MECHANICAL TRANSFER PRESSES FROM JAPAN

Determination of the Commission in Investigation No. 731-TA-429 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal business proprietary operations of individual concerns may not be published and, therefore, has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-429 (Final)

MECHANICAL TRANSFER PRESSES FROM JAPAN

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Japan of mechanical transfer presses, provided for in subheadings 8462.99.00 and 8466.94.50 of the Harmonized Tariff Schedule of the United States (previously reported under items 674.3583, 674.3587, 674.3592, 674.3594, 674.3596, 674.5315, and 674.5320 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 18, 1989, following a preliminary determination by the Department of Commerce that imports of mechanical transfer presses from Japan were being sold at LTFV within the meaning of section 733(a) of the act (19 U.S.C. § 1673b(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission,

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

[2] Chairman Brunsdale dissenting.

Washington, DC, and by publishing the notice in the Federal Register of September 13, 1989 (54 F.R. 37839). The hearing was held in Washington, DC, on January 4, 1990, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONERS ECKES, ROHR, LODWICK AND NEWQUIST

We determine that an industry in the United States is materially injured by reason of imports of mechanical transfer presses from Japan. 1/

I. Like Product and Domestic Industry

As a threshold matter in a Title VII investigation, we must make factual determinations with respect to domestic industry and like product. 2/ The domestic industry consists of the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product;" 3/ and, in turn, a "like product" is "[a] product that is like, or in the absence of like, most similar in characteristics and uses with the articles subject to investigation." 4/

The imported articles subject to this investigation are mechanical transfer presses. 5/ A mechanical transfer press functions as a self-contained production line, fabricating a high volume of identical parts, or

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1/ Chairman Brunsdale dissents from this determination as explained in her dissenting views, infra.
2/ Chairman Brunsdale joins this discussion of like product and domestic industry.
3/ 19 U.S.C. § 1677(4)(A).
4/ 19 U.S.C. § 1677(10)
5/ The Department of Commerce's Final Determination of Sales at Less Than Fair Value provides that a mechanical transfer press:

> refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

55 Fed. Reg. 335 (January 4, 1990).

a family of parts of similar shape, size and thickness, which require two or more production operations. 6/ Depending upon the dies used in the press, a mechanical transfer press is able to perform stamping, drawing, extruding, shearing, punching, bending, folding, straightening, flattening, notching, forging, and hammering operations simultaneously. 7/

A mechanical transfer press's major components are the crown assembly, slide assembly, column assembly, bed assembly, internal transfer feed, and controls. 8/ The crown assembly contains the drive mechanism which moves the slide assembly. The slide assembly moves up and down within the transfer press and imparts the force to the object being formed. The slide assembly may consist of one or more slides; multiple slides are used in operations requiring deeper draws. The slide assembly is connected to the crown assembly by suspension points.

The column assembly supports both the crown and slide assemblies, and gives the press stability against lateral forces. The column assembly is connected to the bed assembly.

The bed assembly acts as a frame to support the press and contains the bolsters, cushion and lower dies. The lower dies, in conjunction with the dies in the slide assembly, form the metal. The lower dies rest upon the bolster, which in turn rests upon a cushion that absorbs shock. Much of the bed assembly, including the cushion, lies beneath the factory floor level in a pit. The bolster, however, is at floor level and may be moved in and out of the transfer press on rails so that the lower dies can be changed rapidly to allow for different metal forming operations. An extra

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6/ Report at A-2.
7/ Id.
8/ Report at A-2-7.

bolster with new dies generally replaces the existing bolster and dies currently in use, permitting die changes in under five minutes.

The transfer feed, which automatically moves a part from one workstation to another within the transfer press, distinguishes a transfer press from other mechanical presses. 9/ Mechanical transfer presses are designed with either an electronic or mechanical transfer feed system and are either tri-axial or dual-axial. In a tri-axial system, the part is lifted vertically when transferred from workstation to workstation within the press. In the dual-axial system, the transfer feed merely slides the part to the next workstation. The distance that the transfer mechanism moves a part between workstations is known as the feed stroke.

Accordingly, mechanical transfer presses generally are described and characterized by manufacturers and purchasers in terms of tonnage capacity, the front-to-back distance of the bolster, the left-to-right distance of the bolster, the length and frequency of the feed stroke, the pitch (the distance between stations), the number of stations, the number of slides, the number of columns, the type of gear, the number of drives, and the number of suspension points. 10/

A. Like Product

Our decision regarding the appropriate like product(s) in an investigation is essentially a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses"

9/ Report at A-2.
10/ Report at A-7.

on a case-by-case basis. 11/ In analyzing like product issues, we generally examine such factors as: (1) physical characteristics, (2) end uses, (3) interchangeability of the products, (4) channels of distribution, (5) production processes, (6) customer or producer perceptions, (7) common manufacturing facilities and production employees, and (8) price. 12/ No single factor is dispositive, and we may consider other relevant factors based upon the facts of a given investigation.

