Certain Emulsion Styrene-Butadiene Rubber From Brazil, Korea, and Mexico

Investigations Nos. 731-TA-794 through 796 (Final)

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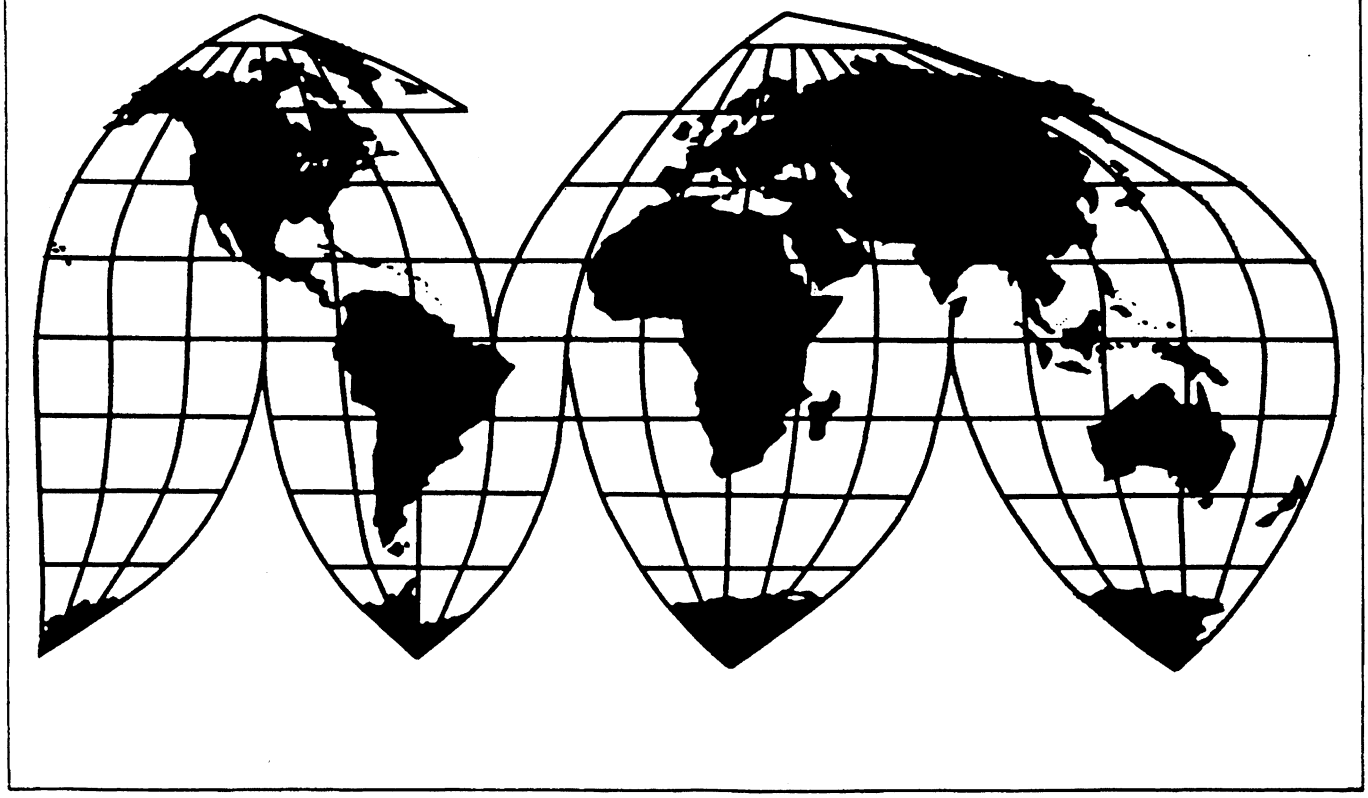

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Note.–Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report. Such deletions are indicated by asterisks.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-794-796 (Final)

CERTAIN EMULSION STYRENE-BUTADIENE RUBBER
FROM BRAZIL, KOREA, AND MEXICO

DETERMINATIONS

On the basis of the record[1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil, Korea, or Mexico of certain emulsion styrene-butadiene rubber, provided for in subheading 4002.19.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

BACKGROUND

The Commission instituted these investigations effective April 1, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by Ameripol Synpol Corp. of Akron, OH, and DSM Copolymer of Baton Rouge, LA. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain emulsion styrene-butadiene rubber from Brazil, Korea, and Mexico were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of November 25, 1998 (63 FR 65219). The hearing was held in Washington, DC, on March 30, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Chairman Bragg dissenting. Chairman Bragg determines that an industry in the United States is materially injured by reason of the subject imports. 1

VIEWS OF THE COMMISSION

Based on the record in these investigations, we determine that an industry in the United States is not materially injured or threatened with material injury by reason of imports of certain emulsion styrene-butadiene rubber ("ESBR") from Brazil, Korea, and Mexico that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").[3] [4]

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured, or threatened with material injury, by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry."[5] Section 771(4)(A) of the Tariff Act of 1930, as amended ("the Act"), defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[6] In turn, the Act defines "domestic like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[7]

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[8] No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.[9] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[10] Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[11]

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[3] Chairman Bragg determines than an industry in the United States is materially injured by reason of imports of ESBR from Brazil, Korea, and Mexico that have been found Commerce to be sold in the United States at LTFV. *See* Dissenting Views of Chairman Lynn M. Bragg. She joins in sections I, II and III.A of these views.

[4] Whether the establishment of an industry in the United States is materially retarded is not an issue in these investigations.

[5] 19 U.S.C. § 1677(4)(A).

[6] 19 U.S.C. § 1677(4)(A).

[7] 19 U.S.C. § 1677(10).

[8] *See, e.g.,* NEC Corp., et al. v. Dep't of Commerce and U.S. Int'l Trade Comm'n, Slip Op. 98-164 (Ct. Int'l Trade Dec. 15, 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See* Nippon Steel at 11, n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[9] *See, e.g.,* S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[10] Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), *aff'd*, 938 F.2d 1278 (Fed. Cir. 1991).

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

B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of these investigations as ESBR:

> [A] synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil-extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.
>
> ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers ("IISRP"). The universe of products subject to these investigations are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as "Clear" or "White Rubber." The 1700 grades are oil-extended and thus darker in color, and are often called "Brown Rubber."[12]

Two forms of emulsion styrene-butadiene rubber are covered by the scope definition: the 1500 series and the 1700 series of ESBR. The 1500 series is considered a neat or pure form of ESBR, while the 1700 series contains some added petroleum-based processing oil, which aids in the eventual processing of ESBR into custom masterbatches and compounds that are extruded, mixed, and rolled into rubber goods.[13]

ESBR is produced in a cold emulsion-polymerization process in which water is used as a diluent element.[14] ESBR is produced as a dry, crumb-like material and is usually sold pressed into bales.[15] Purchasers use ESBR to formulate custom masterbatches and other compounds prior to production of rubber goods, primarily tires. The production process for masterbatch compounds begins by breaking down the bales through heating, mixing, and rolling in order to plasticize the rubber. Other ingredients, such as carbon black, oils, antioxidants, processing aids, vulcanizing agents, silica, and zinc can be added to create the desired masterbatch, as can natural rubber and other synthetic rubbers.[16]

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[12] Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Brazil, 64 Fed. Reg. 14863, Emulsion Styrene-Butadiene Rubber from the Republic of Korea, 64 Fed. Reg. 14865, Emulsion Styrene-Butadiene Rubber from Mexico, 64 Fed. Reg. 14872, 14873 (March 29, 1999). Commerce noted that several "[p]roducts manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product)" were not included within the scope of the investigation and explained, for convenience and customs purposes only, that the products covered by its investigation were classifiable under subheading 4002.19.0010 of the Harmonized Tariff Schedules of the United States (HTS).

[13] Confidential Staff Report, dated April 12, 1999 ("CR") at I-2. For ease of reference, throughout the remainder of these views, the term "ESBR" will be used to refer exclusively to the products covered by the scope definition, i.e., the 1500 and 1700 series of products. The phrase "emulsion styrene-butadiene rubber" will be used when referring to all categories of emulsion styrene-butadiene products, including the 1000, 1600, 1800 and 1900 series of synthetic rubbers.

[14] CR at I-5.

[15] CR at I-4.

[16] CR at I-5, I-6.

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According to information supplied by petitioners, approximately 70 percent of the ESBR sold in the United States is used in the production of new tires, primarily in the replacement tire market.[17] The remaining 30 percent is used to produce other rubber products, including engine mounts, bushings, weather stripping, mudflaps, car mats, conveyor belts, hoses, roller coverings, playground pads, shoes, and adhesives.[18]

Several forms of emulsion styrene-butadiene rubber are not covered by the scope definition, including the 1600 and 1800 series of emulsion styrene-butadiene rubbers.[19] The 1600 series (cold black masterbatch) and the 1800 series (cold oil black masterbatch) are generally known as carbon black master batch, or "CBMB" product.[20] Like ESBR, CBMB is a form of emulsion styrene-butadiene rubber that is produced from a cold emulsion-polymerization process in which water is used as a diluent element[21] and contains styrene and butadiene as its primary raw ingredients. Unlike the 1500 and 1700 series, however, CBMB also contains significant amounts of carbon black.[22] Carbon black is used as a reinforcing agent in CBMB and adds significant abrasion resistance, tear strength and other properties to the rubber.[23] The addition of carbon black also makes CBMB significantly darker than ESBR. According to petitioners, CBMB is used primarily in the production of truck tire retreads.[24]

Another form of styrene-butadiene rubber not covered by the scope definition is solution styrene-butadiene rubber ("SSBR"). Unlike emulsion forms of styrene-butadiene rubber, SSBR is produced using a solution polymerized latex process.[25] SSBR is part of the 1200 IISRP series of synthetic rubbers.[26] SSBR is predominantly used in original equipment tires for new vehicles.[27]

C. Domestic Like Product Issues in These Investigations

Petitioners contend that the Commission should define a single domestic like product consisting of the 1500 and 1700 series of emulsion styrene-butadiene rubber.[28] Cooper Tire, Michelin North America and American Synthetic Rubber Corp., and Petroflex Industria e Comercio, S.A. argue that the domestic

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[17] CR at I-5.

[18] CR at II-2.

[19] CR at I-2. The other categories of emulsion styrene-butadiene rubber not covered by the scope definition are the 1000 and 1900 series of synthetic rubbers, as specified under the IISRP numbering system. There has been no argument for their inclusion in the like product. Unlike ESBR, the 1000 series is a "hot" polymerized series of emulsion styrene-butadiene rubber used in a variety of end uses other than those to which ESBR is best suited, CR at I-3, n.7. The 1900 series of emulsion styrene-butadiene rubber is a high-styrene synthetic rubber that is also used in a variety of non-tire end uses, such as shoe soles and floor tiles. Transcript of Staff Conference ("Conf. Tr."), April 22, 1998, at 50-51; Petitioners' Postconference Brief, dated April 27, 1998, at 41. *Id.* According to petitioners, the 1200, 1300 and 1400 series of synthetic rubbers are not emulsion styrene-butadiene rubbers. Conf. Tr. at 50-51.

[20] CR at I-3.

[21] CR at I-4.

[22] CR at I-8.

[23] CR at I-9; Conf. Tr. at 32.

[24] CR at I-8.

[25] CR at I-3.

[26] CR at I-2, n.6.

[27] CR at I-12; CR at I-12 n.35; CR at II-1, n.6.

[28] Petitioners' Prehearing Brief, March 24, 1999, at 2.

like product should be broadened to include both CBMB and SSBR.[29] Respondents Oliver Rubber Co., Industria Negromex, S.A. de C.V., and GIRSA, Inc. argue that at least CBMB should be included in the domestic like product.[30]

Accordingly, there are two like product issues in these investigations: (i) whether CBMB should be included in the same domestic like product as ESBR; and (ii) whether SSBR should be included within the same domestic like product as ESBR. As explained below, we determine that there is a single domestic like product in these investigations, consisting of ESBR (*i.e.*, the 1500 and 1700 series of emulsion styrene-butadiene rubber products).

1. Whether CBMB Should Be Included Within the Same Domestic Like Product as ESBR

Physical Characteristics and End Uses. The record indicates that ESBR and CBMB share some physical characteristics and end uses but have significant differences in physical characteristics and end uses as well. On the one hand, CBMB and ESBR are both variants of emulsion styrene-butadiene rubber and share certain chemical and physical properties.[31] In essence, CBMB is ESBR mixed with carbon black.[32] Both products provide some similar physical characteristics to the products they are used to produce[33] and they generally share similar end uses in the production of tire components.[34]

On the other hand, significant differences in physical characteristics and end use applications exist between CBMB and ESBR. First, CBMB differs physically from ESBR in that it contains significant amounts of carbon black. The addition of this material to CBMB imparts a black coloring to the rubber and makes it unsuitable in end uses for which a non-black rubber product (such as ESBR) is required, or where flexibility in the type of carbon black to be used is required.[35] Further, the addition of carbon black makes CBMB a harder, more solid and much bulkier product than ESBR and changes its handling characteristics.[36] The addition of carbon black also increases the abrasion resistance and tear strength of CBMB and endows CBMB with superior tread wear performance when compared with ESBR.[37] These differences in characteristics lead to differences in the applications in which they are used. CBMB is used primarily in producing retreads for used truck tires, while ESBR is used more for the production of new tires and replacement tires, but much less for retreading.[38]

Interchangeability. The record suggests that there is some level of interchangeability between CBMB and ESBR. In this regard, nine of 38 responding purchasers reported that they had substituted

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[29] Prehearing briefs of Cooper at 7-10, Michelin North America and American Synthetic Rubber Corp. at 9, Petroflex Industria e Comercio, S.A. at 3.

[30] Prehearing briefs of Oliver Rubber Co. at 3-5 and Industrias Negromex, S.A. de C.V. and GIRSA, Inc. at 3-9.

[31] CR at I-9.

[32] Tr. at 59; Petitioners' Prehearing Brief at 27, 28; Cooper Prehearing Brief at 8.

[33] Petitioners' Postconference Brief at 41.

[34] *E.g.*, Cooper Postconference Brief at app. p. 7.

[35] Petitioners' Postconference Brief at 41; Petitioners' Prehearing Brief at 28.

[36] Conf. Tr. at 26. In this regard, the record indicates that ESBR is packed and shipped in bales and containers, whereas CBMB is generally hot wrapped and shipped stacked as bales on pallets. ESBR is subject to "cold flow" and will not hold its shape in a warm and humid environment, whereas CBMB is very hard and stable. Petitioners' Prehearing Brief at 27.

[37] Conf. Tr. at 32 & 41.

[38] CR at I-10, I-12; Petitioners' Prehearing Brief at 27; *see also* CR at I-12, n.35 ***.

between CBMB and ESBR since 1996.[39] In fact, one major tire producer, Cooper Tire, reported that it has substituted CBMB for ESBR in situations when the available supply of ESBR was limited. Several others reported that they may substitute the products in the near future.[40]

Nonetheless, we find that the two products have a limited level of interchangeability. While the record shows some substitution between ESBR and CBMB, the substitution that occurs is normally not a total substitution.[41] For example, a tire producer that uses a combination of ESBR and CBMB in a given tire component may adjust the mix somewhat but normally would not fully substitute one for the other in components.[42] Moreover, although a number of purchasers reported that they might substitute or have substituted between CBMB and ESBR, the large majority of responding purchasers report that they have not substituted the products for one another since 1996 and do not believe they will do so within the next two years.[43]

The record further suggests that the process of switching between ESBR and CBMB in tire production is, as a practical matter, too costly and time-intensive to make the two products complete substitutes for one another.[44] Cooper's witnesses note that there are limitations on the interchangeability of the two products and that Cooper prefers to use ESBR when it is available.[45] In this regard, while ESBR is used in original equipment tire production, CBMB is not.[46]

Finally, a major use of CBMB is in the production of truck tire retreads, where there is less need for alternative grades of carbon black than in the production of original equipment and replacement tires.[47] Use of ESBR in retread production, however, requires the producer to mix in carbon black, an energy intensive procedure that requires a commitment to maintaining mixing capacity. Thus, use of CBMB in retread production significantly reduces the manufacturer's batch mixing time, energy consumption, and the need to invest in mixing capacity. Accordingly, ESBR can be used in the place of CBMB in retread production only by companies that have mixing capacity available and a timetable that permits completion of the mixing operation.[48]

Channels of Distribution. Generally, CBMB and ESBR are sold through similar channels of distribution in the merchant market.[49] The large bulk of ESBR merchant market sales and all of CBMB merchant market sales are made directly to end users, with only 5 percent of ESBR sold through

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[39] CR at II-6. Thirteen of 39 responding purchasers (including two of the four large tire producers) reported that they might substitute between CBMB and ESBR in their end use applications within the next two years. *Id.*

[40] Cooper Prehearing Brief at 8-9; *see also* Oliver Rubber Co. Prehearing Brief at 4 (stating CBMB is fully interchangeable with ESBR).

[41] CR at II-6.

[42] CR at I-12.

[43] 29 of 38 purchasers reported that they had not substituted between CBMB since 1996 while 26 of 39 reported that they would not substitute within the next two years. CR at II-6.

[44] Conf. Tr. at 37; Petitioner Postconference Brief at 41-42.

[45] Cooper Prehearing Brief at 8. Cooper would use CBMB only when it has exceeded its capacity to mix its own batch from ESBR. Hearing Tr. at 126; *see also* Conf. Tr. at 77-78.

[46] CR at I-12, n.35.

[47] Conf. Tr. at 41; Petitioners' Prehearing Brief at 28.

[48] CR at I-9, n.30; Petitioners' Prehearing Brief at 27, 28; Hearing Tr. at 59.

[49] CR at I-12 - I-13.

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distributors.[50] However, unlike CBMB, a substantial percentage of ESBR production in the United States is captively consumed.[51]

Common Manufacturing Facilities, Production Processes, and Production Employees. CBMB is produced at the same general facilities as ESBR, but is produced on different manufacturing lines and by different employees.[52] Although the record indicates that at least portions of a CBMB production line could be converted to the production of ESBR, producing ESBR after the equipment has been used to produce CBMB would result in contamination of the ESBR with the fine carbon black residues left in the equipment.[53] It is generally acknowledged, therefore, that, although parts of an ESBR production line could be converted to CBMB production, it is not practical to convert a CBMB line to ESBR production.[54] In addition, while there are some similarities in terms of the production process for CBMB and ESBR, CBMB is produced from a different latex than ESBR and undergoes a different drying and packing process than ESBR.[55] Accordingly, the record reveals significant barriers to using common production facilities and common employees in the production of ESBR and CBMB.

Producer and Customer Perceptions. Generally, because CBMB is ESBR mixed with carbon black, producers and customers might consider them to be similar products. Nonetheless, the products are classified differently under International Institute of Synthetic Rubber Producers ("IISRP") standards. ESBR is classified in the 1500 and 1700 series while CBMB is classified in the 1600 and 1800 series, which reflects the fact that there are significant product differences. Moreover, as indicated above, although some end users and producers believe that there is a reasonable degree of interchangeability between CBMB and ESBR, a large majority of end users and the petitioners believe that the products are not practically interchangeable.[56] On the whole, therefore, we believe that producers and customers generally can be said to consider ESBR and CBMB to be different products.

Price. The record suggests that there are differences in the price of ESBR and CBMB. In 1998, the unit values of U.S. producers' domestic shipments of ESBR and CBMB were $0.36 and $*** per pound, respectively.[57]

Conclusion. In its preliminary determination, the Commission did not include CBMB within the domestic like product. We believe that the more extensive record in these final phase investigations supports the same conclusion. While the record indicates that CBMB and ESBR share some physical characteristics and end uses, are somewhat interchangeable, and are sold in similar channels of distribution, there are significant physical and end use differences between CBMB and ESBR; the level of interchangeability between the two products is relatively limited; and the products are produced on different production lines and by different employees and are sold at different price levels. Accordingly, we find that CBMB is not part of the domestic like product in these investigations.

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[50] CR at I-13.

[51] During the period examined, approximately *** percent of U.S. ESBR shipments were captively consumed. CR at III-6.

[52] Petitioners' Prehearing Brief at 34-35.

[53] CR at I-10.

[54] Petitioner DSM testified that it would cost about $5 million to convert an ESBR production line to CBMB. Tr. at 239 (May). Oliver Rubber also stated that it could adapt its equipment to convert ESBR to CBMB, but changes in the process and equipment would be necessary to accomplish this conversion. Oliver Rubber Prehearing Brief at 1.

[55] Petitioners' Prehearing Brief at 34-35.

[56] CR at II-6.

[57] CR at I-13.

2. Whether SSBR Should be Included in the Same Domestic Like Product as ESBR

Physical Characteristics and End Uses. Although both products are types of styrene-butadiene rubber, ESBR is produced using an emulsion polymerization process while SSBR production employs a solution polymerization process.[58] SSBR has a different molecular structure and chemical composition than ESBR, which impart significantly different qualities to SSBR.[59] An important characteristic of SSBR is reduced rolling resistance, which reduces energy loss and lowers fuel consumption.[60] Because of its fuel efficiency properties, SSBR is used primarily in original equipment (OEM) tires, as part of automobile manufacturers' efforts to meet corporate average fuel economy standards for their fleets; in contrast, ESBR finds greater use in replacement tires.[61]

Interchangeability. The record evidence indicates that SSBR is interchangeable with ESBR to some extent. For example, five of 38 responding purchasers reported that they had substituted between ESBR and SSBR since 1996.[62] Similarly, eleven of 37 responding purchasers, including three of the four large tire producers, reported that there were circumstances under which they might substitute one of the products for the other within the next two years.[63]

Nonetheless, the available data suggest that ESBR is not fully interchangeable with SSBR in the original equipment tire market because ESBR does not have similar energy loss characteristics when compared to SSBR.[64] Accordingly, 33 of 38 responding purchasers reported that they had not substituted between ESBR and SSBR since 1996, and 26 of 37 purchasers reported that they would likely not do so within the next two years.[65] On balance, we find that the two products are somewhat interchangeable.[66]

Channels of Distribution. The record evidence suggests that SSBR and ESBR are sold through similar channels of distribution in the merchant market.[67] First, a substantial share of ESBR production and the bulk of SSBR production are captively consumed by the domestic industry.[68] Second, all SSBR merchant market sales and 95 percent of ESBR merchant market sales are made directly to end users.[69]

Common Manufacturing Facilities, Production Processes, and Production Employees. ESBR and SSBR do not share common manufacturing facilities, production processes or production employees. SSBR is produced using a different manufacturing process than that used for ESBR and is not produced in

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[58] CR at I-3.

[59] Petitioners' Prehearing Brief at 16-21.

[60] CR at I-11.

[61] CR at I-11 - I-12; I-12 at n.35.

[62] CR at II-6.

[63] Id.

[64] CR at I-13. In this regard, petitioners contend that the potential for short-term interchangeability between ESBR and SSBR is limited (in the range of 10-20 percent) for articles with low service performance demands, and 10 percent or less in technically demanding applications. Petitioners' Prehearing Brief at 16-20.

[65] CR at II-6.

[66] Hearing Tr. at 130. A Cooper witness stated that to substitute ESBR and SSBR would take longer than substituting ESBR and CBMB, and "we don't like to make changes."

[67] CR at I-12 - I-13.

[68] CR at III-6 and VI-2; PR at III-3 and VI-2

[69] CR at I-13.

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the same facilities as ESBR.[70] Only one of the three domestic producers of ESBR manufactures SSBR and does so in a facility distinct from its ESBR facilities.[71]

Producer and Customer Perceptions. As discussed above, SSBR is perceived as distinct based upon its reduced rolling resistance when included in tire tread formulations. Like CBMB, SSBR is classified by the IISRP differently than ESBR: SSBR is in the 1200 series (including butadiene and isopreme rubbers), whereas ESBR is classified in series 1500 and 1700. Although five of 38 responding purchasers indicated that they had substituted between SSBR and ESBR since 1996,[72] we conclude that producers and customers generally perceive ESBR and SSBR to be distinct products.

Price. On the whole, there are relatively significant price differences between ESBR and SSBR. In 1998, the average unit values of U.S. producers' domestic shipments of SSBR and ESBR were $*** per pound and $0.36 per pound, respectively.

Conclusion. In its preliminary determination, the Commission determined not to define the domestic like product to encompass SSBR. We believe that the more extensive record compiled in the final phase of these investigations supports the same conclusion. Although SSBR and ESBR share some physical characteristics and end uses, are somewhat interchangeable, and are sold in similar channels of distribution, there are significant physical and end use differences between SSBR and ESBR; they are produced on different production lines through different processes and by different employees; producers and customers perceive them to be two different products; and they are sold at different price levels. Accordingly, we find that SSBR is not part of the domestic like product in these investigations.

D. Domestic Industry

The statute defines the domestic industry as "the producers as a whole of a domestic like product."[73] In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll produced, captively consumed, or sold in the domestic merchant market.[74] Because we have found that the domestic like product consists of all ESBR, we also find that the domestic industry consists of all three U.S. producers of ESBR: Ameripol Synpol Corp. ("Ameripol Synpol"), DSM Copolymer, and The Goodyear Tire and Rubber Co. ("Goodyear").[75]

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[70] CR at I-10; Conf. Tr. at 56-57.

[71] Conf. Tr. at 56-57; Petitioners' Postconference Brief at Part Two, p. 22.

[72] CR at II-6. The petitioners similarly assert that, although the products can be interchanged in certain instances, such interchangeability is limited. Petitioners' Prehearing Brief at 16-21.

[73] 19 U.S.C. § 1677(4)(A).

[74] See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

[75] None of the domestic producers is related to or imported merchandise from the subject producers. Accordingly, there are no related party issues in these investigations.

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II. CUMULATION[76]

A. In General

For purposes of evaluating the volume and price effects for a determination of material injury by reason of the subject imports, section 771(7)(G)(i) of the Act requires the Commission to cumulate subject imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.[77] In assessing whether subject imports compete with each other and with the domestic like product,[78] the Commission has generally considered four factors, including:

(1) the degree of fungibility between the subject imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;[79]

(2) the presence of sales or offers to sell in the same geographical markets of subject imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for subject imports from different countries and the domestic like product; and

(4) whether the subject imports are simultaneously present in the market.[80]

While no single factor is necessarily determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the subject imports compete with each other and with the domestic like product.[81] Only a "reasonable overlap" of competition is required.[82]

We have determined to cumulate the subject imports from Brazil, Korea, and Mexico for purposes of our material injury analysis. There is relatively little physical or quality differentiation among the

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[76] Negligibility is not an issue in these investigations. CR and PR at Table IV-1.

[77] 19 U.S.C. § 1677(7)(G)(i).

[78] The SAA (at 848) expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." *citing* Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade 1988), *aff'd* 859 F.2d 915 (Fed. Cir. 1988).

[79] Commissioner Crawford finds that substitutability, not fungibility, is a more accurate reflection of the statute. In these investigations, she finds there is sufficient substitutability to conclude there is a reasonable overlap of competition among the subject imports and between the subject imports and the domestic like product. Therefore, she concurs with her colleagues that the subject imports should be cumulatively assessed. *See* Dissenting Views of Commissioner Carol T. Crawford in Stainless Steel Bar from Brazil, India, Japan, and Spain, Inv. Nos. 731-TA-678, 679, 681, and 682 (Final), USITC Pub. 2856 (Feb. 1995), for a description of her views on cumulation.

[80] *See* Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade), *aff'd*, 859 F.2d 915 (Fed. Cir. 1988).

[81] *See, e.g.*, Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[82] *See* Goss Graphic System, Inc. v. United States, ___ CIT ___, slip op. 98-147 at 8 (Oct. 16, 1998) ("cumulation does not require two products to be highly fungible"); Mukand Ltd., 937 F. Supp. at 916; Wieland Werke, AG, 718 F. Supp. at 52 ("Completely overlapping markets are not required."). 11

subject imports and the domestic merchandise.[83] All three of the responding domestic producers reported that domestic and subject ESBR are interchangeable for each of the subject countries.[84] Although two importers reported Korean products were of higher quality than the subject imports from Mexico,[85] and several importers reported that certain circumstances of sale might vary among the subject imports, all the domestic producers and the large majority of responding importers reported that imports from the subject countries are interchangeable with one another and the domestic like product.[86]

Second, the ESBR market appears to be a nationwide market[87] and the record indicates that the subject imports and the domestic merchandise were offered for sale throughout that market during the period examined. Moreover, the record shows that substantial amounts of imports from each of the three subject countries were sold during each year of this period.[88] Accordingly, the record data indicate that the subject imports were sold in the same geographic regions and were simultaneously present in the market between 1996 and 1998.

Finally, the subject imports and the domestic like product were sold during the period of investigation in two channels of distribution: directly to end users and to distributors.[89] Moreover, the record indicates that at least some imports from all three countries and the domestic like product were sold on a contractual basis during this period.[90]

In sum, the subject imports have a significant degree of fungibility with each other and the domestic merchandise, were sold in the same geographic regions as each other and the domestic merchandise, were simultaneously present in the market, and were generally sold in similar channels of distribution. We conclude, therefore, that the subject imports compete with one another and the domestic like product[91] and, accordingly, we have cumulated imports from the three subject countries for our material injury analysis.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM BRAZIL, KOREA AND MEXICO[92]

In the final phase of antidumping investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.[93] [94] In making this

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[83] CR at II-9 - II-16 & Table II-1.

[84] CR at II-12.

[85] CR at II-14 and Table II-1. Two other purchasers found the Korean and Mexican product to be of comparable quality.

[86] CR at II-9 - II-15 & Table II-1.

[87] *E.g.*, Conf. Tr. at 31 (May 1998).

[88] CR at Table IV-1.

[89] CR at II-1.

[90] CR at II-1.

[91] *E.g.*, CR at II-9 - II-18.

[92] Chairman Bragg determines that the domestic industry producing ESBR is materially injured by reason of the subject imports from Brazil, Korea, and Mexico. *See* Dissenting Views of Chairman Lynn M. Bragg.

[93] 19 U.S.C. § 1673d(b).

[94] Commissioner Crawford notes that the statute requires that the Commission determine whether a domestic industry is "materially injured by reason of" the allegedly subsidized and LTFV imports. She finds that the clear meaning of the statute is to require a determination of whether the domestic industry is materially injured by reason of unfairly traded imports, not by reason of the unfairly traded imports among other things. Many, if not

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determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[95] The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant."[96] In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports we consider all relevant economic factors that bear on the state of the industry in the United States.[97] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[98]

For the reasons discussed below, we determine that the domestic industry producing ESBR is not materially injured by reason of the subject imports from Brazil, Korea, and Mexico that are sold at LTFV.[99]

A. Conditions of Competition

The following conditions of competition are pertinent to our analysis in these investigations. First, the domestic industry captively consumed between *** percent of their aggregate U.S. shipments of ESBR during the period examined.[100] Accordingly, we have considered whether the captive production provision

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most, domestic industries are subject to injury from more than one economic factor. Of these factors, there may be more than one that independently are causing material injury to the domestic industry. It is assumed in the legislative history that the "ITC will consider information which indicates that harm is caused by factors other than less-than-fair-value imports." S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979). However, the legislative history makes it clear that the Commission is not to weigh or prioritize the factors that are independently causing material injury. Id. at 74; H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979). The Commission is not to determine if the unfairly traded imports are "the principal, a substantial or a significant cause of material injury." S. Rep. No. 96-249 at 74 (1979). Rather, it is to determine whether any injury "by reason of" the unfairly traded imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effect of imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic industry." S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987) (emphasis added); Gerald Metals v. United States, 132 F.3d 716 (Fed. Cir. 1997)(rehearing denied).

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

[95] 19 U.S.C. § 1677(7)(B)(i). The Commission "may consider such other economic factors as are relevant to the determination" but shall "identify each [such] factor . . . [a]nd explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B). *See also* Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

[96] 19 U.S.C. § 1677(7)(A).

[97] 19 U.S.C. § 1677(7)(C)(iii).

[98] 19 U.S.C. § 1677(7)(C)(iii).

[99] Chairman Bragg determines that the domestic industry producing ESBR is materially injured by reason of the subject imports from Brazil, Korea, and Mexico. *See* Dissenting Views of Chairman Lynn M. Bragg.

[100] CR at III-6. Goodyear captively consumed between *** and *** percent of the volume of its U.S. shipments in each year of the period. *Id.*

is applicable in these investigations.[101] The record clearly indicates that ESBR is not the "predominant material input" for the downstream products.[102] Accordingly, we find that the second criterion of the captive production provision is not satisfied in this case and that the captive production provision, therefore, is not applicable. Nonetheless, we have considered the significant volume of captive production as a condition of competition.[103]

Second, aggregate demand for ESBR is derived, in significant part, from the demand for tires,[104] since approximately seventy percent of domestic ESBR production is consumed in the production of tires and tire products.[105] During the period examined, total apparent consumption of ESBR remained relatively flat.[106]

Third, grades 1502 and 1712 are the most commonly sold forms of ESBR and both are used in tires. These two grades account for most of the consumption of ESBR within the United States.[107]

Fourth, several rubber products can be substituted for ESBR to varying extents, including natural rubber, CBMB, SSBR, polyisoprene, polybutadiene, and alpha-methylstyrene-butadiene rubber.[108] During

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[101] The captive production provision, 19 U.S.C. § 1677(7)(C)(iv), provides:

> (iv) CAPTIVE PRODUCTION -- If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that --
>
> > (I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product,
> >
> > (II) the domestic like product is the predominant material input in the production of that downstream article, and
> >
> > (III) the production of the domestic like product sold in the merchant market is not generally used in the production of that downstream article,
>
> then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

[102] Goodyear has reported that the ESBR it transfers for internal consumption accounts for only *** percent of the raw material costs of its tires and only *** percent of the raw materials cost of its engineered rubber products. CR at III-6. The SAA explains that a domestic like product will be considered "predominant" only where it is the primary material used in the production of a downstream article. SAA at 853.

[103] *E.g.*, Open-End Spun Rayon Singles Yarn from Austria, Inv. No. 731-TA-751 (Final), USITC Pub. No. 3059 at 6 (Sept. 1997).

[104] CR at II-4.

[105] CR at II-1 - II-2.

[106] Apparent consumption was 1.215 million pounds in 1996, 1.262 million pounds in 1997, and 1.200 million pounds in 1998. CR and PR at Table IV-4.

[107] CR at II-2; CR at V-5; PR at V-4.

[108] CR at II-6-7.

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the period examined, price movements for ESBR have tracked the general trends in the prices of natural rubber[109] and, to a lesser extent, the prices of other synthetic rubbers that are substitutable for ESBR.[110]

Fifth, the majority of ESBR sales are made by contract.[111] Generally, these contracts contain formula price mechanisms, which provide for adjustments to the contractual price of ESBR based on changes in the market prices of styrene and butadiene, the principal raw materials for ESBR.[112] Accordingly, the price of ESBR is influenced also by movements in the cost of raw material inputs for ESBR.[113]

Sixth, because tire manufacturers and other purchasers need to ensure a continuous source of supply, they typically maintain more than one supplier of ESBR.[114] However, consolidation in the domestic industry has increased, most recently with the acquisition of Dynagen, Inc., by Ameripol Synpol in 1997.[115] Because of that acquisition, the industry now consists of only three producers, one of which -- Goodyear -- consumes most of its ESBR production captively.[116] [117] [118]

B. Volume

Section 771(7)(C)(i) of the Act provides that the "Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[119]

The quantity and value of the subject imports increased during the period of investigation, both in absolute terms and relative to consumption in the United States. On a quantity basis, the volume of the cumulated subject imports increased significantly during the entire period of investigation.[120] However, almost all of this increase occurred between 1996 and 1997, when the volume of the subject imports increased from 73.8 million pounds to 127.4 million pounds, an increase of 72 percent. In 1998, the

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[109] While the general price trends for ESBR and natural rubber may be somewhat similar, Chairman Bragg does not find an exact correlation between prices for ESBR and prices for natural rubber. *See* CR and PR at Table C-4.

[110] CR at Table C-4.

[111] *See* CR at II-2; PR at II-1. The terms of these contracts vary between *** to *** for the domestic merchandise and *** for the subject merchandise. CR at V-4; PR at V-3.

[112] CR at V-3; PR at V-1.

[113] Tr. at 48-49 (U.S. producer representative stating that "our price is determined by our raw materials, and the driver is obviously the price of the butadiene and styrene polymers that enter into the making of the product").

[114] *E.g.*, Negromex Prehearing Brief at 23; Kumho Prehearing Brief at 4-5; Kumho Posthearing Brief at 10; Tr. at 171.

[115] CR and PR at VI-1.

[116] *Id.*

[117] Chairman Bragg and Commissioner Crawford also find that the available evidence indicates that ESBR is a commodity product that usually accounts for a minor portion of the overall cost of the downstream products in which it is incorporated. CR at II-6; PR at II-4. Accordingly, price changes for ESBR will likely have only a small impact on overall demand for ESBR. *Id.* Moreover, they find that the record indicates that the domestic industry is a capital-intensive industry that must operate at high capacity utilization rates on a consistent basis to be profitable. CR at II-3; PR at II-2.

[118] Chairman Bragg determines that the domestic industry producing ESBR is materially injured by reason of the subject imports from Brazil, Korea, and Mexico. *See* Dissenting Views of Chairman Lynn M. Bragg. She does not join the remainder of these views.

[119] 19 U.S.C. § 1677(7)(C)(i).

[120] CR & PR at Table IV-1.

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volume of the subject imports increased only modestly, from 127.4 million pounds to 133.1 million pounds.[121]

The market share of the subject imports exhibited similar trends during the period. When measured by quantity, the market share held by the subject imports increased from 6.1 percent in 1996 to 11.1 percent in 1998. However, the bulk of the increase occurred during the period between 1996 and 1997, when the subject imports' market share rose from 6.1 percent to 10.1 percent. The market share of the subject imports increased only modestly to 11.1 percent between 1997 and 1998.[122] When measured by value, the subject imports exhibited similar trends, with their market share increasing from 6.5 percent in 1996 to 9.4 percent in 1997 and then to 10.0 percent in 1998.[123] [124]

Viewed in isolation, the volume of the subject imports can be considered significant. However, in light of the fact that the increase in subject imports occurred early in the period of investigation, and in view of the price and non-price-related factors discussed below, we find that subject imports have not materially injured the domestic industry.

