

POLYCHLOROPRENE FROM FRANCE AND THE FEDERAL REPUBLIC OF GERMANY

Determinations of the Commission in
Investigations Nos. 731-TA-446 and 447
(Preliminary) Under the Tariff Act
of 1930, Together With
the Information Obtained
in the Investigations

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

Investigations Nos. 731-TA-446 and 447 (Preliminary)

Polychloroprene from France and the Federal Republic of Germany

Determinations

On the basis of the record ¹ developed in the subject investigations, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from France and the Federal Republic of Germany of polychloroprene, ² provided for in subheadings 4002.41.00 and 4002.49.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 446.15 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 22, 1989, a petition was filed with the Commission and the Department of Commerce by E. I. du Pont de Nemours & Company, Inc., Wilmington, DE, alleging that an industry in the United States is materially

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

² Polychloroprene (also known as neoprene), a polymer of chloroprene (2-chloro-1,3-butadiene), is a synthetic elastomer available in two different forms: dry polymers and aqueous latex grade polymers.

injured or threatened with material injury by reason of LTFV imports of polychloroprene from France and the Federal Republic of Germany. Accordingly, effective September 22, 1989, the Commission instituted preliminary antidumping investigations Nos. 731-TA-446 and 447 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 29, 1989 (54 FR 40218). The conference was held in Washington, DC, on October 13, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 6, 1989. The views of the Commission are contained in USITC Publication 2233 (November 1989), entitled "Polychloroprene from France and the Federal Republic of Germany: Determinations of the Commission in Investigations Nos. 731-TA-446 and 447 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

VIEWS OF THE COMMISSION

Based on the information obtained in these preliminary investigations, we unanimously determine that there is no reasonable indication that an industry in the United States is materially injured or is threatened with material injury by reason of imports from France and West Germany of polychloroprene which is alleged to be sold at LTFV. 1/

The legal standard in preliminary antidumping and countervailing duty investigations is set forth in sections 703(a) and 733(a) of the Tariff Act of 1930, 19 U.S.C. §§ 1671b(a) and 1673b(a), which require the Commission to determine whether, based on the best information available at the time of the preliminary determination, there is a reasonable indication of material injury to a domestic industry, or threat thereof, or material retardation of establishment of such an industry, by reason of imports alleged to be sold at LTFV.

In American Lamb v. United States, 785 F. 2d 994 (Fed. Cir. 1986), the Federal Circuit states that (i) the purpose of preliminary determinations is to avoid the cost and disruption to trade caused by unnecessary investigations, (ii) the "reasonable indication" standard requires more than a finding that there is a possibility of such injury, and (iii) the Commission may weigh the evidence before it to determine whether "(1) the record as a whole contains clear and convincing evidence that there is no

1/ Material retardation of the establishment of an industry is not an issue in these investigations and will not be discussed further.

material injury or threat of material injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation." 2/3/

Like Product and Domestic Industry

In these, as in other Title VII investigations, the Commission must first make factual determinations with respect to the "like product" and the "domestic industry." The term "industry" is defined as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product..." 4/ Section 771(10) of the Tariff Act of 1930 defines the "like product" as "[a] product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation..." 5/ The Commerce Department has determined that the products subject to investigation are:

Polychloroprene (also known as neoprene), a polymer of chloroprene (2 chloro-1,3-butadiene), which is a synthetic elastomer available in two different forms: dry polymers and aqueous latex grade polymers.

The Commission's decision regarding like product is essentially a factual determination, made on a case-by-case basis. 6/ The Commission

2/ 785 F. 2d 944 at 1001-04 (Fed. Cir. 1986).

3/ Commissioner Eckes' views concerning the legal standard for preliminary investigations are set forth in Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, Inv. No. 731-TA-421 (Preliminary) USITC Pub. 2128 (1988). He finds this standard to be satisfied in this preliminary investigation.

See Commissioner Eckes' Additional Views concerning the issuance of separate business proprietary and public opinions in these investigations.

4/ 19 U.S.C. § 1677(4)(a).

5/ 19 U.S.C. § 1677(10).

6/ Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT ___, 693 F. Supp. 1165, 1169 (1988) (hereinafter "ASOCOLFLORES")

usually considers a number of factors when determining what product is "like" the product subject to investigation, including: (1) physical characteristics and uses, (2) interchangeability, (3) channels of distribution, (4) common manufacturing facilities and production employees, (5) customer or producer perceptions, and (6) price. 7/ The Commission looks for clear dividing lines between like products 8/ because minor distinctions are an insufficient basis for finding separate like products. 9/

In these preliminary investigations, we considered four questions relating to the definition of the like product: 1) whether the like product should include synthetic elastomers other than polychloroprene; 2) whether the dry and latex forms of polychloroprene should be considered separate like products; 3) whether different types and grades of dry polychloroprene should be considered separate like products; and 4) whether the like product should include compounded polychloroprene.

Petitioner asserted that the like product should be defined to encompass all types of dry or latex polychloroprene in uncompounded form. 10/ 11/

7/ See, e.g., Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071 (March 1988) at 6; ASOCOLFLORES, 693 F. Supp. at 1170 note 8.

8/ 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 (January 1987) at 4, n.4.

9/ ASOCOLFLORES, 693 F. Supp. at 1168-69. S. Rep. No. 249, 96th Cong., 1st Sess., 90-91 (1979).

10/ Petition at 6, Tr. at 10-14.

11/ Polychloroprene may be compounded with, e.g. vulcanizing agents, accelerators, retarders or activators, pigments, plasticizers or extenders, fillers, reinforcing agents or organic solvents.

Petitioner maintains that the dry and latex polychloroprene should be one like product because, inter alia, the latex type is the liquid version of the dry product, and the polymer backbone, production process and the resultant properties are largely the same for the dry and latex polychloroprene. 12/

Petitioner also asserts that the various types of dry polychloroprene polymers should be included within the single like product. These types include the G-types, A-types, W-types and T-types. 13/ Petitioner asserts that although there are relatively minor differences in composition between the different types of dry polychloroprene in some cases, the similarities are far greater than the differences. 14/

Further, Petitioner asserts that the like product should not include other synthetic elastomers, because polychloroprene is manufactured by a process that is different from other synthetic elastomers; polychloroprene, unlike other elastomers, is made under atmospheric pressure rather than under high pressure; and the performance characteristics of polychloroprene are different from other synthetic rubbers. 15/

Respondents have not explicitly argued that the like product should differ from that proposed by Petitioner.

For the reasons stated below, we find one like product: all types of dry or latex polychloroprene in uncompounded form.

12/ Tr. at 11.

13/ These designations are those used by petitioner. The respondents sell similar products using different letter designations.

14/ Tr. at 11.

15/ Tr. at 10-11.

(1) Polychloroprene and Other Synthetic Elastomers

No party has argued that the like product should include other synthetic elastomers. The Commission, nonetheless has considered whether other synthetic elastomers should be included in the like product. The manufacturing process for polychloroprene is different from that of other synthetic elastomers. 16/ [***] 17/ Polychloroprene's performance characteristics are different than those of other synthetic elastomers. 18/ [***] 19/ Viewed from the standpoint of the consumer, the distinctions are not as sharp. Other synthetic polymers may be used in certain applications in place of polychloroprene. 20/

In Nitrile Rubber from Japan, 21/ the Commission found that other elastomers, including polychloroprene, were not "like" nitrile rubber and should not be included in the like product definition. While this determination in Nitrile Rubber is not binding on us, we see no basis in the record of this investigation for determining that other synthetic elastomers be included in the like product.

16/ See Tr. at 11.

17/ See Report at A-5, n. 17.

18/ See Tr. at 11.

19/ Report at A-51.

20/ Id. at A-10-11.

21/ Nitrile Rubber From Japan, Inv. 731-TA-384 (Preliminary) USITC Pub. 2027 (October 1987).

(2) Dry vs. Latex Polychloroprene

No party has explicitly argued that dry and latex polychloroprene should be separate like products. Nonetheless, the Commission has considered whether dry and latex polychloroprene should be considered separate like products.

Petitioner testified that the polymer backbone, the properties, the production process used to make the two forms of polychloroprene and the resultant product are the same. 22/ Respondents have not contested these points. Latex polychloroprene is simply the liquid version of dry polychloroprene. The latex type is manufactured in the same way as the dry polychloroprene, but is pulled out of the manufacturing process without precipitating out the polychloroprene from the liquid reaction product prior to shipment. 23/

We determine that the like product should not be subdivided into dry and latex polychloroprene, inasmuch as the two types of products have the same properties, manufacturing processes and polymer backbone.

(3) Various Types and Grades of Dry Polychloroprene

Dry polychloroprene is available in a number of different types, which are generally classified by petitioner as general purpose, adhesive, and specialty types. 24/ Petitioner sells four basic types of dry polychloroprene: G type, which is a chloroprene/sulfur copolymer; W type, which is a chloroprene homopolymer or copolymers with dichloro butadiene; T

22/ Transcript of Preliminary Conference at 11.

23/ Report at A-5.

24/ Report at A-2.

type, which is the same as the W type with a gel component; and A type, which is the W type polymerized at low temperatures. 25/ The G, W and T types are considered general purpose polychloroprenes. 26/ G types are utilized when dynamic properties such as shear, flex and resilience are major considerations. The W and T types are used when resistance to heat aging and compression set are primary requirements. 27/ The A types are generally considered useful in adhesive applications. 28/

Within each type of dry polychloroprene, several grades are available. 29/ There is virtually no substitution among grades. 30/ However, some substitutability among certain types of polychloroprene does occur. 31/ To the extent that the various types and/or grades within a particular type are not completely interchangeable, it should be noted that, in the past, the Commission has not required complete interchangeability to include various articles within a single like product. 32/ Petitioner contends that all forms are produced from the same

25/ Petition at Annex B.

26/ Petition at 8, n. 6.

27/ Report at A-3.

28/ Petition at 8, n. 6.

29/ Petition at 8, n. 6.

30/ See Report at A-6.

31/ Report at A-6, See also, Tr. at 12, where Petitioners representative states "G-types can be used in W-type applications. W types can be used in A-type applications, etc."

32/ See e.g., Dry Aluminum Sulfate from Sweden, Inv. No. 731-TA-430 (Preliminary) (requirements dictating a choice between the various grades of aluminum sulfate did not warrant establishing a separate like product); Certain Forged Steel Crankshafts from the Federal Republic of Germany and
(continued...)

basic manufacturing process and share the same basic properties, 33/ and Respondents provided no evidence to the contrary. The Commission has in the past found one like product even where there are several grades of a chemical involved in an investigation. 34/ We determine that there is no basis presented in this investigation to subdivide the like product by grades or types.

(4) Compounded Polychloroprene

No party has explicitly argued that compounded polychloroprene should be included in the like product.

Polychloroprene products require certain engineering properties that are normally associated with strength and working environment. Raw polychloroprene is converted to these products by mixing selected ingredients into the polychloroprene and curing the resulting compound.

Minimum requirements for a practical compound include: chloroprene

32/(...continued)

the United Kingdom, Inv. Nos. 731-TA-351 and 353 (Final), USITC Pub. 2014 (September 1987)(strength requirements dictating a choice between forged and cast crankshafts did not warrant establishing a separate like product); Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046 (December 1987) (color picture tubes of different sizes are a single like product despite a lack of interchangeability).

33/ Petition at 8.

34/ See e.g., Dry Aluminum Sulfate from Sweden, 731-TA-430 (Preliminary) USITC Pub. 2174 (March 1989); Aluminum Sulfate from Venezuela, Inv. No. 731-TA-431 (Preliminary) USITC Pub. 2189 (May 1989) (one like product where all three grades shared the same manufacturing process and had the same chemical formula); Electrolytic Manganese Dioxide from Greece, Ireland and Japan, Inv. Nos. 731-TA-406 through 408 (Preliminary), USITC Pub. 2097 (July 1988)(one like product encompassing two grades of electrolytic manganese dioxide where both were produced at the same plants using the same facilities, were supplied through similar channels of distribution and were similarly priced).

polymer, processing aid, antioxidant, metallic oxide, curing agent and/or accelerator, filler or reinforcing agent and a plasticizer. 35/

No party has argued for the inclusion of compounded polychloroprene in the definition of like product. While we may nonetheless define the like product to be broader than the scope of imports subject to investigation, the record reveals no information that would support doing so. We determine that compounded polychloroprene not be included in the like product.

Related Parties

The related parties provision 36/ allows for the exclusion of certain domestic producers from the domestic industry. Under that provision, when a producer is related to exporters or importers of the product under investigation, or is itself an importer of that product, the Commission may exclude such producers from the domestic industry in "appropriate circumstances".

We generally apply a two-step analysis in addressing the related parties question, considering: (1) whether the company is solely a domestic producer or whether it is also a "related party" within the meaning of section 771(4)(B); and (2) whether, in view of the producer's "related" status, there are "appropriate circumstances" for excluding the producer in question from the definition of the domestic industry.

The Commission has examined three factors in deciding whether appropriate circumstances exist to exclude the related parties:

35/ Report at A-7.

36/ 19 U.S.C. § 1677(4)(B).

(1) the percentage of domestic production attributable to the importing producer;

(2) the reasons the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm simply benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and

(3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry. 37/

We have also considered whether each company's books are kept separately from its "relations" and whether the primary interests of the related producers lie in domestic production or in importation. 38/

Mobay Synthetics and petitioner are the only domestic producers of polychloroprene. Mobay Synthetics is a wholly owned subsidiary of Mobay Corporation, an importer of allegedly dumped polychloroprene from the Federal Republic of Germany, which in turn, is owned by Bayer AG, which is the German exporter of allegedly dumped polychloroprene.

No party argued that appropriate circumstances exist to exclude Mobay Synthetics. Based on consideration of the above-specified factors, we decline to exclude Mobay Synthetics from the domestic industry.

Mobay Synthetics became a wholly owned subsidiary of Mobay Corporation only on January 1, 1988, which indicates that for most of the period of investigation, Mobay was not a "related party" within the meaning of the

37/ See e.g., Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 at 17-18 (March 1989).

38/ See e.g., Rock Salt from Canada, Inv. No. 731-TA-239, USITC Pub. 1798 at 12 (1986).

statute. 39/ Further, Mobay Synthetics accounts for a significant percentage of the domestic production of polychloroprene, and excluding Mobay Synthetics would leave the domestic industry composed of only one producer, petitioner Du Pont. Further, Mobay Synthetics' relationship to its parent, Mobay Corp., and to Bayer, the German respondent, does not appear to exist for the purpose of benefitting from alleged dumped sales.

For these reasons, we determine not to exclude Mobay Synthetics from the domestic industry.

Cumulation

The statute provides that---

[T]he Commission shall cumulatively assess the volume and effect of the imports from two or more countries of like products subject to investigation if the imports compete with each other and with like products of the domestic industry in the United States market. 40/

To determine whether cumulation is appropriate, the Commission has considered the following factors:

- (1) the degree of fungibility of imports from the different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and

39/ Prior to the 1988 acquisition, Mobay Synthetics was known as Denka Chemical Corp., and had been acquired by an employee group from its Japanese parent, Denki Kagak Kogyo, in March of 1984. Report at A-9.

40/ 19 U.S.C. § 1677(7)(C)(iv).

(4) whether imports are simultaneously present in the market. 41/ While no single factor is determinative, and this list of factors is not exclusive, these factors provide a framework for determining whether the imports compete with each other and with the domestic like product.

Petitioner has not specifically addressed the issue of cumulation of imports. Respondents Bayer, Mobay Corp., and Mobay Synthetics also took no position on the cumulation of imports. In other words, they did not dispute that the imports from France and West Germany each compete with the domestic like product. 42/ The French respondent, Distugil, however, asserted that the French and West German imports are generally of different grades, which serve different needs, and thus do not compete in the U.S. market. 43/ However, there is evidence that both the French and West German producers exported the W-type polymer which accounted for an important amount of their exports to the United States. 44/ There is also evidence of other product overlap, much of which is confidential. For these reasons, we conclude that we must cumulatively assess the volume and price effects of the allegedly LTFV imports of polychloroprene from France and the Federal Republic of Germany.

41/ 19 U.S.C. § 1677(7)(C)(iv). Certain Cast Iron Pipe Fittings from Brazil, the Republic of Korea and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. No. 1845 (May 1986), aff'd, Fundicao Tupy S.A. v. United States, 859 F. 2d 915 (Fed. Cir. 1988); see also Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Inv. Nos. 303-TA--19 and 20 and Inv. Nos. 731-TA-391-399 (Final) May 1989.

42/ See, e.g., Tr. at 79.

43/ Post Conference Brief of Distugil at 8.

44/ Report at A-29.

Condition of the Domestic Industry

In assessing the condition of the domestic industry, we consider, among other factors, production, shipments, capacity, capacity utilization, inventories, employment, wages, financial performance, capital investments, and research and development expenditures. 45/ No single factor is dispositive, and in each investigation we consider the particular nature of the industry involved and the relevant economic factors which have a bearing on the state of the industry. 46/ Before describing the condition of the industry, we note that much of the information on which we base our decision is business proprietary, and our discussion of the condition of the industry must necessarily be general in nature.

Having considered all the factors listed by the statute, we find the information on the following factors to have been particularly relevant to our conclusion regarding the condition of the industry: market share, shipments, the level of operating income for the industry, both absolutely and relative to assets, and expenditures for capital investment and research and development. 47/ As discussed in more detail below, we found

45/ See 19 U.S.C. § 1677(7)(C)(iii).

46/ See 19 U.S.C. § 1677(7)(C)(iii), which requires us to consider the condition of the industry in the context of the business cycle and conditions of competition that are distinctive to the domestic industry. See also H.R. Rep. 317, 96th Cong., 1st Sess. at 46; S. Rep. 249, 96th Cong., 1st Sess. at 88.

47/ Vice Chairman Cass does not join in this conclusion. He believes that the statute under which the Commission conducts Title VII investigations does not contemplate that the Commission will make a separate legal finding respecting the condition of the domestic industry. While he believes the condition of the domestic industry is relevant to assessing whether the effect of the allegedly LTFV imports has been "material," that information has relevance only in assessing material injury by reason of the allegedly LTFV imports. See Digital Readout Systems and Subassemblies Thereof from
(continued...)

the information on these factors to be more persuasive in this case than information on the other indicia of the condition of the industry, such as employment and capacity utilization.

United States production of polychloroprene [***] from 1986-1987, and then [***] from 1987 to 1988. Production [***] from interim 1988 (January to June) relative to interim 1989. Throughout the period of investigation, production [***] overall, but U.S. producers' inventories were also being [***] in interim 1989. Capacity [***] during the period of investigation.

48/

Capacity utilization for U.S. producers [***] from 1986 to 1987, and [***] in 1988 and [***] during interim 1989. Overall, capacity utilization [***] during the period of investigation. 49/

Domestic shipments [***] from 1986 to 1987, and [***] from 1987 to 1988, yielding a [***] and then [***] during January-June 1989 when compared with shipments in the similar period of 1988. Overall, domestic shipments [***] during the period of investigation [***] in exports by the domestic industry.

47/(...continued)

Japan, Inv. No. 731-TA-390 (Final) USITC Pub. 2150 (January 1989) at 95-113 (Concurring and Dissenting Views of Commissioner Cass); Generic Cephalixin Capsules from Canada, 731-TA-423 (Final), USITC Pub. 2211 (August 1989) at 47 (Additional Views of Vice Chairman Cass). See Additional Views of Vice Chairman Cass, infra. For this reason, Vice Chairman Cass does not join these, or subsequent statements in the Views of the Commission characterizing the industry's injury in terms of whether it is "materially injured".

48/ Report at A-15.

49/ Report at A-15.

U.S. producers' inventories of polychloroprene [***] over the period of investigation. 50/

The average number of production and related workers producing polychloroprene [***] over the period of investigation. The average hourly wage for production and related workers producing polychloroprene [***] over the period of investigation. [***] labor productivity [***] over the period of investigation. 51/

Capital investment [***] in 1986-88. Research and development expenses [***] from 1986 to 1987 and [***] from 1987 to 1988 yielding [***] when comparing 1986 to 1988. 52/

Operating income margins [***] from [***] 1986 to [***] 1988, and [***] from interim 1988 to interim 1989. However, the operating income margins [***] throughout the period of the investigation. 53/ [***] the operating return on assets [***] throughout the period of investigation, [***] throughout the period of investigation.

