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12-VOLT MOTORCYCLE BATTERIES FROM THE REPUBLIC OF KOREA

Determination of the Commission in
Investigation No. 731-TA-434
(Preliminary) Under the Tariff Act
of 1930, Together With
the Information Obtained
in the Investigation



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JULY 1989

United States International Trade Commission
Washington, DC 20436

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Note.--Information that would reveal the confidential operations of the individual concerns may not be published and, therefore, has been deleted from this report.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

Investigation No. 731-TA-434 (Preliminary)

12-VOLT MOTORCYCLE BATTERIES FROM THE REPUBLIC OF KOREA

Determination

On the basis of the record ¹ developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of 12-volt motorcycle batteries, provided for in subheading 8507.10.00 of the Harmonized Tariff Schedule of the United States (previously reported under items 683.01 and 683.05 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 17, 1989, a petition was filed with the Commission and the Department of Commerce by Yuasa-Exide Battery Corp., Reading, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 12-volt motorcycle batteries from the Republic of Korea. Accordingly, effective May 17, 1989, the Commission instituted preliminary antidumping investigation No. 731-TA-434 (Preliminary).

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

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 31, 1989 (54 F.R. 23296). The conference was held in Washington, DC, on June 7, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

On the basis of the information obtained in this preliminary investigation, we unanimously determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of 12-volt motorcycle batteries from Korea that are allegedly sold at less than fair value (LTFV) in the United States.

The standard in preliminary determinations

The Commission is to determine whether, based on the best information available at the time of its preliminary determination, there is a reasonable indication of material injury, threat thereof, or material retardation of establishment of an industry by reason of the subject imports. ^{1/} The Federal Circuit, in American Lamb Co. v. United States, ^{2/} addressed the standard for preliminary determinations. The Court held that the reasonable indication standard requires more than a finding that there is a possibility of material injury, and the Commission is to weigh the evidence it has obtained to determine if that evidence demonstrates that a reasonable indication exists. Conversely, the Court sustained the Commission's practice

^{1/} 19 U.S.C. §§ 1671b(a), 1673b(a). Material retardation is not an issue in this investigation and will not be discussed further. Material injury is "harm that is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

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

that a negative determination is appropriate if "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation." ^{3/}

As discussed below, we find clear and convincing evidence of no material injury or threat thereof to the domestic industry. Furthermore, there is no likelihood that contrary evidence would arise in a final investigation. ^{4/ 5/}

Like product/domestic industry

The threshold inquiry in this investigation is to determine the relevant domestic industry. The term "industry" is defined as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of that product . . ." ^{6/} "Like product" is defined as "[a] product which is like, or in the absence of like, most similar in characteristics and uses with the articles subject to

^{3/} Id. at 1001.

^{4/} In his Additional Views, Vice Chairman Cass describes his understanding of the legal standard applicable to title VII preliminary investigations.

^{5/} Commissioner Eckes refers to his separate views in "Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil", Inv. No. 731-TA-421 (Preliminary), USITC Pub. 2128 (Sept. 1988), in which he addresses his concerns on the appropriate standard for preliminary determinations. Based on the best available information, he finds in this investigation there is clear and convincing evidence of no reasonable indication of material injury or a threat of material injury and no likelihood of contrary evidence in a final investigation.

^{6/} 19 U.S.C. § 1677(4)(A).

investigation." ^{7/} The "articles subject to investigation" consist of the imported merchandise defined in the Commerce Department's notice of investigation.

The imported articles subject to this investigation are 12-volt motorcycle batteries from Korea. The Department of Commerce (Commerce) defines the imported merchandise subject to investigation. ^{8/}

The like product definition is based on the facts of each case. ^{9/} In determining the appropriate like product(s), the Commission has typically considered a number of factors relating to characteristics and uses, including: (1) physical appearance, (2) interchangeability, (3) channels of

^{7/} 19 U.S.C. § 1677(10).

^{8/} Commerce determined that:

[t]he products covered by this investigation are 12-volt motorcycle batteries. Motorcycle batteries are lead-acid batteries which are rated from 2 to 32 ampere hours (10 hour rate) with voltage levels of either 6 or 12 volts. This investigation is limited to 12-volt motorcycle batteries. These batteries are mainly designed for use as replacement batteries for motorcycles, but may, to a very limited extent, be used in snowmobiles, lawnmowers, and other such equipment. Prior to 1987, such merchandise was classified under TSUSA items 683.05 and 683.01. In 1987 and 1988, such merchandise was classified under TSUSA item 683.0110. This merchandise is currently classifiable under HTS item 8507.10.00. 54 Fed. Reg. 24927, 24928 (June 12, 1989).

^{9/} See, e.g., *Asociacion Colombiana de Exportadores de Flores v. United States* (ASOCOFLORES), 693 F.Supp. 1165 (Ct. Int'l Trade 1988).

distribution, (4) customer perception, (5) common manufacturing facilities and production employees, and (6) where appropriate, price. ^{10/} No single factor is necessarily dispositive, and the Commission may consider other factors that it finds are relevant depending on the facts of a particular investigation. Further, the Commission considers that minor variations among products provide an insufficient basis for finding separate like products. ^{11/}

In earlier investigations involving 12-volt motorcycle batteries, the Commission has found that there is one like product, consisting of 12-volt motorcycle batteries. ^{12/} The Commission noted that there were no discernible differences between imported and domestic 12-volt motorcycle batteries. ^{13/} This conclusion was upheld by the Court of International Trade. ^{14/} We have not been presented with any contrary facts in this investigation. The parties agree that the appropriate like product is 12-volt motorcycle batteries.

^{10/} Certain Small Business Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan, Invs. Nos. 731-TA-426-428 (Preliminary), USITC Pub. 2156 (Feb. 1989) at 4.

^{11/} *Id.*; S.Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Sony Corporation of America v. United States, Slip op. 89-55 (Ct. Int'l Trade, April 26, 1989) at 6.

^{12/} Motorcycle Batteries from Taiwan, Inv. No. 731-TA-42 (Final), USITC Pub. 1228 (Mar. 1982); 12-Volt Motorcycle Batteries from Taiwan, Inv. No. 731-TA-238 (Preliminary), USITC Pub. 1654 (Feb. 1985) at 4.

^{13/} *Id.*

^{14/} Yuasa-General Battery Corp. v. United States, 661 F.Supp. 1214, 1216-17 (Ct. Int'l Trade 1987).

Based on the foregoing, we determine that there is one like product, comprised of 12-volt motorcycle batteries. As a result, we further determine that there is one domestic industry, consisting of the domestic producer of 12-volt motorcycle batteries. In 1986, there were two domestic producers of 12-volt motorcycle batteries, Exide Corp. (Exide) and Yuasa-General Battery Corp. (Yuasa-General). In April 1987, Exide ceased production of 12-volt motorcycle batteries and, in May 1987, purchased General Battery Corp. and thereby acquired a minority interest in Yuasa-General that was held by General Battery Corp. Yuasa-General was renamed Yuasa-Exide, and is currently the sole domestic producer of 12-volt motorcycle batteries. ^{15/}

Condition of the domestic industry

In assessing the condition of the domestic industry the Commission considers, among other factors, apparent consumption, production, capacity, capacity utilization, shipments, inventories, employment, wages, and financial performance. ^{16/} No single factor is determinative, and in each investigation the Commission will consider the particular nature of the industry concerned. ^{17/} For purposes of this investigation the Commission considered information for the period 1986-1988, and the first quarter of 1989 (the interim period). We find that these factors provide no reasonable

^{15/} Report at A-6.

^{16/} 19 U.S.C. § 1677(7)(C)(iii).

^{17/} We note that the data concerning the condition of the domestic industry are business proprietary. Our discussion of these factors therefore must be limited to avoid disclosing business proprietary data. Petitioner has agreed to allow the Commission to characterize certain trends, however.

indication that the domestic industry is materially injured. ^{18/} ^{19/}

Apparent U.S. consumption figures are business proprietary. ^{20/}

However, although the U.S. industry's share of apparent domestic consumption fell slightly from 1986 to 1988, domestic production increased substantially during the period of investigation. ^{21/} While production capacity was reduced, this was primarily due to Exide's decision to close its own production plant and acquire Yuasa-General's facilities. ^{22/} Capacity utilization, as a result, has risen. ^{23/}

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- ^{18/} Chairman Brunsdale considers the following discussion to adequately describe the condition of the domestic industry, but does not join in the conclusion. The condition of the industry does not necessarily reveal the impact of imports. See Certain Electrical Conductor Redraw Rod from Venezuela, Invs. Nos. 701-TA-287 and 731-TA-378 (Final), USITC Pub. 2103 at 43 (Aug. 1988) (Additional Views of Acting Chairman Brunsdale). See also Additional Views of Chairman Brunsdale, infra.
- ^{19/} Vice Chairman Cass does not join this statement, but does join the discussion of the industry's condition. He believes that the statute under which the Commission conducts title VII investigations does not contemplate any decision based solely on the condition of the domestic industry. While he believes that the condition of the domestic industry is relevant to assessing whether the effect of the allegedly LTFV imports has been "material", that information has statutory relevance only in assessing material injury by reason of the allegedly LTFV imports. See Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (January 1989) at 95-113 (Concurring and Dissenting Views of Commissioner Cass). See Additional Views of Vice Chairman Cass, infra.
- ^{20/} Report at table 15.
- ^{21/} Id. at table 1.
- ^{22/} Id.
- ^{23/} Id.

Domestic shipments of 12-volt motorcycle batteries increased from 1986 to 1987, and while such shipments declined in 1988, they remained at a level that was, nevertheless, higher than 1986 shipments. ^{24/} Data concerning the value of shipments are business proprietary, but are not supportive of a finding of material injury. ^{25/} Similarly, information on domestic inventories is business proprietary, but does not reasonably indicate that the industry is materially injured. ^{26/}

Total compensation paid to production employees has risen steadily. ^{27/} Hours worked increased from 1986 to 1987, and fell slightly in 1988 to a level that is well above that of 1986. ^{28/} Labor productivity also rose from 1986 to 1988 and in the interim period. ^{29/} While the number of production employees, after increasing from 1986 to 1987, declined in 1988 to a level below that of 1986, there was an increase in the interim period. ^{30/}

The information relating to operating and net income before taxes is business proprietary, but are inconsistent with a finding of a reasonable indication that the domestic industry is materially injured. ^{31/} We have

^{24/} Id. at table 2

^{25/} Id.

^{26/} Id. at table 4.

^{27/} Id.

^{28/} Id.

^{29/} Id.

^{30/} Id. at table 5.

^{31/} Id.

also considered information concerning the domestic industry's operating income in reaching this determination. Although there has been a slight decline in net sales by the domestic industry, the financial data show that the domestic industry is performing well and also do not reasonably indicate that the domestic industry is materially injured.^{32/} The values of fixed assets have risen from 1985 to 1988 despite Exide's exit from the industry. Total assets have also risen during the same period, reflecting the industry's financial position. Capital expenditures information also suggests that the industry has not only replaced aging equipment early in the period but also made new investments in the most recent years. Research and development funding fell when Exide left the industry.

Reasonable indication of threat of material injury

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a domestic industry is threatened with material injury "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."^{33/} The statute further directs the Commission to consider, in an antidumping investigation:

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

^{32/} Id. at table 6.

^{33/} 19 U.S.C. § 1677(7)(F)(ii).

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

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

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

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

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

(7) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

(8) 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. ^{34/}

The statute also directs the Commission to "consider whether dumping in the markets of foreign countries . . . suggests a threat of material injury to the domestic industry." ^{35/} In evaluating these factors, we are mindful of the statutory requirement that a potential threat be real and imminent, and not be

^{34/} 19 U.S.C. § 1677(7)(F)(i). The statute also sets forth factors to be considered in investigations concerning subsidies and agricultural products. Neither of these factors are applicable to this investigation.

^{35/} 19 U.S.C. § 1677(7)(F)(iii).

based on supposition or conjecture. ^{36/} This statutory directive applies to preliminary as well as final determinations. ^{37/}

The Commission may, but is not required to, cumulate the price and volume effects of imports from each country subject to investigation in considering the second and third threat factors set forth above. ^{38/} ^{39/} There is no dispute that the imports from Korea and Taiwan compete with each other and with the domestic like

^{36/} See *Alberta Gas Chemicals, Inc. v. United States*, 515 F.Supp. 780 (Ct. Int'l Trade 1981).

^{37/} Commissioner Lodwick joins the discussion of factors relating to the threat of material injury for Korea alone. He does not join the discussion on cumulation or the cumulative effects of Korean and Taiwanese imports.

^{38/} 19 U.S.C. § 1677(7)(F)(iv); see also *ASOCOFLORES*, 693 F.Supp. at 1171-72; 704 F.Supp. at 1070. For cumulation to be appropriate, the imports should compete with each other and with like products of the domestic industry in the United States market, and should be subject to investigation under section 1303, 1671, or 1673 of Title 19, United States Code.

^{39/} Commissioner Rohr notes that he believes that formal cumulation is inappropriate to his analysis of threat but that it is appropriate to consider the presence of other unfairly traded imports in assessing the potential future impact of particular imports on an industry. See *Certain Welded Carbon Pipes and Tubes from India, Taiwan, and Turkey*, Inv. Nos. 731-TA-271-273 (Final), USITC Pub. 1839 (April 1986) (Additional Views of Commissioner Rohr) at 16; *Certain Brass Sheet and Strip from Japan and the Netherlands*, Inv. Nos. 731-TA-379 and 380 (Final), USITC Pub. 2099 (July 1988) (Separate Views of Commissioner Rohr) at 32 n.11; *Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany*, Invs. Nos. 701-TA-293 and 731-TA-412 through 419 (Final), USITC Pub. 2194 (May 1989), Views of Commissioner Rohr at 42-43.

product in the United States market and are subject to investigation.

However, we do not decide whether appropriate circumstances exist for exercising our discretion under the statute for purposes of threat analysis, because even if we cumulatively assess the volume and price effects of imports from both countries for purposes of clauses (III) and (IV) of section 771(7)(F)(i) of the statute, we still find no reasonable indication of a threat of material injury.

Despite changes in Korean productive capacity, Korean capacity utilization has remained high, leaving little unused capacity for additional production. ^{40/} There is, consequently, insignificant underutilized Korean productive capacity. ^{41/} Therefore, there is no reasonable indication of threat of material injury from underutilized Korean capacity. From this fact, we infer that there is no likelihood that there will be a significant increase in imports to the United States market.

With respect to any rapid increase in U.S. market penetration imports from Korea and Taiwan and the likelihood that such penetration will increase to an injurious level, we note that there was an increase in U.S. market penetration by Korean imports, but only because Korean imports in 1986, the beginning of our investigatory period, were at a minimal level. Even in view of their 1986-1988 increase, Korean imports are relatively low and do not have a significant share of the market. Because of the absence of significant unused capacity, it is unlikely that Korean imports will increase to an injurious level. Taiwanese imports, by contrast, have not shown a rapid

^{40/} Report at table 13.

