

UNITED STATES INTERNATIONAL TRADE COMMISSION

NITRILE RUBBER FROM JAPAN  
Investigation No. 731-TA-384 (Review)

DETERMINATION AND VIEWS OF THE COMMISSION  
(USITC Publication No. 3233, September 1999)

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-384 (Review)

NITRILE RUBBER FROM JAPAN

## DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on nitrile rubber from Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

## BACKGROUND

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

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 10, 1999. The views of the Commission are contained in USITC Publication 3233 (September 1999), entitled *Nitrile Rubber from Japan: Investigation No. 731-TA-384 (Review)*.

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

## VIEWS OF THE COMMISSION

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

### I. BACKGROUND

In June 1988, the Commission determined that an industry in the United States was materially injured by reason of imports of nitrile rubber from Japan that were sold at less than fair value.<sup>1</sup> In that same month, the Department of Commerce issued an antidumping duty order on imports of nitrile rubber from Japan.<sup>2</sup> The Commission instituted this five-year review on April 1, 1999.<sup>3</sup>

In five-year reviews, the Commission initially determines whether to conduct a full review (which would include a public hearing, the issuance of questionnaires, and other procedures) or an expedited review, as follows. First, the Commission determines whether individual responses to the notice of institution are adequate. Second, based on those responses deemed individually adequate, the Commission determines whether the collective responses submitted by two groups of interested parties -- domestic interested parties (producers, unions, trade associations, or worker groups) and respondent interested parties (importers, exporters, foreign producers, trade associations, or subject country governments) -- demonstrate a sufficient willingness among each group to participate and provide information requested in a full review.<sup>4</sup> If the Commission finds the responses from either group of interested parties to be inadequate, the Commission may determine, pursuant to section 751(c)(3)(B) of the Act, to conduct an expedited review unless it finds that other circumstances warrant a full review.

In this review, one domestic producer, Zeon Chemicals L.P. (“Zeon”), filed a response to the notice of institution. No other domestic producer, foreign producer, U.S. importer, or other interested party responded to the Commission’s notice of institution. On July 2, 1999, the Commission determined that the domestic and respondent interested party group responses were both inadequate.<sup>5</sup> Pursuant to section

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<sup>1</sup> Nitrile Rubber from Japan, Inv. No.731-TA-384 (Final), USITC Pub. 2090 (June 1988) (“Original Det.”).

<sup>2</sup> 53 Fed. Reg. 22553 (June 16, 1988).

<sup>3</sup> 64 Fed. Reg. 15788 (Apr. 1, 1999).

<sup>4</sup> See 19 C.F.R. § 207.62(a); 63 Fed. Reg. 30599, 30602-05 (June 5, 1998).

<sup>5</sup> 64 Fed. Reg. 38475, 38476 (July 16, 1999). The Commission split evenly regarding the adequacy of the individual domestic producer response submitted by Zeon. Vice Chairman Miller and Commissioners Hillman and Koplan determined that the individual response submitted by Zeon was adequate. They nonetheless found that the domestic interested party group response was inadequate because Zeon accounted for a small percentage of overall domestic production in 1998. In reaching this conclusion, they examined Zeon’s production alone and did not include in this total any production of DSM Copolymer, Inc. Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Review), Explanation of Commission Determination on Adequacy.

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

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751(c)(3)(B) of the Act,<sup>6</sup> the Commission voted to conduct an expedited review of this antidumping duty order.

No interested party filed written comments pursuant to 19 C.F.R. § 207.62(d) in this review. However, in its response to the notice of institution, Zeon asserted that revocation of the antidumping duty order on nitrile rubber from Japan would be likely to lead to a recurrence of material injury to the domestic industry within a reasonably foreseeable time.<sup>7</sup>

