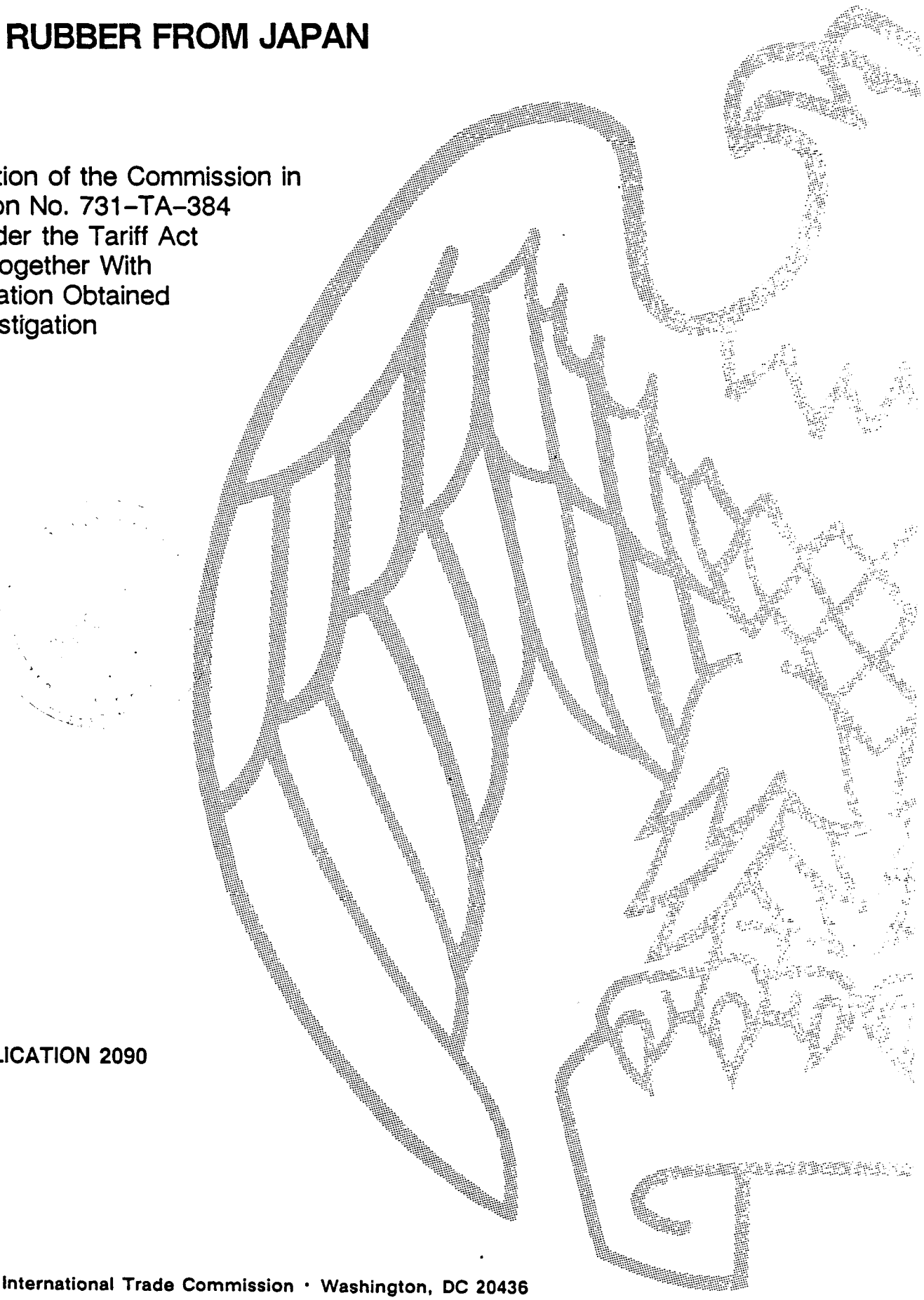
# NITRILE RUBBER FROM JAPAN

Determination of the Commission in Investigation No. 731-TA-384 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation



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UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. 731-TA-384 (Final)

NITRILE RUBBER FROM JAPAN

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, 2/ pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of nitrile rubber, 3/ provided for in item 446.15 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 12, 1988, following a preliminary determination by the Department of Commerce that imports of nitrile rubber from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. § 1673). Notice of the institution of the Commission's 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, DC, and by publishing the notice in the Federal Register of March 2, 1988 (53 F.R. 6710). The hearing was held in Washington, DC, on May 3, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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1/ The record is defined in sec. 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).
2/ Chairman Liebeler dissenting.
3/ The product covered by this investigation is nitrile rubber, not containing fillers, pigments, or rubber processing chemicals. For purposes of this investigation, nitrile rubber refers to the synthetic rubber that is made from the polymerization of butadiene and acrylonitrile and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product.

VIEWS OF VICE CHAIRMAN BRUNSDALE, AND
COMMISSIONERS ECKES, LODWICK, ROHR, AND CASS

We determine that an industry in the United States is materially injured by reason of imports of nitrile rubber from Japan that were sold at less-than-fair-value (LTFV). 1/

Like Product and the Domestic Industry

As a threshold inquiry in this investigation, the Commission must determine the relevant domestic industry. Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product. . . ." 2/ "Like product" is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . . ." 3/

In considering like product questions, the Commission typically examines the following factors: (1) physical characteristics and uses, (2) interchangeability, (3) channels of distribution, (4) common manufacturing facilities and production employees, and (5) customer or producer perceptions. 4/

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1/ Chairman Liebeler makes a negative determination. See her Dissenting Views, infra.

2/ 19 U.S.C. § 1677(4)(A).

3/ 19 U.S.C. § 1677(10).

4/ See, e.g., Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Invs. Nos. 731-TA-367 through 370 (Final), USITC Pub. 2046 (December 1987); Certain Stainless Steel Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-376 (Final), USITC Pub. 2067 (March 1988).

The imported article subject to this investigation is nitrile rubber. Nitrile rubber is butadiene acrylonitrile copolymer synthetic rubber not containing fillers, pigments, or rubber-processing chemicals, currently provided for under TSUSA item 446.1511. [5/] Nitrile rubber is characterized by a high degree of resistance to petroleum chemicals (i.e., oils, fats, and solvents) and by superior flexibility at low temperatures. Consequently, it is used in products where such characteristics are desirable, such as adhesives, footwear, wire and cable insulators, industrial belts and hoses, automotive seals and gaskets, and oil drilling equipment. [6/]

All nitrile rubber is a copolymer of acrylonitrile and butadiene, and all nitrile rubber serves the same general purpose (albeit with different specific end applications), i.e., providing resistance to petroleum chemicals while maintaining flexibility at low temperatures. Variations in acrylonitrile content merely enhance one of these general properties. [7/]

Both domestic and foreign nitrile rubber of all grades have similar

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5/ Commerce Department Final Determination of Sales at Less Than Fair Value, 53 Fed. Reg. 15436 (April 29, 1988).

6/ Before it can be used in such products, however, it must be further processed, e.g., infused or compounded with other ingredients, shaped, and/or vulcanized. A detailed description of the production process and end uses of nitrile rubber is included in the Staff Report to the Commission (Report) at A-2 through A-4.

7/ The imported product includes low, medium, and high grade nitrile rubber and competes with the domestic product in each of these three product subgroups. Id. at A-4-5. The relatively small amount (about 30 percent of both the imported and domestic product) that is represented by low or high grade nitrile rubber is not, for the most part, interchangeable with the medium grade product.

channels of distribution. [8/] Virtually all of the Japanese-produced nitrile rubber is imported into the United States by an unrelated party and subsequently sold to an unrelated chemical products distributor, which in turn sells it to processors. [9/] Most of the U.S.-produced nitrile rubber is likewise sold directly to rubber processors or consumed internally by the domestic producers. [10/]

Producers use common manufacturing equipment and production employees to manufacture all nitrile rubber, regardless of acrylonitrile content. No special equipment is needed to produce different grades of nitrile rubber. [11/]

Customers purchase nitrile rubber (of both domestic and foreign origin) in different grades depending upon their own, or their customer's, need for a nitrile rubber product having specific chemical resistance or flexibility qualities associated with that grade. [12/]

In the preliminary determination, the Commission determined there was one like product, nitrile rubber, regardless of acrylonitrile content, that does not contain any kind of additive or compounding ingredient having a function

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8/ Id. at A-5.

9/ Id. at A-5.

10/ Id. The distributor of the Japanese product sells to the same type of firms in the distribution chain as do the domestic producers.

11/ Id. at A-5.

12/ Id. at A-4.

in the processing, vulcanization, or end-use of the product. [13/] We see no reason to alter this like product definition, and, accordingly, define the like product to be all nitrile rubber, regardless of acrylonitrile content, excluding nitrile rubber products that contain additives, rubber processing chemicals, or other material that is used for functions beyond the copolymerization of acrylonitrile and butadiene. [14/] We further determine that there is one domestic industry which is composed of the domestic producers of this like product. [15/]

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13/ Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Preliminary), USITC Pub. 2027 at 6 (October 1987). Petitioner proposed a like product definition that would include all nitrile rubber regardless of its acrylonitrile content, but would exclude nitrile rubber products that contain additives or compounding ingredients in addition to acrylonitrile and butadiene. Respondent Nippon Zeon Co., Ltd. (Nippon Zeon) did not contest this definition of the like product in this final investigation. In the preliminary investigation, Nippon Zeon argued that this like product definition is too narrow, because it allegedly excludes so-called specialty nitrile rubbers. Respondent's Post-Conference Brief at 13-14. We rejected this view in the preliminary determination, and Nippon Zeon has not raised the issue in this final investigation. Neither party suggests that other types of rubber (e.g., neoprene, acrylate, or fluorocarbon) should be considered part of the like product definition.

14/ Minor variations in an essentially similar product provide an insufficient basis for defining separate like products. See, e.g., Operators for Jalousie and Awning Windows from El Salvador, Invs. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. 1934 at 4 n.4 (January 1987); Certain Lightweight Polyester Filament Fabric from the Republic of Korea, Inv. No. 731-TA-119 (Final), USITC Pub. 1457 (December 1983). In the present case, the different grades of nitrile rubber are minor variations in an essentially similar product, and do not provide a basis for finding separate like products.

15/ These producers are petitioner Uniroyal Chemical Co., Inc., The Goodyear Tire & Rubber Co., BFGoodrich Co., and Copolymer Rubber, Inc. Report at A-8.

Condition of the domestic industry

In determining the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, production, capacity, capacity utilization, shipments, inventories, employment, and financial performance. 16/ The performance of the industry reflected in these indicators during the period of investigation leads us to conclude that the domestic industry is materially injured. 17/

The quantity of apparent consumption of nitrile rubber in the United States declined by 4.6 percent from 1984 to 1987; by value, the decline was 15.0 percent. 18/

U.S. production of nitrile rubber fell from 132.7 million pounds in 1984 to 103.9 million pounds in 1985, increased in 1986 to 112.6 million pounds, and increased again to 128.7 million pounds in 1987. Despite these recent improvements, production declined by 3.1 percent from 1984 to 1987. 19/

The producers' capacity to produce nitrile rubber increased from 146.7 million pounds in 1984 to 161.5 million pounds in 1987. 20/ Capacity utilization, however, dropped dramatically during the period of investigation,

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16/ 19 U.S.C. § 1677(7)(C)(iii).

17/ Commissioner Cass believes that the description of the domestic industry is accurate and relevant to his decision on the existence of material injury by reason of LTFV imports. He does not, however, believe a separate conclusion respecting the condition of the domestic industry is required. For reasons stated in his Additional Views, he determines that the domestic industry has been materially injured by reason of the subject imports.

18/ Report at A-27.

19/ Id. at A-7, Table 1.

20/ Id. We have considered the firms' plans to add, expand, curtail, or close production facilities.

from 90.5 percent in 1984 to 79.7 percent in 1987. 21/

Producers' domestic shipments of nitrile rubber declined by 11.6 percent, from 87.3 million pounds in 1984 to 79.1 million pounds in 1987. 22/ By value these shipments declined from $84.6 million in 1984 to $67.5 million in 1987, 20.2 percent below the value of shipments in 1984. 23/ Intracompany consumption of nitrile rubber also fell steadily throughout the period under investigation, from 22 million pounds valued at $21.7 million in 1984 to 14 million pounds valued at $14.1 million in 1987. 24/ We note that the unit value per pound of nitrile rubber for domestic shipments declined steadily throughout the period under investigation from $0.97 to $0.85. 25/ The unit value of intracompany shipments remained virtually unchanged at levels substantially above those of open market shipments. Exports declined from 1984 to 1985, but rose sharply in volume, value, and share of U.S. producers' total shipments, in 1986 and 1987. 26/

U.S. producers' end-of-period inventories declined by 23.6 percent from 1984 to 1986, or from 26.3 million pounds to 20.1 million pounds, and then increased by 16.3 percent to 23.4 million pounds in 1987. As a percentage of total shipments, inventories were 25.6 percent in 1984, fell to 20.9 percent

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21/ Id. at A-7, Table 1. The expansion of capacity after 1984 accounts, in part, for the decline in capacity utilization.

22/ Id. at A-10, Table 2.

23/ Id.

24/ Id.

25/ Id. at A-11, Table 2.

26/ Id. at A-8, A-10-11, Table 2.

in 1986, and then rose to 22.1 percent in 1987. [27/]

The average number of production and related workers producing nitrile rubber declined without interruption throughout the period under investigation, from 264 in 1984 to 250 in 1985, 242 in 1986, and 241 in 1987. [28/] Several firms reported layoffs from 1984 to 1987. [29/] Total hours worked declined from 549,000 in 1984 to 487,000 in 1987. [30/]

The financial data on U.S. producers' nitrile rubber operations, which include intracompany shipments and exports, indicate a decline in the financial performance of the domestic industry. Net sales fell from $114.0 million in 1984 to $96.1 million in 1987. Operating income declined almost 80.0 percent during the investigation period, from $15.6 million in 1984 to $3.6 million in 1987. The operating (loss) margins also declined, fluctuating from 13.7 percent in 1984 to (-0.5) percent in 1985, 6 percent in 1986, and 3.8 percent in 1987. [31/] Return on assets comparisons follow the same trend. [32/] The data also reveal that intracompany shipments and exports make these figures better than they otherwise would have been. [33/]

Based on our consideration of the foregoing economic indicators, we determine that the domestic industry as a whole is experiencing material injury.

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27/ Id. at A-8, Table 3.

28/ Id. at A-13, Table 4.

29/ Id. at A-12.

30/ Id. at A-13, Table 4.

31/ Id. at A-17, Table 7.

32/ Id. at A-21, Table 11.

33/ The average unit values of intracompany shipments are appreciably higher than those for open market shipments. Id. at A-15.

Material injury by reason of LTFV imports [33/]

In making final determinations in antidumping investigations, the Commission must ascertain whether material injury being suffered by the domestic industry is "by reason of" the imports under investigation. [34/] Although it may consider information indicating that harm is caused by factors other than LTFV imports, the Commission may not weigh causes. [35/] The statute directs the Commission to consider, among other factors: (1) the volume of imports of the merchandise that is the subject of the investigation, (2) the effect of imports of that merchandise on prices in the United States for the like products, and (3) the impact of imports of such merchandise on domestic producers of like products. [36/]

We find that the significant and increasing volume and market penetration of the subject imports, coupled with the decline in prices for the domestic

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33/ Vice Chairman Brunsdale does not join in this section of the opinion. For her views on causation, see her Additional Views, infra. Commissioner Cass does not join in this section of the opinion. For his views on causation, see his Additional Views, infra.

34/ 19 U.S.C. § 1673d(b). See Hercules, Inc. v. United States, 11 C.I.T.___, 673 F. Supp. 454, 479-482 (1987).

35/ "Current law does not . . . contemplate that the effects from the subsidized (or LTFV) imports be weighed against the effects associated with other factors (e.g., the volume and prices of nonsubsidized imports, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry) which may be contributing to overall injury to an industry." S. Rep. No. 249, 96th Cong., 1st Sess. 57-58, 75 (1979).

36/ 19 U.S.C. § 1677(7)(B).

product during most of the period under investigation, significant underselling, and the effect of the imports on domestic sales and revenues, indicate that the material injury being suffered by the domestic industry is by reason of imports of nitrile rubber from Japan.

Imports from Japan increased by more than 10 percent from 1984 through 1987, and by more than 20 percent from 1985 through 1987. 37/ This growth in volume is paralleled by the increase of imports from Japan as a share of apparent U.S. consumption. Their share of U.S. consumption grew by more than 10 percent from 1984-85 through 1987. 38/ Their effect was magnified because of the overall decline in apparent U.S. consumption in 1986 and 1987 from the 1984 level and because of the fungible nature of most of the domestic and imported product. 39/ The slight decline in market penetration from 1986 to 1987 does not, in our judgment, diminish the impact of the growing Japanese penetration of the U.S. market. We note that from 1984 the subject imports grew as a share of total apparent U.S. consumption, open-market (non-captive) consumption, and U.S. production. 40/ Further, the vast

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37/ Report at A-25. Information concerning the volume of imports from Japan is confidential.

38/ Id. at A-27, Table 18. The statute directs that "[i]n evaluating the volume of imports of the merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume . . . is significant." 19 U.S.C. § 1677(7)(C)(i). Import volume was significant throughout the period of investigation; this significance increased as import volume grew.

39/ Report at A-4, A-28.

40/ Id. at A-27, Table 18.

increases in inventories held by U.S. importers and distributors as well as those held by the principal Japanese producer in 1987 demonstrate the ability of and incentive for that foreign producer to bolster its presence in the United States. 41/ 42/

The imports from Japan appear to have had price effects that extend beyond their significant market presence. Domestic prices have generally declined from 1985 through 1987, although they exhibited a slight upturn in the last quarter of 1987 and first quarter of 1988. 43/ The Japanese products have consistently undersold, and usually by wide margins, domestically-produced nitrile rubber throughout the period under investigation. 44/ Also, Japanese prices showed a predominant downward trend during the period under investigation, with a rise in the late 1987 - early 1988 period. 45/ Further, the average unit value per pound of the imported Japanese product has consistently been below those of imports

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41/ Id. at Table 3, and A-23.

42/ Commissioners Eckes and Rohr note that Japanese producers have in the most recent period demonstrated the ability to export significant nitrile rubber to the U.S. over the short term. According to ISIS data presented in Petitioners' prehearing brief, Exhibit 12, 1.2 million lbs., or 16 percent of total 1987 imports, were entered during the month of December alone. In fact, imports for the most recent two months (Dec. 1987 and Jan. 1988) totalled 2.2 million lbs., or more than one-fourth of all Japanese imports during the period Jan. 1987 through Jan. 1988.

43/ Id. at A-30-33.

44/ Id. at A-31-32, Tables 20-21.

45/ Id. We note that the Japanese merchandise continued to undersell the domestic product despite this rise in prices for the imports.

from other sources throughout the period of investigation. 46/ Despite the presence of other imports, therefore, the Japanese products are clearly the price leaders in the U.S. market, and appear both to have led U.S. prices downward and to have placed a brake on the ability of U.S. producers to increase their prices.

The adverse price impact of imports from Japan is further shown in the large number of allegations of lost sales and lost revenues that were verified by the Commission. We note that there were numerous instances of lost sales that the Commission was able to verify for the period of investigation. 47/ Additionally, we note, there were many verified lost revenue allegations in which domestic producers were forced to reduce prices. 48/ These incidents indicate two ways in which imports from Japan have materially injured the U.S. industry. First, they reduce revenues from specific transactions in an industry that is already undergoing a poor income-and-loss experience. 49/ Second, in general they prevent domestic producers from raising prices to the extent that they would otherwise be able. These incidents certainly demonstrate the Japanese product's price leadership in the U.S. market.

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46/ Id. at A-26, Table 16.

47/ Id. at A-43-47.

48/ Id. at A-47-49. Commissioners Eckes and Rohr also note the very poor financial performance of domestic producers on their open market sales, which compete directly with the imports. In 1987, in which the volume of imports increased and prices were at their lowest levels, the operating margin of the domestic producers on their open market sales dipped to -3.2 percent.

49/ Id. at A-15-23.

Accordingly, we determine that the domestic industry producing nitrile rubber is materially injured by reason of LTFV imports from Japan. 50/

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50/ Despite the fact that Commerce made a negative critical circumstances determination, petitioner requests the Commission to "proceed . . . and make an affirmative finding under 19 U.S.C. § 1673d(b)(4)(A)." Petitioner asserts that the Commerce negative determination is in error. It provides, however, no statutory basis upon which a Commission critical circumstances determination can be made in the face of a negative Commerce determination. Petitioner's posthearing brief at 8.

The statute unequivocally mandates that an affirmative Commerce critical circumstances determination is a condition for such a Commission determination; there is no authority for a Commission determination in the absence of an affirmative Commerce finding. 19 U.S.C. § 1673d(b)(4)(A). Further, the Commission may not question the correctness of the Commerce negative determination, as petitioner seems to suggest. Therefore, we are precluded from making any critical circumstances determination in this investigation.

## ADDITIONAL VIEWS OF VICE CHAIRMAN ANNE E. BRUNSDALE

Nitrile Rubber From Japan
Inv. No. 731-TA-384 (Final)

**June 10, 1988**

I agree with my colleagues' conclusions regarding like product, domestic industry, and condition of the domestic industry. I also agree with their determination that domestic producers are materially injured by reason of dumped imports. However, I reach my conclusion on causation through an analysis that differs from theirs. These additional views explain my approach to causation in this case.

I find that the trend analysis traditionally used by the Commission to examine causation often does not allow me to separate the effect of dumped imports from the many other factors that affect the domestic industry.1/ I therefore generally draw on elementary tools of economics to help me assess the market for the product in question, the ability of domestic producers to respond to changes in market

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1/ As I have stated in earlier opinions, trend analysis is useful for assessing the condition of the domestic industry, but in general, it is not useful for assessing causation. See Internal Combustion Forklift Trucks From Japan, 731-TA-377 (Final), USITC Pub. 2082, at 70-72 (May 1988) (Additional Views of Vice Chairman Anne E. Brunsdale) [hereinafter cited as Forklift Trucks]; see also Certain Welded Carbon Steel Pipes and Tubes From Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994, at 52-55 (July 1987) (Additional Views of Vice Chairman Anne E. Brunsdale) [hereinafter cited as Taiwan Pipes and Tubes].

conditions, and the effects of the dumped imports on domestic producers.2/

Import Volumes, Market Penetration, and the Dumping Margin

Measured by quantity, dumped nitrile rubber imports from Japan increased by [**] percent in the 1985-87 period, rising from [**********] pounds to [********** pounds];3/ and when measured by value, they increased by [**] percent.4/ Over the same period, the market share of those imports increased from [***] percent to [***] percent of U.S. consumption, measured by quantity,5/ and from [***] percent to [***]

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2/ A more thorough discussion of the use of elasticities is contained in Forklift Trucks, supra note 1, at 66-83; see also Color Picture Tubes From Canada, Japan, the Republic of Korea, and Singapore, 731-TA-367-370 (Final), USITC Pub. 2046, at 23-32 (December 1987) (Additional Views of Vice Chairman Brunsdale) [hereinafter cited as Color Picture Tubes]. The Court of International Trade has also discussed with approval the use of elasticities. See Copperweld Corp. v. United States, No. 86-03-00338, slip op. 88-23, at 45-48 (CIT Feb. 24, 1988); USX Corp. v. United States, 12 CIT ____, slip op. 88-30, at 19 (Mar. 15, 1988); Alberta Pork Producers' Marketing Board v. United States, 11 CIT ____, 669 F.Supp. 445, 461-65 (1987).

3/ See Report at A-26 (Table 16). Japanese imports totalled [**********] pounds in 1985, rose to [**********] pounds in 1986, and increased again to [**********] pounds in 1987. Id. Because of the timing of this investigation, the Commission gathered four full years of data. Normally the Commission only considers three years of data in its investigations and I have therefore only relied on three years of data in my analysis.

4/ Id. The value of dumped imports was [**********] in 1985, increased to [**********] in 1986, and increased again to [**********] in 1987. Id.

5/ Id. at A-27 (Table 18). By quantity, Japanese market share remained at [***] percent in 1984 and 1985, increased to [***] percent in 1986, and dipped slightly to [***] percent in 1987. Id.

percent, measured by value.6/ Although these shares are not high, they indicate a steady and increasing presence for Japanese imports in the domestic market.