^{41/} Id.

increase. The trend for Taiwanese imports is inconsistent with a conclusion that they pose a threat of material injury to the domestic industry. This view is strengthened by the domestic industry's own importation of Taiwanese batteries. ^{42/}

Even though combined Korean and Taiwanese market share has increased, it is unlikely that Korean imports will increase market share. Also, much of the limited growth in Taiwanese market share is attributable to increased import by the domestic industry. Accordingly, it is likely that any further increase in combined Taiwanese and Korean market share would be the result of the domestic industry's own decision to increase imports. The trend in imports from Taiwan that are entered by importers other than the domestic producer is inconsistent with an indication of a real and imminent threat of material injury. Imports from Korea and Taiwan, therefore, are unlikely to rise to an injurious level.

Similarly, an assessment of the price effects of the cumulated imports does not indicate a probability that the imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices. Despite instances of underselling, the record does not show that the Korean imports had a price suppressive or depressive effect. ^{43/} There is no indication of a likelihood that this will change in the future. The pricing data on Taiwanese battery imports are incompatible with a finding of underselling and also with a conclusion that Taiwanese imports have had a price suppressive or depressive effect in the past or are likely to do so in

^{42/} Id. at table 3; transcript of the conference at 51.

^{43/} Report at tables 17-19, pages A-25-A-26.

the future. ^{44/} Therefore, we conclude that there is no probability that imports of motorcycle batteries from Korea and Taiwan will enter the United States at prices that will have a depressing or suppressing effect on domestic prices. ^{45/}

Inventories of Korean batteries in the United States did not show a substantial increase. ^{46/} Despite changes in Korean inventory levels during the period of investigation, current inventories are inconsequential. Further, the ratio of inventories to imports is inconsistent with a threat finding. Finally, in view of our conclusion that there is not substantial unused Korean production capacity, there is little likelihood that Korean import inventories will rise to an injurious level.

The factor concerning product shifting is not relevant in this investigation because there is no evidence that the production facilities owned or controlled by the Korean manufacturer can be used to produce products subject to investigation under sections 701 or 731 or to final orders under section 736. Also, there are no outstanding antidumping or countervailing duty orders on 12-volt motorcycle batteries from Korea in third countries. Petitioner has not asserted any other demonstrable adverse trends that the subject imports will be the cause of actual injury. We also note that the

^{44/} 12-Volt Motorcycle Batteries from Taiwan, Inv. No. 731-TA-238 (Final), Prehearing Report to the Commission at A-38-42.

^{45/} With respect to the Commission's characterization of the likely volume and price of Korean imports, Commissioner Rohr notes that there is a significant degree of common ownership between the sole Korean respondent and the sole remaining U.S. producer. He concludes that this ownership relationship makes it less likely that imports will be made at injurious levels and prices.

^{46/} Report at table 12.

United States is not the dominant market for Korean production; rather, most Korean production is directed to the Korean home market and countries other than the United States.

Consequently, we conclude that there is no reasonable indication that imports of 12-volt motorcycle batteries from Korea pose a threat of material injury to an industry in the United States.

ADDITIONAL VIEWS OF CHAIRMAN ANNE E. BRUNSDALE

12-Volt Motorcycle Batteries from the Republic of Korea

Inv. No. 731-TA-434 (Preliminary)

July 3, 1989

I join the views of my colleagues as far as they go. I agree with their views regarding like product and I believe they adequately state the condition of the domestic industry.^{1/} As I have indicated in previous opinions, I view the discussion of the condition of the industry as setting forth the context in which one can determine whether the statutory standard — "material injury [or threat of material injury] by reason of" the imports ^{2/}— has been met. I therefore write these additional views to set forth a more complete justification of the Commission's determination.

Cumulation

To bring this case into proper focus, a few words are necessary on the subject of cumulation. The statute governing these proceedings contains two standards for the cumulation of imports. The first provision, applicable to the Commission's consideration of present material injury, provides:

[T]he Commission shall cumulatively assess the volume and effect of imports from two or more countries of like

^{1/} The majority's conclusion that the industry is "healthy" and therefore not injured is somewhat puzzling in these circumstances. The industry's performance trends certainly do not present the upward spiral that one would expect to underlie the majority's conclusion. Indeed, as the majority opinion points out, many of the factors that measure the health of an industry were lower in 1988 than they were in 1986.

^{2/} 19 U.S.C. § 1673d(b).

products subject to investigation if such imports compete with each other and with the like products of the domestic industry in the United States.^{3/}

This "mandatory" cumulation provision stands in stark contrast to the discretionary cumulation authority applicable to threat cases:

To the extent practicable . . . for the purposes of clauses (i) (III) and (IV) the Commission may cumulatively assess the volume and price effects of imports from two or more countries if such imports —

(I) compete with each other, and with like products of the domestic industry, in the United States market, and

(II) are subject to any investigation under section 1303, 1671, or 1673 of this title.^{4/}

The criteria for application of both cumulation provisions — that the imports be under investigation and that they compete with each other and with the domestic like product — are the same; only the degree of Commission discretion differs.

The circumstances of this case suggest that the criteria for cumulation set forth in the statute have not been met. While the petitioner and respondent both concede that imports of 12-volt motorcycle batteries from Taiwan and Korea are both under investigation ^{5/} and that such imports compete with each other in the U.S. market, the evidence compiled in the

^{3/} Section 771(7)(C)(iv) of the Tariff Act of 1930, 19 U.S.C. § 1677(7)(C)(iv).

^{4/} Section 771(7)(F)(iv) of the Tariff Act of 1930, 19 U.S.C. § 1677(7)(F)(iv) (emphasis added). The clauses (i) (III) and (IV) referred to in clause (iv) relate to two factors the Commission considers in its threat determinations, a rapid increase in market penetration and the probability that imports will enter the United States at prices that will suppress or depress the U.S. price of the domestic like product.

^{5/} As discussed below, the Commission is in the midst of investigation No. 731-TA-238 (Final), 12-Volt Motorcycle Batteries from Taiwan.

preliminary investigation is clear and convincing that the imports from Korea do not compete with the domestic like product as that phrase is employed in the cumulation provisions. In particular, the unique relationship between the lone U.S. producer of 12-volt motorcycle batteries and the sole known Korean exporter of that product in my view precludes the sort of competition that Congress had in mind when it drafted the cumulation provisions.

The nature of the relationship between the parties to this case is undisputed. On May 28, 1987, a U.S. company and former motorcycle-battery manufacturer, Exide Corp., purchased General Battery Corp. As part of this acquisition, Exide also became a substantial shareholder in Yuasa-General Battery Corp., predecessor of petitioner Yuasa-Exide. The other shareholder in Yuasa-Exide is the wholly-owned American subsidiary of Yuasa of Japan, a Japanese battery producer.

Respondent in this investigation, and the sole Korean exporter of the like product to the United States, is Global & Yuasa Battery Corp. (Global), a Korean battery manufacturer. The parent company (through its U.S. subsidiary) of Yuasa-Exide is also a substantial shareholder of Global. While the exact holdings of the parent companies are confidential, they support the conclusion that the Japanese company has a material influence on the governance of both corporations. As explained by counsel for Yuasa-Exide, Yuasa-Exide and Global are "half-sister" companies.^{6/}

Although counsel for petitioner expressed repeatedly his view that Yuasa-Exide and Global are competitors, this impression cannot supplant a

^{6/} Transcript of Preliminary Conference (Tr.) at 47.

legal determination of whether the "competition" between the related companies satisfies the statutory requirement. The House Ways and Means Committee, the source of the cumulation provision in 1984, explained its intention that, as a prerequisite to cumulation "the marketing of imports that are cumulated [should] be reasonably coincident."^{7/} When the Committee returned to the subject of cumulation in 1988, it identified the market conditions at which the cumulation provisions were directed. The Committee

recognize[d] that competition from unfairly traded imports from several countries simultaneously often has a hammering effect on the domestic industry. This hammering effect may not be adequately addressed if the impact of the imports are analyzed separately on the basis of their country of origin. The cumulation requirement is thus an effort to make the application of the injury analysis more realistic in terms of recognizing the actual effects of unfair import competition.^{8/}

The question then is whether the circumstances of the case establish the "realistic" possibility of competition between the imported product and the domestic like product, and whether that "competition," in conjunction with imports from other countries, is likely to have the "hammering" effect the Committee identified.

Certainly, the Korean product does not compete with the domestic product on the same footing as the Taiwanese imports manufactured by unrelated producers. The "half-sister" relationship between Yuasa-Exide and Global suggests that the marketing of the Korean and the domestic batteries is not "coincident," but rather is coordinated. The Japanese parent of Global and

^{7/} H. Rep. 98-725, 98th Cong., 2d Sess. (1984) at 37.

^{8/} H. Rep. 100-40, Part I, 100th Cong., 1st Sess. (1987) at 130.

Yuasa-Exide can have some restraining influence, whether it exercises it or not, on the terms of competition between the Korean product and the domestic product in the U.S. market. The fact that the Japanese parent voluntarily may choose for its own purposes to allow its subsidiaries to compete head-to-head does not, in my view, create the competitive conditions necessary to trigger the cumulation provisions.^{9/}

Furthermore, the evidence of actual competition between Yuasa-Exide and Global is scarce. The Korean batteries do not compete with domestic batteries in the original equipment market, which accounts for a significant share of total sales. With regard to the replacement market, Yuasa-Exide itself is an importer of batteries from Taiwan, which batteries, according to Yuasa-Exide, fill out its line. Finally, Yuasa-Exide could point to only one confirmed instance in which it lost a sale to the Korean product. The sale was very small, and the purchaser still buys a substantial portion of its batteries from Yuasa-Exide. Indeed, that purchaser's reason for importing Korean batteries was almost identical to Yuasa-Exide's reason for importing batteries for its own line. While I do not in any way mean to suggest a retreat from the Commission's long-held position that the lack of perfect fungibility between the imported product and the domestic product is insufficient to by-pass the cumulation

^{9/} Indeed, the appearance of such competition may itself serve the Japanese company's overall interests. If we were to permit cumulation in these circumstances, it would increase Exide's likelihood of success against its Taiwanese competitors, as cumulation would be required in that investigation also. The Japanese company thus would have a firm grip on the U.S. market simply by virtue of its manipulation of the unfair trade laws.

statutes,^{10/} I do find the evidence overall clear and convincing that there is no competition between the domestic like product and the Korean product as required by the cumulation statutes.

Material Injury by Reason the Subject Imports

In February 1985, the Commission determined in a preliminary investigation that the domestic 12-volt motorcycle battery industry was not materially injured by reason of imports of motorcycle batteries from Taiwan.^{11/} That decision was affirmed by the Court of International Trade.^{12/} The level of imports in that case was far greater than the level of imports at issue here.^{13/} In addition, the consequences of injury that petitioner cites in this case, most particularly Exide's decision to retreat as an independent motorcycle battery manufacturer and to buy into Yuasa-General, was considered by the court and rejected as a ground for reversal.^{14/} In sum, this case has already been decided adversely to petitioner and it has pointed to nothing in the record that warrants reconsideration.

^{10/} See Granges Metallverken AB v. United States, Slip Op. 89-80 (Ct. Int'l Trade, June 7, 1989).

^{11/} 12-Volt Motorcycle Batteries from Taiwan, Inv. No. 731-TA-238 (Preliminary), USITC Pub. 1654 (Feb. 1985).

^{12/} Yuasa-General Battery Corp. v. United States, 661 F. Supp. 1214 (Ct. Int'l Trade 1987).

^{13/} Compare USITC Pub. 1654 at A-19 with Staff Report at A-20 - A-21.

^{14/} Yuasa-General, *supra* n. 10., at 1218.

Threat of Material Injury by Reason of the Subject Imports

I concur in the majority's views regarding the statutory factors underlying our negative threat determination. I would add only one point. Under the statute, an affirmative determination is appropriate only if the evidence supports the conclusion that "the threat of material injury is real and that actual injury is imminent."^{15/} The determination may not be based on "conjecture or supposition."^{16/}

I believe that the nature of the relationship between petitioner and the sole Korean exporter is in itself sufficient to warrant a negative threat determination. A conclusion that the Korean exporter of motorcycle batteries would commit fratricide by materially injuring its self-described half sister is, in my view, too remote a possibility for serious consideration. Furthermore, I am not convinced that under the controlling statute evidence of such intrafamilial strife would warrant an affirmative determination. However, as the majority views indicate, there is more than sufficient evidence negating the imminence of material injury, so I leave fuller consideration of that issue for another day.

Conclusion

On the basis of all the evidence on the record, and in light of the Views of the Commission and the additional views set forth above, I conclude that the domestic industry is not materially injured or threatened with material injury by reason of the subject imports.

^{15/} 19 U.S.C. § 1677(7)(F)(ii).

^{16/} Id.

ADDITIONAL VIEWS OF VICE CHAIRMAN RONALD A. CASS

12-Volt Motorcycle Batteries
from the Republic of Korea
Inv. No. 731-TA-434
(Preliminary)

I concur with the Commission's determination in this investigation, finding that there is not a reasonable indication that the domestic industry producing 12-volt motorcycle batteries is suffering material injury by reason of alleged less than fair value ("LTFV") imports of 12-volt motorcycle batteries from the Republic of Korea or is threatened with such injury by reason of the subject imports. I join the Commission's discussion of the like product issue, of the possible threat of injury to a domestic industry from the subject imports, and of the condition of the domestic industry to the extent that it accurately summarizes information relevant to my disposition of this investigation. I offer these Additional Views because the analysis that I employ in assessing whether there is sufficient reason to believe that LTFV imports caused material injury to a domestic industry differs in certain respects from that reflected in the Views of the Commission.

I. LEGAL STANDARD GOVERNING DISPOSITION
OF PRELIMINARY INVESTIGATIONS

The legal standard that controls disposition of preliminary

investigations under Title VII of the Tariff Act of 1930 is set forth in sections 703(a) and 733(a) of the Act, as amended.^{1/} Under these statutory provisions, we are required to determine, based upon the best information available to us, whether there is a reasonable indication that a domestic industry has been materially injured, or is threatened with such injury, by reason of unfairly traded imports.^{2/} The application of this standard in our Title VII cases has engendered a great deal of discussion and, on certain occasions, disagreement within the Commission.^{3/} In other cases, I have discussed at some length my understanding of the relevant legal principles, and their relationship to the language and legislative history of Title VII and relevant judicial precedent, including the decision of the United States Court of Appeals for the Federal Circuit in American Lamb Co. v. United States.^{4/} Although I do not believe that similarly

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

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

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

4/ 785 F.2d 994 (Fed. Cir. 1986).

See, e.g., Certain Telephone Systems from Japan, Korea and Taiwan, USITC Pub. 2156, Inv. Nos. 731-TA-426-28 (Preliminary) 53-63 (Feb. 1989) (Additional Views of Commissioner Cass) ("Phc

extended discussion of these issues is warranted here, a brief repetition of certain key points may be helpful to an understanding of my disposition of this investigation.