The U.S. industry's market share is substantial [***] and has [***] over the period of investigation.

While the indicators of the condition of the industry are not completely positive, we do not see any indication of problems in the overall performance of the industry. The domestic industry's market share has been [***], and U.S. producers continued to hold a dominant share of the market. The [***] in market share experienced by the domestic industry is not

50/ Report at A-16.

51/ Report at A-17.

52/ Report at A-18.

53/ Report at A-19.

enough to constitute a reasonable indication of material injury to the industry. Further, domestic shipments [***] as U.S. producers [***] in domestic consumption from 1986 to 1988.

While certain factors, such as operating margins as a percentage of income and as a percentage of assets [***] throughout the period of investigation, the levels of such [***] do not warrant a finding of a reasonable indication of material injury. 54/ The operating income margins from the polychloroprene industry [***] the operating income margins as a percent of sales for the Industrial Chemicals and Synthetics industry from the Quarterly Financial Reports from the U.S. Department of Commerce throughout the entire investigation. 55/ Operating income as a percent of assets, [***] throughout the period of investigation. With [***], the industry was able, and in fact did, [***] capital investment during the period of investigation. Research and development expenditures [***] over the period of investigation, [***]. 56/

Further, regardless of the existence of material injury, we do not find a reasonable indication of material injury "by reason of" the allegedly LTFV imports from France and West Germany. 57/58/59/

54/ See Footnote 47.

55/ See Report at A-19.

56/ See Report at A-18.

57/ Chairman Brunsdale does not draw a separate legal conclusion regarding the state of the industry.

58/ Vice Chairman Cass's views on the existence of material injury by reason of LTFV sales of the subject imports are set forth in his additional views.

(continued...)

No reasonable indication of material injury by reason of allegedly LTFV imports from France and the Federal Republic of Germany 60/61/

In making a preliminary determination in an antidumping investigation, the Commission is also charged with determining whether material injury to the domestic industry is "by reason of" the imports under investigation. 62/ The Commission may take into account other causes of harm to the domestic industry, but it is not to weigh causes. 63/ The unfairly traded imports need only be a cause of material injury. 64/

We determine that there is no reasonable indication that the subject imports are a cause of material injury to the U.S. polychloroprene industry. 65/

59/(...continued)

59/ Commissioner Eckes believes that longstanding Commission practice and case law require use of bifurcated injury and causation analysis. See his views in New Steel Rails from Canada, Inv. No. 701-TA-297 (Final) USITC Pub. 2217 (September 1989) at 29-70.

60/ See Additional Views of Chairman Anne E. Brunsdale.

61/ Vice Chairman Cass does not join in this portion of the Views of the Commission.

62/ 19 U.S.C. § 1673b(a).

63/ "Current law does not...contemplate that the effects from the subsidized [or LTFV] imports be weighted against the effects associated with other factors (e.g. the volume and prices of nonsubsidized [LTFV] 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, 74 (1979).

64/ Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1088 (CIT 1988); Hercules, Inc. v. United States, 673 F. Supp. 454, 479 (1987).

65/ Commissioner Lodwick does not join the discussion of market share and price suppression. He finds that while subject import volume was increasing, subject import market share has [***] and has not [***] during
(continued...)

The domestic industry's market share [***] throughout the period of investigation. While it [***], the total market share of the U.S. producers accounted for [***] of the market. Conversely, the imported polychloroprene, while making some inroads in the domestic market, still remained at relatively low levels, at [***] of the market, [***] throughout the period of investigation. While import volume increased steadily during the period of investigation, we find that there was not sufficient increase in volume to [***] in the United States nor to affect the overall market.

Domestic production [***] but this was not due to effect of the imports. [***]. 66/ [***]. As a result of [***], the industry was able to [***] productivity and wages.

There was no consistent pattern or extreme fluctuations in prices of polychloroprene over the period of investigation. Petitioner indicated that increased costs of production were experienced during the period of investigation, which could not be passed on to customers. 67/ We note that the ratio of the domestic industry's cost of goods sold to net sales was [***] in 1988 than in 1986, and that this ratio has [***] in the first half of 1989 relative to the first half of 1988. 68/ We do not find a

65/(...continued)

the period of investigation. Price information for both U.S. and imported polychloroprene was mixed over the period of investigation demonstrating no consistent patterns of price depression, suppression or undercutting. While the petitioner alleges an inability to pass on its increased cost of production, any price suppression, if it exists, [***] and of polychloroprene substitutes rather than the subject imports.

66/ See Report at A-15.

67/ See e.g. Petition at 23, 26.

68/ See Report A-19.

reasonable indication that the prices of the domestic like product have been suppressed relative to its costs. Cost increases are not always able to be passed on fully and immediately to consumers. To the extent price increases have been suppressed, it is not due to the allegedly dumped imports, but rather to the [***] of Mobay Synthetics, a U.S. producer who is attempting to make inroads into the market. 69/

There is also no consistent pattern of underselling by the imported products. [***]. 70/ [***] 71/ 72/ There are also [***] of lost sales or revenues due to the lower price of the imported product. 73/

We therefore find that any difficulties the industry experienced over the period of investigation were not caused by the relatively small market presence of the imports. Accordingly, we find no reasonable indication

69/ See e.g., Report at Appendix H. Further, [***], any price suppression in the domestic industry can also be attributable to substitutes for polychloroprene, (e.g. styrene-butadiene, nitrile rubber and ethylene-propylene), inasmuch as the price of these substitutes were lower than polychloroprene throughout the period of investigation. See Report at A-28.

70/ See Report at A-62-64.

71/ See Report at A-30.

72/ See, Copperweld Corp. v. United States, 682 F. Supp. 552 at 566 (CIT 1988).

73/ We note that the petitioner attempted to make additional lost sales or lost revenue allegations in its comments on business proprietary information. Those allegations were stricken from the record because they did not comply with the requirements of Commission interim rule § 207.7(g), which requires that comments on business proprietary information "must be limited to comments on business proprietary information received in or after . . . the postconference briefs in a preliminary investigation. Additional comments which do not comply with the requirements of this paragraph may be stricken from the record." 53 Fed. Reg. 33039, 33042 (August 29, 1988).

that imports are a cause of material injury to the domestic polychloroprene industry.

No Reasonable Indication of Threat of Material Injury

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition." 74/ The ten factors that the Commission must consider are:

- (I) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),
- (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
- (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
- (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
- (V) any substantial increase in inventories of the merchandise in the United States,
- (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
- (VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,
- (VIII) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671

74/ 19 U.S.C. § 1677(7)(F)(ii).

or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advance version of the like product. 75/

In addition, we must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a reasonable indication of threat of material injury by the domestic industry. 76/ We consider these factors in turn. 77/78/79/

The French and German exporters' capacity to produce polychloroprene remained relatively stable during the period of investigation, with the

75/ 19 U.S.C. § 1677(7)(F)(i), as amended by Section 1329 of the 1988 Act, Pub. L. 100-418, 102 Stat. 1107, 1206.

76/ See 19 U.S.C. § 1677(7)(F)(iii), as amended by Section 1329 of the 1988 Act, Pub. L. 100-418, 102 Stat. 1107, 1206.

77/ There is no subsidy alleged in this antidumping investigation.

78/ In this analysis, we have not cumulated the French and German data to come to the conclusion that there is no reasonable indication of threat of material injury to the domestic industry. However, we note that the same conclusion would have been reached had we cumulated.

79/ Commission Lodwick does not join the statement regarding threat determination on a cumulated basis.

Commissioner Rohr notes his views on cumulation in threat cases as expressed in his Additional Views in Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, United Kingdom, and West Germany, 701-TA-293 and 731-TA-412-419, USITC Pub. 2194 at 44, n. 72 (May, 1989).

French capacity increasing slightly in 1988. 80/ Shipments to third country markets decreased for France and increased for West Germany from 1986 to 1987, and increased for France and decreased slightly for Germany from 1987 to 1988. French shipments decreased slightly from interim 1988 to 1989, while German shipments have increased. Home market sales for both countries increased from 1986 to 1987, decreased from 1987 to 1988, but have increased during the interim period of 1988 to 1989.

The relatively unchanging production capacity in France and West Germany indicates that there is little potential for imports of polychloroprene from either country to increase significantly. Capacity utilization for both countries, particularly France, is also relatively high. 81/

There is no indication that there will be any rapid increase in market penetration or likelihood that the penetration from each country will increase to an injurious level. While exports to the United States have increased from France (decreasing from 1986 to 1987, increasing from 1987 to 1988, and then decreasing from interim 1988 to 1989) and West Germany (increasing from 1986 to 1987, decreasing from 1987 to 1988, and decreasing from interim 1988 to 1989) throughout the period of investigation, there has been only a slight increase in U.S. market share by the importers. (The French volume of exports increased more than the German exports.) There is nothing in the record to indicate that there would be any rapid increase in market penetration. 82/ Import inventories have at first decreased, and then increased throughout the period of investigation.

80/ See Report at A-22.

81/ Id.

82/ See Report at A-25.

However, taken as a percentage of inventories to total imports, the ratios ended the period of investigation at the same level that they were at the beginning of the investigation, indicating that as a ratio of total imports to inventories, the market is stable.

Because we find no consistent pattern of underselling or price depression or suppression by either the French or German imported products, we have no basis to find that there would be any probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of polychloroprene. 83/

There is no evidence of product shifting in this investigation, because there are no known antidumping or countervailing duty investigations or orders that apply to French or West German production facilities that may be used to produce polychloroprene.

There is also no evidence of any dumping findings or antidumping orders in effect in third countries with respect to polychloroprene from France or the Federal Republic of Germany.

We find no meaningful evidence of any actual or potential negative effects on efforts to develop a derivative or more advanced version of the like product.

Finally, we find no other demonstrable adverse trends that indicate the

83/ Vice Chairman Cass concurs in the Commission's conclusion respecting the likelihood of future price depression or suppression in light of the evidence suggesting that LTFV sales of the subject imports have not significantly depressed or suppressed prices of the domestic like product to date. However, his analysis of the effects that the alleged LTFV imports have had on domestic product prices, and of the significance of underselling, are described separately in his Additional Views.

probability that importation of the merchandise will be the cause of actual injury.

Based upon the threat factors discussed above, we find no reasonable indication of threat of real or imminent material injury to the domestic industry producing polychloroprene by reason of the importation of polychloroprene from France or the Federal Republic of Germany.

Additional Views of Chairman Anne E. Brunsdale

Polychloroprene from France and the Federal Republic of Germany

Inv. No. 731-TA-446 and 447 (Preliminary)

I agree with my colleagues' conclusion that the domestic polychloroprene industry is not materially injured or threatened with material injury by reason of allegedly dumped imports from France and West Germany. I also join their discussions of like product, condition of the domestic industry, and threat to the domestic industry. On the issue of causation, however, my analysis differs from that presented in the Views of the Commission.

The statute governing preliminary determinations requires an affirmative determination if the Commission finds "a reasonable indication that an industry in the United States" is materially injured or threatened with material injury "by reason of imports of the merchandise which is subject to the investigation."¹ But, this standard is not met, of course, if the record contains clear and convincing evidence supporting a negative determination.² In this case, petitioner has presented a considerable body of evidence supporting its contentions. Any additional evidence that might have been gathered for a final investigation would most likely rebut petitioner's "best case" scenario, and therefore favor the respondents. I note for the record that following the legal standard applicable to preliminary investigations, I

¹ 19 U.S.C. 1671b(a)

² See New Steel Rails from Canada, Inv. Nos 701-TA-297 and 731-TA-422 (Preliminary), USITC Pub. 2135 (November 1988) at 55-68 (Views of Acting Chairman Brunsdale). See also American Lamb v. United States, 785 F.2d 994, 1001 (Fed. Cir. 1986).

give the petitioner the benefit of the doubt in all areas where the record is incomplete.

Petitioner calculates that dumped imports caused U.S. prices to fall by just over [***] percent and caused a revenue loss of between [***] percent.³ The assumptions on which this calculation is based, however, lead me to believe that the actual effect of the allegedly dumped imports on the domestic industry was significantly smaller.

The evidence on the condition of the domestic industry is mixed, showing the industry to be profitable, but less so at the end of the investigation than at the beginning.⁴ While the industry's financial performance has deteriorated, the evidence on the record does not link this deterioration with alleged unfairly traded imports. In order for the allegedly dumped imports to have materially injured the domestic industry, these imports would have had to have led to a decrease in domestic polychloroprene sales by domestic firms and/or to a decrease in the price of the domestic like product. The four crucial elements to consider in assessing the likelihood of such decreases are the degree of import penetration, the magnitude of the alleged dumping margin, the degree to which imports could be substituted for the domestic like product, and the degree to which consumer demand for polychloroprene responds to price changes.⁵

³ Petitioner's Post-Conference Brief p. 19.

⁴ Operating income and [***] were down over the period of investigation. Staff Report A-19.

⁵ I have elaborated on the importance of these factors, and demonstrated the basis for my conclusion that they satisfy the statutory criteria for evaluating causation in several recent decisions. See, e.g., Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (January 1989) at 35-36 (Views of Acting Chairman Anne E.

(continued...)

As for the first of the above elements, over the period of the investigation, subject imports never accounted for more than [***] percent of domestic consumption in terms of both quantity and value, and there was no substantial [***] in import penetration.⁶ The domestic industry maintained a market share of over [***] percent, and domestic shipments in terms of quantity [***] over the relevant period.

The petitioner's alleged dumping margins are 35.9 percent from France and 39 percent from West Germany.⁷ The actual decrease in the domestic price of imports would be some fraction of the dumping margin, depending on the relative shares of the importers' U.S. and home market sales. The evidence does not show a decline in the domestic price of polychloroprene imports, either in absolute terms or relative to domestic prices during the period of the investigation.⁸

Petitioner, nonetheless, claims that injury resulted from price suppression, particularly the inability to pass on raw material price increases. However, the evidence does not support that claim. The petitioner's domestic rival, Mobay Synthetics, appears to be the [***] producer.⁹ Mobay Synthetics was operating at approximately [***] percent of capacity and therefore would have been in a position to increase shipments if

⁵(...continued)

Brunsdale); Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) at 15-31 (Views of Acting Chairman Anne E. Brunsdale and Commissioner Ronald A. Cass).

⁶ Staff Report A-25.

⁷ Staff Report A-9.

⁸ Staff Report A-31.

⁹ Staff Report, p. A-16.

DuPont had tried to raise prices, irrespective of imports. In addition, when DuPont did increase its price of polychloroprene, the price of the subject imports increased soon after.¹⁰

The effect of the dumped imports on the volume of sales may also be less than petitioner claims. The evidence suggests that changes in the price of polychloroprene would have had only a limited effect on the quantity demanded. The petitioner claims that the substitutes for polychloroprene are few, while the respondent claims that they are numerous.¹¹ While the identifiable substitutes appear to be imperfect, there would most likely have been some switching by marginal consumers. Since unfairly priced imports draw additional consumers into the polychloroprene market, it is likely that the impact on domestic producers' sales was even less than the [***] percent import penetration level would suggest.

The record also suggests that the degree to which imports of polychloroprene may be substituted for the domestic like product may be limited. While petitioner claims that imported and domestic polychloroprene are almost perfect substitutes, respondents claim that the various grades offered by importers may be somewhat different than the domestic grades.¹² The record shows that for certain applications, polychloroprene must be tested and certified before it can be used as an input.¹³ This indicates that consumers must not consider all grades to be of uniform quality and that

¹⁰ Staff Report, p. 28.

¹¹ Petitioner Brief p. 20, Post Conference Brief of Distugil pp. 12-13.

¹² Petitioner's Post-Conference Brief p. 20. Post-Conference Brief of Distugil p. 8.

¹³ Staff Report A-32 - A-34.

substitution may be limited in the short run.

Finally, various factors other than imports may have accounted for the petitioner's financial performance. There appears to have been substantial domestic price competition from Mobay Synthetics. In addition, export sales by domestic firms [***] during the period of the investigation. Taking all these factors into account, I conclude that the domestic industry is not injured by reason of dumped imports from France and West Germany.

ADDITIONAL VIEWS OF COMMISSIONER RONALD A. CASS

Polychloroprene from France and
the Federal Republic of Germany
Inv. Nos. 731-TA-446-447
(Preliminary)

I concur with the Commission's negative determination in this investigation, finding that there is not a reasonable indication that the domestic industry producing polychloroprene is suffering material injury by reason of alleged less than fair value ("LTFV") sales of imports of polychloroprene from France and the Federal Republic of Germany or is threatened with material injury by reason of such LTFV imports. I join the Commission's discussion of the like product issue, of the possible threat of injury to a domestic industry, and of the condition of the domestic industry to the extent that it accurately summarizes information relevant to my disposition of this investigation. I offer these Additional Views because I believe that it might be useful to describe my understanding of the legal standard that governs preliminary investigations, and because the analysis that I have employed in assessing whether there is sufficient reason to believe that LTFV imports caused material injury to the domestic industry differs in certain respects from that reflected in the Views of the Commission.^{1/}

^{1/} I assume this to be true in light of past decisions by the majority of my colleagues. As in other investigations, however, not all portions of the majority opinion prepared by the General Counsel's office for the Commission have been made available to me. Notwithstanding explicit judicial criticism of this practice (see *Borlem S.A. v. United States*, Ct. No. 87-06-00693, slip op.

I. LEGAL STANDARD GOVERNING DISPOSITION
OF PRELIMINARY INVESTIGATIONS

The legal standard that controls disposition of preliminary investigations under Title VII of the Tariff Act of 1930 is set forth in sections 703(a) and 733(a) of the Act, as amended.^{2/} These statutory provisions require the Commission to determine, based upon the best information available to us, whether there is a reasonable indication that a domestic industry has been materially injured, or is threatened with such injury, by reason of unfairly traded imports.^{3/} In recent years, the application of this standard in our Title VII cases has engendered a great deal of discussion and, on occasion, disagreement within the Commission.^{4/} In a number of cases, I have discussed at length my understanding of the relevant legal principles, and their relationship to the language and legislative history of Title VII

89-93, at 24, note 4 (Ct. Int'l Trade, June 29, 1989)), the majority will not make opinions (or parts of opinions) to anyone deemed not likely to concur in that opinion (or portion of the opinion).

^{2/} The standard is codified at 19 U.S.C. § 1671b(a) (countervailing duty investigations) and at 19 U.S.C. § 1673b(a) (antidumping investigations).

^{3/} Because the domestic industry is already well-established, material retardation of a domestic industry is not at issue in this investigation. For purposes of this discussion of the legal standard governing preliminary investigations, material retardation is subsumed within the concept of material injury.

^{4/} See, e.g., New Steel Rails from Canada, USITC Pub. 2135, Inv. Nos. 701-TA-297, 731-TA-422 (Preliminary) (Nov. 1988) ("New Steel Rails Preliminary") (Additional Views of Acting Chairman Brunsdale) (Additional Views of Commissioner Cass) (Additional Views of Commissioner Eckes).

and relevant judicial precedent, including the decision of the United States Court of Appeals for the Federal Circuit in American Lamb Co. v. United States.^{5/} Although I do not believe that similarly extended discussion of these issues is warranted here, a brief repetition of certain key points may be helpful to an understanding of my disposition of this investigation.

First, less evidence is required to make the requisite showing of injury in a preliminary investigation than in a final investigation.^{6/} In preliminary investigations, Congress clearly intended to "weight the scales in favor of affirmative and against negative determinations."^{7/} Accordingly, the quantum of proof required to sustain an affirmative determination in a preliminary investigation is undoubtedly lower than that required in order to support such a determination in a final investigation. By the same token, however, the "reasonable indication" standard was not intended to preclude any possibility

^{5/} 785 F.2d 994 (Fed. Cir. 1986).