In this case, the margins of dumping are extremely high. The average margin for sales surveyed by the Department of Commerce was 146.5 percent.7/

The Market for Nitrile Rubber in This Case

Demand for Nitrile Rubber in the United States. To understand fully the effects on the domestic industry of unfair imports and the resulting lower prices, the Commission needs to analyze the elasticity of domestic demand for the product under investigation.8/ If demand for a particular product is elastic, consumers will purchase more of the product as price falls. Such a response helps mitigate the adverse effects of the dumped imports on the domestic industry, because the size of the market expands and every additional sale of those dumped imports does not necessarily take a sale away from the domestic producers. Conversely, if demand is inelastic, revenue effects will not be as great because consumers will

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6/ Id. In value terms, market share stood at [***] percent in 1984 increased to [***] percent in 1985, increased again to [***] percent in 1986, and remained at [***] percent in 1987. Id.
7/ See Final Determination of Sales at Less Than Fair Value: Butadiene Acrylonitrile Copolymer Synthetic Rubber from Japan, 53 Fed. Reg. 15436 (ITA April 29, 1988).
8/ See Forklift Trucks, supra note 1, at 77.

not increase their purchases as dramatically as they would if demand were elastic, even if price falls. Nitrile rubber is a raw material used in a wide variety of end products in a number of different industries.9/ Other kinds of rubber can replace nitrile rubber, but the alternatives are either much more expensive, or much less flexible, or much less resistant to crude petroleum, fuels, and solvents.10/ Products made with nitrile rubber normally account for a very small percentage of the total cost of an end product.11/ Based on these facts, the Office of Economics estimated that demand for nitrile rubber is highly inelastic, falling between -0.1 and -0.5,12/ an estimate that the parties did not challenge.13/ I agree with that estimate, and that the total quantity of nitrile rubber demanded in the market is relatively fixed.14/

Substitutability of the U.S. and Japanese Products. Making a decision on the substitutability of the domestic and imported products is central to determining whether material injury in

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9/ See Report at A-2, A-27-28.
10/ See id. at A-4.
11/ See Memorandum from the Director, Office of Economics, Memorandum EC-L-166, at 11 (May 27, 1988).
12/ Id.
13/ See Post-Hearing Brief of Petitioners, Appendix B-9, at 1; Post-Hearing Brief of Respondents, Appendix 3, at 8.
14/ In this case, dumped imports are more likely to have an adverse effect on the domestic industry than if the demand for nitrile rubber were more elastic. Because the size of the market is relatively stable, additional sales of dumped imports will cut into sales by domestic producers.

a Title VII case is "by reason of" dumped imports.15/ For that reason it is particularly important in each case that the Commission make an explicit statement on the degree to which the domestic and imported products are substitutable.16/ In the case before us, we have a great deal of evidence indicating that the products are close substitutes.

Nitrile rubber is used in the manufacture of seals and gaskets, belts and hoses, adhesives, footwear, and wire and cable insulators.17/ Japanese and domestic nitrile rubber have very similar physical characteristics -- which is not surprising given that the substance is a raw material. Both the Japanese and domestic firms produce this product in a wide variety of similar grades and offer a full line of products to their customers.18/ Purchasers tend to use Japanese and U.S. nitrile rubber interchangeably and agree that both Japanese and domestic firms are acceptable sources

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15/ Obviously, the closer the domestic and imported products are as substitutes, the greater the effect sales of the imported product will have on sales of the domestic product, all other things being equal. For a more explicit discussion of the elasticity of substitution, see Forklift Trucks, supra note 1, at 75-76; Color Picture Tubes, supra note 2, at 25-26.

16/ See Forklift Trucks, supra note 1, at 75-76.

17/ It is normally sold in bulk and subjected to further processing by purchasers. Report at A-3. Although nitrile rubber has applications in a number of industries, most of it is consumed by the auto industry. See id. at A-3, A-43-47 (citing lost sales allegations in a number of different industries).

18/ See Memorandum EC-L-166, supra note 12, at 8-9.

of the product.19/ Evidence in the record also indicates that both the Japanese and the domestic products are of sufficiently high quality to meet purchasers' specifications.20/

Two possible limitations on the substitutability of domestic and imported nitrile rubber should be noted. One is the purchasers' practice of negotiating one-year contracts to cover their nitrile rubber requirements.21/ The other is the fact that switching sources of nitrile rubber often requires the producer to fine-tune its manufacturing process, because nitrile rubber made by different manufacturers has subtle chemical differences.22/ However, the record not only contains no evidence that year-long contracts and the fine-tuning of production prevent purchasers from switching sources of nitrile rubber, but also indicates that switching sources is very common among purchasers.23/ I am persuaded that these factors do not limit the substitutability of the domestic and Japanese products to any great extent.

The Office of Economics estimates that the elasticity of substitution is moderately high in this case, falling in the range of 5 to 10.24/ Both Petitioner and Respondent agreed

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19/ See Memorandum EC-L-166, supra note 12, at 9.
20/ Id.
21/ Id.
22/ Id.
23/ Id. The acceptability of switching was revealed in response to questions from the Commission to purchasers.
24/ Id. at 8.

that this range was reasonable.25/ I therefore conclude, based on the evidence in the record and analyses by the staff and parties, that the imported Japanese and domestic nitrile rubber are close substitutes, with an elasticity of substitution falling between 5 and 10.

Fairly Traded Nitrile Rubber Imports. In this investigation, fairly traded imports supply a sizable portion of domestic consumption of nitrile rubber. As Respondent noted, not only were imports from Canada three times greater than imports from Japan, but imports from France and Taiwan rose much faster than imports from Japan.26/ Respondent argued that it is the other imports, not the Japanese, that caused the injury to domestic firms. In addition, Respondent contended that it would be the other foreign producers, not the domestic firms, that would pick up any sales the Japanese

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25/ See Post-Hearing Brief of Petitioner, Appendix B-9, at 1-3; Post-Hearing Brief of Respondent, Appendix 3, at 9.
26/ See Post-Hearing Brief of Respondents, at 3. Information in the Staff Report agrees with these facts. Canadian imports were three times larger than the Japanese in 1987, with Canadian producers shipping [****] million pounds to the United States, versus [***] million pounds for the Japanese. See Report at A-26 (Table 16). In addition, the volume of imports from Taiwan and France doubled. Imports from Taiwan grew from 2.6 million pounds in 1986 to 5.9 million pounds in 1987, while imports from France increased from 1.3 million pounds in 1986 to 3.0 million pounds in 1987. Id. By contrast, Japanese imports only grew by approximately [*] percent between 1986 and 1987. Id.

would lose if they had to sell their product at a fair price.27/

In response, Petitioner stated that imports from Canada, France, and Taiwan would not replace Japanese sales because nitrile rubber from these three countries is not directly competitive with the domestic and the Japanese product.28/ First, the imports from these three countries are unique and do not have the same end-uses as the bulk of U.S. and Japanese nitrile rubber.29/ Second, the unit value of the nitrile rubber from France was higher than that of the U.S. product, and the unit values of the imports from both Canada and Taiwan were higher than that of the Japanese imports.30/

At the hearing, Petitioner discussed the differences between nitrile rubber from France, Taiwan, and Canada and U.S. nitrile rubber. Petitioner stated that the French imports consist almost exclusively of powdered nitrile rubber, a form of nitrile rubber that is more expensive than the U.S. product,31/ that is used in a different industry

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27/ In other words, if the Japanese increased their price to a "fair" level by eliminating the entire price advantage resulting from dumping, in this case, they would be priced out of the domestic market. See Post-Hearing Brief of the Respondents at 8-9. Respondent argues that the sales the Japanese would give up would go to other importers, not domestic firms, because the other importers were charging lower prices than U.S. firms. Id. at 7.

28/ See Hearing Transcript, In the Matter of Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Final), at 40-45 (May 3, 1988).

29/ Tr. at 40.

30/ See Post-Hearing Brief of Petitioners at 9.

31/ Tr. at 40.

(plastics), and that has different applications.32/ As for the Taiwanese imports, they are purchased almost exclusively by a U.S. producer to complement its product line and are sold at or above market prices.33/ Finally, the Canadian imports are a specialty rubber product made with "a different, third monomer,"34/ and all Canadian imports are [**********].35/

Given the information available in the record, it appears that imports from Canada and France are not as close substitutes for the domestic product as nitrile rubber from Japan. French nitrile rubber enters the U.S. market in large part in a powdered form, has specialized uses different than the uses for the U.S. product, and commands a higher price than the domestic product. Canadian nitrile rubber contains additional chemical components, making it physically different from U.S. nitrile rubber. It also appears to have different end-uses. The record does indicate, however, that the Taiwanese and the U.S. products are fairly close substitutes. Thus, if Japanese imports had not been present in the U.S. market, I expect that Canadian and French imports would not have replaced them. Taiwanese nitrile rubber

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32/ Id. at 45.
33/ Id. at 40-41.
34/ Id. at 45.
35/ See Report at A-25, n.2 [**********].

likely would have replaced some of the Japanese sales, but I expect that the preponderance of sales would have gone to U.S. firms.

Ability of the Domestic Industry to Respond to Changes in Prices. If we are to assess the revenue and price effects of unfair imports on the domestic industry, it is necessary to understand the degree to which domestic producers can expand production of nitrile rubber in response to changes in price.36/ Knowing the elasticity of domestic supply in each case gives us the ability to make a judgment about this responsiveness with greater clarity and precision.

In this case, the domestic industry is currently operating at approximately 80 percent of capacity.37/ In addition, a number of domestic firms readily shift production between nitrile rubber and butadiene rubber at the same facilities, thus increasing their ability to respond to price changes in the market for nitrile rubber.38/ Finally, domestic firms produce considerable quantities of nitrile rubber for export -- quantities that could be diverted to the domestic market should domestic prices increase. In 1987, U.S. nitrile rubber exports reached almost 27 million pounds, equal to 29 percent of domestic shipments and 17 percent of

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36/ See Forklift Trucks, supra note 1, at 78-79.
37/ See Report at A-7 (Table 1).
38/ Memorandum EC-L-166, supra note 12, at 4.

domestic production capacity.39/ Clearly, domestic firms have the ability to respond to price increases in the domestic market.

The Office of Economics estimated that the elasticity of domestic supply is moderately high in this case, ranging from 5 to 10.40/ Petitioners and Respondents agreed.41/ After considering the facts presented by staff, the estimates from the Office of Economics, and comments from the parties, I agree that the domestic product is highly responsive to changes in price and that the elasticity of domestic supply falls between 5 and 10 over the relevant range.

Material Injury Caused by Dumped Imports in This Case

In markets where domestic supply is highly elastic, dumped imports should have a significant impact on the quantities produced by the domestic industry but only a small impact on domestic prices. This is what happened in the present case.

Although the Japanese market share was fairly low throughout the period of investigation, it was sufficient to produce a material impact on the domestic industry. To explain: if the Japanese imports had been fairly priced (i.e., if the price of the Japanese nitrile rubber had been higher by the amount of the dumping margin), and if the bulk

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39/ See Report at A-7 (Table 1), A-8.
40/ Memorandum EC-L-166, supra note 12, at 4.
41/ See Post-Hearing Brief of Petitioners, Appendix B-9, at 1; Post-Hearing Brief of Respondents, Appendix 3, at 8-9.

of those sales had shifted from the imports to the domestic product, domestic revenues would have been higher by a material amount. For purposes of my analysis in this case, I assume that Japanese importers had passed the entire amount of the dumping margin through to their U.S. customers in the form of price concessions.42/ This means that if Japanese producers had traded their products fairly, their prices would have been higher by 146.5 percent, an amount that would have certainly priced the Japanese product out of the U.S. market. Typically, some of those sales would have been picked up by U.S. firms and some by other, fairly traded imports. I am persuaded that, in this case, the vast majority of the sales would have gone to U.S. firms.43/

Price suppression caused by unfair imports would have only had a slight effect on the domestic nitrile rubber industry. In this case, the elasticity of domestic supply ranged between 5 and 10.44/ Given this degree of elasticity

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42/ See Taiwan Pipes and Tubes, supra note 1, at 81-82.
43/ Although Respondents make a strong argument that other fairly traded imports would replace sales of Japanese imports if the Japanese were priced out of the market, I am not persuaded by their arguments. Canadian and French imports are not sufficiently close substitutes to replace sales of Japanese nitrile rubber. The U.S. product is a much closer substitute for Japanese nitrile rubber. See the section entitled "fairly Traded Imports," supra. The Taiwanese and U.S. products are reasonably similar and sell for prices that appear to be very close. However, given the strength of the U.S. firms in the domestic market, I am persuaded that they would have gained the bulk of sales that the Japanese would have lost if their product were fairly traded.
44/ See supra notes 37 to 42 and accompanying text for a discussion of the elasticity of domestic supply.

and the amount of Japanese imports, the unfair imports would have reduced domestic prices only slightly. However, combining the volume and price effects of unfair imports, the total amount of lost revenue attributable to unfair imports is a material amount.

The evidence presented to the Commission on the sufficiently high volume of unfair imports, the extremely high dumping margin, the highly substitutable nature of the domestic and Japanese product, the moderately high elasticity of domestic supply, and a sufficiently high level of lost revenue, taken together, shows that the domestic industry is suffering material injury caused by unfair imports in this case. I therefore agree with my colleagues in the majority that the statutory criteria are met and that antidumping duties should be imposed.

# ADDITIONAL VIEWS OF COMMISSIONER RONALD A. CASS

Nitrile Rubber from Japan
Investigation No. 731-TA-384 (Final)

I concur with the Commission's affirmative determination in this final investigation, finding that the domestic nitrile rubber industry has suffered material injury by reason of less than fair value ("LTFV") imports of nitrile rubber from Japan. I also join the Commission's definition of the like product and the domestic industry; the Commission's discussion of the condition of the industry; and the Commission's conclusion that returns to the domestic industry are materially lower than they would have been in the absence of sales at less than fair value of imports from Japan.

I do not, however, reach this conclusion solely on the basis of the evidence of adverse trends in industry profitability and findings that Japanese nitrile rubber has sold for less than domestic nitrile rubber of generally comparable characteristics. In this investigation, I believe it is especially difficult to derive from such evidence conclusions about the effects of LTFV imports on the domestic industry.

The difficulty in this case has three sources. First, use of trend evidence is complicated by the enormous disparity in

the trends depending on the year from which trends are measured. Second, in part because the domestic industry that produces the like product in this investigation is relatively concentrated (compared to many domestic industries), the trends in the industry are significantly affected by the figures relevant to Petitioner, whose fortunes seem to have declined in a manner out of keeping with the other firms in this industry. Both these points are addressed briefly below.

These matters aside, there is a third factor that makes disposition of this case difficult under any approach: the probable injury to the domestic industry from LTFV imports of nitrile rubber does not appear to be great. Put differently, this case raises the question of how much injury to the domestic industry will suffice to support an affirmative determination in a Title VII final antidumping investigation under the Tariff Act of 1930. The statute requires a demonstration that LTFV imports have caused injury to the domestic industry.1/ The statute defines this level of injury as "not inconsequential, immaterial, or unimportant."2/ The statute and legislative history reflect an apparent intent was not to create a high threshold for materiality.

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1/19 U.S.C § 1677(7)(A).

2/Id. See also H. Rep. No. 96-317, 96th Cong., 1st Sess. 46 (1979).

This view is in keeping with Congressional limitation of the statutory inquiry to the connection between the LTFV imports and the domestic industry. The Commission is not asked to determine whether the subject imports are the sole, or even a major, source of injury to the domestic industry. The Commission is asked only whether the subject imports caused material injury.3/

Although the standard of materiality, thus, was intended to be a fairly low hurdle, Petitioner still does not clear it easily. Ultimately, however, I am persuaded that the probable injury to the domestic industry by reason of LTFV imports in this investigation is sufficient to be considered material.

Injury By Reason of LTFV Imports

A. Trend Analysis

The Commission has relied heavily in this investigation on trends in the domestic industry's performance as a guide to the impact that the subject imports have had on the industry. As noted above, however, it seems unusually difficult to draw the necessary inferences from the available trend data in this investigation. First, industry trends in this case are

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3/See S. Rep. No. 249, 96th Cong., 1st Sess. at 74-75 (1979); see also Cold-Rolled Steel Plates and Sheets from Argentina, Inv. No. 731-TV-175 (Second Remand) (Views of Vice Chairman Brunsdale) at 36; Certain Internal Combustion, Industrial Forklifts from Japan, Inv. No. 731-TA-377 (Additional Views of Commissioner Cass) at 117, n. 13.

entirely dependent on the base year one uses. The industry's fortunes declined substantially between 1984 and 1987, but on most measures the industry has improved significantly since 1985. Respondent has urged the Commission to put comparisons to 1984 in perspective, characterizing 1984 as an "exceptionally good year" for the domestic nitrile rubber industry, noting, among other indicators, the sharp, one-year increase in domestic shipments which in 1984 departed substantially from the pattern of shipments from 1981 to 1987.4/ Petitioner has agreed that 1984 was a "good" year for the industry.5/ Obviously, the use of an unusually good year as the beginning date of a trend analysis tends to make later years look worse by comparison. The impact of the choice of base year can be demonstrated by looking at the percentage changes over the two time periods in various factors to which Title VII directs our attention:6/

| | percent change, 1984 to 1987 | percent change, 1985 to 1987 |
|---|---|---|
| U.S. production7/ | -3% | +23% |

4/Respondent's Pre-hearing Brief at 8; see also Report at A-11.

5/Hearing transcript at 37.

6/19 U.S.C. Sec. 1677(7)(c).

7/Report at A-7.

| | | |
|---|---|---|
| U.S. capacity utilization8/ | -12% | +15.5% |
| total shipments (U.S.)9/ | -3.7% | +8.3% |
| inventories10/ | -11% | +8.4% |
| employment11/ | -8.7% | -3.6% |
| hourly compensation (total) paid to production workers12/ | +15.4% | +15.8% |
| cash flow13/ | -55% | +404.6% |
| gross profits14/ | -35% | +50.5% |
| net income15/ | -70% | +294.7% |
| return on assets16/ | -53% | +2.6% |

Given this variation in results, at the very least, the Commission should seriously address Respondent's arguments against comparisons from 1984. If trends since 1984 are

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8/Id.

9/Id. at A-8.

10/Id. at A-12.

11/Id. at A-13.

12/Id. at A-14.

13/Id. at A-17.

14/Id.

15/Id. 1985 value is a negative number; 1985-1987 percentage change calculated using absolute values.

16/Id. at A-21. 1985 value is a negative number; 1985-1987 percentage change calculated using absolute value.

important, it is incumbent on the Commission to explain why.17/

Second, Respondent argues that any reliance on trend information must be qualified by recognition of the peculiar effect of Petitioner's own performance on such information.18/ It is not immediately apparent how trend analysis should be used to assess the impact of imports on the industry, regardless of base year, when it seems the statistics for the domestic industry are dominated by the experience of a single firm. This is particularly problematic when a single petitioner's experience seems to be much different than that of the industry as a whole. While the Commission does not weigh the relative injuries inflicted on an industry, Respondent contends that imports from Japan have not in fact injured the domestic nitrile rubber industry; instead, they argue, the difficulties of a single firm -- due entirely to other factors -- is all the facts of this investigation reveal. In this regard, it is of particular interest that none

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17/ It is worth noting in this regard that the Congress recently added to the proposed 1988 trade legislation explicit directions that this Commission is required to provide full explanations of its analysis of every case it decides, and must explain the relevance of any factor which enters into its decisions. See H.Rep. No. 100-576, 100th Cong., 2d Sess. 616 (1988).

18/ Respondent's Brief at 2, 7.

of the other U.S. producers have chosen to join the petition, and only one has indicated its support.

This argument is especially important to evaluation of information respecting trends in employment and profitability. The petitioner states that its own work force has fallen by *** workers between 1984 and 1987,19/ allegedly evidence of the impact of LTFV imports. Yet petitioner also informs us that employment in the entire U.S. nitrile rubber industry has fallen over this period by almost exactly the same number of workers -- from 264 to 241, or by 23 workers.20/ In short, by employment figures petitioner itself endorses, while petitioner, which represents approximately **** percent of industry production, has **** fewer employees, employment in the remainder of the industry during the period it claims the industry has been most injured declined by just ****.

Likewise, examining petitioner's own contentions about industry profitability leaves one uncertain whether the apparent injury to the industry is in fact a reflection of petitioner's own difficulties. Uniroyal notes that the profitability of rubber product manufacturers increased by nearly 50% between 1984 and 1987, while its own profitability

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19/Petitioner's Pre-Hearing Brief at 15.

20/Id. at 16.

was nearly eliminated.21/ Further, it appears that Uniroyal's losses in 1987 were in large part incurred in the very period when industry prices were rising. Uniroyal incurred **** percent of its 1987 losses in the last three months of that year,22/ in just the period in which it contends that respondent Nippon Zeon "selectively began to stop supplying rubber to the U.S. market"23/ and in which the weighted average price for nitrile rubber rose substantially relative to the earlier part of 1987 and relative to the 1984-1987 period.24/

B. Comparative Analysis

The ambiguity of the trend data in this investigation, standing alone, is compounded if one assesses causation by relating import trends to trends in the domestic industry's performance, for here the subject imports had a fairly small and stable market share throughout the period of investigation.25/ Further, price trends for the industry were

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21/Id. at 13-14.

22/Id. at 13.

23/Id. at 8.

24/ Staff Report at A-45,A-46.

25/Id. at A-39.

opposed, domestic prices declining while imports' prices rose.26/

The evidence does, however, suggest an effect of the subject imports on the U.S. nitrile rubber industry. The LTFV imports from Japan both appear to have somewhat reduced the prices of nitrile rubber in the U.S. and to have reduced sales of U.S.-produced nitrile rubber. The latter effect is more plainly established and more significant. The parties in this case are in agreement that LTFV sales account for all or nearly all of the U.S. sales by the Japanese manufacturers of nitrile rubber.27/ It is likely that these sales in very large measure supplanted sales by domestic manufacturers. Several facts in the record suggest this conclusion. These are addressed below under consideration, first, of the information respecting prices and volumes of the subject imports and, second, of the evidence concerning price and sales effects on the domestic industry.

(1) LTFV Imports

Although the LTFV imports from Japan do not comprise a large share of the U.S. nitrile rubber market,28/ sales at

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26/Id. at A-48.

27/ See Tr. at 24 and 102.

28/See supra note 25. The market share of Japanese imports rose from **** percent in 1984 to **** percent in 1987.

LTFV have very substantially reduced the U.S. prices of nitrile rubber from Japan and increased the volume of imports from Japan. The initial facts that support this judgement are provided by the Department of Commerce. First, the Department of Commerce found that **** percent of the Respondent's sales in the U.S. were found to be at less than fair value.29/ Second, the dumping margins calculated by Commerce were very high, about 146%.30/ The inference from these facts that LTFV sales greatly lowered the prices of Japanese nitrile rubber in the United States is also supported by evidence that the Respondent exporter regards their home market, not the U.S. market, as their principal market. For example, Nippon Zeon (which accounts for over **** percent of Japanese exports to the United States) sells less than **** percent of its output in the United States while selling **** that amount in Japan and nearly **** the U.S. figure in all other foreign markets.31/

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29/USITC Memorandum EC-L-166 (May 27, 1988), at 2.

30/Id., at 1.

31/Id. at A-34. The apparent absence of significant competition in Nippon Zeon's home market also is consistent with this inference. Nippon Zeon apparently is able to sell a substantial volume of nitrile rubber at prices well above those prevailing in the United States without serious risk of losing sales to competitors in its home market. The USITC Office of Economics estimates that the Japanese nitrile rubber market is highly concentrated, and import competition in Japan is minimal. USITC Memorandum EC-L-166 (May 27, 1988), at 17.

(continued...)

The evidence of record, discussed further in the next section of these Views, suggests that factors such as physical characteristics, support services, or ready availability do not significantly distinguish Japanese nitrile rubber from the principal alternative nitrile rubber available in the U.S. market.32/ Instead, it appears that the price of Japanese nitrile rubber played a critical role in purchasing decisions by U.S. consumers.33/ This indicates that the substantial reduction in prices of Japanese nitrile rubber supported the volume of Japanese import sales in the U.S. market observed over the period of investigation.

(2) Prices and Sales of Domestic Nitrile Rubber

The principal effect of the LTFV sales of nitrile rubber from Japan on the domestic nitrile rubber industry appears to be a reduction in domestic industry sales of nitrile rubber. Petitioner argues that the U.S. industry's sales were reduced by the full amount of the domestic sales of the subject

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31/(...continued)
By contrast, competition in the U.S.nitrile rubber market comes not just from the four domestic producers and from Japan, but also from imports from Taiwan, France, and Canada.

32/See USITC Memorandum EC-L-166 (May 26, 1988) at 8-9; Tr. at 45-47.

33/ Report at A-65.

imports.34/ Respondent argued to the contrary that, assuming that the LTFV sales lowered U.S. prices of Japanese rubber and that price is a predominant factor in domestic sales of nitrile rubber,35/ the sales of Japanese nitrile rubber only partly replaced domestic industry sales. In part, Respondent urges, the sales would have shifted to imports of nitrile rubber from other countries.

Although Respondent's argument no doubt is correct, the significant question for purposes of this investigation is the degree to which sales of LTFV imports from Japan replaced domestic industry sales of nitrile rubber. For reasons set forth below, I believe that the evidence supports a conclusion that the very great bulk of sales of subject imports were substitutes for sales by the domestic nitrile rubber industry.

At the outset, it should be noted that the domestic industry's share of the U.S. nitrile rubber market ranged from approximately 70 percent to nearly 80 percent over the period of investigation.36/ If no other information were available,

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34/ Tr. at 21-22.

35/ Respondents did not fully concede these factual predicates. See Respondent's Pre-Hearing Brief at 17. These predicates, however, are consistent with my findings in the preceding section.