As noted by Congress, the like product requirement is not to be "interpreted in such a narrow fashion as to permit minor differences in physical characteristics and uses to lead to the conclusion that the products are not like each other." 13/ Accordingly, we have found minor product variations to be an insufficient basis for a separate like product analysis, and instead, have looked for clear dividing lines among products. 14/

In this investigation, we find one like product consisting of all U.S. produced mechanical transfer presses. We base this determination on our finding that all mechanical transfer presses have the same physical

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11/ Asociacion Colombiana de Exportadores de Flores, et. al. v. United States ("ASOCOLFLORES"), 693 F. Supp. 1165, 1169 (CIT 1988).
12/ ASOCOLFLORES at 1170, n.8; Certain Small Business Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan, Invs. Nos. 731-TA-426-428 (Preliminary), USITC Pub. No. 2156 (February 1989) at 4; Light-Duty Integrated Hydrostatic Transmissions and Subassemblies Thereof, With or Without Attached Axles, from Japan, Inv. No. 731-TA-425 (Preliminary), USITC Pub. No. 2149 (January 1989); Certain Forged Steel Crankshafts from the Federal Republic of Germany and the United Kingdom, Invs. Nos. 731-TA-351 and 353 (Final), USITC Pub. 2014 (September 1987).
13/ S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).
14/ See, e.g., Certain Small Business Telephone Systems and Subassemblies, supra, at 4; Operators for Jalousie and Awning Windows from El Salvador, Invs. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. 1934 (January 1987) at 4, n.4; Sony Corporation of America v. United States, Slip op. 89-55 (CIT, April 26, 1989) at 6.

characteristics and are used for the same general purpose, that is, forming metal parts. Despite variations in design and size due to technical specifications, we find that all mechanical transfer presses are automatic presses with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action. Thus, all mechanical transfer presses share the same end-use of performing highly diversified metal-forming operations within a self-contained production line, although a transfer press may have different specific end-use applications. We further note the absence of a clear dividing line that differentiates mechanical transfer presses used in auto body panel stamping ("auto body panel mechanical transfer presses") from all other mechanical transfer presses, or that distinguishes mechanical transfer presses on the basis of size (e.g. tonnage capacity, bolster length, or slides).

1. Mechanical transfer presses used to stamp auto body panels are not a separate like product.

There simply is no inherent attribute or set of attributes of a particular mechanical transfer press which identifies it as an "auto body stamping" mechanical transfer press or limits it to that use. Although the largest mechanical transfer presses are typically used to produce auto body panels, there is nothing to prevent an "auto body" mechanical transfer press from easily being converted to produce large parts for another application (e.g. satellite dishes), if for instance, the metal forming operations and dimensions of the sheet metal blanks associated with the parts are similar to those of the auto body panels. 15/ Mechanical

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15/ Accord Report at A-2 (large transfer presses are used primarily in the appliance and automotive industries for stamping large auto body panels).

transfer press producers manufacture their presses to meet their customer's technical specifications, and not for a particular end use. 16/

If, as petitioner and AIDA Engineering, Ltd. and AIDA Engineering, Inc. ("AIDA") argue, 17/ press size is determined by the metal forming operations to be performed, and if the "auto body panel stamping" designation describes the operations to be performed, then the auto body panel label inherently serves as a proxy for size. Consequently, according to respondents' argument, there must be a press size which differentiates auto body panel mechanical transfer presses. 18/ In this final investigation, AIDA and Komatsu agreed upon a front-to-back bolster dimension of 108 inches as the distinguishing size of an auto body mechanical transfer press. 19/

16/ See Report at A-9.
17/ Verson's prehearing brief at 5; AIDA's prehearing brief at 7.
18/ The Commission has found size differences alone to be an insufficient basis for distinguishing separate like products. See Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Invs. Nos. 731-TA-367-370 (Final), USITC Pub. 2046 at 5 (Dec. 1987); Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Republic of Germany, France, Italy, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Invs. Nos. 303-TA-19 and 20 and Invs. Nos. 731-TA-391-399 (Preliminary) USITC Pub. 2083 (May 1988); Certain Forged Steel Crankshafts from the Federal Republic of Germany and the United Kingdom, Invs. Nos. 731-TA-351 and 353 (Final), USITC Pub. 2014 (September 1987).
19/ In the preliminary investigation, Komatsu argued that the Commission should treat mechanical transfer presses used for auto body stamping as a separate like product based upon the following distinguishing physical characteristics: (i) auto-body mechanical transfer presses always exert a pressure of 1,000 tons or more; (ii) they are always tri-axial; (iii) they always have a stroke length of at least 36 inches, a feed lift of at least 6 inches, and a front to back dimension of at least 72 inches; and (iv) they always have four suspension points. Komatsu post-conference brief at 4.