See, e.g., Certain Telephone Systems from Japan, Korea and Taiwan, USITC Pub. 2156, Inv. Nos. 731-TA-426-28 (Preliminary) 53-63 (Feb. 1989) (Additional Views of Commissioner Cass) ("Phone Systems"); Generic Cephalexin Capsules from Canada, USITC Pub. 2143, Inv. No. 731-TA-433 (Preliminary) 39-45 (Dec. 1988) (Dissenting Views of Commissioner Cass) ("Cephalexin Capsules"); New Steel Rails Preliminary, supra, at 19-31 (Additional Views of Commissioner Cass).

^{6/} See, e.g., Phone Systems, supra, at 54-55; New Steel Rails Preliminary, supra, at 21 (Additional Views of Commissioner Cass).

^{7/} American Lamb Co. v. United States, supra, 785 F.2d at 1001; see also Yuasa-General Battery Corp. v. United States, 688 F. Supp. 1551, 1553-54 (Ct. Int'l Trade 1988).

of negative determinations in preliminary investigations. As the Court of Appeals made clear in its decision in American Lamb, in articulating the standard for preliminary investigations, Congress sought to balance two competing concerns.^{8/} On the one hand, to safeguard against the rejection of meritorious petitions, Congress provided that investigations are not to be terminated in their preliminary stage simply because the evidence of record is not sufficient to support an affirmative determination in a final investigation. On the other hand, however, Congress also plainly believed that the costly process of final investigations by the Commission (and by the Department of Commerce), with the disruptive effects upon trade that are necessarily associated with such proceedings, should not be endured unless there is sufficient indication of injury to a domestic industry to justify incurring such costs. This is, after all, the very reason why Congress provided for a preliminary investigation.^{9/}

^{8/} See American Lamb Co. v. United States, supra, 785 F.2d at 1002-3, citing S. Rep. No. 1298, 93d Cong., 2d Sess. 171 (1974).

^{9/} The legislative history of the Trade Act of 1974 Act, the statute in which the concept of a preliminary investigation originated, contained the following statement:

Under the present Act, the Secretary of the Treasury must complete his entire investigation as to sales at less than fair value before the matter can be referred to the International Trade Commission for its injury determination. The Committee felt that there ought to be a procedure for terminating investigations at an earlier stage where there was no reasonable indication that injury or the likelihood of injury could be found The amendment is designed to eliminate unnecessary and

Second, in preliminary investigations, we must consider all of the evidence before us, not just the evidence offered in support of an affirmative determination, in deciding whether there is a reasonable indication of injury or threat of material injury to domestic industry.^{10/} This has been the Commission practice for some time, a practice that has been approved by our reviewing courts in American Lamb and in other cases.^{11/} In weighing competing evidence, the Commission's practice, also approved by our reviewing courts, has been to view evidence in a light favorable to petitioners; inferences adverse to petitioners' case are drawn only where the opposing evidence clearly and convincingly refutes the evidence and argument advanced by petitioner.^{12/} The "clear and convincing" evidentiary standard has perhaps been applied differently by different commissioners. But, whatever disparities may be found in its application, this standard has been generally understood to mean that a negative determination will not be reached in a

costly investigations which are an administrative burden and an impediment to trade.

S. Rep. No. 93-1298, 93rd Cong., 2d Sess. 170-71 (1974).

^{10/} See American Lamb Co. v. United States, supra, 785 F.2d at 1002-04.

^{11/} See, e.g., Yuasa-General Battery Corp. v. United States, cited, supra, at note 7.

^{12/} See Certain Welded Carbon Steel Pipes and Tubes from the Republic of Korea and Taiwan, Inv. No. 731-TA-131 and 132 (Preliminary), USITC Pub. 1324 (June 1983); Canned Mushrooms from the People's Republic of China, Inv. No. 731-TA-115 (Preliminary), USITC Pub. 1324 (December 1982).

preliminary investigation simply because on each substantive issue the Commission finds the weight of the evidence marginally favors an inference consistent with such a decision.

Finally, the absence of evidence necessary to an affirmative finding of injury from LTFV imports does not necessarily indicate that a negative determination is appropriate. Rather, we must consider the present lack of such evidence in light of the likelihood that in a final determination evidence might be developed that would support an affirmative decision.^{13/} The question is not whether any evidentiary gaps exist but, instead, whether there is reason to believe that, in a final investigation, such gaps could be filled in with evidence that, together with the rest of the record, would support a decision that the domestic industry is materially injured by LTFV imports.

In these investigations, the record contains an ample basis for disposition of the Petition. Petitioner did a capable, indeed, masterful, job of compiling all the evidence that might conceivably be adduced in support of the Petition, and presenting that evidence to the Commission in the light most favorable to Petitioner. It is difficult to conceive of a better marshalling of facts and inferences in a preliminary investigation or a more cogent argument from the evidence militating in Petitioner's favor. Notably, Petitioner has not rested on general assertions

^{13/} See, e.g., Certain Residential Door Locks from Taiwan, USITC Pub. 2198, Inv. No. 731-TA-433 (Preliminary) 5-6 (June 1989) (Views of Chairman Brunsdale and Vice Chairman Cass).

about the markets in which its products and the competing imports are sold but has endeavored to provide quantitative descriptions that allow a better integrated, more objective assessment of the LTFV imports' effects. These quantitative descriptions do not in all respects appear to be the characterization of circumstances that a neutral observer might reach, but they are, in the main, both plausible and helpful. Petitioner has, in short, presented us with its best case. For the reasons described below and in the Views of The Commission, that case is simply insufficient to support an affirmative disposition of the Petition.

This is not to say that additional information might not be developed in a final investigation. Indeed, there are plainly some issues with respect to which the evidence that would be collected in a final investigation might vary somewhat from the evidence now before us. For example, as discussed below, by the time of any final investigation, we well may have different information before us respecting the magnitude of dumping, if any, that has occurred, or respecting the extent to which other products are substitutable for polychloroprene. However, where these issues are presented, any new information is likely to be adverse, not helpful, to Petitioner. Furthermore, consistent with the legal standard applicable to preliminary investigations, I have given Petitioner the benefit of a doubt where such questions are presented. In my view, then, there are no issues where there is a reasonable prospect that a final investigation would produce new information that would support an affirmative

determination in such an investigation. Accordingly, in light of the legal standard applicable in preliminary investigations, there is simply no basis for anything other than a negative determination in these investigations.

II. ASSESSING THE EXISTENCE OF MATERIAL INJURY: THE STATUTORY BASIS FOR OUR INQUIRY

A. Assessing the Industry's Condition: Differences Between the Unitary Approach and the Bifurcated Approach

As I have explained in numerous other opinions, in my view, the statute that governs antidumping and countervailing investigations, Title VII of the Tariff Act of 1930, as amended, does not contemplate a separate legal finding by the Commission as to the condition of the relevant domestic industry.^{14/} In this respect, among others,^{15/} my understanding of the meaning of Title VII is different from that of certain of my colleagues. These colleagues employ a bifurcated approach to the central question posed for the Commission by Title VII -- whether a domestic industry is suffering material injury by reason of LTFV imports -- that divides that question into two independent inquiries. This bifurcated approach asks first whether the

^{14/} See, e.g., New Steel Rails from Canada, USITC Pub. 2217, Inv. Nos. 701-TA-297 and 731-TA-422 (Final) 125-59 (Sept. 1989) (Dissenting Views of Vice Chairman Cass) ("New Steel Rails Final"); Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150, Inv. No. 731-TA-390 (Final) 98-108 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass) ("Digital Readout Systems").

^{15/} See New Steel Rails Final, supra, at 125-159.

domestic industry's financial health is poor or unhealthy in relation to the financial performance of other industries in the United States or in relation to the industry's performance during some earlier period. If the industry's health is deemed to be poor or declining, the adherents to the bifurcated approach conclude that "material injury" exists. In such cases, they then attempt to ascertain whether LTFV imports contributed to that "injury."

I employ a quite different approach, sometimes referred to as the "unitary" or "comparative" approach. Fundamentally, this approach reads the statutory instruction as requiring us to determine whether the effect of LTFV imports on the domestic industry is sufficient to cause material injury to that industry, regardless of overall changes in industry performance or absolute measures of industry health. In assessing the effects of LTFV imports, the unitary approach compares the condition of the domestic industry to the condition that would have existed had there not been unfairly traded imports, and evaluates whether the change in the circumstances of the industry that resulted from LTFV imports constitutes material injury.^{16/} This approach, in other words, relies on the evidence before the Commission to identify the impact of the LTFV imports and to assess the magnitude of that impact on the domestic industry at issue.

^{16/} See, e.g., *id.*; 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2076, Inv. No. 731-TA-389 (Preliminary) (April 1988) (Views of Commissioner Cass).

As I have explained on other occasions, however, this approach does not regard the condition of the industry as irrelevant. Although I believe that it is not appropriate for the Commission to impose a threshold test in Title VII investigations that requires a petitioner to demonstrate that an industry is healthy, I have expressed the view that the Commission may properly take the health of an industry into account in determining what, in any given case, constitutes "material injury" to a domestic industry.^{17/} The Tariff Act of 1930 does not establish, nor has the Commission ever adopted, a bright-line test for evaluating the materiality of injury resulting from LTFV imports.^{18/} However, although legislation does not restrict antidumping remedies to "sick" industries, Congress has made clear that the health of an industry is one factor that we are to consider in determining whether the effects of LTFV imports constitute material injury to domestic industry in a particular case. Specifically, the Senate Finance Committee has stated that

An industry which is prospering can be injured by dumped imports just as surely as one which is foundering although the same degree of dumping would have relatively different

^{17/} See, e.g., Digital Readout Systems, *supra*, at 117-19; Certain Brass Sheet and Strip from Japan and the Netherlands, USITC Pub. 2099, Inv. Nos. 731-TA-379-80 (Final) 76-77 (July 1988) (Additional Views of Commissioner Cass).

^{18/} See Nitrile Rubber from Japan, Inv. No. 731-TA-385 (Final), USITC Pub. 2090 (June 1988) (Additional Views of Commissioner Cass) at 48-49.

impacts depending upon the economic health of the industry.^{19/}

As discussed in more detail below, in these investigations, as in others, I have taken this Congressional advice fully into account by considering, among other things, the health of the domestic industry that is requesting relief.

B. The Comparative Approach and its Statutory Origins

Title VII directs the Commission, in assessing the causation of injury by dumped imports, 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^{20/}

These three factors are spelled out in greater detail in succeeding portions of the statute.

The text of Title VII, by its own terms, does not purport to identify all of the factors relevant to an assessment of whether LTFV imports have materially injured a domestic industry. The statute explicitly contemplates that the Commission will consider relevant economic factors in addition to those identified in the statute.^{21/} The factors that are listed in the statute and the

^{19/} S. Rep. No. 1385, 90th Cong., 2d Sess., pt. 2, at 11 (1968), reprinted in 1968 U.S. Code Cong. & Admin. News 4548 (emphasis added).

^{20/} See 19 U.S.C. § 1677(7)(B).

^{21/} See 19 U.S.C. § 1677(7)(C).

Under Title VII, as amended by the Omnibus Trade and

order in which they are listed nevertheless provide fundamental guidance respecting the essential elements of the analysis that Congress expected the Commission to undertake. The statute identifies three related questions as critical to an assessment of the possible existence of material injury by reason of LTFV imports.

First, the volumes of imports of the merchandise under investigation must be evaluated. The absolute volumes of imports and their magnitude relative to domestic sales of the competing like product are both relevant in such an assessment. The effect of LTFV sales on the prices of the imports are also a matter that must be considered, as the change in import volumes brought about by dumping will be closely related to changes in the prices of the imports that occurred as a result of sales at LTFV prices.

Second, the Commission must assess how the subject imports affected prices, and concomitantly sales, of the domestic like product. In carrying out this inquiry, in addition to examining evidence respecting the prices at which imports and domestic like

Competitiveness Act of 1988, we are required to explain how these factors affect the outcome reached in any particular investigation. The statute also requires Commissioners to describe the relevance of other economic factors that we consider in addition those specifically identified in the statute. See Pub. L. No. 100-418, § 1328(1), 102 Stat. 1107, 1205 (to be codified as 19 U.S.C. § 1677(7)(B)(ii)). I have explained in detail in other opinions how the three-part inquiry that I employ considers certain other economic factors relevant to an assessment of the impact of unfairly traded imports on the domestic industry producing the like product -- e.g., dumping margins -- in addition to the specific factors listed in the statute. See, e.g. New Steel Rails Preliminary, supra, at 35-37; Cephalalexin Capsules, supra, at 56-58.

products are sold,^{22/} it also is essential to consider the record evidence bearing on three other issues: the share of the domestic market held by the subject imports; the degree to which consumers see the imported and domestic like products as similar (the substitutability of the subject imports and the domestic like product); and the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products.

Finally, the Commission must, of course, evaluate the extent to which the changes in demand for the domestic like product caused by LTFV imports, as reflected in changes in the prices and sales of the domestic like product, affected the financial and employment performance of the domestic industry. As previously discussed, we must also determine whether these effects are material.^{23/} Such factors as return on investment and the level

^{22/} Congress explicitly has asked us to look for the existence of significant price underselling. 19 U.S.C. § 1677(7)(C)(ii). This clearly implicates information on relative prices of imported and domestic products. Title VII does not, however, define price underselling. The statute surely does not mean to equate this term to the simple observation of price differences between imports and domestic products. Although information about simple price differences can be useful, such price differences cannot provide a basis for inference of effects of dumping or of LTFV imports on domestic products' prices without, at a minimum, analysis of various product features and sales terms that may differ across products and sales. See, e.g., Certain Granite from Italy and Spain, USITC Pub. 2110, Inv. Nos. 701-TA-289 and 731-TA-381 (Final) (Aug. 1988).

^{23/} The judgment as to whether these effects are "material" within the meaning of the statute may be assimilated to the third inquiry or may be seen as a fourth part of our inquiry. See Digital Readout Systems, supra, at 117-19.

of employment and employment compensation in the domestic industry are central to any consideration of that issue.^{24/}

III. CAUSATION OF MATERIAL INJURY: POLYCHLOROPRENE
FROM FRANCE AND THE FEDERAL REPUBLIC OF GERMANY

In these investigations, the volume of imports of polychloroprene, while significant in absolute terms, has accounted for only a relatively modest portion of the domestic market. During the first six months of the current year, the period covered by our investigation that corresponds most closely to the period during which dumping is alleged to have occurred, about [*] million pounds of polychloroprene valued at slightly in excess of \$[*] million were imported from France and West Germany.^{25/} This represented a significant decrease from the import levels reported during the comparable six-month period one year earlier.^{26/} The domestic market share of the subject imports did [* * *] over the period of our investigation, and [* * * * *].

During the first six months of this year, the cumulated market

^{24/} In making each of these inquiries under the statute, we are to consider the particular dynamics of the industries and markets at issue. See new Section 771(7)(C)(iii) of the statute (to be codified at 19 U.S.C. § 1677(7)(C)(iii)). See also S. Rep. No. 71, 100th Cong., 1st Sess. 117 (1987).

^{25/} Report at A-24, Table 18. France accounted for about [*]% of these imports.

^{26/} See id. If viewed on an annualized basis, imports reported during the first six months this year were also less than those reported for the full calendar year 1988. See id.

share of the French and West German producers was only [*]% on a quantity-measured basis and [*]% on a value-measured basis.^{27/} During the preceding two years, the cumulated market share of these producers similarly hovered slightly above or below [*]%.^{28/}

The record evidence indicates that the alleged dumping of these imports caused only low-to-moderate declines in the prices of the subject imports. Petitioner asserts that the imports from France were sold at prices reflecting an average dumping margin of 35.5%.^{29/} The average dumping margin asserted for West Germany was slightly higher, 39%.^{30/} In preliminary investigations such as these, we are, in my view, generally constrained to accept such alleged margins as the best evidence available to us respecting the magnitude of the dumping that allegedly occurred. The legislative history of the Trade Agreements Act of 1979 specifies that, in preliminary investigations in antidumping cases, the Commission "will be guided by the description of the allegation of the margin of dumping contained in the petition or as modified by . . . [Commerce]".^{31/} Accordingly, I have used Petitioner's alleged

^{27/} Report at A-34, Table 30.

^{28/} Id.

^{29/} Id. at A-9.

^{30/} Id.

^{31/} Statements of Administrative Action, Trade Agreements Act of 1979, at 415.

margins as the measure of dumping in these investigations. The actual margins may well be lower; Petitioner has presented the Commission (and the Commerce Department) with its calculation of the extent to which dumping has occurred in the domestic market, and Respondents have, of course, had no real opportunity to challenge those calculations. Consistent with the legal standard applicable in preliminary investigations and consistent with the previously-quoted language from the legislative history of the statute, I have nevertheless used the alleged margins as the measure of the magnitude of the dumping alleged to have occurred, accepting the possibility that these may overstate the dumping margins that might be found after investigation by the Department of Commerce.

Dumping margins measure the current difference between the price of the imported goods when offered for sale to the home market or for sale to the United States, both on an ex-factory basis. They do not necessarily describe the change in import prices brought about by sales at LTFV. The actual decrease in the price of subject imports that occurred consequent to the alleged dumping would have been less than the amount of the alleged dumping margin.^{32/} Where, as here, the alleged dumping margins reflect an assertion that the subject foreign producers/exporters have charged a lower price for their product in the United States than the price that they have charged in

^{32/} See, e.g., Phone Systems, supra, at 75.

their home market (or another foreign market used as the surrogate for the home market), the actual decrease in the U.S. price of the subject imports that occurred consequent to dumping will be only a fractional percentage of the dumping margin. This percentage, in turn, will be in large measure a function of the proportion of the total sales of the subject foreign producer(s) in the U.S. and the exporter's home market (or other surrogate foreign market) that is accounted for by sales in the home market. Accordingly, the price decrease caused by the alleged dumping in these investigations would have been less than the full amount of the asserted dumping margins.

The degree to which the alleged dumping affected import prices appears different with respect to imports from each of the two countries of origin in these investigations. In the case of France, because home market sales by the French polychloroprene producer substantially outweighed the sales that producer made in the United States,^{33/} the alleged dumping of imports from that country caused the prices of the subject French imports to decline by an amount reflecting a substantial portion of the alleged dumping margin. In the case of West Germany, however, the price decline would have been significantly smaller in percentage terms because U.S. sales by the West German producer

^{33/} See Report at A-34, Table 30.

were much more important relative to the volume of sales by that producer in its home market.^{34/}

The evidence indicates that the effects on import prices associated with the alleged dumping may have produced some increases in the volumes of the subject imports, but any such increase was minimal. The degree to which decreases in import prices result in increases in the volume of import sales is, in part, a function of the degree to which domestic consumers treat the imported goods in question as substitutable for the domestic like product. In these investigations, the record evidence, discussed in the succeeding section of these Views, indicates that, as Petitioner suggests, the domestic like product and imported polychloroprene are at least moderately substitutable. However, as discussed below, the record evidence also suggests that any increases in the volumes of the subject imports associated with the alleged dumping did not result in significant decreases in either prices or sales of domestically produced polychloroprene.

^{34/} See Report at A-34, Table 30. Petitioner's estimates of the effects that the alleged dumping had on prices and sales of the domestic like product (calculated through application of the Commission-developed "CADIC model") do not appear to reflect this fact. Petitioner's estimates assume that home market sales by both the French and West German producers far exceeded their sales in the United States. See Confidential Annex D to Petitioner's Post-Conference Brief, wherein [*]% is used as parameter a', the measure of the ratio between home market sales and U.S. sales that was used in Petitioner's application of the model.

B. Prices and Sales of the Domestic Like Product

As previously discussed, in determining how the subject imports affected prices, and concomitantly sales, of the domestic like product, it is essential to take into account certain evidence in addition to the record evidence respecting the prices at which imports and domestic like products are sold.^{35/} It is also essential to consider the share of the domestic market held by the subject imports; the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products; and the substitutability of the subject imports and the domestic like product. In these investigations, the record evidence respecting the first two factors -- the imports' domestic market share and the price responsiveness of domestic demand for polychloroprene -- indicates that the effects of LTFV sales of the subject imports on prices and sales of the domestic like product did not rise to significant levels.