First, less evidence is required to make the requisite showing of injury in a preliminary investigation than in a final investigation.^{5/} It is clear that Congress intended to "weight the scales in favor of affirmative and against negative determinations."^{6/} Thus, the quantum of proof required to sustain an affirmative determination in a preliminary investigation is lower than that required in order to support such a determination in a final investigation. By the same token, however, the "reasonable indication" standard plainly was not intended to preclude any possibility of negative determinations in preliminary investigations. As the Court of Appeals made clear in its decision in American Lamb, in articulating this standard, Congress sought to balance two competing concerns.^{7/} To safeguard against the rejection of

Systems"); Generic Cephalixin Capsules from Canada, USITC Pub. 2143, Inv. No. 731-TA-433 (Preliminary) 39-45 (Dec. 1988) (Dissenting Views of Commissioner Cass); New Steel Rails from Canada, USITC Pub. 2135, Inv. Nos. 701-TA-297, 731-TA-422 (Preliminary) 19-31 (Nov. 1988) (Additional Views of Commissioner Cass) ("New Steel Rails").

^{5/} See, e.g., Phone Systems, supra, at 54-55; New Steel Rails, supra, at 21.

^{6/} American Lamb Co. v. United States, supra, 785 F.2d at 1001; see also Yuasa-General Battery Corp. v. United States, 688 F. Supp. 1551, 1553-54 (Ct. Int'l Trade 1988).

^{7/} See American Lamb Co. v. United States, supra, 785 F.2d at 1002-3, citing S. Rep. No. 1298, 93d Cong., 2d Sess. 171 (1974).

meritorious petitions, Congress provided that investigations should not be terminated in their preliminary stage simply because the evidence of record is not sufficient to support an affirmative determination in a final investigation. Congress also believed, however, that the costly process of final investigations both by this Commission and the Department of Commerce, with the attendant disruptive effect upon trade, should not be endured unless there is sufficient indication of injury to a domestic industry to justify incurring such costs. This is the very reason why Congress provided for a preliminary investigation.^{8/}

Second, we must consider all of the evidence before us, not just the evidence offered in support of an affirmative determination, in deciding whether there is a reasonable indication of injury or threat thereof.^{9/} This has been the

^{8/} The legislative history of the Trade Act of 1974 Act, the statute in which the concept of a preliminary investigation originated, contained the following statement:

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

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

^{9/} See American Lamb Co. v. United States, supra, 785 F.2d at 1002-04.

Commission practice for some time, and the practice has been approved by our reviewing courts in American Lamb and in other cases.^{10/} In weighing competing evidence, the Commission's practice, also approved by our reviewing courts, has been to view evidence in a light favorable to petitioners; inferences adverse to petitioners' case are drawn only where the opposing evidence clearly and convincingly refutes the evidence and argument advanced by petitioner.^{11/} The "clear and convincing" evidentiary standard may be applied differently by different commissioners. However, whatever disparities may be found in its application, this standard has been generally understood to mean that a negative determination will not be reached in a preliminary investigation simply because on each substantive issue the Commission finds the weight of the evidence marginally favors an inference consistent with such a decision.

Finally, the absence of evidence necessary to an affirmative finding of injury from LTFV imports does not necessarily indicate that a negative determination is appropriate. Rather, we must consider the present lack of such evidence in light of the

^{10/} See, e.g., Yuasa-General Battery Corp. v. United States, cited, supra, at note 6.

^{11/} See Certain Welded Carbon Steel Pipes and Tubes from the Republic of Korea and Taiwan, Inv. No. 731-TA-131 and 132 (Preliminary), USITC Pub. 1324 (June 1983); Canned Mushrooms from the People's Republic of China, Inv. No. 731-TA-115 (Preliminary), USITC Pub. 1324 (December 1982).

likelihood that in a final determination evidence might be developed that would support an affirmative decision.^{12/}

In this investigation, the record contains ample evidence for decision. This is perhaps not surprising for the Commission has recently carried out several other investigations of imports of motorcycle batteries. On a handful of issues, additional information -- quite possibly adverse to Petitioner -- might be developed in a final investigation. As discussed below, this is perhaps true of the cumulation issue, among others. However, consistent with the legal standard applicable to preliminary investigations, I have given Petitioner the benefit of a doubt where such questions are presented. In my view, there are no issues where there is a reasonable prospect that a final investigation would produce new information that would support an affirmative determination in such an investigation.

II. REASONABLE INDICATION OF INJURY
BY REASON OF LTFV IMPORTS

Title VII of the Tariff Act of 1930, as amended, the statute that governs antidumping and countervailing investigations, contemplates that, in evaluating whether there is a reasonable indication that a domestic industry has suffered material injury by reason of LTFV imports, the Commission will not make a freestanding inquiry into the condition of the relevant domestic industry. There is no statement in the statutory text or in the

^{12/} See, e.g., Certain Residential Door Locks from Taiwan, USITC Pub. 2198, Inv. No. 731-TA-433 (Preliminary) 5-6 (June 1989) (Views of Chairman Brunsdale and Vice Chairman Cass).

history of Title VII that can fairly be read to create a threshold requirement that the domestic industry be in financial distress.^{13/} Certainly, the legislative history does suggest that the overall condition of the domestic industry shall affect our judgment on the degree of harm from LTFV imports necessary to be "material".^{14/} But nothing suggests that the standard for materiality becomes infinitely high once some level of health is passed. Had Congress so intended, it surely could have put such a requirement into the law. My colleagues read the unitary phrase "materially injured . . . by reason of" the imports allegedly sold at LTFV as if it created two entirely separate requirements. I cannot accept that reading. Moreover, even if financial health above a given absolute level were a bar to imposition of antidumping duties, there surely is no reason to suppose that improving trends in industry performance over some

^{13/} See Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150, Inv. No, 731-TA-390 (Final) (Concurring and Dissenting Views of Commissioner Cass) 98-108 (Jan. 1989) ("Digital Readout Systems").

^{14/} In 1967, when Congress was considering changes in the international obligations of the United States that might conflict with U.S. antidumping law, the Senate Finance Committee issued a report that explicitly stated:

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

S. Rep. No. 1835, 90th Cong., 2d Sess. pt. 2, at 11, reprinted in 1968 U.S. Code & Cong. & Admin. News 4548-49.

See Digital Readout Systems, supra, at 117-18.

arbitrarily selected period should constitute such a bar. Industry trends are, as Congress has plainly recognized, affected by many factors other than imports, and, in many cases, these other factors may be of considerably greater importance. Congress has expressly cautioned the Commission against predicating disposition of Title VII investigations on the basis of factors other than the effects of LTFV (or, in preliminary investigations, allegedly LTFV) imports.^{15/} In my view, an analysis that disposes of Title VII investigations because industry trends are positive is not consistent with that instruction.

Instead of looking simply at industry trends, in assessing the effects of LTFV imports, we must compare the condition of the domestic industry to the conditions that would have existed had there not been LTFV imports.^{16/} Title VII directs the Commission, in assessing the causation of injury by dumped imports, to

- "consider, among other factors --
- (i) the volume of imports of the merchandise which is the subject of the investigation,
 - (ii) the effect of imports of that merchandise on prices in the United States for like products, and
 - (iii) the impact of imports of such merchandise on

^{15/} See S. Rep. No. 249, 96th Cong., 1st Sess. 57 (1979). See also *Hercules, Inc. v. United States*, 673 F. Supp. 454, 481 (Ct. Int'l Trade 1987).

^{16/} See, e.g., 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2076, Inv. No. 731-TA-389 (Preliminary) (Additional Views of Commissioner Cass) (April 1988) ("Microdisks Preliminary"); Phone Systems, cited, supra, at note 3.

domestic producers of like products"17/

The statute goes on to spell out these three factors with greater particularity.

Although the statutory text does not identify all of the factors relevant to an assessment of whether dumped imports have materially injured a domestic industry,^{18/} the factors that are listed in the statute and the order in which they are listed suggest the essential elements of the inquiry that we are to undertake. First, we are to examine the volumes of imports of the merchandise under investigation. The absolute volumes of imports, their magnitude relative to domestic sales of the competing "like product", and the extent to which import volumes changed as a result of dumping are all relevant to assessment of the effect of LTFV imports on the domestic industry. The change in import volumes brought about by dumping, in turn, will be closely related to, and in large part a function of, changes in the prices of the imports that occurred as a result of dumping. Second, we must determine how the LTFV imports affected prices, and concomitantly sales, of the domestic like product. Finally, we must evaluate the extent to which the changes in demand for the domestic like product that were caused by dumping affected the financial performance and condition of the domestic industry

^{17/} See 19 U.S.C. § 1677(7)(B).

^{18/} Indeed, the statute explicitly directs the Commission to consider all economic factors relevant to determining whether a domestic industry has been materially injured by reason of unfairly traded imports. See 19 U.S.C. § 1677(7)(C).

and the level and terms of employment in the domestic industry.^{19/}

In considering these questions, we also must consider the particular dynamics of the relevant industries and markets.^{20/} Each of the three inquiries outlined above are undertaken in light of these guidelines. Before addressing these inquiries, however, it is necessary to resolve the threshold question whether the volume and effects of the subject imports from Korea should be assessed cumulatively with those associated with the imports from Taiwan that are subject to a final antidumping investigation now pending before the Commission.

A. Cumulation

Title VII requires the Commission to analyze cumulatively the volume and effect of imports subject to investigation from two or more countries if such imports "compete with each other and with like products of the domestic industry in the United States market."^{21/} Determining whether imports are under investigation has not been difficult, but determining whether products compete with one another sufficiently to support cumulation has at times been problematic. The Commission has

^{19/} Of course, the Commission must also evaluate whether these effects are "material" within the meaning of the statute. This assessment is, in some sense, a fourth part of our inquiry. See Digital Readout Systems, supra, at 117-19.

^{20/} See new Section 771(C)(iii)(IV) of the statute (codified at 19 U.S.C. § 1677(C)(iii)). See also S. Rep. No. 71, 100th Cong. 1st Sess. 117 (1987).

^{21/} 19 U.S.C. § 1677(7)(C)(iv).

generally assessed the following four factors in determining whether the statutory criterion for competition has been met:

- (1) the degree of fungibility of imports from different countries and between imports and the domestic like product, including consideration of specific requirements and other quality related questions;
- (2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;
- (3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and
- (4) whether the imports are simultaneously present in the market. 22/

The four factors considered by the Commission do not add to or substitute for the two basic statutory requirements -- that imports (1) are subject to investigation and (2) compete with each other and with the domestic like product -- but, instead, are used to assess whether the second of those requirements is satisfied.

This investigation presents a difficult question concerning that second requirement: the existence of competition between the imports from the subject countries and between the imports and the domestic like product.23/ Petitioner's controlling

22/ See Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, USITC Pub. 2185, Inv. Nos. 303-TA-19 and 20 and 731-TA-391-399 (Final) 61-62 (May 1989) (Views of the Commission).

23/ Clearly, imports from Korea and Taiwan are both now "subject to investigation" within the meaning of the statute.

shareholder is a Japanese firm, Yuasa Battery (America) Inc.;^{24/} that company, in turn, is part of a corporate family that owns a [*]% interest in Korean Respondent Global & Yuasa Battery Co., Ltd. Petitioner has quite correctly acknowledged that the relationship between Petitioner and Respondent makes the two firms "half-sister" companies.^{25/} The information gathered by the Commission indicates that Respondent was the only Korean firm that exported the subject products to the United States during the period in which dumping is alleged to have occurred.^{26/} Petitioner is the only domestic producer of 12-volt motorcycle batteries.^{27/} In other words, the only Korean and domestically produced 12-volt motorcycle batteries sold in the United States are products made by companies that are, to a significant extent, under common corporate ownership. Under the circumstances, it is highly questionable whether the Korean imports that are the subject of this investigation "compete" in any meaningful sense with the domestic like product.

It might be argued that the very fact that Petitioner has filed the instant petition is an indication that Petitioner and Respondent are competing in the domestic market. However, given the factual posture in which this case comes to us, such an

^{24/} See Report at A-6.

^{25/} Transcript of 6/7/89 Conference ("Tr.") 47-48 .

^{26/} See Transcript of Commission Meeting on June 30, 1989 at 4.

^{27/} Report at A-19.

argument cannot be credited as providing sufficient evidence of competition to satisfy the statutory requirement. Petitioner has been pressing for some time now an antidumping action against 12-volt motorcycle battery imports from Taiwan. Given the vigor with which Petitioner has pressed its cumulation arguments both in this proceeding and in the Taiwan investigation, Petitioner is plainly aware that, as a result of its petition against imports from Korea, Petitioner may derive some additional advantage in the Taiwan investigation. Put another way, the facts suggest that the instant petition may have been motivated primarily by a desire to impede imports from Taiwan,^{28/} rather than by any real concern about dumping by Petitioner's Korean sister company. Although it does not appear that the issue was ever explicitly considered by Congress, it is most unlikely that Congress intended that the cumulation provisions of Title VII be used for such a purpose.

Nonetheless, I believe cumulation is appropriate here. First, there is no clear evidence that the instant Petition was designed solely for strategic purposes without real concern by Petitioner for the effects of the batteries under investigation here on Petitioner's operations. Second, there is anecdotal

^{28/} The family of Yuasa companies also includes Yuasa Taiwan, a Taiwanese producer of 12-volt motorcycle batteries that exports at least some of its production to the United States. However, unlike the Korean Respondent Global & Yuasa, Yuasa Taiwan is by no means the only Taiwanese firm competing in the U.S. market. See Prehearing Report, 12-Volt Motorcycle Batteries from Taiwan, Inv. No. 731-TA-238 (Final) ("Taiwan Report") at Appendix B.

evidence -- albeit not much -- of actual competition between the Korean product and domestically produced batteries in the domestic market.^{29/} Third, there appears to be considerable similarity between 12-volt motorcycle batteries imported from Korea and those imported from Taiwan. Although actual evidence on the exact competitive overlap among domestic motorcycle batteries and those from Korea and Taiwan is sparse, under the legal standard applicable to preliminary investigations, that evidence is, in the absence of contrary evidence, sufficient indication that the requirements for cumulation have been met.^{30/}

B. Volumes and Prices of the Subject Imports

During the period covered by our investigation, the volume of the subject imports from Korea increased substantially.

Imports from Taiwan also increased, albeit at a much lower rate

During 1988 and the first three months of 1989, periods encompassing the six-month period during which dumping of the Korean imports is alleged to have occurred, imports from Korea were substantially higher than they were during the earlier periods covered by our investigation. In 1988, Korean imports amounted to [* *] units; in the first quarter of 1989, [* *] units were imported from Korea (compared to [* *] units during the first three months of 1988).^{31/} By contrast, during all of

^{29/} See Report at A-28.

^{30/} I will, however, give careful additional consideration to this issue in the pending final investigation of imports from Taiwan

^{31/} Report at A-21.

1986, only [* *] 12-volt motorcycle batteries were imported from Korea.^{32/} The value of these imports was also substantially higher in 1988 and the first quarter of 1989 than it was in earlier years. The value of Korea imports in 1988 was \$[* * *]; in the first three months of this year, the value of the subject Korean imports was \$[* * *] (compared to \$[* * *] in the first quarter of 1988).^{33/} By contrast, in all of 1986, the value of the Korean imports was only \$[* * *].