C. Price Effects of the Cumulated Subject Imports

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

> the Commission shall consider whether -- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.[125]

The evidence gathered in these investigations indicates that there is a moderate to high level of substitutability between the subject merchandise and the domestic like product and that quality, price, and availability or ability to supply are all important considerations in the purchase decision.[126] The record also shows that, while the prices of both the subject imports and the domestic product declined during the period of investigation and the subject imports undersold the domestic merchandise in the majority of possible price comparisons, the overall pattern of underselling is mixed.[127] Nevertheless, as we discuss below, the price movements of the domestic merchandise during the period of investigation have been substantially affected by movements in the price of natural and synthetic rubbers and in the cost of raw material inputs for ESBR. Accordingly, we find that the subject imports have not significantly affected domestic prices.[128]

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[121] *Id.*

[122] CR at table IV-4.

[123] CR table IV-3.

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

[125] 19 U.S.C. § 1677(7)(C)(ii).

[126] CR at II-9-13; PR at II-5-8.

[127] Table IV-1, VI-1, VI-2.

[128] Commissioner Crawford concurs that the subject imports are not having significant effects on domestic prices. To evaluate the effects of unfairly traded imports on domestic prices, Commissioner Crawford compares

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In this regard, the record shows that ESBR prices, particularly in the contract market, are directly affected by the prices of the primary inputs, styrene and butadiene, because contract prices for ESBR are linked to the prices of those products. Because the cost of styrene and butadiene declined over the period of investigation, we believe that the declines in the price obtained by the domestic producers for their sales of ESBR can be attributed, in significant part, to the decline in these raw material prices.[129]

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[128] (...continued)
the domestic prices that existed when the imports were dumped with what domestic prices would have been had the imports been fairly traded. In most cases, if the subject imports had not been dumped, their prices in the U.S. market would have increased. Because ESBR is quite substitutable among sources of supply, higher prices normally would have resulted in a shift in demand away from the subject imports. However, purchasers attach great importance to maintaining multiple viable sources of supply. Only 7 of 41 purchasers obtained ESBR from a single country of origin, while 25 of 41 obtained ESBR from 3 or more different countries of origin. This reliance on multiple sources limits the magnitude of any shift in demand.

In these investigations, dumping margins were mixed: 71.08 percent for the primary Brazilian manufacturer/exporter; 33.01 percent for Mexico; 118.88 percent for Korean manufacturer/exporter Hyundai; and 16.65 percent for all other Korean manufacturers/exporters, including the primary manufacturer/exporter, Korea Kumho. The cumulated market share of subject imports from these countries in 1998 is not very large, only 11.1 percent by quantity. The market shares for Brazil and Mexico were fairly small, *** and *** percent, respectively, while the market share for imports from Korea, *** percent, accounted for the majority of the market share held by cumulated subject imports.

At fairly traded prices, it is likely that all of the demand for subject imports from Brazil and some of the demand for subject imports from Mexico would have shifted away from these sources. At fairly traded prices, it is likely that all of the demand for Hyundai's subject imports would have shifted away from this source as well. However, at fairly traded prices, it is likely that most, if not all, of Korea Kumho's product would have continued to be sold in the U.S. market. Since Korea Kumho accounts for the *** majority of subject imports from Korea, only a small portion of demand for subject imports from Korea would have shifted away from this source. Consequently, the combined shift in demand away from the three sources of subject imports would have been fairly small.

Not all of the small shift in demand away from the subject imports would have gone to the domestic industry. Nonsubject imports, though small in volume, were available from a number of countries. Furthermore, several viable alternatives (e.g., CBMB, SSBR, other synthetic rubbers, and natural rubber) that can substitute for ESBR are available. Nonsubject imports and substitute products likely would have captured some of the shift in demand away from the subject imports, and therefore the shift in demand toward the domestic product would have been small.

*** were essentially operating at full capacity in 1998, while *** had to contend with lingering mistrust with customers such as ***. Accordingly, the domestic industry likely would not have able to significantly increase its output. These conditions suggest that the domestic industry might have been able to increase its prices in response to an increase in demand. However, it is likely that the increase in demand toward the domestic product would have been too small to allow the domestic industry to increase its prices. Furthermore, several of the biggest purchasers are sufficiently large to resist price increases, and many U.S. purchasers have diversified their sources of supply. More important, the price discipline from substitute products restricts the U.S. producers' pricing flexibility. Finally, U.S. producers' long-term contracts tend to "lock in" prices for periods of at least one year. Thus, the domestic industry would not have been able to raise its prices in response to the small increase in demand for the domestic product.

Therefore, significant effects on domestic prices cannot be attributed to the unfair pricing of the subject imports. Consequently, Commissioner Crawford finds that the subject imports are not having significant effects on the prices for domestic ESBR.

[129] The overall raw materials costs of the domestic producers declined from $*** in 1996 to $*** in 1998 at the same time that their overall unit price per pound for domestic shipments declined from $0.42 in 1996 to $0.36 cents per pound in 1998. CR at VI-6 and Table III-2; PR at VI-3 & Table III-2. We note that the contribution of falling raw material costs to declining prices may have lagged somewhat because of the prevalence of term (continued...)

Moreover, we find that there is a correlation between the price of ESBR and the price of natural rubber and other synthetic rubbers.[130] The record indicates that natural rubber can be substituted for ESBR in tire production to some extent and that this level of substitutability causes ESBR prices to be affected by natural rubber prices.[131] Accordingly, the availability of these possible substitutes has a disciplining effect on prices of ESBR within the U.S. market. In this regard, the record shows that the average price of natural rubber declined substantially from 1996 to 1998.[132] Given that the decline in natural rubber prices was accompanied by a shift in consumption from ESBR to natural rubber,[133] and given the other record evidence showing a relationship between natural rubber and ESBR prices, we find that declines in domestic ESBR prices during the period can be attributed, in significant part, to declines in the price of natural rubber. Similarly, we find that declines in ESBR prices can also be attributed to downward trends in prices of other synthetic rubbers, such as SSBR and CBMB,[134] which are also substitutable for ESBR in certain applications.[135] In this regard, we find that the level of substitution between these latter products and ESBR is sufficiently significant to affect ESBR prices.

As noted above, the record indicates that the subject imports were underselling the domestic merchandise in the majority of possible price comparisons. However, the record reveals that most of the underselling occurred during the end of the period of investigation, when the market shares and volumes of the subject imports levelled off.[136] Indeed, subject imports from Korea accounted for most of the increase in subject imports during the period[137] but generally oversold the domestic merchandise on the largest volume product for which the Commission gathered price comparison data.[138] Moreover, the bulk of the petitioners' lost sales and lost revenue allegations were not confirmed by the purchasers.[139] Given this record evidence, the underselling data in this investigation does not indicate the subject imports had a significant adverse effect on domestic prices. Rather, the record indicates that the effect of subject imports was not significant in light of declines in raw materials costs and the price of natural and synthetic rubbers.

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[129] (...continued)
contracts in this market.

[130] CR at II-6-8 and Table C-4; PR at II-6-7 and Table C-4.

[131] *Id.* *** reported that tire producers tend to purchase more natural rubber and less ESBR as natural rubber prices decline, and that natural rubber prices have done so substantially in the last three years. Similarly, *** reported that a drop in demand for ESBR was directly related to the decline in the price of natural rubber. *See also* Petitioners' Posthearing Brief, Attachment F (***.)

[132] CR at Table C-4. The unit value of natural rubber declined from $0.66 in 1996 to $0.40 in 1998.

[133] CR at Table C-4.

[134] CR at Table C-4.

[135] CR at II-4. E.g., Tr. at 170-174; Petitioners' Posthearing Brief, Attachment F; Intertex World Resources Prehearing Brief at 10-13.

[136] CR and PR at Tables V-1-V-4 & Table IV-4.

[137] CR and PR at Table IV-4.

[138] CR at Table V-2.

[139] CR at V-17 - V-32.

D. Impact[140]

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.[141] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development.

In general, we find that the subject imports are not having a material impact on the domestic industry.[142] In coming to this conclusion, we recognize that the condition of the industry has generally declined during the period of investigation.[143] The industry has experienced declines in its production and shipment levels,[144] sales revenues,[145] and employment levels[146] throughout the period. Moreover, the

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[140] The statute instructs the Commission to consider the "magnitude of the dumping margin" in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its final determinations Commerce identified the following dumping margins: for Brazil, 71.08 percent for Petroflex and an "all others" rate of 43.85 percent; for Korea, 16.65 percent for Korea Kumho Petrochemical Co., Ltd., 118.88 percent for Hyundai Petrochemical Co., Ltd., and an "all others" rate of 16.65 percent; and for Mexico, 33.01 percent for Negromex and for "all others." 64 Fed. Reg. at 14865, 14872 & 14883. Korea Kumho accounted for *** percent of the overall share of Korean exports in 1998.

[141] 19 U.S.C. § 1677(7)(C)(iii). *See also* SAA at 851 and 885 and Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25, n. 148 (Feb. 1999).

[142] Commissioner Crawford does not rely on any analysis of the trends in the statutory impact factors in her determination of material injury by reason of the subject imports, but concurs in the conclusion that the subject imports are not having a significant impact on the domestic industry. In her analysis of material injury by reason of dumped imports, Commissioner Crawford evaluates the impact on the domestic industry by comparing the state of the industry when imports were dumped with what the state of the industry would have been had the imports not been dumped. In assessing the impact of subject imports on the domestic industry, she considers, among other relevant factors, output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development and other relevant factors, as required by 19 U.S.C. § 1677(7)(C)(iii). These factors together either encompass or reflect the volume and price effects of the unfairly traded imports, and so she gauges the impact through those effects. In this regard, the impact on the domestic industry's prices, sales and overall revenues is critical, because the impact on the other industry indicators (*e.g.*, employment, wages, etc.) is derived from this impact. As she noted earlier, Commissioner Crawford finds that the domestic industry would not have been able to increase its prices had the subject imports not been dumped. Therefore, any impact on the domestic industry would have been on the domestic industry's output and sales.

As noted, had the subject imports been fairly traded, the shift in demand toward the domestic product would have been small. It is likely that the increase in demand for the domestic product would have been too small to have had a material effect on the domestic industry's output and sales. Furthermore, only *** had available capacity to satisfy the increased demand for the domestic product. The overall domestic industry's output and sales, and therefore its revenues, likely would not have increased significantly had the subject imports not been dumped. Therefore, the domestic industry would not have been materially better off if the subject imports had not been dumped. Consequently, Commissioner Crawford determines that the domestic industry is not materially injured by reason of the subject imports.

[143] CR and PR at Table III-2 & VI-3.

[144] The industry's production of ESBR decreased during the period of investigation from 1.28 billion pounds in 1996 to 1.14 billion pounds in 1998. The industry's shipment levels decreased from 1.14 billion pounds in 1996 to 1.05 billion pounds in 1998, while the value of the shipments decreased from $478 million in 1996 to $380 million in 1998. CR and PR at Table III-2.

[145] The industry's overall sales revenues decreased from $*** million in 1996 to $*** million in 1998. The industry's net merchant market sales revenues decreased from $*** million in 1996 to $*** million in 1998. CR 19
(continued...)

industry's profitability levels have declined significantly throughout the period of investigation.[147] Finally, the industry has lost market share as well, with its share of the overall market declining from 93.5 percent in 1996 to 87.7 percent in 1998.[148]

Nonetheless, we find that the subject imports did not materially contribute to the deteriorating condition of the industry during the period of investigation. Our conclusion in this regard is supported by a close examination of the financial indicators and operating results of the industry during the period of investigation. For example, although the gross profits and operating income of the industry overall declined *** over the period of investigation,[149] the industry's worst operating performance occurred during the final year of the period of investigation when the volume and market share of the subject imports leveled off significantly.[150]

Moreover, 6.1 percent of the 7.3 percent drop in the industry's shipment quantity over the period of investigation came between 1997 and 1998, when import market share was relatively flat.[151] In fact, the production and shipment declines experienced by the industry during the period are generally attributable to ***.[152] Although we note that the statute requires us to consider the industry as a whole, the record of these investigations clearly establishes that the declines in production and shipments exhibited by *** are not the result of LTFV pricing competition from the subject imports. Instead, we find that ***[153] during a period in which ***. Moreover, other customers reported that they chose to reduce their purchases of ESBR for a variety of reasons, including the closing of production facilities and a decision to shift to other forms of rubber.[154] Given this, we find that *** production and shipment declines -- and by extension, the bulk of the industry's declines in these figures -- are due at least in large measure to the desire of customers to maintain steady, reliable, diversified sources of ESBR supply or to other factors not related to the subject imports.

In addition, the decline in the industry's operating results was principally the result of declining shipment values and unit values. On a percentage basis, the decline in shipment value was *** the decline

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[145] (...continued)
and PR at Table VI-2.

[146] The average number of production-related workers employed by the industry decreased from 1,140 in 1996 to 1,008 in 1998. Total hours worked decreased from 2.04 million hours in 1996 to 1.90 million hours in 1998. Total wages paid to workers increased from $38.9 million in 1996 to $40.9 million in 1998. Total productivity decreased from 628.4 pounds per hour in 1996 to 600.5 pounds per hour in 1998. Finally, average unit labor costs increased from $0.03 per pound in 1996 to $0.04 in 1998. CR at Table C-1.
CR at Table III-2. CR and PR at Table III-2.

[147] The industry's gross profits fell from $*** million in 1996 to $*** million in 1997 to *** $*** million in 1998. Similarly, operating income fell from $*** million in 1996 and $*** million in 1997 to *** of $*** million in 1998. The ratio of the industry's operating income to net sales ratio fell from*** percent in 1996 to *** percent in 1998. CR and PR at Table VI-2.

[148] CR and PR at Table IV-4.

[149] CR at Table VI-1 & VI-2.

[150] *See* CR at Table IV-1 and discussion above of import volume.

[151] *See* CR at Table C-1.

[152] CR and PR at Table VI-3.

[153] For example, ***. CR at V-4 - V-5. Similarly, an ***. *See also* Petitioners' Posthearing Brief at Attachment 7; Intertex World Resources Prehearing Brief at 14-18.

[154] *** Purchasers' Questionnaire Response at 6; *** Purchasers' Questionnaire at 4; MNA Posthearing Brief at 7.

in quantity and the percentage decline in unit values was *** the percentage decline in shipment quantity.[155] As we discussed above, we find that the subject imports have not had significant adverse price effects on the domestic merchandise. Accordingly, we also find that the subject imports are not materially contributing to the declines in the major indicia of the industry's condition that directly reflect price levels, such as the industry's sales revenue, gross profit, and operating income levels.

Moreover, the financial data submitted by the industry indicate that the industry was experiencing ***.[156] Finally, the record shows that the domestic producers exported a sizable portion of their overall production and that they experienced ***.[157] All of these factors suggest that any declines in the financial performance of the industry are due not to the impact of the subject imports but to other factors in the market, such as overall declines in domestic prices and export sales prices.[158]

In sum, the record indicates that the subject imports are not materially contributing to the industry's declining condition. Instead, the worsening performance of the domestic industry has been caused by a number of other factors, including in particular declines in the price of natural rubber and other synthetic rubbers. Accordingly, we find that the domestic industry is not materially injured by reason of the subject imports from Brazil, Korea, and Mexico.

V. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM BRAZIL, KOREA, AND MEXICO

Section 771(7)(F) of the Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."[159] The Commission may not make such a determination "on the basis of mere conjecture or supposition,"[160] and considers the threat factors "as a whole."[161] In making our determination, we have considered all factors[162] that are relevant to these investigations.[163]

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[155] CR and PR at Table VI-4.

[156] Compare operating income ratios in CR and PR Table VI-1 with those in Table VI-2.

[157] CR and PR at Table VI-3.

[158] In this regard, we further note that the record indicates that purchasers did not confirm the large bulk (by value) of lost sales allegations made by petitioners.

[159] 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

[160] 19 U.S.C. §1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), *citing* American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984). *See also* Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), *citing* H.R. Rep. No. 98-1156 at 174 (1984).

[161] While the language referring to imports being imminent (instead of "actual injury" being imminent and the threat being "real") is a change from the prior provision, the SAA indicates the "new language is fully consistent with the Commission's practice, the existing statutory language, and judicial precedent interpreting the statute." SAA at 184.

[162] The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although "{n}o substantive change in Commission threat analysis is required." SAA at 185.

[163] 19 U.S.C. § 1677(7)(F)(i). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to these investigations. *See* 19 U.S.C. § 1677(7)(F)(i)(I) and (VII).[21]

Based on evaluation of the relevant statutory factors, we find that the domestic industry is not being threatened with material injury by reason of the subject imports from Brazil, Korea, and Mexico. Accordingly, we do not find that further LTFV imports are imminent and that material injury by reason of imports would occur unless an order is issued.

When assessing whether a domestic industry is threatened with material injury by reason of imports from two or more countries, we have discretion to cumulate the volume and price effects of such imports if they meet the requirements for cumulation in the context of present material injury. As noted above in our discussion of material injury, we determined that the requirements for cumulation in the context of present material injury are satisfied in these investigations. We have, accordingly, determined to exercise our discretion to cumulate the LTFV imports for purposes of our threat analysis as well.

As part of our threat analysis, we first considered whether subject producers have significant existing unused production capacity or are planning imminent, substantial increases in production capacity.[164] In this case the record indicates that, on an aggregate level, the subject producers had very high capacity utilization rates throughout the period examined, including 1998, the last year of the period. Moreover, the subject producers are projecting that their capacity use levels will remain at high levels in 1999 and 2000.[165] Further, although the subject producers (in particular Korea) added somewhat significant production capacity during the period examined,[166] they have continued to operate at high capacity use rates throughout the period and none of the subject producers are planning to add additional capacity in 1999 or 2000. We find, therefore, that the capacity levels of the three cumulated countries do not indicate that there are likely to be substantial increases in the subject imports in the imminent future.

We have also considered whether there has been a significant rate of increase of the volume or market penetration of imports of the subject merchandise.[167] Although there was a marked increase in the volume and market share of the subject imports during the period of investigation, the large bulk of that increase occurred between 1996 and 1997.[168] Although there was also an increase in the volume and market share of the imports in the last year of the period, the increase was modest, with the subject imports' market share increasing only by one percentage point and their overall volume increasing by only 4.5 percent in 1998. Accordingly, we find that the recent volume trends exhibited by the subject imports do not indicate a likelihood that there will be a substantial increase in the subject imports.

The inventory levels of the subject merchandise in the three subject countries[169] generally declined significantly between 1996 and 1998 and are projected to remain at stable levels in 1999.[170] Moreover, although the level of U.S. importers' inventories fluctuated during the period, they remained relatively stable throughout the period overall, both considered on an absolute level and as a ratio to total imports.[171] Indeed, the overall inventory level in 1998 was relatively minimal compared to the size of the overall

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[164] 19 U.S.C. §1677(7)(F)(I)(II).

[165] CR at Tables VII-1-4. The capacity use rates for all three countries were above *** percent throughout the period and are projected to remain above the *** percent level in 1999 and 2000.

[166] CR at Tables VII-1-4.

[167] 19 U.S.C. §1677(7)(I)(III).

[168] CR and PR at Table IV-3 & IV-4.

[169] 19 U.S.C. §1677(7)(F)(I)(V).

[170] CR at Tables VII-1-4.

[171] CR and PR at Table VII-5.

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market for ESBR in the United States.[172] Accordingly, we do not find that inventory levels of the subject merchandise support a finding of a threat of material injury.

We have also considered whether the subject imports are likely to have a significant depressing or suppressing effect on domestic prices.[173] As we explained in our material injury discussion above, the cumulated subject imports have not had significant price effects on the price of domestic merchandise. The record does not suggest that the manner in which prices are set and price competition occurs in this market will change in the imminent future. Accordingly, we find it unlikely that the cumulated imports will have significant price-depressing or price-suppressing effects on domestic prices in the imminent future or that they will increase the demand for further imports.

We have also considered whether there is a "potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products."[174] There is no record evidence to suggest any potential for product shifting within the subject countries. Accordingly, we believe there is little indication in the record that the subject producers will actually shift production and increase shipments to the United States.

We have also examined 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."[175] In this case, although members of the industry contend that their ability to make additional necessary investments and obtain necessary financing has been hindered by the impact of the subject imports, the record indicates that the subject imports have had, and will continue to have, a minimal impact on the industry's ability to finance production and development efforts because of the minimal causal relationship between the subject imports and the fortunes of the industry.[176]

Finally, the record in these investigations does not indicate any demonstrable adverse trends suggesting that the subject imports will imminently materially injure the industry.[177] [178]

In sum, we determine that the domestic industry producing ESBR is not threatened with material injury by reason of the subject imports from Brazil, Korea, and Mexico.

CONCLUSION

Accordingly, we determine that the domestic industry producing ESBR is not materially injured or threatened with material injury by reason of the subject imports from Brazil, Korea, and Mexico.

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[172] CR at Table VII-5.

[173] 19 U.S.C. §1677(7)(F)(I)(III).

[174] 19 U.S.C. §1677(7)(F)(I)(VI).

[175] 19 U.S.C. §1677(7)(F)(I)(VIII).

[176] *See, e.g.*, CR and PR at Table VI-8.

[177] 19 U.S.C. §1677(7)(F)(I)(IX)

[178] The record indicates that Mexico has placed large dumping margins on imports of synthetic rubber (including ESBR) from Brazil. CR at VI-7; PR at VI-4. However, because both countries are subject to these investigations, the impact of this action is quite limited. Much of the potential volume lost to Brazilian exporters is likely to be gained by Mexican producers.

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DISSENTING VIEWS OF CHAIRMAN LYNN M. BRAGG

I join my colleagues in defining one domestic like product comprised of the 1500 and 1700 series of emulsion styrene-butadiene rubber ("ESBR") products, and one domestic industry comprised of the three U.S. producers of ESBR. I also join my colleagues in cumulating subject imports from Brazil, Korea, and Mexico for purposes of my material injury analysis, and in finding that negligibility is not an issue in these investigations. Finally, I join the discussion of conditions of competition contained in the majority's views. However, based upon the entirety of the record in these investigations, I find that the domestic industry is materially injured by reason of subject imports from Brazil, Korea, and Mexico. I therefore respectfully dissent from the determination of the majority.

A. Volume

Cumulated subject import volume increased from approximately 73.8 million pounds in 1996 to 133.1 million pounds in 1998, an increase of roughly 80 percent during the period of investigation ("POI").[179] At the same time, total U.S. consumption of ESBR declined slightly.[180] With regard to market share, total U.S. market share for subject imports increased from 6.1 percent in 1996 to 11.1 percent in 1998, while domestic producers' total U.S. market share declined from 93.5 percent in 1996 to 87.7 percent in 1998.[181] Based upon the entirety of the record in these investigations, I find that the increase in volume and market share of subject imports over the POI are significant.

B. Price

ESBR is a commodity-type product, for which price competition is a critical factor in purchasing decisions.[182] The record in these investigations indicates that the aggregate average unit value for U.S. shipments by domestic producers declined from $0.42 per pound in 1996 to $0.36 per pound in 1998, a decline of roughly 14.3 percent during the POI.

To begin, I note that I am unpersuaded that the price decline evidenced for ESBR during the POI is attributable entirely to factors such as: essentially flat demand for ESBR in the United States;[183] a decline in raw materials costs; and, a decline in natural rubber prices. In determining the significance of the price effects of subject imports, I have considered the following particulars in my analysis.

First, I note that the average unit cost of goods sold ("COGS") of ESBR for U.S. producers declined from $*** per pound in 1996 to $*** per pound in 1998, a decline of *** percent over the POI.[184] This decline appears entirely attributable to a decline in raw materials costs.[185] The primary raw materials

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[179] Table IV-1, CR at IV-3, PR at IV-2.

[180] Total U.S. consumption of ESBR declined from approximately 1.215 billion pounds in 1996 to 1.2 billion pounds in 1998, a decline of roughly 1.2 percent. Table IV-4, CR at IV-6, PR at IV-4.

[181] Table IV-4, CR at IV-6, PR at IV-4. Total nonsubject import market share also increased, from 0.5 percent in 1996 to 1.2 percent in 1998. *Id.*

[182] Transcript of Commission Hearing (March 30, 1999) ("Tr.") at 18-19.

[183] Total U.S. consumption of ESBR declined by approximately 1.2 percent between 1996 and 1998. *See* Table IV-4, CR at IV-6, PR at IV-4.

[184] Table VI-1, CR at VI-4, PR at VI-2.

[185] CR at VI-6, PR at VI-3; Tr. at 78.

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used in the production of ESBR are styrene and butadiene.[186] Despite the decline in COGS and the fact that selling, general, and administrative ("SG&A") expenses remained constant over the POI, U.S. producers' operating margins declined from $*** per pound in 1996 to *** of $*** per pound in 1998, a decline of over *** percent.[187] Thus, the decline in ESBR prices substantially exceeds the decline in raw materials costs over the POI.

Second, I note that natural rubber prices declined substantially over the POI. The average unit value of natural rubber declined from $0.66 per pound in 1996 to $0.55 per pound in 1997 and $0.40 per pound in 1998; this represents an overall decline of 39.4 percent between 1996 and 1998. In light of this sharp price decline, the appeal of natural rubber as a partial substitute for ESBR increased for certain applications.[188]

Third, I note that prices for related synthetic rubber products, i.e., SSBR and CBMB, also declined over the POI, but not to the same extent as for ESBR. Specifically, the average unit value for SSBR consumed in the U.S. declined from $*** per pound in 1996 to $*** per pound in 1998, a decline of *** percent. [189] The average unit value for CBMB consumed in the U.S. declined from $*** per pound in 1996 to $*** per pound in 1998, a decline of *** percent.[190]

Fourth, I note that the average unit value of cumulated subject imports declined from $0.45 per pound in 1996 to $0.32 per pound in 1998, a decline of 28.1 percent. The average unit value of nonsubject imports also declined during this period, though to a much lesser extent, i.e., from $0.44 per pound in 1996 to $0.39 per pound in 1998.

Fifth, I note that subject imports undersold the domestic like product in 42 out of 71 quarters for which prices were reported; in other words, almost 60 percent of quarterly pricing comparisons evidenced underselling.[191] Moreover, the incidence and degree of underselling increased over the course of the POI. During 1997, subject imports undersold the domestic like product in 16 out of 24 quarterly pricing comparisons (i.e., in 66.7 percent of comparisons), while in 1998 subject imports undersold the domestic like product in 20 out of 24 quarterly pricing comparisons (i.e., in 83.3 percent of comparisons).[192]

The foregoing record evidence demonstrates that subject imports are a significant cause of negative price effects in the U.S. market. Specifically, the significant decline in domestic prices can hardly be attributed to the minimal decline in demand for ESBR evidenced in the record; moreover, Petitioners indicated that, at least with regard to the consumption of ESBR for tire production, demand has been generally robust since the early 1990s;[193] indeed, this is supported by the record.[194] With regard to the

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[186] Tr. at 20, 56.

[187] Table VI-1, CR at VI-4, PR at VI-2.

[188] Fifteen of the 38 responding ESBR purchasers reported that they had substituted or were likely to substitute between ESBR and natural rubber. CR at II-6, PR at II-4. Of the four large tire producers, three reported that they had substituted between ESBR and natural rubber during the POI, while the remaining large tire producer reported it had done so in ***. *Id.*

[189] Table C-4, CR at C-11, PR at C-6.

[190] *Id.*

[191] *See* CR at V-16 to V-17, PR at V-12 to V-13.

[192] *See* Tables V-1, V-2, V-3, & V-4, CR at V-6 to V-9, PR at V-5 to V-8.

[193] Tr. at19, 52-53, 69-70.

[194] Shipments of replacement passenger tires in the U.S. increased over the POI by 5.1 percent, while total shipments of replacement tires in the U.S. (including passenger tires, truck tires, and off-the-road tires) increased (continued...)

decline in raw materials costs, even if this decline is assumed to have been translated entirely into price reductions through competition among U.S. producers, there remains a significant portion of the price decline which is unaccounted for.

I do not find an exact correlation between changes in prices for natural rubber and ESBR;[195] in addition, I note that any substitution of natural rubber for ESBR would have been only a partial substitution for any given application.[196] Moreover, the sharp drop in natural rubber prices would have increased the appeal of natural rubber as a partial substitute not only for ESBR, but for SSBR and CBMB as well. Yet, the relative decline in ESBR prices (i.e., 14.3 percent) was more than twice as large as the price declines for either SSBR (i.e., *** percent) or CBMB (i.e., *** percent) over the POI. The record thus indicates that an additional significant factor had a negative effect on ESBR prices, i.e., low-priced subject imports.

In short, the record reflects that subject imports extensively undersold the domestic like product, and that the incidence of underselling increased substantially between 1997 and 1998. At the same time, the domestic industry confronted a variety of pricing pressures reflecting falling natural rubber prices, flat overall demand for ESBR, and the increased opportunity for price competition flowing from declines in raw materials costs. In light of the significant volumes of subject imports, I find the record evidence of underselling to be significant and to corroborate my conclusion that other pricing pressures do not account for all of the downward movement in domestic prices over the POI. I further find that subject imports depressed and suppressed prices to a significant degree, independent of any other factors which may have impacted domestic prices at the same time.

C. Impact

The significantly increased volume, market share, and declining prices of subject imports, have adversely impacted the domestic industry; indeed, virtually all measures of industry performance declined over the POI. Between 1996 and 1998, net sales declined by *** percent; gross profit declined by *** percent; operating income declined by over *** percent; and cash flow declined by over *** percent.[197] In addition, domestic production declined by 11.1 percent; capacity utilization declined by 11.6 percent while total capacity increased by only 1.7 percent; U.S. shipments declined by 7.3 percent; and the average number of production and related workers declined by 11.6 percent.[198]

Thus, significantly increased volumes of low-priced subject imports, which are perfectly substitutable for the domestic like product, have resulted in declining prices, revenues, and weak financial performance for the domestic industry. Extensive underselling data in the record confirm that subject imports undercut domestic prices resulting in diminished profitability for the domestic industry. Accordingly, I find that the subject imports have had a significant adverse impact on the domestic ESBR industry.

(...continued)
70 percent of all ESBR produced in the United States.

[195] *See* Table C-4, CR at C-11, PR at C-6.

[196] Tr. at 39-42, 44-46, 50-51, 60-61, 74-75, 95-96, 98-99.

[197] *See* Table VI-1, CR at VI-4, PR at VI-2.

[198] *See* Table III-2, CR at III-3, PR at III-2.

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D. Conclusion

For the foregoing reasons, and based upon the entirety of the record in these investigations, I find that the domestic ESBR industry is materially injured by reason of subject imports from Brazil, Korea, and Mexico, that have been found by Commerce to be sold in the United States at less than fair value.

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by Ameripol Synpol Corp. of Akron, OH, and DSM Copolymer of Baton Rouge, LA, on April 1, 1998, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of certain emulsion styrene-butadiene rubber ("ESBR")[1] from Brazil, Korea, and Mexico. Information relating to the background of these investigations is provided below.[2]

Date	*Action*
April 1, 1998	Petition filed with Commerce and the Commission; institution of Commission investigations
April 27, 1998	Commerce's notice of initiation
May 18, 1998	Commission's preliminary determinations
November 2, 1998 . .	Commerce's preliminary determinations (63 FR 59509, November 4, 1998);[3] scheduling of final phase of Commission investigations (63 FR 65219, November 25, 1998)
March 19, 1999	Commerce's final determinations (64 FR 14863, March 29, 1999)[4]

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[1] For purposes of these investigations, ESBR consists of a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil-extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process. ESBR is covered by statistical reporting number 4002.19.0010 of the *Harmonized Tariff Schedule of the United States* (HTS). Subject imports enter the United States free of duty.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to these investigations consists of product grades included in the IISRP 1500 series and 1700 series of synthetic rubbers. The grades in the 1500 series are light in color and are often described as "Clear" or "White Rubber." The grades in the 1700 series are oil-extended and thus darker in color, and are often called "Brown Rubber." Products manufactured by blending ESBR with other polymers, high styrene resin masterbatch, carbon black masterbatch (i.e., IISRP 1600 series and 1800 series), and latex (an intermediate product) are not included within the scope of these investigations. **In this report, the term "ESBR" refers only to the 1500 and 1700 series of synthetic rubber under the IISRP numbering system. The term "CBMB" (carbon black masterbatch) refers to the 1600 and 1800 series of synthetic rubber under the IISRP numbering system.**

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

[3] Commerce calculated preliminary LTFV margins to be as follows: Brazil - Petroflex Industria e Comercio S.A. 61.71 percent and all others 61.71 percent; Korea - Korea Kumho Petrochemical Co., Ltd. 13.91 percent, Hyundai Petrochemical Co., Ltd. 118.88 percent, and all others 13.91 percent; and Mexico - Industrias Negromex, S.A. de C.V. 29.57 percent and all others 29.57 percent.

[4] Commerce calculated final LTFV margins to be as follows: Brazil - Petroflex Industria e Comercio S.A. 71.08 percent (based on "facts otherwise available" (FOA)) and all others 43.85 percent (based on a simple average of the margins in the petition); Korea - Korea Kumho Petrochemical Co., Ltd. 16.65 percent (calculated), Hyundai Petrochemical Co., Ltd. 118.88 percent (FOA), and all others 16.65 percent (calculated); and Mexico - Industrias

(continued...)

March 30, 1999 .... Commission's hearing[5]
April 29, 1999 ..... Commission's vote
May 11, 1999 ..... Commission determinations transmitted to Commerce

SUMMARY DATA

A summary of data collected in these investigations is presented in appendix C. Table C-1 is for ESBR, table C-2 is for ESBR plus CBMB, table C-3 is for ESBR plus CBMB plus solution styrene-butadiene rubber ("SSBR"), and table C-4 is for ESBR, CBMB, SSBR, and natural rubber. Data appearing in the tables are believed to account for 100 percent of the production and other domestic indicators for the covered products during 1998. U.S. import data are based on responses to the Commission's questionnaires.

THE PRODUCT

The imported product that is the subject of these investigations consists of certain types of cold emulsion-polymerized styrene-butadiene rubber, namely the 1500 and 1700 series of synthetic rubbers under the IISRP numbering system.[6] Both the 1500 and 1700 series are used to formulate custom "masterbatches" and compounds, which are in turn used to produce mainly tires, as well as hoses, belting, and miscellaneous rubber products.

There are three domestic producers of ESBR, consisting of the two petitioners plus The Goodyear Tire & Rubber Co., Akron, OH. As with imported ESBR, the most common types of domestic product are classified under IISRP grades 1502 and 1712, which are subsets of the 1500 and 1700 series, respectively.

There are a number of series other than the 1500 and 1700 series of the IISRP that in industry parlance are considered emulsion styrene-butadiene rubber, but are not "ESBR" as the term is used in this report. Emulsion styrene-butadiene rubber, as defined by the IISRP, includes hot- and cold-polymerized types,[7] oil-extended product (the 1700 series), cold black masterbatch (the 1600 series), and cold oil black masterbatch (the 1800 series).[8] CBMB is specifically discussed in the section of this report entitled "CBMB and SSBR" at the end of Part I. SSBR is a newer type of styrene-butadiene rubber based on a solution-polymerized latex, and is also known as "solution SBR."

In the preliminary phase of these investigations, petitioners contended that the domestic like product should consist of ESBR (i.e., the 1500 and 1700 series of synthetic rubber under the IISRP

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[4] (...continued)
Negromex, S.A. de C.V. 33.01 percent and all others 33.01 percent (both calculated).

[5] A list of witnesses appearing at the public hearing is presented in app. B.

[6] The IISRP numbering system includes the following: 1000 series - hot non-pigmented rubbers; 1200 series - butadiene and isoprene rubbers (SSBR is included herein); 1500 series - cold non-pigmented rubbers; 1600 series - cold black masterbatch with 14 or less parts of oil per 100 parts of SBR; 1700 series - cold oil masterbatch; 1800 series - cold oil black masterbatch with more than 14 parts of oil per 100 parts of SBR; and 1900 series - emulsion resin rubber masterbatches. *The Synthetic Rubber Manual*, 13th edition, published by the International Institute of Synthetic Rubber Producers, Houston, TX.

[7] All types of emulsion styrene-butadiene rubber are "cold" types except for IISRP type 1000, which is considered a "hot" type. Its physical characteristics and uses render it a completely different product than ESBR. It is unsuitable for use in end uses in which ESBR is used.

[8] "Masterbatch" is a term that refers not only to CBMB alone, but also to mixtures of ESBR with CBMB and/or with SSBR and other ingredients. In this report, the term "masterbatch" or "custom masterbatch" may reflect such mixtures, but the term "CBMB" refers to the 1600 and 1800 series of ESBR only.

numbering system), the same as the imported product. Respondent Cooper Tire & Rubber Co. ("Cooper"), a user of the imported subject product for tire production,[9] contended that "the domestic like product advanced by the petitioners is unduly restrictive," and that it should consist of not only ESBR but also of CBMB as well as SSBR.[10] Other respondents appeared to agree that the petitioners' proposed domestic like product was defined too narrowly, but did not formally argue that the domestic like product should be expanded to include these products.[11]

In its preliminary determinations, the Commission did not expand the definition of the domestic like product to include either CBMB or SSBR,[12] but stated that "the issue is a close one with regard to the inclusion of both CBMB and SSBR within the domestic like product,"[13] and that it would seek full data on these products in any final phase of the investigations.[14] In the final phase of these investigations, virtually all respondents contended that the domestic like product should include CBMB and SSBR,[15] or at least CBMB.[16]

The Subject Product (ESBR)

Physical Characteristics and Uses

ESBR is produced as a dry, crumb-like material, and is usually sold pressed into bales. It is distinguished from the other major types of emulsion styrene-butadiene rubber by its relative purity and the fact that it does not contain carbon black. The 1500 series is considered a "neat" or pure form of emulsion styrene-butadiene rubber, while the 1700 series contains some added petroleum-based processing oil. The addition of oil aids in the eventual processing of ESBR into custom masterbatches and compounds that are extruded, mixed, and rolled into rubber goods.