In the preliminary investigation, AIDA also offered a physical description of mechanical transfer presses used for stamping auto body panels, describing them as having: (i) a bolster size of more than 100 inches front to back and more than 300 inches left to right; (ii) a transfer feed stroke of more than 70 inches; and (iii) a slide stroke of

(continued...)

The front-to-back dimension, however, is a function of the size of the auto body part to be stamped and the metal forming operations to be executed. Thus, logically one must define the domain of auto body panel dimensions before the range of auto body panel mechanical transfer press dimensions can be specified. Any minimum front-to-back dimension selected to decipher an auto body panel mechanical transfer press is dependent upon a posited minimum size of an auto body panel. In our view, such an inherent physical constraint, or even consensus within the industry, is not apparent from the record in this final investigation.

Even assuming, arguendo, that a 108 inch bolster dimension is a necessary condition for a transfer press to be used in stamping auto body panels, that does not imply that it is also a sufficient condition. There is not, in our view, a single line, e.g., front-to-back bolster length, along which mechanical transfer presses can be distributed to separate them into discrete like products. Instead, there appears to be an intricate multidimensional set of physical characteristics which describe mechanical transfer presses, e.g., the front-to-back bolster dimension, the left to right bolster dimension, the length of the slide stroke, the length of the transfer feed stroke, the number of suspension points, and the tonnage

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19/(...continued)
more than 30 inches. Ultimately, however, AIDA concluded that "a clear dividing line exists in terms of, inter alia, bolster size and end use." AIDA's post-conference brief at 9.

Thus, during the course of the preliminary investigation and this final investigation, Komatsu and AIDA have variously argued that a front-to-back bolster dimension of 72 inches, or 100 inches, or now, 108 inches defines an auto body panel mechanical transfer press. If, as respondents contend, a single physical dimension identifies a mechanical transfer press as one suited for auto body panel applications, one would expect that the length of the dimension would be less elusive, given that it is purportedly a clear dividing line.

capacity. Based upon the record in this investigation, we do not see a clear partition of those characteristics which isolates mechanical transfer presses for auto body panel applications. 20/

Assigning an auto body panel end-use label to a particular mechanical transfer press is a purely intuitive exercise, based upon an understanding of an interrelated multidimensional set of physical dimensions that describe the mechanical transfer press. Indeed, Komatsu's expert at the preliminary conference (Mr. Weber) was unable to define a mechanical transfer press for auto body panel applications in terms of its physical characteristics, stating "[t]here is no definite line." 21/ Similarly,

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20/ We note that accepting respondents' front-to-back bolster dimension of 108 inches as the like product "litmus test" would require us to find that a 2,000 ton, 216x108 mechanical transfer press is within the same like product definition as a 4,500 ton, 252x132 mechanical transfer press, even as a 2,000-1,500 ton, 212x98 mechanical transfer press is not. See Confidential Report at A-71, Table 23; A-75, Table 23.

Furthermore, we see no basis upon which to find that a 108 inch bolster dimension constitutes a clear dividing line among mechanical transfer presses, but also that a front-to-back bolster dimensions of 120 or 132 inches does not constitute a second or third discrete like product dividing line. See Confidential Report at A-71-75, A-81-82, Tables 23 and 25.

In this regard, General Motors classifies its transfer presses according to an A, B, C, D system, in which an A press has two or three slides and is 132" front-to-back; a B press has two slides and is 108" front-to-back; a C press has one or two slides and is 108" front-to-back; and a D press has one slide and is 54" front-to-back. Thus, if the front-to-back bolster dimension is deemed to identify an auto body panel press, then General Motors apparently differentiates between auto body panel mechanical transfer presses as well, for it does not classify mechanical transfer presses possessing a 108" front-to-back bolster with mechanical transfer presses possessing 132" front-to-back bolsters. Moreover, we find it noteworthy that General Motors does not differentiate mechanical transfer presses on the basis of front-to-back dimension alone, but rather uses a combination of two characteristics -- number of slides and bolster dimension.