## II. DOMESTIC LIKE PRODUCT AND INDUSTRY

### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”<sup>8</sup> The Act defines “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.”<sup>9</sup> In its final five-year review determination, Commerce defined the subject merchandise as:

butadiene acrylonitrile copolymer synthetic rubber (“nitrile rubber”) not containing fillers, pigments, or rubber-processing chemicals from Japan. Nitrile rubber refers to synthetic rubber that is made from the polymerization of butadiene and acrylonitrile, and that does not contain any type of additive or compounding ingredient having a function in processing, vulcanization, or end use of the product. Latex rubber is excluded from this order.<sup>10</sup>

Nitrile rubber is a synthetic rubber used as an intermediate product in the production of gaskets, oil seals, shoe soles, industrial belting, and other specialty rubber products.<sup>11</sup> Nitrile rubber is characterized by being highly resistant to petroleum chemicals and by superior flexibility at low temperatures.<sup>12</sup> The degree to which a nitrile rubber product exhibits both of these characteristics depends on its acrylonitrile content.

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<sup>5</sup> (...continued)

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

<sup>6</sup> 19 U.S.C. § 1675(c)(3)(B).

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

<sup>8</sup> 19 U.S.C. § 1677(4)(A).

<sup>9</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), *aff’d*, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 96-249 at 90-91 (1979).

<sup>10</sup> 64 Fed. Reg. 42668 (August 5, 1999). Nitrile Rubber is currently classifiable under item number 4002.59.000 of the Harmonized Tariff Schedule (“HTS”) of the United States.

<sup>11</sup> Confidential Staff Report (“CR”), dated August 9, 1999, at I-5; Public Staff Report (“PR”) at I-4-5.

<sup>12</sup> Id.

Nitrile rubbers with a higher acrylonitrile content have an increased resistance to petroleum-based products; those with a lower acrylonitrile content have an increased low temperature flexibility.<sup>13</sup>

In its original determination, the Commission defined the domestic like product as nitrile rubber, as defined above.<sup>14</sup> Zeon -- the only party to file a response in this proceeding -- stated in its response that it agreed with this definition of the domestic like product for this proceeding. None of the additional information collected in this review warrants a departure from that definition. Accordingly, based on the facts available, we define the domestic like product as nitrile rubber.

## B. Domestic Industry

Section 771(4)(A) of the Act defines the relevant industry as the “domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.”<sup>15</sup> Given our finding with respect to the domestic like product, we find that the domestic industry includes all firms that produced nitrile rubber during the period of review: Zeon, DSM Copolymer, Inc., Goodyear Tire & Rubber Co., and Uniroyal Chemical Company, Inc.<sup>16</sup>

In defining the domestic industry in this review, we have considered whether Zeon should be excluded from the domestic industry pursuant to the related parties provision in section 771(4)(B) of the Act.<sup>17</sup> Zeon is a wholly-owned subsidiary of a subject producer, Nippon Zeon, and imported a small volume of subject merchandise in 1998.<sup>18</sup> Therefore, Zeon is a related party. However, we find that appropriate circumstances do not exist to exclude Zeon from the industry. Zeon accounted for approximately \*\*\* percent

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<sup>13</sup> *Id.* at I-5-6, PR at I-5-6.

<sup>14</sup> Original Det. at 4-6.

<sup>15</sup> 19 U.S.C. § 1677(4)(A).

<sup>16</sup> We note that Uniroyal has reportedly ceased all production of nitrile rubber in the United States as of June 1999. CR at I-8, n. 24, PR at I-6, n.24.

<sup>17</sup> 19 U.S.C. § 1677(4)(B). That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers. Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case. *See Sandvik AB v. United States*, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), *aff’d without opinion*, 904 F.2d 46 (Fed. Cir. 1990); *Empire Plow Co. v. United States*, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude such parties include:

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

*See, e.g., Torrington Co. v. United States*, 790 F. Supp. 1161, 1168 (Ct. Int’l Trade 1992), *aff’d without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. *See, e.g., Sebacic Acid from the People’s Republic of China*, Inv. No. 731-TA-653 (Final), USITC Pub. 2793, at I-7 - I-8 (July 1994).