End users of ESBR formulate custom masterbatches and other compounds prior to the production of rubber goods. Processing begins by breaking down the bales through heating, mixing, and rolling in order to plasticize the rubber. Many ingredients such as carbon black, oils, antioxidants, processing aids, vulcanizing agents, silica, and zinc oxide are often added to make the masterbatch. End users may formulate masterbatches using ESBR, CBMB, other series of emulsion styrene-butadiene rubber, SSBR, and other ingredients, depending upon the final product. Rubber tires, the largest end use for ESBR, may require a number of differently formulated masterbatches, depending upon the characteristics desired in

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[9] ***.

[10] Counsel for Cooper, hearing transcript, pp. 111-114 and conference transcript, p. 87, and Cooper's postconference brief, app. pp. 6-10.

[11] Conference transcript, pp. 103, 104, 118, and 119.

[12] The Commission's determination regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and producer perceptions; (5) channels of distribution; and, where appropriate, (6) price. Prices are more completely covered in Part V of this report.

[13] *Certain Emulsion Styrene-Butadiene Rubber from Brazil, Korea, and Mexico*, USITC Pub. 3108, May 1998, p. 6.

[14] Ibid, pp. 8 and 10.

[15] Prehearing briefs of Cooper, pp. 7-10; Michelin North America and American Synthetic Rubber Corp., pp. 1-9; and Petroflex Industria e Comercio, S.A., p. 3.

[16] Prehearing briefs of Oliver Rubber Co., pp. 3-5, and Industrias Negromex, S.A. de C.V. and GIRSA, Inc., pp. 3-9.

each tire component. Tire components such as tire tread, sidewall, or core generally use a specialized masterbatch formulation (figure I-1 shows a cut-out representation of a typical radial passenger/radial light truck tire). According to information presented by petitioners, over 70 percent of ESBR is formulated into masterbatches for new rubber tires.[17]

Manufacturing Facilities and Production Employees

The production of ESBR has a relatively short history, arising from demand for synthetic rubber as a replacement for natural rubber during World War II. ESBR is coagulated from a cold emulsion-polymerized SBR latex. The latex itself ***.[18] The latex used to produce the 1500 series is also used to produce the 1700 series.

ESBR latex is produced by either a "hot" (50 degrees C.) or "cold" (5-10 degrees C.) polymerization process from a controlled reaction of an emulsion of styrene, butadiene, water, and various chemicals used as emulsifiers, stabilizers, and modifiers (see figure I-2). In both the hot and cold processes, five main ingredients (water, monomers, soap, modifier, and an initiator system) flow through a series of reactors. Water is used as a diluent to reduce the viscosity of the material in process and promote good heat transfer; the soap keeps polymers and reacting material suspended in the emulsion; the modifier is used to control the length of the copolymer chains; and the initiator is used to begin the polymerization process.

The reaction is stopped at a predetermined point through use of a chemical known as a "short stop." At this point, the emulsion resembles natural rubber latex. The latex can be stored at this point, or as mentioned earlier, it may be ***.[19]

Depending on the desired content of the finished ESBR, the latex may then be blended with oils, antioxidants, and other materials. This mixture is coagulated in coagulation tanks using an acid. Large crumbs of ESBR form and are filtered, neutralized and washed, and dried. Prior to shipping the ESBR crumbs are usually pressed into bales, covered with plastic shrink wrap, and palleted.

The same equipment, machinery, and production and related workers used by Ameripol Synpol to produce ESBR ***.[20] The same equipment, machinery, and workers used by DSM Copolymer *** ESBR, ***.[21]

Interchangeability

The 1500 series contains little or no processing oil compared with the 1700 series, which is 37.5 percent by weight petroleum processing oil. Because of the physical characteristics and the relative difficulty of processing ESBR into custom masterbatches or compounds by end users, additional processing oil is usually required.[22] Petitioners' postconference brief mentions "some degree of

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[17] Petitioners' postconference brief, p. 41.

[18] Telephone conversation with ***, Apr. 2, 1998.

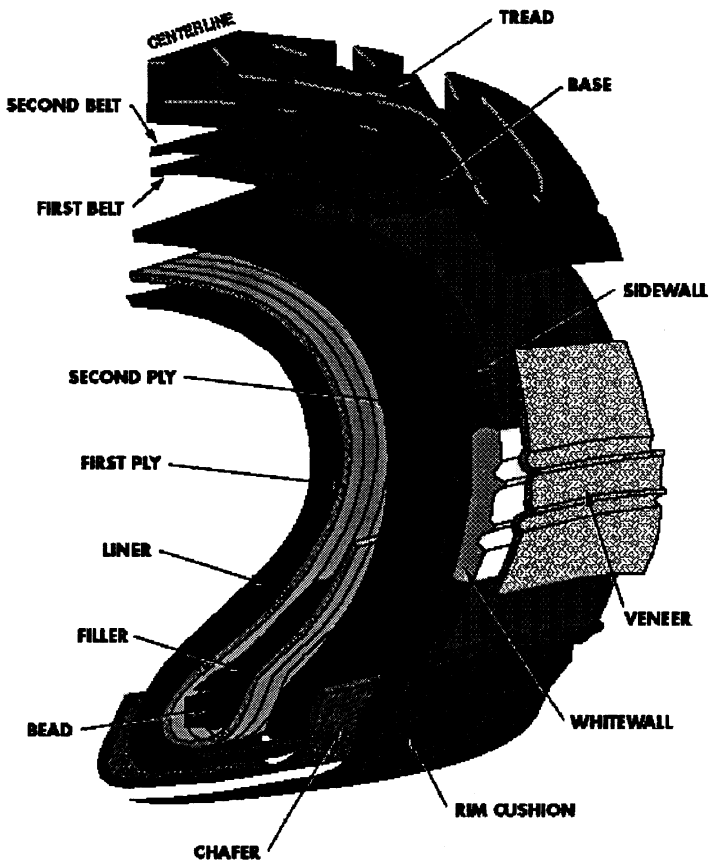
[19] Telephone conversation with ***, Apr. 2, 1998.

[20] Ameripol Synpol stated that ***. Questionnaire response of Ameripol Synpol in the final phase of the investigations, p. 4.

[21] Based on questionnaire responses of the respective firms in the final phase of the investigations, p. 4.

[22] Telephone conversation with ***, Apr. 2, 1998, and *Rubber Technology and Manufacture*, edited by C.M. Blow c. 1971, CRC Press, Cleveland, OH, p. 88.

Figure I-1
Cut-out representation of a typical radial passenger car/radial light truck tire[23]

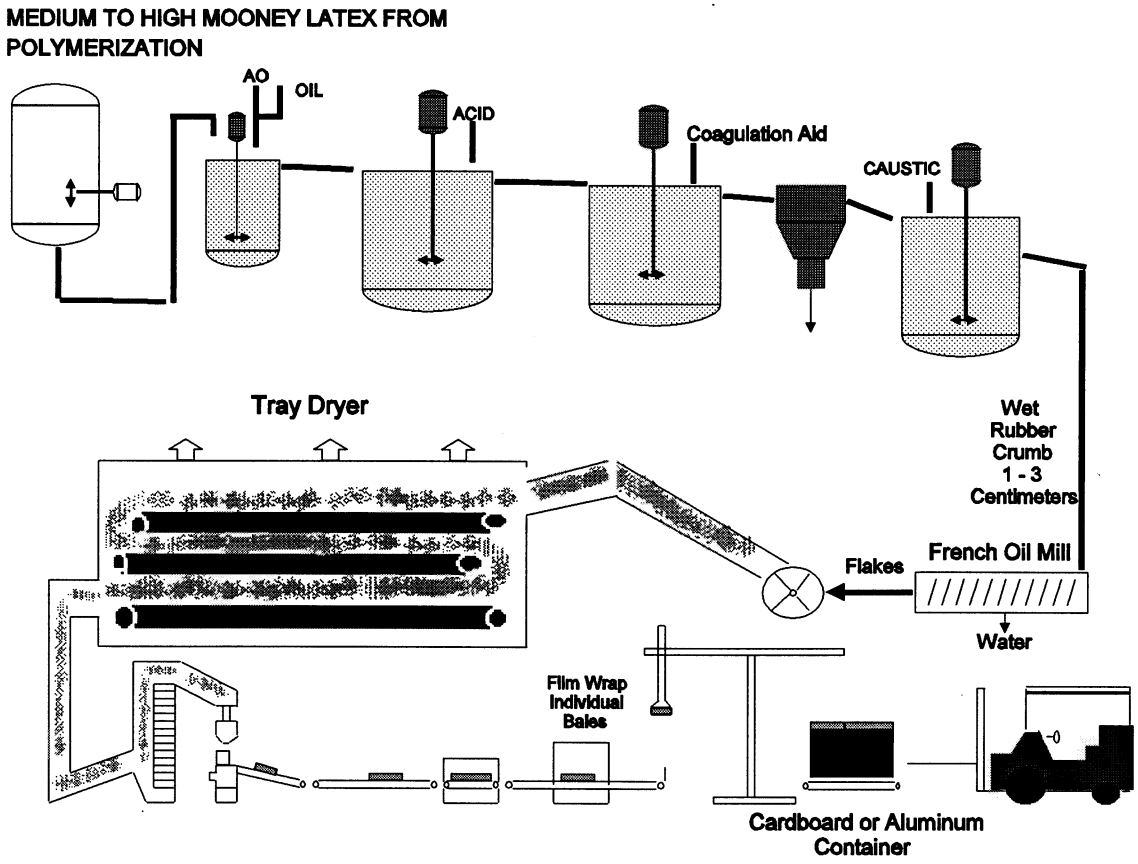


Source: Cooper Tire and Rubber Corporation.

[23] ***.

Type of rubber	Passenger tire weights standard specification P195/75R14	Light truck tire weights standard specification LT235/85R16
Natural rubber	***	***
ESBR 1712	***	***
ESBR 1502	***	***
Other rubbers	***	***
Total rubbers	***	***
Total weight of tire	***	***

Figure I-2
ESBR: Manufacturing flowchart



Source: DSM Copolymer.

interchangeability" of 1500 series with 1700 series.[24] *** stated that tire makers can, and often do, substitute some 1500 series for some 1700-series product without making major adjustments to formulations, processes, or processing equipment.[25] The interchangeability and substitutability of ESBR with other rubber components are discussed more fully in the section of Part I of this report entitled "CBMB and SSBR" and in Part II.

Customer and Producer Perceptions

Petitioners indicate that ESBR is perceived to be an industrial commodity product.[26] *** stated that tire producers (the major end users of ESBR) use ESBR from different producers interchangeably and

[24] Petitioners' postconference brief, p. 41.

[25] ***.

[26] Petitioners' postconference brief, p. 41.

usually strive to have ESBR from all available quality manufacturers approved for use in their formulations;[27] a similar statement was made on behalf of Cooper.[28]

Channels of Distribution

U.S. producers and importers of ESBR usually sell product directly to end users. Relatively small amounts are sold through distributors.

Price

According to responses received from Commission questionnaires, prices for ESBR are set based on competition in the open market. In 1996, the price (unit value) of U.S. producers' U.S. shipments of ESBR in the U.S. market was $0.42 per pound. Unit values decreased to $0.40 per pound in 1997 and $0.36 per pound in 1998. Actual transaction prices in each of the years tended to be within a range of prices above or below the averages cited above, depending on the grade of ESBR and the type of transaction (e.g., spot or formula sales contract). More detailed information on prices is presented in Part V of this report.

CBMB and SSBR

CBMB is similar in terms of physical characteristics to ESBR, with the exception that CBMB contains carbon black, which is used as a reinforcing agent.[29] Both CBMB and ESBR are types of emulsion styrene-butadiene rubber in industry parlance. CBMB is not produced on the same equipment that is used to produce ESBR, although it is produced at the same locations using separate, physically separated production lines. The principal reason for separate production lines is the possible contamination of ESBR with carbon black (see figure I-3). According to petitioners, the majority of CBMB is used to produce truck tire retreads.[30]

SSBR is produced at completely different U.S. facilities from those of ESBR, although manufacturing equipment is similar (see figure I-4). SSBR is produced by Firestone Synthetic Rubber in Lake Charles, LA, American Synthetic Rubber in Louisville, KY, and Goodyear in Beaumont, TX.[31] Neither Ameripol nor DSM *** produce SSBR. The production of SSBR latex is carried out in a solvent such as hexane, and the process results in a product that has some different characteristics from ESBR. The major advantage of SSBR use in tires is reduced rolling resistance of the tire tread, resulting in lower fuel consumption.[32] [33]

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[27] ***.

[28] Conference transcript, p. 132.

[29] Petitioners have stated that CBMB is a useful, "value-added" product for end users because it contains highly-dispersed carbon black that normally requires an energy-consuming process of mixing, rolling, and blending. E.g., ***.

[30] Petitioners' postconference brief, pp. 40-41.

[31] *World Rubber Statistics 1997*, IISRP, as presented in petitioners' postconference brief, exhibit 17.

[32] William D. Spence, conference transcript, p. 9.

[33] While not produced from an emulsion, SSBR represents technological advances in synthetic rubber processing and the production of modern tires. In the 1980s SSBR began to be used increasingly in tires because it imparted different performance characteristics, thereby somewhat replacing ESBR as a component. William D.

(continued...)

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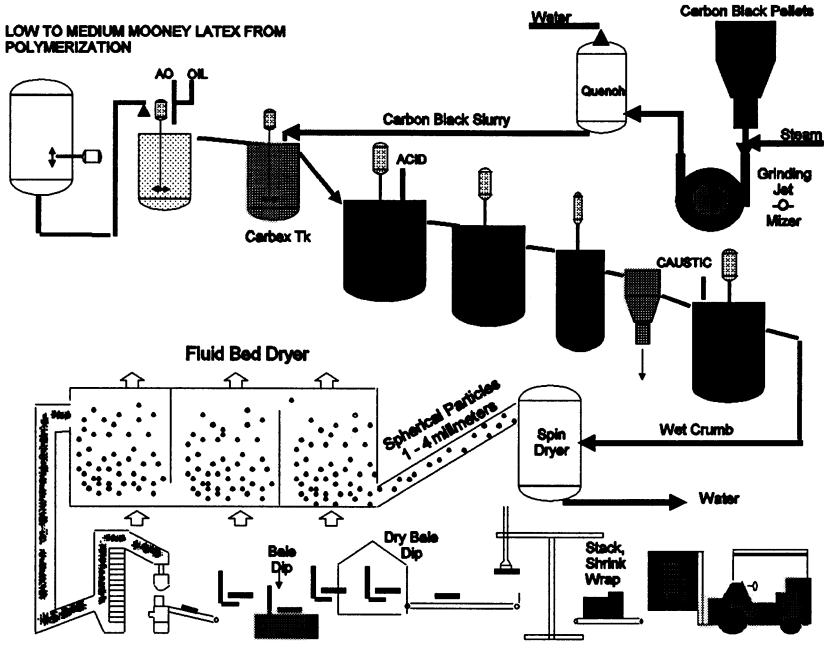
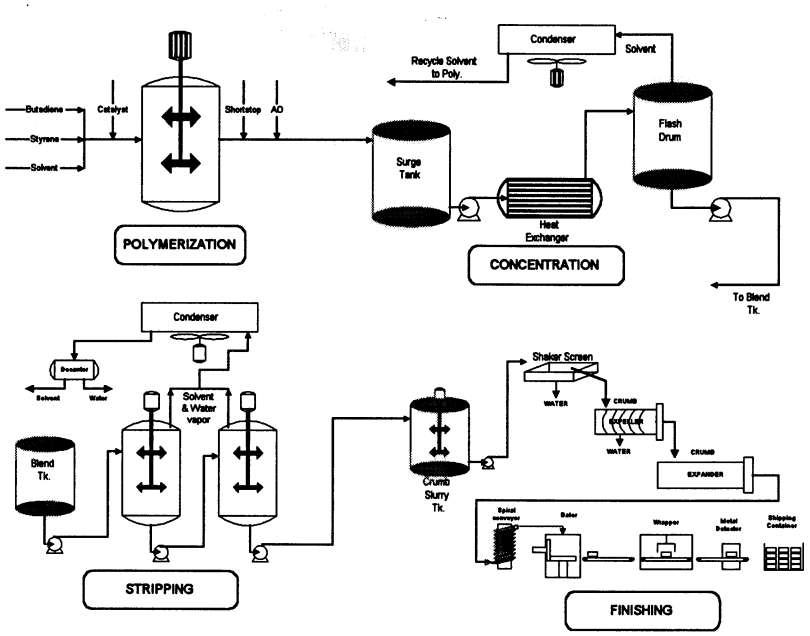
Figure I-3
CBMB: Manufacturing flowchart



Source: DSM Copolymer.

Figure I-4
SSBR: Manufacturing flowchart



Source: American Synthetic Rubber Corporation.

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[33] (...continued)
Spence, Chief Operating Officer of Ameripol Synpol (conference transcript, pp. 9-10.)

Original equipment tires tend to have a greater share of SSBR in them than ESBR or CBMB, whereas replacement tires tend to have a greater share of ESBR in them.[34] Cooper has contended that the uses of ESBR, CBMB, and SSBR "are so closely related in tire production applications as to be virtually indistinguishable."[35]

Petitioners have stated that ESBR has no practical substitutes in its principal application, the manufacture of new tires, except over a long period of time, and that substitution of ESBR in other applications is unlikely.[36] Cooper stated that there is "ample substitution" of CBMB for ESBR in tire compounds, and that SSBR has been used extensively in tire production. Information obtained by the Commission staff appears to indicate that, in general, while there is substitution of ESBR by and for other rubber components by some purchasers, the substitution is normally not a total substitution; for example, a tire producer that uses a certain percentage of ESBR and a different percentage of another rubber component in a given application may, for one or more reasons, switch the mix somewhat or even totally in that application,[37] but normally would not totally substitute one product for the other in all applications.[38] Additional information on substitution is presented in the section entitled "subsitute products" in Part II of this report.

With regard to other domestic like product factors, the channels of distribution for CBMB are quite similar to those of ESBR; Cooper contends that the channels of distribution of ESBR, CBMB, and to a large extent SSBR, are identical.[39] Questionnaire responses showed that over 95 percent of both U.S. producers' and importers' reported shipments of ESBR were to end users and 100 percent of CBMB and SSBR shipments were to end users. Petitioners contend that CBMB and SSBR are products distinct from ESBR, whereas Cooper contends that "there are no practical distinctions with respect to perceptions of quality or use, provided the equivalent specifications are met" between CBMB and the 1502 and 1712 grades of ESBR, and that although SSBR may have a higher perceived value than ESBR, "in reality there is price comparability between the equivalent grades of relevance to Cooper."[40] Prices for CBMB and SSBR are higher than those of ESBR. In 1998, the unit values of U.S. producers' U.S. shipments of CBMB and SSBR in the U.S. market were $*** per pound and $*** per pound, respectively, compared with a unit value of $0.36 per pound for ESBR.

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[34] Although percentages of rubber components used in tires vary considerably among manufactures and among tire brands and lines, in general the principal rubber ingredient (by volume) in original equipment tires appears to be natural rubber (between *** and *** percent). SSBR (between *** and *** percent) tends to be the next largest rubber ingredient, followed by polybutadiene, ESBR (between *** and *** percent) and other synthetic rubbers, and lastly (***) CBMB. In replacement tires, the principal rubber ingredient (by volume) appears to be natural rubber (between *** and *** percent), followed by ESBR (between *** and *** percent), polybutadiene, other synthetic rubbers, CBMB (between *** and *** percent), and SSBR (between *** and *** percent). Information based on responses to questions III-19 and III-20 of the purchasers' questionnaires in these investigations. Percentage compilations reported herein are not weighted to take into account the sizes of the tire producers that provided data.

[35] Cooper's postconference brief, app. p. 7 and exhibit 4.

[36] E.g., ***.

[37] Oliver Rubber Co. stated that in the tire retreading industry, CBMB is fully interchangeable with ESBR. Prehearing brief of Oliver Rubber Co., p. 4.

[38] Hearing transcript, pp. 129-132.

[39] Cooper's postconference brief, app. p. 8.

[40] Cooper's postconference brief, app. pp. 8-9.

I-9

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

MARKET SEGMENTS AND CHANNELS OF DISTRIBUTION

ESBR is sold by U.S. producers either by formula sales contract or on the spot market directly to industrial users, or indirectly through distributors which sell the ESBR to firms that use smaller quantities of ESBR.[1] Most U.S.-produced ESBR is sold on a formula contract basis in which the basic price level is determined by annual negotiations, during which the buyer and seller agree on ESBR's markup above the cost of styrene and butadiene.[2] Between these negotiations, the price is adjusted monthly or quarterly for changes in the price of inputs.

Mexican product is sold mainly by *** using formula sales contracts. The Brazilian producer sells directly to end users ***, and on the spot market through importer/distributors.[3] The Korean producers sell directly to end users and through importer/distributors either ***.[4]

ESBR is mainly sold in compressed bales weighing from 75 to 85 pounds.[5] A small amount of non-compressed ESBR is sold in bags and it is used in different products than ESBR in bales.

Tire producers are the main users of ESBR and demand for ESBR is mainly determined by the demand for tires and the amount of ESBR used to produce tires.[6] Tires are estimated to consume 70 percent of all ESBR produced in the United States. Four of the top 5 users (***),[7] all of which are tire producers, reported purchasing *** percent of total shipments and 54 percent of commercial shipments of domestically-produced ESBR. The remaining large tire manufacturer ***. Its captive consumption was *** percent of all U.S. production. Tire producers use ESBR to make masterbatch blends that in turn are used to produce tires.[8] ESBR is used to produce automobile and small truck tires,[9] tires for other types of vehicles including all-terrain vehicles, boat trailers, or tricycles, and to produce masterbatch that is sold to other firms that produce retreads. ESBR is also used in engine mounts, bushings, weather stripping, mud flaps, car mats, conveyor belts, hoses, roller coverings, playground pads, shoes, and adhesives. None of these use a majority of the ESBR not used in tires.

ESBR comes in a variety of chemical formulations which are distinguished by IISRP numbers. The most common of these, 1502 and 1712 grades, are used in tires and account for most of the consumption of the 1500 and 1700 series. Within each IISRP grade there may be small variations in the water content, viscosity, residual styrene and butadiene, and other characteristics that affect processing, the recipe used to make the masterbatch, and the amount of waste product. Some purchasers require narrower

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[1] All three U.S. producers have price lists and one reported that it ***. Only one purchaser mentioned price lists. ***.

[2] In some cases the price of oil is also included in the formula.

[3] Two importers from Brazil reported their selling method; ***.

[4] Three importers from Korea reported their selling method; ***.

[5] Conference transcript, p. 22.

[6] Larger cars require larger tires using more rubber. Radial tires use less ESBR per tire and last longer than bias tires and radial tires have largely replaced bias tires for passenger tires and light truck tires. Conference transcript, p. 69. Hearing transcript, William C. Jones, Cooper, pp. 155-156. Tires for new cars are typically made with relatively larger amounts of SSBR, which has been more expensive than ESBR but can provide better gas mileage to meet the CAFE standards. Tire producers that also produce SSBR are more likely to use SSBR in their tires.

[7] A list of purchasers and the sources of their material are presented in app. D.

[8] Different parts of the tire need different characteristics and therefore different types of masterbatch. Hearing transcript,William C. Jones, Cooper, p. 111.

[9] Tire producers reported that natural rubber tended to be used in large truck tires but that retreads were made of either ESBR or CBMB or a combination of these.

II-1

ranges of specifications; this can increase product consistency and plant efficiency. To increase the homogeneity of their ESBR, some purchasers also prefer to change suppliers relatively infrequently.

Fifteen of 40 purchasers reported using "off specification" (off-spec) material that is occasionally available at relatively low prices. Off-spec material is also called wide-spec and non-prime material.[10] It is seldom used in tires and when it is used in tires relatively little is used.[11]

Importers from Brazil and Korea sell a similar range of ESBR as domestic producers. The Mexican producer, however, reports that it now exports only grades 1502 and 1712 to the United States. Imports from the subject countries comprised 10.0 percent of the value of U.S. total consumption in 1998, domestic producers' shipments comprised 88.6 percent, and imports from nonsubject countries comprised 1.3 percent.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on the available information, staff believes that U.S. ESBR producers are likely to respond to changes in demand with relatively small changes in shipments of U.S.-produced ESBR to the U.S. market, and larger changes in prices. Factors contributing to the low responsiveness of supply are discussed below.

Capacity in the U.S. Industry

Petitioners reported that they prefer to change the price of ESBR rather than reduce the quantity the firm sells.[12] This is because plants are most efficient when run continually. The low levels of excess capacity in production facilities imply that the industry cannot increase production significantly. U.S. producers' capacity utilization rates ranged from a high of 92.3 percent in 1996 to a low of 80.7 percent in 1998 (table III-2). The falling capacity utilization, however, indicates that firms have some flexibility to increase utilization to replace some subject imports.

Production Alternatives

Most of the equipment used to produce ESBR cannot readily be converted to produce other rubber products.[13] Most other synthetic rubbers are produced on different types of production lines which would require major modifications to produce ESBR.

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[10] All these types are not within the IISRP specs for the product. Wide-spec was reported by the producers to be less far from on-spec material and therefore to sell at less of a discount than material reported to be off-spec. According to the Mexican producer, ***. *** Feb. 24, 1999, meeting with Commission staff.

[11] Worldwide, about 2 percent of production is off-spec. Producers also sell plant cleanup (PCU) material, which is reprocessed and used like off-spec material. Reported by the *** in discussions with Commission staff, Feb. 24, 1999.

[12] Didier Begat, DSM Copolymer, conference transcript, p. 66.

[13] Much of the equipment used to produce ESBR could produce CBMB, but this would be a permanent change because the equipment would be contaminated by carbon black.

II-2

Inventory Levels

The moderate level of inventories during the period for which data were collected indicate that U.S. producers may be able to respond to changes in demand with some shipments from inventories. Inventories fell from 141 million pounds in 1996 to 128 million pounds in 1998. The inventories first rose from *** percent of annual shipments in 1996 to *** percent in 1997, and then fell to *** percent of annual shipments in 1998.

Export Markets

Domestic producers' exports fell from *** percent of production in 1996 to *** percent in 1998. The moderate level of exports indicates that domestic producers could shift some shipments from other markets to the U.S. to replace some subject imports.

U.S. Demand

Consumption of ESBR fell slightly, by 1.2 percent, over the period of investigation, first rising from 1996 to 1997 then falling from 1997 to 1998. The main factors influencing overall demand for ESBR are the number and types of vehicles in use and the types of tires they use, and the cost of other types of synthetic and natural rubber that can substitute for ESBR. The number of both passenger and light truck tires sold increased steadily between 1996 and 1998.[14] Sales of light truck tires used in sport utility vehicles grew more rapidly (in percentage terms but not in absolute terms) than sales of passenger car tires, and light truck tires typically use more ESBR than passenger car tires.[15]

According to respondents, substitution of other rubbers may have reduced demand for ESBR. Mr. Keating of Bridgestone/Firestone reported that Bridgestone had completely replaced ESBR with SSBR in non-OEM tires in the last year or so,[16] and this would have reduced demand for ESBR. In addition, Mr. Webster of Michelin reported that tire producers tend to purchase more natural rubber and less ESBR as natural rubber prices decline, and that natural rubber prices have done so substantially in the last three years.[17]

The petitioners report that 1997 had been a good year in terms of the quantity of ESBR sold.[18] They stated that the reduction in demand for ESBR in 1998 may be the result of strikes at General Motors, at Continental General's plant in Charlotte, and at Titan Tires in Des Moines.[19]

Purchasers were asked if the consolidation of the U.S. suppliers of ESBR had encouraged them to diversify their sources. Of the 41 firms responding, 24 responded "No" that consolidation had not encouraged them to diversify their sources and 17, including 3 of the 4 large tire producers responding, reported that it had encouraged them to diversify.[20]

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[14] Tire consumption data are provided in app. E.

[15] Light truck tires use more rubber overall than passenger tires and typically use larger amounts of synthetic rubbers as well as natural rubber.

[16] Hearing transcript, p. 200.

[17] Hearing transcript, p. 179.

[18] Mr. May, DSM, hearing transcript, p. 52.

[19] Ibid, p. 53.

[20] The remaining large tire producer reported that it had not encouraged them to diversify, but ***.

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Substitute Products

The substitutes for ESBR include CBMB, SSBR, natural rubber, polyisoprene, polybutadiene, and alpha-methylstyrene-butadiene rubber.[21] When asked if there were any other substitutes for ESBR, 21 responded that there were not and the remaining 18 responding firms reported that there were other substitutes.[22] Nine of 38 responding purchasers reported that they had substituted between CBMB and ESBR since 1996; 29 had not substituted between the products. Thirteen of 39 responding purchasers reported that there are circumstances under which they could substitute between CBMB and ESBR during the next two years, including 2 of the 4 large tire producers. Five of 38 responding purchasers reported that they had substituted between SSBR and ESBR since 1996 (33 had not), and 11 of 37 responding purchasers reported that there were circumstances under which they could make this substitution during the next two years, including 3 of the 4 large tire producers. Fifteen of the 38 responding firms reported that they had substituted or were likely to substitute between natural rubber and ESBR. Three of the four large tire producers reported they had substituted between ESBR and natural rubber; the remaining large tire producer reported that it was not likely to substitute because it was focusing on more important projects but that it had substituted between the two in ***. Eleven of 39 responding purchasers reported they were likely to substitute polybutadiene for ESBR.

When asked the difficulties faced in substituting between ESBR and any other substitute rubber, 3 large tire producers responded, reporting that ***. Six other purchasers reported little or no difficulty in substitution.[23] Six firms reported the time required for such substitution, which varied from 1 month or less reported by 3 of those responding, to 6 months to 1 year reported by 2 firms. This longer time included developing, testing, compounding, and formulation work for a new substitution.

When asked if natural rubber prices outside the United States had influenced the price of ESBR, 14 purchasers reported no and 14 reported yes. Those answering no were not asked for an explanation, however 7 provided more information; of these, 2 reported they did not know, 2 reported there was no direct substitution, 2 reported that natural rubber prices tend to track synthetic rubber, and 1 reported that natural rubber prices had fallen in all markets. Of the 14 answering yes, 6 reported that they were substitutes, 5 reported that natural rubber and synthetic rubber prices moved together, and 3 reported that foreign prices had fallen, or that it was a world market. Three of the four responding large tire producers answered yes. When asked if the world price of ESBR affected U.S. prices, 8 purchasers reported no[24] and 20 reported yes. When asked if prices of other synthetic rubbers outside the United States affect the U.S. price of ESBR, 20 purchasers answered no and 9 yes.

Two of the three responding producers reported that the U.S. price of ESBR had not been influenced by either ESBR or natural rubber prices outside the United States. ***. *** agreed that the price of ESBR is not related to the price of other synthetic rubbers.

Respondents contend that the prices of natural rubber drive the prices of ESBR and other synthetic rubbers, and that the declines in the price of natural rubber caused ESBR prices to fall between the

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[21] In addition, purchasers mentioned that EPDM (ethylene propylene diene monomer), nitrile rubber, neoprene, PBD, and emulsion butadiene rubber were possible substitutes for ESBR.

[22] The question asked if there were any other products that might be substituted, and many of those answering yes reported products listed above.

[23] The remaining firms reported that substitution was based on customer specifications; substitution of natural rubber would take 6 months; they would examine substitution if ESBR were unavailable or had a major price increase; substitution costs would be part of normal business costs; cost of substitution would vary with application; they are currently researching substitution; and substitution could occur within 2 months.

[24] Two of those answering no also reported that they did not know.

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beginning of 1996 and the end of 1998.[25] Available information indicates that when prices of natural rubber increased, natural rubber users, where possible, replaced natural rubber with ESBR and other synthetic rubbers, bidding up the price of these. For example, in 1994, when natural rubber prices were high, Bridgestone-Firestone reported that it had "substituted synthetic rubber for NR (natural rubber) wherever possible without compromising product specifications."[26]

Respondents report that two new U.S. SSBR facilities are going to be opened by Bayer and Goodyear in 1999 and 2000.[27] This will increase the availability of SSBR which will compete with ESBR.[28]

Economic consultants for Cooper and Negromex created two models of the price of ESBR using changes in the price of natural rubber and the prices of butadiene and styrene to predict changes in the price of ESBR.[29] They asserted that the hypothesis that natural rubber prices influence the price of ESBR cannot be rejected, and that there is no evidence that changes in ESBR prices caused changes in the price of natural rubber.[30] Petitioners dispute respondents' assertations of natural rubber's influence on U.S. ESBR prices.[31] In addition, a respondent presented data indicating that price trends for ESBR were similar in the United States and Europe between the beginning of 1994 and the end of 1998.[32]

Cost Share

Thirty purchasers reported the percentage of ESBR in their final costs; their responses ranged from less than 0.5 percent to 100 percent.[33] The four responding large tire producers reported that ESBR costs ranged from *** percent to *** percent of their cost of production.[34]

ESBR is mainly used in replacement tires, and less so in original equipment tires. The cost of replacement tires is a necessary part of the cost of maintaining a vehicle. It is probable that small changes in the price of replacement tires, from an increase in the prices of SSBR, will have very little impact on demand for ESBR.

SUBSTITUTABILITY ISSUES

All manufacturers produce the same types of ESBR and produce these to IIRSP standards. Most purchasers, 31 of 39, require suppliers to be certified or pre-qualified, with 29 requiring this for all their product. Ten of 40 responding purchasers reported that suppliers had failed to qualify or lost their qualified status. Three of these reported that a domestic producer was unqualified, 4 reported that 1 of the

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[25] Hearing transcript, Mr. Ikensen, attorney for Cooper, p. 106.

[26] "High demand, bad weather boost NR prices" by Miles Moore, *Rubber and Plastics News II*, Aug. 8, 1994, p. 5.

[27] Mr. Jolliff, hearing transcript, p. 110.

[28] Ibid.

[29] Dr. Michael D. Bradley, Professor of Economics, the George Washington University. Prices for both 1502 and 1712 grades were predicted using *** purchase prices and published prices of natural rubber.

[30] Cooper's postconference brief, exhibit 3.

[31] E.g., petitioners' prehearing brief, p. 59.

[32] Postconference brief of Korea Kumho Petrochemical Co., apps. 2 and 3.

[33] Fourteen reported that ESBR made up less than 10 percent of the cost of their product, 6 reported that ESBR was 12 to 28 percent of the cost of their output, and 7 reported that ESBR was 30 to 60 percent of the cost of their output. The other 3 reported ranges of 3 to 50 percent, 17 to 41 percent, and 8 to 100 percent depending on the product.

[34] They reported ***.

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subject foreign producers was unqualified, and 3 reported that product from nonsubject countries was unqualified.

Many purchasers report changing suppliers relatively infrequently. Of 40 responding, 3 reported never changing,[35] 21 reported changing infrequently,[36] 5 reported changing less than once a year or occasionally, 10 reported changes for shorter times or based on economics, and 1 reported changing weekly. When asked the number of firms they contacted before making a purchase, 12 reported none or one,[37] 6 reported 1 to 3 suppliers, 17 reported contacting 2 to 3 vendors, and 6 reported a larger number of contacts.

Purchasers were asked to name the three most important factors in their purchasing decisions. Twenty-six of 39 responding purchasers listed quality as the most important characteristic.[38] Overall, 37 purchasers listed quality as one of the most important characteristics, 35 listed price,[39] and 22 listed availability or ability to supply as one of the three most important factors considered. Only 2 of 38 responding purchasers stated that the lowest price offered for ESBR will always win a contract or sale.

Purchasers were asked to evaluate the importance of 17 factors in their purchase decisions for ESBR.[40] The two most important factors cited were availability and quality. These were reported to be very important by 39 of the 40 firms reporting.[41] Other very important factors were consistency, reliability of supply, delivery time, and price; these were reported to be very important by 38, 37, 30, and 29 purchasers, respectively. All purchasers reported all these 6 factors were either very important or somewhat important, except one that reported consistency was not important (see table II-1).

Comparison of Domestic Products and Subject Imports

Purchasers were requested to provide information regarding the interchangeability of domestic ESBR and subject imports and to describe differences between ESBR coming from these countries. Twenty-five of 26 responding firms reported that U.S. and Korean ESBR is used in the same applications. Twenty-four of 26 reported U.S. and Brazilian ESBR is used in the same applications, and 7 of 8 responding purchasers reported that U.S. and Mexican ESBR is used in the same applications.[42] Purchasers were asked how much higher the price of imported ESBR would have to be for them to purchase domestic ESBR. Twelve reported on Korean ESBR, reporting that the price would have to be on average 6 percent higher.[43] Seven reported on Brazilian ESBR, reporting that on average the price

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[35] This includes one firm each reporting none, ***, and never.

[36] This included answers such as infrequently, not often, rarely, and seldom.

[37] This included one firm reporting that it had a supply contract and one that reported it usually knew from whom it would buy.

[38] This includes 2 reporting specific quality characteristics, meeting specifications and product performance as well, 2 reporting quality consistency, and 1 reporting approved quality.

[39] Eight reported that price was the most important factor and in addition to these, 27 reported price as one of the top 3 factors; 4 reported that it was another significant factor but not one of the top 3 factors.

[40] These factors were availability, delivery terms, delivery time, discounts offered, lowest price, available at spot prices, available on formula contract, length of the contract, minimum quantity requirements, packaging, product consistency, product quality, product range, reliability of supply, technical support/service, transportation network, and U.S. transportation costs.