36/ Report at A-27.

it would be reasonable to infer that, if LTFV sales of nitrile rubber from Japan replaced other sales, the domestic industry lost sales equal to between 70 and 80 percent of the Japanese imports' sales volume.

We do, however, have other information. That information suggests that the subject imports are more closely substitutable with U.S.-produced nitrile rubber than with other imports. Evidence on this point takes two forms: indications of high substitutability between U.S.-produced nitrile rubber and indications of lower substitutability between rubber from either of these sources and rubber from other sources.

The record strongly suggests the absence of significant distinguishing features in the characteristics and uses of Japanese and American nitrile rubbers.37/ Respondent contends that for certain specialized purposes, Japanese nitrile rubber has a natural advantage over other rubber, including U.S.-produced nitrile rubber.38/ There is no evidence, however, that the demand for such uses of nitrile rubber accounts for a significant fraction of Japanese sales in the United States,

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37/ See Report at EC-L-166 (May 26, 1988) at 8-10.

38/ See Respondent's Post-Hearing Brief at 9.

and Respondent concedes the substitutability of Japanese and American nitrile rubbers for other purposes.39/

Further, the evidence indicates that other imports substitute less closely for Japanese or U.S.-produced nitrile rubbers. Imports to the U.S. come from three countries besides Japan: France, Taiwan, and Canada. Petitioner offered testimony at the hearing,40/ unrebutted by respondent,41/ that imports from these countries have different uses than Japanese and American nitrile rubber, and are not readily substitutable for them. For example, according to Petitioner, while both American and Japanese nitrile rubbers are used in the auto, footwear, and adhesives industries,42/ and are sold in baled or latex form, the French product apparently is quite different. It is sold in a powdered form, and is typically used in the plastics industry for blending with other powders.43/ Although Respondent indicates that the French

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39/ See Respondent's Post-Hearing Brief at App. 6 (Letter from Walter Phillips, The Akro Corp.)

40/Tr. at 44-46.

41/ See, e.g., Respondent's Post-hearing Brief at 3, n. 14.

42/ Tr. at 45.

43/ Id.

nitrile rubber and other imports as well are good substitutes for the Japanese nitrile rubber,44/ other evidence supports Petitioner's contention that there are differences among these imports. Information gathered by the Commission staff suggests, for example, that the physical characteristics of the French nitrile rubber are somewhat different than Japanese or American nitrile rubber, that its end uses are somewhat different, and that it is not clear that the French product readily can be substituted for the Japanese or American product.45/ Likewise, staff suggests that the Canadian product has a different composition than the Japanese and American products and to some extent is used in different and specialized applications.46/

Respondent offers two additional arguments to support their contention that the domestic industry would not have gained all the sales lost to LTFV imports from Japan. First, Respondent notes that unit values (and apparent prices) of both Japanese and other imports are lower than American unit

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44/ See Tr. at 104, 107-109; Respondent's Prehearing Brief at 21-22.

45/ See Tr. at 44; Respondent's Post-Hearing Brief at 3, n. 14.

46/ Id.

values (and comparable prices).47/ Respondent therefore argues that if sales of Japanese imports have replaced other sales due to the low prices of the subject imports, the sales the imports have replaced must primarily be sales of other imports.48/ This argument, however, assumes that other imports are similarly substitutable for Japanese imports, a conclusion I do not believe borne out by the present record.

Second, Respondent notes that third-country imports are larger and have grown much faster relative to the growth in domestic U.S. consumption of nitrile rubbers.49/ From this observation, Respondent argues that the injury to the domestic industry must be attributed to the other imports and not to the Japanese imports.50/ Again, however, this point assumes similar substitutability for the U.S.-produced nitrile rubber among the various imports. The record does not indicate the exact sources of domestic consumption of nitrile rubber or the sources of growth in domestic consumption since 1985, but the evidence is consistent with an inference that domestic consumption of nitrile rubber has shifted toward uses for

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47/ Respondent's Pre-Hearing Brief at 20.

48/ See Tr. at 103-104.

49/ Id. at 106.

50/ Id.

which third-country products are particularly well-suited. Absent evidence to the contrary, given the evidence concerning pricing of LTFV imports and evidence concerning the characteristics and uses of rubber from various sources, there is no substantial basis for an inference that the sales of LTFV Japanese nitrile rubber have not come principally at the expense of the domestic industry.

One additional point should be noted here. The record also does not indicate that a significant portion of the sales of subject imports represent sales made only due to the price at which the Japanese imports were offered. If that were true, these could not be considered sales that were lost by the domestic industry (which was unwilling to make those sales at that price). Instead, however, the record suggests that the domestic demand for nitrile rubber was not significantly affected by the prices charged by the Respondent. In part, this reflects the fact that demand for nitrile rubber does not appear very sensitive to the price of nitrile rubber. Nitrile rubber is generally a small part of a larger product (for example, hoses for automobiles);51/ there do not appear to be very good substitutes for nitrile rubber for most such uses;52/ and very large proportional changes in the prices of

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51/ Report at EC-L-166 (May 27, 1988), at 11.

52/ Id.

nitrile rubber would have only slight impact on the cost of the larger end-product.53/

While it thus appears that LTFV sales of Japanese nitrile rubber reduced domestic industry sales by an amount nearly equivalent to the subject imports' U.S. sales volume, the effect of those imports on the prices at which the domestic industry was able to sell nitrile rubber over the period of investigation appears to have been more modest. Petitioner contends that the subject imports severely depressed the prices for U.S.-produced nitrile rubber.54/ Respondent disputes this claim, arguing that other factors fully explain the decreasing prices of U.S.-produced nitrile rubber over most of the period of investigation.55/ Such factors include decreases in the prices of raw materials from which nitrile rubber is made and increased cost-consciousness of end-users of components made of nitrile rubber.

Although the evidence of record does not demonstrate the absence of any effect on prices of domestically-produced nitrile rubber, the evidence does generally support Respondent's argument on this point.56/ The finding of

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53/ Id.

54/ Petitioner's Pre-Hearing Brief at 29.

55/ Respondent's Pre-Hearing Brief at 17.

56/ Respondent's Pre-Hearing Brief at 17.

modest effects on prices of the domestic like product also is supported by staff estimates of the relationship of subject imports' prices to domestic like product prices, estimates that both parties have accepted as falling within a generally acceptable range.57/ As noted earlier, the presence of declining domestic prices does not, of itself, demonstrate any relation to the subject imports, average prices of which rose while average prices of the domestic like product declined.58/ And the evidence on price comparisons in particular categories of sales should be scrutinized in light of the evidence that, while domestic and Japanese nitrile rubbers comprise substantially substitutable classes, there are significant variations within each class that may significantly affect the price of any given sale and similarly (depending on

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57/ See staff elasticity estimates at Report EC-L-166 (May 27, 1988, at 8, 11. These together with the market shares of the subject imports and the domestic like products suggest the relationship between prices of the imported and domestically-produced products. R. Lipsey & P. Steiner, Economics 106 (1966). Taking the estimates from the staff as identifying a general range within which the actual figure for each of these relationships might lie and considering for each an array of possible figures both above and below the staff's estimate, it does not appear that LTFV imports of nitrile rubber exercised more than a small effect on the prices of the domestic product.

58/ Report at INV-L-036 at A-46.

differences in the mix of sales being compared) may affect the relative prices observed.59/

In sum, I find from the evidence in this investigation that LTFV imports from Japan reduced sales of domestically-produced nitrile rubber by nearly the full amount of the subject imports' U.S. sales volume but only depressed prices of domestically-produced nitrile rubber by a substantially smaller amount.

(3) Impact on Employment and Investment in the Domestic Industry

The statute directs the Commission, after looking at the nature of the imports and their effects on prices for the domestic like product, to consider various factors that might provide information respecting the impact of the subject imports on employment and investment in the domestic industry. Facts concerning many of these factors are contained in the Views of the Commission, and I will not restate them here. By and large, these facts do not clearly indicate the dimensions of the LTFV imports' effects on the domestic industry.

Two points respecting the magnitude of those effects not addressed in the Views of the Commission should, however, be mentioned. One, mentioned above in these Additional Views, concerns the notion of material injury. The Tariff Act does

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59/ See Report at A-27, n. 1.

not establish, nor has the Commission ever adopted, a litmus test for the materiality of injury by reason of LTFV imports. Decision whether the threshold of materiality has been crossed is a matter left to the judgment of individual Commissioners in each investigation. That issue is not readily resolved in an investigation such as this, where the evidence suggests that the effect of the LTFV imports has neither been dramatic nor clearly trivial.

One witness for Respondent has helped to focus this issue. He estimated a "worst-case scenario" of injury from the subject imports using the assumptions that American companies would have captured half of current Japanese sales in the absence of LTFV imports and that U.S. producers would have satisfied all of the increase in demand out of new production rather than by diverting current shipments from export markets to the domestic market.60/ On these assumptions, the witness estimated that "total revenues" of American producers would have exceeded the observed figures by a maximum of "about 3 to 3.5 percent."61/ Looking at data for the last full year illustrates the meaning of this estimate. In 1987, net sales by American producers of nitrile rubber

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60/ Id. at 108-109.

61/ Id. at 108.

amounted to $96,057,000;62/ thus, Respondent's argument would be that American producers' revenues fell by no more than $3.3 million that year as a consequence of LTFV imports from Japan.

Although Respondent does not concede this degree of injury from LTFV Japanese imports, the evidence indicates a greater loss of domestic industry sales to these imports than Respondent's projection assumes63/ and a correspondingly greater decrease in the domestic industry's revenues.64/ Even taking Respondent's "worst case" figure, it is not plainly evident that a revenue loss of $3.3 million in a single year would be immaterial. Given that total operating income for the industry was only $3.6 million in 1987,65/ those additional revenues could have substantially increased returns to the domestic industry. Having found that Respondent's assumptions understate the impact of LTFV imports on the domestic industry, I believe that the level of injury, if still not amounting to a large percentage of revenue to the

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62/ Report at A-17 (Table 7).

63/ See discussion supra, text at notes 36-59.

64/ The "worst case" scenario sketched by Respondent also was very conservative estimated price effects. See Tr. at 108.

65/ See Report at A-22 (Table 7).

domestic industry, satisfies the standard of material injury in the context of this investigation.

A second argument must be addressed here, however, before reaching that conclusion. Respondent notes that the company filing the petition in this investigation, Uniroyal, has experienced much less financial success over the period of investigation than have the other enterprises in the domestic nitrile rubber industry.66/ For example, Uniroyal has **** fewer employees than it had in 1984 while other companies in the industry altogether have experienced a decline of only **** over this period.67/ In this circumstance, can the industry be said to have suffered material injury, or only Uniroyal?

In this investigation, I believe that the concentration of harm on a single company does not negate the conclusion that LTFV imports have caused material harm to the domestic industry. For one thing, Respondent has not shown that the difficulties experienced by Uniroyal is entirely due to factors other than the LTFV imports. That, of course, is not a burden Respondent must bear as an initial matter. But when other facts suggest that the industry has experienced material

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66/ See Respondent's Post-Hearing Brief at 1-2.

67/ Report at A-13 (Table 4).

injury by reason of LTFV imports, the essence of an argument over the concentration of harm on one company must be that the inference from other facts is a mistake, else the harm would be more generally experienced by other companies in the industry which would exhibit similar symptoms of financial ill health. Without a showing that factors apart from the imports account for the problems faced by the especially distressed firm, the argument puts considerable weight on a single ambiguous fact (that one company is doing substantially less well than others).

Moreover, there is no reason to believe that injury from imports necessarily will be distributed evenly across all companies in an industry. In this investigation, there is evidence that some market segmentation exists, with U.S. producers of nitrile rubber serving one segment and some serving another segment.68/ The evidence does not justify any strong conclusion about the degree to which this might explain whether indeed Uniroyal was especially affected by LTFV imports or whether instead Uniroyal's relatively weaker performance has been the result of unrelated factors while the effects of imports have been distributed evenly across all firms in the industry. Without such evidence, I do not believe it appropriate to infer from the mere fact of one

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68/ See Memorandum EC-L-165 at 3.

firm's poor performance relative to the rest of the industry that the findings supported by other evidence should be rejected as insufficiently probative of injury to the industry.

## Conclusion

For the reasons stated above, I conclude that the domestic nitrile rubber industry was materially injured by reason of less than fair value imports from Japan.

DISSENTING VIEWS OF CHAIRMAN SUSAN LIEBELER
NITRILE RUBBER FROM JAPAN
Inv. No. 731-TA-384 (Final)
June 10, 1988

The Commission has reached an affirmative determination in this case. I join with the Commission in its discussion of the like product, the domestic industry and the condition of the domestic industry. Because I find that less than fair value (LTFV) imports of nitrile rubber from Japan do not cause or threaten material injury to the domestic industry producing nitrile rubber,1/ I offer my dissenting views.

In deciding whether LTFV imports cause or threaten material injury to a domestic industry, it has been the practice of some Commissioners to examine the condition of the domestic industry and decide whether that industry is materially injured (or threatened with material injury), and if so, to determine whether the subject imports caused the injury. Typically, the approach to causation focuses on a description of trends during the period of investigation, the margin of underselling (or overselling)2/ and anecdotal evidence on sales lost by domestic producers to the subject imports.

This approach to causation has, I believe, significant shortcomings which I discussed in Internal Combustion Engine Forklift Trucks from Japan, Inv. No. 731-TA-377 (Final), USITC Pub.

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1/Material retardation is not an issue here.
2/This margin is derived by comparing prices reported in the Staff Report for the domestic and imported product.

No. 2082 (Additional Views of Chairman Liebeler). I believe it is preferable to merge the analysis of material injury and causation and focus on the effects of the LTFV imports on the domestic industry.

In determining whether LTFV imports cause or threaten material injury to the domestic industry the Commission examines the volume of unfairly traded imports, the effect of those imports on U.S. prices and the impact of those imports on the domestic industry.3/ For each of these, one must compare the actual state of the domestic industry to the state of the domestic industry absent dumping. If the difference between the two states is large enough to constitute material injury, an affirmative decision must be rendered. Thus the effects of the LTFV imports must be segregated from all other factors affecting the domestic industry.4/

The data contained in the record, including the Staff Report and various staff memos, in the transcript of the pre-hearing conference, and in submissions from the parties, provide information from which one can draw appropriate inferences for analyzing the effects of LTFV imports.

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3/In determining whether unfairly traded imports have caused or threatened material injury: the statute directs the Commission to "consider, among other factors --

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

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

(iii) the impact of imports of such merchandise on domestic producers of like products." 19 U.S.C.§1677(B).

4/This should in no way be construed as weighing the different effects. In fact, the opposite occurs: other causes are removed from consideration so they do not interfere with the mandate of the law.

The initial inquiry attempts to determine the price that Japanese imports would have sold for absent dumping. This involves a comparison of the prices and volumes of the subject imports observed during the period of the investigation with the prices and volumes that would have been obtained absent dumping. The dumping margin determined by the Department of Commerce (Commerce) is useful in assessing the maximum increase in the U.S. price of the subject imports had they been sold in the United States and Japan at the same price.5/

Analysis of the facts collected during this investigation enable us to make a reasonable estimate of this price. In this case, the dumping margins reported by Commerce were 146.5 percent for both Nippon Zeon Co. Ltd. and all other Japanese producers.6/ The dumping margins from Commerce were based on home market comparisons for Nippon Zeon Co. Ltd.7/ Commerce assigned margins to all other Japanese producers equal to those of Nippon Zeon.8/ Approximately [ ]% of the total Japanese nitrile rubber sold in the U.S. and Japan is sold in Japan.9/

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5/In many cases prices of the subject imports would have increased less than the amount of the dumping margin had the imports not been sold at LTFV. In cases where the products are sold in both the exporter's home market and the United States, the difference in the prices usually will be lower than the dumping margin. See Office of Economics Memorandum EC-L-149.
6/53 Fed. Reg. 15,436 (1988).
7/Nippon Zeon accounted for more than % of all imports of nitrile rubber from Japan. Rep. at A-8.
8/In cases where the exporters home market price is constructed, I assume that the U.S. price of the import in the absence of dumping would have risen by the full dumping margin.
9/See Rep. at A-36. This figure is derived from sales of Nippon Zeon which accounted for over [ %] of Japanese exports to the United States.

Given the fact that the Japanese nitrile producers sell a significantly greater proportion of their output in Japan than in the U.S., they would be inclined to raise their U.S. prices by a substantial portion of the dumping margin. It is my judgement that if the exporting firms had not been able to charge different prices in the United States and Japan (as would have been the case if the imports had been fairly traded), the prices of Japanese nitrile rubber sold in the United States would have been substantially greater and the volume would have been significantly lower than the levels actually observed.10/ Thus, absent dumping, significantly less Japanese nitrile would have been sold in the United States at far higher prices.

These higher prices and lower volumes would affect the market for domestic nitrile rubber. The statute instructs the Commission to consider the effect of LTFV imports on the prices for the domestic like product and the extent to which the subject imports may have depressed the prices for the domestic like product.11/ The statute also directs the Commission to examine the market share for the domestic product and the subject imports, domestic sales, domestic output and domestic inventories among other factors.12/ These factors are useful in assessing changes in the sale of domestic products and relating those changes to the sales of subject imports

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10/Both petitioner and respondent state that increasing the U.S. price of the LTFV import by the full extent of the dumping margin would have eliminated Japanese imports from the U.S. market.
11/19 U.S.C.§1677(7)(B),(C).
12/Id.

The impact of prices and volumes of the LTFV imports on the demand for the domestic like product depends on:

1) The economic substitutability of the LTFV imports for the domestic like product and for the fairly traded like products from third countries;13/

2) The LTFV market share;

3) The availability of fairly traded imports of the like product.

Both petitioner and respondent urge that domestic and Japanese nitrile rubber are close physical substitutes.14/ Domestic and foreign producers often indicate in their marketing literature which grades of rubber manufactured by different producers that are substitutable. Further, the fact that domestic users of nitrile rubber sometimes buy from both domestic and Japanese rubber manufacturers indicates that the LTFV imports and the domestic nitrile are close physical substitutes.

While these facts indicate that domestic and Japanese rubber are close physical substitutes, other information in the record suggests

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13/Economic substitutability is one factor which explains the relationship of demand for the domestic product to the price of the LTFV imports. An increase in the price of the LTFV import encourages substitution towards both the domestic like product and fairly traded imports. A rise in demand for the domestic product relative to the fairly traded import depends upon its relative economic substitutability with the LTFV import. Therefore, the economic substitutability of the LTFV import with the domestic like product implicitly depends upon other available substitutes. The relative supply of the fairly traded and domestic products also affects the demand for the domestic like product.

14/Petitioners post-hearing brief at Exhibit B-9; Respondents post hearing brief at Appendix 2. See Office of Economics Memorandum EC-L-166, May 27, 1988 at 8-1.

that their degree of substitutability, both physically and, more importantly, economically, is limited. First, purchasers of the product under investigation indicated that the Japanese LTFV import was of higher quality than the domestic like product. Second, supply commitments are generally negotiated for one year periods, limiting the substitutability of products in the short run. Third, the rubber must sometimes be "qualified" by the purchaser of the intermediate products or components made from nitrile rubber.15/ This limits the ability of nitrile rubber users to switch between sources. Fourth, the fact that relative price changes between domestic and LTFV Japanese rubber did not engender major changes in sourcing indicates limits to the economic substitutability of the products. Finally, the dramatic increase in the U.S. market share of fairly traded nitrile suggests the substitutability of domestic nitrile rubber for LTFV Japanese nitrile rubber is somewhat limited by available substitutable alternatives.16/

LTFV import market share is also important. The greater the market share of the subject imports, the greater their effect on the prices and volumes of the domestic like product. Japanese nitrile

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15/This is especially the case in the auto industry, the largest user of nitrile rubber products.

16/Petitioner asserts that nitrile rubber from France and Canada are not substitutable with the domestic like product. See Tr. at 44-46. Respondent claims Canadian imports are "highly interchangeable with U.S. and Japanese nitrile rubber." Post-Hearing Brief of Respondent Nippon Zeon at 3 n. 14. According to purchasers, nitrile rubber produced by a Canadian manufacturer [ ], competes with domestic nitrile rubber. (field interviews by Commission staff with purchasers in the [ ] area, March 16-17, 1988.) Competition between domestic and Canadian products was also found at the distributor level. See EC-L-165 at 4.

rubber has captured a small share of the U.S. market. It was [ ] percent in 1984 and 1985, [ ] percent in 1986 and [ ] percent in 1987.17/ Because of the small market share of the LTFV imports and the imperfect substitutability of the domestic like product and LTFV imports, the demand for domestic nitrile rubber would respond much less than proportionately to changes in the price of the LTFV import.18/ The increase in demand for the domestic like product is also limited by the total share of LTFV imports in the U.S. market.19/ Consequently, the increase in demand for the domestic like product would have been slight.20/

The third factor, the availability of fairly traded imports, can increase the magnitude of the shift in demand for the domestic like product. The less elastic the supply of fairly traded imports, the greater is the harm from the dumped import to the domestic like product.

In this analysis, we have assumed that all other prices (ie. the prices for the domestic and third country fairly traded like products) have remained constant.21/ However, the elimination of

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17/Report at A-40.
18/ The relationship between the demand for the domestic like product and the price of the LTFV import is captured by the cross-price elasticity. This measure, by definition, is the percentage change in the quantity demanded of the domestic like product given a one percent change in the price of the LTFV import.
19/Certainly, the elimination of all Japanese nitrile rubber during the period of the investigation, had its price been prohibitive, would not have brought about a more than proportional increase the demand for the domestic like product.
20/This is the case even when, as here, the vast majority of the dumping margin would have been passed through in the form of higher U.S. prices for LTFV imports.
21/In fact, the previous analysis represents a lower bound for the affects of dumping.

sales at LTFV in this case would increase the demand for both the domestic like product and the fairly traded import. Only if the import supply curve is horizontal or infinitely elastic will the price of the fairly traded product remain unchanged. If import supply is less than infinitely elastic, the demand shift for the domestic like product will be greater than in the previous analysis because the price of third country fairly traded like products would increase with the elimination of LTFV sales.

In the instant case, fairly traded nitrile rubber from third countries has obtained a steadily increasing share of the U.S. market rising from [ ] percent in 1984 to [ ] percent in 1987.22/ The ability of third countries to supply nitrile rubber to this market is demonstrated by this increase in market share. Further, the excess capacity of countries producing fairly traded nitrile rubber and their ability to redirect exports towards the U.S. suggests the supply of fairly traded imports is highly elastic.23/ Therefore, the small decrease in demand for U.S. nitrile caused by LTFV sales would not have been exacerbated by the inability of third countries to respond to increases in demand for their product.24/

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22/Report at A-40.
23/See EC-L-166, May 27, 1988 at 13-15.
24/The existence of an infinitely elastic import supply curve for fairly traded imports can never mitigate the changes in demand for the domestic like product as a consequence of market share and substitutability. A less than infinitely elastic supply, however, will increase the demand shift. Restated, the presence of an infinitely elastic import supply of fairly traded goods creates a lower bound for the effect on demand for the domestic like product.

Further, much of the Japanese nitrile rubber would have been replaced by fairly traded imports. In particular, imports from Canada, the largest exporter of nitrile rubber to the United States, is highly substitutable for the Japanese product and competes with both the U.S. and Japanese goods in the U.S. market. The fact that the U.S. market share of Canadian imports has grown larger relative to the share held by U.S. producers suggests that the gap left by the Japanese would have more readily been taken by the Canadians.25/ The large excess capacity of the Canadian producers suggests that they would have had no problem meeting the increase in demand for their product.26/

The facts of this case strongly suggest that if not for the LTFV sales, there would have been only a slight increase in the demand for the domestic like product. Given the size of the dumping margins, the substitutability of the domestic and LTFV import goods, the small market share of the LTFV imports, and the availability of substitutable fairly traded imports, it is clear that the amount of LTFV sales which replaced purchases of domestic products was immaterial, inconsequential, and insignificant. Further, the LTFV imports did not materially depress the price of the domestic products that actually were sold.

In addition to those addressed above, the statute also commands attention to other factors that might support or contradict an inference regarding the effects of LTFV imports on domestic price

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25/In fact, Canadian imports are more than three times greater than those from Japan. Rep. at A-36.
26/See Office of Economics Memorandum EC-L-166 (May 27, 1988) at 13.

and production. Information on inventories, capacity utilization, and productivity can suggest reasons the subject imports would have more or less effect than might at first appear. For example, low capacity utilization in the domestic industry may suggest significant ability to increase production if the absence of LTFV imports increased demand for the domestic like product. Concomitantly, if domestic capacity is (virtually) fully utilized, the presence of LTFV imports may not exert significant influence over domestic production, although the imports would then affect price more significantly.

The evidence in the record indicates that sales of LTFV imports did not have a material effect on the prices or volume of domestic product. 27/ The domestic industry is not experiencing material injury by reason of the LTFV imports. Had Japanese nitrile rubber not been sold at LTFV, the domestic industry would not have materially increased the prices and volumes of its nitrile rubber sales.