Imports from Taiwan in 1988, which encompassed the six-month period during which Commerce has preliminarily determined that imports from Taiwan were sold at LTFV,^{34/} totalled [* *] units.^{35/} Imports in 1988 were approximately [*]% lower than they were in 1989.^{36/} The volume of the Taiwanese imports fell again in the first quarter of 1989 relative to the comparable three-month period in 1989 -- from [* *] units to [* *] units.^{37/} The value of the Taiwanese imports in 1988 were higher than they were during the preceding periods covered by our investigation -- \$[* * *] compared to \$[* * *] in

^{32/} Id.

^{33/} Id.

^{34/} Id. at Appendix B.

^{35/} Id. at A-21, Table 14.

^{36/} See id.

^{37/} Id.

1986.^{38/} However, the value of the Taiwanese imports was lower in the first three months of this year than it was during the comparable three-month period in 1988 -- \$[* * *] in 1988 as compared to \$[* * *] this year.^{39/}

The volume of subject imports is closely related to the prices at which those imports were sold. The record evidence in these investigations indicates that dumping (or, in the case of Korea, alleged dumping) had a significant effect on the prices of the imports from Korea, but a much smaller effect on Taiwanese import prices. The record evidence relating to the effects that dumping had on prices of the subject imports is discussed for each of these countries in turn.

Petitioner has alleged that the subject imports from Korea were sold at prices reflecting dumping margins ranging from 51% to 124%.^{40/} Respondent has asserted that the statute does not permit the use of margins by the Commission in preliminary investigations.^{41/} However, Respondent has not explained why this is so, other than to offer the cryptic observation that the statutory provision governing preliminary investigations is worded somewhat differently than the provision governing final

^{38/} Id.

^{39/} Id.

^{40/} Id. at A-2.

^{41/} Respondent's Postconference Brief at 25.

investigations.^{42/} Respondent goes on to state that the Commission should in any event disregard Petitioner's margin allegations as "false and misleading".^{43/} Respondent asserts that the Commission should be skeptical of Petitioner's margin allegations because, according to Respondent, the final margins determined by Commerce often are substantially lower than those alleged in the petition.^{44/} Respondent also argues that the alleged margins should be disregarded they are based upon list prices rather than actual prices, and because they supposedly were calculated based upon certain erroneous assumptions respecting the prices charged by Respondent in sales to one of its customers and respecting the export activity of one Korean firm, Korea Storage Battery Co., Ltd.^{45/}

These arguments are wholly unpersuasive. As I indicated in an earlier case in which similar arguments were advanced by the same counsel representing Respondent in the instant investigation,^{46/} although I am concerned that factual assertions, such as the Petitioner's alleged margins, not be accepted uncritically, I do not believe that a full inquiry into the margins is appropriate under the bifurcated statutory

^{42/} See Tr. 80-81.

^{43/} See Respondent's Postconference Brief at 36.

^{44/} Id.

^{45/} Id.

^{46/} See *New Steel Rails*, *supra*, at 38-41.

framework governing Title VII investigations. Where assertions on this or other issues are inherently implausible or plainly contradicted by clear record evidence, we may not be able to accept them, but generally, until the Department of Commerce has spoken, the alleged margins will be the best evidence available to us. Moreover, the legislative history of the Trade Agreements Act makes clear that, in preliminary investigations in antidumping cases, the Commission "will be guided by the description of the allegation of the margin of dumping contained in the petition or as modified by . . . [Commerce]".^{47/} In short, there is not only no apparent basis for Respondent's argument that a petitioner's margin allegations cannot be considered in our preliminary investigations; there is, in fact, strong authority for the proposition that we must credit such alleged margins in preliminary investigations unless we receive contrary advice from Commerce.

Furthermore, even if it were appropriate for the Commission to conduct its own evaluation of Petitioner's margin claims, the record evidence is insufficient to support a conclusion that Petitioner's margin allegations are unsubstantiated. These allegations are not, on their face, demonstrably false or implausible. Moreover, Respondent's evidence and argument on this issue offer little, if any, assistance to the Commission in assessing the merits of these allegations. Respondent has

^{47/} Statements of Administrative Action, Trade Agreements Act of 1979, at 415.

pointed to a handful of alleged technical defects in the manner in which Petitioner's margins were computed, but has provided us with no explanation as to the possible significance of those alleged errors, and has offered no alternative computations correcting for the alleged errors. Under the circumstances, it is clear that Petitioner's alleged margins are, in fact, the best information available to us.

In most cases, even where there are dumping margins of the magnitude alleged here, the actual decrease in the price of subject imports that occurs consequent to dumping will be less than the amount of the dumping margin.^{48/} In cases such as this one, where the alleged dumping margins reflect an assertion that the subject foreign producers/exporters have charged a lower price for their product in the United States than the price that they have charged in their home market (or another foreign market used as the surrogate for the home market), the actual decrease in the U.S. price of the subject imports that occurred consequent to dumping will be only a fractional percentage of the dumping margin.^{49/} This percentage, in turn, will be in large measure a function of the proportion of the total sales of the subject foreign producer(s) in the U.S. market and the exporter's home

^{48/} See Phone Systems, supra, at 75.

^{49/} For a description of the manner in which the alleged dumping margins were calculated, see Petition at 8-10.

market (or other surrogate foreign market) that is accounted for by sales in the home market.^{50/}

As previously noted, the information gathered by the Commission indicates that Respondent is the only Korean firm that exported the subject batteries to the United States during the period in which dumping of the Korean imports is alleged to have occurred. Respondent's sales of 12-volt motorcycle batteries in its home market during the portion of our investigation encompassing that period (and during the preceding periods covered by our investigation) [* * *] outweighed its sales of such products in the United States.^{51/} Accordingly, the

^{50/} See, e.g., Certain All-Terrain Vehicles from Japan, USITC Pub. 2163, Inv. No. 731-TA-388 (Final) 58-60 (March 1989) (Additional Views of Commissioner Cass); Granular Polytetrafluoroethylene Resin from Japan and the Netherlands, USITC Pub. 2112, Inv. Nos. 731-TA-385 and 386 (Final) 74 (Aug. 1988) (Additional Views of Commissioner Cass); Certain Bimetallic Cylinders from Japan, USITC Pub. 2080, Inv. No. 731-TA-383 (Final) 44 (May 1988) (Additional Views of Commissioner Cass).

In reality, an estimate of the decrease in the price of the dumped product that is derived in this fashion will be somewhat overstated as it represents an approximate upper bound of that decrease. For a thorough explication of this subject, see Office of Economics, Assessing the Effects on the Domestic Industry of Price Dumping, USITC Memorandum EC-L-149 at 1, n. 1, 13, 19-21 (May 10, 1988). A more accurate statement of the effects of dumping on import prices also may require some adjustment to reflect the fact that dumping margins are calculated on an ex-factory, rather than final sales price, basis. However, the evidence that would be necessary to make such an adjustment is not contained in the record here.

^{51/} See Report at A-19, Table 13. In 1988, home market sales by Respondent accounted for [*]% of its total sales in a combined Korean/U.S. market. Id. During the first three months of this year, home market sales accounted for [*]% of Respondent's sales in such a combined market. Id.

record evidence indicates that dumping caused the price of the subject Korean imports to decline by a substantial percentage of the alleged dumping margin.

The record evidence respecting the imports from Taiwan presents a different picture. In its preliminary investigation of those imports, Commerce found dumping margins substantially lower than those alleged for Korea. For Taiwanese producers Wei Long and Chong Kwang, the preliminary dumping margins were 3.97% and 1.00%, respectively.^{52/} Ztong Yee was assigned a preliminary margin of 28.06%.^{53/} The weighted average dumping margin applicable to all other Taiwanese imports (including those made by Yuasa Taiwan) was 6.95%.^{54/} In each instance, the preliminary margin was calculated on the basis of differences in actual sales prices charged by the subject foreign producers in the United States and the Taiwan home market (or, in the case of Wei Long and Cheng Kwang, another third country market used by Commerce as a surrogate for the home market, because those producers reported insufficient sales in Taiwan).

As the preceding discussion of the subject imports from Korea suggests, in cases where dumping margins reflect differences in sales prices, dumping will generally cause the prices of the dumped imports to decline by less than the full

^{52/} See Taiwan Report at Appendix B.

^{53/} Id.

^{54/} Id.

amount of the dumping margin. In this investigation, however, we do not have record evidence that would permit us to determine with greater precision the effects that dumping had on prices of the Taiwanese imports because we have not received for analysis in this proceeding information from the Taiwanese producers indicating the magnitude of those producers' sales in their home market (or other surrogate foreign market) relative to their sales in the United States. Accordingly, consistent with the legal standard applicable in preliminary investigations, in assessing the impact that dumping had on volumes and prices of the Taiwanese imports, I have given Petitioner the benefit of all doubt on this issue by using the full amount of the preliminary dumping margins calculated by Commerce as the measure of the extent to which prices of those imports declined consequent to dumping. Even so, because those margins were relatively low, it is apparent that dumping did not cause substantial decreases in the prices at which the Taiwanese imports were sold.

The record evidence indicates that the changes in the prices of the subject imports from Korea and Taiwan that occurred consequent to dumping did not produce significant increases in the volume of imports from either country. The degree to which decreases in import prices result in increases in the volume of import sales is, in large measure, a function of the degree to which the imported goods in question are substitutable for the domestic like product from the standpoint of domestic consumers. For the reasons stated in the succeeding section of these Views,

the record evidence suggests that there are important limitations on the substitutability of the imported and domestic products, and that these limitations sharply circumscribed the effects that dumping had on sales of the subject imports from Korea and Taiwan.

C. Prices and Sales of the Domestic Like Product

In evaluating the effects of subject imports on domestic prices and sales, it is necessary to have some understanding of the markets for the domestic and imported products. In that regard, the manner in which consumers' reactions affect these markets is especially important. The evidence bearing on three issues is central to our analysis: the share of the domestic market held by the subject imports; the degree to which consumers see the imported and domestic like products as similar (the substitutability of the subject imports and the domestic like product); and the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products. Each of these three issues is considered in turn.

During the period in which dumping is alleged to have occurred, the market share of the subject Korean imports was only slightly more than de minimis. During the first three months of this year -- the portion of our investigation that most closely corresponds to the period of alleged dumping of Korean imports -- the Korean imports accounted for only [*]% of the quantity, and [*]% of the value, of domestic consumption of 12-volt

motorcycle batteries.^{55/} This represented a marked [* *] from the level of market penetration experienced in 1988, when the subject Korean imports accounted for [*]% of domestic consumption on a quantity-measured basis and [*]% of domestic consumption on a value-measured basis.^{56/} The market share of imports from Taiwan was notably larger than that of Korea. During the first three months of this year, imports from Taiwan accounted for [*]% of domestic consumption, measured on the basis of quantity; on a value-measured basis, market penetration was significantly lower, amounting to [*]%.^{57/} As in the case of Korea, the market share of the Taiwanese imports was higher in 1988: [*]% on a quantity-measured basis and [*]% on a value-measured basis.

Other evidence indicates, however, that the collective market share accounted for by the subject imports is not an indication of the import' effects on domestic prices and sales. In particular, other information underlying the market share data provides a strong indication that the substitutability of the subject imports and the domestic like product was quite limited. Yuasa-Exide and Exide collectively accounted for a significant percentage of imports from Taiwan throughout the period covered by our investigation. In 1988, for example, import purchases by

^{55/} Report at A-22, Table 15.

^{56/} Id.

^{57/} Id.

those firms amounted to almost [*]% of the total volume of domestic shipments of imports from Taiwan.^{58/} In assessing the substitutability of the Taiwanese imports for the domestic like product, the fact that Petitioner and its minority shareholder, Exide, have controlled a major portion of the import supply is important. Petitioner and Exide had (and have) a strong interest in maintaining the profitability of Yuasa-Exide's domestic battery production operations; each firm must be presumed to have taken this interest into account when deciding whether to import batteries from Taiwan and in deciding what types of batteries to import. The batteries imported from Taiwan by Petitioner and Exide therefore did not, and do not, constitute a truly independent alternative source of supply to the consumer. Put another way, one would not expect that decreases in the prices at which batteries were imported by Petitioner and Exide from Taiwan consequent to dumping would necessarily result in commensurate decreases in either prices or sales of Petitioner's product.^{59/}

^{58/} See Report at A-10, Table 3; A-22, Table 15.

^{59/} The market share data also suggest that there may be significant differences in the quality of Taiwanese batteries and the domestic like product. Specifically, as previously noted, in 1988, the value-measured market share of the Taiwanese imports was significantly lower than the quantity-measured market share of those imports. These data indicate that the quality of the Taiwanese imports as a group may be inferior in some respects to domestically produced batteries. However, because the record in this preliminary investigation does not contain evidence corroborating this inference, product differences do not form the basis for my conclusions respecting the substitutability issue.

The common Yuasa ownership interest in Petitioner, Respondent and Yuasa Taiwan likewise operated to reduce significantly the likelihood that the subject imports and the domestic like product are fully substitutable. As previously discussed in the context of the cumulation issue, there is a real question respecting the degree to which imports from the Korean Respondent Global Yuasa compete with the domestic like product. The same question can be raised with respect to imports by Petitioner's Taiwanese sister company, Yuasa Taiwan. Although I have not found, for purposes of this preliminary investigation, that competition between the imports and the domestic like product is so limited as to prevent us from cumulating the volume and effects of the imports from Korea with those from Taiwan, the inherent limits on competition between firms that have close corporate relationships of the sort presented here must be taken into account in assessing the extent to which domestic consumers can substitute imported batteries for the domestic like product, and ultimately on the degree to which the imported batteries affected prices and sales of domestic batteries.

The other important evidence bearing on the extent to which the imported and domestic like products are substitutable concerns the end-user markets in which those products are sold. Original equipment manufacturers ("OEMs") account for the vast majority of sales of 12-volt motorcycle batteries.^{60/} Yet, in

^{60/} Report at A-7.

this important market, no sales of Korean imports were reported during the period covered by our investigation.^{61/} Taiwanese imports sold in the OEM market were reported only recently and only to a very limited extent.^{62/} The explanation for this offered by Petitioner, and confirmed by other evidence available to the Commission, is that the delivery lead time for the imported product is substantially longer than required by domestic OEMs that use "just-in-time" delivery systems when procuring parts.^{63/} In the most important segment of the market, the OEM market, the imported product is, therefore, simply not available to any significant extent as a substitute for domestically-produced batteries.

The remaining issue that must be considered in evaluating the effects that dumping of the subject imports had on prices and sales of the domestic like product relates to the degree to which domestic consumers of motorcycle batteries respond to changes in the price of these products. When consumer demand for the domestic and imported products as a group is highly responsive to changes in price, the effects of dumping on prices and sales of

^{61/} Id. at A-23. There were sales reported to OEM accounts for equipment other than motorcycles (e.g., ride-on lawnmowers and garden tractors) that sometimes use 12-volt motorcycle batteries subject to this investigation. These sales were of relatively insignificant volume and were not directly competitive with sales to motorcycle OEM accounts.

^{62/} Taiwan Report at A-41-A-45. See discussion, supra, at note 61.

^{63/} Report at A-23; Petitioner's Postconference Brief at 5-6.

the domestic like product is attenuated, for in that case the lower prices resulting from dumping will stimulate significantly increased domestic demand for the lower priced product. Much greater effects will be felt by U.S. producers when consumers perceive no difference between the imported and domestic product other than price but their overall purchases of these products are relatively unresponsive to price changes. In the latter case, consumers will simply switch their purchases from U.S.-made to lower-priced imported products, resulting in detrimental impacts on both prices of the U.S. product and sales of that product.

