

We have no evidence SNPE received benefits from FSAI.

D. Loan Guarantees. We have determined SNPE has not received loan guarantees directly from the government of France, or indirectly from any financial institution acting on the direction of the government of France.

E. Fonds National de l'Emploi (FNE). FNE was established in 1963 to provide vocational training programs, and relocation and early retirement allowances to workers confronted with industrial changes brought about by economic development.

We have no evidence SNPE received benefits from the FNE.

F. Early Retirement and Layoff Benefits. French corporations have certain statutory and contractual obligations to pay severance to their employees in case of interruption or cessation of employment. There are several French government early retirement plans designated to compensate for the effects of mass layoffs.

We have no evidence SNPE has received benefits under any of these early retirement plans.

Petitioner's Comments: 1. Petitioner argues the Department has not given adequate consideration to its allegation that SNPE's military nitrocellulose operations serve as a means for subsidizing industrial production. Petitioner argues further that, where access to relevant information is barred on grounds of military secrecy, the Department is required to rely on petitioner's submissions as the best information available.

DOC Position: See the section of this notice titled "Cross-subsidization Through Military Sales," particularly footnote 1.

2. Petitioner argues SNPE is in effect an arm of the government of France and the Department should presume, therefore, that all asset transfers to SNPE constitute countervailable grants.

DOC Position: On the basis of our verification and all other information available from the record, insofar as we

are able to determine, SNPE is an independent company which operates in a commercial fashion.

3. Petitioner argues that even if SNPE is an independent company and not an arm of the government, the Department must determine whether it has received transferred assets and funds on a commercial basis.

DOC Position: See the section of this notice titled "Reorganization of the Explosive Powders and Substances Industry."

4. Petitioner argues SNPE receives indirect subsidies through volume discounts on inputs sold to it by government-owned suppliers.

DOC Position: During the period of investigation, certain suppliers of inputs were not government-owned. In addition, we find no evidence to support this allegation. See the section of this notice titled "Inputs."

5. Petitioner contends the Department has failed to verify whether government-owned suppliers of inputs charge SNPE the same rates as those charged other purchasers.

DOC Position: On the basis of standard verification procedures and the information available to it, the Department is satisfied SNPE does not receive special benefits or discounts on its purchases of inputs. For further detail, see the section of this notice titled "Inputs."

Respondent's Comments: 1. Respondent argues the scope of the investigation should be limited solely to industrial nitrocellulose. Issues relating to military nitrocellulose are not germane to the investigation. In any case, there is no substance to the allegation that industrial production receives indirect subsidies through military operations. Moreover, information relating to military nitrocellulose production cannot be provided in violation of respondent's security commitments to the government of France.

DOC Position: The Department recognizes the legitimate national security claims of the government of France and has acted accordingly (see footnote 1 to this notice). The Department does not, however, pursue its investigations in a vacuum. In this case, military and industrial products are produced at the same facility and are closely related in nature and composition. In the face of the allegation that industrial production receives indirect subsidies through military sales, and in view of the fact that industrial nitrocellulose is a co-product of military grade nitrocellulose, the Department must carry out its charge to investigate petitioner's claim. Finally, our

determination regarding this allegation has been based on the respondent's refusal to provide information, a refusal which involved no claim of national security. For additional detail regarding our treatment of this issue, see the section of the notice titled "Cross-subsidization Through Military Sales."

2. Respondent argues the loan to SNPE from Credit National, which was preliminarily determined to be countervailable, was made on commercial terms.

DOC Position: One the basis of additional information developed in the course of our verification, we agree with respondent that, in this instance, the loan from Credit National was made on commercial terms and does not, therefore, confer countervailable benefits.

3. Respondent argues that, since capital grants are subject to taxation as income, any countervailing duty arising out of grants should be calculated on the basis of the net, post-tax value of the grant.

DOC Position: The Department consistently has declined to consider the tax consequences of grants to companies in calculating the benefit, and thus the subsidy, received by a company. Further, it is our understanding of French tax accounting practice that, though capital grants are in theory subject to the income tax, no actual tax is paid in any given period because the amount of the grant taken in as income is offset by the depreciation expense for the same period. Consequently, any countervailing duty calculation should be based on the full value of the grants.