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27/The volume effect in this case will be greater than the price effects because the domestic supply is highly elastic. There is ample evidence in the record to support the high elasticity of domestic supply. The domestic industry has significant excess capacity to meet increased sales volume. Reported capacity utilization fell from 90.5 percent in 1984 to 69 percent in 1985 and remained below 80 percent throughout the remainder of the investigation. Rep. at A-9. Further, inventories, which remained stable over the period of investigation, are available to meet increased demand in the short run. Rep. at A-12. In addition, U.S. exports could be diverted to the domestic market. Rep. at A-11. The elasticity estimates of petitioners and the Commission staff support the conclusion that supply is highly elastic. Office of Economics Memorandum EC-L-166 (May 27, 1988).

The statute specifies a number of factors for the Commission to consider that reflect the impact of the subject imports on the domestic industry: actual and potential negative effects on employment and wages, and actual and potential negative effects on profits, return on investment, cash flow, ability to raise capital, and level of investment.28/

These factors can serve as a basis for inference about the accuracy of the estimates of the adverse effect of LTFV imports on the domestic industry. Directly observable changes in the factors measuring returns to the domestic industries rarely will be simply and readily correlated with LTFV imports, in part because information on these factors seldom is kept on bases coextensive with the scope of our investigations. Reference to observed data on employment, compensation, profits, cash flow, and similar factors can, however, provide inferential support for the estimates derived from our earlier analysis or, if inconsistent, can provide a basis for reexamining them. In this investigation, the information available on these factors do not support an inference of material injury to the domestic nitrile rubber industry caused by the subject imports.

For the reasons given above, I determine that the domestic nitrile rubber industry is not materially injured by reason of the LTFV imports from Japan. I also determine that the domestic industry is not threatened with material injury by reason of the LTFV imports from Japan.

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28/ 19 U.S.C.§1677(7)(C).

In determining whether a domestic industry is threatened with material injury by LTFV imports the Commission considers whether any existing unused foreign capacity or increase in foreign production capacity is likely to result in a significant increase in exports to the U.S., any rapid increase in U.S. market penetration and the likelihood that such penetration will increase to an injurious level. We must also consider whether imports will enter the U.S. at prices that will have a depressing or suppressing effect on U.S. prices, any substantial increase in inventories in the U.S., and the potential for product shifting.29/ A finding of threat must be based on "evidence that the threat of material injury is real and that the actual injury is material", and may not be based on "mere conjecture or supposition."30/

The data in this investigation reveals that Respondent was operating at a capacity utilization rate of [ ] in 1987. Respondent has little available excess capacity to increase production and it has no plans to construct any new facilities to produce nitrile rubber in Japan or to increase capacity at existing facilities.

The Japanese market share is small and stable, never exceeding [ ]. From 1986 to 1987 [ ].]31/ Additionally, due to the rise of the yen against the dollar, there is no threat that Japanese exports of nitrile rubber will increase.

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29/19 U.S.C.§1677(7)(F)(i).
30/Id. at (ii).
31/Respondent's Pre-Hearing Brief at 28.

There are other factors which would prevent a threat of increased Japanese imports. Respondent has stated that unlike U.S. producers, it can not shift production to nitrile rubber from other synthetic rubbers because it employs a different type of polymerization reactor than U.S. producers.32/ Furthermore, due to the considerable waste water Respondent's operations generate, its facilities are subject to environmental controls by the Japanese government. Any attempt to shift or increase nitrile rubber production would be subject to government approval.

Accordingly, I conclude that a domestic industry is not threatened by material injury by LTFV imports of nitrile rubber from Japan.

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32/Respondent's Pre-Hearing Brief at 26.

# INFORMATION OBTAINED IN THE INVESTIGATION

## Introduction

On February 12, 1988, the U.S. Department of Commerce published in the Federal Register (53 FR 4193) its preliminary determination that there is a reasonable basis to believe or suspect that nitrile rubber 1/ from Japan is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Tariff Act of 1930. Accordingly, effective February 12, 1988, the U.S. International Trade Commission instituted investigation No. 731-TA-384 (Final) under section 735(b) of the act (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports from Japan.

Notice of the institution of the Commission's final 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, DC, and by publishing the notice in the Federal Register of March 2, 1988 (53 FR 6710). 2/ The Commission's hearing was held in Washington, DC, on May 3, 1988, 3/ and the briefing and vote were held on June 2, 1988. The statutory deadline for reporting the Commission's final injury determination to Commerce is June 10, 1988.

## Background

On September 1, 1987, petitions were filed with the Commission and Commerce by Uniroyal Chemical Co., Inc. (Uniroyal), Middlebury, CT, alleging that LTFV imports of nitrile rubber from Japan are being sold in the United States and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, effective September 1, 1987, the Commission instituted antidumping investigation No. 731-TA-384 (Preliminary) under section 733(a) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports. On October 16, 1987, the Commission notified Commerce of its

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1/ The product covered by this investigation is nitrile rubber, not containing fillers, pigments, or rubber processing chemicals. For purposes of this investigation, nitrile rubber refers to the synthetic rubber that is made from the polymerization of butadiene and acrylonitrile and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product. Nitrile rubber is currently provided for in item 446.15 of the Tariff Schedules of the United States (TSUS) and reported for statistical purposes under item 446.1511 of the Tariff Schedules of the United States Annotated (TSUSA).

2/ A copy of the Commission's Federal Register notice is presented in app. A; a copy of Commerce's final Federal Register notice is presented in app. B.

3/ A calendar of witnesses who appeared at the Commission's hearing is presented in app. C.

affirmative determination with respect to its preliminary investigation. As a result, Commerce continued its investigation on alleged LTFV sales of nitrile rubber from Japan.

## Previous Investigation

Nitrile rubber has been the subject of one other investigation by the Commission: a 1976 antidumping investigation, also involving imports from Japan (investigation No. AA1921-151). As the result of that investigation, the Commission unanimously determined (two Commissioners not participating) that an industry in the United States was not being injured or threatened with injury by reason of the subject product from Japan (USITC Publication 764, March 1976).

## Nature and Extent of the LTFV Sales

Commerce made its final determination with respect to the LTFV imports on April 25, 1988. In order to determine whether sales of the subject nitrile rubber from Japan were made in the United States at LTFV, Commerce compared the U.S. price with the foreign market value. The period examined by Commerce's investigation was January 1, 1987, through September 30, 1987. The weighted-average LTFV margin was determined to be 146.5 percent for Nippon Zeon Co., Ltd., and for all other producers and exporters. 1/ Commerce also concluded that "critical circumstances" do not exist within the meaning of section 733(e) of the act with respect to imports of nitrile rubber from Japan. Commerce has directed the U.S. Customs Service to suspend liquidation of all imports of the subject merchandise entered, or withdrawn from warehouse for consumption, on or after February 12, 1988.

## The Product

### Description and uses

The product subject to the petitioner's complaint, raw nitrile rubber, is also known as acrylonitrile-butadiene rubber, butadiene-acrylonitrile rubber, NBR, or N-type rubber. This synthetic rubber 2/ is produced by the copolymerization of butadiene and acrylonitrile, 3/ without any additives 4/

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1/ Nippon Zeon is the principal producer of nitrile rubber in Japan and accounts for nearly all exports to the United States. Commerce examined all of Nippon Zeon's sales to the United States during the period of investigation, which totaled * * * pounds valued at $* * *. * * * sales were found to be at LTFV; margins on individual sales ranged from * * * percent to * * * percent.
2/ "Rubber" refers to a broad group of complex solid materials, both natural and synthetic, which are characterized primarily by their ability to return rapidly to their initial dimensions and shape after substantial deformation by a weak stress and release of the stress.
3/ Synthetic rubbers are defined primarily by the basic raw materials from which they are made--in this case, acrylonitrile and butadiene.
4/ Other than short-stopping agents or "short stops," which are chemicals that terminate polymerization at about 75 percent completion to prevent undesirable cross-linking, and anti-oxidants or other types of stabilizers.

or compounding ingredients having a function in the processing of the rubber (compounding, shaping, and/or vulcanization) for end-use purposes. 1/ Nitrile rubber is characterized primarily by a high degree of resistance to petroleum chemicals (oils, fuels, and solvents) and by superior flexibility at low temperatures. Accordingly, it is used principally in products where such characteristics are demanded--such as adhesives, footwear, wire and cable insulators, industrial belts and hoses, and seals and gaskets for automotive and other types of equipment. Raw nitrile rubber, however, must be further processed--i.e., infused or compounded with other ingredients, shaped, and/or vulcanized, before it can be used to manufacture any of these products.

Nitrile rubber is produced by mixing butadiene in water with acrylonitrile, catalysts, an emulsifier (soap), and other reaction-controlling agents. These products react in a series of polymerization steps to form nitrile rubber emulsified in water. About 10 percent of nitrile rubber is sold in this form, known as latex. The remainder and vast bulk of nitrile rubber, however, is removed from the water, dried, and shipped in the form of 55- to 70-pound bales. (Smaller amounts may be shipped in the form of slabs, crumbs, or powder according to the preferences of individual buyers.)

The industry classifies nitrile rubber into three ranges of acrylonitrile content for pricing purposes: low, or less than 28 percent; medium, or 28 to 35 percent; and high, or greater than 35 percent. 2/ As acrylonitrile content increases, resistance of the finished article to crude petroleum and fuel (e.g., gasoline) increases, but flexibility at low temperature and resilience decreases. Thus, nitrile rubber that has a higher-than-average acrylonitrile content is used primarily for products requiring high resistance to crude petroleum and fuel, such as oil well parts, engine seals, and fuel hoses. Nitrile rubber with lower than average acrylonitrile content is used where low temperature flexibility and resilience is more important than crude petroleum resistance, such as in adhesives, footwear, and industrial belts. Producers usually offer nitrile rubber with varying degrees of acrylonitrile content to suit the needs of various buyers and end-use products. The vast bulk (approximately 70 percent) of both the U.S.-produced and imported product is of medium acrylonitrile content, from which most seals, hoses, and gaskets for the automobile industry are produced.

The viscosity of nitrile rubber is the only other variable important to purchasers' needs and for which a range of values is offered by producers. Virtually all other variables, such as tensile strength, specific gravity, and elongation, are functions of acrylonitrile content and viscosity. Several viscosities may be available for a specified acrylonitrile content. In practice, producers offer discrete products, each designated by a number, letter, or number-letter combination (e.g., BJLT, DN-223, N-34) and each

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1/ Another reason for terminating the reaction is that, owing to monomer depletion, the polymerization rate slows down in late stages to the point at which it is uneconomical to continue.

2/ The higher the weight proportion of the acrylonitrile component, the higher the production cost; other factors being equal, price varies accordingly.

having a specified acrylonitrile content and viscosity. 1/ Buyers will order from among a producer's discrete list of products accordingly. For the most part, what is available from one producer is available from another, although some variability is associated with the specifications for a particular product. According to testimony at the Commission's conference, this variability is generally less for Japanese-produced nitrile rubber than for U.S.-produced nitrile rubber. 2/

Several other kinds of rubber--notably neoprene, acrylate, and fluorocarbons--can be used in place of nitrile for many applications, but not without compromising many of nitrile rubber's advantages, including cost. Whereas acrylate and fluorocarbons, for example, have crude-petroleum-resistant properties superior to those of nitrile at high temperature, they lack nitrile's low-temperature flexibility and are 2 to 16 times as expensive. Consequently, they tend to be used only in applications that require a higher resistance to heat than is possible with nitrile products. Although neoprene sells for approximately the same price as nitrile and is superior in terms of electrical insulation, it is considerably less resistant to crude petroleum, fuels, and solvents. During the last 20 to 30 years, nitrile rubber, a newer product, has tended to displace neoprene in many applications. 3/

U.S. tariff treatment

Nitrile rubber is provided for in TSUS item 446.15, a classification that includes all synthetic rubber, whether or not containing additives or compounding ingredients having a function in further processing. Nitrile rubber not containing fillers, pigments, or rubber-processing chemicals is separately reported for statistical purposes under TSUSA item 446.1511. The column 1 (most-favored-nation) rate of duty for this tariff item, applicable to imports from Japan, is free. Such imports are classifiable under subheading 4002.59.00 of the proposed Harmonized Tariff Schedule of the United States.

## U.S. Channels of Distribution

In the United States most U.S.-produced nitrile rubber is sold either directly to unrelated end users or to unrelated custom mixers, which add compounding ingredients (such as vulcanization agents, accelerators, activators, age resistors, fillers, plasticizers (softeners), pigments, and

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1/ There is some confusion in the industry as to the use of the term "grade." In some cases "grade" refers to nitrile rubber with a certain acrylonitrile content, or at least that within a certain range (low, medium, or high). In other cases it refers to the discrete product offered by the producer--i.e., BJLT, DN-223, etc.--which implies not only acrylonitrile content but also viscosity and all other derivative factors.

2/ Transcript of the preliminary conference, pp. 72-73.

3/ Nitrile rubber has been displaced to some extent by plastics, such as chlorinated polyethylene, in wire and cable applications.

lubricants) to the basic rubber, then shape and vulcanize 1/ the mixture, and/or otherwise process it into forms for specific end uses. Nitrile rubber is of little or no use until it is compounded with other ingredients, shaped, and vulcanized. The automobile and light truck industry is the largest single user of nitrile rubber products.

Most Japanese nitrile rubber is imported by one firm and sold to an exclusive but unrelated distributor which in turn sells to custom mixers and end users (see the section of this report entitled "Japanese Producers and U.S. Importers"). The following tabulation shows the shares of shipments of U.S.-produced and Japanese-produced nitrile rubber sold to custom mixers and end users (in percent, based on quantity):

| | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|
| U.S.-produced: | | | | |
| Sold to custom mixers | 15 | 15 | 19 | 21 |
| Sold to end users | 85 | 85 | 81 | 79 |
| Total | 100 | 100 | 100 | 100 |
| Japanese-produced: | | | | |
| Sold to custom mixers | *** | *** | *** | *** |
| Sold to end users | *** | *** | *** | *** |
| Total | 100 | 100 | 100 | 100 |

U.S. Producers

In addition to the petitioner, which produces nitrile rubber at a plant in Painesville, OH, three other firms manufacture nitrile rubber in the United States: Goodyear Tire & Rubber Co. (Goodyear) at two plants located in Houston, TX, and Akron, OH; BFGoodrich Co. (BFGoodrich) at a plant in Louisville, KY; and Copolymer Rubber, Inc. (Copolymer) at a plant in Baton Rouge, LA. * * *. All four producers provided data in response to the Commission's questionnaire. The petitioner accounted for * * * percent of U.S. production in 1987; Goodyear, BFGoodrich, and Copolymer accounted for about * * *, * * *, and * * * percent, respectively.

All of the producers--in addition to several hundred other firms--further process nitrile rubber for specific end uses, but in relatively small quantities. All of the above-named firms except Copolymer are large multinational corporations and all manufacture rubber products other than nitrile--some, particularly styrene rubber, with the same equipment. None of these firms produces butadiene or acrylonitrile, the basic raw materials from which nitrile rubber is made.

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1/ Vulcanization or curing is the final rubber processing step. Vulcanization refers to the conversion of rubber (in this case nitrile rubber) from a predominantly soft, plastic-like material into a strong elastic (rubbery) material. This is accomplished by forming three-dimensional cross-linking between the single molecules to obtain a continuous network of flexible elastic chains. Vulcanization of nitrile rubber may be carried out with sulfur and heat, the traditional vulcanization method; or, vulcanization may be brought about with sulfur donors or other suitable chemicals, such as organic peroxides.

## Japanese Producers and U.S. Importers

Two companies produce nitrile rubber in Japan--Nippon Zeon Co., Ltd. (Nippon Zeon), Tokyo, and Japan Synthetic Rubber Co. Ltd. (JSR), Tokyo. 1/ Both companies export nitrile rubber to the United States. The vast bulk of nitrile rubber exported to the United States from Japan is produced by Nippon Zeon, exported by the trading company Nichimen Industrial Co., Ltd., Tokyo, and imported by its marketing subsidiary, Nichimen America, Inc. (Nichimen), a chemical-products distributor in New York, NY. Nearly all of the nitrile rubber that Nichimen imports is resold, without further processing, to Goldsmith and Eggleton, Inc. (G&E), 2/ Akron, OH, another chemical-products distributor, which then distributes the unprocessed material to various rubber processors and rubber-product manufacturers. Material produced by JSR, which accounts for only about * * * percent of exports to the United States from Japan, is imported by a related firm, JSR America, Inc. (JSR America), New York, NY, a distributor of chemical products.

## Consideration of Alleged Material Injury to an Industry in the United States

### U.S. production, capacity, and capacity utilization

The equipment used to produce nitrile rubber in the United States can be and is used to produce other products, particularly styrene rubber (a mixture of styrene and butadiene). Production of other products accounted for about * * * percent of Goodyear's equipment's time, * * * percent of BFGoodrich's equipment's time, and * * * percent of Copolymer's equipment's time during the period for which data were collected. * * *. Data for U.S. producers' capacity, shown in table 1, reflect the amount of the equipment's time U.S. producers allocated or made available to the subject product. As shown in table 1, total capacity increased by 10 percent from 1984 through 1987. The increase was due to * * * in 1985 and to * * * in 1987. According to questionnaire responses, * * *.

U.S. production declined by 21.7 percent from 1984 to 1985 and then increased by 8.4 percent in 1986, but to a level still 15.2 percent below that in 1984. Production in 1987 increased by 14.3 percent from production in 1986. None of the producers reported any significant losses in production due to employment-related problems, sourcing problems, transitions, power shortages, natural disasters, or any other unusual circumstances. For the most part capacity utilization reflects the changes in production, as shown in table 1.

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1/ This was confirmed by the U.S. State Department, * * *.
2/ * * *.

Table 1
Nitrile rubber: U.S. production, average practical capacity, and capacity utilization, by firms, 1984-87

| Item and firm | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|
| | Quantity (1,000 pounds) | | | |
| Production: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Total | 132,734 | 103,908 | 112,617 | 128,681 |
| Average practical capacity: | | | | |
| BFGoodrich 1/ | *** | *** | *** | *** |
| Copolymer 2/ | *** | *** | *** | *** |
| Goodyear 1/ | *** | *** | *** | *** |
| Uniroyal 3/ | *** | *** | *** | *** |
| Total | 146,720 | 150,700 | 153,750 | 161,460 |
| | Percent | | | |
| Ratio of production to capacity: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Average | 90.5 | 69.0 | 73.2 | 79.7 |

1/ * * *.
2/ * * *.
3/ * * *.

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

U.S. producers' intracompany consumption, domestic shipments, and exports

U.S. producers provided the Commission with intracompany consumption and shipments data for 1981-87. Intracompany consumption of nitrile rubber by U.S. producers declined from 26.5 million pounds in 1981 to 18.3 million pounds in 1983, increased to 21.7 million pounds in 1984, then declined annually thereafter to 13.9 million pounds in 1987. As a share of total shipments, intracompany consumption declined from 22.1 percent in 1981 to 11.6 percent in 1987, as shown in the following tabulation (in thousands of pounds):

| Year | Intracompany consumption | Domestic shipments | Intracompany and domestic shipments | Exports | Total |
|---|---|---|---|---|---|
| 1981..... | 26,508 | 80,504 | 107,012 | 12,796 | 119,808 |
| 1982..... | 19,117 | 63,552 | 82,669 | 11,668 | 94,337 |
| 1983..... | 18,337 | 72,079 | 90,416 | 10,834 | 101,250 |
| 1984..... | 21,689 | 87,332 | 109,021 | 15,581 | 124,602 |
| 1985..... | 19,063 | 78,655 | 97,718 | 12,694 | 110,412 |
| 1986..... | 18,737 | 77,172 | 95,909 | 19,045 | 114,954 |
| 1987..... | 13,931 | 79,107 | 93,038 | 26,892 | 119,930 |

U.S. producers' domestic shipments declined by 21.1 percent from 80.5 million pounds in 1981 to 63.6 million pounds in 1982, then increased by 37.4 percent to 87.3 million pounds in 1984. Domestic shipments declined in 1985 and again in 1986, dropping 11.6 percent from shipments in 1984. Such shipments increased by 2.5 percent in 1987 from 1986, to 79.1 million pounds, which was 9.4 percent below 1984 shipments and 1.7 percent below 1981 shipments. During 1984-87, nitrile rubber with medium acrylonitrile content (over 28 percent to 35 percent) averaged 78 percent of total domestic shipments while that with medium-high acrylonitrile content (35 percent to 42 percent) averaged 10 percent, and nitrile rubber with medium-low acrylonitrile content (24 percent to 28 percent) averaged 8 percent. 1/ Figure 1 presents a comparison of U.S. producers' intracompany consumption, domestic shipments, and exports for 1981-87; table 2 presents shipments data by company for 1984-87.

Export shipments by U.S. producers declined by 15.3 percent from 12.8 million pounds in 1981 to 10.8 million pounds in 1983. Exports then increased to 15.6 million pounds in 1984, dropped to 12.7 million pounds in 1985, then rose in 1986 and again in 1987, reaching 26.9 million pounds. As a share of U.S. producers' total shipments, exports increased irregularly from 10.7 percent in 1981 to 22.4 percent in 1987. Principal markets for U.S. exports were Western Europe, Asia, and Canada.

## Inventories

U.S. producers' end-of-period inventories declined by 23.6 percent from 1984 to 1986, and then increased by 16.3 percent in 1987 (table 3). As a percentage of total shipments, inventories followed the same trend, declining from 25.6 percent to 20.9 percent during 1984-86, and then increasing to 22.1 percent in 1987.

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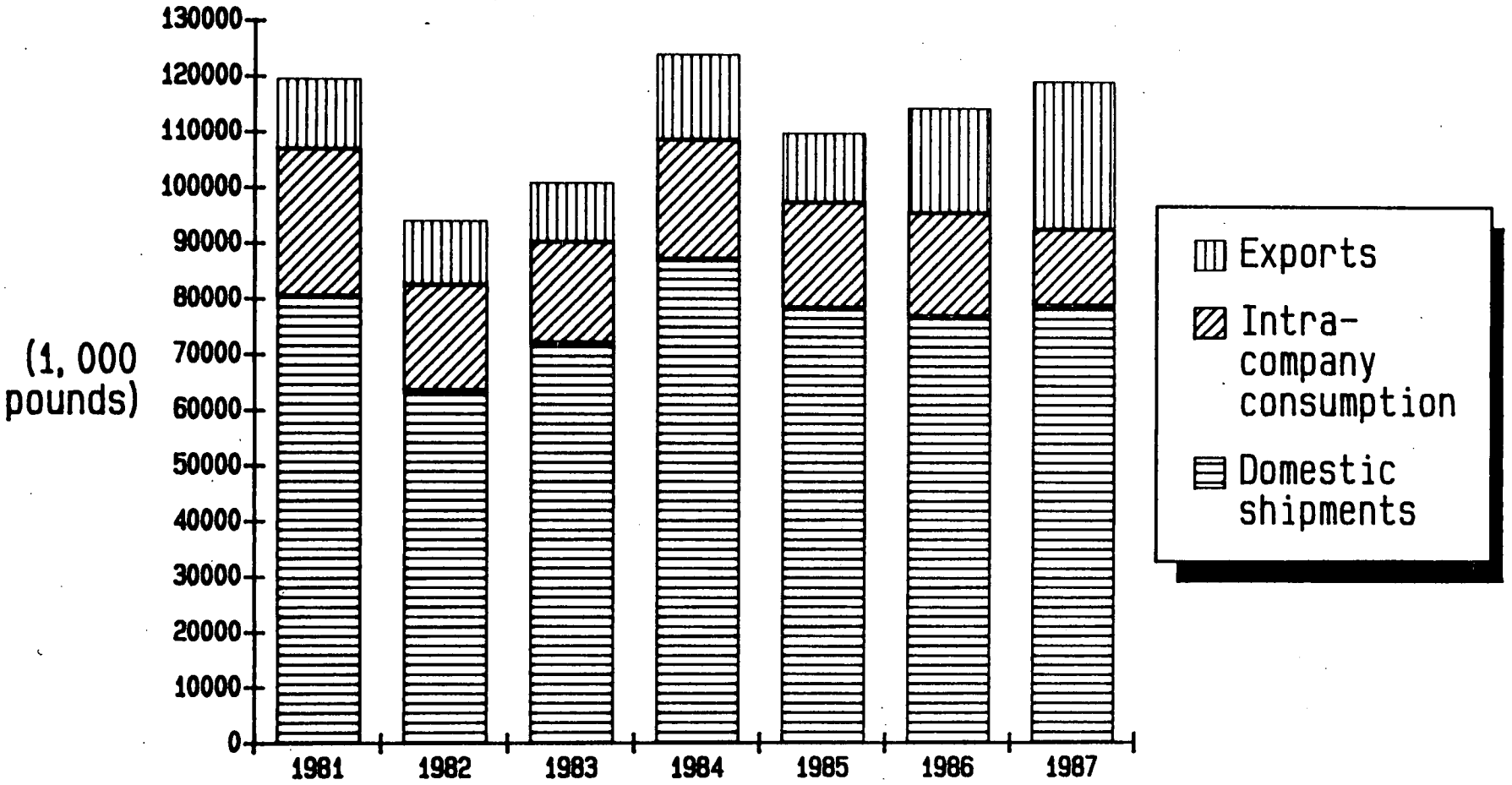
1/ For comparison purposes, U.S. shipments of Japanese-produced nitrile rubber by G&E, Nippon Zeon's U.S. distributor, averaged as follows during 1984-87: medium content, * * * percent; medium-high content, * * * percent; and medium-low content, * * * percent. At the Commission's hearing, Mr. Fairclough, Business Manager for Uniroyal, stated that there has been very little shift in product mix through the period of this investigation (Transcript, p. 35).