<sup>18</sup> CR at I-8 & I-10, PR at I-6 & I-8..

of aggregate domestic production in 1998.<sup>19</sup> Further, Zeon imported only a small amount of subject merchandise in 1998, equaling only \*\*\* percent of its domestic production of nitrile rubber.<sup>20</sup> Accordingly, based on the record evidence,<sup>21</sup> we find that Zeon’s primary interest lies in domestic production and not in the importation of the subject merchandise and that Zeon should not be excluded from the domestic industry.

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

#### **A. Legal Standard**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping is likely to continue or recur, and (2) the Commission makes a determination that revocation of an order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>22</sup> The Uruguay Round Agreements Act (“URAA”) Statement of Administrative Action (“SAA”) states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo -- the revocation [of the order] . . . and the elimination of its restraining effects on volumes and prices of imports.”<sup>23</sup> Thus, the likelihood standard is prospective in nature.<sup>24</sup> The statute states that “the Commission shall consider that the effects of revocation . . . may not be imminent, but may manifest themselves only over a longer period of time.”<sup>25</sup> According to the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ time frame applicable in a threat of injury analysis [in antidumping and countervailing duty investigations].”<sup>26</sup>

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<sup>19</sup> CR at I-8, PR at I-6.

<sup>20</sup> CR at I-10, n. 28, PR at I-8, n. 28.

<sup>21</sup> The record of this sunset review contains no information on whether Zeon has benefitted from its importations when compared to the rest of the industry.

<sup>22</sup> 19 U.S.C. § 1675a(a).

<sup>23</sup> SAA, H.R. Rep. No. 103-316, Vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry).” SAA at 883.

<sup>24</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

<sup>25</sup> 19 U.S.C. § 1675a(a)(5).

<sup>26</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>27</sup> In analyzing what constitutes a reasonably foreseeable time, Commissioners Crawford and Koplán examine all the current and likely conditions of competition in the relevant industry. They define “reasonably foreseeable time” as the  
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Although the standard in five-year reviews is not the same as the standard applied in original antidumping or countervailing duty investigations, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the order is revoked.”<sup>28</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order under review, and whether the industry is vulnerable to material injury if the order is revoked.<sup>29 30</sup>

Section 751(c)(3) of the Act and the Commission’s regulations provide that in an expedited five-year review the Commission may issue a final determination “based on the facts available, in accordance with section 776.”<sup>31 32</sup> As noted above, only one of four domestic producers and no respondent interested parties

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<sup>27</sup> (...continued)

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

<sup>28</sup> 19 U.S.C. § 1675a(a)(1).

<sup>29</sup> 19 U.S.C. § 1675a(a)(1). The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>30</sup> Section 752(a)(1)(D) of the Act directs the Commission to take into account in five-year reviews involving antidumping proceedings “the findings of the administrative authority regarding duty absorption.” 19 U.S.C. § 1675a(a)(1)(D). Commerce has not issued any duty absorption finding in this case. 64 Fed. Reg. 42668 (Aug. 5, 1999).

<sup>31</sup> 19 U.S.C. § 1675(c)(3)(B); 19 C.F.R. § 207.62(e). Section 776 of the Act, in turn, authorizes the Commission to “use the facts otherwise available” in reaching a determination when: (1) necessary information is not available on the record or (2) an interested party or any other person withholds information requested by the agency, fails to provide such information in the time or in the form or manner requested, significantly impedes a proceeding, or provides information that cannot be verified pursuant to section 782(i) of the Act. 19 U.S.C. § 1677e(a). The statute permits the Commission to use adverse inferences in selecting from among the facts otherwise available when an interested party has failed to cooperate by acting to the best of its ability to comply with a request for information. 19 U.S.C. § 1677e(b). Such adverse inferences may include selecting from information from the record of our original determination and any other information placed on the record. Id.