21/ Conference Tr. at 87-88. We note that in the final investigation, Mr. Weber identified auto body mechanical transfer presses as "tri-axis presses normally with two or three slides and sliding bolsters with front to back dimensions of from 108 to 132 inches." Komatsu's prehearing brief at Appendix D, p. 1. Compare with Hearing Transcript ("Tr.") at 184-187.

another of Komatsu's experts in this final investigation, Mr. Scicluna, was unable to succinctly define the physical characteristics of an auto body panel mechanical transfer press. 22/

Furthermore, we find that auto body mechanical transfer presses and other transfer presses generally are manufactured using common manufacturing facilities and production employees, and share the same production processes. Additionally, auto body mechanical transfer presses and other mechanical transfer presses are generally sold through the same channels of distribution. Finally, the absence of interchangeability among large auto body panel mechanical transfer presses and "other" transfer presses does not necessarily distinguish an auto body transfer press as a separate like product, for once the size of a transfer press is determined, it is generally not interchangeable with any other mechanical transfer presses of different sizes. 23/

22/ Tr. at 184-187.

23/ While we find a single like product, we nevertheless evaluate material injury and causation within the context of the domestic industry's conditions of trade, including the various market segments that characterize the domestic industry.

We note that there appears to be a vague but common understanding among purchasers of mechanical transfer presses that the market for mechanical transfer presses can be segmented by their end uses into two distinct categories: large mechanical transfer presses used to produce auto body panels and all other mechanical transfer presses.

What defines a mechanical transfer press for an auto body panel stamping application, however, is quite amorphous and equivocal. In this regard, we note that in answering the Commission's questionnaires, mechanical transfer press producers, when so required, categorized individual mechanical transfer presses as for auto body panel application, for auto parts application, and for other applications, but denied the existence of well defined boundaries between the categories, or even that the categories were susceptible to clear definition.

2. Mechanical transfer presses with a capacity under 150 tons also are not a separate like product.

We similarly find that mechanical transfer presses under 150 tons do not constitute a separate like product. This determination is again based upon our view that there is no single line, whether tonnage or front-to-back bolster length, along which mechanical transfer presses can be clustered to separate them into discrete like products. 24/ In sum, we believe that because mechanical transfer presses are expensive, complex, discrete custom-made products, it is impracticable and inappropriate to define any mechanical transfer press solely by reference to a single physical dimension.

The other "like product factors" we traditionally consider similarly suggest that 150 ton capacity does not provide a clear line, which separates mechanical transfer presses into two discrete like products. The interchangeability of the products, channels of distribution, production processes, customer or producer perceptions, manufacturing facilities and production employees, or prices do not establish a clear dividing line between 50 ton mechanical transfer presses and for example, 200 ton mechanical transfer presses. Simply put, all mechanical transfer presses are automatic presses with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, and although the size of the mechanical transfer press may determine its particular industrial application, all mechanical transfer presses are used for the same general purpose of

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24/ See discussion, supra at 7-11.

forming metal parts. 25/ We do not find that differences in size are a sufficient basis to separate mechanical transfer presses into separate like products. 26/

For these reasons, we find one like product consisting of all mechanical transfer presses. Accordingly, we also find a single domestic industry consisting of the all U.S. producers of mechanical transfer presses, with the exception of Hitachi-Zosen-Clearing ("HZC"), for the reasons described below.

B. Domestic Industry

The record indicates that there are eight domestic producers of mechanical transfer presses including HZC. 27/ HZC, however, is a wholly-owned subsidiary of Hitachi Zosen, Ltd. ("Hitachi"), Tokyo, Japan. HZC therefore is a related party. In our preliminary determination, we excluded HZC from the definition of the domestic industry under the related parties provision. 28/

25/ For instance, a 50 ton mechanical transfer press may be used to manufacture component parts for the camera industry, a 200 ton mechanical transfer press may be used by a small auto parts stamping firm, and a 4,000 ton mechanical transfer press may be used to stamp auto body panels. See Confidential Report at A-16, A-19. Nevertheless, all these mechanical transfer presses share the same end-use of performing highly diversified metal-forming operations within a self-contained production line.
26/ See e.g. Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Invs. Nos. 731-TA-367-370 (Final), USITC Pub. 2046 at 5 (Dec. 1987); Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Republic of Germany, France, Italy, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Invs. Nos. 303-TA-19 and 20 and Invs. Nos. 731-TA-391-399 (Preliminary), USITC Pub. 2083 (May 1988); Certain Forged Steel Crankshafts from the Federal Republic of Germany and the United Kingdom, Invs. Nos. 731-TA-351 and 353 (Final), USITC Pub. 2014 (September 1987).
27/ See Confidential Report at A-14-21.
28/ Mechanical Transfer Presses from Japan, Inv. No. 731-TA-429 (Preliminary), USITC Pub. 2160 (February 1989) at 8-10.