Figure 1.--Nitrile rubber: U.S. producers' intracompany consumption, domestic shipments, and exports, 1981-87




Source: Table 2.

Table 2
Nitrile rubber: U.S. producers' intracompany consumption, domestic shipments, and exports, by firms, 1984-87

| Item and firm | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|
| | Quantity (1,000 pounds) | | | |
| Intracompany consumption: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Total | 21,689 | 19,063 | 18,737 | 13,931 |
| Domestic shipments: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Total | 87,332 | 78,655 | 77,172 | 79,107 |
| Exports: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Total | 15,581 | 12,694 | 19,045 | 26,892 |
| | Value (1,000 dollars) | | | |
| Intracompany consumption: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Total | 21,718 | 18,695 | 18,420 | 14,089 |
| Domestic shipments: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Total | 84,587 | 72,466 | 66,646 | 67,468 |
| Exports: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Total | 13,546 | 10,937 | 13,796 | 19,564 |

Table 2--Continued
Nitrile rubber: U.S. producers' intracompany consumption, domestic shipments, and exports, by firms, 1984-87

| Item and firm | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|
| | Unit value (per pound) | | | |
| Intracompany consumption: | | | | |
| BFGoodrich | $ *** | $ *** | $ *** | $ *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Average | 1.00 | .98 | .98 | 1.01 |
| Domestic shipments: | | | | |
| BFGoodrich | $ *** | $ *** | $ *** | $ *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Average | .97 | .92 | .86 | .85 |
| Exports: | | | | |
| BFGoodrich | $ *** | $ *** | $ *** | $ *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Average | .87 | .86 | .72 | .73 |

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

Employment

As stated previously, the equipment used to produce nitrile rubber can be and is used to produce other products. Workers at these plants apportion their time accordingly. The data shown for U.S. producers' employment in tables 4 and 5 represent an allocation of workers, time, and compensation to the subject product (equivalent to the proportion of the equipment's time used to produce the subject product). Although different methodologies were used by the producers to arrive at these data, each producer's methodology was consistent from period to period, and therefore the trends--both for individual producers and for the aggregate--are believed to be reliable.

Table 3
Nitrile rubber: U.S. producers' end-of-period inventories, by firms, 1984-87

| Item and firm | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|
| | Quantity (1,000 pounds) | | | |
| Inventories: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Total | 26,330 | 21,603 | 20,127 | 23,410 |
| | Percent | | | |
| Ratio of inventories to total shipments: 1/ | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Average | 25.6 | 23.6 | 20.9 | 22.1 |

1/ Includes export shipments.

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

The average number of production and related workers producing nitrile rubber in the United States declined by 8.7 percent from 1984 to 1987. While the number of workers dropped steadily during 1984-87, hours worked dropped during 1984-86 before recovering in 1987, and productivity and total compensation decreased only during 1985; these last two measures increased during 1986 and 1987 to points above 1984 levels. Unit labor costs showed little change, as shown in table 5. Workers employed by all four U.S. producers are represented by unions.

U.S. producers were asked to report any reductions in the number of production and related workers if such reduction involved at least 5 percent of the workforce or 50 workers. Copolymer * * *. BFGoodrich * * *. Goodyear * * *. Uniroyal * * *. * * *.

Table 4
Average number of production and related workers producing nitrile rubber in U.S. establishments, hours worked by such workers, and output per hour worked, by firms, 1984-87

| Item and firm | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|
| Average number of production and related workers producing nitrile rubber: | | | | |
| BFGoodrich | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** |
| Total | 264 | 250 | 242 | 241 |
| Hours worked by production and related workers producing nitrile rubber: | | | | |
| BFGoodrich (1,000 hours) | *** | *** | *** | *** |
| Copolymer (1,000 hours) | *** | *** | *** | *** |
| Goodyear (1,000 hours) | *** | *** | *** | *** |
| Uniroyal (1,000 hours) | *** | *** | *** | *** |
| Total (1,000 hours) | 549 | 483 | 475 | 487 |
| Output (production) of nitrile rubber per hour worked: | | | | |
| BFGoodrich (pounds) | *** | *** | *** | *** |
| Copolymer (pounds) | *** | *** | *** | *** |
| Goodyear (pounds) | *** | *** | *** | *** |
| Uniroyal (pounds) | *** | *** | *** | *** |
| Average (pounds) | 242 | 215 | 237 | 264 |

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

Table 5
Total compensation and average hourly compensation paid to production and related workers producing nitrile rubber in U.S. establishments, and unit labor cost of such production, by firms, 1984-87

| Item and firm | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|
| Total compensation paid to production and related workers producing nitrile rubber: | | | | |
| BFGoodrich (1,000 dollars)... | *** | *** | *** | *** |
| Copolymer (1,000 dollars).... | *** | *** | *** | *** |
| Goodyear (1,000 dollars)..... | *** | *** | *** | *** |
| Uniroyal (1,000 dollars)..... | *** | *** | *** | *** |
| Total (1,000 dollars)..... | 10,632 | 9,323 | 10,228 | 10,884 |
| Hourly total compensation paid to production and related workers producing nitrile rubber: | | | | |
| BFGoodrich..... | $ *** | $ *** | $ *** | $ *** |
| Copolymer..... | *** | *** | *** | *** |
| Goodyear..... | *** | *** | *** | *** |
| Uniroyal..... | *** | *** | *** | *** |
| Average..... | 19.37 | 19.30 | 21.53 | 22.35 |
| Unit labor cost of producing nitrile rubber: | | | | |
| BFGoodrich (per pound)..... | $ *** | $ *** | $ *** | $ *** |
| Copolymer (per pound)..... | *** | *** | *** | *** |
| Goodyear (per pound)..... | *** | *** | *** | *** |
| Uniroyal (per pound)..... | *** | *** | *** | *** |
| Average (per pound)..... | .08 | .09 | .09 | .08 |

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

Financial experience of U.S. producers

Four producers, accounting for 100 percent of U.S. production of nitrile rubber in 1987, supplied income-and-loss data for both the total operations of their establishments in which nitrile rubber is produced and, separately, for their nitrile rubber operations.

Overall establishment operations.--Net sales for overall establishment and nitrile rubber operations are shown in the tabulation below, by firms, for 1987:

| Firm | Net sales | | Nitrile rubber's share of establishment sales |
|---|---|---|---|
| | Nitrile rubber | Establishment | |
| | 1,000 dollars | | Percent |
| BFGoodrich | *** | 1/ *** | *** |
| Copolymer | *** | 2/ *** | *** |
| Goodyear | *** | 3/ *** | *** |
| Uniroyal | 4/ *** | 5/ *** | *** |

1/ * * *.
2/ * * *.
3/ * * *.
4/ * * *.
5/ * * *.

The establishment income-and-loss data for these producers are summarized in table 6. Additional corporate financial data are included in appendix D.

Nitrile rubber operations.--The income-and-loss experience of U.S. producers on their nitrile rubber operations is presented in table 7. Net sales declined 15.2 percent from $114.0 million in 1984 to $96.8 million in 1985. In 1986 sales were $91.4 million, a decrease of 5.5 percent from 1985 sales. Net sales increased by 5.1 percent to $96.1 million in 1987. Operating income was $15.6 million in 1984, $5.4 million in 1986, and $3.6 million in 1987. An operating loss of $528,000 was incurred in 1985. Operating income (loss) margins, as a percent of sales, were 13.7, (0.5), 6.0, and 3.8 in 1984, 1985, 1986, and 1987, respectively. Interim 1987 sales were $* * *, an increase of * * * percent from 1986 interim sales of $* * *. In interim 1986 an operating income of $* * * was achieved, compared with an operating income of $* * * in interim 1987.

Because the raw materials, butadiene and acrylonitrile, are such large components in U.S. producers' cost of production, they are significant factors in overall profitability. Recent increases in raw material costs have affected profitability. In * * * Uniroyal notified its customers of a * * *-percent increase in raw material prices since * * * and the need to increase prices (by * * *). 1/

1/ See * * * letter from Uniroyal to its customers, shown in app. E.

Table 6
Income-and-loss experience of U.S. producers on the overall operations of their establishments within which nitrile rubber is produced, accounting years 1984-87 and interim periods ended Dec. 31, 1986, and Dec. 31, 1987 1/

| Item and firm | 1984 | 1985 | 1986 | 1987 | Interim period ended Dec. 31-- 1986 | 1987 |
|---|---|---|---|---|---|---|
| | Value (1,000 dollars) | | | | | |
| Net sales: | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Total | 488,732 | 407,233 | 358,982 | 439,648 | *** | *** |
| Gross profit: | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Total | 39,965 | 19,352 | 50,421 | 49,586 | *** | *** |
| Operating income or (loss): | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Total | 15,042 | (5,846) | 28,101 | 26,410 | *** | *** |
| | Percent of net sales | | | | | |
| Gross profit: | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Average | 8.2 | 4.8 | 14.0 | 11.3 | *** | *** |
| Operating income or (loss): | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Average | 3.1 | (1.4) | 7.8 | 6.0 | *** | *** |

1/ * * *. * * *. * * *. * * *. * * *.

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

Table 7
Income-and-loss experience of U.S. producers on their operations producing nitrile rubber, accounting years 1984-87, and interim periods ended Dec. 31, 1986, and Dec. 31, 1987 1/

| Item | 1984 | 1985 | 1986 | 1987 | Interim period ended Dec. 31--1986 | Interim period ended Dec. 31--1987 |
|---|---|---|---|---|---|---|
| | Value (1,000 dollars) | | | | | |
| Net sales | 114,041 | 96,753 | 91,437 | 96,057 | *** | *** |
| Cost of goods sold | 88,893 | 87,571 | 76,242 | 82,301 | *** | *** |
| Gross profit | 25,148 | 9,182 | 15,195 | 13,756 | *** | *** |
| General, selling, and administrative expenses | 9,502 | 9,710 | 9,752 | 10,138 | *** | *** |
| Operating income or (loss) | 15,646 | (528) | 5,443 | 3,618 | *** | *** |
| Interest expense | *** | *** | *** | *** | *** | *** |
| Other income or (expense) | *** | *** | *** | *** | *** | *** |
| Net income or (loss) | 14,112 | (1,815) | 5,227 | 3,594 | *** | *** |
| Depreciation, amortization, included above | 2,692 | 3,310 | 3,676 | 3,951 | *** | *** |
| Cash flow 2/ | 16,804 | 1,495 | 8,903 | 7,545 | *** | *** |
| | Share of net sales (percent) | | | | | |
| Cost of goods sold | 77.9 | 90.5 | 83.4 | 85.7 | *** | *** |
| Gross profit | 22.1 | 9.5 | 16.6 | 14.3 | *** | *** |
| General, selling, and administrative expenses | 8.3 | 10.0 | 10.7 | 10.6 | *** | *** |
| Operating income or (loss) | 13.7 | (0.5) | 6.0 | 3.8 | *** | *** |
| Net income or (loss) | 12.4 | (1.9) | 5.7 | 3.7 | *** | *** |

1/ * * *. * * *. * * *. * * *. * * *.
2/ Cash flow is defined as net income or loss plus depreciation and amortization.

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

The individual income-and-loss history of each producer is presented in table 8. It is apparent that there is a wide discrepancy in profitability among the individual companies. The industry's overall profitability was at its highest level in 1984, then results for all four companies declined in 1985. The industry recovered in 1986 * * *. The profitability divergence between individual companies widened in 1987 when * * *. The differences in performance among the companies are primarily due to the individual characteristics of their operations. All of the companies experienced a decline in their average unit selling price between 1984 and 1987 (table 9). The cost of goods sold * * *. * * * general, selling, and administrative expenses * * * between 1984 and 1987. * * *. One of the major reasons for the high level of profitability for * * * and * * * was * * *. * * *. * * *. Domestic shipments * * *. * * *. Interim period data * * *. The

Table 8
Income-and-loss experience of four U.S. producers on their operations producing nitrile rubber, accounting years 1984-87 and interim periods ended Dec. 31, 1986, and Dec. 31, 1987 1/

| Item and firm | 1984 | 1985 | 1986 | 1987 | Interim period ended Dec. 31-- 1986 | 1987 |
|---|---|---|---|---|---|---|
| | Value (1,000 dollars) | | | | | |
| Net sales: | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Total | 114,041 | 96,753 | 91,437 | 96,057 | *** | *** |
| Gross profit: | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Total | 25,148 | 9,182 | 15,195 | 13,756 | *** | *** |
| Operating income or (loss): | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Total | 15,646 | (528) | 5,443 | 3,618 | *** | *** |
| | Percent of net sales | | | | | |
| Gross profit: | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Average | 22.1 | 9.5 | 16.6 | 14.3 | *** | *** |
| Operating income or (loss): | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Average | 13.7 | (0.5) | 6.0 | 3.8 | *** | *** |

1/ * * *. * * *. * * *. * * *. * * *.

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

Table 9
Income-and-loss experience (on a dollars per pound sold basis) of each U.S. producer on its operations producing nitrile rubber, accounting years 1984-87 and interim periods ended Dec. 31, 1986, and Dec. 31, 1987

| Item and firm | 1984 | 1985 | 1986 | 1987 | Interim period ended Dec. 31-- 1986 | 1987 |
|---|---|---|---|---|---|---|
| Net sales: | | | | | | |
| BFGoodrich | $ *** | $ *** | $ *** | $ *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Average | .96 | .92 | .86 | .91 | *** | *** |
| Cost of goods sold: | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Average | .75 | .83 | .71 | .78 | *** | *** |
| Gross profit: | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Average | .21 | .09 | .15 | .13 | *** | *** |
| General, selling, and administrative expenses: | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Average | .08 | .09 | .09 | .10 | *** | *** |
| Operating income or (loss): | | | | | | |
| BFGoodrich | *** | *** | *** | *** | *** | *** |
| Copolymer | *** | *** | *** | *** | *** | *** |
| Goodyear | *** | *** | *** | *** | *** | *** |
| Uniroyal | *** | *** | *** | *** | *** | *** |
| Average | .13 | 2/ | .06 | .03 | *** | *** |

1/ Less than $0.01.
2/ Less than ($0.01).

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

questionnaire data from * * * were verified and except for some immaterial errors, the data were reliable. Additional information about each company, including information obtained during the verifications, is discussed below in an analysis of each company.

Uniroyal 1/.--In 1984 nitrile rubber sales accounted for * * * percent of total establishment sales. Uniroyal * * *. In October 1986, Uniroyal, Inc., sold Uniroyal Chemical to Avery, Inc., for $760 million. Avery recently announced its plans to put the chemical company up for sale. A leveraged buyout by Uniroyal Chemical's management is being considered. 2/

* * * * * * *

Uniroyal Chemical's income-and-loss experience on its nitrile rubber operations is presented in table 10. 3/

* * * * * * *

* * * * * * *

Table 10
Income-and-loss experience of Uniroyal Chemical Co., Inc., on its operations producing nitrile rubber, accounting years 1984-87, and interim periods ended Dec. 31, 1986, and Dec. 31, 1987

* * * * * * *

Copolymer.--

* * * * * * *

BFGoodrich.--

* * * * * * *

Goodyear.--

* * * * * * *

---

1/ Includes * * *.
2/ The Wall Street Journal, Jan. 28, 1988, p. 26.
3/ * * *.

Investment in productive facilities.--All of the companies provided information on their investment in productive facilities for their establishments, and all but * * * provided such data for nitrile rubber operations (table 11). In addition, calculations are presented for a return on investment in productive facilities for each producer.

Table 11
Nitrile rubber: Value of property, plant, and equipment of U.S. producers, accounting years 1984-87 and interim periods ended Dec. 31, 1986, and Dec. 31, 1987

| Item | As of end of accounting year-- | | | | As of Dec. 31-- | |
|---|---|---|---|---|---|---|
| | 1984 | 1985 | 1986 | 1987 | 1986 | 1987 |
| | Value (1,000 dollars) | | | | | |
| All products of establishments: | | | | | | |
| Original cost.... | 148,918 | 157,895 | 164,946 | 173,594 | *** | *** |
| Book value..... | 41,283 | 49,043 | 50,607 | 54,454 | *** | *** |
| | Percent | | | | | |
| Return on assets: 1/ | | | | | | |
| BFGoodrich..... | *** | *** | *** | *** | *** | *** |
| Uniroyal..... | *** | *** | *** | *** | *** | *** |
| Copolymer..... | *** | *** | *** | *** | *** | *** |
| Goodyear..... | *** | *** | *** | *** | *** | *** |
| Average..... | 33.0 | (14.7) | 54.6 | 47.0 | *** | *** |
| | Value (1,000 dollars) | | | | | |
| Nitrile rubber: | | | | | | |
| Original cost.... | *** | *** | *** | *** | *** | *** |
| Book value..... | *** | *** | *** | *** | *** | *** |
| | Percent | | | | | |
| Return on assets: 2/ | | | | | | |
| BFGoodrich 3/.. | *** | *** | *** | *** | *** | *** |
| Uniroyal..... | *** | *** | *** | *** | *** | *** |
| Copolymer..... | *** | *** | *** | *** | *** | *** |
| Goodyear..... | *** | *** | *** | *** | *** | *** |
| Average..... | *** | *** | *** | *** | *** | *** |

1/ Defined as establishment net income before income taxes divided by the book value of establishment fixed assets of firms reporting data in both categories.
2/ Defined as product net income before income taxes divided by the book value of product fixed assets of firms reporting data in both categories.
3/ * * *.

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

Capital expenditures.--All of the companies supplied data on their capital expenditures for their establishments, and all but * * * provided such data for nitrile rubber operations (table 12).

Table 12
Nitrile rubber: Capital expenditures by U.S. producers, accounting years 1984-87 and interim periods ended Dec. 31, 1986, and Dec. 31, 1987

(In thousands of dollars)

| Item | 1984 | 1985 | 1986 | 1987 | Interim period ended Dec. 31--1986 | Interim period ended Dec. 31--1987 |
|---|---|---|---|---|---|---|
| All products of establishments: | | | | | | |
| Land and land improvements | *** | *** | *** | *** | *** | *** |
| Building and leasehold improvements | *** | *** | *** | *** | *** | *** |
| Machinery, equipment, and fixtures | *** | *** | *** | *** | *** | *** |
| Total | 5,790 | 14,076 | 12,311 | 9,680 | *** | *** |
| Nitrile rubber: 1/ | | | | | | |
| Land and land improvements | *** | *** | *** | *** | *** | *** |
| Building and leasehold improvements | *** | *** | *** | *** | *** | *** |
| Machinery, equipment, and fixtures | *** | *** | *** | *** | *** | *** |
| Total | *** | *** | *** | *** | *** | *** |

1/ * * *.

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

Research and development expenses.--All of the companies provided data on their research and development expenses for both their establishment and nitrile rubber operations (table 13).

Capital and investment.--The Commission requested U.S. producers to describe any actual or potential negative effects of imports of nitrile rubber from Japan on their firms' growth, investment, and ability to raise capital. Their responses are shown in appendix D.

Table 13
Nitrile rubber: Research and development expenses by U.S. producers, accounting years 1984-87 and interim periods ended Dec. 31, 1986, and Dec. 31, 1987

(In thousands of dollars)

| Item | 1984 | 1985 | 1986 | 1987 | Interim period ended Dec. 31-- 1986 | 1987 |
|---|---|---|---|---|---|---|
| All products of establishments | 8,555 | 9,242 | 7,744 | 8,415 | *** | *** |
| Nitrile rubber | 4,594 | 5,161 | 4,835 | 5,011 | *** | *** |

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

## Consideration of Threat of Material Injury

In the examination of the question of threat of material injury to an industry in the United States, the Commission may take into consideration such factors as the rate of increase of imports and market penetration of such imports, probable suppression and/or depression of U.S. producers' prices, the ability of producers in the exporting country to generate exports (including the existence of underutilized capacity and the availability of export markets other than the United States), the potential for product shifting by foreign producers, 1/ and U.S. importers' inventories. Import, price, and market penetration trends for nitrile rubber are discussed in the sections immediately following. A discussion of importers' inventories and foreign capacity and exports, to the extent such information is available, is presented below.

### U.S. importers' inventories

Data received from Goldsmith & Eggleton and JSR America--the exclusive U.S. distributors of nitrile rubber produced by Nippon Zeon and JSR, respectively--show that yearend inventories of Japanese-produced nitrile rubber in the United States increased by * * * percent from 1984 to 1987, or from * * * pounds in 1984 to * * * pounds in 1987. As a share of shipments, inventories declined from * * * percent in 1984 to * * * percent in 1986, then increased to * * * percent in 1987 (table 14). 2/

1/ Foreign producers are not manufacturing any other products subject to investigation under section 701 or 731 of the act or to final orders under section 736 in facilities that can be used for nitrile rubber production.
2/ * * *. * * *.

Table 14
U.S. distributors' yearend inventories of Japanese-produced nitrile rubber, by firms, 1984-87

* * * * * * *

Ability of producers in Japan to generate exports

As stated previously, two firms, Nippon Zeon and JSR, produce nitrile rubber in Japan. Counsel for Nippon Zeon, which accounted for nearly all imports of nitrile rubber from Japan during the period covered by the investigation, has supplied the Commission with the requested information on operations of that firm. 1/ The State Department was unable to provide any data beyond that supplied by Nippon Zeon.

Production of nitrile rubber by Nippon Zeon * * * (table 15). Production * * *. Nippon Zeon projects that production in 1988 will be * * *. Nippon Zeon uses * * *. Capacity * * *. Capacity is projected to * * *. Capacity utilization by Nippon Zeon * * *. Nippon Zeon expects capacity utilization to * * * in 1988.

Table 15
Nitrile rubber: Production, capacity, capacity utilization, home-market sales, inventories, and exports by Nippon Zeon Co., Ltd., 1984-88

* * * * * * *

Home-market sales by Nippon Zeon * * *. As a share of total sales, home-market sales by Nippon Zeon * * *. Home-market sales for 1988 are projected by Nippon Zeon * * *. Exports by the company * * *. Nippon Zeon projects * * *. Exports to the United States, as a share of total exports, * * *. Exports to the United States during 1988 are projected by Nippon Zeon to * * *. The company also exports nitrile rubber to * * *. Nippon Zeon's yearend inventories of nitrile rubber in Japan increased * * *. 2/

---

1/ Letter dated Mar. 30, 1988, from counsel for Nippon Zeon to Acting Director, Office of Investigations.

2/ Nippon Zeon made the following statement with respect to its increase in inventories: "Nippon Zeon increased its inventories of nitrile rubber subject to investigation from Dec. 31, 1986 to Dec. 31, 1987 because it found that it was more cost efficient to hold inventory than to keep switching production among the many (over 100) grades it produces. In addition, Nippon Zeon devoted more of its production facilities, at both plants, to the development of new, trial grades of specialty nitrile rubber and therefore had to build up inventory from which to supply customers while working on the development of new products." (Prehearing brief of Nippon Zeon, p. 30.)

## Consideration of the Causal Relationship Between the LTFV Imports and the Alleged Material Injury

### U.S. imports

From 1984 to 1985, total U.S. imports of nitrile rubber declined by 9.5 percent from * * * pounds, valued at $* * *, to * * * pounds, valued at $* * * (table 16). Imports then increased in 1986 to a level 5.8 percent above that in 1984. The upward trend continued in 1987, when imports increased by 26.2 percent from imports in 1986. In keeping with the trend for the aggregate, imports from Japan declined from * * * pounds, or * * * percent of total imports, in 1984, to * * * pounds, or * * * percent of imports, in 1985, and then increased to * * * pounds, and to * * * percent of imports, in 1986. From 1986 to 1987, imports from Japan increased by * * * percent, but declined as a share of total imports, to * * * percent. 1/ Other large and increasing sources of imports in recent periods include Canada, the largest single source, Taiwan, and France. 2/ Unit values per pound, which were lowest for Japan, trended downward during 1984-87.

Imports by U.S. producers increased annually from * * * pounds in 1984 to * * * pounds in 1987, as shown in the following tabulation (in thousands of pounds):

* * * * * * *

As a share of total imports, those by U.S. producers accounted for * * * percent in 1984, * * * percent in 1985, * * * percent in 1986, and * * * percent in 1987. * * *. 3/ * * *.

---

1/ During the investigation, petitioner has contended that import data supplied by Nippon Zeon and also reported in the IM-146 understate imports from Japan. Therefore, petitioner relied on import data from a commercial statistical service (ISIS) which compiles its data from ship manifests at the port of entry (Transcript of the hearing, p. 72). Respondent contends that the commercial service's data are inaccurate for at least three reasons: first, they report gross weight which includes packing; second, the numbers include products not subject to the investigation; and third, the data are recorded at the first port of entry, not the final destination. Both petitioners and respondents agree that all shipments listed by the commercial service are consigned to Alba Freight Forwarding (Alba). Alba is the freight forwarder for Nichimen and told Nichimen it only imports Nippon Zeon material. Nichimen reported all shipments consigned to Alba to both the Commission and Commerce (Posthearing brief of Nippon Zeon, pp. 4-5). On May 5, 1988, Commission staff contacted by telephone * * * for Alba. * * *.