As previously noted, the cumulated market share of the subject imports from the subject imports is small. In the first

^{35/} The significance of price underselling in this context is discussed in note 22, supra. As noted therein, although Title VII does not define price underselling, the statute surely does not equate this term to the simple observation of price differences between imports and domestic products. Information about simple price differences can be useful, but cannot provide a basis for inference of effects of dumping or of LTFV imports on domestic products' prices without, at a minimum, analysis of various product features and sales terms that may differ across products and sales. See, e.g., Certain Granite from Italy and Spain, USITC Pub. 2110, Inv. Nos. 701-TA-289 and 731-TA-381 (Final) (Aug. 1988).

six months of this year, the period covered by our investigation that most nearly corresponds to the period during which dumping is alleged to have occurred, imports of polychloroprene from France and West Germany, measured by either quantity or value, accounted for about [*]% of domestic consumption of polychloroprene.^{36/} The import market share during this period was, in fact, slightly [*] than that experienced during the comparable six-month period in 1988, or for full year 1988.^{37/} In the context of the other evidence before us respecting the magnitude of the decline in imports prices associated with dumping, this low, [*] market share is evidence of the limited effect that the subject imports had on domestic prices and sales.

The second important body of evidence pointing in the same direction concerns the responsiveness of domestic demand for polychloroprene to changes in the price of that product. This evidence is important because, to the extent that consumer demand for the product group in which subject imports are included is responsive to changes in price, the effects of dumping on prices and sales of the domestic like product are attenuated, for in that case the lower prices of imports accompanying dumping will stimulate significantly increased domestic demand for the lower-priced product. Conversely, much greater effects will be felt by

^{36/} Report at A-34, Table 30.

^{37/} See id.

U.S. producers when consumers perceive no difference between the imported and domestic product other than price but their overall purchases of these products are relatively unresponsive to price changes. In the latter case, consumers will simply switch their purchases from U.S.-made to lower-priced imported products, imposing a quite detrimental impact on both prices and sales of the domestic product.

In these investigations, Petitioner has argued that domestic demand for polychloroprene is relatively unresponsive to increases or decreases in the price of that product. In that context, Petitioner notes that the level of domestic demand for polychloroprene was stable throughout the period covered by our investigation.^{38/} Petitioner asserts that there are few available substitutes for polychloroprene; Petitioner argues, among other things, that certain substitutes, such as polyurethanes, are generally used on lower quality products, where durability rather than appearance is important.^{39/} Finally, Petitioner contends that there is a relatively high "mark-up" reflected in the price of polychloroprene, and that this difference between the price of polychloroprene and the marginal cost of producing that product is additional evidence that the price responsiveness of polychloroprene is limited.^{40/}

^{38/} Petitioner's Postconference Brief at 20.

^{39/} Id.

^{40/} Id.

Respondents, on the other hand, take the position that there are available substitutes for polychloroprene in most key applications, making domestic demand for polychloroprene quite responsive to changes in the price of that product.^{41/}

Respondents note that Petitioner acknowledges that, since 1932, when polychloroprene was first developed, numerous substitutes have been developed for polychloroprene, and that many of these substitute products have effectively displaced polychloroprene in many applications in which that product was formerly used.^{42/} Of more direct relevance for present purposes, Respondents contend that many other polymers can be substituted for polychloroprene in various major applications for which polychloroprene is still used. For example, Respondents assert that other products produced by du Pont, such as TPE and Hypalon, are substitutable for polychloroprene in extruded and automotive applications, respectively.^{43/} Respondents dismiss the contention that the relatively flat level of domestic polychloroprene consumption is indicative of inelastic demand, contending, inter alia, that no meaningful conclusions respecting that issue can be derived from looking only at data on the level of demand without taking into

^{41/} See APO Comments of French Respondent Distugil at 1-4; APO Comments of West German Respondents Bayer AG et al. at 10-11.

^{42/} Report at A-28.

^{43/} Transcript of 10/13/89 Conference at 56-58.

account price trends and numerous other factors that may affect demand for polychloroprene.^{44/}

On this issue, then, the position of the parties is in sharp conflict. Further, the factual record on that issue is not as well developed as it might perhaps be in a final investigation. Consistent with the legal standard under which this investigation must be decided, I have therefore given Petitioner the benefit of a doubt by analyzing the facts of this case under Petitioner's view of the marketplace -- that is, one that assumes that domestic demand for polychloroprene is relatively unresponsive to increases or decreases in the price of that product -- even though I believe that there is a strong possibility that a final investigation would produce evidence that would lead me to draw inferences on this issue that are substantially less favorable to Petitioner. Even under this view of the evidence, however, it is clear that domestic demand for polychloroprene is sufficiently responsive to variations in price as to preclude the possibility that sales of the subject imports at LTFV prices resulted in significantly reduced prices or sales of the domestic like product.

This is also true with respect to the evidence concerning the degree to which domestic consumers regard imported polychloroprene as substitutable for the domestic like product. On this issue, Petitioner has posited a relatively high degree of

^{44/} APO Comments of French Respondent Distugil at 3.

product interchangeability.^{45/} The French Respondents, on the other hand, assert that there are variations in the composition of the imports that may affect the substitutability of the imported products for the domestic product. Specifically, these Respondents claim that the French and West German imports are concentrated in distinct and differing polychloroprene grades.^{46/} As stated in the Commission's discussion of the cumulation issue, the data before us do not appear to support that contention. Consistent with this factual record and consistent with the need in these preliminary investigations to give Petitioner the benefit of all reasonable doubt, I have concluded for present purposes that the imports are substitutable for the domestic like product to the degree posited by Petitioner. This substitutability, together with the other information presented by Petitioner, suggests that LTFV sales of these imports reduced the prices of the domestic like product by a very small amount, and sales of the domestic like product by a greater, but still very small, amount.

These effects are not so slight as to lead, without question, to less than material harm to the domestic industry. They are, however, in light of all of the information of record, not so large as to be plainly a source of material injury. Taking the evidence of price and sales effects in the manner most

^{45/} Petitioner's Postconference Brief at 20.

^{46/} French Respondents' Postconference Brief at 8.

reasonably favorable to Petitioner, the record can be said to show a reasonable indication of effects that in some circumstances might arguably lead to material injury and in other circumstances surely would not. The issue squarely presented is whether the instant investigation belongs in the former of these categories or the latter. That requires consideration of the third statutory inquiry.

C. Investment and Employment

Our remaining task is to consider the extent, if any, to which LTFV sales of the subject imports resulted in material injury to either the financial or employment performance of the domestic industry. Viewed in isolation, the investment and employment data compiled by the Commission for the domestic industry producing polychloroprene ultimately provide no basis upon which conclusions regarding that issue can be drawn with even a reasonable degree of confidence. As in other Title VII investigations, such data can be useful, but only if evaluated with care in the context of the other previously-discussed information that is available to us respecting the effects of the alleged LTFV imports in question on prices and sales of the domestic like product. In this case, as in others, many factors that are not related in any way to LTFV sales of the subject imports have affected the performance of the domestic industry, including not only the overall state of the domestic and global economies, but a host of firm-specific developments (such as the

acquisition of Mobay Synthetics by Respondent Bayer in 1988).^{47/} These factors are, of course, also reflected in the various indicators of industry performance that are now before us.

That said, I note that the employment and financial data for the domestic industry are mixed, and susceptible to a variety of interpretations, none of which can be sustained on the basis of review of these data standing alone. In the first six months of this year, the period covered by our investigation that corresponds most closely to the period during which dumping is alleged to have occurred, the number of production and related workers [* * * *]^{48/} Employment levels [* *] over the period from 1986 to 1988,^{49/} but it appears that a large portion of this [*] may be attributable to [* * * *] reported over the period covered by our investigation.^{50/} Moreover, the hourly wage paid to production and related workers [* * * *] and significantly over the entire period covered by our investigation.

The financial data before us are similarly difficult to interpret. During the first six months of this year, when

^{47/} See Report at A-9.

^{48/} Report at A-17, Table 8.

^{49/} Id.

^{50/} Id.

dumping was allegedly occurring, the profitability of the industry, as measured by reported operating income, actually [* * *]%.51/ Over the preceding three-year period from 1986 to 1988, however, the industry was also [* * *], although the level of industry profitability [* * *] over the period.52/

Petitioner acknowledges that even at [* * * * *], its profit margins are still [*] than the average profit margins for U.S. manufacturing.53/ Petitioner asserts, however, that its profit margin data are nevertheless noteworthy because they reveal [*] trends and because the profit margins on du Pont's polychloroprene business are [*] than the average profit margins of all products manufactured by its Polymer Products Division.54/ Surely, however, these facts in themselves provide no basis for a finding of material injury by reason of LTFV sales of the subject imports. As previously noted, declining trends may be the product of any number of factors unrelated to LTFV imports. Furthermore, the mere fact that one of Petitioner's products may be earning [*] than certain of its other products at any given time does not provide a plausible basis for

51/ Id. at A-19, Table 9.

52/ Id.

53/ Petitioner's Postconference Brief at 12.

54/ Id. at 10-11.

an inference that the product that is performing [*] in a relative sense was injured by unfairly traded imports.

Accordingly, as in all cases, any reasoned assessment of the domestic industry's financial data ultimately depends on the inferences that have been drawn respecting the effects that LTFV sales have had on prices and sales of the domestic like product. As suggested earlier, the evidence in these investigations clearly indicates that these effects were small. This surely does not mean that the evidence contains no evidence of any effects from LTFV sales of the subject imports, nor is it to say that it is implausible to suppose that such sales had any effect on the industry's profitability. To the contrary, Petitioner has provided us with certain economic evidence suggesting that the industry may have lost as much as several millions of dollars in profits from LTFV sales of the subject imports -- assuming, as I have for the purposes of this preliminary investigation, the validity of Petitioner's argument respecting such important variables as the substitutability of the subject imports for the domestic like product and the degree to which domestic demand for polychloroprene is responsive to increases or decreases in the price of that product.^{55/} The question remains, however: even

^{55/} See Petitioner's Postconference Brief at 19-20; Confidential Annex D. I note, however, that these estimates presented by Petitioner appear to be predicated on an erroneous assumption respecting the relative importance of the West German home market to the West German producer of polychloroprene. See note 34, supra. Accordingly, Petitioner's estimates are overstated somewhat -- by perhaps [*]%.

assuming [*] of the magnitude posited by Petitioner, does the mere fact that such [* * *] constitute material injury? I am satisfied, in the context of these investigations, that it does not. I believe that it is plain that Congress expected that the Commission, in evaluating the existence of material injury by reason of LTFV imports, would take the health of the industry into account in assessing whether the impact of such imports on the domestic industry has been "material". In these investigations, no argument can be made -- and, indeed, no argument has been made by Petitioner -- that the domestic industry producing polychloroprene, even in the aftermath of its recent decline in profitability, is earning anything but [*] profits. Put another way, unlike many other cases before us, no argument can be made that this is an industry in trouble. Moreover, I believe that Congress intended us to evaluate injury in relation to the particular industry; an absolute decline in revenues or profits that might be below the level of ordinary fluctuations in a large industry (in other words, a negligible effect on that industry) might be of major importance to a smaller, or less profitable, one.^{56/} Under these circumstances,

^{56/} As I have stated elsewhere, I believe that it is clear that the term "material injury" does not connote an absolute dollar standard, no matter how large or small the industry. Such an absolute dollar standard finds no support in either the language or legislative history of the statute. Moreover, defining "material injury" under an absolute dollar standard would enable larger domestic industries to obtain relief far more easily than smaller ones, a discriminatory result that I believe plainly was not intended by Congress. See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal

I believe that no showing has been, or can be, made that there is even a reasonable indication that the domestic industry in these investigations has been materially injured by reason of LTFV sales of the subject imports.

CONCLUSION

For the foregoing reasons and for the reasons stated in the Views of The Commission, I have concluded that the record evidence in these investigations contains no reasonable indication that the domestic industry producing polychloroprene has been materially injured by reason of LTFV sales of polychloroprene or that the domestic industry is threatened with such injury.

Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, USITC Pub. 2185, Inv. Nos. 303-TA-19 and 20 and 731-TA-391-399 (Final) 133-134 (Mar. 1989) (Concurring and Dissenting Views of Vice Chairman Cass).

Additional Views of Commissioner Alfred E. Eckes

Polychloroprene from France
and the Federal Republic of Germany
Invs. Nos. 731-TA-446 and 447 (Preliminary)

The Commission has determined to issue two separate versions of the unanimous negative preliminary determination in these investigations: a business proprietary version (with business proprietary information in brackets), and an expurgated public version (with the bracketed information deleted). The result, in my view, is a "public" opinion that reveals almost nothing about the data gathered in these investigations and the trends in those data, and discloses very little of the Commission's analysis of these data in the context of the statutory factors we must consider in injury cases.

The public is entitled to the fullest possible disclosure of the bases for our determinations. Persons reading our opinions should be able to discern the nature and direction of trends in the data, as well as the significance of such trends in our evaluation of each statutory injury and causation factor. While a confidential opinion may be more convenient to defend in court, such concerns should not override the Commission's obligation to provide the public with reasons for its determinations.

INFORMATION OBTAINED IN THE INVESTIGATIONS

Introduction

On September 22, 1989, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce, by counsel on behalf of E.I. du Pont de Nemours & Co., Inc., Wilmington, DE. The petition alleges that imports of polychloroprene from France and the Federal Republic of Germany (West Germany) are being sold in the United States at less than fair value (LTFV), and that an industry in the United States is materially injured and threatened with material injury by reason of such imports.

Accordingly, effective September 22, 1989, the Commission instituted preliminary antidumping investigations under the applicable provisions of the Tariff Act of 1930 to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports of such merchandise into the United States.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 29, 1989 (54 FR 40217).¹ The conference was held in Washington, DC, on October 13, 1989.² The Commission voted on these investigations on November 1, 1989, and transmitted its determinations to the U.S. Department of Commerce on November 6, 1989.

Previous and Related Investigations

In 1973, polymerized chlorobutadiene (polychloroprene) from Japan was the subject of an antidumping investigation by the United States Tariff Commission. That investigation (No. AA1921-129, TC publication 622, October 1973) resulted in an affirmative determination of injury to the domestic industry by reason of imports of polychloroprene from Japan, and an antidumping order has been in effect for the subject imports from Japan since that time.³

¹ Copies of the Commission's and Commerce's notices are presented in app. A.

² A list of witnesses appearing at the conference is presented in app. B.

³ 38 FR 33593, Dec. 6, 1973.

The Product

Description and uses

Product description.--Polychloroprene is the name used for a family of synthetic rubber-like polymers based on chloroprene (2-chloro-1,3-butadiene). ⁴ Polychloroprene, or neoprene, was actually the first commercial synthetic rubber or synthetic elastomer. ⁵ It was discovered in the laboratories of Notre Dame University, developed by E.I. du Pont de Nemours & Co., and introduced commercially for the first time by DuPont in 1931 (under the trade name DuPrene). ⁶

The polychloroprene subject to these investigations includes dry polymers and aqueous latex-grade polymers. Within the dry form, a number of different types or families of polychloroprene are commercially available, and are classified as general purpose, adhesive, and specialty types. Within each type, several grades are generally available. ⁷ Polychloroprene, as sold by U.S. producers and importers, is a raw synthetic rubber. To convert the raw polymer into useful objects, it must be mixed or compounded with selected chemicals, fillers, and processing aids.

Petitioner contends that imports of polychloroprene from France and West Germany compete with the domestic product over the range of polymer types and families. ⁸

Physical and chemical characteristics.--Polychloroprene is noted primarily for its high resilience and excellent resistance to ozone and weathering. It also possesses high strength and good resistance to abrasion,

⁴ The product covered here is more commonly known as neoprene, which is a DuPont Co. trade name; but, through use, it is now the generic designation for the polymers of chloroprene.

⁵ "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. The term "elastomers" includes the complete spectrum of elastic or rubber-like polymers that are sometimes randomly referred to as rubbers, synthetic rubbers, or elastomers. More properly, however, rubber is a natural material and synthetic rubbers are polymers which have been synthesized to reproduce consistently the best properties of natural rubber. Since such a large number of rubber-like polymers exist, the broad term elastomer is most fitting and is commonly used. In general, the term polymer encompasses plastics as well as elastomers.

⁶ In 1936, the trade name of DuPont's polychloroprene was changed to Neoprene.

⁷ Du Pont offers 22 different grades within its dry polychloroprene families.

⁸ The petition, at Annex B, provides comparative charts of domestic and imported products.

oxidants, oil, and aging. Polychloroprene is also noted for its combination of fire-retardant, good solvent-resistant, and high temperature-stability properties. Among its major drawbacks are some difficulty in processing, only fair dielectric properties, and poor resistance to low temperatures. Polychloroprene elastomers are especially useful where a variety of deteriorating conditions exist.⁹

As described in DuPont literature, polychloroprene is a multi-purpose elastomer which yields a balanced combination of properties. All types have these inherent characteristics:

- o Resist degradation from sun, ozone, and weather.
- o Perform well in contact with oils and many chemicals.
- o Remain useful over a wide temperature range.
- o Display outstanding physical toughness.
- o Resist burning inherently better than exclusively hydrocarbon rubbers.

Among polychloroprene types, G types are utilized when dynamic properties like tear, flex, and resilience are major considerations. The W and T types of polychloroprene are used when resistance to heat aging and compression set are primary requirements.

Polychloroprene is produced in the form of various dry/solid types and latices that differ primarily because of their differing tendencies to crystallize. This process is accomplished through variations in polymerization process and conditions; that is, the nature and amount of the initiators, emulsifiers, the temperature, the conversion rate, and the polymer stabilization system. Each type of polychloroprene is characterized by the rate at which the hardness of an unvulcanized compound increases and also by its processing properties and uses.¹⁰

Polychloroprene products, whether domestically produced or imported, must meet basic specifications as established by the American Society of Testing Materials (ASTM) and the International Standards Organization (ISO).

⁹ Chemical Economics Handbook, SRI International, 1984.

¹⁰ Vulcanization is described as the conversion of rubber from a predominantly plastic to an elastic condition by 3-dimensional crosslinking. Through the vulcanization process, a soft tacky thermoplastic material, such as neoprene, is converted into a strong, temperature-stable thermoset material possessing unique elastic and yield properties.

Vulcanization is the final rubber processing step and was originally accomplished with heat and sulfur. Today the term covers a broad spectrum of systems which use sulfur or nonsulfur vulcanizing agents, and which may or may not be carried out at room temperature. Metal oxides, such as zinc oxide and magnesium oxide, serve, generally along with organic accelerators, as the curatives or vulcanizing agents for neoprene. The metal oxides also are essential to ensure good aging properties of the neoprene as it undergoes vulcanization.

These basic control specifications include viscosity, alkalinity, volatiles (water) content, and processability properties (e.g., scorch limits). As an example, one of the most descriptive properties about an elastomer is its viscosity. ¹¹ A complex gasket made in a mold would require a low viscosity polychloroprene to fill the mold completely. On the other hand, a product such as a hose for automotive applications would be made from a higher viscosity material for strength requirements. The adhesive-grade polychloroprenes are made in several very high viscosity grades.

Manufacturing process

The broad range of physical and chemical properties available in the family of chloroprene homo- and copolymers permits polychloroprene to fulfill the requirements of many applications. This versatility arises from the chemistry of free-radical emulsion polymerization of chloroprene. The process used in the manufacture of polychloroprene consists of three stages: monomer production, polymerization, and finishing. ¹²

Monomer production.--Butadiene, ¹³ chlorine, and sodium hydroxide are the principal raw materials used in the production of chloroprene, which is the crude product in the manufacturing process.

Polymerization.--Polychloroprene is generally produced in a batch process by the emulsion polymerization of chloroprene in water using a rosin soap as the emulsifying agent and using an initiator of an alkali persulfate (e.g., ammonium persulfate) with sulfur present. ¹⁴ The production temperature is maintained at about 40°C. In producing copolymers, the comonomer most frequently used is 2,3-dichloro-1,3-butadiene. Copolymerization is difficult since chloroprene tends to form homopolymers even in the presence of other monomers. Details of the manufacturing process vary according to the specific end properties desired in the product.