<sup>32</sup> Chairman Bragg and Commissioners Koplán and Askey note that the statute authorizes the Commission to take adverse inferences in five-year reviews, but emphasize that such authorization does not relieve the Commission of its obligation to consider the record evidence as a whole in making its determination. “[T]he Commission balances all record evidence and draws reasonable inferences in reaching its determinations.” SAA at 869 [emphasis added]. Practically speaking, when only one side has participated in a five-year review, much of the record evidence is supplied by that side, though that data is supplemented with publicly available information. We generally give credence to the facts supplied by the participating parties and certified by them as true, but base our decision on the evidence as a whole, and do not automatically accept the participating parties’ suggested interpretation of the record evidence. Regardless of the level of participation and the interpretations urged by participating parties, the Commission is obligated to consider all evidence relating to each of the statutory factors and may not draw adverse inferences that render such analysis superfluous. “In general, the Commission makes determinations by weighing all of the available evidence regarding a multiplicity of factors relating to the domestic industry as a whole and by drawing reasonable inferences from the

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

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

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic industry if the order is revoked, the statute directs the Commission to evaluate all relevant economic factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>33</sup> In performing our analysis under the statute, we have taken into account the following conditions of competition in the U.S. market for nitrile rubber.

First, nitrile rubber is a component of compounds used to produce various rubber products and thus demand for nitrile rubber is derived from consumption of finished rubber articles.<sup>34</sup> Apparent consumption of nitrile rubber was generally comparable in 1996 to that consumed during the original period of investigation.<sup>35</sup> Nevertheless, between 1996 and 1998 apparent consumption of nitrile rubber increased by 17 percent, from 131.4 million pounds in 1996 to 153.1 million pounds in 1998.<sup>36</sup> Moderate growth in demand can be expected through the reasonably foreseeable future.<sup>37</sup>

Second, the domestic industry has become increasingly concentrated. As in the original investigation, there were only four domestic producers during the period of review.<sup>38</sup> However, Uniroyal decreased its domestic production in the United States over the period and, as noted earlier, has ceased all production of nitrile rubber in the United States as of June 1999.<sup>39</sup> Moreover, DSM Copolymer no longer markets its own production. Instead, it has an arrangement with Zeon under which Zeon purchases and resells all of the nitrile rubber DSM produces.<sup>40</sup> Accordingly, all sales of domestic production (to, e.g., distributors, end users, and mixers) are currently made by or through Zeon and Goodyear.

Third, since the original investigation, Japanese production capacity has increased significantly, and a new Japanese producer has entered the market in Japan.<sup>41</sup> Japanese production capacity has more than doubled since the period covered by the original investigation.<sup>42</sup> However, as discussed above, Nippon Zeon -- the Japanese producer that was responsible for nearly all of the subject imports to the United States during

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<sup>32</sup> (...continued)  
evidence it finds most persuasive." Id.

<sup>33</sup> 19 U.S.C. § 1675a(a)(4).

<sup>34</sup> CR at I-14, PR at I-11; Korean Determination at I-2-3.

<sup>35</sup> CR and PR at Table I-3.

<sup>36</sup> CR and PR at Table I-3.

<sup>37</sup> In the recent Korean investigation, petitioners reported that demand generally increases 1 to 2 percent per year. Korean Determination at II-2.

<sup>38</sup> CR at I-7-8, PR at I-6.

<sup>39</sup> CR at I-8, n. 24, PR at I-6, n.24.

<sup>40</sup> CR at I-7, PR at I-6.

<sup>41</sup> CR at I-16, PR at I-13.

<sup>42</sup> CR and PR at Table I-4.

the original investigation -- now owns a nitrile rubber production facility in the United States that accounted for \*\*\* percent of domestic production in 1998.<sup>43</sup> The other large Japanese producer, JSR (Tokyo), exported only minimal amounts of nitrile rubber to the United States during the original period of investigation.<sup>44</sup>

Fourth, non-subject imports have played an increasingly important role in the U.S. nitrile rubber market. Apparent consumption of non-subject imports increased by fifty-five percent during the period from 1996 to 1998, while their market share increased by nearly fifteen percentage points during that same period.<sup>45</sup> Moreover, the increasingly important role of non-subject imports in the market reflects, in part, sourcing decisions made by members of the domestic industry. For example, during the period from 1996 to 1998, Uniroyal has relied increasingly upon imports from Mexico in place of its own domestic production to supply its U.S. customers.<sup>46</sup> Imports of nitrile rubber from Mexico have grown in recent years and the limited record data indicate that average unit values of nitrile rubber imports from Mexico have been consistently below those of any other country.<sup>47</sup>