In this investigation, neither of the parties adduced any evidence bearing on this issue. However, other information collected by the Commission is sufficient to support the inference that domestic demand for motorcycle batteries is relatively unresponsive to changes in the price of that product. In particular, there are essentially no substitutes for motorcycle batteries in the uses to which such batteries are put.^{64/} Accordingly, there is no basis for inference that the price responsiveness of domestic demand attenuated the effects of dumping. However, given other evidence indicating that the substitutability of the domestic like product and the subject imports is limited, no such inference is required in order to reach the conclusion that the subject imports did not have a

^{64/} Report at A-4.

significant impact on either prices or sales of the domestic like product.

D. Investment and Employment

The investment and employment data compiled by the Commission for the domestic industry producing 12-volt motorcycle batteries are consistent with, but do not provide strong independent support for, the conclusion that there is no reasonable indication that the subject imports from Korea and Taiwan had a material, adverse impact on that industry. In every case that comes before us, there will be many factors that will have affected the performance of the domestic industry, ranging from the overall state of the domestic and global economies to developments that may affect only specific companies within an industry. These factors, most of which are not related in any way to unfairly traded imports, will also be reflected in the various indicators of industry performance that we normally consider. Accordingly, it is important that we view such indicators of industry performance with care and in the context of the other information that is available to us respecting the effects of the LTFV imports in question.

With that caveat in mind, the investment and financial data that the Commission has gathered are noteworthy in two respects. First, as the Commission majority has suggested, these data collectively indicate that the industry is thriving. As previously discussed, unlike the Commission majority, I do not believe that it is appropriate for us to make a separate finding

concerning the condition of the industry. As I have explained in other opinions, however, I believe that Congress has clearly expressed its intent that we take the condition of the industry into account in determining what constitutes "material injury" in any particular case.^{65/} In other words, a minor impact that might be regarded as "material" for an industry that is on the brink of extinction need not and should not be so treated when the industry is as healthy as the one before us in the instant investigation.

Second, the various indicators of industry performance that are normally considered by the Commission are in fact devoid of any evidence that might plausibly suggest that the industry's performance has suffered materially by reason of LTFV imports. The profitability of the industry, as measured by the industry's operating income, declined slightly over the period from 1986 to 1989; more notably, however, industry operating income improved substantially in the first three months of this year, the period that corresponds most closely to the period during which dumping of the subject Korean imports is alleged to have occurred.^{66/} If the industry's quarterly income is extrapolated over the full year, it becomes readily apparent that the industry is more profitable than it has been during any other period surveyed in our investigation. The level of production by the industry is

^{65/} Digital Readout Systems, supra, at 117-18.

^{66/} Report at A-13.

also at an all-time high,^{67/} which is remarkable given the fact that Exide closed its South Carolina plant in 1987.

The number of workers employed in the domestic industry fell [* *] from 1986 to 1988, but what is again more important, it increased [* * *] in 1989.^{68/} The productivity data compiled by the Commission indicate that the mild decline in employment experienced earlier is more than accounted for by the [*]% improvement in labor productivity that the industry has registered over the full period covered by our investigation.^{69/} By all other measures -- hours worked, total compensation, and hourly compensation -- the terms and conditions of employment in the domestic industry have improved [* * *].^{70/} All of the investment and employment data are, therefore, consistent with the conclusion otherwise suggested by the record evidence before us: that there is no reasonable indication that the subject Korean imports, even when considered in conjunction with imports from Taiwan, caused material injury to the domestic industry.

III. REASONABLE INDICATION OF THREAT OF MATERIAL INJURY FROM ALLEGEDLY LTFV IMPORTS

I join the Commission's discussion of threat, but I believe a few additional points are worth noting. First, it is important

^{67/} Id. at A-8.

^{68/} Id. at A-11.

^{69/} Id.

^{70/} Id.

to understand analysis of threat as a distinct inquiry, not merely an appendage to analysis of injury from allegedly LTFV imports. This ground for relief addresses a particular factual context, where a clear threat of imminent injury from LTFV imports exists even though no significant effect has yet been felt.

Second, as threat analysis requires prediction, an even less precise process than divination of past effects, it is important to describe carefully the basis of our analysis, else this becomes a very slippery tool.^{71/} That is particularly true in preliminary cases, where the evidentiary standard is lower than in final investigations. We must be cautious not to use threat analysis as an escape valve for difficult cases, finding threat where we cannot quite find injury.

A third point follows from these observations: we should be careful to cumulate in threat analysis only where the evidence clearly shows a basis for belief that imports from the various countries at issue are likely to be subject to the same influences and to produce the same effects on the domestic industry. No such evidence has been adduced in this investigation and, even under the legal standard used in preliminary investigations, I do not believe it appropriate to assess cumulatively the threat from LTFV imports from Taiwan and

^{71/} Congress has specifically cautioned the Commission against making affirmative determinations of threat based on conjecture or supposition. 19 U.S.C. § 1677(7)(F)(ii).

the allegedly LTFV imports from Korea. Further, I do not believe the best information available to us permits such an analysis, as evidenced by the Commission's discussion of several factors merely in terms of the threat from Korean imports.

Finally, I understand the threat factors contained in the statute to require the same sort of integrated analysis presented above with respect to actual injury from allegedly LTFV imports. The factors are not a checklist of criteria that should be evaluated on a disaggregated basis, with a negative threat finding ensuing if a majority of statutory factors do not indicate a threat. Rather, the factors suggest where we should look to see whether probable events over the near term will produce the sorts of effects on the domestic industry's prices and sales, and ultimately on its financial returns and employment, that would constitute material injury. Where, as here, the factors almost uniformly move in a single direction, any analysis that refers to them -- even on a factor-by-factor basis -- should produce a sensible result. Where, however, the factors produce a less consistent picture, careful inspection of that information becomes critical.

CONCLUSION

For the foregoing reasons and, as indicated above, for reasons stated in the Views of the Commission, I find that there is not a reasonable indication that the domestic industry has been materially injured, or is threatened with such injury, by reason of the imports that are the subject of this investigation.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On May 17, 1989, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by counsel for Yuasa-Exide Battery Corp., Reading, PA, alleging that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from the Republic of Korea of 12-volt motorcycle batteries that are allegedly being, or are likely to be, sold in the United States at less than fair value (LTFV). Accordingly, effective May 17, 1989, the Commission instituted investigation No. 731-TA-434 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports.

Notice of the institution of this investigation and of a conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 31, 1989 (54 F.R. 23296).¹ The conference was held in Washington, DC, on June 7, 1989.² The Commission voted on this investigation on June 29, 1989.

Effective June 12, 1989, the Department of Commerce initiated an antidumping investigation to determine whether the subject imports are being sold or are likely to be sold in the United States at LTFV.³

Previous Investigations

The Commission has not conducted any other investigations on motorcycle batteries from the Republic of Korea. However, motorcycle batteries from Taiwan have been the subject of previous antidumping investigations by the Commission and Commerce. Following a final investigation, the Commission, on March 28, 1982, notified Commerce of its unanimous determination that an industry in the United States was not materially injured or threatened with material injury and that an industry in the United States was not materially retarded, by reason of LTFV imports of motorcycle batteries from Taiwan.⁴

¹ Copies of cited Federal Register notices are presented in app. A.

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

³ A copy of Commerce's notice appears in app. A.

⁴ Investigation No. 731-TA-42 (Final), Motorcycle Batteries from Taiwan, USITC Publication 1228, March 1982. The investigation included both 6-volt and 12-volt motorcycle batteries.

The Commission is currently conducting a final antidumping investigation with respect to imports of 12-volt motorcycle batteries from Taiwan (Inv. No. 731-TA-238 (Final)). The investigation was instituted effective April 18, 1989, following a preliminary determination by the Department of Commerce that imports of the subject merchandise are being, or are likely to be, sold in the United States at LTFV.

Nature and Extent of Alleged Sales at LTFV

Petitioner's estimate of United States price (USP) for exporter's sales price (ESP) transactions is based on 1988 list prices charged by the U.S. sales subsidiary of Global & Yuasa Battery Co., Ltd. (Global). Deductions were made for warranty rebates, credit, U.S. duty, ocean freight and insurance, foreign inland freight and insurance, U.S. inland freight and insurance, brokerage and handling, commissions, indirect selling expenses, and bank and other miscellaneous charges. Petitioner's estimate of USP for purchase price transactions is based on 1986 list prices of batteries sold by both Global and Korea Storage Battery Co., Ltd. to their related trading companies which were in turn sold to unrelated United States purchasers. These list prices, the most recent available to petitioner, were in effect through 1987. Petitioner made further adjustments, supported by affidavit, to account for price increases since that time. Deductions were made for foreign inland freight and insurance, ocean freight and insurance, U.S. duty, and brokerage, handling and miscellaneous fees.

Petitioner's estimate of foreign market value (FMV) is based on April 1989 price quotes by Global in Korea, less a sales discount. Where USP is ESP, f.o.b. prices were adjusted for inland freight and insurance, for credit, and for an ESP offset to U.S. commissions and indirect selling expenses. Where USP is purchase price, net prices were adjusted for inland freight and insurance, and for credit.

On the basis of a comparison between FMV and USP, petitioner alleges dumping margins ranging from 51 to 124 percent.

The Product

Description and uses

The motorcycle batteries that are the subject of this investigation are lead-acid storage batteries having a nominal output of 12 volts and rated from 2 to 32 ampere-hours (at a 10-hour discharge rate). Such batteries are principally used for motorcycles, but are also used to a lesser extent for riding lawnmowers, garden tractors, and other applications. For purposes of this report, these batteries are collectively referred to as motorcycle batteries.

A storage battery is a device that is capable of converting chemical energy into electrical energy through a chemical reaction. The chemical reaction can be effectively reversed, and thus the battery can be recharged by passing an electrical current in the opposite direction of the discharge current. Storage batteries differ from primary batteries in that primary batteries cannot be efficiently recharged by the reversal of the discharge current.

Motorcycle batteries are constructed of cells, each of which has a nominal output of 2 volts. Each cell consists of cast antimonial-lead or calcium-lead grids (or "plates") coated with baked lead oxide. The plates are alternately given negative and positive charges and are separated to provide the necessary voltage. Motorcycle batteries can be stored indefinitely in their dry condition and must be activated by the addition of sulfuric acid prior to use.

The ampere-hour rating for motorcycle batteries is well below the rating of lead-acid storage batteries used in automobiles. Automobile-starting currents and electrical systems usually require a battery rated at a minimum of 35 ampere-hours. The physical characteristics of motorcycle batteries (i.e., dimensions, location of positive and negative terminals, placement of the pressure relief vent, and so forth) are dependent upon the specifications of the particular motorcycle. The electrical and physical specifications of virtually all motorcycle batteries sold in the United States are identified by Japanese Industrial Standards (JIS) numbers. For example, a JIS 12N14A-3A battery is a 12-volt, 14-ampere model, with top terminals.

All recent-model, street-legal motorcycles use 12-volt batteries for their ignition systems, while certain older motorcycles use 6-volt batteries to power their horn and lights. The batteries are installed on the motorcycle, and, although they are recharged by the vehicle's electrical system, they must be replaced periodically, generally after several years of use. Motorcycles with relatively large engines require batteries with higher ampere-hour ratings than motorcycles with smaller engines.

In the late 1970s, motorcycle manufacturers began phasing out kick starters on on-road motorcycles. Kick starters allow the rider to manually start the engine without a battery. Honda produces an on-road motorcycle with both an electric starting system as well as a kick starter. Many dual-purpose motorcycles (those designed for both on and off road use) use kick starters exclusively, although they use a 12-volt battery so that lights and horns can operate while the engine is off, as required by law. Off-road motorcycles use only kick starters, and do not require or use batteries.

Motorcycle batteries are used to a lesser extent in other types of vehicles such as garden tractors, riding lawnmowers, and snowmobiles. This is a limited market for motorcycle batteries owing to several factors, such as the power requirements and charging systems of this equipment, and space available for the location of the battery.

There are no substitute products for 12-volt motorcycle batteries. Although automotive batteries operate in a similar manner to motorcycle batteries, automotive batteries have size, weight, and operation characteristics that prohibit their use in motorcycles.

Manufacturing process

The manufacturing process for motorcycle batteries consists of two major production activities: lead battery plate production, and assembly of the battery. The lead battery plates are constructed by processing lead into the proper grid forms by the use of grid casting machines. Two thousand pounds of lead oxide (pure lead which has been ground into powder) are then mixed with sulfuric acid and other chemical additives to make the "paste" or "active material." The grids are packed flat with the paste, with the larger and thicker plates (contained in better, more expensive batteries) being packed with more active material. The resulting "pasted panels" are surface-dried by putting them onto skids and leaving them in a room to air dry for at least five days.

After the pasted panels are dry, they are placed into a tank of sulfuric acid for 18 to 20 hours, during which time they are charged. Whether a plate is positively or negatively charged depends on the chemical mixture which is combined with the lead oxide to make the paste. Upon removal from the acid, the plates are washed off and the trays of charged panels are heat dried for 20 hours. After drying, the panels are sawed apart in such a way as to create two, four, six, or nine separate battery plates, depending on the specific type of battery being manufactured. The plates are then sent to the battery assembly line or to inventory.

The assembly of the batteries occurs on an assembly line, and begins when a line worker places sets of battery plates together in groups, which are then placed into the battery case which encloses the plates and sulfuric acid. Each group of battery plates produces two volts, and the greater the ampere-hour rating of the battery, the more plates are required in each group. Thus, a 12-volt battery contains six groups of plates. Negative and positive plates are alternated within the battery, and a "separator" is placed between each plate.

"Combs" are used to connect (by welding) plates with like charges. The battery terminal posts (one positive, one negative) are welded to their respective combs. The terminals are located on top of the combs at each end of the battery, and will eventually be connected to cables leading to the motorcycle's electrical system when installed on the vehicle.

Following the welding process, the batteries are tested to ensure that the plates are properly joined together. The test procedure identifies any problems in the battery, and rejected batteries are repaired. The procedure eliminates scrap batteries in the manufacturing process.

After testing, plastic covers are placed on the batteries, and are joined to the battery case in a heat-sealing machine. After the batteries are sealed, removable vent plugs are placed in the vent holes on top of the battery. The batteries are then removed from the assembly line, labeled appropriately, and placed into cartons which are inventoried in a dry state, meaning that battery acid has not yet been added.

U.S. tariff treatment

Imports of 12-volt motorcycle batteries are classified in the Harmonized Tariff Schedule of the United States (HTS) subheading 8507.10.00, which covers lead-acid storage batteries, of a kind used for starting piston engines. The subject batteries are covered by statistical reporting number 8507.10.0030, which encompasses 12-volt batteries not exceeding 6 kilograms in weight. The column 1-general rate of duty for this subheading is 5.3 percent ad valorem. Imports from countries covered under the Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act (CBERA), and the United States-Israel free trade agreement enter the United States free of duty, as do goods covered by the Automotive Products Trade Act (APTA) and the Agreement on Trade in Civil Aircraft (ATCA). Effective January 1, 1989, the Republic of Korea, Taiwan, Singapore, and Hong Kong lost their status as beneficiary developing countries under the GSP, and imports of 12-volt motorcycle batteries from those countries became subject to the column 1-general rate of duty of 5.3 percent. Goods originating in Canada are dutiable at 4.7 percent ad valorem under the United States-Canada Free-Trade Agreement, and this tariff rate will be phased out by 1990. The column 2-rate of duty on imports from Communist countries is 40 percent ad valorem.