2/ * * *.

3/ On the basis of official statistics, BFGoodrich accounted for * * * of the imports of nitrile rubber from Taiwan during the period covered by the investigation. According to testimony at the hearing, the imports from Taiwan are a line of products no longer produced by BFGoodrich in the United States; these products are sold in the United States at the prevailing market price (Transcript, pp. 40-41).

Table 16
Nitrile rubber: U.S. imports for consumption, by principal sources, 1984-87

| Source | 1984 | 1985 | 1986 | 1987 |
|---|---|---|---|---|
| | Quantity (1,000 pounds) | | | |
| Canada | 18,572 | 17,154 | 19,218 | 22,162 |
| Japan | *** | *** | *** | *** |
| Taiwan | 1,180 | 1,613 | 2,611 | 5,943 |
| France | 1,374 | 660 | 1,328 | 3,006 |
| All other | *** | 1/ *** | *** | *** |
| Total | *** | *** | *** | *** |
| | Value (1,000 dollars) 2/ | | | |
| Canada | 15,771 | 13,909 | 14,962 | 16,915 |
| Japan | *** | *** | *** | *** |
| Taiwan | 911 | 1,229 | 1,772 | 4,189 |
| France | 1,353 | 642 | 1,114 | 2,904 |
| All other | *** | 1/ *** | *** | *** |
| Total | *** | *** | *** | *** |
| | Unit value (per pound) | | | |
| Canada | $0.85 | $0.81 | $0.78 | $0.76 |
| Japan | *** | *** | *** | *** |
| Taiwan | .77 | .76 | .68 | .71 |
| France | .98 | .97 | .84 | .97 |
| All other | *** | 1/ *** | *** | *** |
| Average | *** | *** | *** | *** |

1/ Includes 922,000 pounds, valued at $338,000, with an average unit value of $0.37 per pound, from Mexico.
2/ C.i.f. value, i.e., landed cost at the point of importation.

Note.--Numbers may not add to totals shown due to rounding.

Source: Imports from Japan compiled from data submitted in response to questionnaires of the U.S. International Trade Commission; imports from other countries compiled from official statistics of the U.S. Department of Commerce. Imports from Japan are understated in the official statistics of the U.S. Department of Commerce to the extent that some imports have been classified under TSUSA item 446.1557 instead of item 446.1511. This misclassification does not appear to apply to imports from Canada, France, or Taiwan.

Shipments of imports by U.S. distributors

U.S. shipments of Japanese-produced nitrile rubber by * * * increased annually from * * * pounds in 1984 to * * * pounds in 1987, an increase of * * * percent. The value of shipments increased by * * * percent between 1984 and 1987 as the average values * * * (table 17).

Table 17
U.S. distributors' shipments of Japanese-produced nitrile rubber, by firms, 1984-87

* * * * * * *

U.S. consumption and market penetration

Apparent U.S. consumption of nitrile rubber declined by 10.2 percent from * * * pounds in 1984 to * * * pounds in 1985, and then increased by 2.1 percent to * * * pounds in 1986, a level still 8.3 percent below that in 1984 (table 18). In 1987, consumption increased by 4.0 percent from that in 1986, but remained 4.6 percent below consumption in 1984. The trend in open-market consumption was similar, but at a level about 15 percent below that for total consumption.

Table 18
Nitrile rubber: Apparent U.S. consumption and ratios of imports to consumption, 1984-87

* * * * * * *

As a share of apparent consumption, imports increased from * * * percent in 1984 to * * * percent in 1987. Correspondingly, imports from Japan increased from * * * percent in 1984 and 1985 to * * * percent in 1986 before declining to * * * percent in 1987. As a share of open-market consumption, the trend in imports was similar to that for total consumption. 1/

Prices

The demand for nitrile rubber is derived from the demand for a number of intermediate-use and end-use products such as automobiles and auto parts, adhesives, wire and cable covers, footwear, flotation equipment, matting, industrial belts, and pipe seals and hoses for the oil industry. The single largest user of nitrile rubber is the automobile industry, which uses the product in the manufacture of parts such as O-rings, gaskets, oil seals, and hoses.

Nitrile rubber can be separated into three general pricing categories depending upon the level of acrylonitrile content. 2/ Nitrile rubber with

---

1/ As a share of U.S. production, imports from Japan increased from * * * percent in 1984 to * * * percent in 1986, then declined to * * * percent in 1987.

2/ Based on industry pricing practice, petitioner and respondent reached agreement on these categories as an acceptable basis for price comparisons. Respondents contend that prices within each category can vary by as much as 5 percent because of variations in the acrylonitrile content.

more than 35 percent acrylonitrile content (both domestic and imported from Japan) is the highest priced category because it is used in products requiring high resistance to oil and heat, such as oil-well parts, fuel cell liners, and oil seals and fuel hoses. Nitrile rubber with 28 percent and less acrylonitrile content is the middle-priced category and is used where low-temperature flexibility is more important than oil resistance. The lowest priced category is nitrile rubber with acrylonitrile content of over 28 percent to and including 35 percent. It is the lowest priced category primarily because it is more commonly sold in bulk quantities. This type of nitrile rubber constitutes more than 70 percent of domestic shipments and more than * * * percent of Japanese shipments and is used primarily by the automobile and related industries. 1/

The domestic industry usually sells directly to firms that use the nitrile rubber as an input in their manufacturing process. In addition to end users, another domestic channel of distribution is sales to custom mixers. These firms process the nitrile rubber by specific formula into a compound for specified end uses for particular manufacturers of nitrile rubber products. Some are for original equipment, others are for the aftermarket. Nichimen, which imports approximately * * * percent of Japanese nitrile rubber, sells all of the nitrile rubber it imports from Japan to the distributor, G&E. This distributor, in turn, sells to the same types of firms in the distribution chain--end users and custom mixers--as do domestic producers. JSR America, the only other importer of the Japanese product, sells * * *.

Nitrile rubber is sold in several physical forms, including bale, slab, crumb, powder, and latex. Regardless of the physical form, nitrile rubber is sold on a per-pound basis. Volume discounts apply, but negotiations are based on anticipated annual requirements of the purchaser. Often, informal agreements on prices are reached between supplier and purchaser. Although these agreements are not contracts to supply nitrile rubber at a specified price, the agreement price will prevail for periods of up to a year, unless there is a significant change in circumstances such as a change in material costs. Large users of nitrile rubber are offered rebates by both domestic and import suppliers on the basis of achieved levels of annual volume.

Because the principal raw materials, butadiene and acrylonitrile, together account for over half of the production cost of nitrile rubber, the cost of these raw materials is likely to affect the trend in selling prices. During the period under investigation, the combined cost of these raw materials fell significantly, by * * * percent from January-March 1984 to October-December 1986, before increasing by * * * percent over the next 4 quarters. 2/ In table 19, domestic raw material costs of the principal raw

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1/ The 28 percent and less category and the greater than 35 percent category accounted for about * * * percent and * * * percent of imported Japanese nitrile rubber sales, respectively. Domestic nitrile rubber sales in those categories amounted to 12 percent and 13 percent, respectively.

2/ The material cost data was taken from app. 27 of the petition. Respondents claim, as does Conference witness Timothy Killeen of Burton Rubber Products, that domestic prices track the principal raw material prices. The petitioner, Uniroyal, states on p. 22 of the petition that imports from Japan have forced them to reduce prices even though there have been increasing raw material prices.

Table 19
Nitrile rubber: U.S. producers' principal raw material costs, weighted-average prices to end users for nitrile rubber with acrylonitrile content of between 28 and 35 percent, and principal raw materials' share of price, by quarters, January 1984-December 1987 and January-February 1988

* * * * * * *

materials of nitrile rubber with an acrylonitrile content of 32 percent are compared with weighted-average prices for domestic nitrile rubber with an acrylonitrile content of 28-35 percent. The data show that both raw material costs and the domestic price of the particular category of nitrile rubber trended downward through 1986, although raw material costs fell more rapidly. Raw material costs increased steadily during 1987, ending the year * * * percent above the January-March 1984 level. After a decline in April-June 1987, the domestic price similarly rose during the remainder of the year, ending the year * * * percent below the January-March 1984 level.

Price data.--The Commission asked domestic producers and the importers and distributors of the Japanese product to provide quarterly price data during January 1984-December 1987 and data for January-February 1988 for the three categories of nitrile rubber listed below:

Category 1.--Nitrile rubber with acrylonitrile content of 24 to 28 percent inclusive. 1/

Category 2.--Nitrile rubber with acrylonitrile content over 28 percent, to and including 35 percent.

Category 3.--Nitrile rubber with acrylonitrile content over 35 percent, to and including 42 percent. 1/

The product specifications used to collect price data identified the major selling price factors--acrylonitrile content, viscosity, and market segment. In order to control for quarterly price changes caused solely by slight changes in the product specifications sold within a product category, producers and importers reported selling price data for the same item throughout the period. Separate price data were requested for sales to end users and to custom mixers. Price data, by class of customer (end user and custom mixer) were requested for the three largest customers of the responding firm's single-largest-volume item for the entire period within a product category. Weighted-average prices for each product category were computed for each firm based on the largest volume sales data received. A weighted-average domestic industry price and import price were calculated by weighing the firms' average prices using total quarterly sales volume data for that

1/ To narrow price comparisons at the extreme, petitioner and respondents agreed to exclude price data for grades with less than 24 percent and more than 42 percent acrylonitrile content. Such grades account for very minor sales volume.

category. Price data accounted for approximately 20 percent of total 1987 domestic shipments of nitrile rubber and more than * * * percent of imports from Japan.

Domestic price trends.--Selling-price data reported by U.S. producers 1/ for their sales of nitrile rubber to end users and custom mixers provided usable weighted-average price series for the three categories of the product. The weighted-average price data for the three categories sold to end users, shown in table 20, indicate that domestic prices either generally declined or remained relatively flat from January-March 1984 to October-December 1987, before edging upward in 1988.

Prices to end users.--For the period of investigation, the weighted-average price for category 1 nitrile rubber sold to end users remained relatively flat, fluctuating from a January-March 1984 base-period price of $* * * per pound to lows of $* * * to $* * * during the subject period. In January-February 1988, however, the price jumped to $* * * per pound. 2/ The weighted-average price to end users for category 2 nitrile rubber generally declined through mid 1987, then recovered during the latter period of the investigation. From * * * cents per pound in January-March 1984 it fell to * * * cents per pound by April-June 1986, before recovering to a level of * * * to * * * cents per pound through January-March 1987. 3/ The price fell to a period low of * * * cents per pound in April-June 1987, then climbed to * * * cents in October-December 1987 and held through February 1988. The weighted-average price for category 3 nitrile rubber sold to end users was relatively flat in 1984 and 1985, and then generally declined. The price decreased from $* * * per pound in January-March 1984 to a period low of $* * * per pound by January-March 1987 and held at or near that level through 1987 before rising to $* * * per pound in January-February 1988. 4/

Prices to custom mixers.--Prices of domestic nitrile rubber sold to custom mixers generally reflect a rather steady downtrend during most of the time period until the trend reversed in the latter part of 1987 (table 21). The weighted-average price for category 1 nitrile rubber declined from a flat * * * to * * * cents per pound throughout 1984 to a period low of * * * cents in July-September 1986, then jumped to $* * * per pound in October-December 1986 and continued to climb to $* * * by January-February 1988. During the downtrend, the weighted-average price fell 7.5 percent.

The price trend for category 2 nitrile rubber also reflects a steady decline that began in January-March 1985. From its slight upturn in 1984 from * * * to * * * cents per pound, it fell steadily to * * * cents in April-June 1987, a decline of 16.3 percent from the base period. Prices then edged up to * * * cents in January-February 1988, a level 13.0 percent below the weighted-average price in January-March 1984.

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1/ The 4 producers were Uniroyal Chemical, BFGoodrich, Goodyear, and Copolymer.
2/ The products listed in category 1 accounted for about 12 to 14 percent of annual domestic shipments to end users and custom mixers during 1984-87.
3/ The products listed in category 2 accounted for about 73 to 75 percent of annual domestic shipments to end users and custom mixers during 1984-87.
4/ The products in category 3 accounted for about 12 to 14 percent of annual domestic shipments to end users and custom mixers during 1984-87.

Table 20
Nitrile rubber: U.S. producers' and importers' weighted-average selling prices to end users and margins of underselling (overselling), by percentage acrylonitrile content, by quarters, January 1984-December 1987 and January-February 1988

| Period | Inclusive 24 to 28 percent | | | Over 28 to and including 35 percent | | | Over 35 to and including 42 percent | | |
|---|---|---|---|---|---|---|---|---|---|
| | U.S. | Japan | Margin | U.S. | Japan | Margin | U.S. | Japan | Margin |
| | ---Per pound--- | | Percent | ---Per pound--- | | Percent | ---Per pound--- | | Percent |
| 1984: | | | | | | | | | |
| Jan.-Mar..... | $*** | $*** | 16.2 | $*** | $*** | 5.0 | $*** | $*** | 27.2 |
| Apr.-June..... | *** | *** | 18.3 | *** | *** | 4.2 | *** | *** | 21.8 |
| July-Sept..... | *** | *** | 10.6 | *** | *** | 8.3 | *** | *** | 25.8 |
| Oct.-Dec..... | *** | *** | 7.6 | *** | *** | 7.7 | *** | *** | 28.6 |
| 1985: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | 14.1 | *** | *** | 11.8 | *** | *** | 25.7 |
| Apr.-June..... | *** | *** | 17.8 | *** | *** | 11.7 | *** | *** | 25.4 |
| July-Sept..... | *** | *** | 11.1 | *** | *** | 7.7 | *** | *** | 27.0 |
| Oct.-Dec..... | *** | *** | 15.8 | *** | *** | 11.6 | *** | *** | 29.7 |
| 1986: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | 19.4 | *** | *** | 5.5 | *** | *** | 27.8 |
| Apr.-June..... | *** | *** | 26.0 | *** | *** | 2.6 | *** | *** | 29.7 |
| July-Sept..... | *** | *** | 26.1 | *** | *** | 15.9 | *** | *** | 28.2 |
| Oct.-Dec..... | *** | *** | 31.0 | *** | *** | 17.3 | *** | *** | 28.5 |
| 1987: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | 28.5 | *** | *** | 20.5 | *** | *** | 27.0 |
| Apr.-June..... | *** | *** | 28.6 | *** | *** | 16.1 | *** | *** | 29.5 |
| July-Sept..... | *** | *** | 24.0 | *** | *** | 22.6 | *** | *** | 26.5 |
| Oct.-Dec..... | *** | *** | 20.7 | *** | *** | 24.3 | *** | *** | 29.0 |
| 1988: | | | | | | | | | |
| Jan.-Feb..... | *** | *** | 26.5 | *** | *** | 10.7 | *** | *** | 24.2 |

Note.--Percentage margins were calculated from unrounded figures; therefore, margins cannot always be calculated directly from the rounded prices in the table.

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

Table 21
Nitrile rubber: U.S. producers' and importers' weighted-average selling prices to custom mixers and margins of underselling (overselling), by percentage acrylonitrile content, by quarters, January 1984-December 1987 and January-February 1988

| Period | Inclusive 24 to 28 percent | | | Over 28 to and including 35 percent | | | Over 35 to and including 42 percent | | |
|---|---|---|---|---|---|---|---|---|---|
| | U.S. | Japan | Margin | U.S. | Japan | Margin | U.S. | Japan | Margin |
| | ---Per pound--- | | Percent | ---Per pound--- | | Percent | ---Per pound--- | | Percent |
| 1984: | | | | | | | | | |
| Jan.-Mar..... | $*** | $*** | (3.4) | $*** | $*** | 5.4 | $*** | $*** | 2.3 |
| Apr.-June..... | *** | *** | (1.7) | *** | *** | 5.6 | *** | *** | 8.9 |
| July-Sept..... | *** | *** | 8.2 | *** | *** | 7.6 | *** | *** | 2.5 |
| Oct.-Dec..... | *** | *** | 8.2 | *** | *** | 9.6 | *** | *** | 2.2 |
| 1985: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | 5.5 | *** | *** | 3.8 | *** | *** | 9.3 |
| Apr.-June..... | *** | *** | 2.9 | *** | *** | 4.7 | *** | *** | 7.4 |
| July-Sept..... | *** | *** | 3.7 | *** | *** | 2.1 | *** | *** | - |
| Oct.-Dec..... | *** | *** | 2.2 | *** | *** | 7.7 | *** | *** | 5.1 |
| 1986: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | 9.6 | *** | *** | 4.5 | *** | *** | 5.4 |
| Apr.-June..... | *** | *** | 5.0 | *** | *** | 15.3 | *** | *** | 6.5 |
| July-Sept..... | *** | *** | 8.0 | *** | *** | 12.6 | *** | *** | - |
| Oct.-Dec..... | *** | *** | 26.1 | *** | *** | 9.4 | *** | *** | 7.4 |
| 1987: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | 13.4 | *** | *** | 8.9 | *** | *** | 7.5 |
| Apr.-June..... | *** | *** | 27.4 | *** | *** | 10.1 | *** | *** | 8.3 |
| July-Sept..... | *** | *** | 26.3 | *** | *** | 7.9 | *** | *** | (1.5) |
| Oct.-Dec..... | *** | *** | 31.2 | *** | *** | 9.6 | *** | *** | 1.4 |
| 1988: | | | | | | | | | |
| Jan.-Feb..... | *** | *** | 26.2 | *** | *** | 5.2 | *** | *** | (1.7) |

Note.—Percentage margins were calculated from unrounded figures; therefore, margins cannot always be calculated directly from the rounded prices in the table.

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

Category 3 weighted-average prices edged upward from $* * * in January-March 1984 to a period high of $* * * per pound in April-June, then crept downward to a period low of * * * cents in July-September 1987, a decline of 14.4 percent from the period high. Again, the trend reversed and the weighted-average price increased to * * * cents per pound in January-February 1988, a level 6.9 percent below the January-March 1984 base-period price.

Import price trends.--The price trends of each of the categories of the Japanese products were similar to corresponding domestic price trends. The weighted-average prices for the three categories, shown in tables 20 and 21, remained relatively flat in 1984, then declined by varying degrees in 1985 and 1986 before turning upward in late 1987 or early 1988. 1/

Prices to end users.--For the period of investigation, the weighted-average price for category 1 nitrile rubber sold to end users remained relatively flat through July-September 1985 (table 20). At that point a downtrend began to a period low of * * * cents in April-June 1987, a drop of * * * percent from the period high of * * * cents. Then an upturn began that reached a price of * * * cents in January-February 1988, a level * * * percent below the * * * cent period high in July-September 1984. 2/ The weighted-average price for sales of category 2 nitrile rubber to end users was flat in 1984, then generally declined over the remaining period of investigation. Overall, the price fell by * * * percent from * * * cents per pound in January-March 1984 to * * * cents per pound by July-September 1987. Prices shot up to * * * cents per pound by January-February 1988. 3/

The weighted-average price for category 3 nitrile rubber fluctuated narrowly through September 1985 before declining. Overall, the price declined from the period high of $* * * per pound in April-June 1984 to * * * cents per pound by October-December 1987, a drop of * * * percent. 4/

Prices to custom mixers.--Prices of imported nitrile rubber from Japan sold to custom mixers generally reflect a decline similar to the pattern of selling prices to end users. The weighted-average price for category 1 nitrile rubber declined from * * * cents per pound in January-March 1984 to a period low of * * * cents per pound in January-March 1987, a decline of * * * percent, before climbing to * * * cents per pound by January-February 1988.

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1/ For sales of category 1 and 3 nitrile rubber to custom mixers, the downtrend began in 1984.

2/ The products listed in category 1 accounted for about * * * to * * * percent of annual shipments of imports from Japan to end users and custom mixers during 1984-87.

3/ The products listed in category 2 accounted for about * * * to * * * percent of annual shipments of imports from Japan to end users and custom mixers during 1984-87.

4/ The products listed in category 3 accounted for * * * to * * * percent of annual shipments of imports from Japan to end users and custom mixers during 1984-87.

The price trend for category 2 nitrile rubber began its downturn in July-September 1985. From a price of * * * cents per pound in April-June 1985 the price slowly declined to a period low of * * * cents per pound by April-June 1987, * * * percent lower than the * * * cents per pound in January-March 1984. The subsequent upturn pushed the price to * * * cents per pound in January-February 1988, still * * * percent below the base-period price.

Category 3 weighted-average prices slid from $* * * per pound in January-March 1984 to a period low of * * * cents per pound in January-June 1987. Again, the price turned upward to * * * cents per pound in January-February 1988.

Price comparisons.--In order to provide price comparisons at the same level of trade, comparisons are made at the first level of sale by the domestic producers to end-user and custom-mixer customers. Prices of domestic producers' sales to each of these classes of customers are compared with sales of imports to those respective purchaser categories by the distributor, Goldsmith and Eggleton, combined with the importer JSR America's direct sales to each of those groups. The reported selling-price data for sales of domestic nitrile rubber and imported Japanese nitrile rubber to end users during January-March 1984 to January-February 1988 resulted in 51 direct quarterly price comparisons between weighted-average prices (table 20). Price data showed underselling by imports in each of the price comparisons. Margins of underselling by the Japanese were highest for category 3. The tabulation below presents a summary of direct quarterly price comparisons that showed underselling by the distributors of the Japanese product for each product category and the range of percentage margins by which the imported Japanese nitrile rubber undersold the U.S. product.

| Product | Instances of underselling/ total comparisons | Range of underselling Percent |
|---|---|---|
| Category 1..... | 17/17 | 7.6-31.0 |
| Category 2..... | 17/17 | 2.6-24.3 |
| Category 3..... | 17/17 | 21.8-29.7 |

The reported selling-price data for sales by domestic producers and by the importer JSR America and the distributor G&E to custom mixers during January-March 1984 to January-February 1988 resulted in 49 direct quarterly price comparisons between weighted-average prices of domestic and imported Japanese nitrile rubber (table 21). Price data showed underselling in 45 of the price comparisons. Overselling by the Japanese product was in category 1 and category 3 nitrile rubber sales. In only four instances was the domestic nitrile rubber price slightly lower than the price of the imported nitrile rubber from Japan. The tabulations below summarize the comparisons.

| Product | Instances of underselling/ total comparisons | Range of underselling Percent |
|---|---|---|
| Category 1..... | 15/17 | 2.9-31.2 |
| Category 2..... | 17/17 | 2.1-15.3 |
| Category 3..... | 13/15 | 1.4- 9.3 |

| Product | Instances of overselling/ total comparisons | Range of overselling Percent |
|---|---|---|
| Category 1..... | 2/17 | (1.7)-(3.4) |
| Category 2..... | 0/17 | - |
| Category 3..... | 2/15 | (1.5)-(1.7) |

Purchase prices.--The Commission sent questionnaires to more than 50 purchasers of nitrile rubber. The recipients of questionnaires included both end users and custom mixers. 1/ Purchasers were requested to provide quarterly price data for the largest purchase of U.S.-produced nitrile rubber, imported Japanese nitrile rubber, and imported nitrile rubber other than Japanese. Quarterly price data were requested for the period January 1985-December 1987 and for the period January-February 1988 for each of the same three categories of nitrile rubber for which price data were submitted by domestic producers, importers, and the distributor of Japanese nitrile rubber. 2/ Twenty-nine purchasers provided usable data on either net f.o.b. prices, delivered prices, or both. Weighted-average f.o.b. and delivered domestic prices and import prices were computed for each product category, by class of purchaser, based on the price data received on largest volume purchases and data on the total quarterly volume purchased in that category.

Domestic price trends.--Weighted-average purchase price data reported by end users for the period January 1985-February 1988 reflect a general downtrend in prices for all three categories of domestic nitrile rubber generally through mid 1987 (table 22). The overall drop in delivered prices ranged from * * * cents per pound or 33.7 percent for prices paid by end users for category 1 nitrile rubber (24-28 percent acrylonitrile), to * * * cents per pound or 20.0 percent for the high-volume, category 2 nitrile rubber (above 28 to 35 percent acrylonitrile), and to * * * cents per pound or 28.8 percent for category 3 nitrile rubber (above 28 to 35 percent acrylonitrile). Weighted-average purchase price data from custom mixers show a somewhat less severe downtrend in delivered prices paid for nitrile rubber in each category, again, followed by a less than offsetting upturn late in the period (table 23).

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1/ Domestic producers, importers, and the distributor of imported Japanese nitrile rubber provided purchaser lists that were the basis for identifying purchaser questionnaire recipients. Coverage is discussed for each rubber category.

2/ See discussion on p. A-29.