¹¹ Viscosity is defined as the internal resistance to flow exhibited by a fluid. Water is the primary viscosity standard against which other fluids are measured. The plasticity or viscosity of raw elastomers or compounds is measured in terms of Mooney viscosity.

¹² See app. C for polychloroprene process diagrams.

¹³ Butadiene, the key starting material, is produced as an ethylene coproduct at stream crackers, with yield depending on feedstock.

¹⁴ Petitioner has indicated that Bayer in Europe uses a continuous production process for neoprene. An advantage to the continuous process is that it is less labor intensive, while a disadvantage is the loss of shelf stability with the peptizable sulfur copolymer types of product that is afforded by the batch process. (* * *). In multiple product plants, batch operation seems preferable.

The production is carried out without any additives ¹⁵ or compounding ingredients having a function in the processing of the rubber (compounding, shaping, and/or vulcanization) for end-use purposes.

After polymerization is complete, unconverted monomer is recovered and the product aged at low temperatures for about 8 hours. After aging, the alkaline latex is acidified. This acidification stops the plasticizing (i.e., solubilizing) action, precipitates the rosin that is retained by the polymer, and prepares the latex for isolation of the polymer. ¹⁶ About 10 percent of the polychloroprene is not removed from the aqueous phase, but is sold for use in the form of latex.

Finishing.--The polymer is isolated from the emulsion by acidifying the latex to a point just short of coagulation. The emulsion is then fed into a large pan in which a large rotating brine-cooled drum is immersed. The polychloroprene is stripped as a film from the surface of the drum, washed, and dried. The dried film is cooled, gathered into rope form, and cut into chips approximately one-quarter inch in thickness by one inch in diameter, coated with talc, and packaged.

Petitioner argues that all types of polychloroprene are generally produced at common manufacturing facilities, often on identical or similar machinery and equipment, employing labor skills that are often interchangeable. ¹⁷

End uses

The broad range of physical and chemical properties available in the polychloroprene family permits this material to enter a wide range of markets

¹⁵ Other than a plasticizer, a stabilizer, and short-stopping agents or "short stops," which are chemicals that terminate polymerization. Polymerization is terminated between 30 percent complete (low conversion) and 91 percent complete (high conversion). The degree of conversion is a control variable that affects the processability of the neoprene. Low conversion is used for neoprene copolymers and neoprene for molding products. High conversion is used for neoprene directed towards such markets as adhesives.

¹⁶ Neoprene as produced is of such high molecular weight that it is virtually insoluble in any solvents. Therefore an ingredient is added to the process that not only acts as a "short stop" but also reduces the molecular weight of the neoprene, thus permitting it to be more soluble and, therefore, usable, in various organic solvents.

¹⁷ * * *

from adhesives to wire coverings.¹⁸ Polychloroprene's major end-use areas with examples are shown in the following tabulation:

<u>End-use application (examples)</u>	<u>1988 share of consumption (Percent)</u>	<u>Percent change 1986-88</u>
Mechanical (e.g., belts, conveyors, and seals).....	***	***
Automotive (e.g., V-belts, hoses, and weather stripping).....	***	***
Building/construction (e.g., road seals, pipe gaskets for sewer pipes, and bridge pads)....	***	***
Wire and cable (e.g., wire and cable jackets)..	***	***
Adhesives (e.g., contact adhesives and sealants).....	***	***
Other (e.g., sponge coated fabrics, printing rollers, and soles for industrial footwear)..	***	***
Latex.....	***	***
Total.....	100	

Interchangeability

Parties have reported that there is virtually no substitution among grades other than among like/comparable grades of different producers. However, there is evidence that substitutability among certain families/types of polychloroprene does occur. In response to the Commission's questionnaire parties provided the following comments on the substitutability of different grades of dry polychloroprene:

<u>Firm</u>	<u>Comment</u>
DuPont	* * *.
Mobay Synthetics	* * *.
Mobay Corp.	* * *.
A. Schulman	* * *.

¹⁸ The application dictates the type of polychloroprene which will be used. For example, DuPont reports in its petition that the peptizable sulfur copolymers of polychloroprene typically enter uses such as V-belts, conveyors and other dynamic applications while the mercaptan-modified polychloroprene polymers typically enter uses such as hose, gaskets, and other molded goods.

Like product considerations

During the course of these investigations, parties have framed and addressed the following possible like product considerations: ¹⁹

Polychloroprene and other synthetic elastomers.--Petitioner cites clear and significant differences, especially in chemical composition, manufacturing process (produced at atmospheric pressure rather than under pressure), and performance characteristics, when it argues that polychloroprene is not like other synthetic elastomers. ²⁰

Counsel for the West German respondent has indicated agreement with the petitioner's definition of the product in that they "do not seek to claim that other synthetic rubber products which are close substitutes in use for polychloroprene are like products for purposes of the Commission's determination." ²¹

Different forms of polychloroprene.--Petitioner contends that dry and latex forms of polychloroprene are the same product with respect to properties ("polymer backbone") and manufacturing processes, concluding that latex polychloroprene is the liquid version of the dry product. Latex is simply pulled off the production line before it dries.

Different types and grades of dry polychloroprene.--There are four basic families of polychloroprene: G-types, W-types, T-types, and A-types. Petitioner cites relatively minor distinctions in composition in some cases, e.g., G-types have some sulfur. In another case, the difference is in the production process, e.g., A-types are W-types polymerized at very low temperatures. Petitioner concludes that the similarities are far greater than the distinctions. ²²

Compounds.--Polychloroprene products require certain engineering properties usually associated with strength or working environment. Raw polychloroprene is converted to these products by mixing selected ingredients into the polychloroprene and curing (i.e., vulcanizing) the resulting compound. Minimum requirements for a practical compound include: chloroprene polymer, processing aid, antioxidant, metallic oxide, curing agent and/or accelerator, filler or reinforcing agent, and physical softener (plasticizer). ²³

¹⁹ Counsel for the French respondent, Distugil, has indicated that his client does not wish to take a position on "like product" issues.

²⁰ See app. D for supplemental information regarding other synthetic elastomers.

²¹ Post-conference brief of Bayer and Mobay, p. 26, fn. 7.

²² Transcript of the staff conference (TR), p. 12.

²³ Maurice Morton, Rubber Technology, 1973, p. 328.

Petitioner contends that foreign respondents could easily import compounds of polychloroprene if an antidumping order were issued against polychloroprene without compounds, by simply adding "a little carbon black to the product and try to enter it as a compounded product." ²⁴ Counsel for the West German respondent has indicated that compounds should not be included in the product definition, stating that it "supports the Commission definition of product which makes it clear that a covered product must retain its essential character as a raw material." ²⁵

U.S. tariff treatment

Imports of polychloroprene are classified in subheading 4002.41.00 (chloroprene rubber, latex) and in subheading 4002.49.00 (chloroprene rubber, other) of the Harmonized Tariff Schedule of the United States (HTS). Polychloroprene was classified in schedule 4 of the former Tariff Schedules of the United States (TSUS) (see app. E for complete nomenclature of the HTS and TSUS provisions that cover the subject products).

The current column 1-general rate of duty for polychloroprene, applicable to imports from France and West Germany, is free. ²⁶ Most-favored-nation (MFN) imports of polychloroprene have been free of duty since January 1, 1987, when polychloroprene was provided for in TSUS item 446.15. Polychloroprene not containing fillers, pigments, or rubber processing chemicals was separately reported for statistical purposes under TSUS item 446.1521. For calendar year 1986, uncompounded polychloroprene was dutiable under TSUS item 446.15 at a rate of 0.4 percent ad valorem for MFN imports.

²⁴ When questioned at the preliminary conference, petitioner indicated that a small amount of carbon black in the raw material polychloroprene would not make the resulting mixture a compound, by the traditionally accepted definition of "compound", and that compounds are usually in the form of a rough-surfaced sheet that are cut in strips approximately 18 inches or 2 feet wide (TR, p. 31).

²⁵ Post-conference brief of Bayer and Mobay, p. 6. Bayer and Distugil have reported that they do not manufacture polychloroprene compounds, and that they, therefore, do not export such compounds to the United States.

²⁶ These headings apply to polychloroprene which has not been compounded as defined in note 5(a) and 5(b) to chapter 40, "Rubber and Articles Thereof", of the HTS. Imports of compounded polychloroprene, unvulcanized in primary forms or in plates, sheets or strips, could enter under one of three "basket" categories of the HTS: subheading 4005.10.00, compounded with carbon black or silica; subheading 4005.20.00, covering solutions and dispersions other than those of subheading 4005.10; and subheading 4005.99.00, other, n.e.s. These value-added products are outside the scope of these investigations.

The Nature and Extent of Alleged
Sales at Less Than Fair Value

For each of the countries covered by these investigations, the petitioner has calculated LTFV margins by comparing the United States price for particular sales with adjusted home market prices (except as noted). The following tabulation provides estimated dumping margins for products comparable to representative DuPont grades, for each country:

<u>Product grade</u>	<u>Estimated dumping margins</u>	
	<u>France</u>	<u>West Germany</u>
	<u>----(percent)----</u>	
W.....	34.3	41.2
GRT.....	45.5	44.6
TW.....	22.1	27.4
AD 10.....	<u>46.9</u>	<u>49.1</u>
Average.....	35.9	39.0

The U.S. Market

U.S. producers

There are two producers of polychloroprene in the United States, and the Commission has received completed responses to its questionnaires from both. A brief description of each firm follows.

DuPont.--DuPont was and is the principal U.S. producer of polychloroprene, and has held that position since it developed and introduced the product to the market in 1932. During the period of investigation DuPont's share of domestic shipments has been at or above *** percent. DuPont produces polychloroprene at Louisville, KY, and La Place, LA. All of DuPont's production of monomer (chloroprene) takes place at its Pontchatrain facility (La Place), the majority of which is then shipped to Louisville by freight car for polymerizing and finishing. The Louisville facility produces all of DuPont's latex product, sulfur grades, and copolymers. DuPont imports specialty grades of polychloroprene from its subsidiary in Northern Ireland.

Mobay Synthetics.--Mobay Synthetics has been the only other U.S. producer of polychloroprene (in one name or another) since 1969; it opposes the petition. Since January 1, 1988, Mobay Synthetics has been a wholly-owned subsidiary of Mobay Corp., which in turn is a wholly-owned subsidiary of Bayer AG, the West German respondent in these investigations. From 1978 to 1987, Mobay Synthetics was known as Denka Chemical Corp., changing ownership in March of 1984 when an employee group acquired the firm from its Japanese parent, Denki Kagak Kogyo. Prior to 1978, the firm was known as Petro-Tex Chemical Corp. and had begun polychloroprene production operations in 1969. Mobay Synthetics has indicated that it has not imported polychloroprene from any country during the period of these investigations.

U.S. importers

Information identifying importers of polychloroprene was provided by counsel for the petitioner, and was verified against import files provided to the Commission by the U.S. Customs Service. The Commission sent questionnaires to *** importers, which included all the known major importers of polychloroprene. The *** importers are believed to account for almost all imports of polychloroprene from the countries subject to these investigations.

There are two principal importers of polychloroprene in the United States, and a brief description of the firms follows.

A. Schulman, Inc..-A. Schulman, located in Akron, OH, is the exclusive and unrelated distributor of imports of polychloroprene from the French respondent, Distugil. Counsel for the French respondent reports that imports of polychloroprene from Distugil have been present in the U.S. market since the early 1970's.

Mobay Corp..-Mobay Corp. is located in Pittsburgh, PA, and is a wholly-owned subsidiary of the West German respondent in these investigations, Bayer AG. Mobay Corp. is the principal importer of polychloroprene from West Germany, although a limited number of imports have been shipped directly from Bayer to U.S. customers. These direct shipments of latex product accounted for a small and decreasing share of Bayer's exports, as these direct shipments are being phased out.

Character of the U.S. market

Introduced to the market in 1932 as the only alternative to natural rubber, polychloroprene (at age 57) is now in the mature phase of its manufacturing technology, product property development, and application evolution. The petitioner reports that from the 1950's to the mid-1980's, polychloroprene was substituted for in many applications by newer, more cost-effective elastomers and plastics (i.e., functional competition). Now, however, only thermoplastic elastomers (TPEs) are competing with polychloroprene in its remaining markets, and this competition is in window gaskets, a minor erosion.²⁷ DuPont reports that since the mid-1980's, domestic polychloroprene has competed against only imported polychloroprene for its market share. The markets which polychloroprene still retains (e.g., high-performance transmission belts in the automotive industry) reportedly are

²⁷ Nitrile rubber is used in TPEs for blends or alloys and in this fashion nitrile rubber is competing with neoprene. With the TPEs, it is simply process economics; that is, the TPEs require less equipment, less manpower, the scrap is reusable, and TPEs can be processed on plastic equipment.

for products made from polychloroprene because lower cost elastomers do not meet the performance requirements.²⁸

Respondents argue that a number of lower cost and in some cases higher performance substitutes for polychloroprene²⁹ have been developed and marketed, and have caused U.S. polychloroprene production to decrease, particularly since 1974. Respondents indicate that despite the apparent stability in the U.S. polychloroprene market from 1986 to 1988, long-term trends may continue to decline.³⁰

Domestic consumption of polychloroprene is estimated by the International Institute of Synthetic Rubber Producers (IISRP)³¹ to have reached 80,000 metric tons in 1988, or an average annual growth of 3.3 percent during 1986-88. This growth is based in part on the weakness of the U.S. dollar, which has helped U.S. producers by promoting fabricated rubber-goods exports. In addition, industry sources are optimistic that polychloroprene demand is no longer declining because of new major outlets, such as the modification of asphalt for roads.³² One source reports that polychloroprene will continue to grow at an estimated rate of 1-2 percent annually through 1992. The biggest market is for industrial and mechanical goods, such as hose, belts, and O-rings, which will increase at 3 percent per year from 1988 to 1992.³³ IISRP, on the other hand, forecasts the average annual growth rate of polychloroprene in the United States at only 0.25 percent for 1988 to

²⁸ "Chemical Profile-Neoprene," Chemical Marketing Reporter, Oct. 1, 1988, states that the [domestic] replacement of neoprene by chlorinated polyethylene, styrene butadiene-rubber, and ethylene propylene terpolymers has reached its saturation point in some markets. Some markets into which chlorinated polyethylene had made inroads, such as wire and cable and weather stripping, have returned to neoprene use. Globally, however, neoprene continues to lose ground to styrene butadiene rubber and ethylene propylene terpolymers in automotive and industrial markets, where its use should continue to decline through 1992.

²⁹ Respondents cite, in particular, ethylene-propylene (EPDM), styrene-butadiene (SBR), and nitrile rubber (NR) as substitute products.

³⁰ Post-conference brief of Bayer, pp. 25-26.

³¹ The IISRP is an association of synthetic rubber producers located in noncommunist countries. Its 51 member companies provide more than 95 percent of the world's synthetic rubber produced in noncommunist countries.

³² "Bounce for Synthetic Rubber: Tires are Back in the Fast Lane," Chemical Week, Apr. 19, 1989, pp. 40-52.

³³ "The Changing Shape of the Rubber Market," Chemical Week, Apr. 20, 1988, pp. 18-30.

1993.³⁴ Figure 1 graphically depicts the salient features of the U.S. polychloroprene market since 1955.

Apparent U.S. consumption

The data on apparent U.S. consumption of polychloroprene presented in table 1 are composed of the sum of domestic shipments of U.S.-produced polychloroprene, domestic shipments of imports of polychloroprene from France, the United Kingdom, and West Germany as reported in response to the Commission's questionnaires, and imports from all other countries (excluding imports from Belgium) as reported in official U.S. import statistics.

Table 1

Polychloroprene: U.S.-produced domestic shipments, shipments of imports, and apparent U.S. consumption, 1986-88 and January-June 1988-89

* * * * *

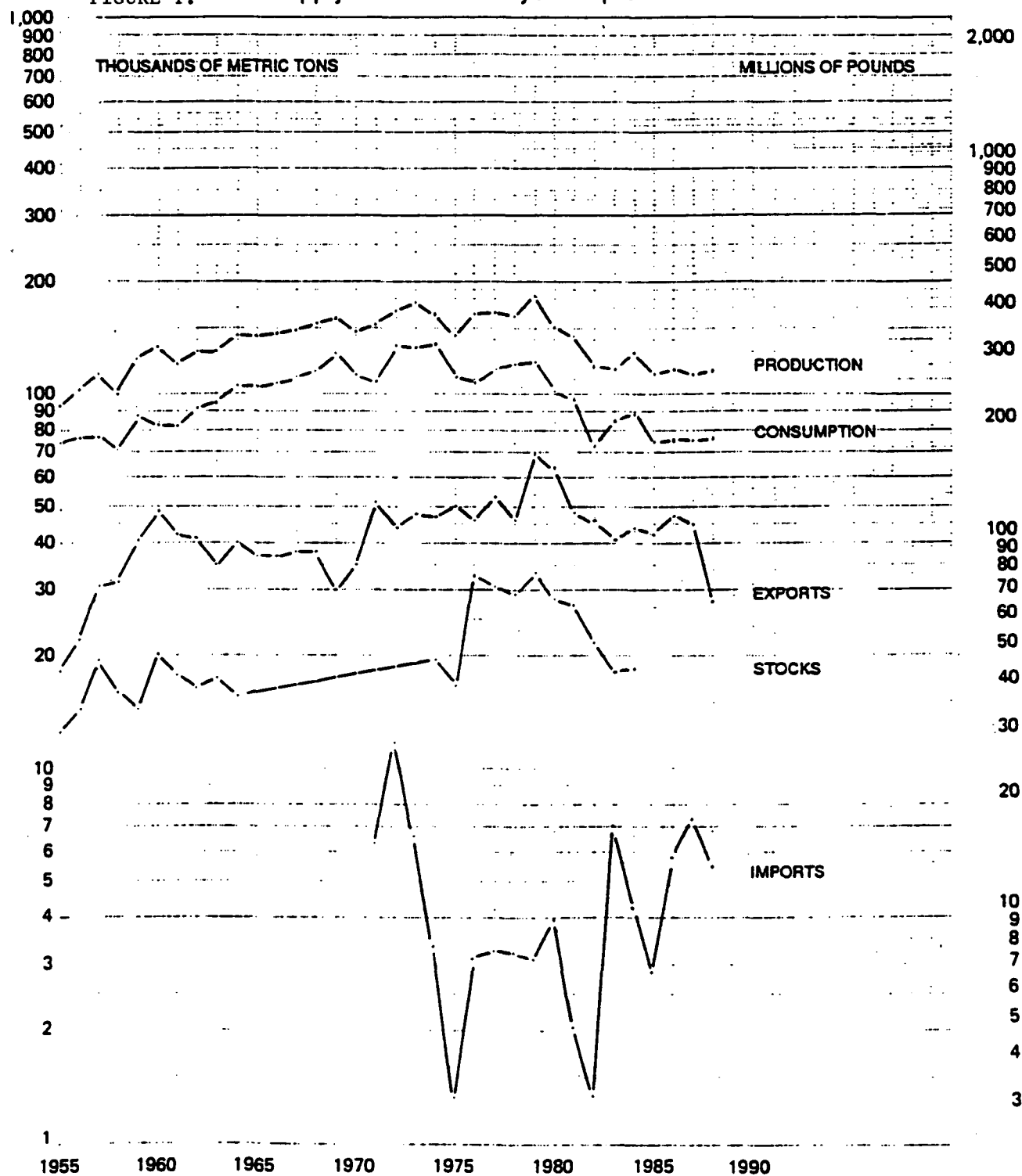
Trends in apparent consumption.--Apparent consumption of all polychloroprene * * * million pounds from 1986 to 1987, and then * * * to *** million pounds in 1988, or by *** percent. Apparent consumption during January-June 1989 * * * by *** percent when compared with the corresponding period of 1988.³⁵ Trends in total apparent consumption of polychloroprene are heavily influenced by activity in the dry polychloroprene product category, as it represented approximately *** percent of total apparent consumption during the period of investigation.