Under the related parties provision, section 771(4)(B) of the 1930 Act, when a producer is related to exporters or importers of the merchandise subject to investigation, or is itself an importer of the product, the Commission may exclude the producer from the definition of the "domestic industry" in appropriate circumstances. 29/ The related parties provision enables the Commission to avoid any distortion in the aggregate data for the domestic industry that might result from including producers whose operations are shielded from the effect of the imports by reason of their relationship with a foreign producer or status as an importer of the like product. 30/

In determining whether appropriate circumstances exist, we have focused principally upon: 31/

> (1) the position of the related producers vis-a-vis the rest of the domestic industry;
>
> (2) the reasons why the domestic producers have chosen to import the product under investigation--to benefit from the unfair trade practice, or to enable them to continue production and compete in the domestic market; and
>
> (3) the percentage of domestic production attributable to the related producers. 32/

29/ 19 U.S.C. § 1677(4)(B). See also S. Rep. No. 249, 96th Cong., 1st Sess. at 83 (1979).
30/ See e.g., Granular Polytetrafluorethylene Resin from Italy and Japan, Invs. Nos. 731-TA-385 and 386 (Preliminary), USITC Pub. 2043 (December 1987) at 9.
31/ See Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071 at 13 (March 1988). See also Granular Polytetrafloroethylene Resin from Italy and Japan, Invs. Nos. 731-TA-385 and 386 (Final), USITC Pub. 2112 at 15 (August 1988); Granular Polytetrafloroethylene Resin from Italy and Japan, Invs. Nos. 731-TA-385 and 386 (Preliminary), USITC Pub. 2043 at 9 (December 1987).
32/ ATVs, citing Granular Polytetrafluoroethylene Resin from Italy and Japan, Invs. Nos. 731-TA-385 and 386 (Preliminary), USITC Pub. 2043 at 9; Empire Plow v. United States, 675 F. Supp. at 1353-1354.

We have also considered whether each company's records are maintained separately from its "relations" and whether the primary interests of the related producer lie in domestic production or in importation. 33/

As in the preliminary investigation, we again conclude that HZC should be excluded from the definition of the domestic industry. 34/ We base this determination on confidential information bearing on the factors listed above, as well as on our finding that excluding HZC would not skew the data for the majority of economic indicators describing the condition of the domestic industry. 35/

II. The Condition of the Domestic Industry

In assessing the condition of the domestic industry, we considered, among other factors, U.S. production, shipments, capacity, capacity utilization, employment, wages, financial performance, capital investment,

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33/ ATVs at 13, n. 44, citing Rock Salt from Canada, infra. In its analysis, the Commission has considered whether the related party is primarily in the position of a domestic producer or an importer, and whether inclusion of the firm's data would skew overall industry data. See Butt-Weld Pipe Fittings from Brazil and Taiwan, Invs. Nos. 731-TA-308 and 310 (Final) at 9-10 and n. 27. In particular, the Commission has examined: (1) the amount of the U.S. producer's domestic output relative to the amount imported by the U.S. producer, and (2) the relationship between the products produced in the United States and those produced abroad, including which products or product lines are produced in the United States and which are produced abroad, and where in the United States sales of the domestically and foreign produced merchandise occur. See also Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 at 11 (January 1986) (If exclusion of related parties would necessarily exclude or distort economic data of considerable significance to, or determinative of, an accurate picture of the domestic industry as a whole, then exclusion of the related party would not be appropriate).

34/ HZC states in this final investigation that because it does not segregate revenues and expenses related to domestic production from those related to its imports of mechanical transfer presses, it "does not object to an industry analysis of financial data which excludes Clearing's [HZC's] data under the related parties provision." HZC's prehearing brief at 20.

35/ Confidential Report at A-18.

and research and development expenditures. 36/ No single factor is dispositive, and in each investigation we consider the particular nature of the industry involved and the relevant economic factors which have a bearing on the state of the industry. 37/

A. The 1988 Amendments

The Omnibus Trade and Competitiveness Act of 1988 Act ("the 1988 Act") amended 19 U.S.C. § 1677(7)(B) to require, inter alia, that the Commission evaluate 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" in considering the impact of the subject imports upon the domestic industry. 38/

The Senate explained the purpose of the "derivative product" amendment as follows:

> To compete successfully in R&D and investment intensive industries, U.S. producers can remain in the forefront of technical progress only through maintaining the ability to develop new product innovations and the next generation of a product. Dumped or subsidized foreign sales in the U.S. impede or threaten to impede the ability of U.S. producers to devote the necessary resources to important product innovations and next generation development because of the long lead times from product design to actual production, business uncertainties, lost marketing opportunities, and erosion of profitability caused by such unfair trade practices. This is particularly relevant to industries producing big-ticket items, such as aircraft and heavy electrical equipment, where loss of a single sale may have major impact on revenues and profits and thus the ability to proceed with research and development or production plans. 39/

36/ 19 U.S.C. § 1677(7)(C)(iii).
37/ See e.g., 12-Volt Motorcycle Batteries from Taiwan, Inv. No. 731-TA-238 (Final), USITC Pub. 2213 (August 1989).
38/ See 19 U.S.C. § 1677(7)(C)(iii)(IV).
39/ S. Rep. No. 71, 100th Cong., 1st Sess. at 117 (1987). The Senate language cited above is immediately preceded by the sentence, "the ITC is

(continued...)

We determine that a mechanical transfer press is such a big-ticket item, where the loss of a single sale may have a major impact on the ability to proceed with research, development, and production plans. 40/

The 1988 Act also codified the requirement that the Commission evaluate the condition of the domestic industry within the context of the business cycle and conditions of competition that are distinctive to the domestic industry. 41/ The amendment insures that "the condition of an industry [is] considered in the context of the dynamics of that particular industry sector, not in relation to other industries or manufacturers as a

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39/(...continued)
directed to examine as part of its analysis of material injury to the domestic industry the effects of imports on the industry's existing efforts to develop the technology for production of a later generation of products related to the type of product under investigation." S. Rep. No. 71, 100th Cong., 1st Sess. at 117 (1987). Thus, the derivative product amendment applies in every investigation to each domestic industry the Commission finds. As with any statutory factor, the derivative product's probative value with respect to our material injury determination depends upon the facts in the record before us.

40/ Thus, we find the derivative product provision to be an important consideration in this investigation because technological progress, and hence the next generation of the product, is a function of experienced gained in designing, producing, and installing mechanical transfer presses and because there are relatively few sales of mechanical transfer presses upon which to gain such expertise. As respondent Komatsu's expert, Mr. Scicluna, stated:

> R&D is done in a very different manner in this area. It's done by virtue of a purchase order and cooperative effort of the buyer and the seller.
>
> Now, we [Ford] have had research and development contracts that go on purchase orders. In the 60's and 70's, we spent millions of dollars with Verson on the research and development of cold extrusions. Tr. at 154.

Thus, technological progress in this industry is directly related to a producer's installed base of machines. Report at A-9.

41/ See 19 U.S.C. § 1677(C)(iii).

whole," 42/ and recognizes that "temporary cyclical trends can mask real harm being caused by unfairly traded imports." 43/

B. The Conditions of Competition in the Mechanical Transfer Press Industry.

The demand for large mechanical transfer presses generally depends upon automakers' decisions to modernize existing press operations by replacing tandem press lines with mechanical transfer presses or upon automakers' new construction of automobile facilities. 44/ Thus, demand for mechanical transfer presses is derivative but is also irregular.

Mechanical transfer press production also involves learning by doing. 45/ The economies of scale in the production of mechanical transfer presses and the experience derived from working with the customer during the installation and subsequent operation significantly add to the ability of a manufacturer to design, build, and install these presses. 46/ Thus, technological development in this industry is directly related to the installed base of machines of a particular producer. 47/

As an additional condition of competition, we note that prior to the

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42/ S. Rep. No. 71, 100th Cong., 1st Sess. at 117 (1987).
43/ Id. at 116. ("For example, capital intensive industries that are suffering severe dislocation from imports may stop investing in new plant and equipment because they cannot raise capital or the existence of low priced imports in the market makes investment unprofitable. Such industries may continue to have respectable operating profits from fully depreciated plant and equipment, thereby appearing on cursory examination not to be injured, although examination of such factors as capital expenditures would show they are becoming uncompetitive").
44/ Report at A-15.
45/ Report at A-9; see also The MIT Dictionary of Modern Economics, (3d ed. 1986).
46/ Report at A-9; Tr. at 154.
47/ Id.

Commission's preliminary determination in this investigation, 48/ the domestic industry was "locked out of" or not invited to bid upon the sales of several mechanical transfer presses to Japanese-owned companies for use in their U.S. facilities. We determine that these contracts cannot be regarded as lost sales because the domestic industry was not permitted to bid on them because of the Japanese transplant automakers' or their parent corporation's desire to deal exclusively with Japanese producers, with whom they had longstanding business relations. 49/

Nevertheless, although the domestic industry did not suffer any lost sales to the Japanese-owned automakers, such "quasi-exclusive dealing" practices are relevant to the conditions of competition in the domestic industry. Given the economies of scale and learning curve effects associated with mechanical transfer press production, we find that because the Japanese imports have had a captive portion of the U.S. mechanical transfer press market at least until very recently (i.e. Japanese

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48/ Petition at 23-24. We note, however, that one Japanese transplant automaker solicted bids and placed an order for U.S. produced mechanical transfer presses since the Commission's preliminary determination in this investigation.