The limited record in this review also indicates that the subject imports and the domestic like product are likely to be used interchangeably,<sup>48</sup> indicating that there is at least a moderate level of substitutability between the domestic and subject merchandise. In addition, the record also indicates that price is a significant factor in purchasing decisions for nitrile rubber.<sup>49</sup> However, a number of conditions of sale (e.g., discounts, rebates, lead times between order and delivery, and payment terms) are also important in the purchase decision.<sup>50</sup> Finally, the limited record in this review indicates that nitrile rubber prices are directly affected by the prices of the primary inputs in the production of nitrile rubber, acrylonitrile and butadiene. In fact, contract prices are directly linked to the prices of those products.<sup>51</sup>

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the order under review is revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>52</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for

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<sup>43</sup> CR at I-7-8, PR at I-6. The facility is that formerly owned by B.F. Goodrich, a member of the domestic industry during the original investigation. Id.

<sup>44</sup> CR at I-16, PR at I-13. The new Japanese producer, Shimutzu, only accounts for \*\*\* percent of Japanese production capacity. Id.

<sup>45</sup> CR and PR at Table I-3.

<sup>46</sup> Korean Determination at 9.

<sup>47</sup> Korean Determination at 9.

<sup>48</sup> CR at I-6-7, PR at I-5.

<sup>49</sup> Korean Determination at 11.

<sup>50</sup> Korean Determination at 11.

<sup>51</sup> Korean Determination at 12.

<sup>52</sup> 19 U.S.C. § 1675a(a)(2).

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.<sup>53</sup>

In its original determination, the Commission found that the volume and market share of the subject imports from Japan had been significant and increasing during the period of investigation.<sup>54</sup> In particular, the Commission found that the volume of the subject imports had increased by more than ten percent from 1984 to 1987 and by more than twenty percent from 1985 to 1987. Moreover, the Commission found that the subject imports had increased their market share in the United States by more than ten percent from 1984 to 1987.<sup>55</sup> The Commission also noted that the effect of the subject imports was magnified by a decline in consumption that occurred in the market during the period of investigation and that these volume increases had been accompanied by vast increases in subject inventories, which indicated that the subject producers had the ability to increase their presence in the U.S. market.<sup>56</sup>

In this review, several factors lead us to conclude that subject import volumes are not likely to be significant if the order is revoked. First, although the subject producers have more than doubled their capacity since the original period of investigation, they are now operating at very high capacity utilization rates.<sup>57</sup> The record also suggests that the Japanese producers made these substantial capacity additions in order to serve increased demand in their home and third country markets, rather than the U.S. market, especially given that the antidumping duty order was in place in this country during the period in which these increases occurred.

In this regard, it is significant that Nippon Zeon -- the Japanese producer that produced nearly all of the subject merchandise imported into the United States during the original period of investigation -- purchased the U.S. nitrile rubber production facilities of B.F. Goodrich in 1989 and its wholly-owned subsidiary Zeon now produces nitrile rubber domestically.<sup>58</sup> Consequently, there is little incentive for Nippon Zeon to increase its shipments of subject merchandise to the United States significantly if the order were revoked, since such shipments would be in competition with the production of its own subsidiary and with the DSM Copolymer product Zeon has agreed to market.<sup>59</sup> In addition, we find it unlikely that the other large subject producer, JSR, would begin shipping significant volumes of subject merchandise to the United States if the order were revoked, given that it did not export significant volumes to the United States even during the original period of investigation.<sup>60</sup>

Second, the limited record of this review suggests that the Japanese producers have substantial amounts of nitrile rubber in inventory in Japan.<sup>61</sup> However, the record also indicates that these inventories have remained relatively stable since December 1996 and that these high inventory levels have not resulted in a substantial shift in Japanese export patterns. Thus, while existing inventory levels might suggest that the

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<sup>53</sup> 19 U.S.C. § 1675a(a)(2)(A)-(D).