[41] In the case of quality, only 39 firms responded; all of these reported that quality was very important.

[42] The one firm that reported differences in the ESBR for each of these sources reported that it only formulates with products from a single ESBR producer and if it changed ESBR, it would also change to use the same supplier for other products in the compound.

[43] Of those answering, 3 reported 0 percent and two reported 20 to 25 percent. In addition, 1 firm reported

(continued...)

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Table II-1
ESBR: Importance of purchasing factors and comparisons among selected countries

Factors	U.S. vs Brazil			U.S. vs Korea			U.S. vs Mexico			Brazil vs Korea			Brazil vs Mexico			Korea vs Mexico			Overall importance		
	S	C	I	S	C	I	S	C	I	S	C	I	S	C	I	S	C	I	very	some	not
Availability	4	16	1	6	17	2	1	4	0	0	10	1	2	2	0	2	2	0	39	1	0
Delivery terms	4	14	2	4	16	4	1	4	0	0	9	1	1	3	0	2	1	1	22	18	0
Delivery time	5	13	2	7	16	1	1	4	0	0	8	2	1	1	2	1	0	3	30	10	0
Discounts	2	11	5	3	13	4	0	4	1	1	8	1	1	3	0	0	4	0	20	10	6
Lowest price	1	5	15	1	10	14	1	2	2	2	5	4	1	2	1	2	2	0	29	11	0
Available at spot price	0	10	6	2	10	6	0	1	2	0	7	2	1	2	0	1	2	0	10	13	14
Available on contract	3	9	1	4	10	1	1	3	0	1	7	0	0	3	0	0	2	1	4	12	19
Length of contract	2	10	0	3	11	0	1	3	0	1	6	0	0	3	0	0	2	1	5	10	21
Minimum quantity	1	16	1	5	14	1	1	4	0	0	10	0	1	3	0	1	3	0	7	15	14
Packaging	6	14	1	2	21	2	1	3	1	1	6	4	0	3	1	2	2	0	19	16	5
Consistency	1	18	2	0	20	5	1	4	0	0	9	2	0	3	1	2	2	0	38	1	1
Product quality	2	17	2	0	21	4	1	4	0	0	9	2	0	4	0	2	2	0	39	0	0
Product range	8	9	1	10	13	1	2	2	0	0	9	1	0	3	0	0	3	0	6	26	7
Reliability of supply	4	16	1	3	20	2	1	4	0	0	7	4	0	3	1	1	3	0	37	3	0
Technical support	12	8	0	15	9	0	3	2	0	0	7	3	0	3	1	1	3	0	11	25	4
Trans. network	4	14	0	4	16	1	2	3	0	0	7	2	0	4	0	1	3	0	10	18	11
U.S. transport costs	1	15	5	1	17	6	2	3	0	0	7	3	0	4	0	1	3	0	16	23	1
Suitability	-	1	-	-	-	1	-	1	-	-	-	1	-	1	-	1	-	-	1	-	-
Payment terms	-	-	1	-	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	1	-
Financial strength	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Credit history	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-
Past pricing	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-

S = ESBR from the first country is superior to that from the second.
C = ESBR from both countries is comparable.
I = ESBR from the first country is inferior to that from the second.

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

would have to be 10 percent higher. One reported on Mexican ESBR, reporting that its price would have to be 2 to 3 percent higher. In addition, 6 purchasers reported that it was important to them to have a foreign source of supply and 4 of these reported that if product from subject countries were not available they would prefer to purchase from some other foreign source rather than purchasing solely domestic.

[43] (...continued)
105 percent; it is likely that it did not understand the question.

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All 3 of the responding domestic producers reported that domestic and subject ESBR is interchangeable, for each of the subject countries. Seven of 8 responding importers reported Korean and U.S. product were interchangeable, 3 of 4 importers reported that Brazilian and U.S. product were interchangeable, and all 3 responding on Mexican product reported it was interchangeable with the U.S. product. The importer that reported that Korean and U.S. ESBR were not interchangeable reported that this was because the Korean product was superior. The importer that reported that U.S. and Brazilian ESBR were not interchangeable reported that the Brazilian product processes differently. Two domestic producers reported no differences between subject imports and U.S.-produced ESBR, and one, ***, reported differences including the U.S. product's better technical service, returnable containers, and shorter supply lines. Only 1 of the 4 responding importers reported no differences between Korean and U.S. product, and the other 3 reported that Korean was superior. One importer compared Brazilian and U.S. product, reporting they were basically the same, and 1 compared U.S. and Mexican product and reported that they were different in terms of sales conditions including "Buy American," lead times, and distribution networks.

The lead time between a customer's order and delivery for U.S.-produced ESBR varied between 10 and 14 days. Importers' average lead times ranged from 1 to 75 days. Lead times of 2 days or less were reported by 2 of the 6 responding importers; the remainder reported lead times from 20 to 75 days.

Brazil

Twenty-eight firms compared the price of U.S. and Brazilian ESBR; 19 reported that the U.S. price was higher, 2 that the Brazilian price was higher, and 7 that their prices were the same. Comparisons of 17 purchasing characteristics between domestically produced and Brazilian ESBR, as well as comparisons between other country pairs, are presented in table II-1. The table indicates that for nearly all purchasing characteristics, the majority of responding purchasers assessed the domestically-produced and Brazilian product as comparable. A majority found the U.S. product superior in technical support and a majority found the Brazilian product to have a lower price.

Korea

Twenty-seven purchasers compared U.S. and Korean prices; 19 reported that the U.S. price was higher, 2 that Korean prices were higher, and 6 that their prices were the same. Table II-1 indicates that based on 17 purchasing characteristics, the majority of purchasers assessed the domestically-produced and Korean ESBR to be comparable in virtually all comparisons. A majority found the U.S. product superior in technical support and a majority found the Korean product to have a lower price.

Mexico

Seven purchasers compared U.S. and Mexican prices; 4 reported that U.S. prices were higher, 2 that Mexican prices were higher, and 1 that prices were the same. The number of purchasers that compared the domestically-produced and Mexican ESBR in table II-1 was much smaller than the number comparing U.S. and Brazilian or Korean product, but the results were much the same, with the majority of purchasers indicating that domestically-produced and Mexican ESBR are comparable in most categories.

Comparison of Subject ESBR

Comparison of Brazilian and Korean ESBR

Sixteen purchasers compared the price of Brazilian and Korean ESBR. Five reported that the Brazilian price was higher, 2 that the Korean price was higher, and 9 that their prices were the same. Eleven firms compared Brazilian and Korean ESBR according to the 17 factors listed. In availability, 10 firms reported that Korean and Brazilian ESBR were comparable and 1 that Korean ESBR was more available. In reliability of supply, 7 reported that they were comparable and 4 reported that Korean supply was more reliable. For both product quality and consistency, 9 reported they were comparable and 2 that Korean ESBR was superior. For lowest price, 2 reported that Brazilian ESBR was lower, 5 that Korean and Brazilian prices were comparable, and 4 that Korean prices were lower. For all other factors the majority reported that the Korean and Brazilian product were comparable.

Comparison of Brazilian and Mexican ESBR

Eight firms compared Brazilian and Mexican prices; 4 reported that Brazilian prices were lower, 1 reported that Mexican prices were lower, and 3 reported that the prices were the same. Four firms compared Brazilian and Mexican ESBR on the 17 characteristics listed. The majority of these firms reported that Mexican and Brazilian ESBR were comparable in terms of delivery terms, discounts, availability at spot prices, availability on contract, length of contract, minimum quantity required, packaging, product consistency, quality, product range, reliability of supply, technical support, transportation networks, and U.S. transportation costs. In terms of availability, 2 each reported that Brazil was superior and that Brazil and Mexico were comparable. In delivery time, 2 reported that Mexico was superior, and in terms of lowest price, 2 reported that they were comparable.

Comparison of Korean and Mexican ESBR

Six firms compared Korean and Mexican prices; 4 reported that Korean prices were lower and 1 each that the prices were the same and that Mexican prices were lower. Four firms compared Korean and Mexican ESBR on the 17 characteristics listed. The majority reported that they were comparable in terms of discounts, availability at spot, availability on contract, length of contract, minimum quantity required, product range, reliability of supply, technical support, transportation networks, and U.S. transportation costs. In terms of availability, lowest price, packaging, product consistency, and product quality, 2 firms each reported that Korea was superior and that they were the same. The majority reported that Mexico was superior in delivery time, while 2 reported that Korea was superior in delivery terms. Importers of Korean ESBR sold it nationwide; the importer of Mexican ESBR reported selling ***.[44]

Comparison of Domestic Products and Subject Imports to Nonsubject Imports

Purchasers were asked to compare U.S. and nonsubject country prices. One purchaser each found that the U.S. price was higher than prices from Eastern Europe, Argentina, and Japan. Two firms compared the U.S. and Dutch prices, 1 reporting that the U.S. price was higher and 1 that their prices were the same.

Purchasers reported that ESBR from Argentina, the Czech Republic, England, France, Germany, Italy, Japan, the Netherlands, Poland, Russia, and Taiwan were used in the same applications as U.S.-

[44] Four importers reported selling Korean ESBR. Two sold it only in certain regions and 2 sold it nationwide. II-9

produced ESBR.[45] The three domestic producers compared domestic and nonsubject imports. *** reported that U.S. product and subject imports were not interchangeable with nonsubject imports because of supply or quality problems. *** reported that there were significant differences between U.S. product and imports from Russia, Romania, and Argentina and that nonsubject product was seldom seen in the country because it was inferior or it lacked distribution, availability, or reliable delivery. *** reported that U.S. and subject imported ESBR were interchangeable with German, Italian, and U.K. ESBR and that these, like subject product, were disadvantaged compared to U.S. ESBR in terms of technical service, returnable containers, and lines of supply.

ELASTICITY ESTIMATES

This section discusses the elasticity estimates used in the COMPAS analysis (appendix F).

U.S. Supply Elasticity[46]

The domestic supply elasticity for ESBR measures the sensitivity of quantity supplied by U.S. producers to a change in the U.S. market price of ESBR. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternative markets for U.S.-produced ESBR.[47] Analysis of these factors earlier indicates that the U.S. industry may have a limited ability to increase or decrease shipments to the U.S. market. Staff estimates that the supply elasticity is between 2 and 4.

U.S. Demand Elasticity

The U.S. demand elasticity for ESBR measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of ESBR. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of ESBR in the production of downstream products. Other types of rubber are limited as substitutes for ESBR; however, it is likely that if the price of ESBR changed relative to these products the relative mix of ESBR and other rubber products would change in some products, although ESBR generally accounts for a small percentage of the final cost of a tire. Based on available information, demand for ESBR is likely to be inelastic, estimated to be in the range of -0.4 to -0.9.

The petitioners indicate that this estimate is too high. They report that substitutes for ESBR play a more limited role than is implied by these numbers. They suggest that the highest end of the range should be (-)0.75. However, tire producers report that there are a number of potential substitutes for some of the ESBR, including SSBR, CBMB, and to a more limited extent, natural rubber.[48] The availability of substitutes increases price sensitivity.

Respondent Negromex reports that the estimated elasticity of demand is too low. It reports that substitutes for ESBR play a larger role than is implied by these numbers. It suggests that the highest end of the range should be (-)2, in line with the elasticity of substitution between domestic and imported

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[45] ***. Discussions with Commission staff, Mar. 2, 1998.

[46] A supply function is not defined in the case of a non-competitive market.

[47] Domestic supply response is assumed to be symmetrical for both an increase and a decrease in demand for the domestic product. Therefore, factors affecting increased quantity supplied to the U.S. market also affect decreased quantity supplied to the same extent.

[48] William C. Jones, Cooper, hearing transcript, pp. 110-113.

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product because of "the high degree of substitutability between ESBR, natural rubber, and other synthetic rubbers."[49] Imports, however, are clearly better substitutes for domestic ESBR than other substitutes since other rubbers normally require some adjustment in the method of production.

Substitution Elasticities

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.[50] Product differentiation, in turn, depends upon such factors as quality, (meeting the IISBR specifications or even narrower specifications if these are requested), processability, consistency (for smooth product flow and quality control of output, it is important that there are minimal variations in the ESBR from batch to batch), and conditions of sale (e.g., service and availability). Most ESBR is used in tire production regardless of country of origin, and this increases the degree of substitutability between U.S. and imported ESBR. Any differences in quality between U.S.-produced and subject imported ESBR would reduce the substitutability between domestic and imported ESBR. However, there were no major differences in quality reported among the subject countries or between the U.S. and subject countries, although some firms reported that Korean product was better than U.S. and other subject ESBR. Based on available information, the elasticity of substitution between U.S.-produced ESBR and subject imported ESBR is likely to be in the range of 2 to 4 for all subject countries.

Petitioners believe that the elasticity of substitution proposed by staff is too low. Petitioners report that price is the only material difference between domestic and subject imported ESBR. They report that the elasticity of substitution should be between 10 and 15. Staff does not accept this high a range of elasticity of substitution, even if only the commercial segment of the market were examined. Most product is sold on contract; this limits purchasers' responses to day-to-day or even month-to-month changes in prices. A number of large purchasers reported that they were interested in maintaining a diverse supplier base; no single country source. Finally, the largest producer ***. Petitioners acknowledged that reliability of supply and quality (including no contamination and consistency so that production was not slowed) were more important than price; however, they report that these do not materially differ between domestic and imported ESBR.[51]

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[49] Posthearing brief of Manatt Phelps Phillips, p. 9, n. 2.

[50] The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like product to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject product (or vice versa) when prices change.

[51] William D. Spence, CEO, Ameripol Synpol Corp., hearing transcript, pp. 18-19.

PART III: CONDITION OF THE U.S. INDUSTRY

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

U.S. PRODUCERS

In addition to the two petitioners, two other firms (Goodyear Tire and Rubber Co. and Dynagen, Inc.) produced ESBR in the United States during the investigative period; however, Dynagen's sole plant (Odessa, TX) was sold to petitioner Ameripol Synpol in 1997. U.S. producers' identities, plant locations, and shares of U.S. production are shown in table III-1. The lone non-petitioner *** the petition. In terms of shares of total production and shipments, each of the three firms in 1998 was a significant producer. In 1998, Goodyear captively consumed *** percent of the ESBR it produced.

Table III-1
ESBR: U.S. producers, plant locations, share of production in 1998, and position on the petition

Firm	Location of production facilities	Share (*percent*) of reported total production of ESBR in 1998	Position on the petition
Ameripol Synpol Corp.	Port Neches, TX Odessa, TX	*** ***	Petitioner
DSM Copolymer, Inc.	Baton Rouge, LA	***	Petitioner
Goodyear Tire and Rubber Co.	Houston, TX	***	***

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

U.S. PRODUCTION, CAPACITY, CAPACITY UTILIZATION, SHIPMENTS, INVENTORIES, AND EMPLOYMENT

Aggregate data for the U.S. producers of ESBR are shown in table III-2. Production decreased by 11 percent from 1996 to 1998. Petitioners accounted for *** percent of total U.S. production in 1998, *** from *** percent in 1996. Goodyear *** its share from *** percent in 1996 to *** percent in 1998. Goodyear captively consumed *** of ESBR, or *** percent of its production in 1998, *** percent in 1996. Ameripol Synpol's production fell from *** in 1996 to *** in 1998. DSM increased its production from *** in 1996 to *** in 1998. DSM increased its capacity from *** in 1996 to *** in 1997 (***), a result of ***.[1] Ameripol Synpol's capacity remained constant during the period of investigation, except for its purchase of the Dynagen plant in 1997, and Goodyear increased its capacity by *** from *** in 1996 to

[1] Telephone conversation with Donald Morgan, petitioners' counsel, Apr. 28, 1998.

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*** in 1998. Aggregate capacity utilization was high, but decreased steadily from 92 percent in 1996 to 81 percent in 1998.

Aggregate trends in U.S. shipments paralleled those for U.S. production, although the unit value of the U.S. shipments declined steadily during 1996-98 (table III-3). The decline in U.S. producers' commercial shipments was *** that for captive shipments. The quantity, value, and unit value of exports also declined during this period, as did the number of production and related workers and hours worked. Hourly wages, total wages paid, and unit labor costs all increased during 1996-98. Inventories and productivity rose from 1996 to 1997 before falling in 1998.

Table III-2
ESBR: U.S. production, average practical capacity, capacity utilization, shipments, end-of-period inventories, and employment-related indicators, 1996-98

Item	1996	1997	1998
Production (*1,000 pounds*)	1,279,449	1,232,796	1,137,914
Capacity (*1,000 pounds*)	1,386,666	1,410,500	1,410,500
Ratio of production to capacity (*percent*)	92.3	87.4	80.7
U.S. shipments:			
Quantity (*1,000 pounds*)	1,135,099	1,120,195	1,052,166
Value (*1,000 dollars*)	477,945	453,559	379,724
Unit value (*per pound*)	$0.42	$0.40	$0.36
Exports:			
Quantity (*1,000 pounds*)	***	***	***
Value (*1,000 dollars*)	***	***	***
Unit value (*per pound*)	***	***	***
Total shipments:			
Quantity (*1,000 pounds*)	***	***	***
Value (*1,000 dollars*)	***	***	***
Inventories (*1,000 pounds*)	141,284	145,711	127,700
Ratio of inventories to total shipments during the period (*percent*)	***	***	***
Average number of production and related workers	1,140	1,084	1,008
Hours worked by production and related workers (*1,000 hours*)	2,036	1,949	1,895
Pounds produced per hour	628.4	632.5	600.5
Wages paid to production and related workers (*1,000 dollars*)	38,940	39,127	40,896
Hourly wages	$19.13	$20.08	$21.58
Unit labor costs (*per pound*)	$0.03	$0.03	$0.04

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

Table III-3
ESBR: U.S. producers' shipments, by types, 1996-98

* * * * * * *

Table III-4 shows petitioners' shipments to their top purchasers of ESBR during 1996-98.

Table III-4
ESBR: Petitioners' U.S. shipments to their largest purchasers, 1996-98

* * * * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

No U.S. producer reported imports of ESBR. ***.

CAPTIVE CONSUMPTION OF ESBR BY U.S. PRODUCERS

Captive consumption of ESBR for the production of downstream products by the 3 U.S. producers of ESBR amounted to *** percent of the volume of U.S. producers' aggregate U.S. shipments of ESBR in 1996, *** percent in 1997, and *** percent in 1998. Of the 3 U.S. producers, *** consumed ESBR captively during 1996-98.

Goodyear captively consumed *** percent of the volume of its U.S. shipments of ESBR in 1996, *** percent in 1997, and *** percent in 1998. The ESBR that Goodyear captively consumes *** from the ESBR it sells commercially; the *** of ESBR that Goodyear solely produces for captive consumption but for which there is also a commercial market ***. The downstream products in which Goodyear uses its ESBR are tires ***. Goodyear estimated that ESBR accounts for *** percent of its raw material cost of producing tires ***.[2] The principal use of the ESBR sold by all three U.S. producers is in the production of tires, which is also the principal use of the ESBR that Goodyear captively consumes.[3]

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[2] Information concerning Goodyear reported in this section of the report is from Goodyear's response to the Commission's producers' questionnaire in the final phase of the investigations, pp. 5, 9, and 10.

[3] Petitioners contend that although the ESBR produced by Goodyear and the ESBR produced by the petitioners are used primarily for tire production, the tires produced by each manufacturer are different and thus the captively-produced ESBR and the commercial-market ESBR are not used in the production of the same downstream articles (petitioners' postconference brief, p. 29).

III-3

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

The largest known U.S. importers by far during 1996-98 were: (1) from Brazil, ***; (2) from Korea, ***; and (3) from Mexico, ***. *** reported that it imports ESBR from more than one of the subject countries; no firm reported that it imports from all three countries.

Questionnaires were sent to 32 firms believed to be importers of ESBR, SSBR, and CBMB, based on information provided by the U.S. Customs Service; on other information obtained in the preliminary phase of the investigations; and on information in the petition. Questionnaire responses were received from 23 of the 32 firms, including from all importers believed to be large importers of ESBR; 14 of the 23 firms responded that they did not import the subject products. Based on questionnaire responses, it appears that the overwhelming bulk of ESBR imported into the United States is produced in Brazil, Korea, and Mexico. ESBR from other countries has entered the United States, but to date in quantities well below those of the subject countries.[1] Only two firms, *** (from Argentina) and *** (from Germany and the Netherlands), reported imports from other than subject countries in their importers' questionnaire responses in the final phase of these investigations. However, 11 other firms stated in their purchasers' questionnaire responses that they purchased ESBR that originated in 8 countries other than subject countries. The largest quantity was from Japan as reported by ***.[2]

U.S. imports, by sources, are presented in table IV-1,[3] and information on U.S. producers' shipments, U.S. imports, and commercial and total shipments is presented in table IV-2. Since not all importers provided data in response to the Commission's questionnaire, the subject import volume data presented in the tables are based on questionnaire responses received from foreign exporters,[4] and the import value data from the subject countries are the result of multiplying the unit values of import data received in questionnaire responses by the export volume data reported by foreign producers. The import values in table IV-2 are derived values and are import values, not shipment values which would be somewhat higher.

U.S. commercial consumption and commercial market shares, based on U.S. producers' shipments plus import shipments, are shown in table IV-3, and U.S. total consumption and total market shares are shown in table IV-4.

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[1] Responses to Commission questionnaires and conference transcript, p. 65.

[2] *** as reported in their purchaser's questionnaire. Telephone conversation with ***.

[3] Imports from "other sources" in the table include both imports as reported in importers' questionnaires and reported and non-double-counted purchases of imported product as reported in purchasers' questionnaires. The values and unit values of "other sources" are not fully comparable with those of subject imports because the other sources data include delivered values to purchasers.

[4] There are 4 known foreign producers of subject imports and the Commission received useable responses from all.

IV-1

Table IV-1
ESBR: U.S. imports, by sources, 1996-98

Item	1996	1997	1998
		Quantity (*1,000 pounds*)	
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Subtotal	73,843	127,376	133,075
Other sources	5,674	13,938	14,643
Total	79,517	141,314	147,718
		Value (*1,000 dollars*)[1]	
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Subtotal	33,229	47,435	43,035
Other sources	2,493	5,648	5,648
Total	35,722	53,083	48,683
		Unit value (*per pound*)[1]	
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Average	$0.45	$0.37	$0.32
Other sources	0.44	0.41	0.39
Average	0.45	0.38	0.33
		Share of quantity (*percent*)	
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Subtotal	92.9	90.1	90.1
Other sources	7.1	9.9	9.9
Total	100.0	100.0	100.0
		Share of value (*percent*)	
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Subtotal	93.0	89.4	88.4
Other sources	7.0	10.6	11.6
Total	100.0	100.0	100.0

[1] On a f.o.b. U.S. port of entry basis for subject imports and a combination of f.o.b. U.S. port of entry basis and delivered-to-purchasers basis for other sources.

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

Table IV-2
ESBR: U.S. producers' domestic shipments by types, U.S. imports by sources, and U.S. commercial and total consumption, 1996-98

Item	1996	1997	1998
	Quantity (*1,000 pounds*)		
U.S. producers' captive shipments	***	***	***
U.S. producers' commercial shipments	***	***	***
Total U.S. producers' U.S. shipments	1,135,099	1,120,195	1,052,166
U.S. imports:			
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Subtotal	73,843	127,376	133,075
All other	5,674	13,938	14,643
Total U.S. imports	79,517	141,314	147,718
Commercial consumption	***	***	***
Total consumption	1,214,616	1,261,509	1,199,884
	Value (*1,000 dollars*)		
U.S. producers' captive shipments	***	***	***
U.S. producers' commercial shipments	***	***	***
Total U.S. producers' U.S. shipments	477,945	453,559	379,724
U.S. imports:			
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Subtotal	33,229	47,735	43,035
All other	2,493	5,648	5,648
Total import shipments	35,722	53,083	48,683
Commercial consumption	***	***	***
Total consumption	513,667	506,642	428,407

Note: Total imports and importers' shipments are not equal as a significant amount of product is in importers' inventories. See the section of Part VII entitled *U.S. Importers' Inventories*.

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

Table IV-3
ESBR: U.S. commercial consumption and commercial market shares, 1996-98

* * * * * * *

Table IV-4
ESBR: U.S. total consumption and market shares, 1996-98

Item	1996	1997	1998
	Quantity (*1,000 pounds*)		
Total consumption	1,214,616	1,261,509	1,199,884
	Value (*1,000 dollars*)		
Total consumption	513,667	506,642	428,407
	Share of quantity (*percent*)		
U.S. producers' U.S. shipments	93.5	88.8	87.7
U.S. imports:			
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Subtotal	6.1	10.1	11.1
All other	0.5	1.2	1.2
Total U.S. imports	6.5	11.2	12.3
	Share of value (*percent*)		
U.S. producers' U.S. shipments	93.0	89.5	88.6
U.S. imports:			
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Subtotal	6.5	9.4	10.0
All other	0.5	1.1	1.3
Total U.S. imports	7.0	10.5	11.4

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

PART V: PRICING AND RELATED DATA

FACTORS AFFECTING PRICING

Raw Material Costs

The average cost of all raw materials of the U.S. producers is presented in Part VI of the report. These costs amounted to *** per pound in 1996, *** per pound in 1997, and *** per pound in 1998. The prices of both styrene and butadiene fell during the period of investigation.[1]

U.S. Inland Transportation Costs

Ameripol Synpol and DSM Copolymer reported that U.S. inland transportation costs account for between *** and *** percent of the total delivered price of ESBR.[2] Two importers reported that transportation costs accounted for between 1 and 10 percent of the delivered price of ESBR.[3]

Tariff Rates

ESBR is covered by subheading 4002.19.00 of the HTS. The general tariff rate for these products is free.

Exchange Rates

Quarterly exchange rates reported by the International Monetary Fund for Brazil, Korea, and Mexico during the period January 1996-September 1998 are shown in figures V-1 to V-3.

PRICING PRACTICES

ESBR is sold in a variety of grades with different characteristics and uses, the most important of which are 1502 and 1712, which are mainly used in tires. The 1700 series contains oil while the 1500 series does not; as a result, the 1700 series tends to be less expensive since oil costs less than styrene or butadiene. ESBR is sold in formula sales contracts, in the spot market, and to distributors. In formula sales contracts, the price is agreed to by buyer and seller with an adjustment factor for changes in the cost of styrene and butadiene. In addition, the major Korean producer reported that it sold using ***. Of the three domestic producers, *** reported having meet-or-release provisions in its contracts.

ESBR is sold mainly in bales weighing from 75 to 85 pounds, which are wrapped in plastic film. These bales are usually sold by the truck or container load.

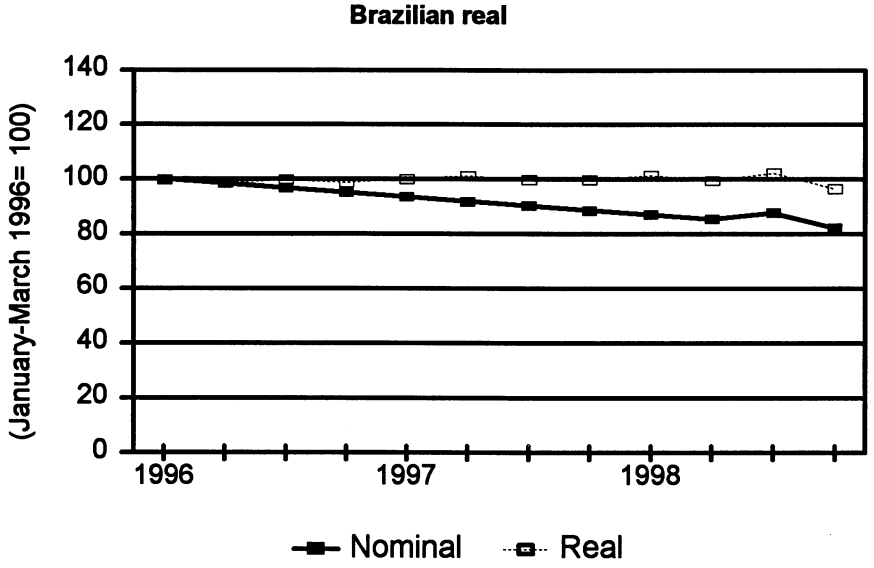
---

[1] Styrene and butadiene made up from *** percent of the cost of production of 1500-series product to *** percent of the cost of production of 1700-series product. Percentages reported by ***. Data reported by *** do not separate the costs of styrene and butadiene between the 1500 series and the 1700 series. Overall, *** reports that styrene and butadiene made up between *** percent of the cost of goods sold.

[2] ***.

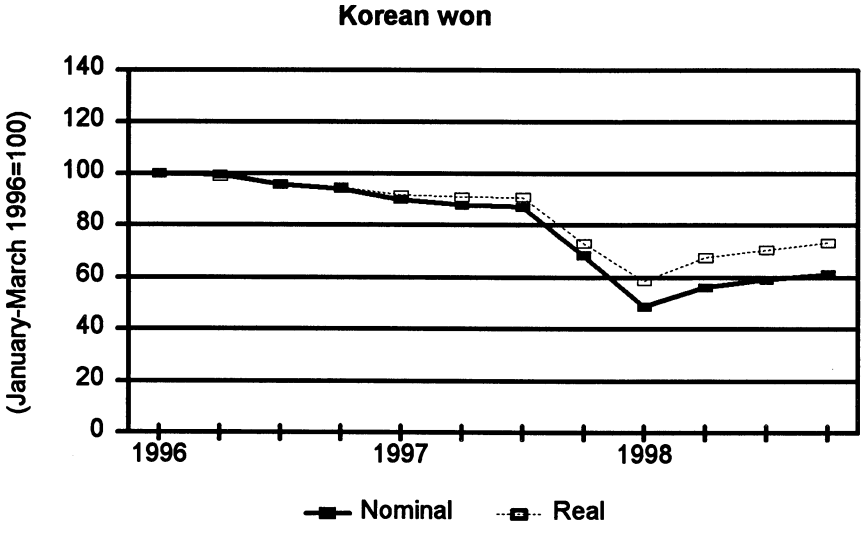
[3] Eight of the 13 importers responding to the questionnaire were end users and did not answer this question; however, in addition to the 2 firms mentioned above, 2 firms reported that transportation accounted for 0 percent of the delivered cost of ESBR (1 of these also reported that the purchaser paid for transportation) and 1 firm reported that transportation accounted for 95 percent of ESBR's total cost.

Figure V-1
Exchange rates: Indexes of the nominal and real exchange rates of the Brazilian real relative to the U.S. dollar, by quarters, Jan. 1996-Dec. 1998



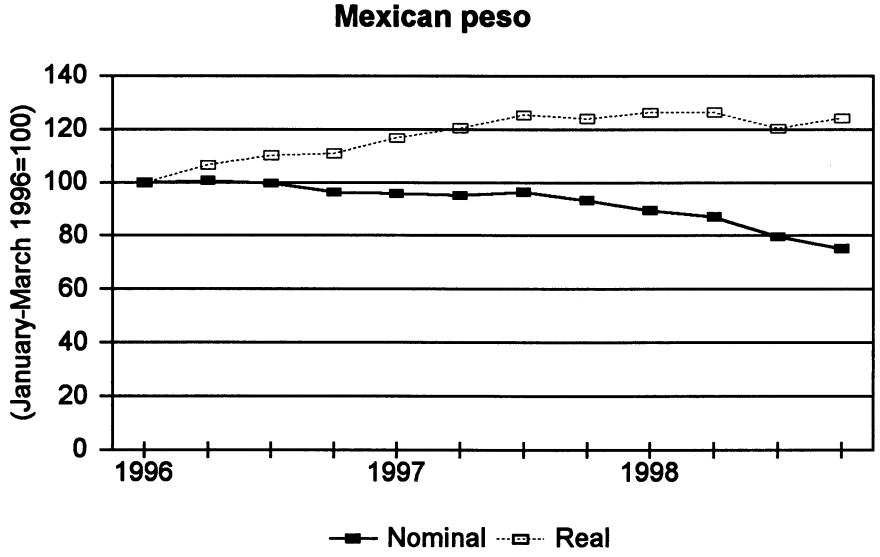
Source: International Monetary Fund, *International Financial Statistics*, March 1999.

Figure V-2
Exchange rates: Indexes of the nominal and real exchange rates of the Korean won relative to the U.S. dollar, by quarters, Jan. 1996-Dec. 1998



Source: International Monetary Fund, *International Financial Statistics*, March 1999.

Figure V-3
Exchange rates: Indexes of the nominal and real exchange rates of the Mexican peso relative to the U.S. dollar, by quarters, Jan. 1996-Dec. 1998



Source: International Monetary Fund, *International Financial Statistics*, March 1999.

All domestic producers reported that they normally offer ***. Three of the six responding importers offered no discounts, two reported some quantity/volume discounts, and one reported that some customers had been granted prompt-payment discounts.

All of the domestic producers and one importer had price lists. All the domestic producers and three of the six responding importers sold both on a spot basis and contract basis. One importer, ***, reported that it sold only on a contract basis,[4] two importers, selling Korean or Brazilian ESBR, sold only on a spot basis, and three sold on both a contract and a spot basis (these sold Korean and Mexican ESBR).[5]

Both responding domestic producers reported selling on an f.o.b. basis.[6] Three of the six responding importers sold on a delivered basis, two sold on an f.o.b. basis, and the remaining importer sold on both f.o.b. and delivered bases.

Domestic producers reported longer-term contracts than importers. One domestic producer reported contracts from ***, and the other two reported *** contracts. In contrast, one of the three responding importers reported 1-year contracts, two reported quarterly contracts, and the other had contracts that lasted for 2 to 3 months. All domestic producers sold *** of their ESBR on contract; ***.

In 1997 the number of domestic producers of ESBR fell from four to three with the purchase of Dynagen, Inc. by Ameripol Synpol. ***.

[4] ***.

[5] The Mexican importer was the only importer that reported selling on a formula contract basis.

[6] *** did not answer this question.

V-3

PRICE DATA

The Commission requested the U.S. producers and importers to provide quarterly quantity and value data both for sales on the spot market and for formula sales contracts between January 1996 and December 1998 for the following products:

Product 1.--IISRP 1502 grade of ESBR

Product 2.--IISRP 1712 grade of ESBR

U.S. producers and importers who sold ESBR were asked to provide values for the product f.o.b. at their U.S. point of shipment. In addition, importers which processed ESBR were asked to provide the value of the products delivered to their U.S. establishments.

Three U.S. producers and 12 importers provided usable price data for sales of the requested products in the U.S. market, although not necessarily for both products, all types of sales, all quarters, or all countries. Weighted-average pricing data and margins of under/overselling are presented in tables V-1 to V-6 and figures V-4 and V-5. Usable pricing data accounted for about 86 percent of U.S. commercial shipments of domestic ESBR and about 55 percent of shipments of ESBR from Brazil, Korea, and Mexico combined for product that was sold by the importers. When the imports processed by the importers are included, prices for products 1 and 2 cover 86 percent of all subject imports.

Table V-1
Certain ESBR: Weighted-average net f.o.b. spot prices (per pound) and quantities for sales to unrelated U.S. customers for product 1[1] reported by U.S. producers and importers, and margins of underselling/(overselling), by quarters, Jan. 1996-Dec. 1998

Period	U.S. Product			Brazilian Product				Korean Product			
	Net f.o.b. price	Quantity	Co.[2]	Net f.o.b. price	Quantity	Co.[2]	Margin	Net f.o.b. price[3]	Quantity	Co.[2]	Margin
	Per pound	*1,000 pounds*		*Per pound*	*1,000 pounds*		*Percent*	*Per pound*	*1,000 pounds*		*Percent*
1996:											
January-March	***	***	***	***	***	***	***	***	***	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***
1997:											
January-March	***	***	***	***	***	***	***	***	***	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	$0.45	1,180	3	***
1998:											
January-March	***	***	***	***	***	***	***	***	***	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***

[1] IISRP 1502 grade of ESBR.
[2] Number of companies reporting data.
[3] ***.

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

V-5

Table V-2
Certain ESBR: Weighted-average net f.o.b. spot prices (per pound) and quantities for sales to unrelated U.S. customers for product 2[1] reported by U.S. producers and importers, and margins of underselling/(overselling), by quarters, Jan. 1996-Dec. 1998

Period	U.S. Product			Brazilian Product				Korean Product			
	Net f.o.b. price	Quantity	Co.[2]	Net f.o.b. price	Quantity	Co.[2]	Margin	Net f.o.b. price[3]	Quantity	Co.[2]	Margin
	Per pound	*1,000 pounds*		*Per pound*	*1,000 pounds*		*Percent*	*Per pound*	*1,000 pounds*		*Percent*
1996:											
January-March	***	***	***	***	***	***	***	([4])	***	([4])	([5])
April-June	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***
1997:											
January-March	***	***	***	***	***	***	***	***	***	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***
1998:											
January-March	***	***	***	***	***	***	***	***	***	***	***
April-June	***	***	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	***	***	***	***	***

[1] IISRP 1712 grade of ESBR.
[2] Number of companies reporting data.
[3] ***.
[4] Data not reported.
[5] Margins not calculated.

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

V-6

Table V-3
Certain ESBR: Weighted-average net f.o.b. formula sales contract prices (per pound) and quantities for sales to unrelated U.S. customers for product 1[1] reported by U.S. producers and importers, and margins of underselling/(overselling), by quarters, Jan. 1996-Dec. 1998

Period	U.S. Product			Mexican Product			
	Net f.o.b. price	Quantity	Co.[2]	Net f.o.b. price	Quantity	Co.[2]	Margin
	Per pound	*1,000 pounds*		*Per pound*	*1,000 pounds*		*Percent*
1996:							
January-March	$0.47	42,196	3	***	***	***	***
April-June	0.46	40,528	3	***	***	***	***
July-September	0.46	43,599	3	***	***	***	***
October-December	0.47	46,819	3	***	***	***	***
1997:							
January-March	***	***	***	***	***	***	***
April-June	0.45	57,059	3	***	***	***	***
July-September	***	***	***	***	***	***	***
October-December	0.44	53,972	3	***	***	***	***
1998:							
January-March	0.44	47,606	3	***	***	***	***
April-June	0.40	42,125	3	***	***	***	***
July-September	0.40	37,948	3	***	***	***	***
October-December	0.39	33,593	3	***	***	***	***

[1] IISRP 1502 grade of ESBR.
[2] Number of companies reporting data.