U.S. producers' share of apparent consumption.--The U.S. producers' share of total apparent consumption of all polychloroprene (based on quantity) * * * from *** percent in 1986 to *** percent in 1987, * * * to *** percent in 1988, and *** percent in January-June 1989.

³⁴ "IISRP Shows Substantial Increase in North American SR Consumption in 1988: 3.7% over 1987," IISRP News release, January 1989.

³⁵ These * * * trends are confirmed by published data from industry associations.

FIGURE 1.—U.S. Supply/Demand for Polychloroprene Elastomers



Channels of distribution

Data regarding channels of distribution for both U.S.-produced and imported French and West German polychloroprene are presented in table 2.³⁶ As shown, U.S.-produced and imported polychloroprene are sold through similar channels of distribution. The vast majority of polychloroprene, whether domestically produced or imported, is sold to end users (processors) that manufacture intermediate goods for use in downstream industry applications.

Table 2

Polychloroprene: Channels of distribution, 1986-88

* * * * * *

End-use applications

The broad range of physical and chemical properties available in the polychloroprene family permits this material to enter a wide range of markets from adhesives to wire coverings. The principal markets for both U.S. producers and importers of polychloroprene are mechanical, automotive, and adhesive applications (table 3). These markets accounted for approximately *** percent of total shipments of polychloroprene in 1988. As shown in table 3, imports of polychloroprene from France and West Germany were sold to customers in all industry segments.³⁷ From 1986 to 1988, U.S.-produced polychloroprene gained segment share in *** of seven industry segments; i.e., * * *.

Table 3

Polychloroprene: End-use applications, 1986-88

* * * * * *

³⁶ See app. F for market data for imports of French and West German polychloroprene, reported separately.

³⁷ See app. F for individual country data.

Consideration of Alleged Material Injury

The information in this section of the report was compiled from responses to questionnaires of the U.S. International Trade Commission. The two producers that provided questionnaire responses are believed to have accounted for all domestic shipments of U.S.-produced polychloroprene during the period of investigation.

U.S. production, capacity, and capacity utilization

Data on reported U.S. production, end-of-period capacity, and capacity utilization in connection with operations on polychloroprene are presented in table 4. Production of polychloroprene * * * from *** million pounds in 1986 to *** million pounds in 1987, or by *** percent, but then * * * to *** million pounds in 1988, or by *** percent.³⁸ Production during January-June 1989 * * * by *** percent from the level during the corresponding period of 1988. Capacity to produce polychloroprene remained unchanged for both U.S. producers during the period of investigation.

Table 4

Polychloroprene: U.S. capacity, production, and capacity utilization, 1986-88 and January-June 1988-89

* * * * *

Utilization of capacity to produce polychloroprene * * * over the period of investigation, with * * *. Capacity utilization for U.S. producers in manufacturing polychloroprene * * * from *** percent in 1986 to *** percent in 1987, * * * to *** percent in 1988 and *** percent during January-June 1989.

U.S. producers' domestic shipments

Data on U.S. producers' domestic shipments of polychloroprene are presented in table 5. Domestic shipments of U.S.-produced polychloroprene * * * from *** million pounds in 1986 to *** million pounds in 1987, or by *** percent, and * * * to *** million pounds in 1988, or by *** percent. Domestic shipments * * * by *** percent during January-June 1989 when compared with shipments in the similar period of 1988. As shown in table 5, the trend in shipments for the two U.S. producers moved * * *.

³⁸ * * *.

Table 5

Polychloroprene: U.S. producers' domestic shipments, 1986-88 and January-June 1988-89

* * * * *

The average unit values for U.S. producers' domestic shipments * * * from \$*** per pound in 1986 to \$*** per pound in 1987, and * * * in 1988. Average unit values * * * during January-June 1989 to \$*** per pound from \$*** per pound in the corresponding period of 1988. Average unit values for Mobay Synthetics were * * *. ³⁹ To a certain extent, average unit values of polychloroprene are affected by the amount of "off-grade" product that each producer sells. ⁴⁰

U.S. producers' exports

Information on U.S. producers' exports of polychloroprene is based on questionnaire responses and the data are presented in table 6. The quantity of U.S. producers' exports of all polychloroprene * * * from *** million pounds in 1986 to *** million pounds in 1987, or by *** percent, and * * * to *** million pounds in 1988, or by *** percent.

Table 6

Polychloroprene: U.S. producers' exports, 1986-88 and January-June 1988-89

* * * * *

U.S. producers' exports as a share of total shipments of all polychloroprene * * * from *** percent in 1986 to *** percent in 1988, * * * from *** percent during January-June 1988 to *** percent during the same period in 1989.

Average unit values of export shipments were * * * than domestic shipments * * *, and while moving irregularly, were * * * \$*** per pound * * *.

³⁹ * * *.

⁴⁰ Polychloroprene is "off-grade" when the products are over age (average shelf life is 12 months), or out-of-spec (viscosity may be 51 when the specification range is 40-50). Applications for these off-grades include * * *.

U.S. producers' inventories

U.S. producers' inventories of polychloroprene * * * over the period of investigation (table 7). As a share of U.S. producers' total shipments of polychloroprene during the preceding year, inventories of polychloroprene * * * from *** percent as of December 31, 1986, to *** percent as of December 31, 1987, and * * * to *** percent at yearend 1988. Inventories of polychloroprene * * * from *** percent of annualized shipments as of June 30, 1988, to *** percent as of June 30, 1989.

Table 7

Polychloroprene: U.S. producers' inventories, 1986-88 and January-June 1988-89

* * * * *

U.S. producers' employment and wages

The average number of production and related workers producing polychloroprene * * * over the period of investigation. The number of such employees * * * from *** in 1986 to *** in 1987, or by *** percent, and * * * to *** in 1988, or by * * * percent (table 8). The average hourly wage for production and related workers producing polychloroprene * * * over the period of investigation from \$*** in 1986 to \$*** during January-June 1989. Labor productivity * * * over the period of investigation from *** pounds per hour in 1986 to *** pounds per hour during January-June 1989.

Table 8

Polychloroprene: Average number of production and related workers, hours worked by and average hourly wages paid to such employees, and labor productivity, 1986-88 and January-June 1988-89

* * * * *

Financial experience of U.S. producers

E.I. du Pont de Nemours & Co., Inc. and Mobay Synthetics Corp., accounting for all U.S. production of polychloroprene in 1988, supplied income-and-loss data on polychloroprene operations.

On January 1, 1988, Mobay Synthetics Corp. purchased Denka Chemical Corp., a producer of polychloroprene in 1986 and 1987. Denka Chemical Corp. reported 9 months' income-and-loss data for 1987 because of a change in its fiscal yearend. For comparative purposes, the 1987 income-and-loss data were annualized in this report.

Polychloroprene operations.--Income-and-loss data on polychloroprene operations, for each company and combined are shown in table 9. Net sales of polychloroprene * * * percent from \$*** million in 1986 to \$*** million in 1987. Sales * * * percent to \$*** million in 1988. Operating income was \$*** million in 1986, \$*** million in 1987, and \$*** million in 1988. Operating income margins as a percent of sales were *** percent in 1986, *** percent in 1987, and *** percent in 1988.

Net sales in the interim period ended June 30, 1989, were \$*** million, * * * of *** percent over interim 1988 sales of \$*** million. Operating income was \$*** million in interim 1988 and \$*** million in interim 1989. Operating income margins, as a percent of sales, were *** percent and *** percent in interim 1988 and interim 1989, respectively.

The income-and-loss experience on an average per pound basis is shown in table 10 for each company and both companies combined. Net sales * * * percent from \$*** per pound in 1986 to \$*** per pound in 1987 and 1988. Operating income on a per-pound basis for both companies combined * * * from *** cents in 1986 to *** cents in 1987 and *** cents in 1988. Net sales on a per-pound basis were \$*** in interim 1989, compared with \$*** in interim 1988. The operating income per pound was *** cents in interim 1988 and *** cents in interim 1989.

Capital expenditures.--Capital expenditures for the producers of polychloroprene are shown in the following tabulation (in thousands of dollars):

* * * * *

Value of plant, property, and equipment.--End-of-period investment in facilities producing polychloroprene and the annual return on those investments are shown in table 11.

Research and development expenses.--Research and development expenses for polychloroprene are shown in the following tabulation for each company (in thousands of dollars):

* * * * *

Impact of imports on capital and investment.--The Commission requested that DuPont and Mobay describe and explain the actual or anticipated negative effects, if any, of imports of polychloroprene from France and West Germany on their growth, development and production efforts, investment, and ability to raise capital. Their comments are shown in appendix G.

Table 9

Income-and-loss experience of U.S. producers on their operations producing polychloroprene, by firms, accounting years 1986-88, January-June 1988, and January-June 1989

* * * * *

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

2/ * * *.

3/ * * *..

4/ * * *.

5/ For comparative purposes, the operating income margins for the DuPont business segment, Polymer Products, computed from the DuPont 1988 Annual Report to shareholders were 12.3 percent for 1986, 14.9 percent for 1987, and 14.7 percent for 1988. Polychloroprene produced in the United States by DuPont comprises approximately *** percent of Polymer Products.

6/ For comparative purposes, operating income margins as a percent of sales for the Industrial Chemicals and Synthetics industry from the Quarterly Financial Reports of the U.S. Department of Commerce were 7.7 percent for 1986, 9.2 percent for 1987, and 11.0 percent for 1988.

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

Table 10

Income-and-loss experience on a per-pound basis of U.S. producers on their operations producing polychloroprene, by firms, accounting years 1986-88, January-June 1988, and January-June 1989

* * * * *

Table 11

Polychloroprene: Value of property, plant, and equipment of U.S. producers, by firms, accounting years 1986-88

* * * * *

Consideration of the Question of
Threat of Material Injury

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. § 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors ⁴¹--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

⁴¹ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation, (IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product. ⁴²

Item I (nature of subsidies) does not apply in these investigations, since no subsidies have been alleged. Information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject products and the alleged injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of alleged material injury." Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), (VIII) and (IX) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets, follows.

Ability of foreign producers to generate exports and the availability of export markets other than the United States

The world market.--This section of the report has been prepared in order to provide a perspective on the globalization of the market for polychloroprene. The companies and countries that are parties to these investigations accounted for approximately 51 percent of the world's capacity

⁴² Section 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT-member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

to produce polychloroprene; from 1986 to 1988, DuPont held 33 percent of world capacity, Bayer AG held 11 percent, and Distugil held 7 percent.⁴³

As with U.S. demand, worldwide demand for polychloroprene is dependent on the level of business activity in its end-use markets, which are primarily in automotive, mechanical, and adhesive applications. Consumption of polychloroprene increased worldwide by about 2 percent during 1986-88. This relatively flat change in polychloroprene consumption worldwide reflects the mature nature of this commodity. Industry sources forecast that worldwide polychloroprene consumption will increase between 1988 and 1993 at an average annual growth rate of 0.6 percent.⁴⁴ Most of this growth will occur in Latin America (5.5 percent average annual growth rate), Asia, and Oceania (2.0 percent average annual growth rate). This reflects the growing rubber fabrication industry in these regions to serve local needs, including automotive, as well as increased exports of fabricated goods. Polychloroprene consumption in Western Europe over this period is projected to grow at an average annual rate of only 1.1 percent since Western Europe represents a mature market for polychloroprene. Tables 12-14 show worldwide consumption, production and capacity, by region for 1986-88, and projections through 1990.

France.--Information on capacity, production, and shipments of polychloroprene by Distugil, the only known French producer/exporter, was provided by counsel for the respondent. The data are presented in table 15. Exports of polychloroprene to the United States accounted for *** percent of total shipments of such merchandise in 1986, * * * to *** percent in 1987, and * * * to *** percent in 1988. Distugil reported operating * * *.

West Germany.--Information on capacity, production, and shipments of polychloroprene by Bayer AG, the only known West German producer/exporter, was provided by counsel for the respondent. The data are presented in table 16. Exports to the United States accounted for *** percent of total shipments (based on quantity) of polychloroprene in 1986; this share * * * to *** percent in 1987, and * * * to *** percent in 1988. Bayer reported operating * * * percent of capacity during the period of investigation, with * * *.

Outstanding dumping orders.--Respondents have reported that the polychloroprene exported by their firms is not subject to antidumping or countervailing duty orders in the markets of GATT-member foreign countries.

Importers' inventories

The available data on U.S. importers' inventories of polychloroprene from the subject countries, as reported by the two major importers (accounting for *** percent of total imports in 1988) in response to the Commission's questionnaires, are presented in table 17.

⁴³ World Elastomers, Tecnon, 1989. If data for centrally planned countries were excluded, the three world producers would account for approximately 83 percent of the world's capacity to produce polychloroprene; from 1986 to 1988, DuPont held 50 percent of such capacity, Bayer AG held 23 percent, and Distugil held 11 percent (Worldwide rubber statistics, IISRP, 1989).

⁴⁴ Worldwide Rubber Statistics 1989, IISRP, Houston, TX, p. 10.

Table 12

Polychloroprene: Worldwide consumption, by region, 1986-88 and projected 1989-90

(In thousands of metric tons)

Region	1986	1987	1988	1989	1990
North America.....	88	87	85	86	86
Western Europe.....	85	85	87	89	89
Latin America.....	17	20	20	20	21
Eastern Europe.....	112	117	120	120	120
Africa.....	4	5	5	5	5
Middle East.....	1	1	1	1	1
Asia & Pacific.....	82	83	83	87	88
World total.....	392	398	401	408	410

Source: Raymond Seveke and John Wyatt, World Elastomers, Tecnon, Milan, Italy, 1989.

Table 13

Polychloroprene: Worldwide production, by region, 1986-88 and projected 1989-90

(In thousands of metric tons)

Region	1986	1987	1988	1989	1990
North America.....	127	129	120	120	120
Western Europe.....	113	115	117	120	120
Latin America.....	0	0	0	0	0
Eastern Europe.....	60	70	70	74	74
Africa.....	0	0	0	0	0
Middle East.....	0	0	0	0	0
Asia & Pacific.....	103	101	102	105	110
World total.....	403	415	409	419	424

Source: World Elastomers, Tecnon, Milan, Italy, 1989.

Table 14

Polychloroprene: Worldwide production capacity, by region, 1986-88 and projected 1989-90

(In thousands of metric tons)

Region	1986	1987	1988	1989	1990
North America.....	162	162	162	162	162
Western Europe.....	133	133	133	133	133
Latin America.....	0	0	0	0	0
Eastern Europe.....	140	140	150	165	165
Africa.....	0	0	0	0	0
Middle East.....	0	0	0	0	0
Asia & Pacific.....	107	107	122	137	137
World total.....	542	542	567	597	597

Source: World Elastomers, Tecnon, Milan, Italy, 1989.

Table 15

Polychloroprene: French capacity, production, inventories, capacity utilization, and shipments, 1986-88 and January-June 1988-89

* * * * *

Table 16

Polychloroprene: West German capacity, production, inventories, capacity utilization, and shipments, 1986-88 and January-June 1988-89

* * * * *

Table 17

Polychloroprene: U.S. importers' inventories, 1986-88 and January-June 1988-89

* * * * *

U.S. importers' reported inventories of polychloroprene * * * from *** million pounds on December 31, 1986, to *** million pounds on December 31, 1987, or by *** percent, and * * * million pounds on December 31, 1988, or by *** percent. Inventories on June 30, 1989, were * * * than those on the corresponding date of 1988. The ratio of inventories to total imports * * *.

Consideration of the Causal Relationship Between Imports of the Subject Products and the Alleged Injury

Imports

U.S. imports of all polychloroprene * * * from *** million pounds in 1986 to *** million pounds in 1987, or by *** percent, and * * * to *** million pounds in 1988, which represented * * * of *** percent (table 18). During January-June 1989, total imports of polychloroprene * * * by *** percent to *** million pounds when compared with imports during the similar period in 1988.

Table 18

Polychloroprene: U.S. imports, 1986-88 and January-June 1988-89

* * * * *

France.--Imports of polychloroprene from France comprised * * * share of total imports and * * * during the period of investigation. The share of total imports of polychloroprene accounted for by imports from France was *** percent in 1986, * * * to *** percent in 1987, and * * * to *** percent in 1988. During January-June 1989 imports from France * * * to *** percent of total imports from a *** percent share during the corresponding period in 1988. There were no imports of latex polychloroprene from France during the period of investigation.

West Germany.--Imports of polychloroprene from West Germany comprised * * * share of total imports. In 1986, total imports of polychloroprene from West Germany accounted for *** percent of all imports based on quantity, * * * to *** percent in 1987, and * * * to *** percent in 1988. During January-June 1989 imports from West Germany * * * to *** percent from a level of *** percent during the corresponding period of 1988. Imports of latex polychloroprene from West Germany accounted for * * *.

Market penetration of imports

Shares of apparent U.S. consumption accounted for by imports of polychloroprene are presented in table 19. On the basis of quantity, the share of apparent consumption held by imports of all polychloroprene from the subject countries * * * the period of investigation, * * * percent from 1986 to January-June 1989. Such imports represented *** percent of apparent consumption in 1986, *** percent in 1987, and *** percent in 1988.

Table 19

Polychloroprene: Apparent U.S. consumption and shares held by U.S. producers' shipments and by imports, 1986-88 and January-June 1988-89

* * * * *

France.--On the basis of quantity, imports of polychloroprene from France * * * market share over the period of investigation, * * * percent over the period. Imports from France accounted for *** percent of total apparent consumption in 1986, increasing to *** percent in 1987, and increasing to *** percent in 1988.

West Germany.--On the basis of quantity, the share of apparent consumption held by imports of polychloroprene from West Germany * * * during the period of investigation, * * * percent over the period of investigation. Imports from West Germany accounted for *** percent of apparent consumption in 1986, increased to *** percent in 1987, and then decreased to *** percent in 1988.

In order to better understand the dynamics of market share for domestic and imported product, the following tabulation presents changes in market share by individual firms (in percent):

<u>Firm</u>	<u>1986-87</u>	<u>1987-88</u>	<u>Jan.-June</u> <u>1988-89</u>
Domestic shipments:			
DuPont.....	***	***	***
Mobay Synthetics.....	***	***	***
Total domestic.....	***	***	***
Shipments of imports:			
Schulman.....	***	***	***
Mobay Corp.....	***	***	***
Subtotal of subject imports.....	***	***	***
DuPont (U.K.).....	***	***	***
All other.....	***	***	***
Total imports.....	***	***	***

Prices

Prices of the various types of polychloroprene vary according to their differing costs of production as determined by the nature of the manufacturing process and costs of inputs. Certain types of polychloroprene have characteristics requiring special care in the production process and are therefore more expensive. In order to achieve special characteristics in the end product some polychloroprene products have more complex recipes or require special additives that increase costs of production. In general, mercaptan grades have the lowest prices, followed by sulfur grades, and the specialty grades.⁴⁵ Products that do not meet specification requirements are referred to as offgrade and are sold at discounted prices.

Polychloroprene is sold in quantities varying from a few hundred pounds to a truckload and is virtually always shipped by truck. Transportation costs for polychloroprene are relatively low, typically ranging from 1 to 14 cents per pound, or less than 5 percent of total delivered price.⁴⁶ Both producers and importers reported that shipments were made throughout the United States, with Schulman noting that the bulk of its sales were * * *.

Sales are typically made on a contractual basis with terms of net 30 days.⁴⁷ The average lead time between a customer's order and date of shipment is typically between 1 and 5 days. Following the purchase of Mobay Synthetics (previously Denka) by Mobay Corp. in January 1988, the sales forces

⁴⁵ The prices of different grades generally vary within a range of *** percent. Post-conference brief for Mobay Corp. and Mobay Synthetics, app. A, p. 1.

⁴⁶ * * * responded that shipping charges account for *** percent of delivered price for shipments from its warehouse.