<sup>54</sup> Original Det. at 10.

<sup>55</sup> Original Det. at 11.

<sup>56</sup> Original Det. at 11-12.

<sup>57</sup> The capacity levels of the subject producers increased from \*\*\* million pounds in 1987, the last year of the original period of investigation, to 189.9 million during 1996 through 1998. CR at Table I-4. The subject producers operated at a capacity utilization rate of more than 87 percent in 1996 and 1997. Id.

<sup>58</sup> CR at I-7-8, PR at I-6.

<sup>59</sup> Zeon and DSM Copolymer have entered into an agreement under which Zeon will purchase and sell all of DSM's Copolymer's nitrile rubber production, CR at I-7-8, PR at I-6. In addition, the limited available record indicates that Nippon Zeon is operating at very high capacity utilization rates (in excess of \*\*\* percent), CR and PR at Table I-4, n. 1.

<sup>60</sup> CR at I-16, PR at I-13.

<sup>61</sup> CR at I-17, n. 39, PR at I-13, n. 39.

Japanese producers have the ability to increase shipments somewhat, the consistent levels at which inventories are maintained suggests that they are not likely to do so.

Third, there are no reported tariff or non-tariff barriers to trade in countries other than the United States for nitrile rubber exports from Japan.<sup>62</sup> Indeed, the Japanese producers have shipped the large bulk of their production not consumed in their home market to third-country markets other than the United States.<sup>63</sup> There is no basis to conclude that this pattern is likely to change in the reasonably foreseeable future.

Finally, the record indicates that two Japanese producers, Nippon Zeon and JSR, have the ability to shift at least some production capacity from the production of non-subject merchandise to the production of nitrile rubber.<sup>64</sup> However, we do not find that this is likely to happen within the reasonably foreseeable future.

As we note above, it is unlikely that Nippon Zeon would shift production to nitrile rubber for the purpose of increasing its shipments to the United States because these shipments would be competing in significant part with those of Zeon, its U.S. subsidiary. Similarly, although JSR may have the ability to undertake this sort of production shifting, we find that JSR is not likely to do so because it has not exported significant volumes of merchandise to the United States previously.

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

#### **D. Likely Price Effects of Subject Imports**

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared with domestic like products and whether the subject imports are likely to enter the United States at prices that would have a significant depressing or suppressing effect on the prices of domestic like products.<sup>65</sup>

In its original determination, the Commission found that the subject imports from Japan had significant price effects.<sup>66</sup> The Commission found that the subject imports had consistently undersold, by wide margins, the domestic merchandise during the period of investigation and that both domestic and Japanese prices had exhibited significant declines during the period.<sup>67</sup> The Commission also noted that the average unit prices of the subject merchandise were consistently below those of non-subject imports and that the Japanese products were the price leaders in the U.S. market.<sup>68</sup> Finally, the Commission noted that the large number of confirmed lost sales and revenues allegations evidenced the adverse price effects of the subject imports.<sup>69</sup>

There is a limited amount of information available with respect to price competition between the subject and domestic merchandise in this review. The limited record indicates that price is an important factor

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<sup>62</sup> CR at I-17, PR at I-13.

<sup>63</sup> CR and PR at Table IV-4.

<sup>64</sup> CR at I-16, PR at I-13.

<sup>65</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that “[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices.” SAA at 886.

<sup>66</sup> Original Det. at 12.

<sup>67</sup> Original Det. at 12.

<sup>68</sup> Original Det. at 13.

<sup>69</sup> Original Det. at 13.

in the purchase decision<sup>70</sup> and that there is at least a moderately high level of substitutability between the domestic merchandise and the subject imports.<sup>71</sup> Although these facts might suggest that the subject imports could have an adverse effect on domestic prices, we find that, overall, the subject merchandise will not have significant adverse effects on domestic prices within a reasonably foreseeable time.