Table 22
Nitrile rubber: Weighted-average purchase prices paid by end users for domestic and imported product and margins of underselling (overselling), by percentage acrylonitrile content, by quarters, January 1985-December 1987 and January-February 1988

| Period | Inclusive 24 to 28 percent | | | Over 28 to and including 35 percent | | | Over 35 to and including 42 percent | | |
|---|---|---|---|---|---|---|---|---|---|
| | U.S. | Japan | Margin | U.S. | Japan | Margin | U.S. | Japan | Margin |
| | ---Per pound--- | | Percent | ---Per pound--- | | Percent | ---Per pound--- | | Percent |
| 1985: | | | | | | | | | |
| Jan.-Mar..... | $*** | $*** | 14.5 | $*** | $*** | (1.0) | $*** | $*** | 13.8 |
| Apr.-June..... | *** | *** | 9.1 | *** | *** | 5.3 | *** | *** | 3.1 |
| July-Sept..... | *** | *** | (4.7) | *** | *** | 2.3 | *** | *** | 13.8 |
| Oct.-Dec..... | *** | *** | 15.3 | *** | *** | 3.4 | *** | *** | 14.5 |
| 1986: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | 6.9 | *** | *** | 2.5 | *** | *** | 14.1 |
| Apr.-June..... | *** | *** | 8.1 | *** | *** | (.6) | *** | *** | 10.6 |
| July-Sept..... | *** | *** | 11.8 | *** | *** | 3.8 | *** | *** | 17.4 |
| Oct.-Dec..... | *** | *** | 21.2 | *** | *** | 3.0 | *** | *** | 18.4 |
| 1987: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | (1.1) | *** | *** | (1.0) | *** | *** | (2.2) |
| Apr.-June..... | *** | *** | (9.6) | *** | *** | 2.7 | *** | *** | (3.6) |
| July-Sept..... | *** | *** | 2.4 | *** | *** | 8.1 | *** | *** | (9.9) |
| Oct.-Dec..... | *** | *** | (.8) | *** | *** | 3.0 | *** | *** | (10.3) |
| 1988: | | | | | | | | | |
| Jan.-Feb..... | *** | *** | (2.6) | *** | *** | 2.0 | *** | *** | (10.6) |

Note.--Percentage margins were calculated from unrounded figures; therefore, margins cannot always be calculated directly from the rounded prices in the table.

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

Table 23
Nitrile rubber: Weighted-average purchase prices paid by custom mixers for domestic and imported product and margins of underselling (overselling), by percentage acrylonitrile content, by quarters, January 1985-December 1987 and January-February 1988

| Period | Inclusive 24 to 28 percent | | | Over 28 to and including 35 percent | | | Over 35 to and including 42 percent | | |
|---|---|---|---|---|---|---|---|---|---|
| | U.S. | Japan | Margin | U.S. | Japan | Margin | U.S. | Japan | Margin |
| | ---Per pound--- | | Percent | ---Per pound--- | | Percent | ---Per pound--- | | Percent |
| 1985: | | | | | | | | | |
| Jan.-Mar..... | $*** | $*** | - | $*** | $*** | (0.7) | $*** | $*** | - |
| Apr.-June..... | *** | *** | - | *** | *** | (.3) | *** | *** | - |
| July-Sept..... | *** | *** | - | *** | *** | .3 | *** | *** | - |
| Oct.-Dec..... | *** | *** | - | *** | *** | 3.4 | *** | *** | - |
| 1986: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | - | *** | *** | 1.6 | *** | *** | - |
| Apr.-June..... | *** | *** | 4.0 | *** | *** | 12.7 | *** | *** | - |
| July-Sept..... | *** | *** | 9.2 | *** | *** | 10.9 | *** | *** | - |
| Oct.-Dec..... | *** | *** | 10.1 | *** | *** | 6.4 | *** | *** | (0.8) |
| 1987: | | | | | | | | | |
| Jan.-Mar..... | *** | *** | 12.1 | *** | *** | 8.1 | *** | *** | (7.2) |
| Apr.-June..... | *** | *** | 8.2 | *** | *** | 4.5 | *** | *** | (12.1) |
| July-Sept..... | *** | *** | 4.8 | *** | *** | 4.5 | *** | *** | (13.4) |
| Oct.-Dec..... | *** | *** | 10.4 | *** | *** | 7.5 | *** | *** | (20.1) |
| 1988: | | | | | | | | | |
| Jan.-Feb..... | *** | *** | (2.4) | *** | *** | 5.9 | *** | *** | (12.8) |

Note.--Percentage margins were calculated from unrounded figures; therefore, margins cannot always be calculated directly from the rounded prices in the table.

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

Prices paid by end users.--The weighted-average purchase prices paid by end users for category 1 nitrile rubber dipped and then recovered during 1985 and again in 1986, for an overall decline from the base-period price of $* * * per pound to $* * * per pound in October-December 1986 (table 22). 1/ The price fell sharply during the first half of 1987 to a period low of * * * cents per pound in April-June before turning upward to end the period at * * * cents per pound. Category 2 weighted-average purchase prices declined steadily from a January-March 1985 level of * * * cents per pound to * * * cents in April-June 1987. 2/ Beginning in July-September 1987, the price edged up to * * * cents per pound at period end. Category 3 nitrile rubber prices, after a 10-percent decline to $* * * per pound late in 1985 from a January-March high of $* * * per pound, held at or near $* * * per pound through 1986. 3/ A sharp downturn in price began in January-March 1987, as the price fell to a period low of * * * cents per pound in April-June, then climbed to a period-end level of * * * cents per pound.

Prices paid by custom mixers.--Weighted-average purchase prices paid by custom mixers for domestic nitrile rubber reflect an irregular price decline in all three product categories. The downtrend in prices from base-period high to period low varied from 13.3 percent for category 1 purchase prices, to 11.8 percent for category 2 prices and 16.5 percent for category 3 prices (table 23).

The weighted-average purchase price pattern of delivered prices paid by custom mixers for category 1 nitrile rubber reflects a rather shallow decline in 1985. 4/ By April-June 1986, however, the price had dropped from a base-period high of * * * cents per pound to * * * cents per pound and reached a low of * * * cents in January-February 1988. Category 2 nitrile rubber prices fell steadily from a period high of * * * cents per pound in April-June 1985 to a period low of * * * cents per pound in April-June 1987 before edging up to end the period at * * * cents per pound. 5/ The weighted-average price of category 3 nitrile rubber was level at $* * * per pound in most of 1985, declined to * * * cents in October-December 1985, then slipped to * * * cents in October-December 1986. 6/ The price recovered, but then fell to a period low of * * * cents in July-September 1987 and ended the subject period at * * * cents per pound.

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1/ The volume of purchases of category 1 nitrile rubber per quarter for which price data were received amounted to 37 to 48 percent of the total quarterly volume of such purchases by respondent end users during 1985-87.
2/ The volume of purchases of category 2 nitrile rubber for which price data were received amounted to 31 to 42 percent of the total quarterly volume of such purchases by respondent end users during 1985-87.
3/ The volume of purchases of category 3 nitrile rubber for which price data were received amounted to 49 to 70 percent of the total quarterly volume of such purchases by respondent end users during 1985-87.
4/ The volume of purchases of category 1 nitrile rubber for which price data were received amounted to 16 to 33 percent of the total quarterly volume of such purchases by respondent custom mixers during 1985-87.
5/ The volume of purchases of category 2 nitrile rubber for which price data were received amounted to 16 to 44 percent of the total quarterly volume of such purchases by respondent custom mixers during 1985-87.
6/ The volume of purchases of category 3 nitrile rubber for which price data were received amounted to 16 to 37 percent of the total quarterly volume of such purchases by respondent custom mixers during 1985-87.

Import price trends.--Weighted-average purchase prices paid by end users for nitrile rubber imported from Japan also reflect a downtrend in all three categories from January-March 1985 to period lows in April-June 1987, before increasing during the remainder of the period. The decline in delivered prices during the first 10 quarters ranged from * * * cents per pound or * * * percent for category 1 nitrile rubber to * * * cents or * * * percent for category 2, and to * * * cents per pound or * * * percent for category 3 nitrile rubber (table 22). Delivered prices paid by custom mixers for imported Japanese nitrile rubber also reflect a downtrend to a period low of about * * * percent for the high-volume, category 2 nitrile rubber. Category 1 prices show only a * * *-percent decline over a shorter time period, and the weighted-average prices of category 3 nitrile rubber reflect an uptrend over an even shorter time period of only 5 quarters plus January-February 1988 (table 23).

Prices paid by end users.--The weighted-average delivered purchase price paid by end users for category 1 nitrile rubber imported from Japan declined steadily from a period high of * * * cents in April-June 1985 to a period low of * * * cents per pound in April-June 1987 and held at that level during July-September before turning up to end the period at * * * cents per pound. 1/ Category 2 nitrile rubber purchase prices for Japanese product reflect a steady decline from * * * cents per pound in the base period, January-March 1985, to a period low of * * * cents per pound in April-June 1987. 2/ Then prices edged up over three quarters to end the subject period at * * * cents per pound. The decline in category 3 prices of nitrile rubber imported from Japan was not quite as steep. 3/ The weighted-average price fell from $* * * in January-March 1985 to a period low of * * * cents per pound in April-June 1987 before climbing to a period high of $* * * per pound in January-February 1988.

Prices paid by custom mixers.--Over a shorter time period, April 1986-February 1988, the weighted-average purchase prices paid by custom mixers for category 1 nitrile rubber declined by * * * percent from * * * cents per pound in April-September 1986 to * * * cents per pound in October-December, a price level that held through June 1987. 4/ The price moved up to * * * cents per pound during the balance of the year and to * * * cents per pound in January-February 1988. Data on the prices of category 2 imported Japanese nitrile rubber span the entire subject time period and show a rather steady decline from a price of * * * cents per pound in January-June

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1/ The volume of purchases of category 1 imported Japanese nitrile rubber for which price data were received amounted to * * * to * * * percent of the total quarterly volume of such purchases by respondent end users during 1985-87.
2/ The volume of purchases of category 2 imported Japanese nitrile rubber for which price data were received amounted to * * * to * * * percent of the total quarterly volume of such purchases by respondent end users during 1985-87.
3/ The volume of purchases of category 3 imported Japanese nitrile rubber for which price data were received amounted to * * * to * * * percent of the total quarterly volume of such purchases by respondent end users during 1985-87.
4/ The volume of purchases of category 1 imported Japanese nitrile rubber for which price data were received amounted to * * * to * * * percent of the total quarterly volume of such purchases by respondent custom mixers during 1985-87.

1985 to a period low of * * * cents per pound in January-March 1987. 1/ From a level of * * * cents per pound in April-September 1987 the price moved up to * * * cents per pound in January-February 1988. Price data for category 3 nitrile rubber imported from Japan purchased by custom mixers cover only October 1986-February 1988. 2/ Weighted-average prices increased from * * * cents per pound in October-December 1986 to * * * cents during January-September 1987, and then to a peak price of $* * * in October-December. In January-February, the price fell to $* * * per pound.

Price comparisons.--Quarterly weighted-average purchase prices that each class of purchasers paid for domestic nitrile rubber were compared with the corresponding weighted-average prices paid for imported Japanese nitrile rubber supplied by Nippon Zeon's distributor, G&E, and prices of imported Japanese nitrile rubber purchased directly from JSR America. These purchase price comparisons are made at the first level of sale by the domestic producers to each of the two classes of customers, end users and custom mixers. Domestic producers do not use distributors to market their nitrile rubber. Purchase prices paid by end users and custom mixers for imported Japanese nitrile rubber are almost entirely prices at the second level of sale. More than * * * percent of the Japanese nitrile rubber is Nippon Zeon product imported by Nichimen whose first level of sale is to the sole distributor, G&E. 3/ Less than * * * percent are direct sales by JSR America to end users and custom mixers. Comparisons of prices to end users and custom mixers are presented in tables 22 and 23.

Purchases by end users.--The reported data on delivered prices for purchases of domestic nitrile rubber and imported nitrile rubber from Japan resulted in 39 direct delivered-price comparisons using quarterly, weighted-average prices paid by end users (table 22). These price comparisons showed underselling by the imported nitrile rubber from Japan in 26 of the 39 comparisons. Ten of 13 comparisons of the prices for category 2, the high-volume, medium grade nitrile rubber, indicated underselling. For categories 1 and 3, 8 of 13 price comparisons in each of these low-volume grades reflected underselling. The tabulation below presents a summary of direct quarterly purchase price comparisons that showed underselling or overselling by the suppliers of imported Japanese nitrile rubber for each product category and the range of percentage margins by which the imported Japanese nitrile rubber undersold or (oversold) the U.S. product.

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1/ The volume of purchases of category 2 imported Japanese nitrile rubber for which price data were received amounted to * * * to * * * percent of the total quarterly volume of such purchases by respondent custom mixers during 1985-87.
2/ The volume of purchases of category 3 imported Japanese nitrile rubber for which price data were received amounted to * * * to * * * percent of the total quarterly volume of such purchases by respondent custom mixers during 1985-87.
3/ G&E's markup over Nichimen's selling price to G&E was * * *. * * *. Data showing G&E's markup on each product category are presented in appendix table F-1.

| Product | Instances of underselling/ total comparisons | Range of underselling Percent |
|---|---|---|
| Category 1..... | 8/13 | 2.4-21.2 |
| Category 2..... | 10/13 | 2.0- 8.1 |
| Category 3..... | 8/13 | 3.1-18.4 |

| Product | Instances of overselling/ total comparisons | Range of overselling Percent |
|---|---|---|
| Category 1..... | 5/13 | (0.8)-(9.6) |
| Category 2..... | 3/13 | (0.6)-(1.0) |
| Category 3..... | 5/13 | (2.2)-(10.6) |

Purchases by custom mixers.--The reported data on purchase prices of domestic nitrile rubber and imported nitrile rubber from Japan resulted in 27 direct delivered-price comparisons using quarterly, weighted-average prices paid by custom mixers. These price comparisons showed underselling by the suppliers of nitrile rubber imported from Japan in 18 of the 27 instances (table 23). Seven of eight comparisons of purchase prices for the low-volume category 1 nitrile rubber indicated underselling by the imported Japanese product. Eleven of 13 comparisons of purchase prices paid by custom mixers for the high-volume category 2 nitrile rubber grades revealed underselling. Six comparisons of purchase prices for the low-volume category 3 nitrile rubber showed the Japanese product priced above the domestic nitrile rubber. The tabulation below presents a summary of these quarterly price comparisons.

| Product | Instances of underselling/ total comparisons | Range of underselling Percent |
|---|---|---|
| Category 1..... | 7/8 | 4.0-12.1 |
| Category 2..... | 11/13 | 0.3-12.7 |
| Category 3..... | 0/6 | - |

| Product | Instances of overselling/ total comparisons | Range of overselling Percent |
|---|---|---|
| Category 1..... | 1/8 | (2.4) |
| Category 2..... | 2/13 | (0.3)-(0.7) |
| Category 3..... | 6/6 | (0.8)-(20.1) |

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during January 1984-December 1987 the nominal value of the Japanese yen appreciated 70.1 percent relative to the U.S. dollar (table 24). 1/ Adjusted

1/ International Financial Statistics, February 1988.

Table 24
U.S.-Japanese exchange rates: 1/ Nominal exchange-rate equivalents of the Japanese yen in U.S. dollars, real exchange-rate equivalents, and producer price indicators in the United States and Japan, 2/ indexed by quarters, January 1984-December 1987

| Period | U.S. Producer Price Index | Japanese Producer Price Index | Nominal exchange-rate index | Real exchange-rate index 3/ |
|---|---|---|---|---|
| | | | -----US dollars/yen---- | |
| 1984: | | | | |
| January-March..... | 100.0 | 100.0 | 100.0 | 100.0 |
| April-June..... | 100.7 | 99.9 | 100.6 | 99.8 |
| July-September..... | 100.4 | 100.7 | 94.9 | 95.1 |
| October-December.... | 100.2 | 100.4 | 93.9 | 94.1 |
| 1985: | | | | |
| January-March..... | 100.0 | 100.8 | 89.7 | 90.4 |
| April-June..... | 100.1 | 100.1 | 92.1 | 92.1 |
| July-September..... | 99.4 | 99.0 | 96.8 | 96.4 |
| October-December.... | 100.0 | 96.7 | 111.6 | 107.9 |
| 1986: | | | | |
| January-March..... | 98.5 | 94.4 | 123.0 | 117.8 |
| April-June..... | 96.6 | 90.4 | 135.8 | 127.1 |
| July-September..... | 96.2 | 87.9 | 148.3 | 135.6 |
| October-December.... | 96.5 | 86.6 | 144.1 | 129.2 |
| 1987: | | | | |
| January-March..... | 97.7 | 86.2 | 150.8 | 133.1 |
| April-June..... | 99.2 | 85.8 | 161.9 | 140.0 |
| July-September..... | 100.3 | 86.9 | 157.2 | 136.1 |
| October-December.... | 100.8 | 4/ 86.6 | 170.1 | 4/ 146.1 |

1/ Exchange rates expressed in U.S. dollars per Japanese yen.
2/ Producer price indicators--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of the International Financial Statistics.
3/ The indexed real exchange rate represents the nominal exchange rate adjusted for relative movements in the Producer Price Indices in the United States and Japan. Producer prices in the United States increased 0.8 percent between January 1984 and December 1987 compared with a 13.4-percent decrease in Japanese prices for the same period.
4/ Data are derived from Japanese Producer Price Indices reported for October only.

Note.--January-March 1984=100.0.

Source: International Monetary Fund, International Financial Statistics, February 1988.

for movements in Producer Price Indices in the United States and Japan, the real value of the Japanese currency registered an overall appreciation equivalent to 46.1 percent as of the fourth quarter of 1987 relative to January-March 1984 levels.

Lost sales

Three domestic producers provided lost sales allegations in this investigation. In the preliminary investigation 23 purchasers were cited in 27 allegations of sales lost because of price competition from imports from Japan. All but two of the lost sales allegations were for 1986 and 1987. Alleged sales lost to imports from Japan during the period of investigation totaled approximately * * * pounds valued at over $* * *. In the final investigation * * * submitted 14 new allegations involving six previously named firms. * * * listed one new allegation involving an additional firm.

Allegations investigated in the preliminary investigation.--* * * and * * * named * * * in two sales totaling approximately $* * * allegedly lost due to competition from Japanese suppliers. * * * stated that the company did eliminate a domestic supplier during * * * but the majority of this new business went to another domestic supplier and only a small percentage was purchased from Japanese suppliers. * * * commented that although price is very important in * * *'s purchasing decisions, quality of the product and service of the supplier are also taken into consideration. * * * stated that prices of Japanese and domestic nitrile rubber have generally been similar and that recently it has been the American producers that have driven the price down in an attempt to increase market share. According to * * *, the quality of Japanese nitrile rubber has been better than that of domestic nitrile rubber in recent years; however, within the last 12 months, this gap has narrowed.

* * * was named by * * * in a lost sale allegation totaling approximately * * * involving competition from Japanese suppliers. * * * stated that the company purchases from both Japanese and domestic suppliers and that the majority of this business goes to domestic suppliers. * * * commented that although price is very important in * * *'s purchasing decisions, quality of the product and service of the supplier are also taken into consideration. According to * * *, the quality of Japanese nitrile rubber has been better than that of domestic nitrile rubber in recent years. * * * produces * * *.

* * * was named by * * * and * * * in two sales totaling approximately $* * * allegedly lost due to competition from Japanese suppliers. * * * confirmed that the company purchased the Japanese material. * * * commented that price was the reason for * * *'s purchasing from the Japanese.

* * * was named by * * *, * * *, and * * * in sales totaling approximately $* * * allegedly lost due to competition from Japanese suppliers. * * * stated that the company purchases from the Japanese instead of domestic suppliers for use in * * * because the Japanese provide a superior rubber. Most of their business is involved with * * * which goes to domestic suppliers.

* * * was named by * * * in a lost sale allegation totaling approximately $* * * involving competition from Japanese suppliers. * * * denied the lost sale allegation, stating that they purchased small quantities from the Japanese for test purposes only. * * * produces * * *.

* * * was named by * * * in a lost sale allegation totaling approximately $* * * involving competition from Japanese suppliers. * * * stated that his company purchased from the Japanese because of the superior quality of their nitrile rubber. The company purchases * * * from both the domestic producers and the Japanese. * * * produces * * * for * * *.

* * * was named by * * * in a lost sale allegation totaling $* * * of nitrile rubber allegedly purchased from Japanese suppliers in * * *. * * * stated that the company did not purchase the domestic product but the decision was not based on the price of the product. * * * explained that * * * wanted * * * to * * *; however, * * *. * * * stated that the firm decided not to purchase from * * * because it was not a good business move. * * * added that although prices for Japanese nitrile rubber are slightly lower than domestic prices, the prices for British nitrile rubber are much lower than both Japanese and domestic prices.

Other purchasers contacted by the Commission to which producers reported lost sales include * * *; * * *; * * *; * * *; and * * *. Three of these firms, to which a total of $* * * had allegedly been lost, reported that they had purchased the Japanese product in favor of the U.S.-produced product and primarily because of price, although quality was a significant consideration. (According to these buyers, Japanese nitrile rubber falls consistently within a narrow range of specifications). One, to which $* * * had allegedly been lost (* * *), reported that it had never purchased the Japanese product; and another, to which $* * * had allegedly been lost (* * *), claimed that it had only purchased sample quantities of the Japanese product and that these purchases had been made "at a considerable time in the past."

Allegations investigated in the final investigation.--In the final investigation * * * listed nine examples of lost sales involving nine firms. Eight of the nine had been submitted in the preliminary questionnaire response. These nine instances involved an alleged lost sales volume of * * * pounds of nitrile rubber with a sales value of $* * *. The Commission staff investigated eight of the nine allegations. * * * listed the same seven instances of lost sales in the final as were submitted in the preliminary investigation. They totaled * * * pounds of lost volume with a sales value of $* * *. All of these instances were investigated. * * * listed 15 instances of alleged lost sales involving eight firms in its final questionnaire response. Although six of these firms had been listed in the preliminary investigation, 14 of the 15 examples were new allegations. These allegations totaled * * * pounds of sales volume valued at $* * *. The staff investigated 13 of these allegations.

* * * was cited by * * * in an alleged lost sale of * * * pounds of nitrile rubber in * * *. This potential sales value of $* * * (* * * cents per pound) was allegedly lost to imported Japanese product offered for $* * * (* * * cents per pound). * * * also named * * * in an alleged instance of a lost sale to supply an anticipated annual requirement of * * * pounds of nitrile rubber in * * *. * * *'s offer price of * * * cents per pound was rejected in favor of a competing price of * * * cents per pound for imported Japanese nitrile rubber. The alleged lost value amounted to $* * *. * * * stated that * * *, during which * * * had used no Japanese nitrile rubber. * * *. The prices quoted reflected competitive levels in * * *. * * *. * * *. * * * verified that * * * volume amounted to about * * * pounds

annually. * * *. In 1987, prices for nitrile rubber dropped about 10 cents per pound from the level in 1986, according to * * *.

* * * named * * * in an alleged lost sale for an anticipated annual 1986 supply requirement that totaled * * * pounds of nitrile rubber. This potential lost sale amounted to $* * * at an offer price of * * * cents per pound. * * * alleged that it believed it lost the sale to * * * whose alleged offer price of * * * cents per pound was a response to a competing low price for imported Japanese product. * * * stated that he qualifies competing medium grade nitrile rubber from several sources. He negotiates a price for * * *'s annual requirements and stays with one supplier after his annual sourcing decision. Imported Japanese rubber prices were in the picture during the past several years. * * * uses such competing prices as leverage to get the best price possible. In * * *, * * * sourced from * * * at * * * cents per pound. In * * *, * * *'s price was * * * cents per pound, but * * *'s price fell to * * * cents, rather than * * * cents, in the face of a lower price for imported Japanese product. * * * switched sources to * * * in * * * at a price of * * * cents per pound. * * * emphasized that * * * manufactures * * * and the end product competition is fierce from offshore. This necessitates keeping the input costs as low as possible for quality nitrile rubber.

* * * and * * * identified * * * in lost sales allegations that involved an annual supply requirement of * * * pounds of nitrile rubber. The lost sales value was allegedly $* * * for * * * and $* * * for * * *. Their respective prices of * * * cents and * * * cents per pound were rejected, and a price of * * * cents per pound for Japanese nitrile rubber was allegedly accepted. * * * confirmed negotiations in the period * * * for an annual volume requirement of * * * pounds. * * *, * * *, and * * * were competing. * * * stated that the competing domestic prices were as alleged, adding that * * * and * * * would not drop their prices below * * * cents and declined to compete. Although * * * ultimately cut its price to * * * cents per pound, the award went to the Japanese product at a price of * * * cents per pound. * * * had previously qualified substitute grades of * * *, * * *, * * *, and * * * but did not consider the * * * product in the negotiation. After negotiating, * * * selects a single source for that time frame for 100 percent of the firm's supply requirement.

* * * also cited * * * in an alleged lost sale for supplying an annual anticipated requirement of * * * pounds of nitrile rubber with a sales value of $* * *. * * *'s offer price of * * * cents per pound was rejected in favor of an alleged price of * * * cents per pound for imported Japanese nitrile rubber. * * * stated that the * * * price was accurate but too high even though its nitrile rubber was equal in quality to the Japanese product. * * * also confirmed buying * * * nitrile rubber. In total, he purchased * * * pounds of the Japanese product at a price of * * * cents per pound. The balance at first was sourced from * * * and later spread among three domestic sources and * * *. * * *'s prices were always the lowest, * * * stated.