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

V-7

Table V-4
Certain ESBR: Weighted-average net f.o.b. formula sales contract prices (per pound) and quantities for sales to unrelated U.S. customers for product 2[1] reported by U.S. producers and importers, and margins of underselling/(overselling), by quarters, Jan. 1996-Dec. 1998

Period	U.S. Product			Mexican Product			
	Net f.o.b. price	Quantity	Co.[2]	Net f.o.b. price	Quantity	Co.[2]	Margin
	Per pound	*1,000 pounds*		*Per pound*	*1,000 pounds*		*Percent*
1996:							
January-March	***	***	***	***	***	***	
***							
April-June$0.40	51,265	3	***	***	***	***	
July-September	***	***	***	***	***	***	***
October-December	0.41	61,564	3	***	***	***	***
1997:							
January-March	0.38	77,314	3	***	***	***	***
April-June	0.38	76,043	3	***	***	***	***
July-September	0.37	72,578	3	***	***	***	***
October-December	0.36	72,624	3	***	***	***	***
1998:							
January-March	0.37	35,978	3	***	***	***	***
April-June	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***
October-December	0.31	36,921	3	***	***	***	***

[1] IISRP 1712 grade of ESBR.
[2] Number of companies reporting data.

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

V-8

Table V-5
Certain ESBR: Weighted-average net delivered import prices (per pound) and quantities for importers' own use, product 1,[1] by quarters, Jan. 1996-Dec. 1998

Period	Brazilian Product, contract			Korean Product, spot		
	Net delivered price	Quantity	Co. [2]	Net delivered price	Quantity	Co. [2]
	Per pound	*1,000 pounds*		*Per pound*	*1,000 pounds*	
1996:						
January-March	([3])	([3])	-	***	***	***
April-June	([3])	([3])	-	***	***	***
July-September	([3])	([3])	-	***	***	***
October-December	([3])	([3])	-	***	***	***
1997:						
January-March	([3])	([3])	-	$0.44	3,461	4
April-June	([3])	([3])	-	0.48	3,685	4
July-September	([3])	([3])	-	0.41	3,571	4
October-December	***			0.36	5,228	4
1998:						
January-March	***	***	***	0.37	3,385	4
April-June	***	***	***	0.35	5,389	5
July-September	***	***	***	0.34	6,320	4
October-December	([3])	([3])	-	0.34	3,200	4

[1] IISRP 1502 grade of ESBR.
[2] Number of companies reporting data.
[3] Data not reported.

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

V-9

Table V-6
Certain ESBR: Weighted-average net delivered import prices (per pound) and quantities for importers' own use, product 2,[1] by quarters, Jan. 1996-Dec. 1998

Period	Brazilian Product, spot			Brazilian Product, contract			Korean Product, spot		
	Net delivered price	Quantity	Co. [2]	Net delivered price	Quantity	Co. [2]	Net delivered price	Quantity	Co. [2]
	Per pound	*1,000 pounds*		*Per pound*	*1,000 pounds*		*Per pound*	*1,000 pounds*	
1996:									
January-March	***	***	***	([3])	([3])	-	***	***	***
April-June	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***
October-December	***	***	***	***	***	***	$0.40	380	3
1997:									
January-March	***	***	***	***	***	***	0.39	1,757	4
April-June	([3])	([3])	-	***	***	***	0.37	3,585	5
July-September	([3])	([3])	-	***	***	***	0.34	2,954	4
October-December	([3])	([3])	-	***	***	***	***	***	***
1998:									
January-March	***	***	***	***	***	***	0.31	1,274	4
April-June	***	***	***	***	***	***	***	***	***
July-September	***	***	***	***	***	***	***	***	***
October-December	([3])	([3])	-	([3])	([3])	-	***	***	***

[1] IISRP 1712 grade of ESBR.
[2] Number of companies reporting data.
[3] Data not reported.

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

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Figure V-4
Weighted-average net f.o.b. (or delivered for own-use material) spot prices (per pound) of product 1, by quarters, Jan. 1996-Dec. 1998 and weighted-average net f.o.b. (or delivered for own-use material) formula contract prices (per pound) of product 1, by quarters, Jan. 1996-dec. 1998

* * * * * * *

Figure V-5
Weighted-average net f.o.b. (or delivered for own-use material) spot prices (per pound) of product 2, by quarters, Jan. 1996-Dec. 1998 and weighted-average net f.o.b. (or delivered for own-use material) formula contract prices (per pound) of product 2, by quarters, Jan. 1996-dec. 1998

* * * * * * *

U.S. Producers' and Importers' Prices

U.S. Product

U.S. producers' spot prices for product 1 ranged from a high of *** per pound to a low of *** per pound; product 1 prices on a formula contract basis ranged from a high of *** per pound to a low of *** per pound. Spot prices for product 2 ranged from *** to *** per pound, while formula contract product 2 prices ranged from *** to *** per pound. Prices for product sold in formula sales contracts tended to be below those sold at spot prices. Prices for products 1 and 2 both declined over the period of investigation. Product 1's spot prices peaked in the first quarter of 1996, after which they fell, with the lowest prices reached in the final quarter of 1998. Product 1's formula prices peaked in the first and final quarters of 1996 and in the first quarter of 1997, after which they fell, with the lowest prices reached in the final quarter of 1998. Product 2's spot prices peaked in the first two quarters of 1996, after which they fell, reaching their minimum in the third quarter of 1998. Product 2 formula prices peaked in the last two quarters of 1996 and fell to their lowest level in the final quarter of 1998. Over the entire period of investigation, the spot price of product 1 fell by *** percent and the formula price fell by 17 percent. The spot price of product 2 fell by *** percent and the formula price fell by *** percent.

Brazilian Product

Price data for formula contract sales of Brazilian ESBR were only available for product 2 and only for product purchased by the end user. Spot prices for Brazilian product 1 ranged from *** per pound at their peak in the first quarter of 1996 to *** per pound in the second and third quarters of 1998. The spot price for product 2 ranged from a high of *** per pound in the first quarter of 1996 to a low of *** per pound in the final quarter of 1998. Over the period of investigation, the spot price of product 1 fell by *** percent and the spot price of product 2 fell by *** percent.

Importers processing Brazilian product 1 reported contract prices for the final quarter of 1997 and the first three quarters of 1998. The price peaked in the final quarter of 1997 at *** per pound and reached its minimum in the second quarter of 1998 at *** per pound, falling by *** percent over that time span. Brazilian product 2 spot prices for importers who process ESBR were available for all quarters in 1996, the first quarter of 1997, and the first three quarters of 1998. The price peaked in the first quarter of 1997 at *** per pound, after which it fell to *** per pound by the second quarter of 1998. Over the period for

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which prices were available, they fell by *** percent. Contract prices for product 2 were available for the second quarter of 1996 through the third quarter of 1998. The price peaked at *** per pound in the final quarter of 1996 and reached its minimum at *** per pound in the second and third quarters of 1998. Over the period for which prices were available, they fell by *** percent.

Korean Product

No price data were available for formula contract sales of Korean products 1 and 2. The spot price of products 1 and 2 fell steadily over the period of investigation. The spot price for Korean product 1 ranged from *** at its peak in the first quarter of 1996 to *** per pound in the final quarter of 1998. Spot prices for Korean product 2 were not available for the first quarter of 1996. The spot price for product 2 ranged from a high of *** per pound in the second and third quarters of 1996 to a low of *** per pound in the fourth quarter of 1998. Over the period of investigation, the price of product 1 fell by *** percent and the price of product 2 fell by *** percent.

The spot price importer/processors paid for Korean product 1 for their own use peaked in the first quarter of 1996 at *** per pound; it reached its minimum in the last 2 quarters of 1998 at $0.34 per pound. Korean product 1's spot own-use price fell by *** percent over the period of investigation. Importers' product 2 spot own-use prices peaked at *** per pound in the second quarter of 1996 and reached their minimum in the fourth quarter of 1998 at *** per pound. The Korean product 2's spot own-use prices fell *** percent over the period of investigation.

Mexican Product

Spot prices for Mexican product 1 and 2 were not available and prices were available only for Mexican product sold through an importer/distributor. The formula sales contract price of Mexican product 1 ranged from *** to *** per pound. The price for product 1 peaked in the first quarter of 1996, after which it fell to its lowest price the fourth quarter of 1998. The final price was *** percent below the initial price. Reported prices for product 2 ranged from *** in the first quarter of 1996 to *** per pound in the final quarter of 1998. The final price was *** percent below the initial price.

Price Comparisons

Tables V-1 to V-4 show the margins of underselling/(overselling) for ESBR from January-March 1996 through October-December 1998 for the subject countries. Brazilian product 1 (spot) undersold U.S. product 1 in 9 quarters, with margins of underselling ranging from *** percent to *** percent. In the 3 quarters of overselling the margins ranged from *** percent to *** percent. Overselling occurred in the ***. Product 2 (spot) from Brazil undersold the U.S. product in 8 quarters and oversold in 4 quarters, with margins of underselling ranging from *** percent to *** percent and margins of overselling ranging from *** percent to *** percent; underselling occurred sporadically throughout the period.

For Korean product 1 (spot) there were 8 instances of underselling and 4 of overselling. Margins of underselling for product 1 ranged from *** percent to *** percent, and the margins of overselling ranged from *** percent to *** percent; most overselling occurred in 1996. Korean product 2 (spot) undersold the U.S. product in 2 of 11 quarters of the period of investigation for which prices were reported; in the remaining 9 quarters for which prices were available, it oversold the U.S. product. The margins of underselling were *** percent and *** percent; margins of overselling ranged from *** percent to ***.

Product 1 (formula sales contract) from Mexico had 8 instances of underselling and 4 instances of overselling. The margins of underselling ranged from *** percent to *** percent, and overselling margins ranged from *** percent to *** percent. All four instances of overselling occurred in 1996. Mexican product 2 (formula sales contract) undersold U.S. product in the final 3 quarters of 1997 and all four

quarters of 1998; in the remaining 5 quarters, it oversold U.S. product 2. Underselling margins ranged from *** percent to *** percent, and margins of overselling ranged from *** percent to *** percent.

LOST SALES AND LOST REVENUES

Two domestic producers *** reported 31 allegations of lost sales with a total value of *** (table V-7) and 75 allegations of lost revenues with a total value of *** (table V-8).[7] Staff obtained comments from 32 of the 39 purchasers named, as detailed below.[8] Information was obtained on 28 specific lost sales. Of 75 lost revenue allegations, information was obtained in 57 instances.

Table V-7
Lost sales allegations reported by petitioners

* * * * * * *

Table V-8
Lost revenues allegations reported by petitioners

* * * * * * *

*** was named in *** lost sales allegations, with a value of ***. *** reported that he could not recall the exact details about this order.[9] He reported that in *** had bought the *** grade from a domestic producer at *** a pound and in *** it bought imports at a lower price from Brazil and Korea. Regarding the *** grade, he reported that the amount reported in the lost sales allegation was not correct. His firm typically purchases about *** pounds of *** per year. He reported that the rest of the information regarding the *** grade was reasonable.

*** was named in *** lost sales allegations with a reported value of ***. *** reported that the allegation regarding *** was incorrect because *** purchased only ***.[10] *** reported that *** purchased *** of ***, ***. He reported that price is important in these purchases but so are quality and the reliability of the vendor. He does not have any record of the prices offered by the domestic producers, but reports that if domestic producers had been competitive *** would have purchased from them.

*** was named in one lost sales allegation by ***, with a value of ***. *** reported the he now buys only from ***.[11] He did report that he had once purchased ***, of *** grade from ***. He did not recall the date. He reports that the price of the product from *** was slightly lower than the price of the domestic product, not the *** reported in the lost sales allegation.

*** was named in *** lost sales allegations, with a value of ***. *** reported that no firm was offering *** grades at prices of *** cents per pound.[12] He had never seen rubber prices that high while he

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[7] *** domestic producers reported a number of additional lost sales and lost revenues allegations in their preliminary questionnaires; however, only *** included lost sales and lost revenues allegations in their final questionnaires. They did not provide enough data on all the allegations to follow up on them.

[8] In some cases these firms provided responses to only earlier allegations because new allegations were received after they were contacted.

[9] Discussions with Commission staff, Apr. 17, 1998.

[10] Fax to Commission, Mar. 16,1999.

[11] Discussions with Commission staff, Apr. 15, 1998. ***.

[12] Discussions with Commission staff, Apr. 14, 1998.

has been in the business. The highest price he ever faced was *** cents per pound. *** now uses about *** pounds per year of *** grade. In the most recent period, their orders were split between ***. *** reported that their total purchases of *** in ***.[13] Of this, *** were purchased from *** at prices of ***. The remaining ***. *** purchased from domestic suppliers to support the domestic economy and purchased from importers because of lower price and to maintain 2 viable suppliers, thus insuring steady supply.

*** was named in *** lost sales allegations, with a value of ***. *** agreed that *** had purchased imports in the last 4 years.[14] His firm had imported *** directly from *** and buys other product produced by *** through a local distributor. He reported that he purchased imports because of the lower price and that the amounts reported in the allegation are reasonable. He reported that his purchasing price between *** for *** grade was from *** cents per pound to *** cents per pound for prime grade material. They purchased no *** grade during the period covered. He reported that *** purchases *** of *** grade per quarter ***, thus the amount reported in the lost sales allegation is higher than their normal purchases.

*** was named in *** lost sales allegation, with a value of ***. *** reported that North American producers are their largest supplier of *** grade, providing almost *** of *** consumption of this product.[15] She reported that the firm purchases from one to three suppliers, usually with two major players and one minor. She reported that quality (to the specific grade) was the most important factor in purchases. The next most important factor was consistency within grade. Inconsistency can create a high scrap rate, which is costly. The third most important factor she reported was technical compatibility with the suppliers. If there were a large number of suppliers it was difficult to form technical partnerships with them, and this reduces the ability to use their technical expertise effectively. *** is interested in the lowest total cost and price is not the most important part of this. Finally, she reported that they have plants *** and want *** so they can use the same technical expertise ***. Therefore she reported that she did not agree with the allegation that the lower price of imports led *** to purchase imports instead of domestic product.

*** was named in one lost sales allegation, with a value of ***. *** denied the allegation.[16] He reported that *** only purchases domestic *** grade and did not purchase any imports.

*** was named in *** lost sales allegations, with a value of ***. *** reported that his firm does ***, which is mainly used by the ***.[17] His firm purchases domestic *** grade, not imports. He reported that in *** the price of both domestic and imported *** was the same. At that time *** was buying only imports because the quality of imports, particularly those from ***, was superior to domestic product. Only in *** did the price of imports fall; however, this did not cause *** to buy imports because it was already buying imports because of their quality.

*** was named in *** lost sales allegations with a reported value of ***. *** denied the allegations, reporting that his firm only purchases domestic product.[18]

*** was named in *** lost sale allegation with a reported value of ***. *** not recall the sale.[19] ***; they purchase about half this amount. Even if *** had purchased domestic, the domestic supplier would not have received all the order at *** because *** would have purchased *** if it were available at a lower price.

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[13] Fax to Commission, Mar. 30, 1999.
[14] Discussions with Commission staff, Apr. 14, 1998.
[15] Discussions with Commission staff, Apr. 13, 1998.
[16] Discussions with Commission staff, Apr. 13, 1998.
[17] Discussions with Commission staff, Apr. 24, 1998.
[18] Fax to Commission, Mar. 11, 1999.
[19] Fax to Commission, Mar. 10, 1999.

*** was named in *** lost sale allegation with a reported value of ***. *** reported that although she could not recall the sale, she disagreed with the allegation.[20] She reported, however, that *** purchased imports for *** per pound not *** per pound. U.S. producers have offered *** per pound but on ***.

*** was named in *** lost sale allegation with a reported value of ***. *** reported that the allegation was correct; however, the prices of both the U.S. and imported ESBR reported in the allegation were not correct.[21] The price of the domestic product offered was *** not *** as reported and the price of the ***.

*** was named in *** lost sale allegations with a reported value of ***. *** reported that the allegations were not correct.[22] During ***. ***. He reported that *** was better performing and with the consolidation in U.S. production *** wanted to have more options to purchase imports. In addition he reported in some products *** has switched from ESBR to CBMB due to customer requirements.

*** was named in *** lost sale allegation with a reported value of ***. *** reported that the allegations were largely correct.[23] *** reported that the quantity was high (***). He reported the alleged price of imports was too low (***).

*** was named in *** lost sale with a reported value of ***. *** reported that the allegation was largely correct.[24] *** reported that the domestic price was too low (***) and the price of imports was also too low(***).

*** was named in *** lost sale with a reported value of ***. *** reported that the allegation was incorrect.[25] *** reported that ***.

*** was named in *** lost sale with a reported value of ***. *** reported that the allegation was incorrect.[26] The primary reason *** purchased imports was quality and consistency, not price. In *** provided ***. In *** refused to sell because it was sold out. *** was thus forced on the world market. *** found *** was a good supplier, suppling with high quality and consistency. As a result, *** became *** vendor of choice. He feels that he cannot trust *** on either quality or consistent supply. In addition, he reported that the price paid for imports was *** per pound and the quantity purchased was ***.

*** was named in *** lost sales allegation with a reported value of ***. *** reported that the allegation was correct; however, he purchases ***.[27]

*** was named in *** lost sales allegation with a reported value of ***. *** reported that the allegation was correct, however ***.[28]

*** was named in *** lost revenue allegations, with claimed losses of ***. *** reported that *** increased its purchase of imports to take advantage of their lower prices.[29] He maintained a domestic supplier but there was competition between domestic producers for these sales. He reported that this year *** was more competitive and got the order for ***. However, he purchased only imported *** because this was less expensive. The price of domestic *** was *** cents per pound, not *** cents as reported in the lost revenue allegation. He reported that the amount reported in the lost revenue allegation is about the amount his firm purchases from domestic sources. *** reported that he did not have records of offer prices

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[20] Fax to Commission, Mar. 10, 1999.
[21] Fax to Commission, Mar. 12, 1999.
[22] Fax to Commission, Mar. 15, 1999.
[23] Fax to Commission, Mar. 15, 1999.
[24] Fax to Commission, Mar. 15, 1999.
[25] Fax to Commission, Mar. 16, 1999.
[26] Fax to Commission, Mar. 16,1999.
[27] Fax to Commission, Mar. 17, 1999.
[28] Fax to Commission, Mar. 18, 1999.
[29] Discussions with Commission staff, Apr. 14, 1998. ***.

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in ESBR purchases.[30] He reported, however, that *** sources. During the period that the lost revenue was reported, he said *** on price and not against importers.

*** was named in *** lost revenue allegations, with claimed losses of ***. *** reported that he purchased mainly from *** and had since 1989.[31] He reported that he did not know if he had told *** about the price of imports when he was trying to get a price reduction around ***. He reported that the price did fall dramatically around that time but he did not know if it fell because of excess domestic capacity on the part of one U.S. producer or for other reasons. In any case, he reported that *** was a follower, not a leader, in the price reduction. He reported that the quantities reported in the lost revenue allegation were correct.

*** was named in *** lost revenue allegations, with claimed losses of ***. *** reported that at the time of the allegation his firm ***.[32] The person who had purchased ESBR up to that time ***. Therefore, *** did not know the details of the sales. The lower price, *** cents, was established when he began purchasing. He reported that the allegation was nonetheless probably correct, and that the amount reported was the amount they purchase.

*** was named in *** lost revenue allegations, with claimed losses of ***. *** reported that the domestic producers had reduced the price of *** because of competition from ***; however, he reported that the difference in price alone was not what was driving this market.[33] He reported that transportation costs were important and estimated that the transportation costs from *** are from *** cents per pound while transport from the U.S. producers costs *** cents per pound. He reported that he mainly buys from importers and has bought imports from the start. He reported that the falling price of natural rubber was hurting domestic producers, and that natural rubber's price has fallen from about *** cents per pound to *** cents, causing his firm to use more natural rubber. He said that the products they produce used to have on average *** percent synthetic rubber; now products have from *** percent synthetic rubber.

*** was named in *** allegation of lost revenue, with claimed losses of ***. *** reported that he was a *** for both *** and for ***.[34] He agreed with the allegation that *** had to reduce its price because of competition from *** product; however, he does not purchase *** product, he is a ***. He reported that Korean prices were very low, *** cents per pound; he was buying domestic at *** cents a pound and was ***.

*** was named in *** allegations of lost revenue, with claimed losses of ***. *** reported that he purchases exclusively from *** because 2 to 3 years ago, when there was a worldwide shortage of rubber and the price ranged from *** per pound, he was sold a load by *** at *** per pound.[35] He reported that he does not get quotes from foreign producers but talks with other purchasers to find out what the market price is and gets this price from ***. Prices were falling during the interval covered by the lost revenue allegations and his current price is *** per pound. He reported that imports could be purchased for less than this. He reported that he purchases about *** pounds of *** grade per year.

*** was named in *** lost revenue allegation, with claimed losses of ***. *** reported that he recalled the transaction but the price did not fall because of low-priced imports.[36] The lower price was offered because prices were falling.

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[30] Letter to Commission, Mar. 9, 1999.
[31] Discussions with Commission staff, Apr. 13, 1998.
[32] Discussions with Commission staff, Apr. 13, 1998.
[33] Discussions with Commission staff, Apr. 10, 1998.
[34] Discussions with Commission staff, Apr. 10, 1998.
[35] Discussions with Commission staff, Apr. 15, 1998.
[36] Fax to Commission, Mar. 1, 1999.

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*** was named in *** lost revenue allegations, with claimed losses of ***. *** reported that he recalled the transactions and that the U.S. price did fall because of low-priced imports.[37]

*** was reported in *** lost revenue allegations with claimed losses of ***. *** reported that he recalled the transaction and that the U.S. price did fall because of low-priced imports.[38]

*** was named in *** lost revenue allegations, with claimed losses of ***. *** reported that he recalled the purchases from the domestic producer.[39] In the *** transaction, he reported that the price of *** and that the price of ***. In the *** transaction, he reported that the ***. He reported that the price from ***. He did not report why the price of domestic product fell.

*** was named in *** lost revenue allegations, with claimed losses of ***. *** reported that he was unable to recall the transaction.[40]

*** was named in *** lost revenue allegations, with claimed losses of ***. *** reported that he did not recall the transaction but he disagreed with the allegation because the price *** was reported to pay was wrong.[41] He reported paying ***, the price reported by the petitioner. He said that the price only ***.

*** was named in *** lost revenue allegations with a reported value of ***. *** reported that the reduction in price was not due to lower prices of imports in each of the *** cases.[42] He reported that the ***. He reported that the change in the market price was not due to imports but due to overall supply and demand, reductions in input prices, and lower prices of substitutes (natural rubber, polybutadiene, and SSBR).

*** was named in *** lost revenue allegations with a reported value of ***. *** denied the allegations.[43] He reported that the price of ESBR fell because of the falling price of natural rubber. He reported that in his *** years in the rubber industry the price of natural rubber has almost always been above ESBR. With the price of natural rubber in the mid $0.30s, the price of ESBR would be low as well. He reported that natural rubber is better for most applications than ESBR; this is why ESBR prices tend to be below the price of natural rubber. In addition, imported ESBR is better, with better physical properties, because its manufacturing facilities are better.

*** was named in *** lost revenue allegations with a reported value of ***. *** reported that he did not recall the transaction and provided no other information.[44]

*** was named in *** lost revenue allegations with a reported value of ***. *** reported that the allegations were not correct.[45] He reported that *** did not consider any offers for *** from *** either directly or through distributors. For ***, the price of the imports was not the primary reason *** lost revenue. He reported that the U.S. prices were out of line with world prices and *** offered lower prices outside the United States. He reported that *** must compete in a global *** market and in order to compete it must have inputs at world prices and that similar low prices were available from Japan, Europe, and Russia. *** purchases from ***.

*** was named in *** lost revenue allegations with a reported value of ***. *** reported that he did not recall the transaction but also reported that lower-priced imports were the reason that the price of U.S. product fell in *** cases.[46]

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[37] Fax to Commission, Mar. 1, 1999.
[38] Fax to Commission, Mar. 1, 1999.
[39] Fax to Commission, Mar. 4, 1999.
[40] Fax to Commission, Mar. 1, 1999.
[41] Fax to Commission, Mar. 9, 1999.
[42] Fax to Commission, Mar. 9, 1999.
[43] Fax to Commission, Mar. 9, 1999.
[44] Fax to Commission, Mar. 8, 1999.
[45] Faxes to Commission, Mar. 9, 1999 and Mar. 24, 1999.
[46] Fax to Commission, Mar. 11, 1999.

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

BACKGROUND

Three producers (Ameripol Synpol, DSM Copolymer, and Goodyear), accounting for all U.S. production of ESBR, provided financial data on their ESBR operations. Ameripol Synpol and DSM Copolymer also provided financial data on their CBMB operations. Goodyear, American Synthetic Rubber, and Firestone Synthetic Rubber provided financial data on their SSBR operations.[1]

Ameripol Synpol *** is owned by GVC Holdings, Inc., a holding company, which in turn is owned by Citicorp Venture Capital and a number of individuals. There have been several changes in ownership over the past few years. The plant in Port Neches, TX, was physically separated into two separate areas which were owned by Uniroyal and Goodrich, which merged in 1986. In 1990 Michelin purchased the plant, and it was then sold to GVC in 1992. The ESBR business of Dynagen, Inc. (a subsidiary of CGT) in Odessa, TX, was sold to Ameripol Synpol in 1997.[2] DSM Copolymer (the other petitioner) is a wholly-owned subsidiary of DSM, a Dutch company. It has a plant in Baton Rouge, LA, which produces ESBR and other synthetic rubbers. Goodyear is the largest U.S. tire manufacturer and produces ESBR at a plant in Houston, TX, and SSBR at a plant in Beaumont, TX. Firestone Synthetic Rubber is a wholly-owned subsidiary of Firestone/Bridgestone and produces SSBR in Sulphur, LA and Orange, TX. American Synthetic Rubber is a wholly-owned subsidiary of the Michelin Corp. and produces SSBR in Louisville, KY.

The tire industry has consolidated over the past several years and has become more global. Goodyear[3] and Cooper[4] are the only major tire manufacturers with headquarters in the United States.

The difference between the two petitioners (Ameripol Synpol and DSM Copolymer) and the other three producers (Goodyear, Firestone Synthetic, and American Synthetic) of synthetic rubber is that the petitioners' domestic and export shipments ***. A breakdown of the percentage of trade sales and internal transfers (domestic and export) in 1998, by type of product and by firm, is shown in the following tabulation (percentage based on volume):

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[1] This section only contains financial tables for ESBR. Financial data that include all three products are presented in the product summaries in app. C.

[2] Ameripol Synpol's acquisition of Dynagen's ESBR business at Odessa reduced the number of U.S. producers to three. At the beginning of the 1980s, there were seven U.S. producers of ESBR. Petition, pp. 31-32.

[3] Goodyear will form a strategic alliance with Sumitomo (Dunlop). Press release, Feb. 3, 1999.

[4] Cooper and Pirelli have recently forged a strategic alliance. Cooper and Pirelli are the world's sixth and eighth largest tire companies, respectively. Press release, Feb. 11, 1999.

VI-1

Company	*Trade*	*Transfers*
Ameripol Synpol:		
ESBR	***	***
CBMB	***	***
DSM:		
ESBR	***	***
CBMB	***	***
Goodyear:		
ESBR	***	***
SSBR	***	***
American Synthetic:		
SSBR	***	***
Firestone Synthetic:		
SSBR	***	***

* * * * * * *.

OPERATIONS ON ESBR

The aggregate results of trade operations for the three producers of ESBR are presented in table VI-1.[5] Aggregate sales volume, sales values, and operating income declined *** between 1996 and 1998. ***. The effect of exports on industry profitability will be discussed later in this section.

The aggregate results of operations for trade and transfers are shown in table VI-2.[6] The data in table VI-2 are the same for Ameripol Synpol and DSM, but Goodyear's internal transfers were adjusted to its average domestic market price (***). ***.[7] ***.

Table VI-1
Results of operations of U.S. producers on their trade operations producing ESBR, fiscal years 1996-98

* * * * * * *

Table VI-2
Results of operations of U.S. producers on their trade and adjusted transfer operations producing ESBR, fiscal years 1996-98

* * * * * * *

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[5] ***. In this section, transfers refer to captive shipments.

[6] ***. Note: Producers' originally submitted questionnaire data before adjustments are shown in app. G. It shows operating income (loss) margins to be ***. The difference between the appendix data and the data in Part VI is the staff's captive production adjustment.

[7] See table VI-3. ***.

The results of trade operations, by firm, are presented in table VI-3.[8] As shown in the table, both aggregate domestic volume and values declined in each successive year between 1996 and 1998. The decline in aggregate export sales values of *** between 1996 and 1998 accounted for approximately *** percent of the aggregate decline in total industry sales values of ***. ***. There was a decline in the aggregate unit sales values and unit cost of goods sold between 1996 and 1998, ***.

Table VI-3
Results of operations of U.S. producers, by firms, on their trade operations producing ESBR, fiscal years 1996-98

* * * * * * *

The cost of raw materials is the major cost element for producing the various types of synthetic rubber. Butadiene and styrene are common raw materials for ESBR and SSBR production. Extender oils are used for most types except for the 1500 ESBR series. Carbon black is used for CBMB only. Generally, most of these raw material costs were lower in 1998 than in 1996. On a per-unit cost basis, raw materials accounted for *** percent of the cost of goods sold in 1996, 1997, and 1998, respectively. Aggregate unit cost of goods sold data are shown below (in dollars per pound):[9]

	1996	1997	1998
Raw materials	$***	***	***
Direct labor	***	***	***
Factory overhead	***	***	***
Total	***	***	***

* * * * * * *

***.[10] ***. Therefore, aggregate declines in raw material costs during the period of investigation only affect a portion of the aggregate unit selling prices, and thus the decline in average unit selling prices is only partially related to declines in raw material costs. ***.[11]

Ameripol Synpol's questionnaire data were verified by the staff. ***.[12] ***.[13] ***.[14]

The variance analysis showing the effects of prices and volume on the producers' net trade sales of ESBR, and of costs and volume on their total expenses, is shown in table VI-4. Captive production is excluded from the analysis. ***.

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[8] In the sales volumes and sales values section, the exports have been adjusted slightly from the amounts shown in the shipments data in Part III of this report in order to tie into the totals shown in the results of operations section. There was no breakdown of domestic sales and exports in the financial section of the questionnaire.

[9] Columns may not add due to rounding differences.

[10] Refer to Part V (pricing) in this report.

[11] ***.

[12] ***.

[13] ***.

[14] ***.

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Table VI-4
Variance analysis for trade sales of ESBR, fiscal years 1996-98

* * * * * * *

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

The value of fixed assets (property, plant, and equipment), capital expenditures, and research and development costs for ESBR are shown in table VI-5. ***.

Table VI-5
Value of assets, capital expenditures, and research and development expenses for producers of ESBR, by firm, fiscal years 1996-98

* * * * * * *

CAPITAL AND INVESTMENT

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

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PART VII: THREAT CONSIDERATIONS

The Commission analyzes a number of factors in making threat determinations (see 19 U.S.C. § 1677(7)(F)(i)). Information on the dumping margins was presented earlier in this report; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.[1]

THE SUBJECT FOREIGN INDUSTRIES

Table VII-1 presents aggregate data for production and shipments of ESBR for the three subject countries. As noted earlier, the four reporting firms are believed to account for all production of ESBR in Brazil, Korea, and Mexico. Aggregate production of ESBR by the four firms in 1998, 1.16 billion pounds, was slightly higher than the 1.14 billion pounds produced in the United States. All firms assumed dumping duties were to be imposed and therefore reflected that in their "projected" responses.

The lone Brazilian firm, Petroflex Industria e Comercio S.A., reported that ESBR production accounted for nearly *** of its total sales in 1998; ***. In addition, Petroflex reported sales to ***. The two Korean producers, Korea Kumho Petrochemical Co., Ltd. and Hyundai[2] (which started production in August of 1996), accounted for all ESBR production in Korea and reported exports to ***. Industrias Negromex, S.A. de C.V. is reported to be the sole producer of ESBR (which accounted for *** percent of Negromex's total sales in 1998) in Mexico, and reported shipments to ***.

[1] Appendix I gives world capacity information for ESBR and SSBR.

[2] Hyundai states in its questionnaire response that it will ***.

Table VII-1
ESBR: Aggregate Brazilian, Korean, and Mexican capacity, production, inventories, capacity utilization, and shipments, 1996-98 and projected 1999-2000

Item	1996	1997	1998	Projected 1999	Projected 2000
			Quantity (*1,000 pounds*)		
Capacity	1,190,417	1,309,304	1,298,825	1,298,825	1,298,825
Production	1,063,628	1,191,968	1,162,583	1,110,245	1,116,109
End-of period inventories	93,799	61,749	45,760	47,302	69,398
Shipments:					
Internal consumption	86	1,407	(190)	39	39
Home market	668,706	690,956	624,092	679,842	710,517
Exports to–					
The United States	73,843	127,376	133,075	69,131	37,637
All other markets	295,468	404,034	421,729	359,691	345,820
Total exports	369,311	531,410	554,804	428,822	383,457
Total shipments	1,038,103	1,223,773	1,178,706	1,108,703	1,094,013
			Ratios and shares (*percent*)		
Capacity utilization	89.3	91.0	89.5	85.5	85.9
Inventories to production	8.8	5.2	3.9	4.3	6.2
Inventories to all shipments	9.0	5.0	3.9	4.3	6.3
Share of total quantity of shipments:					
Internal consumption	(1)	0.1	(2)	(1)	(1)
Home market	64.4	56.5	52.9	61.3	64.9
Exports to–					
The United States	7.1	10.4	11.3	6.2	3.4
All other markets	28.5	33.0	35.8	32.4	31.6

[1] Less than 0.05 percent.
[2] Less than (0.05) percent.

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

VII-2

The Industry in Brazil

Table VII-2 presents data for the sole known producer of ESBR in Brazil.

Table VII-2
ESBR: Brazilian capacity, production, inventories, capacity utilization, and shipments, 1996-98 and projected 1999-2000

* * * * * * *

The Industry in Korea

Table VII-3 presents data for the two known producers of ESBR in Korea.

Table VII-3
ESBR: Korean capacity, production, inventories, capacity utilization, and shipments, 1996-98 and projected 1999-2000

* * * * * * *

The Industry in Mexico

Table VII-4 presents data for the sole known producer of ESBR in Mexico.

Table VII-4
ESBR: Mexican capacity, production, inventories, capacity utilization, and shipments, 1996-98 and projected 1999-2000

* * * * * * *

U.S. IMPORTERS' INVENTORIES

Importers' reported end-of-year inventories of subject imported ESBR are presented in table VII-5.

POSSIBLE NONSUBJECT SOURCES OF ESBR

There are a number of foreign producers of ESBR. As shown in appendix table I-1,[3] total world capacity to produce ESBR was approximately 3.9 million metric tons in 1996, and increased only marginally to 4.1 million metric tons in 1998. Major foreign producers of ESBR in 1998 include the Commonwealth of Independent States (690,000 metric tons capacity, 6 firms), Japan (530,000 metric tons capacity, 4 firms), Brazil (271,000 metric tons capacity, 2 firms), and Korea (250,000 metric tons capacity, 2 firms). The United States had the greatest total capacity (866,000 metric tons, 3 firms).

[3] World capacity of SSBR is also shown in app. I, table I-2.

Table VII-5
ESBR: U.S. importers' reported imports, and reported end-of-period inventories of imports, 1996-98

Item	1996	1997	1998
	Quantity (*1,000 pounds*)		
Reported U.S. imports:			
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Total	67,556	114,612	121,665
Importers' reported EOP inventories:			
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Total	12,213	26,729	13,526
	Ratio to imports (*percent*)		
Brazil	***	***	***
Korea	***	***	***
Mexico	***	***	***
Total	18.1	23.3	11.1

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

U.S. IMPORTERS' CURRENT ORDERS

In response to a question on whether importers had ordered ESBR from Brazil, Korea, or Mexico for delivery after December 31, 1998, the majority of importers responded "No." *** firms reported a total of *** pounds of Korean product; *** reported a total of *** pounds of Mexican product;[4] and no firms reported future imports from Brazil.

DUMPING IN THIRD-COUNTRY MARKETS

On May 27, 1995, Mexico's Trade Ministry placed tariffs on synthetic rubber (which includes ESBR) from Brazil of 71.47 percent for the Brazilian firm Petroflex and 93.38 percent for all other Brazilian producers. The Ministry said the imposition of compensatory tariffs was made because of

[4] The foreign producer's questionnaire of Industrias Negromex, the sole producer in Mexico, projected *** exports to the United States in 1999.

VII-4

dumping of the products on the Mexican market at prices below production costs and to offer protection to the national industry of synthetic rubber.[5]

The Secretaria de Comercio y Fomento Industrial (translated as Department of Commerce and Industrial Development) published its initiation of an antidumping investigation concerning ESBR from the United States on March 8, 1999, in the *Diario Official* (the Mexican *Federal Register*).[6]

[5] News release from *Reuters Financial Service*, May 28, 1996, and telephone call and E-mail from Ron Wisla, of Manatt Phelps Phillips, Mar. 9, 1999.