⁴⁷ * * *.

of these two companies were combined and now function as a unified sales group selling both imported and domestic polychloroprene. ⁴⁸

Prices are quoted on both an f.o.b. and on a delivered basis. ⁴⁹ The share of 1988 shipments sold on each basis is shown in the following tabulation (in percent):

	<u>U.S. f.o.b. plant basis</u>	<u>U.S. f.o.b. warehouse basis</u>	<u>Delivered basis</u>
<u>Producers</u>			
DuPont.....	***	***	***
Mobay Synthetics Corp.....	***	***	***
<u>Importers</u>			
A. Schulman, Inc.....	***	***	***
Mobay Corp.....	***	***	***

All companies reported that their pattern of pricing had changed since 1986 due to competitive situations. According to DuPont, polychloroprene historically was sold f.o.b. shipping point. In 1985, DuPont changed to a delivered price policy. This change, in part, resulted from a reorganization within DuPont. As a large purchaser of transportation services, DuPont believed it might be able to offer purchasers reduced transportation costs.

⁵⁰ However, in August 1988, DuPont returned to selling f.o.b. shipping point. According to spokesmen from DuPont, the majority of their customers preferred f.o.b. pricing. ⁵¹ Schulman noted in its questionnaire that in 1986 * * * percent of its sales were on a delivered basis compared with *** percent in 1988. According to Schulman, the increase in the percentage of sales made on this basis is "due to pressure from the market place for delivered pricing which DuPont initiated."

Unlike DuPont, Mobay Synthetics Corp. continued pricing the bulk of its shipments of domestic product on an f.o.b. basis over the period of investigation. ⁵² In 1988, *** percent of its shipments were priced on a f.o.b. basis. Freight charges are equalized with the company quoting freight from the nearest warehouse. ⁵³ *** percent of Mobay Corp.'s sales of imports from West Germany were made on a f.o.b. basis and *** percent on a delivered basis.

⁴⁸ Conversation with * * *, Capital Economics, economic consultants for Mobay Corp. and Mobay Synthetics, Oct. 17, 1989.

⁴⁹ * * *.

⁵⁰ Conversation with * * *.

⁵¹ Ibid.

⁵² Conversation with * * *.

⁵³ According to * * *.

Although both the producers and the importers publish price lists, discounts are commonly given. Discounts are available for purchasing large volumes of the product and may be given at the time of invoice or as rebates paid at specified intervals. Mobay Corp. and Mobay Synthetics Corp. responded that in a very few instances a * * *. ⁵⁴

According to DuPont, discounts to meet competition were made from list prices in * * * of its sales. From September 1987 to March 1988, DuPont offered a voluntary allowance, an across-the-board discount to all customers, on all grades of polychloroprene. According to * * *. He said that by * * * had been sent to purchasers. Both Schulman and Mobay Synthetics Corp. also reported that over the past 2 years prices had been discounted for competitive reasons. ⁵⁵

On June 1, 1988, DuPont announced that the list prices of its polychloroprene products would be increased on August 1, 1988. ⁵⁶ According to a spokesman for DuPont, * * *. ⁵⁷ On June 28, 1988, Mobay Corp. and Mobay Synthetics announced that their list prices of polychloroprene would also increase on August 1, 1988. ⁵⁸ Schulman announced on August 2 its list prices would increase on October 1, 1988. ⁵⁹

Although DuPont responded in its questionnaire that purchasers of polychloroprene * * *, the second U.S. producer, Mobay Synthetics Corp., and both importers indicated in their questionnaires and at the conference that substitutes are available and have made inroads into the polychloroprene market. Mobay Corp. and Mobay Synthetics identified styrene-butadiene rubber, nitrile rubber, and ethylene propylene as substitutes and submitted annual unit values (per pound) for these products, which are shown in the following tabulation for 1984-87: ⁶⁰

⁵⁴ DuPont also gives * * *. * * *. (Conversation with * * *). * * *.

⁵⁵ Conversations with * * *.

⁵⁶ DuPont made this announcement 2 months before the date of the actual price increase, rather than the customary 30 days, in order to give producers of polychloroprene products for the automobile industry time to incorporate these price increases into price quotes for the following year.

⁵⁷ Conversation with * * *.

⁵⁸ Conversation with * * *.

⁵⁹ According to * * *.

⁶⁰ Source: Rubber Production Shipments and Stocks, U.S. Department of Commerce, as submitted in post-conference brief of Mobay Corp. and Mobay Synthetics, app. A, p. 4. Conversation with * * *.

	<u>Styrene-butadiene</u> <u>rubber (SBR)</u>	<u>Nitrile</u> <u>rubber (NBR)</u>	<u>Ethylene-propylene</u> <u>(EPDM)</u>
1984.....	\$0.50	\$1.01	\$0.77
1985.....	0.47	0.95	0.75
1986.....	0.40	0.89	0.68
1987.....	0.47	0.90	0.73

The prices of all of these substitute products declined from 1984 to 1986 but increased in 1987. No information was provided for 1988.

Questionnaire price data.--The Commission requested U.S. producers and importers of polychloroprene to provide quarterly price data from January 1986 through June 1989 for six categories of polychloroprene. For each product category, they were asked to report the total delivered selling price and the f.o.b. U.S. location price charged for their largest shipment in each quarter. These products accounted for *** percent of Dupont's sales in 1988, *** percent of Mobay Synthetic's sales, and *** percent of both Schulman's and Mobay Corp.'s sales. Grade W was by far the most important product, accounting for *** percent of DuPont's sales, *** percent of Mobay Synthetic's, *** percent of Schulman's, and *** percent of Mobay Corp's.

Product 1: Dry polychloroprene, DuPont Grade W or comparable products such as Distugil Grade 30 or Bayer Grade 210.

Product 2: Dry polychloroprene, DuPont Grade WRT or comparable products such as Distugil Grade 10 or Bayer Grade 110.

Product 3: Dry polychloroprene, DuPont Grade GRT or comparable products such as Distugil Grade SC10 or Bayer Grade 610.

Product 4: Dry polychloroprene, DuPont Grade AD10 or comparable products such as Distugil Grade MA40R or Bayer 320LV.

Product 5: Dry polychloroprene, DuPont Grade TW or comparable products such as Distugil DE302 or Bayer 215.

Product 6: Latex polychloroprene, DuPont Grade 671A or comparable products.

Indexes of producers' f.o.b. weighted-average prices for products 1 through 6 are shown in table 20. No consistent pattern or extreme fluctuations in prices are shown by these indexes over the period of investigation. The prices for products * * * exhibited some fluctuations over the period, * * *. * * *.

Table 20

Polychloroprene: Indexes of U.S. producers' f.o.b. prices, by quarters, January 1986-June 1989

* * * * *

As in the case of U.S. producer prices, the f.o.b prices of the importer of French polychloroprene were fairly steady over the period of investigation (table 21). * * *.

Table 21

Polychloroprene: Indexes of the U.S. importer's f.o.b. prices for imports from France, by quarters, January 1986-June 1989

* * * * *

Fluctuations in the f.o.b. prices of West German polychloroprene were relatively small, as in the case of the U.S. and French products (table 22). * * *.

Table 22

Polychloroprene: Indexes of the U.S. importer's f.o.b. prices for imports from West Germany, by quarters, January 1986-June 1989

* * * * *

Price comparisons.--Weighted-average delivered prices of polychloroprene products 1 through 6 of U.S. producers are compared with prices of imports from France and West Germany in tables 23-28. Domestic prices are based on data from two producers in each quarter while imports represent reports from single firms. ⁶¹

As U.S. and import prices fluctuated, periods of underselling alternated with periods of overselling. * * *.

⁶¹ Individual company delivered price data are shown in app. H. In most cases the lowest prices were reported by * * *.

Table 23

Polychloroprene product 1 (DuPont grade W or comparable products): U.S. producers' (weighted-average) and importers' delivered prices and margins of underselling (overselling), by quarters, January 1986-June 1989

* * * * *

Table 24

Polychloroprene product 2 (DuPont grade WRT or comparable products): U.S. producers' (weighted-average) and importers' delivered prices and margins of underselling (overselling), by quarters, January 1986-June 1989

* * * * *

Table 25

Polychloroprene product 3 (DuPont grade GRT or comparable products): U.S. producers' (weighted-average) and importers' delivered prices and margins of underselling (overselling), by quarters, January 1986-June 1989

* * * * *

Table 26

Polychloroprene product 4 (DuPont grade AD-10 or comparable products): U.S. producers' (weighted-average) and importers' delivered prices and margins of underselling (overselling), by quarters, January 1986-June 1989

* * * * *

Table 27

Polychloroprene product 5 (DuPont grade TW or comparable products): U.S. producers' (weighted-average) and importers' delivered prices and margins of underselling (overselling), by quarters, January 1986-June 1989

* * * * *

Table 28

Polychloroprene product 6 (DuPont latex grade 671A or comparable products): U.S. producers' (weighted-average) and importers' delivered prices and margins of underselling (overselling), by quarters, January 1986-June 1989

* * * * *

* * *.

Exchange rates

Both the French franc and the West German deutchmark appreciated in nominal and real terms against the U.S. dollar over the period of investigation (table 29). The nominal and the real exchange rates of both of these foreign currencies peaked in the first quarter of 1988, with the real value of the French franc increasing by 25.1 percent over its base value and the real value of the West German deutchmark increasing by 30.7 percent over its base value. Both of these exchange rates generally declined in value over the remainder of the investigation period in real and nominal terms. The real value of the franc was 15.5 percent higher than its base value by the first quarter of 1989 (the latest period for which data are available), and the real value of the deutchmark was 9.3 percent higher than its base value by the second quarter of 1989.

Lost revenues and sales

*** allegations of lost revenue and *** allegations of lost sales were made by * * *. Lost revenues cited by * * * amounted to \$*** on a total of *** pounds of polychloroprene. Alleged lost sales amounted to *** pounds valued at \$***. Staff contacted all companies named in these allegations. Conversations with company spokesmen willing to discuss these allegations are reported below.

* * * was named in *** allegation of * * * involving *** pounds of * * * polychloroprene in * * * and * * * involving *** pounds of * * * polychloroprene valued at \$*** in * * *. Both allegations concerned imports from * * *. * * * was unable to confirm these allegations. He stated that * * *. He said that there were no differences between the domestic and imported product in terms of quality, deliverability, etc. From 1986 to 1989 the prices of imported polychloroprene were generally less than those of the domestically produced product. Approximately *** percent of all * * * 's purchases are from domestic producers; its remaining purchases were from * * *.

* * * was named in *** allegation of * * * on *** pounds of type * * * polychloroprene in * * * because of competition with imports from * * *. * * * was unable to confirm or deny this allegation. He did say that he had * * *. He noted that * * * had * * * its purchases of the * * * product from * * * because of its * * * and had * * *. He indicated that the imported and domestic products were comparable but not direct matches. He also stated that for the purposes of * * * there are no substitutes for polychloroprene at this time.

* * * was named in *** allegation of * * * on *** pounds of type * * * polychloroprene in * * *; this allegation concerned imports from * * *. * * * would not comment specifically on this allegation. * * * stated that * * * only purchased polychloroprene from * * * and that since * * *. * * * further stated that * * * polychloroprene are close substitutes and can be used interchangeably for * * * purpose. * * * also indicated that * * * recently considered purchasing polychloroprene from * * * but had decided that this product was not as well suited as the * * * products for * * * 's

Table 29

Exchange rates: 1/ Indexes of the nominal and real exchange rates between the U.S. dollar and the French franc and West German deutschmark, and indexes of producer prices in France, West Germany, and the United States, 2/ by quarters, January 1986-June 1989

Period	France			Federal Republic of Germany			U.S.
	Nominal exchange- rate index	Producer price index	Real exchange- rate index 3/	Nominal exchange- rate index	Producer price index	Real exchange- rate index 3/	
1986:							
Jan.-Mar...	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Apr.-June..	100.9	98.7	101.4	104.4	98.7	105.7	98.2
July-Sept..	106.3	98.0	106.7	112.5	97.9	112.8	97.7
Oct.-Dec...	109.7	97.3	108.8	116.9	96.2	114.6	98.1
1987:							
Jan.-Mar...	117.6	97.7	115.8	127.6	95.7	123.0	99.2
Apr.-June..	119.6	98.3	116.6	130.0	95.4	123.0	100.8
July-Sept..	117.5	98.9	114.0	127.6	95.8	119.0	101.9
Oct.-Dec...	125.3	99.9	122.3	137.6	96.1	129.2	102.3
1988:							
Jan.-Mar...	127.1	101.3	125.1	140.0	96.1	130.7	102.9
Apr.-June..	124.7	102.5	122.1	137.4	96.7	126.8	104.8
July-Sept..	114.1	105.0	112.8	125.7	97.2	115.1	106.2
Oct.-Dec...	118.9	107.6	119.9	132.1	97.7	121.0	106.7
1989:							
Jan.-Mar...	114.5	109.9	115.5	126.9	99.1	115.3	109.0
Apr. June..	110.0	4/	4/	121.3	99.9	109.3	110.9

1/ Based on exchange rates expressed in U.S. dollars per unit of foreign currency.

2/ The producer price indexes are aggregate measures of inflation at the wholesale level in the United States and the above foreign countries. Quarterly producer prices in the United States fluctuated but rose, by 10.9 percent, during January 1986-June 1989. Producer prices in France rose by about the same rate, increasing by 9.9 percent through the first quarter of 1989, the latest period for which such data are available. On the other hand, producer prices in West Germany remained relatively unchanged during the period of investigation.

3/ The real values of the foreign currencies are the nominal values adjusted for the difference between inflation rates in the individual foreign countries and the United States, as measured by the producer price indexes in these countries.

4/ Data not available.

Note.--January-March 1986=100.0

Source: International Monetary Fund, International Financial Statistics, October 1989.

applications. * * * also stated that * * * knew of no other products that could be substituted for polychloroprene in * * * applications at this time.

* * * was cited in *** allegations--* * *. * * * would not confirm or deny these allegations over the phone. * * * said * * * knew of no products that could be substituted for polychloroprene for * * * 's purposes.

* * * was named in * * *. * * * would not confirm or deny these allegations over the phone. He did state that at one time or another * * * had purchased polychloroprene from all of the suppliers.

* * * was named in * * *. * * * said he did not agree with these allegations. He said that * * * had * * *. He also said that * * *. ⁶² He indicated that * * * and * * * only purchased a small amount of product from * * * to determine whether it was technically advantageous to use. At that time the * * * product was priced * * * product. He did not consider this to be a significant price difference, indicating that the choice of the * * * material was for technical reasons. Overall, he felt that the * * * and * * * products were equal in quality.

* * * was named by * * * in * * *. * * *. When questioned on substitute products, he responded that, "as a general statement other products could be used for polychloroprene. Prices of substitute products have kept prices of polychloroprene down."

Summary of market data

A summary of U.S. market data regarding the subject product is presented in table 30.

Table 30

Polychloroprene: Market data and percentage changes, 1986-88 and January-June 1988-89

* * * * *

APPENDIX A
COMMISSION'S AND COMMERCE'S NOTICES

**INTERNATIONAL TRADE
COMMISSION**

**(Investigations Nos. 731-TA-446 and 447.
(Preliminary))**

**Polychloroprene From France and the
Federal Republic of Germany**

AGENCY: United States International
Trade Commission.

ACTION: Institution of preliminary
antidumping investigations and
scheduling of a conference to be held in
connection with the investigations.

SUMMARY: The Commission hereby gives
notice of the institution of preliminary
antidumping investigations Nos. 731-
TA-446 and 447 (Preliminary) under
section 733(a) of the Tariff Act of 1930
(19 U.S.C. 1673b(a)) to determine
whether there is a reasonable indication
that 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 France and the Federal Republic of Germany of polychloroprene, provided for in subheadings 4002.41.00 and 4002.49.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 448.15 of the former Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value.¹ As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 8, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), as amended 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Diane Mazur (202-252-1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20438. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on September 22, 1989, by E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.

Participation in the Investigations.

Persons wishing to participate in these investigations 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 seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be deferred to the Chairman, who will determine whether to accept the late

entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations 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 public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 13, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202-252-1184) not later than October 10, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before October 17, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary 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 information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than October 20, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: September 28, 1989.

Lisbeth K. Godley,

Acting Secretary.

[FR Doc. 89-23104 Filed 9-28-89; 8:45 am]

BILLING CODE 7020-02-M

¹ Polychloroprene (also known as neoprene), a polymer of chloroprene (2-chloro-1,3-butadiene), is a synthetic elastomer available in two different forms: dry polymers and aqueous latex grade polymers.

proceeds normally, the ITC will make its preliminary determination on or before November 6, 1989. If that determination is affirmative, we will make a preliminary determination on or before March 1, 1990.

EFFECTIVE DATE: October 19, 1989.

FOR FURTHER INFORMATION CONTACT: Karim Leiman or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-8498 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 22, 1989, we received a petition filed in proper form by E.I. Du Pont de Nemours & Company, Inc. In compliance with the filing requirements of § 353.12 of the Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12772) (to be codified at 19 CFR 353.12), petitioner alleges that imports of polychloroprene from France are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

On October 3, and October 4, 1989, we received submissions supplementing the petition.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations.

International Trade Administration

[A-427-802]

Initiation of Antidumping Duty Investigation; Polychloroprene From France

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of polychloroprene from France are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of polychloroprene from France materially injure, or threaten material injury to, a U.S. industry. If this investigation

United States Price and Foreign Market Value

Petitioner based United States price (USP) on price quotations to U.S. purchasers of polychloroprene by A. Schulman Inc. (Schulman). Schulman is a U.S. distributor of polychloroprene produced in France by Distugil S.A. Schulman's prices to U.S. purchasers were obtained by Du Pont salesmen. Petitioner adjusted these prices to account for commissions, U.S. warehousing, foreign inland freight, ocean freight and insurance, and U.S. freight.

Petitioner based foreign market value (FMV) on actual transaction price information collected by Du Pont's European subsidiary on sales of polychloroprene in France. Petitioner adjusted these prices to account for selling expenses, foreign inland freight, and warehousing and distribution.

Based on a comparison of FMV to USP, petitioner alleges dumping margins which range from 22.12 to 46.90 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on polychloroprene from France and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of polychloroprene from France are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by March 1, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written

description remains dispositive as to the scope of this investigation.

The product covered by this investigation is polychloroprene. Polychloroprene (also known as neoprene), a polymer of chloroprene (2-chloro-1,3-butadiene), is a synthetic elastomer available in two different forms: dry polymers and aqueous latex grade polymers.

Polychloroprene is currently provided for under the following HTS subheadings: 4002.41.00.00 and 4002.42.00.00. Prior to January 1, 1989, polychloroprene was classifiable under items 446.1521 of the *Tariff Schedules of the United States Annotated*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 6, 1989, whether there is a reasonable indication that imports of polychloroprene from France materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 12, 1989.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 89-24711 Filed 10-18-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-425-534]

Initiation of Antidumping Duty Investigation; Polychloroprene From the Federal Republic of Germany

AGENCY: Import Administration,
International Trade Administration,
Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of polychloroprene from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of polychloroprene from the Federal Republic of Germany materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before November 6, 1989. If that determination is affirmative, we will make a preliminary determination on or before March 1, 1990.

EFFECTIVE DATE: October 19, 1989.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 377-8498 or (202) 377-5288, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On September 22, 1989, we received a petition filed in proper form by E.I. Du Pont de Nemours & Company, Inc. In compliance with the filing requirements of § 353.12 of the Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12772) (to be codified at 19 C.F.R. 353.12), petitioner alleges that imports of polychloroprene from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, the U.S. industry.

On October 3, and October 4, 1989, we received submissions supplementing the petition.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this

petition, please file written notification with the officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on price quotations to U.S. purchasers of polychloroprene by Mobay Corporation (Mobay). Mobay, a subsidiary of Bayer A.G. (Bayer), is a U.S. distributor of polychloroprene produced in the Federal Republic of Germany by Bayer. Mobay's prices to U.S. purchasers were obtained by Du Pont salesmen. Petitioner adjusted these prices to account for U.S. selling expenses, U.S. warehousing, foreign inland freight, ocean freight and insurance, and U.S. freight.