In 1987 and 1988, 12-volt motorcycle batteries were reported for statistical purposes under item 683.0110 of the Tariff Schedules of the United States Annotated (TSUSA), which covered 12-volt lead-acid storage batteries not exceeding a weight of 13 lbs., of a kind used for starting piston engines. Prior to 1987, 12-volt motorcycle batteries were provided for in TSUS items 683.01, 683.02 and 683.03, which covered all 12-volt lead-acid storage batteries regardless of weight, with the latter two items providing special tariff treatment under APTA and ATCA.

The U.S. Market

U.S. producers

Presently, the domestic industry producing 12-volt motorcycle batteries consists of a single producer, Yuasa-Exide Battery Corp., the petitioner in this investigation. In 1986, there were two U.S. producers of 12-volt motorcycle batteries, Exide Corp. and Yuasa-General Battery Corp. (Yuasa-General), Reading, PA. In April 1987, Exide Corp., citing increased competition from imports, stopped producing 12-volt batteries for use in motorcycles at its Sumter, SC production facility. This decision in no way affected Exide's manufacture of other battery products, specifically automotive and industrial batteries and 12-volt batteries for use only in garden tractors and marine products such as jet skis.⁵

On May 28, 1987, Exide purchased General Battery Corp. and thus acquired the *** percent minority interest in Yuasa-General previously held by General Battery.⁶ Exide changed the name of Yuasa-General to Yuasa-Exide Battery Corp. (Yuasa-Exide) and continued that firm's operations under existing management and production staff.

U.S. importers

Importers of 12-volt motorcycle batteries are largely distributors of motorcycle parts and accessories, motorcycle battery producers, and U.S. affiliates of Japanese motorcycle producers. Motorcycle parts distributors, which account for the bulk of motorcycle battery imports, are located in all regions of the United States but are concentrated in California, Ohio, Tennessee, and Oregon. The most significant importer/distributors include such firms as * * *, * * *, and * * *. Yuasa-Exide, which accounted for *** percent of 1988 imports, imports motorcycle batteries to complement and complete its line of motorcycle batteries, as did Yuasa-General and Exide before. Japanese motorcycle producers, through U.S. affiliates, operate two assembly plants in the United States and import motorcycle batteries as part of the original equipment of the U.S.-assembled motorcycles. These U.S. affiliates also import batteries for replacement sales.

There are five known U.S. importers of 12-volt motorcycle batteries from the Republic of Korea. The largest of these is * * *, which accounted for *** percent of total reported imports from the Republic of Korea in 1988. Two of the importers from the Republic of Korea, including * * *, also import 12-volt motorcycle batteries from Taiwan and from other sources.

⁵ Exide produces 12-volt batteries for use in garden tractors at 2 Indiana production sites, 1 in Logansport and 1 in Frankfort.

⁶ Yuasa Battery Co., Ltd. of Japan owned the remaining *** percent of YGBC indirectly through its wholly-owned U.S. subsidiary Yuasa Battery (America), Inc.

Channels of distribution

There are no distinct differences in the channels of distribution for domestically produced and imported 12-volt motorcycle batteries. The vast majority of 12-volt motorcycle batteries sold in the United States are accounted for by original equipment manufacturers (OEMs). These channels include motorcycle manufacturers, who install batteries as part of the original equipment of new motorcycles, and to a lesser extent, manufacturers of ride-on lawnmowers and garden tractors. In addition to installing batteries as part of the original equipment of their respective manufactured products, OEMs also distribute replacement batteries to consumers through retail sales affiliates.

Three channels of distribution are used to market 12-volt motorcycle batteries in the replacement segment of the U.S. market. The traditional and largest channel is through OEMs and independent motorcycle warehouse distributors (MWDs). OEMs, such as Honda, Kawasaki, and Harley-Davidson purchase batteries for resale to consumers through the replacement parts programs of their respective motorcycle dealerships. Motorcycle warehouse distributors carry replacement motorcycle parts and accessories for numerous OEM product lines. The fullest lines of motorcycle battery models are sold in this channel, through which the petitioner estimates that *** percent of all replacement battery sales are made.⁷

The second channel of distribution involves sales of batteries to automotive parts distributors and small retailers. Fewer models of batteries are sold through this channel, which accounts for approximately *** percent of current replacement sales.

The third channel of distribution for replacement sales of motorcycle batteries is through large retail chains (such as Sears, Roebuck & Co., Montgomery Ward, J.C. Penney, and K-Mart) and automotive and motorcycle accessory discount chains such as Western Auto, Penn-Jersey, and Trak Auto. This market segment is the newest and fastest growing distribution channel for 12-volt motorcycle batteries, accounting for the estimated *** percent remainder of replacement sales. Only the higher-volume motorcycle battery models are carried by merchants in this marketing channel.

Annual demand for 12-volt motorcycle batteries for replacement applications is directly related to the total U.S. motorcycle population. Total U.S. motorcycle registrations have declined annually since 1982, from 5.6 million in 1982 to 4.7 million in 1987, the latest year for which data are available. The five leading States in terms of motorcycle registrations in

⁷ In its questionnaire response, the petitioner estimated that of its total quantity of batteries shipped in 1988, *** percent were shipped to distributors of all types.

1987 were California, Texas, Illinois, Ohio, and Florida.⁸ Together, these States accounted for one-third of the estimated 4.7 million registered motorcycles in that period. By region, 1987 motorcycle registrations were most concentrated in the Midwest (32 percent), followed by the West (27 percent), the South (23 percent), and the East (18 percent). Assuming an approximate average 2-year product life for a motorcycle battery, estimated 1987 replacement demand for motorcycle batteries ranged from 1.9 million units to 2.3 million units.

Consideration of Alleged Material Injury

The information that follows is based on data provided in Commission questionnaires by the domestic producers of 12-volt motorcycle batteries. Although the domestic 12-volt motorcycle battery industry currently consists of only one producing firm, Yuasa-Exide, questionnaire data were also provided by Exide Corp. on its operations up to the time it ceased production in 1987. Also, the 1986-87 data presented for Yuasa-Exide throughout this report are (in effect) the data reported by Yuasa-General prior to the name change.

U.S. production, capacity, and capacity utilization

Partly as a result of the closing of Exide's Sumter, SC, facility in 1987,⁹ the remaining producer (which since 1987 comprises the entire U.S. industry) operated at increasingly higher levels, in terms of production and capacity utilization. Although its 12-volt motorcycle battery capacity declined by *** percent from 1986 to 1988, Yuasa-Exide's production of 12-volt motorcycle batteries increased by *** percent over the same period (table 1). Total U.S. production increased from *** units in 1986 to *** units in 1988, or by *** percent. Production increased in January-March 1989 by *** percent compared with production in the corresponding period of January-March 1988. The increase in interim 1989 is particularly noteworthy in view of the fact of * * *.¹⁰

Yuasa-Exide's capacity utilization increased from *** percent in 1986 to nearly *** percent in 1988, and was *** percent in January-March 1989 partly because of increased orders resulting from Exide's closing.

⁸ 1988 Motorcycle Statistical Annual, Motorcycle Industry Council, Inc.

⁹ Exide accounted for about *** percent of the capacity of the U.S. 12-volt motorcycle battery industry in 1986 and 1987.

¹⁰ * * *.

Table 1
12-volt motorcycle batteries: U.S. producers' average practical capacity, production, and capacity utilization, 1986-88, January-March 1988, and January-March 1989

Firm	1986	1987	1988	Jan.-Mar.--	
				1988	1989
	*	*	*	*	*

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

U.S. producers' shipments

Domestic shipments.-- U.S. producers' domestic shipments of U.S.-produced 12-volt motorcycle batteries increased by *** units, or by *** percent, from 1986 to 1987, but then decreased by *** units, or by *** percent, from 1987 to 1988 (table 2). U.S. producers' domestic shipments increased (by *** percent) in January-March 1989 compared with shipments in January-March 1988.¹¹ The value of producers' domestic shipments followed a similar trend, increasing from *** in 1986 to *** in 1987, but then decreasing to *** in 1988. The value of such shipments rose by *** to ***, from January-March 1988 to January-March 1989.

Table 2
12-volt motorcycle batteries: U.S. producers' domestic shipments of production and exports, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	Jan.-Mar.--	
				1988	1989
	*	*	*	*	*

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

¹¹ Additional data on U.S. producers' shipments are presented in table C-1, app. C.

Export shipments.--As a share of total shipments, U.S. producers' exports, primarily to * * *, of 12-volt motorcycle batteries were * * * throughout the period covered by the investigation, accounting for *** percent of total producers' shipments. The value of such exports was *** throughout the period.

U.S. producers' purchases

Both Exide and Yuasa-Exide purchased 12-volt motorcycle batteries from foreign sources during 1986-88. Yuasa-Exide also purchased from foreign sources in interim 1989.¹² All of Exide's foreign purchases were from * * *. Yuasa-Exide relied on * * * in *** and *** as its source of purchases abroad. Yuasa-Exide also indicated in its questionnaire response that in January-March 1989, the firm purchased *** units of imported 12-volt motorcycle batteries, valued at ***, from ***.¹³

Imports by the two firms increased from *** units, valued at ***, in 1986 to *** units, valued at *** in 1988 (table 3). From January-March 1988 to January-March 1989, U.S. producers' import purchases increased by nearly *** percent in quantity and by *** percent in value.

Table 3
12-volt motorcycle batteries: U.S. producers' import purchases, 1/ 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	Jan.-Mar.--	
				1988	1989

* * * * *

1/ * * * were the * * * which U.S. producers reported import purchases.

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

U.S. producers' inventories

As shown in table 4, U.S. producers' inventories of their production of 12-volt motorcycle batteries declined from *** units as of December 31, 1986, to *** units at year-end 1987, but then increased to *** units as of

¹² Although Exide closed its production facility in 1987, the firm continued to import the subject product through 1988.

¹³ ***.

Table 4

12-volt motorcycle batteries: U.S. producers' inventories as of Dec. 31 of 1986-88, and as of Mar. 31 of 1988 and 1989

Item	As of Dec. 31--			As of Mar. 31--	
	1986	1987	1988	1988	1989
	*	*	*	*	*

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

December 31, 1988.¹⁴ As of March 31, 1989, Yuasa-Exide's inventories were reduced by *** percent from the volume of inventories held on March 31, 1988. * * *

Employment, wages, and productivity

In 1986, Exide and Yuasa-Exide (formerly Yuasa-General) were the only known producers of 12-volt motorcycle batteries in the United States. These two firms' production of 12-volt batteries was concentrated at plants in Sumter, SC and Reading, PA. Exide ceased production of 12-volt batteries for use in motorcycles at its Sumter, SC plant in April 1987 and effectively withdrew from the motorcycle battery industry, thereby leaving Yuasa-Exide as the sole U.S. producer and only employer of workers in the industry.¹⁵

As shown in table 5, the average number of production and related 12-volt motorcycle battery workers, all of whom are non-union, and the number of hours worked by such workers increased in 1987, declined in 1988, and increased in January-March 1989 over January-March 1988. The earnings of these same workers, as measured by the wages paid, total compensation earned, and average hourly compensation, increased between 1986 and 1988, and again in January-March 1989.

Productivity by production and related workers, measured in terms of the number of units produced per hour worked, increased from *** units per worker hour in 1986 to over *** units per worker hour in 1987 and 1988 to *** units per worker hour in January-March 1989. Unit labor costs decreased from *** per unit in 1986 to *** per unit in 1988. However, such costs decreased from *** in January-March 1988 to *** in January-March 1989, or by *** percent.

¹⁴ Additional data on U.S. producers' inventories are presented in table C-1, app. C.

¹⁵ Exide produces 12-volt batteries for use in garden tractors at 2 Indiana production sites, 1 in Logansport and 1 in Frankfort.

Table 5

Average number of production and related workers producing 12-volt motorcycle batteries, hours worked, wages paid, total compensation paid, average hourly compensation paid, productivity, and unit labor costs, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	Jan.-Mar.--	
				1988	1989
	*	*	*	*	*

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

Financial experience of U.S. producers

Yuasa-General, Yuasa-Exide, and Exide provided income-and-loss data on their 12-volt motorcycle battery operations as well as on their overall operations.

Yuasa-General was owned *** percent by Yuasa Battery (America), Inc. and *** percent by General Battery Corp. in 1985, 1986, and until May 28, 1987. On that date Exide acquired General Battery Corp. Yuasa-General's name was changed to Yuasa-Exide Battery Corp. The financial data are presented for Yuasa-Exide as one company for all periods. Yuasa-Exide presented 1985, 1986, and 1987 data as of December 31 and 1988 data as of March 31, 1989, because of a change in its corporate fiscal year end. However, for this report the 1988 financial data were restated as of Dec. 31, 1988, for consistent comparative purposes. Yuasa-Exide accounted for all known U.S. production of 12-volt motorcycle batteries in 1988.

12-volt motorcycle battery operations.--The income-and-loss data on the 12-volt motorcycle battery operations of each company are presented in table 6. Aggregate sales increased from *** in 1985 to *** in 1986, an increase of *** percent. Net sales increased by *** percent to *** in 1987 and decreased by *** percent to *** in 1988. * * *.

Table 6

Income-and-loss experience of U.S. producers on their operations producing 12-volt motorcycle batteries, by firm, accounting years 1985-88, and interim periods ended March 31, 1988, and March 31, 1989

Item	1985	1986	1987	1988	Interim period ended Mar. 31--	
					1988	1989
	*	*	*	*	*	*

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

Operating income decreased *** percent, from *** in 1985 to *** in 1986. Operating income decreased *** percent to *** in 1987 and decreased *** percent to *** in 1988. The operating income margin was *** percent in 1985, *** percent in 1986, *** percent in 1987, and *** percent in 1988. Operating income was *** in interim 1989 compared with *** in interim 1988. The operating income margin was *** percent in interim 1989 and *** percent in interim 1988.

Overall establishment operations.--Income-and-loss data for Exide's establishment within which 12-volt motorcycle batteries were produced are shown in table 7. The share of total net sales accounted for by 12-volt motorcycle batteries produced by Exide decreased from *** percent in 1985 and 1986 to *** percent in 1987. Exide *** in 1985 of less than *** percent of net sales, and reported operating income margins of *** percent and *** percent of net sales in 1986 and 1987, respectively. Comparatively, Exide reported * * * for 12-volt motorcycle batteries, as shown in table 6, of *** percent of net sales in 1985 and *** percent in 1986, and an operating income margin of *** percent in 1987 on decreasing sales.