[6] Telephone call and E-mail from Ron Wisla, of Manatt Phelps Phillips, Mar. 9, 1999.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–794–796 (Final)]

Certain Emulsion Styrene-Butadiene Rubber From Brazil, Korea, and Mexico

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–794–796 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Brazil, Korea, and Mexico of certain emulsion styrene-butadiene rubber ("ESBR"), provided for in subheading 4002.19.00 of the Harmonized Tariff Schedule of the United States.[1]

[1] The imported product subject to these investigations, ESBR, is a synthetic polymer made via free radical cold emulsion copolymerization of

Continued

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 2, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain emulsion styrene-butadiene rubber from Brazil, Korea, and Mexico are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 1, 1998, by Ameripol Synpol Corp., Akron, OH, and DSM Copolymer, Baton Rouge, LA.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of 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, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 17, 1999, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 30, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 23, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 25, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing .

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is March 24, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 6, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 16, 1999. On April 16, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 20, 1999, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules. A-4

Issued: November 19, 1998.

styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least 1 percent of organic acids from the emulsion polymerization process. ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to these investigations are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as "Clear" or "White Rubber." The 1700 grades are oil-extended and thus darker in color, and are often called "Brown Rubber." ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Imported products manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (i.e., IISRP 1600 series and 1800 series) and latex (an intermediate product) are not included within the scope of these investigations.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–31519 Filed 11–24–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-827]

Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Brazil

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

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John Maloney, Office of AD/CVD Enforcement, Group II, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2613 or (202) 482-1503.

The Applicable Statute

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

Final Determination

We determine that emulsion styrene-butadiene rubber (ESBR) from Brazil is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation on October 28, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Brazil*, 63 FR 59509 (November 4, 1998) (Preliminary Determination)), the following events have occurred:

On December 9, 1998, the sole respondent in this case, Petroflex Industria e Comercio S.A. (Petroflex), submitted a letter to the Department stating that Petroflex is "unable to receive Department personnel for verification as scheduled." Furthermore, Petroflex stated that the "company does not anticipate a significant reduction in the final margin to warrant further participation in the Department's investigation" and "has therefore decided to focus its efforts on the injury proceedings at the U.S. International Trade Commission." As a result of Petroflex's decision not to participate in verification, the information provided by the company, which was the basis of our preliminary determination, could not be verified. Therefore, we have applied facts otherwise available in our final determination. For a further discussion, see "Facts Available" section below.

We received a case brief from the petitioners on February 5, 1999. We received no case or rebuttal brief from Petroflex.

Scope of Investigation

For purposes of this investigation, the product covered is ESBR. ESBR is a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to this investigation are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as "Clear" or "White Rubber." The 1700 grades are oil-extended and thus darker in color, and are often called "Brown Rubber." ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Products manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product) are not included within the scope of this investigation.

The products under investigation are currently classifiable under subheading 4002.19.0010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1997 through March 31, 1998.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to certain exceptions contained in section 782, use facts otherwise available in reaching the applicable determination. In this case, Petroflex refused to allow the Department to verify the sales and cost of production data it provided in its questionnaire responses, thus rendering subsections 782(c)(1) and (e) inapplicable. Accordingly, we have determined that use of facts available is appropriate for Petroflex.

Section 776(b) of the Act provides that adverse inferences may be used

when an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103d Cong., 2d Sess. 870 (1994) (SAA). Petroflex's decision to refuse verification of its submitted data demonstrates that it has failed to act to the best of its ability to comply with a request for information under section 776 of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted. Consistent with Department practice in cases where the respondent refuses to participate, as adverse facts otherwise available, we have applied a margin based on the highest margin stated in the petition (there were no calculated margins in this investigation for us to consider). *See, e.g., Notice of Final Determination of Sales At Less Than Fair Value: Stainless Steel Wire Rod from Germany,* 63 FR 40433 (July 29, 1998).

Section 776(c) provides that, when the Department relies on secondary information, such as the petition, when resorting to the facts otherwise available, it must, to the extent practicable, corroborate that information using independent sources that are reasonably at its disposal. To corroborate secondary information, to the extent practicable, the Department will examine the reliability and relevance of the information to be used. With respect to the reliability aspect of corroboration, we reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*e.g.*, import statistics, call reports, and data from business contacts) as outlined below.

The petitioners identified Petroflex as the sole exporter and producer of ESBR from Brazil. The petitioners based export price on U.S. prices in call reports generated by the petitioners' sales personnel in the normal course of business and obtained from various customers for ESBR grades 1502 and 1712, two grades most commonly exported to the United States. The petitioners adjusted the delivered U.S. prices to ex-factory prices by deducting international freight and insurance expenses. The source of these expenses were official U.S. import statistics. For sales that did not specify "FOB Port" or "Delivered", the petitioners assumed the terms of these sales to be FOB Brazil and did not deduct international freight and insurance expenses. No other adjustments were made.

With respect to normal value, the petitioners obtained from a local business contact in Brazil prices for contemporaneous sales of ESBR grades 1502 and 1712 from Petroflex to a Brazilian customer. The petitioners adjusted these home market prices for estimated inland freight and credit expenses. The interest rates used in the calculation of credit expenses were obtained from publicly available information. The Brazilian inland freight expenses and credit terms were based on information obtained by local business contacts, as noted in an affidavit. After making adjustments for movement expenses and credit expenses, the petitioners calculated ex-factory normal values which were converted to U.S. dollars using publicly available exchange rates. *See Notice of Initiation of Antidumping Investigations: Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, and Mexico,* 63 FR 20575 (April 27, 1998), and "Office of Antidumping Investigations Initiation Checklist" dated April 21, 1998 (*Initiation Checklist*).

For purposes of the final determination, we reexamined the export price and normal value data provided in the petition in light of information obtained during the investigation and, to the extent that it could be corroborated, found that it continues to be reliable. For export prices, we attempted to corroborate the petition information by comparing the range of prices in the petition to U.S. Customs C.I.F. prices for the HTSUS number which includes subject merchandise (*i.e.*, subheading 4002.19.0010). The price quotes submitted by the petitioners are consistent with the U.S. import statistics. Additionally, the actual information submitted by Petroflex regarding U.S. price in this case, although not dispositive because it is unverified, tends to corroborate information submitted in the petition. With regard to normal value, information obtained from Petroflex during the investigation shows the prices calculated by the petitioners represent a reasonable range of prices for the sale of the foreign like product in the home market.

With respect to the relevance aspect of corroboration, the Department considers information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. In this proceeding, there was no information that indicated that the margins in the petition are not relevant. Thus, as the highest margin in the petition is reliable and relevant, the Department concludes that this margin has probative value and is sufficiently corroborated so that it may be used as facts available. *See,* the Memorandum to Louis Apple, Office Director from the Team on "The Application of Facts Available Rate and Corroboration of Secondary Information for Petroflex Industria e Comercio S.A." dated March 19, 1999.

The All-Others Rate

The foreign manufacturer/exporter in this investigation is being assigned a dumping margin on the basis of facts otherwise available. Section 735(c)(5) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated. Where the data is not available to weight average the facts available rates, the SAA, at 873, provides that we may use other reasonable methods. In this case, the margin assigned to the only company investigated is based on adverse facts available. Therefore, consistent with the SAA, we are using an alternative method. As our alternative, we are basing the all others rate on a simple average of the margins in the petition, 43.85 percent.

Interested Party Comments

Comment Use of Facts Available for Petroflex

The petitioners argue that Petroflex refused to allow verification of its questionnaire responses and, therefore, the Department should base its final determination on total facts available. Further, the petitioners assert that Petroflex has not cooperated with the Department in this investigation and that adverse inferences are warranted in assigning a facts available margin to Petroflex. As adverse facts available, the petitioners urge the Department to assign the highest margin calculated in the petition.

DOC Position

We agree with the petitioners. As discussed above in the "Facts Available" section of the notice, as adverse facts available, we assigned the highest margin calculated in the petition, 71.08 percent, to Petroflex.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of emulsion styrene-butadiene from Brazil, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date of publication of our preliminary determination in the **Federal Register**. For these entries, the Customs Service will require a cash deposit equal to the estimated amount by which the normal value exceeds the export price as shown below. This suspension of liquidation will remain in effect until further notice.

Exporter/manufacturer	Weighted-average margin percentage
Petroflex Industria e Comercio S.A.	71.08
All Others	43.85

The all-others rate applies to all entries of subject merchandise except for the entries of merchandise produced by the exporter/manufacturer listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 777(i) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration

[FR Doc. 99-7525 Filed 3-26-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-833]

Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea

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

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or James Nunno, AD/CVD Enforcement Group II, Office V, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2613 or (202) 482-0783, respectively.

Applicable Statute and Regulations

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

Final Determination

We determine that emulsion styrene-butadiene rubber (ESBR) from the Republic of Korea is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of Liquidation" section of this notice, below.

Case History

Since the preliminary determination in this investigation on October 28, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from the Republic of Korea*, 63 FR 59514 (November 4, 1998) (*Preliminary Notice*)), the following events have occurred:

In November 1998, we received a supplemental response to Section D of the Department's antidumping questionnaire from Korea Kumho Petrochemical Co. Ltd. (KKPC).

In January 1999, we verified the questionnaire responses of KKPC. In February 1999, we issued our verification reports for KKPC. Also in February 1999, KKPC submitted a revised sales database, reflecting verification revisions, at the Department's request.

On February 16, 1999, the petitioners (*i.e.*, Ameripol Synpol Corporation and DSM Copolymer), and KKPC submitted case briefs. On February 22, 1999, the petitioners and KKPC submitted rebuttal briefs. The Department held a public hearing on February 25, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is ESBR. ESBR is a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to this investigation are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as "Clear" or "White Rubber." The 1700 grades are oil-extended and thus darker in color, and are often called "Brown Rubber." ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Products manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product) are not included within the scope of this investigation.

The products under investigation are currently classifiable under subheading 4002.19.0010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

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The period of investigation (POI) is April 1, 1997, through March 31, 1998.

Facts Available

The petition in this investigation named both KKPC and Hyundai Petrochemical Co., Ltd. (Hyundai) as producers/exporters of ESBR from Korea to the United States. On May 8, 1998, Hyundai requested that it be excluded from participation as a mandatory respondent. On May 12, 1998, the petitioners submitted a letter to the Department opposing Hyundai's exclusion from this proceeding. On May 13, 1998, the Department notified Hyundai that it was selected as a mandatory respondent. On May 21, 1998, the Department issued the antidumping duty questionnaire to both companies. Hyundai did not submit a response to the questionnaire. Consequently, for purposes of the preliminary determination, the Department based the antidumping margin for Hyundai on facts otherwise available and assigned it a margin of 118.88 percent, which was the higher of either the highest margin in the petition or the highest margin calculated for a respondent. *See Preliminary Notice.* Hyundai did not submit comments on the Department's preliminary determination and, thus, has continued not to participate in this investigation. Accordingly, for the final determination, the Department has continued to base the antidumping margin for this company on facts otherwise available and assigned it a margin of 118.88 percent, which was the higher of either the highest margin in the petition or the highest margin calculated for a respondent.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Investigation" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire.

Fair Value Comparisons

To determine whether sales of ESBR from Korea to the United States were made at less than fair value, we compared the export price (EP) to the normal value (NV). Our calculations followed the methodologies described in the preliminary determination except as noted below under the "Export Price" and "Normal Value" sections of the notice.

Level of Trade

For purposes of the preliminary determination, we conducted a level of trade analysis for KKPC, and determined that the level of trade for all EP sales is the same as that of the home market sales. *See Preliminary Notice.* Based on our findings at verification, we find no indication that the level of trade for EP sales is different from that of the home market sales. Furthermore, neither the petitioners nor KKPC commented on the Department's level of trade determination. Therefore, for purposes of the final determination, we have continued to hold that a level of trade adjustment is not warranted for KKPC.

Export Price

In accordance with section 772(a) and (c) of the Act, we used EP methodology for KKPC because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise indicated.

We calculated EP based on the same methodology used in the preliminary determination, with the following exceptions: (1) we recalculated U.S. credit expenses using the average short-term lending rates calculated by the Federal Reserve (*see Calculation Memorandum for the Final Determination for Korea Kumho Petrochemical Co., Ltd.* dated March 19, 1999 (*Final Calculation Memorandum*)); and (2) we adjusted the reported amounts for U.S. bank charges and packing expenses based on corrections presented at the start of verification.

Normal Value

We used the same methodology to calculate NV as that described in the preliminary determination, with the following exceptions: (1) we used the February 12, 1999, home market sales listing reflecting verification revisions, submitted at the Department's request; (2) we adjusted the reported amounts for home market inland freight charges and packing expenses based on corrections presented at the start of verification; and (3) we recalculated home market credit expenses denominated in U.S. dollars using the average short-term lending rates calculated by the Federal Reserve (*see Final Calculation Memorandum*). We continued to make no adjustment for imputed credit expenses related to the payment of value-added taxes (VAT), in accordance with our long-standing practice (*see* Comment 2 below). In those instances where KKPC did not report payment dates, we recalculated reported credit expenses using the date of the last day of the sales verification as the payment date.

Cost of Production

We calculated the cost of production (COP) based on the sum of KKPC's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative (SG&A) expenses and packing costs, in accordance with section 773(b)(3) of the Act. We relied on the submitted COPs, except for the following specific instances where we modified the margin calculation program to correct for certain adjustments and updated cost data based on verification findings (*see Final Calculation Memorandum*): (1) based on information obtained at verification, we adjusted KKPC's reported cost of manufacturing (COM) to reflect the POI costs (*see* Comment 5 below); (2) we recalculated KKPC's financial expense ratio used in the calculation of COP and CV on a consolidated basis (*see* Comment 6 below), and additionally, in accordance with Department practice to exclude exchange gains and losses from accounts receivable (*see* Comment 7 below, and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Korea*, 63 FR 40404, 40416 (July 29, 1998)); and (3) based on our analysis of KKPC's supplemental response to Section D of the Department's antidumping questionnaire, we determined that an adjustment to the direct labor costs reported in KKPC's COP and CV databases was unwarranted (see Comment 8 below).

We also conducted our sales below cost test in the same manner as that described in our preliminary determination. As with the preliminary determination, we found that, for certain grades of ESBR, more than 20 percent of KKPC's home market sales were at prices less than the COP within an extended period of time. *See* Section 773(b)(1)(A) of the Act. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Constructed Value

In accordance with section 773(e) of the Act, we calculated CV based on the sum of KKPC's cost of materials, fabrication, SG&A expenses, profit, and

U.S. packing costs. We relied on the submitted CVs, except in the specific instance noted in the "Cost of Production" section above.

Currency Conversion

As noted in the *Preliminary Notice*, our preliminary analysis of Federal Reserve dollar-won exchange rate data showed that the won declined rapidly at the end of 1997, losing over 40 percent of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. We continue to determine that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, for purposes of the final determination, the Department continued to use daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1 and December 31, 1997. For sales occurring after December 31, but before March 1, 1998, the Department continued to rely on the standard exchange rate model, but used as the benchmark rate a (stationary) average of the daily rates over this period. In this manner, we used an "up-to-date" (post-precipitous drop) benchmark, but at the same time avoided undue day-to-day fluctuations in the exchange rates used. For sales occurring after March 1, the standard model and standard (rolling, 40-day) benchmark rate were used (*see* Comment 1 below).

Critical Circumstances

On September 24, 1998, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of ESBR from Korea. Section 733(e)(1) of the Act provides that the Department will determine that there is a reasonable basis to believe or suspect that critical circumstances exist if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

For purposes of the preliminary determination, we found that no critical circumstances existed because there was no history of dumping, and the preliminary margins were insufficiently high to impute knowledge of dumping to exporters, producers, or importers of the subject merchandise. Because the margin remains insufficiently high to impute such knowledge, our final determination of critical circumstances remains negative (*see* Comment 4 below).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by KKPC for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, and original source documents provided by KKPC.

Interested Party Comments

General Issues

Comment 1: Exchange Rate Methodology

The petitioners argue that the Department did not fully analyze its methodology for currency conversion used in the preliminary determination in which it modified the exchange rate database by using the actual daily exchange rates during the period of devaluation, November 1, 1997–December 31, 1997, to convert prices denominated in Korean won into U.S. dollars. The petitioners contend that the Department neither explained how it identified the devaluation of the Korean won as too precipitous and large to represent a fluctuation, nor did it cite any support for its decision to use a modified benchmark for sales after January 1, 1998, which provided no clear notice to interested parties as to what the official exchange rate would be on a particular date of sale. The petitioners argue that the Department's methodology used for the preliminary determination, in addition to being unnecessarily complex and unpredictable, is inconsistent with Congressional intent that the currency conversion process not distort dumping margins, and should, therefore, not be used for purposes of the final determination.

The petitioners contend that the Department should, instead, use its standard exchange rate model, which would treat the won as a fluctuating currency. As an alternative, the petitioners suggest that the Department apply its existing "sustained movement" analysis (used for situations in which a foreign currency appreciates against the U.S. dollar) to the period of devaluation in Korea. The petitioners claim that using this approach would deny an exporter the benefit of lower dumping margins when it is selling products in the United States at less than fair value, and would also provide a consistent treatment of both increases and decreases in the value of the foreign currency. Finally, the petitioners suggest that, as a third option, the Department limit the POI to the seven months preceding the devaluation of the won.

KKPC argues that the depreciation in the Korean won cannot be considered a "fluctuation" because its value at the end of March 1998, three months after the period of devaluation, was still 50 percent less than what it had been in October 1997, which is contrary to the definition of a fluctuation. Further, KKPC asserts that the Department's "sustained movement" analysis is designed to prevent artificial dumping margins created by appreciations in the foreign currency in situations in which there would ordinarily be no margins. KKPC contends that if the Department were to implement a "sustained movement" policy to devaluating currency situations, it would apply an exchange rate reflective of the pre-devaluation period to prices reflective of the won's devaluation, and would, thus, penalize exporters that immediately adjust their prices when the foreign currency depreciates in value instead of waiting to adjust prices until after the won rebounds in value. KKPC cites to recent cases involving currency depreciations in which the Department chose not to follow this approach (*e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Indonesia*, 63 FR 72268, 72269 (December 31, 1998)). Moreover, KKPC argues that the Department should not alter the POI because the Department's regulations require that the Department investigate sales during the four fiscal quarters prior to the filing of the petition. KKPC asserts that the petitioners had knowledge of the currency devaluation in Korea before filing the antidumping petition, and could have avoided a POI including the devaluation of the won by filing their petition at an earlier date.

DOC Position

We have continued to use the currency conversion methodology used for purposes of the preliminary determination, for the reasons explained in the *Preliminary Notice*. Although neither party requested that we use separate averaging periods, the petitioners did request that we consider using a truncated POI. Under section 777A(d)(1)(A) of the Act, the Department has wide latitude in calculating the average prices used to determine whether sales at less than fair value exist. More specifically, under 19 CFR 351.414(d)(3), the Department may use averaging periods shorter than the POI where NV, EP, or constructed export price varies significantly over the POI. In the instant case, NV (in dollars) in the last five months of the POI differs significantly from NV earlier in the POI due primarily to a significant change in the underlying dollar value of the won. In this case, the change is evidenced by the precipitous drop in the won's value that occurred in November and December 1997, without a quick, significant rebound. The won's value decreased by more than 40 percent in relation to the dollar in the span of these two months and remained substantially at this new lower value for the remainder of the POI. While we do not believe that it is appropriate in this case to ignore sales that occurred in the latter five months of the POI, and, thus, truncate the POI as the petitioners have proposed, it is appropriate to use two averaging periods to avoid the possibility of a distortion in the dumping calculation. Therefore, we have used two averaging periods for purposes of the final determination: April through October 1997, and November 1997 through March 1998.

We disagree with the petitioners' claim that we should not have modified the currency conversion model, as was done for purposes of the preliminary determination. As the petitioners themselves have acknowledged, "whenever the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is only fluctuating, the lower actual daily rates will be employed from the time of the large decline." *Exchange Rate Methodology*, Policy Bulletin, March 4, 1996. The petitioners dispute our interpretation of the movement in the dollar-won exchange rate during November and December of 1997 as so precipitous and large as to reasonably preclude the possibility that it was only fluctuating. However, as KKPC points out in its case brief, within an approximately two-month period, the won's value fell from 920 per U.S. dollar to 1700 per U.S. dollar. In addition, while the won recovered slightly after the rapid two-month decline, it did not regain its value of the period prior to the rapid devaluation. A devaluation of almost 50 percent over a period of two or three months cannot reasonably be seen as a mere fluctuation. Accordingly, the Department continued to apply the currency conversion methodology outlined above in the "Currency Conversion" section, and divided the POI into two separate averaging periods for purposes of the final determination.

Sales Issues

Comment 2: Calculation of Home Market Credit Expenses

According to KKPC, the Department erred in its decision to not include home market VAT in the price used as the basis for the calculation of home market credit expenses. KKPC explains that the purpose of calculating credit expenses is to determine the economic cost to the seller when it decides to allow the customer to delay its payment. KKPC asserts that the Department should calculate credit expenses based on the total price actually paid by the customer, because the cost to KKPC of the delayed payment must be measured by the total amount on which payment was delayed, which includes the tax-exclusive price, plus VAT. KKPC argues that calculating credit expenses on a tax-exclusive basis understates the economic effect of its decision to extend credit.

Furthermore, KKPC states that calculating credit expenses net of only VAT, without also deducting other costs borne by the seller, is incongruent with the Department's stated methodology in *Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom*, 58 FR 3253 (January 8, 1993) (*Sulphur Vat Dyes*). KKPC argues that the treatment of VAT should not differ from the treatment of other costs that the seller pays from the proceeds of the sale (*e.g.*, commissions), and asserts the Department has never calculated credit expenses net of such other costs.

KKPC cited cases in which the Department calculated credit expenses based on prices that include taxes (*e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico*, 57 FR 42953 (September 17, 1992); *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From Brazil*, 56 FR 26977 (June 12, 1991); and *Notice of Final Results of Administrative Review of Antidumping Duty Order: Color Television Receivers from Korea*, 49 FR 50420 (December 28, 1984). KKPC contends that the Department's past practice on calculating credit expenses has been inconsistent, and that there is no rationale for excluding VAT from the total price paid by the customer.

The petitioners state that such a circumstance-of-sale adjustment for credit expenses relating to VAT is not warranted by the Department's regulations, and refer to the stated methodology concerning credit expense calculations in *Notice of Final Determination of Sales at Not Less Than Fair Value: Stainless Steel Bar from Italy*, 59 FR 66921 (December 28, 1994), in which the Department explained that the regulations contain no indication that an adjustment should be granted for a government imposed tax such as VAT, or for any type of so-called "opportunity cost." The petitioners assert that KKPC did not support its argument with any statutory or regulatory basis. In addition, the petitioners argue that KKPC supports its argument with cases that are outdated, and that the Department has since then reflected on the treatment of VAT for credit expense calculations and concluded that it should not make a circumstance-of-sale adjustment for imputed interest expenses related to the payment of VAT. Finally, the petitioners assert that the Department should continue to calculate credit expenses net of VAT, because these expenses do not bear a "direct relationship" to the sales in question, as defined by the Department's regulations.

DOC Position

We agree with the petitioners. As the petitioners noted, we have evaluated this issue in past cases, and have come to the conclusion that our regulations do not imply that we should treat the payment of VAT as an opportunity cost to the seller on behalf of the buyer (*See Sulfur Vat Dyes*). Furthermore, no statute or regulation requires us to include VAT in the home market credit expense calculation (*see Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 33041, 33050 (June 17, 1998)). As the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994) (SAA) states at page 827, "[t]he deduction from normal value for indirect taxes constitutes a change from the existing statute. The change is intended to ensure that dumping

margins will be tax-neutral." Thus, Congress specifically intended for normal value to be tax-neutral. Accordingly, computing imputed credit expenses on a price that specifically includes an indirect tax such as the VAT, as KKPC insists that we do, would be clearly inconsistent with Congressional intent on this subject. For the final determination, we are following our established practice of excluding VAT from home market credit expense calculations for purposes of the final determination (*see Frozen Concentrated Orange Juice From Brazil: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 5767, 5769 (February 5, 1999)).

Comment 3: Home Market Date of Sale

The petitioners argue that the Department should not use KKPC's invoice date as the date of sale for its larger home market customers, because the terms of sale are established at an earlier date (*i.e.*, the order date). The petitioners cite past cases in which the Department used a date other than the invoice date for the respondent's date of sale, and assert that the Department can appropriately use KKPC's order date as the date of sale. The petitioners state that at a minimum, because KKPC's order dates are not on the record, the Department should use KKPC's date of shipment as the date of sale, since this information is on the record of this proceeding. The petitioners explain that because of the currency crisis in Korea, the order date during this time period may precede the invoice date by more than a month, which can have a significant effect on the calculation of dumping margins.

KKPC asserts that it properly reported the invoice date as the date of sale for all sales to its larger home market customers, because in the normal course of business, such customers place orders and receive shipments throughout the month. KKPC maintains that it recognizes home market sales, and records them as sales in its accounting records, when it issues the invoice to the customer. In addition, KKPC states that reporting the shipment date for these sales based on the month-end invoice date understates the number of days between shipment and payment, reduces the amount of credit expense relating to the sale, and overstates the resulting dumping margin calculated for KKPC, since the average shipment date would be at the middle of the month. KKPC argues that the petitioners' allegation is untimely, because they had not contended its use of the invoice date as the date of sale until their case brief. Further, KKPC contends that using the invoice date is consistent with the Department's regulations, and that the petitioners did not provide a sufficient basis to use a different date. Finally, KKPC contests that, although the sales quantity can be tied to its transaction statements that are prepared for each shipment prior to invoicing, the invoice itself is the first document generated in its sales process which provides written evidence of the sales price charged to the customer. KKPC explains that the transaction statement and invoice relating to a specific shipment are always generated in the same month that the shipment is made, and, therefore, all of its relevant sales were included in the sales listing reported to the Department.

DOC Position

We agree with KKPC. The Department's current practice is to use invoice date as the date of sale, unless record evidence demonstrates that the material terms of sale, i.e., price and quantity, are established on a different date. *See* 19 CFR 351.401(i). The Department explained in the preamble to its regulations at 62 FR 27348 (May 19, 1997):

> * * * as a matter of commercial reality, the date on which the terms of a sale are first agreed is not necessarily the date on which those terms are finally established. In the Department's experience, price and quantity are often subject to continued negotiation between the buyer and the seller until a sale is invoiced.

As noted in its responses to Sections A, B, and C of our questionnaire, KKPC explained its above-stated invoicing methodology for its home market customers. Furthermore, we noted "* * * no inconsistencies between the information concerning the date of sale methodology in the company responses and the information gathered at verification." *See Sales Verification Report*, dated February 15, 1999, at page 9. During the course of this investigation, we found no indication that a different date is more suitable as a date of sale. We find that KKPC accurately reported the invoice date as the appropriate date of sale because the invoice date best reflected the date on which the essential terms of the sale were established.

Comment 4: Critical Circumstances

The petitioners request the Department reconsider their critical circumstances allegation, should it calculate a final dumping margin greater than 25 percent.

KKPC argues that even if the final calculated dumping margin, if any, exceeds 25 percent, there is no way that an importer knew or should have known that the subject merchandise was being sold at less than fair value. KKPC asserts that it is unfair for the Department to penalize importers with a retroactive assessment of duties when it changes its methodologies from the preliminary determination, which might cause the margin to exceed 25 percent, because an importer has limited information.

DOC Position

As stated above in the "Critical Circumstances" section of this notice, KKPC's margin does not exceed 25 percent for EP sales, and there are no CEP sales in this investigation. Therefore, we find both the petitioners' and KKPC's arguments to be moot in this case.

Cost Issues

Comment 5: Use of Fiscal Year Costs Versus POI Costs

According to KKPC, it correctly reported its costs based on the fiscal year (*i.e.*, January 1 through December 31, 1997) and not based on the POI, because, although KKPC calculates monthly ESBR manufacturing costs on a product-specific basis, the costs for certain expenses, such as severance and depreciation costs, are based on estimates. In addition, KKPC explains that its monthly ESBR manufacturing costs for materials and inventories are valued using a monthly moving average method, while the annual cost calculations use an annual average method. As a result, the summation of KKPC's monthly costs do not reconcile directly to the annual costs because the differences between the monthly costs through November and the annual costs are recorded as year-end adjustments to the December costs, which can lead to aberrant December costs.

Moreover, KKPC argues that the Department has allowed respondents to report fiscal year costs when the POI and fiscal year do not differ by more than a few months, citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 12725, 12734 (March 16, 1998), in which the Department granted the respondent's request to base its reported costs on its fiscal period rather than the period of review. KKPC asserts that it indicated its use of fiscal year data in its September 18, 1998, response to the Section D questionnaire, and that, although the petitioners asked the

Department to require KKPC to report POI costs, the Department did not request POI costs until verification. According to KKPC, it would be inappropriate for the Department to use the monthly POI costs now on the record, because the fiscal year 1997 covers nine months of the POI, and the monthly costs cannot be tied directly to its annual costs or to KKPC's financial statements.

The petitioners argue that, although KKPC has maintained that only its annual costs could be reconciled to its audited financial statements, information gathered at verification proves that the monthly cost statements could be reconciled to its financial statements. In support of its argument, the petitioners refer to the following items noted in the Department's *Cost Verification Report*, dated February 7, 1999: (1) KKPC's cost accounting system is integrated with its financial accounting system; (2) KKPC produces monthly trial balances, income statements, and COM statements; and (3) the unit costs calculated in the monthly COM statements match the unit costs as calculated in KKPC's reconciliation of reported costs to its annual COM statement. The petitioners assert that the monthly cost information reported to the Department at verification could have been provided at an earlier date, and that the Department should, therefore, consider the information to be submitted in an untimely fashion. In addition, the petitioners argue that in light of the increase in the COM during the first quarter of 1998, as noted in the *Cost Verification Report*, KKPC's decision to report fiscal year costs and not POI costs was intended to minimize its costs of production. The petitioners suggest that, consequently, the reported COMs should be rejected, and the Department should apply adverse facts available, using the rate of 118.88 percent for KKPC's sales of subject merchandise, as was applied to Hyundai.

The petitioners argue that if the Department decides not to reject KKPC's reported COMs, it should, at a minimum, adjust KKPC's reported COPs to reflect the differences in COM between the fiscal year 1997 and the POI. However, the petitioners state that an upward adjustment based on the percentage difference should not be used because of the devaluation of the Korean won at the end of the POI, which would benefit KKPC rather than penalize it. As an alternative, the petitioners suggest that, as adverse facts available, the Department should either: (1) limit the POI to the seven months prior to the devaluation of the won (*see* Comment 1 above); or (2) convert HM prices denominated in U.S. dollars to won both for purposes of the cost test, as well as for calculating NV. The petitioners explain that although KKPC has HM sales denominated in U.S. dollars, these US dollar prices reflect won-based prices that were converted to U.S. dollars for the convenience of KKPC's customers. The petitioners state that converting all HM prices into won would, therefore, be consistent with KKPC's pricing practice.

DOC Position

We disagree with the petitioners that we should reject KKPC's response in toto and apply total facts available for purposes of the final determination. We note that although the Department, in its May 21, 1998, Section D questionnaire at D–3, instructed KKPC to report its costs based on the costs incurred during the POI, KKPC reported its costs to the Department based on its fiscal year 1997. In its September 18, 1998, Section D response, KKPC stated that the company's cost accounting system calculates costs on an annual basis at the end of each fiscal year and these annual figures are the only calculations that reconcile to KKPC's audited financial statements (*See* pages 24 and 25 at footnote 9). KKPC further stated that while the company also calculates monthly product costs for management purposes, using the same methodologies used in the company's normal cost accounting system, these monthly management cost calculations are not used in KKPC's accounting systems and do not reconcile directly to the company's audited financial statements. Based on such claims, the Department did not require KKPC to report POI cost data subsequent to its September 18, 1998, submission. We note that the Department does allow a respondent to report fiscal year costs where there is only a few months difference between the POI and the company's fiscal year. In such instances, the Department will test the impact of the shift in the cost reporting period to ensure that the use of fiscal year costs is not distortive for purposes of our COP and CV analysis.

At the start of verification, contrary to its statements in its questionnaire responses, KKPC disclosed to Department officials that KKPC does, in fact, record monthly cost data in its accounting system. Consequently, we requested and reviewed KKPC's monthly cost data, noting that the monthly costs do reconcile to the company's audited financial statements, after accounting for year-end adjustments for certain expenses. During verification, we tested and compared the POI costs based on the monthly cost data to the reported fiscal year costs and noted that the per-unit COMs for each grade of ESBR for the POI were higher than the per-unit COMs for the fiscal year (*see Cost Verification Report* at pages 7 and 8 for a detailed discussion). Thus, in this instance, because the Department originally requested POI cost data, and our verification findings indicate that the use of the reported fiscal year cost data is distortive, we have used the verified POI cost data for purposes of the final determination, as facts available, in accordance with section 776(a) of the Act (*see Cost of Production and Constructed Value Calculation Adjustments for the Final Determination Memorandum*, dated March 19, 1999). *See e.g., Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29568 (June 5, 1995) (where the Department disagreed with the respondent's reporting period for cost data, and used the costs obtained during the verification for purposes of the final determination).

Comment 6: Allocation of Financial Expenses to Investment Activities

KKPC argues that the Department erred in its calculation of financial expenses for purposes of the preliminary determination. KKPC calculated its financial expenses reported in the COP and CV data by allocating its total financial expenses between its investment activities and its manufacturing and sales activities, based on the ratio of the income generated by each of these lines of business. For purposes of the preliminary determination, the Department rejected KKPC's methodology and recalculated KKPC's financial expenses by allocating the company's total financial expenses over its cost of goods sold (*see Preliminary Notice* at 59517). KKPC, citing *Final Determination of Sales at Less than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Korea*, 55 FR 32659, 326678 (August 10, 1990) (*Sweaters from Korea*) and *Porcelain-on-Steel Cooking Ware from Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 32095 (June 8, 1993), argues that the methodology adopted by the Department for its preliminary determination is not consistent with established Department practice. KKPC contends that, as the Department recognized in *Sweaters from Korea*, financial expenses incurred by a company relate both to the company's investment activities and to its

manufacturing and sales activities. Thus, KKPC asserts that an allocation that assigns all of the financial expenses to the company's manufacturing and sales activities is incorrect and urges the Department to revise its calculation of financial expenses for the final determination.

The petitioners argue that KKPC offers no compelling reason for the Department to deviate from its long-standing practice of allocating a company's total financial expenses over its cost of goods sold, and, therefore, urge the Department to deny KKPC's request for reallocation of its financial expenses to the company's investment activities.

DOC Position

We disagree with KKPC that we erred in rejecting its method of allocating interest expenses. As the Department has repeatedly stated, and the Court of International Trade has upheld, we

> recognize the fungible nature of a corporation's invested capital resources, including debt and equity, and we do not allocate corporate financing expenses to individual divisions of a corporation on the basis of sales per division. Instead, we allocate the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation. More importantly, our established practice of requiring the use of consolidated financial statements recognizes: (1) the fungible nature of invested capital resources such as debt and equity of the controlling entity within a consolidated group of companies; and (2) that the controlling entity within a consolidated group has the power to determine the capital structure of each member company within its group (*see, e.g., Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands; Final Results of Antidumping Administrative Review*, 62 FR 38058 (July 16, 1997)).

E.I. Du Pont de Nemours & Co. v. *U.S.*, SLIP OP. 98–7 (CIT 1998).

In this instance, KKPC is asking that the Department deviate from its established practice of allocating financial expenses to the merchandise under investigation using consolidated results of operations (due to the proprietary nature of this issue, for a full explanation, please *see Memorandum to Louis Apple, Office Director, from Team*, dated March 19, 1999). Accordingly, for purposes of the final determination, we continued to rely on the interest expense calculation methodology used for purposes of the preliminary determination.

Comment 7: Treatment of Exchange Gains and Losses on Sales

KKPC argues that foreign exchange gains and losses arising from sales transactions should be included in the calculation of COP and CV. KKPC asserts that foreign exchange gains and losses on sales transactions relate to a company's general operations and, as such, should be included as part of the financial expense of the company. Furthermore, KKPC maintains that the treatment of exchange gains and losses on sales transactions as a cost of financing sales is inconsistent with the fundamental principle that money is fungible. Accordingly, KKPC argues that the Department's financial expense calculation should include all exchange gains and losses, including gains and losses that arise from sales transactions.

The petitioners maintain that KKPC presents no compelling justification for the Department to deviate from its long-standing policy of excluding exchange gains and losses on sales transactions from the calculation of COP and CV.

DOC Position

We disagree with KKPC. The Department typically only includes foreign exchange gains and losses in a respondent's financial expense if such gains and losses are related to the cost of acquiring debt. Moreover, it is the Department's normal practice to distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago*, 63 FR 9177, 9181 (February 24, 1998) (*Steel Wire Rod from Trinidad and Tobago*). The Department normally includes in its calculation of COP and CV foreign exchange gains and losses resulting from transactions related to a company's manufacturing activities (*e.g.*, purchases of inputs). We do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company. *See, e.g., Steel Wire Rod from Trinidad and Tobago*, 63 FR at 9181 and *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411, 31430 (June 9, 1998). Accordingly, for purposes of the final determination, we disallowed exchange gains and losses arising from sales transactions in the COP and CV calculation.

Alleged Clerical Errors Made in the Preliminary Determination Margin Calculation Program

Comment 8: Corrections to KKPC's Direct Labor Costs

In the preliminary determination, we recalculated KKPC's reported direct labor cost, because, based on information on the record at the time, we could not reconcile KKPC's reported direct labor costs to its total labor costs. KKPC notes that, subsequent to the Department's preliminary determination, the company provided a reconciliation of its direct labor costs to its total labor costs in its November 2, 1998, response to the Department's section D supplemental questionnaire. In addition, KKPC states that the Department verified that the direct labor costs were calculated correctly. Therefore, KKPC asserts that the Department should accept the reported direct labor costs and should, accordingly, correct the margin program.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination.