49/ To determine whether sales are "lost" to the subject imports, we attempt to independently (1) identify those mechanical transfer press bid specifications which are so central that nonconformity with them makes the entire bid nonresponsive, and (2) examine the extent to which price influenced the bid outcomes for the sales under investigation.

We previously have determined that there is no lost sale when a bid is nonresponsive. See Certain Automated Fare Collection Equipment and Parts Thereof from France, Inv. No. 701-TA-200 (Preliminary), USITC Pub. 1323 (Nov. 1982); Cell-Site Transceivers and Subassemblies Thereof from Japan, Inv. No. 731-TA-163 (Final), USITC Pub. 1618 (Dec. 1984). The fact that a producer's bid does not accord with every element of the purchaser's specifications and terms, however, does not automatically constitute nonresponsiveness. Offshore Platform Jackets and Piles from the Republic of Korea and Japan, Invs. Nos. 731-TA-259 and 260 (Final), USITC Pub. 1848 (May 1986) at 16. Indeed, we found that a purchaser's doubts about whether offers of timely delivery could be relied upon in light of the financial consequences associated with delay do not make a bid unresponsive. Id.

transplant automakers), each sale of a mechanical transfer press in the open, competitive portion of the U.S. market is more important in evaluating the present condition of the domestic industry. 50/

C. Industry Indicia

Because mechanical transfer presses are big-ticket, made-to-order products with relatively low and irregular sales over time, 51/ year-by-year comparisons of certain indicators that we normally examine--most notably production, shipments, capacity and capacity utilization--must be viewed with caution. 52/ Moreover, because much of the information describing the condition of the domestic industry is business proprietary information, we are able to discuss this information in general terms only.

Both the value of domestic shipments as a percentage of apparent U.S. consumption and the value of U.S. purchase orders as a percentage of apparent U.S. consumption fluctuated within a fairly narrow range within the period of investigation. 53/ Due to the long lead times characteristic of the industry, purchase orders often precede shipments by two years for the larger, high-valued mechanical transfer presses.

Given the levels of shipments and purchase orders, the domestic industry had significant excess capacity throughout the period of investigation, even when measured by reference to the highest level of production of

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50/ See Tr. at 129. ("[I]t wasn't that the Japanese sold presses in '74 or '75 really, because most transfer presses are placed in the '80's, and it was placed because the transplant had those presses....That gave them [Japanese mechanical transfer press producers] the advantage, because the transplant automatically brings businesses with them.")
51/ Report at A-17; Conference Tr. at 81.
52/ Because mechanical transfer presses are made-to-order products, they are not inventoried. Report at A-18.
53/ Compare Confidential Report at A-30, Table 5 with Confidential Report at A-64, Table 20 and with Confidential Report at A-65, Table 21.

mechanical transfer presses during the 1980s, as expressed in direct labor hours. 54/

Unlike shipment, production, employment, or capacity data, all of which fluctuate with demand, the need to obtain sales in order to develop the experience derived from working with customers, and hence remain competitive in the industry, is more likely to reveal itself in the domestic industry's financial condition, as a result of accepting low profit margins in order to win bids. Although the domestic industry's financial performance generally improved throughout the period of investigation, we find that the overall level of financial performance manifests material injury, as explained below.

We find the industry's net income-and-loss experience on its operations producing mechanical transfer presses, computed on a percentage of completion method, to be poor, both absolutely and as a share of net sales. 55/ The poor performance holds for operating income, both absolutely and as a share of net sales, as well. 56/

54/ Report at A-16; Confidential Report at A-28, Table 4. Respondents argued that capacity measured by reference to the actual levels of production achieved during the period of investigation overstates domestic capacity. See e.g. IHI's prehearing brief at 16-18; HZC's prehearing brief at 6-7.

While we recognize the inherent difficulty in measuring capacity in this industry, we note that this capacity measure is based upon actual production of mechanical transfer presses expressed in direct labor hours and therefore cannot overstate "capacity." Because precise measurement of capacity, and therefore, capacity utilization, is inherently problematic in this industry, however, we conclude only that the domestic industry had significant excess capacity throughout the period of investigation. This is evident by comparing years 1986, 1987, and 1988 at Confidential Table 4. Employment data similarly reflect the decline in production over the period. Confidential Report at A-36, Table 7.