Table 7

Income-and-loss experience on the overall operations of Exide Corp.'s establishment within which 12-volt motorcycle batteries were produced, accounting years 1985-87

Item	1985	1986	1987
	*	*	*

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

Income-and-loss data for Yuasa-Exide's establishment within which 12-volt motorcycle batteries are produced are shown in table 8. The share of total net sales accounted for by 12-volt motorcycle batteries produced by Yuasa-Exide decreased each year from *** percent in 1985, *** percent in 1986, *** percent in 1987, and *** percent in 1988. However, the share of net sales accounted for by 12-volt motorcycle batteries produced by Yuasa-Exide increased in interim 1989 to *** percent. The increase in 12-volt motorcycle battery sales was due partially to * * *. Overall establishment sales increased each year from *** in 1985 to *** in 1986, *** in 1987, and *** in 1988. Operating income decreased *** percent from *** in 1985 to *** in 1986 and 1987, and increased *** percent to *** in 1988. The operating income margin was *** percent in 1985, *** percent in 1986, *** percent in 1987, and *** percent in 1988. Net sales for the interim period ended March 31, 1989, were ***, an increase of *** percent over interim 1988 sales of ***. Operating income was *** in interim 1988 and *** in interim 1989. The operating income margin was *** percent in interim 1988 and *** percent in interim 1989.

Table 8
Income-and-loss experience on the overall operations of Yuasa-Exide's establishment within which 12-volt motorcycle batteries are produced, accounting years 1985-88, and interim periods ended March 31, 1988, and March 31, 1989

Item	1985	1986	1987	1988	Interim period ended Mar. 31-	
					1988	1989
	*	*	*	*	*	*

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

Investment in productive facilities.--The investment in productive facilities and the return on those investments are presented in table 9 for each company.

Capital expenditures.--The capital expenditures for each company are presented in table 10.

Table 9

Value of property, plant, and equipment of U.S. producers, by company, accounting years 1985-88, and interim periods ended March 31, 1988, and March 31, 1989

Item	1985	1986	1987	1988	Interim period ended Mar. 31--	
					1988	1989

* * * * *

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

Table 10

Capital expenditures of U.S. producers, by company, accounting years 1985-88, and interim periods ended March 31, 1988, and March 31, 1989.

(In thousands of dollars)

Item	1985	1986	1987	1988	Interim period ended Mar. 31--	
					1988	1989

* * * * *

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

Research and development expenses.--Research and development expenses are presented in table 11. As shown, Yuasa-Exide * * *. Yuasa of Japan, the parent company of Yuasa America, * * *.

Capital and investment.--The Commission requested U.S. producers to describe any actual or potential negative effects of imports of 12-volt motorcycle batteries from the Republic of Korea and Taiwan on their firms' growth, investment, development and production efforts, and ability to raise capital. Their responses are presented in appendix D.

Table 11

Research and development expenses of U.S. producers, by company, accounting years 1985-88, and interim periods ended March 31, 1988, and March 31, 1989

(In thousands of dollars)

Item	1985	1986	1987	1988	Interim period ended Mar. 31--	
					1988	1989
	*	*	*	*	*	*

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

Consideration of the Question of Threat of Material Injury

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors¹⁶--

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

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

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

¹⁶ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

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

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

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

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

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

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

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.¹⁷

The available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is

¹⁷ Section 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

presented in the section entitled "Consideration of the causal relationship between imports allegedly sold at LTFV and the alleged material injury or threat thereof;" information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of alleged material injury." Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets, follows. Subsidies (item (I) above) and the agricultural product provision (item (IX) above) are not at issue in this investigation.

U.S. importers' inventories

Data on U.S. importers' inventories of 12-volt motorcycle batteries imported from the Republic of Korea are shown in table 12. As shown in the table, end-of-period inventories of U.S. importers were *** units at year-end 1986 and 1987, but increased to *** units at year-end 1988. Such inventories were virtually unchanged from March 31, 1988, to March 31, 1989. The ratio of inventories to imports decreased from *** percent in 1986 to just under *** percent in 1987, but increased to nearly *** percent in 1988 and declined to *** percent in the interim 1989 period. As sales of motorcycles and accessory parts, lawn and garden equipment, and other original equipment that use 12-volt motorcycle batteries generally peak during the spring and summer months, importers tend to accumulate inventories during January through March in anticipation of the selling season.

Table 12
12-volt motorcycle batteries: U.S. importers' inventories ^{1/} of imports from the Republic of Korea and from Taiwan, as of Dec. 31, 1986-88, and as of Mar. 31, 1988 and 1989

Item	As of Dec. 31--			As of Mar. 31-- ^{2/}	
	1986	1987	1988	1988	1989
	*	*	*	*	*

^{1/} * * *

^{2/} Based on annualized import data.

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

Data on inventories of Taiwan-produced 12-volt motorcycle batteries are also presented in table 12. Such inventories, including those of U.S. producers, increased by *** percent from yearend 1986 to year-end 1987, decreased by *** percent at year-end 1988, and decreased from interim 1988 to interim 1989 by *** percent. The ratio of inventories to imports rose from a low of *** percent in 1986 to a high of *** percent in 1987.

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

According to information provided in the petition, Global & Yuasa Battery Co., Ltd. is the largest producer/exporter of 12-volt motorcycle batteries in the Republic of Korea.¹⁸ Other Korean producers of the subject merchandise listed in the petition include Korea Storage Battery Co., Ltd.; Ilsung; Namil; Union Battery; and Kyungwon Industrial.¹⁹

The Commission requested counsel to Global & Yuasa Battery Co., Ltd. to provide pertinent information on their client's 12-volt motorcycle battery operations.²⁰ The Commission also requested that the U.S. Embassy in Seoul provide information on the industry in the Republic of Korea, particularly with respect to industry participants, capacity, production, export markets, and inventories. The information requested from the embassy has not been received. The information provided by counsel to Global & Yuasa is presented in table 13 and summarized below.²¹

Global & Yuasa's 12-volt motorcycle battery operations * * *

Table 13
12-volt motorcycle batteries: Pertinent data concerning Global & Yuasa's operations in the Republic of Korea, 1986-89

(In thousands of units, except as noted)

Item	1986	1987	1988	1989
	*	*	*	*

Source: Information provided by Dow, Lohnes & Albertson, counsel to Global & Yuasa Battery Co., Ltd.

¹⁸ Petition at p. 16.

¹⁹ Id. at p. 17.

²⁰ Global & Yuasa Battery Co., Ltd. produces a complete line of battery products.

²¹ ***.

Pursuant to the Commission's current investigation concerning 12-volt motorcycle batteries from Taiwan (inv. No. 731-TA-238 (Final)), the Commission also has requested data on the foreign industry in Taiwan from counsel representing a number of producers/exporters and from the U.S. embassy in Taipei. The information requested has not been received from either source.

Consideration of the Causal Relationship Between Imports Allegedly Sold at LTFV and the Alleged Material Injury or Threat thereof

Imports

Import data on Korea, Taiwan, and Japan discussed in this report are obtained from responses to questionnaires of the U.S. International Trade Commission. Import data on all other countries are obtained from official statistics of the U.S. Department of Commerce. There are substantial discrepancies between imports from Korea, Taiwan, and Japan as reported in response to the Commission's questionnaires compared with those reported in the official import statistics. The responses to the Commission's questionnaires indicate that imports of 12-volt motorcycle batteries from Korea and Japan are significantly lower, and imports from Taiwan are significantly higher than imports reported in official statistics. The differences in the data are apparent, as shown in table E-1, appendix E.

Total U.S. imports of 12-volt motorcycle batteries increased by *** percent to *** units from 1986 to 1987, but decreased by *** percent from 1987 to 1988 and decreased further by *** percent from interim 1988 to interim 1989 (table 14). The value of such imports increased continuously over the period covered by the investigation. Imports increased in value from *** in 1986 to *** in 1988, or by *** percent, and from *** in interim 1988 to *** in interim 1989, a *** percent increase. The unit value of total imports, after declining in 1987, increased to *** in 1988 and to *** in interim 1989, compared with *** in the interim 1988 period.

Imports of 12-volt motorcycle batteries from the Republic of Korea increased in both quantity and value from 1986 to 1988, with the most dramatic increase occurring in 1988. Imports increased from *** units, valued at ***, in 1987 to *** units, valued at ***, in 1988. Imports from the Republic of Korea declined substantially, both in terms of quantity and value, in interim 1989 from interim 1988.

Table 14

12-volt motorcycle batteries: U.S. imports, by selected sources, 1986-88, January-March 1988, and January-March 1989

Source	1986	1987	1988	January-March--	
				1988	1989
	*	*	*	*	*

Source: Imports from Taiwan, Japan, and the Republic of Korea compiled from data submitted in response to questionnaires of the U.S. International Trade Commission; imports from all other sources compiled from official import statistics of the U.S. Department of Commerce.

Imports of 12-volt motorcycle batteries from the Republic of Korea and Taiwan combined increased by *** percent in 1987, decreased by *** percent in 1988, and decreased by *** percent in January-March 1989 compared with imports in the corresponding period of 1988. Combined, imports from these two countries accounted for *** percent of total imports (by quantity) in 1986, *** percent in 1987, *** percent in 1988, and *** percent of the total in interim 1989.

Apparent U.S. consumption and market penetration

Apparent consumption of 12-volt motorcycle batteries increased by *** percent from 1986 to 1987, decreased by *** percent in 1988, and increased by *** percent in interim 1989 over the corresponding 1988 period (table 15). In terms of value, apparent consumption increased from *** in 1986 to *** in 1988, an increase of *** percent. The trend continued in the interim 1989 period as the value of consumption increased *** percent over the interim 1988 value. The ratio of imports to consumption increased from *** percent of consumption in 1986 to *** percent in 1988. The ratio declined from *** percent in interim 1988 to *** percent in interim 1989. Conversely, the ratio of producers' shipments to consumption increased from *** in interim 1988 to *** percent in interim 1989.

Table 15

12-volt motorcycle batteries: Apparent U.S. consumption and ratios of imports to consumption, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	January-March--	
				1988	1989

* * * * *

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official import statistics of the U.S. Department of Commerce.

Imports from the Republic of Korea as a share of apparent consumption increased from *** percent of consumption in 1986 to *** percent in 1988. When combined with imports from Taiwan, the share of consumption accounted for by the two countries was *** percent in 1986, *** percent in 1987, *** percent in 1988, and *** percent in interim 1989, down from *** in the corresponding 1988 period.

Prices

Market characteristics. -- In addition to motorcycles, 12-volt motorcycle batteries are used for lawn and garden tractors, snowmobiles, and jetskis. Yuasa-Exide, the petitioner, reports that the lawn and garden market for batteries has grown during the investigation period, while motorcycle sales have remained relatively stable. All 12-volt motorcycle batteries are identified by Japanese Industrial Standards (JIS) for electrical and physical specifications.

According to Yuasa-Exide, all batteries for the replacement market are produced in standard sizes, and domestic and imported models may be used interchangeably. Purchasers also view the domestic and imported batteries as interchangeable.

Sales of these batteries are strongest during the first half of the year, since many motorcycles have been stored for the winter months. If a battery is not recharged occasionally during the storage period, it will need to be replaced. With proper care, a battery may last several years, but most owners purchase replacement batteries annually.

Yuasa-Exide produces 53 types of 12-volt motorcycle batteries, differentiated by physical size, amperage, terminal location, and vent location. It sells these batteries throughout the United States through two major distribution channels: original equipment customers (OEMs) and aftermarket customers. OEM customers include motorcycle, lawn and garden equipment, and recreational vehicle producers, and aftermarket customers include motorcycle and automotive parts and supply stores, retail stores, and distributors. In 1988, OEM shipments represented about *** percent and aftermarket sales about *** percent of Yuasa's total shipments.

Prices for the domestic product sold to OEMs are on a cost-plus basis, considering competition, annual volume, and shipment quantity per order. Distributor prices, applied to aftermarket customers' sales, are based on an established price list from which a volume discount may be subtracted. The average lead time for shipment after a customer orders is *** days. Transportation costs average about *** percent of the total delivered cost of a battery.

Importers reported importing up to 50 different types of 12-volt motorcycle batteries, although this included imports from countries other than Korea. Retail stores and distributors were the largest of the aftermarket customers served by these importers. No importers reported selling to OEM accounts. A * * * for Global & Yuasa, a Korean producer, stated that Korean batteries have unsuccessfully competed with domestic batteries in the OEM market for two reasons: they have not been price competitive with the domestic batteries, and lead times for Korean batteries average *** to ***, while the petitioner can ship to OEMs within *** to ***.²² Yuasa-Exide stated that OEM manufacturers' purchase decisions are driven by the availability of engineering support and just-in-time delivery, in addition to price, whereas purchases for the replacement market are essentially driven by price.²³

The average lead time for Korean batteries between a customer's order and the date of delivery ranged from *** days, if the items are in importers' inventory, to *** days if shipped from Korea. Two of the four responding Korean importers publish price lists, and do not offer volume discounts. The other two importers offer quantity discounts. Transportation costs averaged about *** percent of the total delivered cost. Two of the Korean importers market these batteries throughout the United States, while the other two concentrate sales in the Southeast.

²² Conversation with ***.

²³ Transcript of the conference, pp. 58-61, and postconference brief of the petitioner, pp. 5-6.

An importer of Korean-produced motorcycle batteries for use in lawn and garden equipment characterized that industry as one of consistent growth. He stated that lawn and garden equipment is designed to use either a U-1 battery or a smaller 12-volt battery, but that these two classes of batteries are not interchangeable without a significant redesign of the equipment.²⁴

Price data.--The Commission requested quarterly net U.S. f.o.b. selling prices and quantities for 2 specific 12-volt motorcycle batteries from U.S. producers and importers of the Korean-produced batteries. Producers and importers were also requested to report the f.o.b. price data separately for sales to OEMs and dealer/distributors. The price data were requested for the largest sale and for total sales of the products reported, by quarters, during January 1986-March 1989. The products for which data were requested are shown below.

Product 1: 12-volt motorcycle battery--JIS 12N12A-4A1 (or equivalent)

Product 2: 12-volt motorcycle battery--JIS 12N14A-3A (or equivalent)

Yuasa-Exide reported OEM and distributor producer price data for 1986-89. Two importers reported usable price data for sales to distributors and no importers reported sales to OEMs. These two importers accounted for *** percent of total Korean imports in 1988. A fourth importer, * * *, was unable to break out imports of Korean-produced batteries from those imported from Taiwan and other countries, by quantity, since it does not make a distinction between country of origin for its sales. * * * accounted for *** percent of Korean imports in 1988.²⁵

Price trends and comparisons.--Weighted average prices and percent margins by which the price of the imported product differed from the domestic product are presented in tables 16-19. Prices for domestically produced product 1 and product 2 showed no clear trends for sales to OEMs or distributors. Despite claims of seasonality in sales and price discounts based on sales volumes, lower prices did not necessarily occur during those quarters with higher sales volumes.

Domestic prices.--Prices for U.S.-produced product 1 sold to OEMs * * * during 1986 and 1987, * * * in the first half of 1988, then * * * in the final quarter of 1988. Prices for product 1 sold to distributors * * *.

²⁴ Conversation with ***.

²⁵ Several of *** customers reported that purchases of 12-volt motorcycle batteries from *** may include batteries produced in several foreign countries. Price does not vary by country of origin, and these customers noted no quality differences between the various imported products.