Comment 9: Product Characteristics Used for Purposes of Model Matching

The petitioners argue that, for purposes of the preliminary determination, the Department improperly excluded grade as one of the matching criteria in performing its model matching. In addition, the petitioners claim that by excluding grade, the Department assigned one control number to two different ESBR products (*i.e.*, ESBR grades 1502 and 1507).

KKPC asserts that the Department clearly stated its intention to not include grade as a matching criterion, and that by not doing so, two products are treated as one product. KKPC argues that these do not constitute inadvertent or clerical errors, and that there is no basis for changing the matching criteria.

DOC Position

We agree with both the petitioners and KKPC, in part. In response to our April 28, 1998, letter to interested parties, in which we requested information concerning the product characteristics, the petitioners stated that "* * * any product matching that relied simply on the IISRP grading system as product matching criteria, rather than on the essential physical characteristics of ESBR product, would necessarily fail to match certain product sales that properly should be included

in the Department's matching analysis." We, therefore, used the product characteristics attached to the petitioners' aforementioned response as our matching criteria, and did not include grade as a product characteristic. Excluding the grade from the matching criteria was, therefore, not an inadvertent or clerical error.

However, based on the arguments raised in this proceeding, we have reexamined our matching criteria. We note that indeed two of KKPC's reported products are assigned one control number based on our matching criteria, as verified. *Sales Verification Report* at page 6. Based on KKPC's written description of ESBR grades 1502 and 1507, as noted in its June 18, 1998, response to Section A of the Department's questionnaire, grade 1507 has a "* * * lower mooney viscosity than the 1500 and 1502 grades." Based on our review of the record in this case, we find that the ranges for mooney viscosity, as defined by KKPC's standard specifications (and also reflected in the IISRP's *The Synthetic Rubber Manual*), are different for grades 1502 and 1507. In addition, there are cost and price differences between these two grades based on KKPC's submitted COPs and sales listings. Therefore, we recognize that mooney viscosity is an essential product characteristic that defines the grade, and conclude that KKPC's sales of grades 1502 and 1507 should be treated as two separate products for purposes of the final determination (*see Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan*, 62 FR 60472, 60475 (November 10, 1997) (where the Department used additional product characteristics for the final results in order to prevent grouping of physically diverse chain as identical or similar merchandise)). In addition, for purposes of any future administrative reviews, the Department intends to include mooney viscosity as a product characteristic for matching purposes (*see Final Calculation Memorandum*).

Comment 10: Quantity Variable Used in the Margin Program

The petitioners argue that the Department made a certain inadvertent programming error in its preliminary margin calculation, and that the Department should correct this error for purposes of the final determination. Specifically, the petitioners note that the Department overstated the U.S. sales quantity by using an incorrect quantity variable.

DOC Position

We agree. We have made the appropriate corrections for purposes of the final determination (*see Final Calculation Memorandum*).

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of ESBR from Korea that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Korea Kumho Petrochemical Co., Ltd.	16.65
Hyundai Petrochemical Co., Ltd.	118.88
All Others	16.65

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act, from the calculation of the "All Others Rate."

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 777(i) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-7526 Filed 3-26-99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-821]

Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Mexico

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

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim or John Maloney, Import Administration: Group II, Office V, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-2613 or (202) 482-1503, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 351, 62 FR 27926 (May 19, 1997).

Final Determination

We determine that emulsion styrene-butadiene rubber (ESBR) from Mexico is being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Continuation of Suspension of

Liquidation" section of this notice, below.

Case History

Since the preliminary determination in this investigation on October 28, 1998 (*see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Emulsion Styrene-Butadiene Rubber from Mexico*, 63 FR 59519 (November 4, 1998) (Preliminary Determination)), the following events have occurred:

On November 23, 1998, we received revised factual information from Industrias Negromex, S.A. de C.V. (Negromex) regarding its sales responses. In December 1998 and January 1999, we conducted on-site verifications of questionnaire responses submitted by Negromex and its affiliated U.S. importer, GIRSA, Inc. (GIRSA). Also, in January and February 1999, we requested and received Negromex's revised home market and U.S. sales databases reflecting verification revisions. On February 10, 1998, the petitioners (*i.e.*, Ameripol Synpol Corporation and DSM Copolymer) and Negromex submitted case briefs. On February 17, 1999, the petitioners and Negromex submitted rebuttal briefs. We held a public hearing on February 22, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is ESBR. ESBR is a synthetic polymer made via free radical cold emulsion copolymerization of styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least one percent of organic acids from the emulsion polymerization process.

ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to this investigation are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as "Clear" or "White Rubber." The 1700 grades are oil-extended and thus darker in color, and are often called "Brown Rubber." ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Products manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product) are not included within the scope of this investigation.

The products under investigation are currently classifiable under subheading 4002.19.0010 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is April 1, 1997, through March 31, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the "Scope of Investigation" section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire.

Fair Value Comparisons

To determine whether sales of ESBR from Mexico to the United States were made at less than fair value, we compared the Constructed Export Price (CEP) to the Normal Value (NV). Our calculations followed the methodologies described in the preliminary determination except as noted in the Constructed Export Price and Normal Value sections of this notice, below.

Level of Trade

In the preliminary determination, we conducted a level of trade analysis for Negromex. We determined that a level of trade adjustment was warranted in lieu of a CEP offset. *See* Department's October 28, 1998, Level of Trade Analysis Memorandum to the File from The Team through James Maeder. Both Negromex and the petitioners commented on this issue. We have determined that it is appropriate to continue to make a level of trade adjustment in lieu of a CEP offset in this case. *See* Comment 2 in the "Interested Party Comments" section of this notice, below. Accordingly, for purposes of the final determination, we continue to hold that a level of trade adjustment, when appropriate, is warranted for Negromex.

Constructed Export Price

As in the preliminary determination, we used CEP methodology for all sales by Negromex, in accordance with section 772(b) of the Act, because sales to the first unaffiliated purchaser took place after importation into the United States. We revised the U.S. indirect selling expense ratio of Negromex's affiliated importer, GIRSA, based on our findings at verification. *See* Comment 4 in the "Interested Party Comments" section of this notice, below. In addition, based on our findings at verification, we included a warranty expense in the United States in our calculation of CEP. Finally, we revised Negromex's reported date of sale, and we adjusted the quantity for one sale, for sales made under two long-term contracts consistent with our established date of sale methodology as discussed in Comment 3 in the "Interested Party Comments" section of this notice, below. *See also* Department's March 19, 1999, Final Determination Calculation Memorandum.

Normal Value

We used the same methodology to calculate NV as that described in the "Normal Value" section of the preliminary determination with the following exceptions:

For home market sales invoiced and paid in U.S. dollars, we used the reported dollar amount for purposes of calculating NV.

For one sale in the home market with no reported payment date, we used the last day of verification as the payment date.

Cost of Production

We calculated the cost of production (COP) based on the sum of Negromex's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative (SG&A) and financial expenses and packing costs, in accordance with section 773(b)(3) of the Act. We relied on the submitted COPs, with the following exceptions: (1) Based on our findings at verification, as facts available, we adjusted the reported cost of direct materials by increasing the cost of the portion of styrene purchased from an affiliated party (*see* Comment 7, below); (2) we revised the G&A expense ratio based on changes resulting from verification; and (3) we included a

portion of the reported gains and losses on monetary position in our calculation of financial expenses (*see* Comment 6, below).

Constructed Value

In accordance with section 773(e) of the Act, we calculated constructed value (CV) based on the sum of Negromex's cost of materials, fabrication, SG&A expenses, profit, and U.S. packing costs. We relied on Negromex's submitted CV except for the adjusted direct materials cost and G&A and financial expense ratios as noted in the "Cost of Production" section above.

Currency Conversion

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank in accordance with section 773A of the Act.

Interested Party Comments

Comment 1: Treatment of Additional Matching Criteria Proposed by Negromex

The petitioners argue that Negromex's proposal for the addition of five matching criteria (ash content, free soap content, styrene content variance, mooney viscosity variance, and vulcanization time tolerance) to the Department's model match was untimely. According to the petitioners, Negromex had the opportunity to suggest matching criteria from the onset of this investigation and, in fact, was requested to do so by the Department in a May 4, 1998, letter. Because Negromex did not respond to that request and, instead, proposed the five additional criteria after the issuance of the questionnaire, the petitioners assert that the Department must reject Negromex's argument for the additional criteria as late.

If the Department accepts Negromex's proposal as timely, the petitioners argue that any minor variations in ESBR resulting from customers' specifications should not lead the Department to treat ESBR with the same IISRP grade as distinct products. According to the petitioners, even though Negromex may make minor adjustments to its production process to meet customers' specifications, Negromex has not shown that such minor adjustments result in products different from the products produced within the same IISRP grade. The petitioners assert that the Department's practice is to consider physical characteristics of the final product, as opposed to minor adjustments to the production process, in selecting model matching criteria. *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434, 40445 (July 29, 1998) (*SSWR from Japan*). The petitioners claim that a customer's specifications often call for a narrower range than Negromex's general specifications for the percentage content of a specific input of ESBR. However, the petitioners argue, it is likely that all ESBR produced by Negromex falls within that narrower range. As a result, the petitioners contend that ESBR with the same physical properties would be treated by the Department as different products and would lead the Department to improperly compare products based on customer specifications instead of comparing products according to significant physical properties.

The petitioners also argue that Negromex has not demonstrated any cost differences between ESBR produced for a customer's specifications and other ESBR with the same IISRP grade. According to the petitioners, the absence of cost differences distinguishes this case from *Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy*, 61 FR 30326 (June 14, 1996) (*Pasta from Italy*), where the Department accepted an additional physical characteristic as a matching criterion because it materially affected the cost of production.

The petitioners further contend that, contrary to Negromex's claim, ESBR produced according to a customer's specifications is not different from general-specification ESBR simply because a customer will reject ESBR not meeting its specifications. According to the petitioners, differences between customer-specific and general-specification ESBR are only due to varying ranges of refinement that different customers require within the same IISRP grade and are insufficient to create different products for purposes of model matching. The petitioners assert that Negromex misinterpreted section 771(16)(A) of the Act, defining "identical" merchandise, when it argued that ESBR products are not identical unless they have identical chemical contents rather than allowable ranges of content within a grade. According to the petitioners, the Department determined that steel products with different widths were still identical if they were within the same width range set out in the Department's matching criteria. *See Certain Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Antidumping Duty Administrative Review*, 60 FR 65264, 65270 (December 19, 1995) (*Carbon Steel Germany*). The petitioners also assert that the Department has found that customer preferences should not be considered in determining identical merchandise. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18446 (April 15, 1997) (*Carbon Steel Korea*).

Negromex argues that it included additional product characteristics in response to the Department's questionnaire requesting inclusion of any characteristics relevant to identifying home market sales of identical merchandise. *See* Department's May 21, 1998, questionnaire at B6 and C6. Thus, Negromex asserts that its proposal for the inclusion of the five additional characteristics as matching criteria was timely and, furthermore, that the Department did not treat the information as untimely because the Department requested more information on those characteristics in the August 13, 1998, supplemental questionnaire and considered the inclusion of the characteristics as matching criteria for purposes of the preliminary determination.

According to Negromex, the Department's rejection of the five additional product characteristics in the preliminary determination resulted in all ESBR within an IISRP grade being treated as identical merchandise. Negromex asserts that such a result does not reflect commercial reality because each of the five additional product characteristics proposed by Negromex is essential in order to meet particular specifications of its customers. Negromex alleges that the record demonstrates that Negromex produces ESBR either according to general IISRP specifications or according to customers' proprietary specifications, and that its customers will reject merchandise if it does not meet specifications, even if the product meets the specifications of an IISRP grade. Negromex argues that the Department improperly treated proprietary-specification ESBR and general-specification ESBR as identical merchandise. Negromex contends that such a result is precluded by section 771(16)(A) of the Act and Department precedent that it is inconsistent to consider products sold according to different specifications as identical. *See Certain Cut-to-Length Carbon Steel Plate from Finland; Final Results of Antidumping Duty Administrative*

Review, 62 FR 18468, 18470–71 (April 15, 1997) (*Carbon Steel Finland*).

Negromex argues that, in order to compare only sales of physically identical merchandise, the Department's model matching criteria must incorporate all commercially significant physical characteristics of the products subject to investigation. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 63 FR 18879, 18881 (April 16, 1998) (*Lead and Bismuth*). Negromex further argues that Department precedent establishes that the creation of a product concordance relies on the matching of significant physical characteristics. *Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, from Japan*, 62 FR 60472, 60475 (November 10, 1997) (*Roller Chain*).

Negromex asserts that physical characteristics, as opposed to production costs, govern the identification of identical merchandise. On that issue, Negromex alleges that the Department has held that a common production process with identical production costs may produce distinct products with differing physical characteristics. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India*, 63 FR 72246, 72250 (December 31, 1998); *Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 37334, 37335 (July 10, 1998) (*PET Film from Korea); Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411, 31416 (June 9, 1998). Additionally, Negromex asserts that the Department has accepted the principle by treating off-specification ESBR and on-specification ESBR as non-identical products in the preliminary determination, even though Negromex shows the same costs for those two product types.

Negromex argues that the five additional product characteristics are commercially significant and should be included in the Department's model match because each characteristic is critical to the manufacture of ESBR, the sale of ESBR, and the use of ESBR by Negromex's customers. *See* Negromex's September 3, 1998, submission at page B22. In addition, Negromex states that the *Synthetic Rubber Manual*, included in the petition, recognizes both styrene content variance and mooney viscosity as important physical characteristics of ESBR. Furthermore, Negromex argues that the record in this case establishes that it sells ESBR as either "off-specification," "general (IISRP) specification," or "proprietary specification," and that sales of proprietary-specification ESBR require it to produce several types of ESBR 1502 and 1712, which the Department verified. *See* December 22, 1998, Sales Verification Report at 10.

Negromex finally argues that the record shows that it must alter its production inputs and processes in order to meet customers' specifications, including specifications for the five proposed characteristics. In addition, Negromex asserts that the record shows that quality checks are made to ensure that a customer's specifications are met. All of this, Negromex urges, shows that the proposed five additional characteristics are commercially relevant and should be included by the Department's as model matching criteria for purposes of the final determination.

DOC Position

We agree with the petitioners that the addition of the five matching criteria proposed by Negromex (ash content, free soap content, styrene content variance, mooney viscosity variance, and vulcanization time tolerance) is not necessary to identify identical merchandise for model matching purposes in this case. As discussed in the preliminary determination, we determined that the ten product characteristics included in our questionnaire designate the IISRP ESBR grade and sufficiently defined identical products for matching purposes. *See* Preliminary Determination at 59522. After a review of Negromex's comments, we are not persuaded that their proposed criteria are necessary to appropriately match sales of subject merchandise in the United States with identical merchandise in the home market.

The Department has broad authority to determine model matching criteria and necessarily selects criteria on a case-by-case basis. The selection of appropriate matching criteria to define identical merchandise under section 771(16)(A) of the Act is based on meaningful physical characteristics and interested parties' comments. The Department does not attempt to account for every conceivable physical characteristic and may rely upon product standards when selecting matching criteria. The criteria selection process allows the Department to "draw reasonable distinctions between products for matching purposes, without attempting to account for every possible difference inherent in the merchandise." *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Canada*, 63 FR 9182, 9197 (February 24, 1998) (*Wire Rod from Canada*). In this process, the Department matches products as "identical," consistent with section 771(16)(A) of the Act, even though they may contain minor physical differences. *Wire Rod from Canada* at 9197. Additionally, the Department has determined that a range of products can be treated as identical within the meaning of section 771(16)(A) of the Act. *Carbon Steel Germany* at 65271 (where the Department determined that steel products falling within the same width and thickness ranges were identical); *see also Carbon Steel Korea* at 18446 (where the Department treated products with distinct paint coatings as identical and noted that products do not have to be "technically substitutable, purchased by the same types of customers, or applied to the same end use" in order to be treated as "identical" merchandise within the meaning of section 771(16)(A) of the Act (citation omitted)).

In order to determine "meaningful physical characteristics" for selection in identifying identical merchandise, the Department has looked to both price differences in the marketplace and cost differences that may reflect different production processes. In *Pasta from Italy*, the Department found an additional proposed matching criterion, wheat quality, to be "commercially significant and an appropriate criterion for product matching" after finding that differences in wheat quality were reflected in wheat costs and pasta prices. *Pasta from Italy* at 30346; *see also Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review*, 62 FR 62547 (November 24, 1997) (where color was accepted as an appropriate matching criterion because it materially affected cost). However, costs are not always indicative of whether two products are identical, and we recognize that the same production process and costs can result in different products. For example, in *PET Film from Korea*, the Department found that the same costs and production process produced different products, but there the two products at issue were physically different grades of film of markedly different levels of quality and value. *PET Film from Korea* at 37335. Cases where the Department has found non-identical products with the same production process and costs usually involve seconds or other differences in

quality that affect value. *See Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411, 31416 (June 9, 1998) (where the Department found different grades of salmon from the same production process and with identical costs).

Even though product matching issues are decided on a case-by-case basis, we can take guidance from cases where the Department has addressed product matching issues involving products classified according to standardized grades. In such cases, the Department will typically match by grade, based on the appropriate physical characteristics describing the grade, but normally will not choose criteria to account for minor differences within a grade. For example, in *SSWR from Japan*, we selected the American Iron and Steel Institute (AISI) grade as a matching criterion in place of actual chemical content. In that case, we found that grade sufficiently defined the physical characteristics for matching purposes and decided that a type of steel with unique manufacturing processes was not a different product because the chemical content of that steel "falls within the ranges of established standard AISI steel grades." *SSWR from Japan* at 40445; *see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan*, 63 FR 40461 (July 29, 1998) (where the Department matched products as identical based on the grades of the product). However, where a product's characteristics are outside the permissible range of chemical content established by a defining grade or specification, we may reflect such a difference in our criteria if the difference is significant. In *SSWR from Japan*, we found that the respondents had appropriately reported their internal grades, in lieu of AISI grades, only when the chemical compositions of those internal products went beyond the range established by the standard AISI grade specifications. *SSWR from Japan* at 40436.

In this case, the ten matching criteria used by the Department in the preliminary determination, which are based on the IISRP standard grades, sufficiently take account of all the commercially meaningful physical characteristics for model matching. The five additional matching criteria proposed by Negromex are not necessary in this case to define identical products because they represent minor differences within ESBR grades. Rather, we find that the internationally-recognized grade classifications set forth by the IISRP provide an objective basis for appropriately distinguishing between different ESBR products.

We do not agree that subject merchandise produced according to proprietary specifications is a different product than merchandise produced according to Negromex's general specifications, which comport with an internationally-recognized IISRP standard grade. The record indicates that proprietary specifications only further refine the chemical ranges already defined by the general specifications for the ESBR grade. We found no cases where a customer's proprietary specifications for a characteristic went beyond the permissible range for that physical input (*e.g.*, styrene content variance) in Negromex's general specifications. The evidence on the record shows that proprietary-specification ESBR falls within permissible ranges for the percentage and variance of material inputs and finished product physical properties of general-specification ESBR. *See* Department's December 22, 1998, Sales Verification Report at verification exhibit 9; Department's February 2, 1999, Sales Verification Report at verification exhibit 10; and Negromex's June 18, 1998, submission at Exhibit 7. The facts on the record indicate that ESBR meeting a customer's proprietary specifications would also meet Negromex's general specifications. *See* December 22 Report at 10 and verification exhibit 9 and February 2 Report at verification exhibit 10.

We recognize that the exact measure of all chemical properties will differ among Negromex's various ESBR sales, even though ESBR with varying levels of those properties fall within one IISRP grade. The additional matching criteria proposed by Negromex would serve only to subdivide several ESBR sales falling within one IISRP standard grade into several "different" products for matching purposes. This would cause the Department to recognize "different" products based on the exactness of the chemical contents in customers' proprietary specifications, even though these chemical contents are within the range of the industry standard specification for a grade. Therefore, there is no reason to depart from the industry standard and accept criteria based on these minor differences reflected in customers' specifications.

We also disagree with Negromex that the "significance" of the additional criteria is undeniable based on the fact that its customers can reject merchandise for not meeting customer specifications (including the specifications for the proposed additional criteria). Although we recognize that customers can reject merchandise if it is not to their specifications, this fact, standing alone, is not a sufficient basis to determined that physical characteristics are "commercially significant."

Moreover, the proposed additional criteria are not meaningful physical characteristics because the minor differences that they represent within a grade have no cost effect. Negromex has reported the same cost for ESBR grade 1502, and the same cost for grade 1712, regardless of whether a particular sale of either grade is designated as general specification or proprietary specification. *See Pasta from Italy*. In addition, although, as discussed above, identical processes and costs may produce different products, such products are normally seconds or have a different quality level reflected in their value. While we have distinguished off-specification merchandise, *i.e.*, seconds, in our model matching, the record indicates that proprietary-specification ESBR is not a second and does not have a unique quality level demonstrated by a difference in value, and there are no cost differences. Therefore, we see no compelling reason to treat it as a different product. *See PET Film from Korea*.

Notably, Negromex has not argued any price differences for proprietary-specification ESBR that it alleges is a different product. As stated, a demonstration of price differences would have supported Negromex's argument that its additional criteria are meaningful physical characteristics. *See Pasta from Italy*.

Negromex asserts that *Roller Chain* supports acceptance of the additional matching criteria because they are "commercially significant." Negromex's reliance on *Roller Chain*, however, is misplaced because that case did not involve industry product standards or making distinctions between products that meet one industry grade. Rather, it involved making distinctions between physically diverse products. The minor variations at issue here are merely variations within an industry grade and do not result in physically diverse products.

Negromex also relies on *Lead and Bismuth* in its argument. In *Lead and Bismuth*, the Department determined that the impurity level in the steel (*i.e.*, residual value) was a significant physical characteristic even though there were no cost differences. As already stated, we necessarily choose matching criteria on a case-by-case basis because of myriad different products in antidumping investigations. The steel product in *Lead and Bismuth* was

highly specialized and, as a result, we found that impurities were a significant characteristic in that case despite the lack of cost differences. In this case, the proposed criteria represent only minor differences within grade specifications and are not meaningful physical characteristics. As a result, our decision is not inconsistent with *Lead and Bismuth*.

Additionally, Negromex argues that the decision in *Carbon Steel Finland* supports acceptance of their proposed criteria. However, in that case, the Department made identical matches based on national specifications which are analogous to industry standards such as IISRP ESBR grades. *Carbon Steel Finland* at 18470. The Department did not match in that case based on customer-specific specifications. Thus, we are not persuaded that we should accept criteria for matching based on customers' proprietary specifications.

We note that, as discussed in the companion case to this investigation on ESBR from the Republic of Korea, the Department determined that an additional physical characteristic, mooney viscosity, should be added as a model matching criterion because, in that case, mooney viscosity was the sole physical property that distinguished ESBR grades 1502 and 1507. In this case, we do not need any of the five additional criteria, including mooney viscosity, to differentiate ESBR grades. We will add mooney viscosity as a model matching criterion, if necessary, in any future administrative review.

For the reasons stated above, we find that the ten matching criteria included in our questionnaire are sufficient to identify identical ESBR for matching purposes in this investigation.

Finally, we disagree with the petitioners that Negromex's proposal for the addition of five matching criteria was untimely. The Department's May 21, 1998, questionnaire states, "[y]ou may add additional product characteristics." *See* the Department's May 21, 1998, questionnaire at pages B–6 and C–6. Negromex first provided information on the five proposed additional matching criteria in its July 13, 1998, response to the Department's questionnaire. As a result, Negromex's proposal for the addition of the five matching criteria was not untimely and was considered for purposes of the final determination in this investigation.

Comment 2: Negromex's Claim for a CEP Offset

Negromex asserts that there is no LOT in the home market comparable to the CEP level of trade and that the levels of trade in the home market are more advanced in the distribution chain than the CEP level of trade. Consequently, Negromex argues that the Department must grant a CEP offset under section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).

Negromex claims that the record establishes that the home market end user and distributor levels of trade each constitutes a more advanced LOT than the CEP level of trade. Negromex states that it sells directly to unaffiliated distributors and end users in the home market. Negromex also states that GIRSA resells to both unaffiliated distributors and unaffiliated end users in the United States. According to Negromex, its sales to GIRSA (CEP sales) must be at a less advanced market stage than home market sales because GIRSA resells to the same types of customers that Negromex sells directly to in the home market. Negromex asserts that sales in the home market to distributors or end users cannot be at the same LOT as sales to GIRSA (CEP sales) because GIRSA resells to distributors and end users.

Negromex also argues that verified information on the record establishes that the home market levels of trade are more advanced than the CEP level of trade. According to Negromex, there are eighteen separate selling functions performed in support of ESBR sales in the home market and in the United States. Negromex asserts that sixteen of those eighteen functions were performed in support of sales to unaffiliated distributors and all eighteen were performed in support of sales to end users. Negromex claims that its submissions, and the Department's verification reports, confirm its claims. Negromex next asserts that, in contrast, it performs only four of the eighteen selling functions in support of its sales to GIRSA. *See* Negromex's November 23, 1998, submission at Exhibit 6. The remainder of the selling functions, argues Negromex, are performed by GIRSA on behalf of its U.S. customers. For selling functions shared by Negromex and GIRSA (*i.e.*, technical services, application advice, advertising and sales promotion), Negromex claims that such functions are not performed on sales to GIRSA. Further, Negromex argues that its advertising expenses in the United States should not be included within the CEP selling functions because those expenses are attributable to U.S. economic activity. *See* section 772(d) of the Act and 19 CFR 351.402(b). Finally, Negromex asserts that technical service and application advice by Negromex is rare. Thus, because of the limited number of selling functions performed at the CEP level of trade and the greater number performed by Negromex in the home market, Negromex argues that both home market levels of trade are at a more advance stage of distribution than the CEP level of trade. As a result, Negromex asserts that section 773(a)(7)(B) of the Act requires that the Department grant a CEP offset in this investigation.

The petitioners argue that the Department properly denied Negromex a CEP offset in the preliminary determination and should continue to do so for purposes of the final determination. According to the petitioners, under section 773(a)(7)(B) of the Act, a CEP offset may be made only when two conditions are satisfied. First, NV must be established at a level of trade that is more advanced than the level of trade of the CEP. Second, the information available does not provide the Department with a basis to quantify a LOT adjustment. The petitioners argue that neither condition has been met and, thus, no CEP offset should be granted.

The petitioners assert that, in the preliminary determination, the Department properly concluded that home markets sales made at the unaffiliated distributor level of trade were comparable to U.S. sales at the CEP level of trade. As a result, the petitioners claim that the first statutory condition for a CEP offset has not been met because there is a comparable level of trade in the home market to the CEP level of trade. In addition, the petitioners argue that the second statutory condition for a CEP offset was not met because, according to the petitioners, there is sufficient data on the record to determine the basis for a LOT adjustment.

The petitioners argue that Negromex performs the same types of selling activities at the same quality and intensity for both home market sales to unaffiliated distributors and CEP sales. According to the petitioners, Negromex has tried to change this "fact" by downplaying the extent of its selling activities supporting its CEP sales. The petitioners assert that, in general, Negromex understates its selling functions in support of CEP sales by portraying selling functions performed by Negromex as selling functions performed by GIRSA. Regarding technical service support specifically, the petitioners allege that, even if GIRSA handles some routine technical questions, the most important technical support comes from experts in Mexico.

The petitioners further assert that, contrary to Negromex's argument, Negromex's affiliation with GIRSA does not preclude comparability between

those sales and sales to unaffiliated customers in the home market. According to the petitioners, the affiliation of a purchaser is not relevant to whether the same LOT can be found. In addition, the petitioners claim that Negromex has not demonstrated any real differences between the home market unaffiliated distributor LOT and the CEP LOT. The petitioners argue that the Department's regulations require, at the minimum, "substantial differences" in selling activities to find a different LOT. *See* 19 CFR 351.412(c)(2). In addition, the petitioners assert that the Department requires purchasers at different places in the distribution chain and sellers performing qualitatively or quantitatively different functions in selling to them to find a different LOT. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Carbon Steel South Africa*). According to the petitioners, Negromex has not shown that its purchasers in the home and U.S. markets occupy different places in the distribution chain, nor has Negromex shown substantially different selling functions between sales to unaffiliated distributors and sales to GIRSA. As a result, the petitioners urge the Department to continue to find that the same LOT exists in both markets.

DOC Position

We disagree with Negromex. As we stated in our preliminary determination, in accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the LOT is also that of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Carbon Steel South Africa.*

Negromex requested a CEP offset prior to our preliminary determination in this investigation. *See* Negromex's June 18, 1998, response at A13. We examined Negromex's claim based on the analysis described above. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, exclusive of economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. *See* Department's October 28, 1998, Level of Trade Analysis Memorandum to the File from The Team through James Maeder. We found that "one of the levels of trade in the home market, sales to unaffiliated distributors, was comparable to the CEP level of trade because of the similarities between the class of customer and distribution channel." Preliminary Determination at 59521. Negromex asserts that information placed on the record subsequent to the preliminary determination demonstrates that its home market sales were made at more advanced levels of trade than its sales to GIRSA. In light of the additional information on the record, we have revisited our LOT analysis.

We continue to find that Negromex sold to two levels of trade in the home market, the end user level of trade and the unaffiliated distributor level of trade. We find two distinct levels of trade in the home market because Negromex's sales to end users are at a more advanced stage in the chain of distribution and involve quantitatively and qualitatively more selling functions than its sales to unaffiliated distributors. In addition, we continue to find that Negromex's home market sales to unaffiliated distributors are made at a level of trade comparable to the CEP level of trade. Although Negromex may perform nominally more selling functions in support of its sales to the unaffiliated distributor LOT than it does in support of its sales to the CEP LOT, we are not persuaded that these differences in selling functions are so substantial as to result in two distinct levels of trade.

Differences in selling activities do not require us to find two distinct levels of trade. *See, e.g., Carbon Steel South Africa* at 61732 (where the Department found that differences in selling functions, even substantial differences, do not alone sufficiently establish a difference in the level of trade); *see also* 19 CFR 351.412(c)(2) ("substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing").

In reexamining this issue, we find that both Negromex's unaffiliated distributors and GIRSA are resellers of ESBR to unaffiliated end users and both occupy the same place along the chain of distribution. In fact, Negromex stated that GIRSA "is akin to that of a master distributor." Negromex's June 18, 1998, response at A18. Thus, we disagree with Negromex's argument that its sales to GIRSA are at a less advanced marketing stage because GIRSA, in turn, sells to the same types of customers as Negromex. Moreover, both Negromex's home market distributors and GIRSA provide significant services to their ESBR customers and both function at the same place in the chain of distribution for sales of ESBR in their respective markets.

Regarding the selling functions performed in support of Negromex's home market and CEP sales, for purposes of the preliminary determination, we found that Negromex performed analogous levels of selling functions in support of its home market sales to unaffiliated distributors and its CEP sales to GIRSA. *See* Preliminary Determination at 59521; *see also* the Department's October 28, 1998, Level of Trade Analysis Memorandum to the File through James Maeder. Our analysis of selling functions, both for the preliminary determination and for the final determination, focused specifically on home market sales to unaffiliated distributors for comparison to CEP sales. Negromex's arguments that its home market selling functions are not comparable to its CEP selling functions did not clearly distinguish between selling functions in support of sales to unaffiliated distributors as opposed to selling functions in support of sales to end users. In its case brief, Negromex argues that the levels of trade are not comparable "[w]hen the very limited number of selling functions performed by Negromex at the CEP level of trade on its sales to GIRSA, Inc. are compared to the full range of selling functions performed by Negromex on its sales to unaffiliated endusers and unaffiliated distributors in the home market." Negromex's February 10, 1999 Case Brief at 29. Selling functions performed in support of sales to end users,

however, are not relevant to our comparisons between the unaffiliated distributor LOT and the CEP LOT. We have focused our analysis on a comparison between the unaffiliated distributor LOT and the CEP level of trade.

Negromex reported revised selling functions information in its November 23, 1998, submission. The revised selling functions information differed from the information relied on for the preliminary determination (*see* Negromex's June 18, 1998, Section A response at Exhibit A–5) in two significant ways. First, in its November 23 submission, Negromex reports either "Yes" or "No" for a selling function, rather than the degree of a selling function (i.e., High, Medium, Low) as it had for some selling functions in its Section A response. Second, in its latter submission, Negromex reports eighteen selling functions instead of the eight reported in its Section A response. *See* Negromex's November 23, 1998, submission at pages 7–12 and Exhibit 6. We find, however, that, of the ten "additional" selling functions reported by Negromex, six out of the ten merely reflect subdivisions of selling functions already reported by Negromex in its June 18 response. For example, the "Inventory Maintenance" selling function originally reported became "Immediate Post Production Storage" and "Inventory Maintenance at Negromex Facilities."

Negromex argues that it performs fourteen selling functions in support of unaffiliated distributor sales but only four selling functions in support of CEP sales. However, our analysis of the information on the record indicates that the numerical disparity in the selling functions has been substantially overstated. For example, Negromex reports that it performs inventory maintenance at its facilities for sales to distributors, but not for sales to GIRSA. However, the Department learned at verification that "Negromex provides inventory maintenance at its plant for U.S. sales." Department's December 22, 1998, Sales Verification Report at 7–8. In addition, we found at verification that Negromex also performs technical service and application support functions from Mexico for its U.S. sales. *See* Department's February 2, 1999, Sales Verification Report at 7. As stated, a substantial difference in selling functions, *inter alia*, must exist in order for the Department to find a different LOT; a difference in the number of selling functions alone is not sufficient. Although there are some differences in selling functions between sales to distributors and sales to GIRSA, the differences are not substantial. For example, the degree of the selling function labeled "Collection," performed for distributors, was originally reported as "Low" and subsequently has been reported as "Yes." Negromex reports this as "No" for sales to GIRSA and relies on this as one of the differences between the selling functions, but we find that a small difference in collection levels is not a significant difference in selling activities. At verification, Negromex provided no evidence of substantial differences in these selling functions.

Finally, the four new selling functions claimed by Negromex (credit analysis, sales administration, post-sale customer service, and contract/purchase order negotiation), reported as performed in support of sales to distributors but not to GIRSA, are not significant selling activities and Negromex has not supplied any information to indicate otherwise.

We find that Negromex's sales to unaffiliated distributors in the home market and to GIRSA in the United States are made at the same point in the chain of distribution and involve selling functions that are not substantially different. As a result, we continue to find that the unaffiliated distributor LOT in the home market is comparable to the CEP level of trade. Consequently, we made a LOT adjustment if we compared sales in the United States to sales at the end user LOT in the home market based on the established pattern of price differences between the two levels of trade in the home market. Because we matched sales at the comparable home market LOT and made a LOT adjustment, if necessary, we did not make a CEP offset to NV.

Comment 3: Date of Sale for Long-Term Contracts

As found in the preliminary determination, Negromex's affiliated U.S. importer, GIRSA, sold ESBR during the POI to one U.S. customer under two long-term contracts. The terms of each year-long contract provided that the U.S. customer was obligated to purchase a minimum amount of ESBR during the contract's year-long duration. Prices for the minimum required annual quantities were established in the contracts based on a mathematical formula incorporating the published monthly monomer prices and prices of butadiene and styrene, two major inputs of ESBR.

Although Negromex originally acknowledged that these were long-term contracts and thus reported the contract date as the date of sale for the two contracts at issue, Negromex now argues that the Department should not use the contract date as the date of sale, but refers to these contracts as "consignment inventory contracts" and argues that these are not long-term contracts, but rather monthly sales based on the consignment terms of the contracts. Negromex contends that the Department's practice regarding consignment sales is to treat the date on which the customer withdraws inventory from consignment as the date of sale. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil*, 62 FR 16763, 16767 (April 8, 1997) *(Ferrosilicon from Brazil)*; *Final Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods from France*, 58 FR 68865, 68870 (December 29, 1993) (*Rods from France*). Under the contract terms, a monthly quantity (1/12th of the annual minimum quantity requirement) was set to be purchased and withdrawn from consignment with an allowable variance of plus or minus twenty percent each month. According to Negromex, the Department's precedent regarding consignment contracts should be followed in this case because the quantity under the contracts was not fixed on the dates of contract but on the dates when the customer removed merchandise from its consignment inventory. Negromex imputes the fifteenth of each month as the average date for all of the U.S. customer's withdrawals from consignment during every month and urges the Department to adopt the fifteenth of each POI month as the dates of sale for each of the contracts at issue.

Alternatively, if the Department determines that the date of sale was not governed by the contracts' monthly consignment inventory terms, Negromex argues that the Department should use the invoice dates as the dates of sale. Because GIRSA's U.S. customer often failed to meet the contracts' monthly purchase requirements, Negromex asserts that the contract date did not establish the quantity term and thus it was not a long-term contract. Therefore, according to Negromex, the contract date should not be used as the date of sale. In support of its position, Negromex references a case in which, because the customer's monthly purchases exceeded the contract's monthly quantity requirements, the Department determined that the date of sale was the invoice date. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative*

Review, 63 FR 55578 (October 16, 1998) (*Tubes from Thailand*).

The petitioners urge the Department to continue to use the contract date as the date of sale for the two long-term contracts. In support of their position, the petitioners refer to the Department's statutory provisions which allow the Secretary to choose a date other than invoice date as the date of sale when another date more accurately reflects the final determination of a sale's material terms by an exporter or producer. *See* 19 CFR 351.402. The petitioners assert that the Department should use the contract date as the date of sale because that was the date on which the parties legally bound themselves to the essential terms of sale, i.e., price and quantity.

The petitioners assert that the Department's policy in deciding date of sale for long-term contracts with minimum quantity requirements has been to recognize the contract date as the date of sale for all merchandise sold up to the minimum quantity requirement. *See Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Japan*, 56 FR 12156 (March 22, 1991); *Titanium Sponge From Japan: Final Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part*, 54 FR 13403, 13404 (April 3, 1989). *See also Toho Titanium Co., Ltd.* v. *U.S.*, 743 F. Supp. 888, 890–91 (CIT 1990). The petitioners argue that Negromex recognized that these were long-term contracts and therefore properly included sales made under the two long-term contracts invoiced after the POI in its response to the Department's Section C questionnaire. *See* Negromex's July 13, 1998, response at C14–C15.