4. Respondent argues that since DATAR grants are available to all industries in France, they should not be considered as countervailable. In any event, even if treated as countervailable, the benefit to SNPE from DATAR grants should be allocated over industrial nitrocellulose sales plus the value of shared infrastructure at the Bergerac plant.

DOC Position: Though DATAR grants may be available in some form throughout France, the extent of benefits available under this program vary according to a system of regional priorities and preferences. The Department has consistently held that grants which confer incentive benefits on the basis of regional preference are countervailable. As to the appropriate denomination over which to allocate the value of these grants, the Department agrees with the respondent.

Verification

In accordance with section 776(a) of the Act, we verified the data relied upon in our final determination. During verification we followed standard procedures, including inspection of documents, discussions with government officials and on-site inspection of the manufacturer's operations and records.

Administrative Procedures

The Department has afforded interested parties an opportunity to present oral views in accordance with its regulation (19 CFR 355.35). Also, in accordance with its regulation (19 CFR 355.34(a)), a hearing was requested and held, and written views have been received and considered.

Suspension of Liquidation

In accordance with section 705(c)(1)(B) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial nitrocellulose from France which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**, and to require a cash deposit or the posting of a bond, for each such entry of the merchandise in the amount of 3.248 percent *ad valorem*.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination and make available to it all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

This notice is published pursuant to section 705(d) of the Act and section 355.33 of the Department of Commerce regulations (19 CFR 355.33).

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 83-7390 Filed 3-21-83; 8:45 am]

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APPENDIX C

DU PONT'S ANNOUNCEMENT TO LEAVE THE NITROCELLULOSE BUSINESS

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* * * *

WE REGRET TO NOTIFY YOU THAT DU PONT PLANS TO PHASE OUT
THE MANUFACTURE AND SALE OF INDUSTRIAL NITROCELLULOSE
BY DECEMBER 30, 1977.

OUR NITROCELLULOSE BUSINESS HAS BEEN OPERATING AT A LOSS
FOR SEVERAL YEARS. DURING THIS PERIOD, WE HAVE APPLIED
CONSIDERABLE EFFORT AND RESOURCES TO DEAL WITH THE
INCREASING COST BURDENS OF RAW MATERIALS, ENVIRONMENTAL
CONTROLS AND ENERGY AND TO HELP RESTORE PROFIT MARGINS.
HOWEVER, THE CONTINUED LARGE INFUSION OF NEW CAPITAL
REQUIRED TO UPGRADE OUR AGING PLANT AND MEET PROJECTED
ENVIRONMENTAL REGULATIONS IS NOT ECONOMICALLY JUSTIFIED
IN THE FACE OF CURRENT AND FORECAST DEMAND FOR INDUSTRIAL
NITROCELLULOSE.

MARKET DEMAND FOR NITROCELLULOSE HAS GROWN LITTLE IN THE
PAST DECADE. BOTH DU PONT AND INDEPENDENT STUDIES
INDICATE THIS TREND WILL CONTINUE FOR A FEW YEARS,
AND LONGER-RANGE, DEMAND WILL SOFTEN AS A RESULT OF
ENVIRONMENTAL REGULATIONS FOSTERING WIDER USE OF
NONSOLVENT SYSTEMS.

THE CURRENT WORLD CAPACITY FOR INDUSTRIAL NITROCELLULOSE
IS CONSIDERED ADEQUATE TO MEET DEMAND, AND NO SHORTAGES
RESULTING FROM OUR WITHDRAWAL FROM THIS MARKET ARE
FORESEEN.

BASED ON CURRENT PLANNING, WE WILL CEASE ALL SHIPMENTS
ON OR BEFORE DECEMBER 30, 1977. ORDERS WILL BE ACCEPTED
THROUGH OCTOBER 1. THE PURPOSE OF THIS EARLY NOTICE IS
TO GIVE YOU TIME TO PLAN AN ORDERLY TRANSITION TO OTHER
SOURCES OF SUPPLY.

WE REGRET ANY INCONVENIENCE THIS MAY CAUSE AND WILL
GLADLY WORK WITH YOU TO SMOOTH YOUR CHANGEOVER PERIOD.
OUR REPRESENTATIVE WILL BE IN CONTACT WITH YOU SOON TO
ANSWER ANY QUESTIONS YOU MIGHT HAVE REGARDING THE
PHASEOUT.

DUPONT CO R S ARMSTRONG, MANAGER

APPENDIX D
SNPE'S PRODUCTION PROCESS

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