Petitioner based foreign market value (FMV) on actual transaction price information collected by Du Pont's European subsidiary on sales of polychloroprene in the Federal Republic of Germany. Petitioner adjusted these prices to account for selling expenses, foreign inland freight, and warehousing and distribution.

Based on a comparison of FMV to USP, petitioner alleges dumping margins which range from 27.36 to 49.14 percent.

Initiation of Investigation

Under section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on polychloroprene from the Federal Republic of Germany and found that the petition meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of polychloroprene from the Federal Republic of Germany are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by March 1, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of this investigation.

The product covered by this investigation is polychloroprene. Polychloroprene (also known as neoprene), a polymer of chloroprene (2-chloro-1,3-butadiene), is a synthetic elastomer available in two different forms: dry polymers and aqueous latex grade polymers.

Polychloroprene is currently provided for under the following HTS subheadings: 4002.41.00.00 and 4002.49.00.00. Prior to January 1, 1989, polychloroprene was classifiable under items 446.1521 of the *Tariff Schedules of the United States Annotated*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by November 6, 1989, whether there is a reasonable indication that imports of polychloroprene from the Federal Republic of Germany materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to the statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: October 12, 1989.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 89-24712 Filed 10-18-89; 8:45 am]
BILLING CODE 3510-DS-M

APPENDIX B
LIST OF WITNESSES

CALENDAR OF THE PUBLIC CONFERENCE

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

Subject : Polychloroprene from France and
the Federal Republic of Germany

Inv. Nos. : 731-TA-446 & 447 (Preliminary)

Date and Time : October 13, 1989 - 9:30 a.m.

The session was held in connection with the subject investigations in the Main Hearing Room 101 of the U.S. International Trade Commission, 500 E Street, SW, in Washington, DC.

In support of the imposition of
antidumping duties:

Wilmer, Cutler & Pickering--Counsel
Washington, DC
on behalf of--

E.I. du Pont de Nemours & Co.
Wilmington, DE

John H. Michener, Manager Product Programs
Robert Kane, Sr. Marketing Programs Manager, Neoprene
Robert R. Bonczek, Legal Dept.

John Greenwald)--OF COUNSEL
Corinne Krupp)--Economist, Michigan State

In opposition to the imposition of
antidumping duties:

Ablondi & Foster--Counsel
Washington, DC
on behalf of--

Dustugil SA

A. Schulman Inc.

Gregory LeFevre, National product manager

David Foster)--OF COUNSEL

Howrey & Simon--Counsel
Washington, DC
on behalf of--

Bayer AG

Mobay Corporation

Herbert Shelley)--OF COUNSEL
William Kerr)--Economist, Capital Economics

A-45

APPENDIX C

POLYCHLOROPRENE PRODUCTION PROCESSES

A-46

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APPENDIX D
OTHER SYNTHETIC ELASTOMERS

The U.S. market

The U.S. market for synthetic elastomers is not a uniform market. Many of the products, like polychloroprene, are mature and entering well-established markets. Others, like thermoplastic elastomers, are relatively new, growing rapidly, and displacing older elastomers and plastics as they grow. Still others, like ethylene-propylene, are not new elastomers but have established an important market, such as single-ply roofing, which is not subject to the fluctuations of the domestic automotive industry. See table D-1 for the total domestic market by type of rubber for 1986-88, and the graphic presentation of data for polychloroprene and three competitive products in figure D-1.

Industry sources report that in 1988 domestic consumption of all synthetic elastomers was at its highest level of the 1980's. This was due in part to tire sales reaching an historic high in 1988 and exports reaching high levels, partly spurred by the weak U.S. dollar.⁶³ For the period 1988-93, the International Institute of Synthetic Rubber Producers (IISRP) is forecasting an average annual growth rate of 1.6 percent for all synthetic elastomers.

The IISRP reports that, while moving ahead, the mature synthetic elastomers industry will have few spectacular developments in demand for its products through the early 1990's.⁶⁴ The IISRP projects that the tire and tire products end-use segment will grow in total volume even though it will continue to shrink relative to other end-use categories. Other end-use areas that are growing, according to IISRP, are medical products, agriculture uses, and road building.⁶⁵

U.S. producers of other competitive synthetic elastomers include:

<u>Product</u>	<u>U.S. producers</u>
EPDM.....	DuPont, Exxon, Mark IV, and Polysar.
Nitrile Rubber..	Avery, BASF, BF Goodrich, Goodyear, Mark IV, Polysar, and Reichhold.
SBR.....	Uniroyal, Firestone, General Tire, Goodyear, and Mark IV.

⁶³ Standard and Poors Industry Surveys, Chemicals, Oct. 13, 1988, pp. C29-C30; and, "Bounce for Synthetic Rubber: Tires are Back in the Fast Lane," Chemical Week, Apr. 19, 1989, pp. 40-52.

⁶⁴ "Modest Growth Ahead for Rubber," Chemical & Engineering News, Mar. 21, 1988, pp. 25 and 26.

⁶⁵ "Rubber Consumption Figures Show Steady Growth to 1993," Elastomerics, February 1989, pp. 8-10.

Table D-1
New rubber: U.S. consumption, by types of rubber, 1986-88

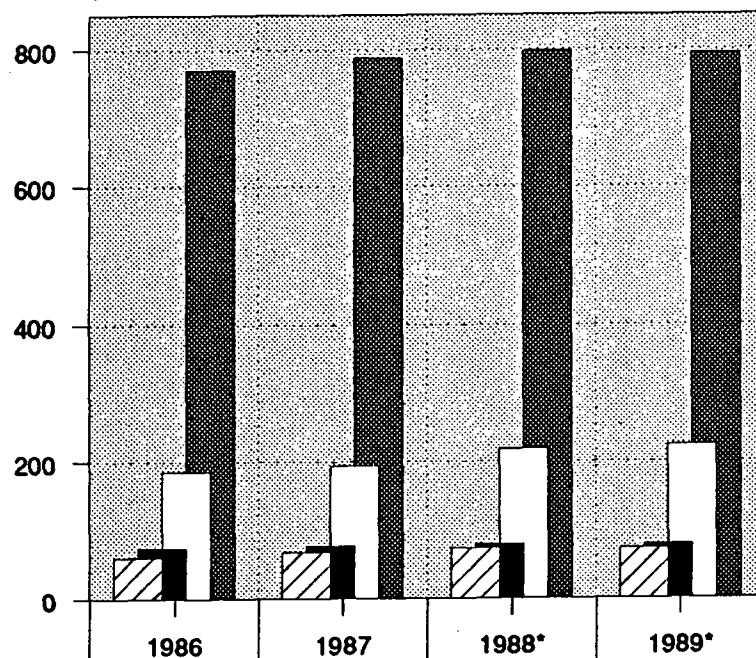
(In thousands of metric tons)				Average yearly change from 1986-88 forecast (Percent)
Rubber	1986 actual	1987 actual	1988 forecast	
Styrene-butadiene solid and solution...	728	749	756	2.1
Styrene-butadiene, latex.....	43	40	42	(1.2)
Carboxylated styrene butadiene, latex....	375	440	449	9.4
Polybutadiene.....	367	390	410	5.7
Ethylene-propylene....	186	195	219	8.5
Polychloroprene.....	75	78	80	3.3
Nitrile, solid.....	55	61	67	10.4
Nitrile, latex.....	6	7	7	8.0
Other synthetics.....	434	426	453	2.2
Total synthetics..	2,269	2,386	2,483	4.1
Total natural.....	742	775	809	4.4
Total new.....	3,011	3,161	3,292	4.6
Percent synthetic.....	73.7	75.5	75.4	1.1
Polychloroprene as a share of synthetic..	3.3	3.3	3.3	
Tire and tire products, percent...	41.0	41.6	46.0	5.9
Thermoplastic elastomers (TPE'S)...	182	212	232	12.9

Source: Except for thermoplastic elastomers, which is from Modern Plastics, (January 1988, p. 101), data for 1986 were supplied by the petitioner; data for 1987 and 1988 are from the IISRP, Houston, TX. The IISRP is an association of synthetic rubber producers located in noncommunist countries. Its 51 member companies provide more than 95 percent of the world's synthetic rubber produced in noncommunist countries.

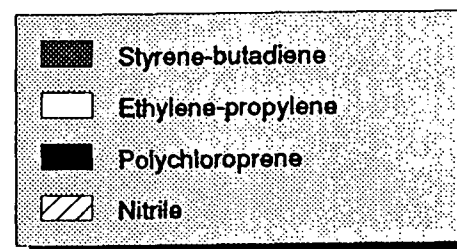
Figure D-1

U.S. consumption of polychloroprene and 3 competitive products, 1986-89

(thousands of metric tons)



	1986	1987	1988*	1989*
Styrene-butadiene	771	789	798	795
Ethylene-propylene	186	195	219	224
Polychloroprene	75	78	80	80
Nitrile	61	68	74	74



* Forecast

Source: Table D-1

In response to Commission questionnaires, parties provided the following comments on the differences and similarities in the chemical and physical properties of polychloroprene and synthetic elastomers:

<u>Firm</u>	<u>Comments on chemical properties:</u>
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DuPont	* * *.
--------	--------

Mobay Synthetics	* * *.
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	<u>Comments on physical properties:</u>
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DuPont	* * *.
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Mobay Synthetics	* * *.
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In response to Commission questionnaires, parties provided the following comments on the differences and similarities in the manufacturing processes used in the production of polychloroprene and in the production of other synthetic elastomers:

<u>Firm</u>	<u>Comments on production inputs:</u>
-------------	---------------------------------------

DuPont	* * *.
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Mobay Synthetics	* * *.
------------------	--------

	<u>Comments on machinery and equipment:</u>
--	---

DuPont	* * *.
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Mobay Synthetics	* * *.
------------------	--------

In response to Commission questionnaires, parties provided the following comments on the substitutability of other synthetic rubber for polychloroprene products:

<u>Firm</u>	<u>Comment</u>
-------------	----------------

DuPont	* * *.
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Mobay Synthetics	* * *.
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Mobay Corp.	Same response as Mobay Synthetics above.
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A. Schulman	* * *.
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APPENDIX E
TARIFF NOMENCLATURE

HARMONIZED TARIFF SCHEDULE of the United States

Annotated for Statistical Reporting Purposes

CHAPTER 40

RUBBER AND ARTICLES THEREOF

VII
40-Notes

1. Except where the context otherwise requires, throughout the tariff schedule the expression "rubber" means the following products, whether or not vulcanized or hard: natural rubber, balata, gutta-percha, guayule, chicle and similar natural gums, synthetic rubber, factice derived from oils and such substances reclaimed.
2. This chapter does not cover:
 - (a) Goods of section XI (textiles and textile articles);
 - (b) Footwear or parts thereof of chapter 64;
 - (c) Headgear or parts thereof (including bathing caps) of chapter 65;
 - (d) Mechanical or electrical appliances or parts thereof of section XVI (including electrical goods of all kinds), of hard rubber;
 - (e) Articles of chapter 90, 92, 94 or 96; or
 - (f) Articles of chapter 95 (other than sports gloves and articles of headings 4011 to 4013).
3. In headings 4001 to 4003 and 4005, the expression "primary forms" applies only to the following forms:
 - (a) Liquids and pastes (including latex, whether or not prevulcanized, and other dispersions and solutions);
 - (b) Blocks of irregular shape, lumps, bales, powders, granules, crumbs and similar bulk forms.
4. In note 1 to this chapter and in heading 4002, the expression "synthetic rubber" applies to:
 - (a) Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-thermoplastic substances which, at a temperature between 18°C and 29°C, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of 5 minutes, to a length not greater than 1-1/2 times their original length. For the purposes of this test, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted;
 - (b) Thioplasts (TM); and
 - (c) Natural rubber modified by grafting or mixing with plastics, depolymerized natural rubber, mixtures of unsaturated synthetic substances with saturated synthetic high polymers provided that all the above-mentioned products comply with the requirements concerning vulcanization, elongation and recovery in (a) above.
5. (a) Headings 4001 and 4002 do not apply to any rubber or mixture of rubbers which has been compounded, before or after coagulation, with:
 - (i) Vulcanizing agents, accelerators, retarders or activators (other than those added for the preparation of prevulcanized rubber latex);
 - (ii) Pigments or other coloring matter other than those added solely for the purpose of identification;
 - (iii) Plasticizers or extenders (except mineral oil in the case of oil-extended rubber), fillers, reinforcing agents, organic solvents or any other substances, except those permitted under (b);
- (b) The presence of the following substances in any rubber or mixture of rubbers shall not affect its classification in heading 4001 or 4002, as the case may be, provided that such rubber or mixture of rubbers retains its essential character as a raw material:
 - (i) Emulsifiers or antitack agents;
 - (ii) Small amounts of breakdown products of emulsifiers;
 - (iii) Very small amounts of the following: heat-sensitive agents (generally for obtaining thermosensitive rubber latexes), cationic surface-active agents (generally for obtaining electro-positive rubber latexes), antioxidants, coagulants, crumbling agents, freeze-resisting agents, peptizers, preservatives, stabilizers, viscosity-control agents or similar special-purpose additives.

HARMONIZED TARIFF SCHEDULE of the United States

Annotated for Statistical Reporting Purposes

VII
40-3

Heading/ Subheading	Stat. Suf. & cd	Article Description	Units of Quantity	Rates of Duty		
				General	Special	2
4001		Natural rubber, balata, gutta-percha, guayule, chicle and similar natural gums, in primary forms or in plates, sheets or strip:				
4001.10.00	00 9	Natural rubber latex, whether or not pre-vulcanized.....	kg 1/...	Free		Free
4001.21.00		Natural rubber in other forms:				
		Smoked sheets.....		Free		Free
	10 4	Grade 1.....	kg			
	20 2	Grade 2.....	kg			
	30 0	Grade 3.....	kg			
	50 5	Other.....	kg			
4001.22.00		Technically specified natural rubber (TSNR).....		Free		Free
	05 0	Grade 5.....	kg			
	10 3	Grade CV.....	kg			
	15 8	Grade L.....	kg			
	20 1	Grade 10.....	kg			
	25 6	Grade 20.....	kg			
	50 4	Other.....	kg			
4001.29.00	00 8	Other.....	kg.....	Free		Free
4001.30.00		Balata, gutta-percha, guayule, chicle and similar natural gums.....		Free		Free
	05 0	Balata.....	kg			
	10 3	Gutta-percha and guttas, not elsewhere specified or included.....	kg			
	15 8	Jelutong or pontianak.....	kg			
	20 1	Chicle.....	kg			
	25 6	Leche caspi and sorva.....	kg			
	50 4	Other.....	kg			
4002		Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip:				
		Styrene-butadiene rubber (SBR); carboxylated styrene-butadiene rubber (XSBR):				
4002.11.00	00 7	Latex.....	kg.....	Free		20%
4002.19.00		Other.....		Free		20%
	10 7	Containing 50 percent or less styrene by weight of the dry polymer.....	kg			
	20 5	Containing over 50 percent styrene by weight of the dry polymer.....	kg			
4002.20.00	00 6	Butadiene rubber (BR).....	kg.....	Free		20%
		Isobutene-isoprene (butyl) rubber (IIR); halo-isobutene-isoprene rubber (CIIR or BIIR):				
4002.31.00	00 3	Isobutene-isoprene (butyl) rubber (IIR).....	X.....	Free		20%
4002.39.00	00 5	Other.....	kg.....	Free		20%
		Chloroprene (chlorobutadiene) rubber (CR):				
4002.41.00	00 1	Latex.....	kg.....	Free		20%
4002.49.00	00 3	Other.....	kg.....	Free		20%
		Acrylonitrile-butadiene rubber (NBR):				
4002.51.00	00 8	Latex.....	kg.....	Free		20%
4002.59.00	00 0	Other.....	kg.....	Free		20%
4002.60.00	00 7	Isoprene rubber (IR).....	kg.....	Free		20%
4002.70.00	00 5	Ethylene-propylene-nonconjugated diene rubber (EPDM).....	kg.....	Free		20%
4002.80.00	00 3	Mixtures of any product of heading 4001 with any product of this heading.....	kg.....	Free		20%
		Other:				
4002.91.00	00 0	Latex.....	kg.....	Free		20%
4002.99.00	00 2	Other.....	kg.....	Free		20%

1/ Kilograms dry rubber content.

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TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987)

Page 4-84

SCHEDULE 4. - CHEMICALS AND RELATED PRODUCTS
Part 4. - Synthetic Resins and Plastics Materials; Rubber

4 - 4 - B
446.05 - 446.30

Item	Stat. Suf- fix	Articles	Units of Quantity	Rates of Duty		
				1	Special	2
446.05		Natural rubber:				
		Not containing fillers, extenders, pigments, or rubber-processing chemicals.....	Free		Free
	10	Gutta balata.....	Lb.			
	20	Gutta-percha and guttas, not specially provided for.....	Lb.			
	30	Jelutong or pontianak.....	Lb.			
	40	Other:				
		Latex.....	Lb. <u>1</u> /			
		Other:				
		Ribbed smoked sheets:				
	44	Grade 1.....	Lb.			
	48	Grade 2.....	Lb.			
	52	Grade 3.....	Lb.			
	56	Other.....	Lb.			
		Technically specified rubber:				
	60	Grade 5.....	Lb.			
	64	Grade CV.....	Lb.			
	68	Grade L.....	Lb.			
	72	Grade 10.....	Lb.			
	76	Grade 20.....	Lb.			
	80	Other.....	Lb.			
	84	Other.....	Lb.			
446.10	00	Containing fillers, extenders, pigments, or rubber-processing chemicals.....	Lb.....	Free		20% ad val.
446.12	00	Chlorinated natural rubber.....	Lb.....	Free		20% ad val.
446.15		Synthetic rubber.....	Free		20% ad val.
		Not containing fillers, pigments, or rubber- processing chemicals:				
	06	Butyl.....	Lb.			
	11	Nitrile.....	Lb.			
	16	Polybutadiene.....	Lb.			
	21	Polychloroprene (neoprene).....	Lb.			
	26	Ethylene-propylene.....	Lb.			
	31	Polyisoprene.....	Lb.			
	33	Silicone.....	Lb.			
		Styrene-butadiene:				
		Containing 50 percent or less styrene by weight of the dry polymer:				
	35	Latex.....	Lb.			
	39	Other.....	Lb.			
	44	Containing over 50 percent styrene by weight of the dry polymer.....	Lb.			
	57	Other.....	Lb.			
		Other:				
		Masterbatches:				
	71	Containing carbon black.....	Lb.			
	76	Other.....	Lb.			
	80	Silicone.....	Lb.			
	97	Other.....	Lb.			
446.20	00	Reclaimed rubber of all kinds.....	Lb.....	Free		Free
446.30	00	Mixtures of any of the foregoing.....	Lb.....	Free		20% ad val.

1/ Pounds dry rubber content.

APPENDIX F
FRENCH AND WEST GERMAN MARKET DATA

Table F-1

Polychloroprene: Shipments of imports, by firms, by channels of distribution,
and by end uses, 1986-88

* * * * *

APPENDIX G
COMMENTS ON CAPITAL INVESTMENT

The Commission requested DuPont and Mobay to describe and explain the actual and potential negative effects, if any, of imports of polychloroprene from France and West Germany on their growth, investment, development and production efforts, and ability to raise capital. Their responses are shown below:

DuPont

* * * * *

Mobay

* * * * *

APPENDIX H
PRICING TABLES

Table H-1

Polychloroprene product 1: U.S. producers' and importers' net delivered prices, by quarters, January 1986-June 1989

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Table H-2

Polychloroprene product 2: U.S. producers' and importers' net delivered prices, by quarters, January 1986-June 1989

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Table H-3

Polychloroprene product 3: U.S. producers' and importers' net delivered prices, by quarters, January 1986-June 1989

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Table H-4

Polychloroprene product 4: U.S. producers' and importers' net delivered prices, by quarters, January 1986-June 1989

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Table H-5

Polychloroprene product 5: U.S. producers' and importers' net delivered prices, by quarters, January 1986-June 1989

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Table H-6

Polychloroprene product 6: U.S. producers' and importers' net delivered prices, by quarters, January 1986-June 1989

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