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

Moreover, even if the subject imports re-enter the market to some degree, it is not likely that they would have a significant adverse effect on domestic prices in this market if the order were revoked. First, movements in the price of nitrile rubber in the U.S. market are directly affected by movements in the price of acrylonitrile and butadiene, the primary raw materials for nitrile rubber.<sup>72</sup> Second, non-subject imports are a significant and increasing presence in the U.S. market for nitrile rubber. In 1998, non-subject imports accounted for approximately fifty-seven percent of the market.<sup>73</sup> Finally, to the extent that Nippon Zeon ships merchandise to the U.S. market, we find that the relationship between the two firms makes it unlikely that Nippon Zeon will undersell the merchandise marketed by its subsidiary, Zeon.

Given the influence of raw material prices on domestic prices, the significant presence of non-subject imports in the U.S. market, Nippon Zeon's relationship with the domestic producer Zeon, and our finding that the increase in the volume of the subject imports would not be significant, we find that it is not likely that the subject imports would undersell the domestic merchandise significantly or enter the United States at prices that would have significant depressing or suppressing effects on the prices for the domestic like product if the order is revoked.

#### **E. Likely Impact of Subject Imports**

In evaluating the likely impact of imports of subject merchandise if the order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>74</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>75</sup> As instructed by the statute, we have considered the extent to which any

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<sup>70</sup> Korean Determination at 11.

<sup>71</sup> CR at I-6-7, PR at I-5; Korean Determination at 11.

<sup>72</sup> As we found in the recently completed antidumping investigation covering nitrile rubber from Korea, the price of the raw materials directly affects nitrile rubber prices because contract prices for nitrile rubber are linked to the prices of these materials. Korean Determination at 12.

<sup>73</sup> CR and PR at Table I-3.

<sup>74</sup> 19 U.S.C. § 1675a(a)(4).

<sup>75</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that "the Commission may consider the magnitude of the margin of dumping" in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the "magnitude of the margin of dumping" to be used by the Commission in five-year reviews as "the dumping margin  
(continued...)

improvement in the state of the domestic industry is related to the antidumping duty order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>76</sup>

In its original determination, the Commission found that the domestic industry was materially injured by reason of the subject imports.<sup>77</sup> It found that the industry's financial indicators declined significantly during the original period of investigation, including its revenue, profitability, employment, and production levels.<sup>78</sup> The Commission found that the significant and increasing volume and market penetration of the subject imports, coupled with the decline in prices for the domestic product during most of the period of investigation, significant underselling, and lost sales and revenues, indicated that the domestic industry was materially injured by reason of the subject imports.<sup>79</sup>

The record of this review provides a mixed picture with regard to the state of the industry's health and any improvement in the industry's condition since the antidumping duty order was issued in 1988. For example, the domestic industry's overall share of the U.S. market for nitrile rubber has declined significantly since 1987, the last year of the original period of investigation.<sup>80</sup> Moreover, its market share has decreased significantly even during the recent period from 1996 to 1998.<sup>81</sup> Similarly, the industry's production, shipments, and sales revenue levels have declined significantly since the original period of investigation.<sup>82</sup> The industry's production, shipment and revenue levels declined as well during the period from 1996 to 1998, despite the fact that apparent U.S. consumption increased during the same period.<sup>83</sup> At the same time, however, other industry indicators have remained stable or improved. For example, the industry's current capacity utilization rates are similar to the levels in existence during the last three years of the original period

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<sup>75</sup> (...continued)

or margins determined by the administering authority under section 1675a(c)(3) of this title." 19 U.S.C. § 1677(35)(C)(iv). *See also* SAA at 887. Under that provision of the statute, Commerce found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at margins of 146.50 percent for all Japanese manufacturers and exporters. 64 Fed. Reg. 42668 (Aug. 5, 1999).

<sup>76</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission "considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports." SAA at 885.

<sup>77</sup> Original Det. at 7.

<sup>78</sup> Original Det. at 7-9.

<sup>79</sup> Original Det. at 10-11.