According to the petitioners, *Tubes from Thailand* is unpersuasive because the facts of that case involved neither a long-term contract nor a minimum quantity requirement. Similarly, the petitioners assert that cases cited by Negromex dealing with consignment sales contracts are also irrelevant in this case because those cases did not involve long-term contracts with minimum quantity requirements, but rather were merely sales made on consignment. *See Ferrosilicon from Brazil; Rods from France.* The petitioners conclude that Negromex was unable to demonstrate why the Department should deviate from its practice of using contract date as the date of sale for long-term contracts and argue that the Department should continue using the contract date as the date of sale in this case.

DOC Position

We disagree with Negromex. As discussed in the preliminary determination, we followed our practice of using contract dates as the dates of sale for these two U.S. long-term contracts because we determined that price and quantity were fixed on the contract dates. We are not persuaded by Negromex's arguments that the quantity terms in the two contracts were not fixed and, consequently, these are not long-term contracts. Therefore, the average day of release from consignment each month is not the appropriate date of sale for sales under the two contracts.

Pursuant to 19 CFR 351.401(i), the date of sale is normally the date of invoice unless satisfactory evidence is presented that the material terms of sale, price and quantity, are established on some other date. *See also Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14067 (March 29, 1996). The Department has determined that a long-term contract's price term is fixed if it is established by a published source outside of the control of either party to the contract, such that there is nothing more that the parties need to negotiate concerning the price of the goods sold. *See Final Determination of Sales of Less Than Fair Value: Brass Sheet and Strip From France*, 52 FR 812, 814 (January 9, 1987). In addition, the Department has determined that, for a long-term contract with a minimum quantity requirement, the contract date is the date of sale for the minimum quantity specified in the contract. However, for situations in which a customer has not yet agreed to purchase quantities above the minimum requirement, the Department will use the date of invoice (or other appropriate date) as the date of sale for all amounts sold in excess of the minimum requirement. *See Titanium Sponge From Japan; Final Results of Antidumping Duty Administrative Review and Tentative Determination To Revoke in Part*, 54 FR 13403, 13404 (April 3, 1989); *see also Toho Titanium Co., Ltd.* v. *U.S.*, 743 F. Supp. 888, 890–91 (CIT 1990).

Because the price terms of the long-term contracts in this investigation were based on a set formula of published monthly prices for major inputs which were outside either contracting party's control, we continue to find that the price was fixed on the contract dates. It was on the dates of contract, therefore, that Negromex, as the price discriminator, set the prices for these sales. Moreover, we are also unpersuaded that the minimum quantity was not fixed at the time of the contracts. Negromex points to the fact that the contracts indicate 1/12th of the annual quantity is to be purchased each month, with an acceptable variance of plus or minus twenty percent. However, although monthly quantities to be withdrawn under the year-long contracts deviated more than twenty percent for some months, the annual quantities set by the contracts were not subject to any variation and the full amount was required to be purchased during the contract year. Thus, the fact that any minimum monthly amount was not withdrawn from inventory does not negate the fact that the annual quantity term was fixed by the parties on the contract date, regardless of the actual terms of delivery thereafter. We disagree with Negromex that these are "consignment inventory contracts," and find that the monthly withdrawal terms are merely delivery terms which provide stability for both parties throughout the duration of these long-term contracts.

Moreover, Negromex's attempt to equate the types of consignment sales found in *Ferrosilicon from Brazil* and *Rods from France* is without merit given our facts because those cases did not deal with long-term contracts with established fixed minimum annual quantity requirements, but were merely sales from consignment, as pointed out by the petitioners. Finally, regarding Negromex's alternative argument if the Department does not find these to be merely consignment sales, *Tubes from Thailand* did not deal with a long-term contract, and the short-term contract at issue did not actually fix the quantity term. Thus, the Department appropriately used the invoice date as the date of sale in that case. Based on the evidence before us, we are not persuaded to change our practice on the date of sale issue in this case and, thus, have continued to use the contract dates as the dates of sale for the minimum quantity requirements of the two U.S. long-term contracts. However, as in the preliminary determination, for any quantity sold above the minimum contract requirements, we used the reported average day of withdrawal from consignment (the fifteenth day of the month preceding the invoice date) as the date of sale.

Comment 4: Calculation of Negromex's U.S. Indirect Selling Expense Factor

The petitioners contend that the Department should adjust GIRSA's indirect selling expense allocation because the Department was unable to verify GIRSA's allocation of indirect expenses between subject and non-subject merchandise. The petitioners

urge the Department to reallocate GIRSA's indirect selling expenses in accordance with the petitioners' calculation methodology as provided in their February 17, 1999, rebuttal brief.

Negromex contends that it correctly allocated the indirect selling expenses of GIRSA and that the Department should continue to use the reported allocation of indirect selling expenses in the final margin calculation. In its response, Negromex allocated GIRSA's indirect selling expenses among sales of all rubber products, including ESBR and non-subject merchandise. *See* Department's February 2, 1999, Sales Verification Report at 13. Negromex asserts that it correctly allocated GIRSA's indirect selling expenses attributable to all rubber sales based on GIRSA's accounting records and that the Department should not reallocate these indirect selling expenses.

DOC Position

We agree with the petitioners that we should reallocate Negromex's indirect selling expenses. At verification, GIRSA did not provide documentation supporting its allocation of indirect selling expenses. For example, GIRSA was unable to justify its allocation of all supplies and furniture depreciation expenses to sales of rubber products, including ESBR, and it could not support its allocation of no indirect selling expenses to certain non-subject merchandise. *See* Department's February 2, 1999, Sales Verification Report at 13. Therefore, because GIRSA was unable to substantiate its indirect selling expense allocation between rubber products and non-subject merchandise, we reallocated the total amount of indirect selling expenses for all GIRSA products over the total amount of GIRSA's POI sales for all products. *See* Department's February 2, 1999, Sales Verification Report at 14; *see also* Department's March 19, 1999, Final Determination Calculation Memorandum.

We note that the petitioners, in their rebuttal brief, recalculated GIRSA's indirect selling expense allocation using the same methodology as outlined by the Department in its verification report. However, upon reviewing the petitioners' calculation, we found clerical errors. Accordingly, we did not adopt the calculation provided by the petitioners. Instead, we applied the amount as calculated in our verification report. *See* Department's February 2, 1999, Sales Verification Report at 15.

Comment 5: Adjusting Normal Value for Export Rebates

Negromex grants rebates on ESBR sales to home market customers who incorporate the purchased ESBR into exported non-subject merchandise. Negromex's ESBR customers certify amounts of ESBR used in their exported finished goods, calculate their respective ESBR rebates, and submit rebate documentation for Negromex's approval. *See* Department's December 22, 1999, Sales Verification Report at 17. After approving a customer's export rebate calculation, Negromex applies an export rebate to the customer's next invoice and issues a credit note for the rebate upon the customer's request. *See* Department's December 22, 1999, Sales Verification Report at 17; *see also* Negromex's September 3, 1998, response at Exhibit SB–8.

The petitioners argue that the Department should not deduct these rebates from normal value, arguing that to do so would wrongly encourage "input dumping," a practice which promotes lower export prices in that raw material suppliers charge their customers less for raw materials incorporated into exported products. *See* Petitioners' February 10, 1999, Case Brief at 11. In this case, the petitioners assert that because Negromex's export rebates provide Negromex's customers opportunities to sell their goods at prices lower in foreign markets than in the Mexican market, the Department should follow its practice of denying price adjustments for export rebates, as the Department views these rebates as "input dumping." *See Notice of Final Determination of Sales at Less than Fair Value: Open-End Spun Rayon Singles Yarn from Austria*, 62 FR 43701, 43708 (Aug. 15, 1997) (*Rayon Singles Yarn*); *Final Results of Antidumping Duty Administrative Review: Light-Walled Welded Rectangular Carbon Steel Tubing from Taiwan*, 56 FR 26382, 26383 (June 7, 1991) (*Carbon Steel Tubing Taiwan*).

Negromex asserts that the Department correctly adjusted normal value for the export rebates which Negromex grants its customers who incorporate ESBR into their exported products. According to Negromex, the petitioners are mistaken in analogizing their export rebates to "input dumping" because the Department has only applied the "input dumping" principle to deny a manufacturer's claim to normal value adjustments for export rebates it receives from suppliers. The Act, argues Negromex, mandates an adjustment of normal value for all price adjustments, including export-based rebates, in order to correctly compare normal value with prices at which ESBR is first sold in the United States. *See* Section 773(a)(1)(B) of the Act. Negromex notes that the Department has upheld adjustments for similar export-based rebates in recent decisions and maintains that the Department should follow its precedent of allowing export rebates in this case. *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 33041, 33045–46 (June 17, 1998) (*Tube from Mexico*).

DOC Position

We agree with Negromex. Section 773(a)(1)(B)(i) of the Act requires the Department to calculate normal value in a manner which most closely approximates "the price at which the foreign like product is first sold * * * for consumption in the exporting country. * * *" In order to accurately reflect the foreign like product's price, the Department must account for all price adjustments in calculating the home market product's normal value. *See* 19 CFR 351.401(c). Because rebates affect the price of subject merchandise in the home market, we agree that the export rebates should be deducted in the calculation of Negromex's normal value price in this case. *See* 19 CFR 351.401.

The petitioners' application of the "input dumping" concept to the circumstances of this case is misplaced. The Department has acknowledged that the practice by which raw materials suppliers price their raw materials differently based on whether customers incorporate the raw material into domestic or export products constitutes "input dumping." *Carbon Steel Tubing Taiwan* at 26383. The Department's policy consistently has been to deny finished goods manufacturers an adjustment to normal value for export rebates received from upstream raw material suppliers. *Carbon Steel Tubing Taiwan* at 26383; *Rayon Singles Yarn* at 43708. The issue facing the Department in this case, however, is not a finished goods manufacturer's claim for an adjustment to NV for export rebates granted by its raw material supplier. Instead, Negromex is claiming an adjustment to NV for an export rebate granted to its home market customers. Therefore, in keeping with our policy to allow respondents an adjustment to normal value for export rebates granted to downstream customers who incorporate the material into their exported products (*see Tube from Mexico* at 33045–46), for purposes of the final determination, we have continued

to adjust for export rebates in our calculation of normal value.

Comment 6: Gains and Losses on Monetary Position

Negromex contends that the Department should include the full amount of reported net gain on monetary position in its calculation of financial expenses. Negromex explains that these adjustments reflect the gain on holding net monetary liabilities against reduction in the value of the peso. According to Negromex, these inflation adjustments are required by Mexican generally accepted accounting principles (GAAP), and the Department's practice in Mexican cases is to include these adjustments in the calculation of financial expenses. *See Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17160 (April 9, 1997) (*Cement from Mexico*).

The petitioners did not comment on this issue.

DOC Position

We agree with Negromex, in part. We agree that the gain on monetary position should be included in the financial expense calculation, but we disagree that it should be included in full. In accordance with section 773(f)(1)(A) of the Act, the Department's practice is to rely on costs derived from the respondent's books and records, as long as they: (1) Are prepared in accordance with the home country's generally accepted accounting principles ("GAAP"); (2) are based on allocations that have been historically used by the company; and (3) do not result in distorted production costs. Negromex has historically computed a net gain or loss on monetary position for financial reporting purposes in accordance with Mexican GAAP. This gain or loss reflects the impact of Mexican inflation during the year on holding monetary assets and liabilities.

In this instance, due to the inflation experienced in Mexico during the POI, we consider it reasonable to include in the interest expense computation the impact of holding monetary assets and liabilities throughout the year. Even though Negromex normally computes its net gain or loss on monetary position using all monetary assets and liabilities (both current and long-term), we computed the net gain amount using only Negromex's current monetary assets and liabilities. The gain on monetary position and the foreign exchange loss, in this case, are directly linked. That is, the same foreign-denominated debt caused both a foreign exchange loss and a gain on monetary position. The foreign exchange loss is driven by the devaluation of the peso as compared to other currencies whereas the gain on monetary position is driven by high inflation during the year. Consistent with our current practice of including in the interest expense calculation only a portion of the foreign exchange gains and losses related to foreign-denominated debt (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea*, 63 FR 8934, 8940 (February 23, 1998)), we only included a portion of the gain on monetary position related to Negromex's monetary assets and liabilities.

Our preferred method for computing the portion of foreign exchange gains and losses related to debt is to amortize the gains or losses over the remaining life of the foreign-denominated loans. Alternatively, the Department may, as was done in this case, determine the portion of the exchange gains or losses to include in the financing expense computation based on the ratio of the current portion of the foreign-denominated debt to total foreign denominated-debt, provided that it reasonably approximates the result of using the remaining life of the debt. *See Wire Rod from Canada* at 9187. Following this approach, we consider it appropriate to include in the net monetary gain or loss computation only those asset and liability amounts classified as current. To only include the current portion of the foreign exchange gains or losses related to debt but to include the entire gain or loss on monetary position would be unreasonable and distortive. We note that, in *Cement from Mexico*, we used both current and long-term monetary assets and liabilities to compute the gain on monetary position. However, we also included the foreign exchange gains and losses on both the current and long-term foreign denominated debt. Our practice has developed since that case in that we now only include a portion of the foreign exchange gains and losses related to foreign-denominated debt and thus we will only include a comparable portion of the gains or losses on monetary position.

Comment 7: Purchase of Styrene From an Affiliated Party

At verification, the Department discovered that Negromex purchased styrene, a major input in the production of ESBR, from an affiliated party, Resirene S.A. de C.V. (Resirene). This information was not reported to the Department in the company's questionnaire responses. The petitioners argue that Negromex failed to make timely disclosure of its purchases of styrene from Resirene, denying the Department and the petitioners a reasonable opportunity to analyze and address the costs of this input. The petitioners, citing to 19 CFR 351.407(b) (the major input rule), point out that, in dealing with transactions between affiliated companies, it is the Department's practice to value major inputs at the highest of the transfer price, market price, or actual production cost. However, the petitioners contend, lack of verifiable evidence from Negromex in this instance precludes an application of the major input rule.

According to the petitioners, the Department's attempt at verification to examine the nature of Negromex's transaction with Resirene and test the transfer price between the two companies does not establish an adequate basis for application of the major input rule. Specifically, the petitioners claim that the Department relied primarily upon oral explanations by Negromex's materials manager and faxed documents from Resirene (*i.e.*, Resirene's financial statements and a schedule of its purchases of styrene from unaffiliated suppliers during the POI). The petitioners note that the Department did not speak to anyone at Resirene and did not inspect any original documentation at that company, rendering the faxed documents obtained at verification unverified.

Furthermore, the petitioners assert that the transfer price between Negromex and Resirene, which according to Negromex's official represents Resirene's purchase price and cost of freight, does not cover Resirene's entire cost of obtaining the material, such as general and administrative expenses. Absent verified data concerning Resirene's full cost of purchasing styrene, the petitioners argue that Negromex's reported costs of styrene cannot be analyzed properly under the major input rule. Therefore, the petitioners urge the Department to use facts otherwise available in determining Negromex's costs of styrene for purposes of the final determination.

Negromex contends that it properly reported its styrene costs in its questionnaire response. Negromex notes that the cost of styrene recorded in the company's accounting system and included in the COP and CV data reported to the Department consists of two items: (1) The costs of styrene purchased from an unaffiliated company; and (2) the costs of styrene

purchased from its affiliate, Resirene. Negromex explains that it engages in a joint purchasing arrangement with Resirene under which Resirene purchases styrene from unaffiliated suppliers and resells it to Negromex. According to Negromex, Resirene's sales of styrene to Negromex are not included in Resirene's total sales and the costs are not included in the company's cost of sales, as they are merely pass-through transactions. Accordingly, Negromex contends that it would be inappropriate to include G&A expenses of Resirene to Negromex's purchases of styrene from Resirene.

DOC Position

We agree with the petitioners. In Section D of the Department's questionnaire, we instructed Negromex to identify inputs that the company receives from affiliated parties. *See* the Department's May 21, 1998, questionnaire at D–3. In its questionnaire response, Negromex stated that "[a]ll raw materials, service (water, electricity, and natural gas) and subcontractor inputs are purchased from non-affiliated parties. There were no purchases of any inputs used in the production or manufacture of ESBR 1502 or 1712 from affiliated parties" *See* Negromex's September 22, 1998, Section D response at D6. However, as noted above, we found at verification that Negromex purchased a portion of styrene used in the production of ESBR from Resirene.

Section 773(f)(3) of the Act provides that, if transactions between affiliated parties involve a major input, then the Department may value the major input based on cost of production if the cost is greater than the amount (higher of transfer price or market price) that would be determined under section 773(f)(2). Under this provision, the Department is required to review purchases from affiliated parties of major inputs in order to determine that they reasonably reflect a fair market value. In this instance, Negromex failed to provide information regarding its purchases of styrene from Resirene in its questionnaire responses, thus precluding the Department from adequately addressing this issue prior to verification. Furthermore, at verification, the information Negromex presented to the Department was insufficient to verify that Negromex's purchases of styrene from Resirene were at fair market value. Specifically, we were unable to review source documentation substantiating Negromex's claim that its styrene purchases from Resirene are merely "pass-through" transactions.

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsections 782(d) and (e), use facts otherwise available in reaching the applicable determination. In addition, section 776(b) provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information.

As detailed above, Negromex withheld information concerning its purchases of styrene from an affiliated party in its questionnaire responses. Moreover, Negromex did not disclose this information at the start of verification, but rather it was discovered by the Department during verification, as described in the verification report. *See* Department's January 6, 1999, Cost Verification Report at 4. Under these circumstances, we were unable to obtain sufficient information needed to apply the major input rule, because, as described above, the information provided about Resirene at verification was not verified. Thus, we determine that use of partial facts available is appropriate in valuing the cost of styrene in our calculation of cost of production and constructed value. Furthermore, because Negromex failed to comply with the Department's request for information regarding purchases of inputs from affiliated parties, we find that it failed to cooperate to the best of its ability in providing this information, and therefore, adverse inferences are warranted. This is consistent with the Department's practice of applying adverse facts available when certain requested information is withheld by an interested party in its questionnaire response, but discovered at verification. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile*, 63 FR 56613, 56620 (October 22, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain*, 63 FR 40391, 40396 (July 29, 1998). As facts available, we adjusted Negromex's reported direct materials cost by increasing the cost of the portion of styrene purchased from Resirene by the amount of Resirene's G&A expenses as computed from the company's 1997 financial statements. *See* Cost of Production and Constructed Value Calculation Adjustments for the Final Determination Memorandum, dated March 19, 1999.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of ESBR from Mexico that are entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date of publication of our preliminary determination in the **Federal Register**. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted average margin percentage
Negromex	33.01
All Others	33.01

Pursuant to section 735(c)(5)(A) of the Act, the Department has excluded any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act, from the calculation of the "All Others Rate."

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO)

of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 777(i) of the Act.

Dated: March 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99-7527 Filed 3-26-99; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B

WITNESSES APPEARING AT THE COMMISSION'S HEARING

B-1

CALENDAR OF PUBLIC HEARINGS

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

Subject: CERTAIN EMULSION STYRENE-BUTADIENE RUBBER FROM BRAZIL, KOREA, AND MEXICO

Invs. Nos.: 731-TA-794-796 (Final)

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

Sessions were held in connection with these investigations in the Main Hearing Room, 500 E Street, SW, Washington, DC.

OPENING REMARKS

Petitioners (**Donald L. Morgan**, Cleary, Gottlieb, Steen & Hamilton)
Respondents (**Irwin P. Altschuler**, Manatt, Phelps & Phillips)

In Support of the Imposition of Antidumping Duties:

Cleary, Gottlieb, Steen & Hamilton
Washington, DC
on behalf of

Ameripol Synpol Corp.
DSM Copolymer

William D. Spence, Chief Operating Officer, Ameripol Synpol Corp.

C. Randall Beskow, Corporate Controller, Ameripol Synpol Corp.

David Halter, Director, Worldwide Sales, Ameripol Synpol Corp.

Peter H. Lam, Director, Strategic Planning, Ameripol Synpol Corp.

David M. Lange, Research Manager, Polymeric Materials R&D, Ameripol Synpol Corp.

Didier Begat, Vice President, SBR, DSM Copolymer

P. Dodd May, Director, Sales & Marketing, SBR, DSM Copolymer

B-3

In Support of the Imposition of Antidumping Duties--Continued:

Michael W. Davis, Manager, Accounting and Finance, DSM Copolymer

Bruce Malashevich, President, Economic Services, Inc.

Ian Gray, Economist, Economic Services, Inc.

Bruce Lambillotte, Project Manager, Technical Consulting, Smithers Scientific Services, Inc.

Donald L. Morgan)--OF COUNSEL

In Opposition to the Imposition of Antidumping Duties:

PANEL 1

Frederick L. Ikenson, P.C.
Washington, DC
on behalf of

Cooper Tire & Rubber Company

Keith L. Jolliff, Vice President, Purchasing

William C. Jones, Manager, Research & Technology

Michael D. Bradley, Professor of Economics, George Washington University

Frederick L. Ikenson)--OF COUNSEL

In Opposition to the Imposition of Antidumping Duties--Continued:

PANEL 2

Neville, Peterson & Williams
Washington, DC
on behalf of

American Synthetic Rubber Corp.
Michelin North America, Inc.

Paul Serridge, President, American Synthetic Rubber Corp.

Robert Webster, Vice President, Purchasing, American Synthetic Rubber Corp.

George W. Thompson)--OF COUNSEL

Baker & Hostetler
Washington, DC
on behalf of

Oliver Rubber Company

James R. Osborne, Vice President-Technical and Development

Luis Arri)--OF COUNSEL

Cameron & Hornbostel
Washington, D.C.
on behalf of

Petroflex Industria e Comercio S.A. ("Petroflex")

Maria Locatelli, Commercial Manager - Basic Products

William K. Ince)--OF COUNSEL

In Opposition to the Imposition of Antidumping Duties--Continued:

PANEL 2–Continued

Shearman & Sterling
Washington, DC
on behalf of

Korea Kumho Petrochemical Company, Ltd.

James L. Palombo, Senior Product Chemist, Commercial Product Development, Kumho Technical Center

Thomas B. Wilner)--OF COUNSEL

Barnes & Thornburg
Washington, D.C.
on behalf of

Intertex World Resources, Ltd.

Robert D. Calderwood, Senior Vice President

Jim Keating, Senior Buyer, Polymers, Corporate Purchasing Department, Bridgestone/Firestone, Inc.

David F. Lawson, Section Manager, Polymer Synthesis, Bridgestone/Firestone, Inc.

Randolph J. Stayin)--OF COUNSEL

In Opposition to the Imposition of Antidumping Duties--Continued:

PANEL 2–Continued

Manatt Phelps Phillips
Washington, DC
on behalf of

Industrias Negromex, S.A. de C.V.
GIRSA, Inc.

Jose Manuel Miller, Commercial Director

Seth Kaplan, Charles River Associates

Irwin P. Altschuler)–OF COUNSEL

CLOSING REMARKS

Petitioners (**Donald L. Morgan**, Cleary, Gottlieb, Steen & Hamilton)
Respondents (**Thomas B. Wilner**, Shearman & Sterling)

APPENDIX C

SUMMARY TABLES

C-1

Table C-1
ESBR: Summary data concerning the U.S. market, 1996-98

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

Item	Reported data			Period changes		
	1996	1997	1998	1996-98	1996-97	1997-98
U.S. consumption quantity:						
Amount	1,214,616	1,261,509	1,199,884	-1.2	3.9	-4.9
Producers' share[1]	93.5	88.8	87.7	-5.8	-4.7	-1.1
Importers' share[1]						
Brazil	***	***	***	***	***	***
Korea	***	***	***	***	***	***
Mexico	***	***	***	***	***	***
Subtotal	6.1	10.1	11.1	5.0	4.0	1.0
Other sources	0.5	1.1	1.2	0.8	0.6	0.1
Total imports	6.5	11.2	12.3	5.8	4.7	1.1
U.S. consumption value:						
Amount	513,667	506,642	428,407	-16.6	-1.4	-15.4
Producers' share[1]	93.0	89.5	88.6	-4.4	-3.5	-0.9
Importers' share[1]						
Brazil	***	***	***	***	***	***
Korea	***	***	***	***	***	***
Mexico	***	***	***	***	***	***
Subtotal	6.5	9.4	10.0	3.6	2.9	0.7
Other sources	0.5	1.1	1.3	0.8	0.6	0.2
Total imports	7.0	10.5	11.4	4.4	3.5	0.9
U.S. imports from-- Brazil:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory	***	***	***	***	***	***
Korea:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory	***	***	***	***	***	***
Mexico:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory	***	***	***	***	***	***
Subtotal:						
Quantity	73,843	127,376	133,075	80.2	72.5	4.5
Value	33,229	47,435	43,035	29.5	42.8	-9.3
Unit value	$0.45	$0.37	$0.32	-28.1	-17.2	-13.2
Ending inventory	12,213	26,729	13,526	10.7	118.9	-49.4
Other sources:						
Quantity	5,674	13,938	14,643	158.1	145.6	5.1
Value	2,493	5,648	5,648	126.6	126.6	0.0
Unit value	$0.44	$0.41	$0.39	-12.2	-7.8	-4.8
Ending inventory	504	866	616	22.2	71.8	-28.9

Table continued on next page - -

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

Item	Reported data			Period changes		
	1996	1997	1998	1996-98	1996-97	1997-98
U.S. imports from - - All sources:						
Quantity	79,517	141,314	147,718	85.8	77.7	4.5
Value	35,722	53,083	48,683	36.3	48.6	-8.3
Unit value	$0.45	$0.38	$0.33	-26.6	-16.4	-12.3
Ending inventory	12,717	27,595	14,142	11.2	117.0	-48.8
U.S. producers':						
Average capacity quantity	1,386,666	1,410,500	1,410,500	1.7	1.7	0.0
Production quantity	1,279,449	1,232,796	1,137,914	-11.1	-3.6	-7.7
Capacity utilization [1]	92.3	87.4	80.7	-11.6	-4.9	-6.7
U.S. shipments:						
Quantity	1,135,099	1,120,195	1,052,166	-7.3	-1.3	-6.1
Value	477,945	453,559	379,724	-20.6	-5.1	-16.3
Unit value	$0.42	$0.40	$0.36	-14.3	-3.8	-10.9
Export shipments:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Ending inventory quantity	141,284	145,711	127,700	-9.6	3.1	-12.4
Inventories/total shipments [1]	***	***	***	***	***	***
Production workers	1,140	1,084	1,008	-11.6	-4.9	-7.0
Hours worked (*1,000 hours*)	2,036	1,949	1,895	-6.9	-4.3	-2.8
Wages paid (*1,000 dollars*)	38,940	39,127	40,896	5.0	0.5	4.5
Hourly wages	$19.13	$20.08	$21.58	12.8	5.0	7.5
Productivity (*lbs. per hour*)	628.4	632.5	600.5	-4.4	0.7	-5.1
Unit labor costs	$0.03	$0.03	$0.04	18.1	4.3	13.2
Net sales:						
Quantity	***	***	***	***	***	***
Value	***	***	***	***	***	***
Unit value	***	***	***	***	***	***
Cost of goods sold (COGS)	***	***	***	***	***	***
Gross profit or (loss)	***	***	***	***	***	***
SG&A expenses	***	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***	***
Capital expenditures	***	***	***	***	***	***
Unit COGS	***	***	***	***	***	***
Unit SG&A expenses	***	***	***	***	***	***
Unit operating income or (loss)	***	***	***	***	***	***
COGS/sales [1]	***	***	***	***	***	***
Operating income or (loss)/sales [1]	12.1	2.2	(6.2)	-18.3	-9.8	-8.4

[1] "Reported data" are in percent and "period changes" are in percentage points.

Note.–Financial data are reported on a fiscal year basis and may not necessarily be comparable to data reported on a calendar year basis. In addition, financial data is for trade operations only.

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

Figure C-1
ESBR: U.S. shipments of U.S. producers and U.S. imports from Brazil, Korea, and Mexico, 1996-98

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Table C-2
ESBR plus CBMB: Summary data concerning the U.S. market, 1996-98

* * * * * * *

Table C-3
ESBR plus CBMB plus SSBR: Summary data concerning the U.S. market, 1996-98

* * * * * * *

Table C-4
U.S. consumption of certain synthetic and natural rubber, 1996-98

Item	1996	1997	1998
		Quantity (*1,000 pounds*)	
ESBR	1,214,616	1,261,509	1,199,884
SSBR	***	***	***
CBMB	***	***	***
Natural Rubber[1]	1,335,703	1,503,014	1,689,031
Total	3,272,160	3,519,635	3,632,144
		Value (*1,000 dollars*)	
ESBR	513,667	506,642	428,407
SSBR	***	***	***
CBMB	***	***	***
Natural Rubber[1]	887,785	825,104	670,012
Total	1,725,343	1,673,460	1,409,412
		Share of quantity (*percent*)	
ESBR	37.1	35.8	33.0
SSBR	***	***	***
CBMB	***	***	***
Natural Rubber[1]	40.8	42.7	46.5
Total	100.0	100.0	100.0
		Share of value (*percent*)	
ESBR	29.8	30.3	30.4
SSBR	***	***	***
CBMB	***	***	***
Natural Rubber[1]	51.5	49.3	47.5
Total	100.0	100.0	100.0
		Unit value (*per pound*)	
ESBR	$0.42	$0.40	$0.36
SSBR	***	***	***
CBMB	***	***	***
Natural Rubber[1]	0.66	0.55	0.40
Total	0.53	0.48	0.39

[1] This is the combination of natural rubber provided for in HTSUS statistical reporting numbers 4001.22.0005 (technically specified natural rubber Grade 5) and 4001.22.0025 (technically specified natural rubber Grade 20) that nearly all of the natural rubber used in tire manufacturing is reported under.

Source: Tables C-1, C-2, C-3, and official statistics of the Dept. of Commerce.

C-6

APPENDIX D

PURCHASERS' SOURCES OF ESBR BY COUNTRY

D-1

Table D-1
Purchasers' sources of ESBR by country

* * * * * * *

APPENDIX E

SHIPMENTS OF TIRES IN THE UNITED STATES

E-1

Table E-1
Tire shipments in the United States, by type, and U.S. consumption of certain synthetic and natural rubber, 1996-98

Type	1996		1997		1998	
	Replace-ment	OE	Replace-ment	OE	Replace-ment	OE
			Quantity (in *1,000 tires*)			
Tire shipments:-						
Passenger tires	175,000	57,000	178,000	57,500	184,000	57,500
Light truck tires	27,300	5,900	29,200	6,000	30,500	6,800
Medium truck tires	11,800	4,300	12,700	500	13,200	600
Heavy truck tires	270	84	270	107	260	115
Off-the-road tires	150	73	160	80	165	83
U.S. total shipments	214,520	67,357	220,330	64,187	228,125	65,098
			Quantity (*1,000 pounds*)			
Total U.S. consumption of--						
ESBR	1,214,616		1,261,509		1,199,884	
SSBR	***		***		***	
CBMB	***		***		***	
Natural rubber[1]	1,335,703		1,503,014		1,689,031	
Total	3,272,160		3,519,635		3,632,144	

[1] This is the combination of natural rubber provided for in HTSUS statistical reporting numbers 4001.22.0005 (technically specified natural rubber Grade 5) and 4001.22.0025 (technically specified natural rubber Grade 20) that account for nearly all of the natural rubber used in tire manufacturing.

Source: Table C-4 and the January 1999 issue of *Modern Tire Dealer*.

E-3

APPENDIX F

COMPAS PRESENTATION

F-1

ASSUMPTIONS

The COMPAS model is a supply and demand model that assumes that domestic and imported products are less than perfect substitutes. Such models, also known as Armington models, are relatively standard in applied trade policy analysis and are used extensively for the analysis of trade policy changes both in partial and general equilibrium. Based on the discussion contained in Part II of this report, the staff selects a range of estimates that represent price-supply, price-demand, and product-substitution relationships (i.e., supply elasticity, demand elasticity, and substitution elasticity) in the U.S. ESBR market. The model uses these estimates with data on market shares, Commerce's estimated margins of dumping, transportation costs, and current tariffs to analyze the likely effect of unfair pricing of subject imports on the U.S. domestic like product industry.

FINDINGS[1]

Estimated effects of the LTFV imports from Brazil on the U.S. ESBR industry are as follows: *** percent to *** percent reduction in revenue, *** percent to *** percent reduction in output, and *** percent to *** percent reduction in price. Estimated effects of the LTFV imports from Korea on the U.S. ESBR industry are as follows: *** percent to *** percent reduction in revenue, *** percent to *** percent reduction in output, and *** percent to *** percent reduction in price. Estimated effects of the LTFV imports from Mexico on the U.S. ESBR industry are as follows: *** percent to *** percent reduction in revenue, *** percent to *** percent reduction in output, and *** percent to *** percent reduction in price. Estimated effects of the LTFV imports from Brazil, Korea, and Mexico combined on the U.S. ESBR industry are as follows: 3.6 percent to 7.7 percent reduction in revenue, 2.5 percent to 5.8 percent reduction in output, and 0.7 percent to 2.6 percent reduction in price.

More detailed estimated effects of the dumping and the modeling assumptions used for the full range of scenarios are shown in tables F-1, F-2, F-3, and F-4. The first table shows the effects of those imports which were exported by the Brazilian company subject to Commerce's company specific margin (Commerce provided two dumping margins but all imports into the United States come from one company). Commerce found two margins for Korean firms trading at LTFV, 16.65 percent and 118.88 percent. The effects of these margins are presented separately in tables F-2 and F-3. Table F-2 shows the impact of the firms that exported at the 16.65 percent margin. Table F-3 shows the impact of the firm that exported at the 118.88 percent margin. Commerce found a single dumping margin for imports from Mexico. The effects of these margins are presented in table F-4.

Table F-1
The effects of LTFV pricing of imports from Brazil by Petroflex

* * * * * * *

Table F-2
The effects of LTFV pricing of imports from Korea by Kumho

* * * * * * *

[1] Estimates are based on 1997 data, the year which corresponds closest with Commerce's period of investigation April 1997-March 1998.

F-3

Table F-3
The effects of LTFV pricing of imports from Korea by Hyundai

* * * * * * *

Table F-4
The effects of LTFV pricing of imports from Mexico by Negromex

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APPENDIX G

SUMMARY OF U.S. PRODUCERS' ORIGINAL INCOME-AND-LOSS DATA BEFORE ADJUSTMENTS

Table G-1
Results of operations of U.S. producers on their operations producing ESBR (based on original submissions), fiscal years 1996-98

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G-3

APPENDIX H

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

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

Actual Negative Effects

Ameripol Synpol "***."

DSM "***."

Goodyear "***."

American Synthetic "***."

Firestone "***."

Anticipated Negative Effects

Ameripol Synpol "***."

DSM "***."

Goodyear "***."

American Synthetic "***."

Firestone "***."

Impact of imports of ESBR on CBMB and/or SSBR

Ameripol Synpol "***."

DSM "***."

Goodyear "***."

American Synthetic "***."

Firestone "***."

APPENDIX I

WORLD PRODUCTION CAPACITY FOR ESBR AND SSBR

I-1

Table I-1
Emulsion styrene-butadiene rubber: World production capacity, 1996-98[1]

(In *metric tons*)

Country	Firms	Total capacity		
		1996	1997	1998
Argentina	1	53,500	53,500	53,500
Australia	1	35,000	35,000	35,000
Brazil	2	241,500	265,000	271,000
Bulgaria	1	20,000	20,000	20,000
Canada	1	20,000	20,000	20,000
Commonwealth of Independent States	6	690,000	690,000	690,000
Czech Republic	1	75,000	75,000	73,000
France	3	169,000	169,000	169,000
Germany	1	75,000	75,000	75,000
India	2	44,750	44,750	75,000
Iran	1	0	0	50,000
Italy	1	120,000	120,000	120,000
Japan	4	530,000	530,000	530,000
Korea [2]	2	190,000	247,000	250,000
Mexico	1	64,000	74,500	74,500
Netherlands	1	85,000	85,000	85,000
People's Republic of China	2	120,000	120,000	120,000
Poland	1	112,000	112,000	112,000
Romania	1	100,000	100,000	100,000
South Africa	1	32,000	32,000	32,000
Taiwan	1	100,000	100,000	105,000
Turkey	1	27,000	27,000	27,000
United Kingdom	1	90,000	90,000	90,000
United States [3]	4	866,000	866,000	866,000
Yugoslavia	1	40,000	40,000	40,000
World total	42	3,899,750	3,990,750	4,083,000

[1] For purposes of this table, emulsion styrene-butadiene rubber consists of not only 1500- and 1700-series product, but also of 1900-series product and any other series of emulsion styrene-butadiene rubber.
[2]One Korean firm was in operation in 1996.
[3] Three U.S. firms were operating in 1998 as a result of consolidation.

Source: IISRP, Worldwide Rubber Statistics, 1998.

I-3

Table I-2
SSBR: World production capacity, 1996-98

(In *metric tons*)

Country	Number of firms	Total capacity		
		1996	1997	1998
Belgium	1	20,000	20,000	20,000
Brazil	1	30,000	30,000	30,000
France	2	45,000	55,000	59,000
Italy	1	10,000	10,000	10,000
Japan	4	125,000	125,000	140,000
Korea	1	27,000	27,000	27,000
Mexico	2	45,000	45,000	45,000
Netherlands	1	30,000	30,000	30,000
South Africa	1	18,000	18,000	18,000
Spain	1	50,000	50,000	50,000
Taiwan	1	20,000	20,000	20,000
United Kingdom	1	15,000	15,000	20,000
United States	3	160,000	170,000	370,000
World total	20	595,000	615,000	839,000

Source: IISRP, Worldwide Rubber Statistics, 1998.

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