Table 16

12-volt motorcycle batteries: Weighted-average prices, total quantity sold, and margins of under/(over)selling for JIS 12N12A-4A1 (Product 1) sold to OEMs, as reported by U.S. producers and importers, by quarters, January 1986-March 1989

Period	U.S.		Quantity
	Price per unit	Quantity	

* * * * *

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

Table 17

12-volt motorcycle batteries: Weighted-average prices, total quantity sold, and margins of under/(over)selling for JIS 12N12A-4A1 (Product 1) sold to distributors, as reported by U.S. producers and importers, by quarters, January 1986-March 1989

Period	U.S.		Korea 1/2/		Margin percent
	Price per unit	Quantity	Price per unit	Quantity	

* * * * *

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

Prices for product 2 sold to OEMs * * * during the October-March period and * * * in the April-September period during 1986-89. Prices for product 2 sold to distributors did not follow this pattern. These prices * * * throughout the investigation period, ending * * * in January-March 1989 than in all previous quarters.

Korean prices --Weighted-average prices for the Korean product 1 sold to distributors * * *. Prices for product 2 sold to distributors * * *.

Prices for the Korean product 1 * * *. Korean prices for product 2 * * *.

Table 18

12-volt motorcycle batteries: Weighted-average prices, total quantity sold, and margins of under/(over)selling for JIS 12N14A-3A (Product 2) sold to OEMs as reported by U.S. producers and importers, by quarters, January 1986-March 1989

Period	U.S.	
	Price per unit	Quantity

* * * * *

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

Table 19

12-volt motorcycle batteries: Weighted-average prices, total quantity sold, and margins of under/(over) selling for JIS 12N14A-3A (Product 2) sold to distributors, as reported by U.S. producers and importers, by quarters, January 1986-March 1989

Period	U.S.		Korea 1/2/		Margin percent
	Price per unit	Quantity	Price per unit	Quantity	

* * * * *

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

Company-by-company prices.--Tables 20 and 21 present actual f.o.b. prices for domestic and Korean 12-volt motorcycle batteries, by company. Yuasa-Exide prices include those reported by Yuasa-General Battery Corp., Exide Corp., and Yuasa-Exide.

Yuasa-Exide reported * * *. * * * of Yuasa-Exide stated that * * *. Yuasa-Exide * * *. Yuasa-Exide prices batteries for motorcycle applications * * *.

*** reported no OEM sales. *** sells batteries imported from a number of countries, including *** and *** and does not break out shipments or sales by country. The price of the batteries does not vary with the country of origin. All distributor sales reported were to motorcycle parts distributors. *** of *** stated that while some of its customers may sell some batteries for use in lawn and garden equipment, *** knows of no customers involved exclusively in this area. The only battery sold by *** for use in lawn and garden equipment is the U1 battery. *** accounted for *** percent of 1988 imports from Korea.

Table 20

Actual f.o.b. price for largest sales to distributors in each quarter for JIS 12N12A-4A1 (Product 1), as reported by U.S. producers and importers, January 1986-March 1989

Period	Price per unit				
	Yuasa-Exide	***	***	***	***
	*	*	*	*	*

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

Table 21

Actual f.o.b. price for largest sales to distributors in each quarter for JIS 12N14A-3A (Product 2), as reported by U.S. producers and importers, January 1986-March 1989

Period	Price per unit				
	Yuasa-Exide	***	***	***	***
	*	*	*	*	*

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

* * * reported no OEM sales. All distributor sales reported were to companies involved in the lawn and garden industry. Sales to lawn and garden companies represent about *** to *** percent of *** total sales. All sales prices, whether for lawn and garden or motorcycle applications, are priced in the same manner. * * * of * * * commented that greater price competition exists in sales to motorcycle parts suppliers, while sales to lawn and garden equipment suppliers generate a better profit margin. * * * accounted for *** percent of 1988 imports from Korea.

* * * also reported no OEM sales. Distributor prices were for sales made to lawn and garden parts suppliers. The majority of * * * battery business is the U1 battery, and the 12-volt motorcycle batteries under investigation account for only a very small percentage of its business. * * * accounted for *** percent of 1988 imports from Korea.

* * * also reported no OEM sales. * * * of * * * stated that 12-volt batteries are only a very small part of its business, and he does not know for what uses his customers purchase these batteries. * * * accounted for *** percent of 1988 imports from Korea.

Lost sales and lost revenues

* * * * *

Exchange rates

The nominal value of the Korean won appreciated relative to the U.S. dollar by about 31 percent during January 1986-March 1989 (table 22). An approximate 3 percent rise in the producer price index in Korea compared with a 9 percent U.S. inflation rate resulted in less appreciation of the won in real terms, about 24 percent, than in nominal terms.

Table 22

Exchange rates: 1/ Indexes of the nominal and real exchange rates between the U.S. dollar and the Korean won, and indexes of producer prices in Korea and the United States, 2/ by quarters, January 1986-March 1989

	Korea		U.S.	
	Nominal exchange rate index	Real exchange rate index	Producer price index	Producer price index
1986:				
Jan.-Mar.....	100.0	100.0	100.0	100.0
Apr.-June....	100.0	99.6	97.8	98.2
July-Sept....	100.6	101.7	98.8	97.7
Oct.-Dec.....	102.0	102.0	98.1	98.1
1987:				
Jan.-Mar.....	103.7	102.8	98.4	99.2
Apr.-June....	107.2	105.8	99.5	100.8
July-Sept....	109.8	107.3	99.6	101.9
Oct.-Dec.....	111.0	108.5	100.0	102.3
1988:				
Jan.-Mar.....	115.0	113.5	101.6	102.9
Apr.-June....	120.6	117.1	101.7	104.8
July-Sept....	122.7	118.5	102.5	106.2
Oct.-Dec.....	127.5	122.5	102.5	106.7
1989:				
Jan.-Mar.....	130.9	123.6	102.9	109.0

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

2/ The producer price indexes are aggregate measures of inflation at the wholesale level in the United States and Korea. Quarterly producer prices in the U.S. rose by 9 percent during the period January 1986-March 1989. Korean producer prices increased by 3 percent from the first quarter of 1986 through the first quarter of 1989.

3/ The real value of the Korean won is the nominal value adjusted for the difference in inflation rates in the U.S. and Korea, as measured by the producer price indexes in those countries.

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

APPENDIX A

THE COMMISSION'S AND COMMERCE'S FEDERAL REGISTER NOTICES

[Investigation No. 731-TA-434
(Preliminary)]

**12-Volt Motorcycle Batteries From the
Republic of Korea**

AGENCY: U.S. International Trade
Commission.

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

SUMMARY: The Commission hereby give
notice of the institution of preliminary
antidumping investigation No. 731-TA-
434 (Preliminary) under section 733(a) of
the Tariff Act of 1930 (19 U.S.C.
1673b(a)) to determine whether there is
a reasonable indication that an industry
in the United States is materially
injured, or is threatened with material
injury, or the establishment of an
industry in the United States is
materially retarded, by reason of
imports from the Republic of Korea of
12-volt motorcycle batteries, provided
for in subheading 8507.10.00 of the

harmonized Tariff Schedule of the United States (previously reported under item 683.01 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 3, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207, as amended, 53 FR 33041 *et seq.* (August 29, 1988) and 54 FR 5220 *et seq.* (February 2, 1989)), and Part 201, Subparts A through E (19 CFR Part 201, as amended, 54 FR 13672 *et seq.* (April 5, 1989)).

EFFECTIVE DATE: May 17, 1989.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-252-1188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20438. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1100. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on May 17, 1989, by Yuasa-Exide Battery Corp., Reading, PA.

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of

service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

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

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on June 7, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202-252-1188) not later than June 5, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before June 12, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (9:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business

proprietary treatment must conform with the requirements of §§ 201.8 and 207.7 of the Commission's rules (19 CFR 201.8 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than June 15, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

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

By order of the Commission.
Kenneth R. Mason,
Secretary.

Issued: May 24, 1989.
[FR Doc. 89-12851 Filed 5-30-89; 8:45 am]
BILLING CODE 7020-02-M

[A-580-804]

**Initiation of Antidumping Duty
Investigation; 12-Volt Motorcycle
Batteries From Korea**

AGENCY: Import Administration,
International Trade Administration,
Commerce.

ACTION: Notice.

SUMMARY: On the basis of petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of 12-volt motorcycle batteries (motorcycle batteries) from Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of batteries materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the IT will make its preliminary determination on or before July 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before October 23, 1989.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT:
Lydia La Ferla or Mary S. Clapp, Office

of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1174 or (202) 377-3956, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On May 17, 1989, we received a petition filed in proper form by the Yuasa-Exide Battery Corporation on behalf of the domestic motorcycle battery industry. In compliance with the filing requirements of 19 CFR 352.12, petitioner alleges that imports of motorcycle batteries from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury, to a U.S. industry.

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

Under our revised regulations, parties seeking exclusion are required to submit their requests within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CF 353.14 (54 FR 12773, March 28, 1989).

United States Price and Foreign Market Value

Petitioner's estimate of United States price (USP) for exporter's sales price transactions is based on 1988 list prices charged by the U.S. sale subsidiary of Global & Yuasa Battery Co., Ltd. (Global). Deductions were made for warranty rebates, credit, U.S. duty, ocean freight and insurance, foreign inland freight and insurance, U.S. inland freight and insurance, brokerage and handling, commissions, indirect selling expenses, and bank and other miscellaneous charges. Petitioner's estimate of USP for purchase price transactions is based on 1986 list prices of batteries sold by both Global and Korea Storage Battery Co., Ltd. to their

unrelated trading companies which were in turn sold to unrelated United States purchasers. These list prices, the most recent available to petitioner, were in effect through 1987. Petitioner made further adjustments, supported by affidavit, to account for price increases since that time. Deductions were made for foreign inland freight and insurance, ocean freight and insurance, U.S. duty, and brokerage, handling and miscellaneous fees.

Petitioner's estimate of foreign market value (FMV) is based on April 1989 price quotes by Global in Korea, less a sales discount. Where USP is ESP, f.o.b. prices were adjusted for inland freight and insurance, credit, and an ESP offset to U.S. commissions and indirect selling expenses. Where USP is PP, net prices were adjusted for inland freight and insurance, and credit.

Based on a comparison of FMV to USP, petitioner alleges dumping margins ranging from 51 to 124 percent.

Initiation of Investigation

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

We examined the petition on motorcycle batteries from Korea and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of motorcycle batteries from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 26, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The written description remains dispositive.

The products covered by this investigation are 12-volt motorcycle batteries. Motorcycle batteries are lead-acid storage batteries which are rated

from 2 to 32 ampere hours (10 hour rate) with voltage levels of either 6 or 12 volts. This investigation is limited to 1 volt motorcycle batteries. These batteries are mainly designed for use replacement batteries for motorcycles but may, to a very limited extent, be used in snowmobiles, lawnmowers, and other such equipment. Prior to 1987, such merchandise was classified under TSUSA items 683.05 and 683.01. In 1987 and 1988, such merchandise was classified under TSUSA item 683.0110. This merchandise is currently classifiable under HTS item 8507.10.00.

Notification of ITC

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

Preliminary Determination by ITC

The ITC will determine by July 3, 1989 whether there is a reasonable indication that imports of motorcycle batteries from Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedure.

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

Eric L. Garfinkel,
Assistant Secretary for Import
Administration.

June 6, 1989.

[FR Doc. 89-13904 Filed 6-9-89; 8:45 am]
BILLING CODE 3510-05-M

APPENDIX B

CALENDAR OF WITNESSES AT THE COMMISSION'S
PUBLIC CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

Investigation No. 731-TA-434 (Preliminary)

12-VOLT MOTORCYCLE BATTERIES FROM THE REPUBLIC OF KOREA

Those listed below appeared at the United States International Trade Commission's conference held in connection with the subject investigation on June 7, 1989, in the Hearing Room of the USITC Building, 500 E Street, SW., Washington, DC.

In support of the imposition of antidumping duties

Brownstein, Zeidman, and Schomer--Counsel
Washington, DC
on behalf of--

Yuasa-Exide Battery Corp. (Yuasa-Exide)

Penny Guido, Marketing Manager, Yuasa-Exide Battery Corp.
Wayne Krick, Director of Operations, Yuasa-Exide Battery Corp.
Fred Liebman, Director of Pricing and Warranty, Exide Corp.
Bruce Retter, Vice President of Sales and Marketing, Yuasa-Exide
Battery Corp.

Steve Kersner) --OF COUNSEL
Ron Wisla)

In opposition to the imposition of antidumping duties

Dow, Lohnes & Albertson--Counsel
Washington, DC
on behalf of--

Yuasa & Global Battery Co., Ltd.

Barry Pfeifer) --OF COUNSEL
William Silverman)

APPENDIX C

ADDITIONAL DATA ON U.S. PRODUCERS' OPERATIONS
CONCERNING 12-VOLT MOTORCYCLE BATTERIES

Table C-1

Summary data of U.S. producers' 12-volt motorcycle battery operations, 1985-88

Item	1985	1986	1987	1988
------	------	------	------	------

* * * * *

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

APPENDIX D

COMMENTS RECEIVED FROM PRODUCERS ON THE IMPACT OF
IMPORTS FROM TAIWAN AND/OR THE REPUBLIC OF KOREA
ON THEIR GROWTH, DEVELOPMENT AND PRODUCTION EFFORTS,
INVESTMENT, AND ABILITY TO RAISE CAPITAL

Actual negative effects

Exide Corp....--* * *

Yuasa-Exide...--* * *

Anticipated negative effects

Exide Corp....--* * *

Yuasa-Exide...--* * *

Influence of imports on capital and investment

Exide Corp....--* * *

Yuasa-Exide...--* * *

APPENDIX E

**COMPARISON OF IMPORT DATA AS REPORTED IN QUESTIONNAIRES OF THE
U.S. INTERNATIONAL TRADE COMMISSION AND DATA REPORTED IN THE
OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE**

Table E-1

12-volt motorcycle batteries: Comparison of import data as reported in Commission questionnaires and data reported in the official statistics of the U.S. Department of Commerce, 1986-88, January-March 1988, and January-March 1989

	1986	1987	1988	January-March--	
				1988	1989
Republic of Korea:					
Quantity (1,000 units):					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 149	135	263	91	63
Value (1,000 dollars);					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 2,425	1,681	3,186	1,171	758
Unit value:					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>2/</u> 16.28	12.45	12.11	12.87	12.03
Taiwan:					
Quantity (1,000 units):					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 447	528	528	174	142
Value (1,000 dollars);					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 3,518	5,129	5,508	1,871	1,332
Unit value:					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>2/</u> 7.87	9.71	10.43	10.75	9.38
Japan:					
Quantity (1,000 units):					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 573	815	1,258	357	257
Value (1,000 dollars);					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 6,012	9,250	15,860	3,996	3,308
Unit value:					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>2/</u> 10.49	11.35	12.61	11.19	12.87

1/ Because 12-volt motorcycle batteries were not separately provided for in the TSUS prior to 1987, the 1986 data were estimated by the staff of the U.S. International Trade Commission.

2/ Calculated from the estimated data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.