<sup>80</sup> The industry's share of the market was \*\*\* percent in 1984, \*\*\* percent in 1985, \*\*\* percent in 1986, and \*\*\* percent in 1987. CR and PR at Table I-3. The industry's share of the market was 57.4 percent in 1996, 49.3 percent in 1997, and 43.1 percent in 1998. CR and PR at Table I-3.

<sup>81</sup> *Id.*

<sup>82</sup> The industry's production levels were 132.7 million pounds in 1984, 103.9 million pounds in 1985, 112.6 million pounds in 1986, and 128.7 million pounds in 1988. Its production levels were 99.3 million pounds in 1996, 89.2 million pounds in 1997, and 88.3 million pounds in 1998. CR and PR at Table I-1. The industry's shipments were 109 million pounds in 1984, 97.7 million pounds in 1985, 95.9 million pounds in 1986, and 93 million pounds in 1988. Its shipments were 75.4 million pounds in 1996, 73 million pounds in 1997, and 65.9 million pounds in 1998. CR and PR at Table I-1. The industry's net sales revenues were \$114 million in 1984, \$96.8 million in 1985, \$91.4 million in 1986, and \$96.1 million in 1987. The industry's net sales revenues were \$85.2 million in 1996, \$84.8 million in 1997, and \$72.8 million in 1998. CR and PR at Table I-1.

<sup>83</sup> Total apparent consumption increased from 131 million pounds in 1996 to 153 million pounds in 1998. CR and PR at Table I-3.

of investigation,<sup>84</sup> as are its current employment levels.<sup>85</sup> More importantly, the industry's profitability levels during 1996 to 1998 compare favorably with the levels seen during the last three years of the original period of investigation.<sup>86</sup>

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

We find that the subject imports are not likely to adversely impact the domestic nitrile rubber industry if the antidumping duty order is revoked. We concluded above that revocation of the antidumping duty order is not likely to lead either to significant additional volumes of subject imports or significant price effects. These findings in turn indicate that the subject imports are not likely to have a significant adverse impact on the domestic industry as a whole in the reasonably foreseeable future if the order is revoked. Accordingly, we conclude that revocation of the antidumping order would not be likely to lead to significant declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, or have likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and the domestic industry's development and production efforts within a reasonably foreseeable time.

We reiterate that only one of four domestic producers (representing \*\*\* percent of production) responded to the notice of institution. Thus, most of the industry did not express an interest in maintaining the order and did not provide information concerning the likely effects of revocation. This fact suggests to us that the industry as a whole is indifferent as to the likely effects of revocation of the order on the subject merchandise from Japan.<sup>87</sup> Consequently, we find that the subject imports are not likely to have a significant impact on the domestic industry if the order is revoked.

## CONCLUSION

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

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<sup>84</sup> The industry's capacity utilization rate was 69.0 percent in 1985, 73.2 percent in 1986, and 79.7 percent in 1987. Its capacity utilization rate was 76.1 percent in 1996, 72.7 percent in 1997, and 72.8 percent in 1998. CR and PR at Table I-1.

<sup>85</sup> The number of workers employed by the industry was 264 in 1984, 250 in 1985, 242 in 1986 and 241 in 1987. The number of workers employed by the industry was 272 in 1996, 260 in 1997 and 266 in 1998. CR and PR at Table I-1. The number of hours worked was 549 thousand in 1984, 483 thousand in 1985, 475 thousand in 1986, and 487 thousand in 1987. The number of hours worked was 542 thousand in 1996, 503 thousand in 1997, and 489 thousand in 1998. CR and PR at Table I-1.

<sup>86</sup> The industry's operating income (loss) as a percentage of sales was 13.7 percent in 1984, (0.5) percent in 1985, 6.0 percent in 1986, and 3.8 percent in 1987. Its operating income as a percentage of sales was 7.8 percent in 1996, 4.7 percent in 1997 and 6.7 percent in 1998. CR and PR at Table I-1.

<sup>87</sup> Chairman Bragg and Commissioner Askey base their conclusion on the entirety of the record in this review. They do not base their conclusion on the fact that three of the four members of the domestic industry did not participate in this review. See supra note 32.