* * * named * * * in an alleged lost sale involving * * * pounds of nitrile rubber in * * *. This amounted to a potential sales value of $* * *. The domestic price of * * * cents per pound was rejected in favor of an offer price of * * * cents for the Japanese product. * * * offered several comments. * * * buys about * * * pounds of nitrile rubber per year. The firm

makes * * *. This secondary market exerts pressure for guaranteed price maintenance programs. * * * resists this when possible. * * * qualifies four or five substitute products including * * *'s. Some are better than others but all can be used with some minor adjustments to the formula for the compound. He confirmed the * * * price and stated that although he spreads the volume around, * * * did get * * * pounds of volume between * * * and * * * at a price of * * * cents per pound. Terms were net 30 days. * * * was always the price leader, * * * stated, adding that they are now out of the picture as a source. * * * told him that they do not intend to sell any more * * * nitrile rubber.

* * * identified * * * in another alleged lost sale involving * * * pounds of nitrile rubber in * * *. A domestic offer price of * * * cents per pound for this $* * * potential order was rejected and an offer price of * * * cents per pound for * * * product was allegedly accepted. * * * responded to the staff inquiry. * * * stated that he had "called around to four or five approved sources." This firm uses standard grade nitrile rubber for * * *. * * * had the lowest priced "qualified product." * * * stated that * * * "wanted a foothold in the market and was undercutting everybody." He confirmed the facts almost as alleged, noting that the * * * price was actually * * * cents per pound and that it was important to save even a few cents a pound.

* * * named * * * in an alleged lost sale of * * * pounds of nitrile rubber in * * *. The domestic offer price of $* * * per pound was allegedly rejected in favor of a competing price of * * * cents per pound for imported Japanese product. * * * denied the allegation. * * *, which makes * * *, purchases most of its nitrile rubber compound from * * *, a custom mixer. * * * can get nitrile rubber at volume prices. * * * may have purchased a few thousand pounds of * * * product but at prices "a penny or so below competing domestic prices." * * * commented on the need to be competitive, stating that * * * had had * * * but had lost it to lower priced Japanese imports. Despite using * * *, * * * was "priced out of the market."

* * * was cited by * * * again in the final investigation in two alleged lost sales in * * * involving a total volume of * * * pounds of nitrile rubber valued at $* * *. The domestic prices of * * * cents and * * * cents per pound were allegedly rejected in favor of a competing offer price of * * * cents per pound for imported Japanese nitrile rubber. * * * stated that * * *. * * * confirmed the * * * cents per pound offer price of * * * and revealed that a * * * offer price of * * * cents per pound was accepted. * * * switched to imported * * * nitrile rubber in * * *. During * * *, * * *'s lost volume, based on purchases by this account, totaled * * * pounds valued at about $* * *. The company makes * * *. * * *.

* * * identified * * * in three allegations of lost sales in * * *. The aggregate volume amounted to * * * pounds. A domestic price of * * * cents per pound was rejected in favor of a competing price of * * * cents for Japanese nitrile rubber. * * * confirmed buying * * * nitrile rubber at * * * cents per pound in two of the three instances in the alleged quantities of * * * and * * * pounds. The Japanese nitrile rubber was shipped on consignment and terms for payment did not begin until the product was used. The firm uses about * * * pounds per month in making * * *. * * * also confirmed buying the Japanese product from * * * in the third alleged lost

sale for * * * pounds. This sourcing pattern began in * * *, however, and the price from * * * was * * * cents per pound compared with a domestic price of $* * *.

* * * also named the * * * in the final investigation in an alleged lost sale of * * * pounds of nitrile rubber in * * *, valued at $* * *. The domestic price of $* * * per pound was rejected in favor of a competing price of $* * * per pound allegedly for Japanese product. * * * stated that the product involved was a blend of nitrile rubber and * * *. * * *.

* * * was cited by * * * in an alleged lost sale of * * * pounds of nitrile rubber at a value of $* * *. The domestic price of $* * * per pound was allegedly rejected by * * * and the volume went to competing Japanese nitrile rubber offered at * * * cents per pound. * * * confirmed buying * * * product at the alleged price. Part of the volume, however, a single truckload of * * * pounds, went to * * *, one of the three qualified product sources. * * *.

Lost revenues

Two domestic producers provided lost revenue allegations in this investigation. Seventeen purchasers were cited in 19 allegations of revenues lost to avoid losing sales to imports from Japan. All of the lost revenue allegations were for 1986 and 1987. Alleged revenues lost were approximately $* * * on * * * pounds.

* * * was named by * * * in a lost revenue allegation totaling $* * * due to competition from Japanese suppliers during * * *. * * * stated that to his knowledge, domestic companies have not lowered prices in response to Japanese competition, but have lowered prices in response to competition from each other. * * * is a large user of nitrile rubber. * * *. * * *. According to * * *, the price of raw materials, particularly butadiene, has increased significantly since the beginning of 1987. * * * uses nitrile rubber to produce * * *.

* * * was named by * * * in a lost revenue allegation totaling approximately $* * * due to competition from Japanese suppliers. * * * stated that price reduction by domestic suppliers occurred because of * * *'s introduction of a new nitrile rubber product at a low price, forcing its domestic competitors to lower the prices they offer for nitrile rubber. The company purchases large quantities from both the domestic producers and the Japanese.

* * * named * * * in a lost revenue allegation totaling approximately $* * * due to competition from Japanese suppliers. * * * stated that although price is very important in * * *'s purchasing decisions, quality of the product and service of the supplier are also taken into consideration. * * * stated that prices of Japanese and domestic nitrile rubber have generally been similar and that recently it has been the American producers that have driven the price down in an attempt to increase market share. According to * * *, the quality of Japanese nitrile rubber has been better than that of domestic nitrile rubber in recent years; however, within the last 12 months, this gap has narrowed.

* * * was named by * * * in a lost revenue allegation totaling approximately $* * * due to competition from Japanese suppliers. * * * denied the lost revenue allegation, stating that they purchased small quantities from the Japanese for test purposes only and did not use the Japanese product to receive price concessions from the domestic producers.

* * * was named by * * * and * * * in two lost revenue allegations totaling $* * * due to competition from Japanese suppliers during * * *. * * * denied this allegation. Although his company purchases from the Japanese, the Japanese are not priced lower than their domestic competitors.

* * * alleged lost revenues of $* * * to * * * due to competition from lower priced nitrile rubber from Japan. * * * stated that the company mostly purchases from domestic sources but does contact several suppliers before making a purchase. Although price is an important determinant in a purchasing decision, * * * stated that the firm's number one consideration is to meet the particular grade specifications, i.e., the percent of acrylonitrile in the nitrile rubber. * * * stated that Japanese prices for nitrile rubber have been lower than domestic prices, and the company will use a lower price from one producer to get a lower price from another.

* * * alleged that revenue of $* * * was lost in * * * on a sale to * * * due to price competition from Japanese imports. * * * did not confirm the exact date and time involved in this allegation, but did acknowledge that domestic producers of nitrile rubber have reduced prices in the past year or two in order to remain competitive. However, * * * stated that the leadtime for delivery of Japanese nitrile rubber is longer than that for U.S.-produced nitrile rubber and it is necessary to purchase Japanese nitrile rubber in 40,000-pound increments.

* * * was named by * * * and * * * in two lost revenue allegations totaling approximately $* * * due to competition from Japanese suppliers. * * * stated that price reduction by domestic suppliers is not the result of competitive pressures from Japanese imports, but from competition between domestic suppliers. The company only purchases from the Japanese when they are using * * *. Price competition occurs for nitrile rubber used in * * *--a use supplied by domestic producers.

* * * was named by * * * in a lost revenue allegation totaling approximately $* * * due to competition from Japanese suppliers. * * * confirmed the allegation. * * * commented that the price of the Japanese product was the reason for * * *'s receiving a price concession from a domestic supplier.

* * * named * * * in a lost revenue allegation totaling $* * * due to competition from lower-priced imports from Japan in * * *. * * * stated that domestic producers have had to lower their prices in order to remain competitive in the industry. * * * explained that the company purchases U.S.-produced nitrile rubber if the price is within 3-6 percent of the price of Japanese nitrile rubber. In the past few years, prices for domestic nitrile rubber have been competitive with those of imports, and * * * has purchased nitrile rubber from Japan only once. * * * added that quality is also an important consideration in the purchasing decision, and the domestic and Japanese products are comparable in terms of quality.

* * * was named by * * * in a lost revenue allegation totaling $* * * due to competition from Japanese suppliers in * * *. * * * stated that the * * * plant purchases nitrile rubber from both domestic and * * * producers but has not purchased from Japanese suppliers. * * * commented that although there has not been a price leader in the nitrile rubber market, he was aware that prices for Japanese nitrile rubber were slightly lower than domestic prices. In addition, * * * stated that Japanese nitrile rubber has been purchased by another * * * plant, which did require U.S. producers to lower their prices in order to retain their business.

* * * was named by * * * in a lost revenue allegation totaling approximately $* * * due to competition from Japanese suppliers. * * * stated that the prices the company receives on domestic and imported nitrile rubber are similar. * * * further states that the Japanese suppliers are price followers not price leaders. * * * commented that although price is very important in * * *'s purchasing decisions, quality of the product and service of the supplier are also taken into consideration. According to * * *, the quality of Japanese nitrile rubber has been better than that of domestic nitrile rubber in recent years. * * * produces * * *.

* * * was named by * * * in a $* * * lost revenue allegation due to competition from Japanese suppliers in * * *. * * * denied this allegation and stated that the company purchases nitrile rubber from U.S. and * * * producers, not Japanese. According to * * *, domestic suppliers have limited product lines and, as a result, * * * has looked for other suppliers that have a more complete product line.

# APPENDIX A

## THE COMMISSION'S FEDERAL REGISTER NOTICE

[Investigation No. 731-TA-384 (Final)]

## Nitrile Rubber From Japan; Import Investigations

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

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

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-384 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of nitrile rubber,[1] provided for in item 446.15 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before April 25, 1988, and the Commission will make its final injury determination by June 10, 1988, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this 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), and part 201, subparts A through E (19 CFR part 201).

**EFFECTIVE DATE:** February 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Bruce Cates (202-252-1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-

[1] The product covered by this investigation is nitrile rubber not containing fillers, pigments, or rubber processing chemicals. For purposes of this investigation, nitrile rubber refers to the synthetic rubber that is made from the polymerization of butadiene and acrylonitrile and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product.

impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1759. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

**SUPPLEMENTARY INFORMATION:**

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of nitrile rubber from Japan are being sold in the United States at LTFV within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on September 1, 1987, by Uniroyal Chemical Co., Inc., Middlebury, CT. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 41514, October 28, 1987).

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 (19 CFR 201.11), not later than twenty-one (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 will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate for service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on April 15, 1988, pursuant to section 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 9:30 a.m. on May 3, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. 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 21, 1988. 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 9:30 a.m. on April 26, 1988, in the hearing room of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 26, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). 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. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 10, 1988. 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 10, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 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 must 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 section 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason

*Secretary.*

Issued: February 26, 1988.

[FR Doc. 88-4505 Filed 3-1-88; 8:45 am]

BILLING CODE 7020-02-M

# APPENDIX B

## COMMERCE'S FEDERAL REGISTER NOTICE

## International Trade Administration

[A-588-706]

## Final Determination of Sales at Less Than Fair Value: Butadiene Acrylonitrile Copolymer Synthetic Rubber from Japan

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that butadiene acrylonitrile copolymer synthetic rubber (nitrile rubber) from Japan is being, or is likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to a United States industry.

**EFFECTIVE DATE:** April 29, 1988.

**FOR FURTHER INFORMATION CONTACT:** Contact Debra Conner or Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 377-1778 or 377-2613.

### Final Determination

We have determined that nitrile rubber from Japan is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

### Case History

Since our notice of an affirmative preliminary determination (53 FR 4193, February 12, 1988) a supplemental response was filed by the respondent on February 11, 1988.

A public hearing was not requested. Final comments were submitted by both the petitioner and respondent.

### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this proposal, we will be providing both the appropriate Tariff Schedules of the United States annotated *(TSUSA)* item numbers and the appropriate HS item numbers with our product descriptions on a test basis pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The product covered by this investigation is butadiene acrylonitrile copolymer synthetic rubber not containing fillers, pigments, or rubber-processing chemicals, currently provided for under the *TSUSA* item number 446.1511 and currently classifiable under HS item number 4002.59.00.

### Period of Investigation

Based on petitioner's claim that sales and imports of nitrile rubber are traditionally strongest in the early months of each year, we extended the period of investigation for Nippon Zeon to January 1, 1987–September 30, 1987, as permitted by 19 CFR 353.38(a).

### Such or Similar Comparisons

We determined that Nippon Zeon had sufficient home market sales of such or similar merchandise to form the basis for calculating foreign market value. For all U.S. sales examined, there were sales

of identical merchandise in the home market.

Fair Value Comparisons

To determine whether sales of nitrile rubber from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

United States Price

In its original response to our questionnaire, Nippon Zeon claimed that its U.S. sales were made through an unrelated company, Nichimen Japan-Nichimen America (Nichimen), and that Nichimen acted as Nippon Zeon's agent. Nippon Zeon reported the prices charged by Nichimen in the United States and the commission paid by Nippon Zeon to Nichimen. At the Department's request, Nippon Zeon provided a copy of its agreement with Nichimen and a fuller description of the commission paid to Nichimen.

Based on our verification of the agreement, we have determined that Nichimen does not act as Nippon Zeon's agent. The agreement between Nichimen and Nippon Zeon clearly illustrates that a "sale" is made from Nippon Zeon to Nichimen. Nichimen pays for the merchandise and resells the merchandise to an unrelated customer in the United States. While Nichimen provides certain services to Nippon Zeon, Nippon Zeon does not control the activities of Nichimen. In particular, Nippon Zeon controls pricing to the U.S. customer.

Therefore, we have determined that Nichimen is not Nippon Zeon's agent and that the price Nippon Zeon charges Nichimen is the appropriate sales price to be used. This is in accordance with the Department's usual practice in cases where a manufacturer is aware of the destination of its goods when such goods are sold to an unrelated trading company. *See, e.g., Certain Forged Steel Crankshafts from Japan*, 52 FR 36984 (October 2, 1987); *Birch Three-Ply Doorskins from Japan*, 47 FR 50537 (November 8, 1982).

At the Department's request, Nippon Zeon provided a revised U.S. sales listing on February 11, 1988 showing the invoiced price from Nippon Zeon to Nichimen.

We have calculated purchase price by deducting from Nippon Zeon's invoiced price to Nichimen, foreign inland freight and insurance, and export brokerage and handling. We also made an adjustment for post-sale price adjustments.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on Nippon Zeon's packed delivered prices to unrelated customers in the home market. We made deductions from the home market price where appropriate, for inland freight, insurance and rebates. In order to adjust for differences in packing between the U.S. and home markets, we deducted the home market packing cost from the foreign market value and added U.S. packing costs. We also made adjustments to the home market price, where appropriate, for differences in credit expenses pursuant to 19 CFR 353.15.

Nippon Zeon claimed adjustments for warehousing, indirect selling expenses, inventory carrying costs, technical services, and sale promotion expenses in home market. With respect to the adjustments for warehousing, technical services and sale promotion activities, we have denied these claims because respondent has not demonstrated that they are directly related to home market sals, in accordance with 19 CFR 353.15.

Moreover, we have not allowed adjustments for indriect selling expenses because U.S. sales were treated as purchase price transactions and no commission was recognized on those sales. The claim for inventory carrying costs was withdrawn at verification by Nippon Zeon officials.

Currency Conversion

Since all U.S. sales were purchase price transactions, we made currency conversions in accordance with 19 CFR 353.56(a)(1).

Critical Circumstances

On Septemer 1, 1987, the petitioners alleged that "critical circumstances" exist within the meaning of section 733(e) of the Act with respect to nitrile rubber from Japan. In determining whether critical circumstances exist, that section provides that we examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject to investigation; or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relativcly short period.

In order to determine whether massive imports have taken place over a short period of time we looked at the volume and value of the imports.

In this proceeding, we examined import statistics provided by the petitioner and the respondent, as well as U.S. government collected data. Based on this information, we believe that massive imports have not occurred. Having so concluded, it is not necessary for us to address the issue of whether there is a history of dumping or whether the importers should have known that the merchandise was being sold at less than fair value.

Based on the above information, we determine that critical circumstances do not exist with respect to imports of nitrile rubber from Japan.

Verification

As provided in section 776(a) of the Act, we verified all information used in reaching the final determination in this investigation. We used standard verification procedures including examination of all relevant accounting records and source documents.

Interested Party Comments

*Comment 1.* Respondent argues that the Japanese trading company composed of Nichimen Corporation ("Nichimen Japan") and Nichimen America, Inc. ("Nichimen America") (collectively, "Nichimen") acts as an agent on Nippon Zeon's sales of nitrile rubber to the United States.

Petitioner argues that Nichimen is not acting as an agent but rather, is the first unrelated purchaser of nitrile rubber.

*DOC Position.* The Department agrees with the petitioner. There is no evidence to suggest that Nichimen is related to Nippon Zeon, or that the relationship differs in any significant way from the usual relationship between a manufacturer and a trading company. Furthermore, our review of the agreement submitted by respondent and of supporting documents available at verification did not present facts inconsistent with the application of our usual practice in cases where a manufacturer is aware of the destination of its goods when those goods are sold to an unrelated trading company. (See the "United States Price" section above.

*Comment 2.* Petitioner argues that the correct U.S. price is the price from Nippon Zeon to Nichimen Japan.

Respondent argues that the correct U.S. price is the price to Nichiman's unrelated customer in the United States

*DOC Position.* The Department agrees with the petitioner. As noted above in the "United States Price" section of this

notice, in cases where a manufacturer sells to an unrelated trading company with knowledge of the ultimate destination of merchandise under investigation, it is our usual practice to consider that sale as the first sale to an unrelated party. We then use that sale to determine the purchase price with respect to which all adjustments and calculations will be made.

*Comment 3.* Petitioner submits that the Department should adjust the U.S. price by the amount of a post-sale adjustment.

*DOC Position.* The Department agrees with the petitioner. Under the agreement between Nippon Zeon and Nichimen a post-sale adjustment is made to the invoiced price. The invoiced price is adjusted to reflect currency adjustments and changes in freight costs. Because this adjustment increases or reduces the return to Nippon Zeon on its U.S. sales, we have included it in the calculation of U.S. price.

*Comment 4.* Respondent submits that the Department should terminate the investigation because the petitioner lacks standing.

*DOC Position.* The Department disagrees with the respondent. No domestic producer has stated its opposition to the investigation. *See, e.g., Fabric Expanded Neoprene Laminate from Japan,* 50 FR 23488 (6/4/85); *Offshore Platform Jackets and Piles from Japan,* 51 FR 11788 (4/7/86).

*Comment 5.* Respondent submits that all home market charges claimed (with the exception of inventory carrying costs) be used in the calculation of foreign market value.

Petitioner argues that direct selling expenses, advertising and sales promotion, technical services, warehousing, indirect selling expenses, and inland freight should be rejected and not used in the calculation of foreign market value.

*DOC Position.* The Department has allowed inland freight costs as an adjustment to the home market price since they were fully supported at verification.

The Department has not allowed adjustments for the remaining charges as explained in the "Foreign Market Value" section of this notice.

*Comment 6.* Petitioner submits that the Department should determine that critical circumstances exist based on the import statistics from the Journal of Commerce.

Respondent submits that the Department should determine that critical circumstances do not exist based on the import statistics provided by its sole U.S. importer, Nichiemen.

*DOC Position.* The Department agrees with the respondent. Information we have obtained indicates that Nippon Zeon's exports of nitrile rubber represent approximately 95% of all imports from Japan. For this reason, the Department has used Nichimen's verified import statistics to form the basis of our analysis in the determination of critical circumstances.

## Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of nitrile rubber from Japan that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of nitrile rubber from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|---|---|
| Nippon Zeon Co., Ltd | 146.50 |
| All others | 146.50 |

This suspension of liquidation covers imports of nitrile rubber as defined in the "Scope of Investigation" section of this notice.

## ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order on nitrile rubber from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Joseph A. Spetrini,

*Acting Assistant Secretary for Import Administration.*

April 25, 1988.

[FR Doc. 88-9533 Filed 4-28-88; 8:45 am]

BILLING CODE 3510-DS-M

# APPENDIX C

## CALENDAR OF WITNESSES

CALENDAR OF PUBLIC HEARING

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

Subject : Nitrile Rubber from Japan

Inv. No. : 731-TA-384 (Final)

Date and time: May 3, 1988 - 9:30 a.m.

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

In support of the imposition of antidumping duties:

Howrey & Simon--Counsel
Washington, D.C.
on behalf of

Uniroyal Chemical Co.

James T. Fairclough, Marketing Manager

Richard Dowd, Finance Manager

Herman W. Whitehead, Senior Analyst

Mark J. Glueck, Washington Economic Research Consultants

Herbert C. Shelley)
Joel D. Kaufman )--OF COUNSEL
Alice A. Kipel )

In opposition to the imposition of antidumping duties:

O'Melveny & Myers--Counsel
Washington, D.C.
on behalf of

Nippon Zeon Co., Ltd. (Tokyo, Japan)

Robert Klingender, Vice President and Products Manager of Goldsmith & Eggleton, Inc.

Robert Lyons, H. K. Porter, Bellenfontaine, Ohio

Dr. Robert E. Litan, Senior Fellow, The Brookings Institution

F. Amanda DeBusk )
Jerome M. Lehrman) --OF COUNSEL

# APPENDIX D

## ADDITIONAL CORPORATE FINANCIAL DATA AND IMPACT OF IMPORTS ON U.S. PRODUCERS' GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

Additional corporate financial data

| Producer | Parent company | Stock exchange Listing | Stock price 52 week range thru 4/5/88 High | Low | Closing price |
|---|---|---|---|---|---|
| Copolymer..... | Armtek 1/ | New York | 30-1/2 | 13 | 28-1/8 |
| Uniroyal..... | Triangle Ind. 2/ | New York | 44 | 22-1/2 | 27-3/4 |
| Goodyear..... | Goodyear 3/ | New York | 76-1/2 | 35 | 64-1/2 |
| BFGoodrich..... | BFGoodrich 4/ | New York | 65 | 27-3/4 | 51-5/8 |

1/ Manufactures tires and tubes, synthetic rubber, heat transfer products.
- 1987 dividend - $0.48 per share
- 1986 dividend - $0.48 per share

2/ Uniroyal is owned by Avery, Inc. (coal mining). Triangle Industries, who manufactures metal containers, steel and copper materials, and other products, owns Avery, Inc.
- 1987 dividend - $0.12 per share
- 1986 dividend - $0.12 per share

3/ Development, manufacture and distribution and sale of tires throughout the world - Oil and gas exploration, manufactures metal, rubber, plastic.
- 1987 dividend - $1.60 per share
- 1986 dividend - $1.60 per share

4/ Diversified manufacturer of plastics, specialty chemicals, aerospace and defense products and other polymers.
- 1987 dividend - $1.56 per share
- 1986 dividend - $1.56 per share

1986 Income-and-Loss Data for the Parent Company's Business Segment That Includes the Subject Product

| Parent company | Total sales | Segment sales | Segment income | Operating income margin | Nitrile rubber/total segment sales 1/ |
|---|---|---|---|---|---|
| | 1,000 dollars | | | | Percent |
| Armtek..... | 800,136 | 2/ 150,901 | 12,983 | 8.6 | *** |
| Triangle..... | 2,667,912 | 3/ | - | - | *** |
| Goodyear..... | 9,103,100 | 4/ 1,136,400 | 110,500 | 9.7 | *** |
| BFGoodrich..... | 2,553,000 | 5/ 569,400 | 66,400 | 11.7 | *** |

1/ Nitrile rubber sales for 1986 were as follows: Armtek (Copolymer) - $* * * million; Avery, Inc. (Uniroyal) - $* * * million; Goodyear - $* * * million; BFGoodrich - $* * * million.
2/ Synthetic rubber and related products - 18.9 percent of total sales.
3/ Segment data not indicated.
4/ Industrial rubber, chemical, and plastic products - 12.5 percent of total sales.
5/ Specialty chemicals - 22.3 percent of total sales.

Sources: Moody's Manual, Annual Reports, and Wall Street Journal.

U.S. producers of nitrile rubber were asked to describe any actual or potential negative effects of imports of nitrile rubber from Japan on their firms' growth, investment, and ability to raise capital. The four producers' comments are quoted below:

* * * * * * *

# APPENDIX E

# LETTER FROM UNIROYAL

* * * * * * *

# APPENDIX F

## COMPARISON OF NICHIMEN'S AND G&E'S SELLING PRICES

Table F-1
Nitrile rubber: Weighted-average selling prices of Nichimen, the importer, to G&E, the sole distributor of Nippon Zeon nitrile rubber, G&E's selling prices, and G&E's markup, by percentage acrylonitrile content, by quarters, January 1985-December 1987 and January-February 1988

* * * * * * *