55/ Confidential Report at A-39-40, Tables 8-9.

56/ Id.

Similarly, the industry's gross profits on its operations producing mechanical transfer presses, classified either by the year in which the contract was executed or by the year in which the press was delivered, also are low, both absolutely and as a share of net sales. 57/ Given the levels of interest expense and general, selling, and administrative expenses reported in the industry, the low levels of profit translate into insubstantial estimated operating and net incomes. 58/

We further find that the financial returns to the industry, as reflected in the return on total assets, further reveal material injury. 59/ The industry's poor financial condition retarded domestic expenditures on research and development. 60/ Hence, in every year except 1988, the domestic industry's expenditures on research and development were minimal and insufficient to remain competitive in this industry. 61/

Accordingly, we determine that the domestic industry in the United States producing mechanical transfer presses is materially injured.

III. Material Injury by Reason of the Subject Imports

Under 19 U.S.C. § 1673(d)(b), the Commission must determine whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports.

In making our determination, we take into account any information

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57/ Confidential Report at A-43-46, Tables 10-11.
58/ Compare Confidential Report at A-38-40, Tables 8-9 with A-43-46, Tables 10-11.
59/ Confidential Report at A-51, Table 14.
60/ See e.g. Confidential Report at Appendix F.
61/ See Confidential Report at A-51-53, and Appendix F.

demonstrating possible alternative causes of injury to the domestic industry. 62/ We do not, however, weigh causes. 63/

In light of the conditions of competition described above, including the fact that mechanical transfer presses are big-ticket, made-to-order products with relatively low and irregular sales over time, and are characterized by learning efficiencies and economies of scale in production, we find that the volume of subject imports is significant, both absolutely and relative to domestic production of mechanical transfer presses. In this regard, we note that by value, the subject imports account for more than 65 percent of the apparent U.S. consumption.

Simply put, the more units the domestic industry builds, the lower per-unit engineering and total costs will be for the domestic industry; and by depriving U.S. producers of sales, the subject imports have injured the domestic industry by increasing its per-unit costs relative to the subject imports. 64/

Furthermore, based on extensive evidence from purchasers regarding the basis for their purchase decisions, we determine that relative price between the subject imports and domestically produced mechanical transfer presses is significant in determining the winning bid and the volume of domestic sales of mechanical transfer presses. Confidential information on the record establishes that the subject imports significantly suppressed or depressed prices for the like product and captured sales based in part upon price, often by underselling the like product. 65/

62/ See S. Rep. No. 249, 96th Cong., 1st Sess. 58 (1979); 19 C.F.R. § 202.27.
63/ See S. Rep. No. 249, 96th Cong., 1st Sess. 57-58, 75 (1979).
64/ Report at A-9; Tr. at 41, 44.
65/ Confidential Report at A-69-75, Table 23.

Most mechanical transfer presses are sold through bid competition. 66/ Most often, the bidding is closed, but firms generally know who their competitive bidders are. 67/ Mechanical transfer press manufacturers generally have from four to six weeks to prepare their bids, which are based on estimated production costs, anticipated profit, the technical specifications of the press in the request for quote (RFQ), and knowledge of competitors' recent bids. 68/ Because RFQs contain precise specifications that vary widely from project to project, each large mechanical transfer press is engineered to order and estimated costs depend upon the RFQ's specification.

Firms are often allowed only one bid, although in some instances suppliers ask for rebids from firms that have met the specifications of the project. 69/ Since mechanical transfer presses are extremely complex products, bids are differentiated not only by price but also by manufacturer. Purchasers consider price, delivery time, reliability, and previous experience with mechanical transfer press manufacturers in deciding with whom to place an order. 70/ A bid, however, must meet the purchaser's technical specifications; bids that do not meet the project specifications are dropped from consideration and the remaining bids are outlined in a quotation chart or quotation inquiries document. 71/ Throughout this investigation, respondents have argued that the domestic

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66/ Report at A-31.
67/ Id.
68/ Id.
69/ Report at A-32; Petition at 24.
70/ Report at A-32.
71/ Id.

industry is not qualified to supply large auto body panel mechanical transfer presses to that market segment. 72/

We find that the U.S. industry is qualified as a producer of mechanical transfer presses in general and of large mechanical transfer presses in particular. Verson was permitted to bid on the entire range of mechanical transfer presses upon which General Motors issued RFQs, including bids for auto body panel mechanical transfer presses. 73/ Verson won some of these bids. 74/ The record does not support the conclusion that Verson was unqualified as a supplier of all mechanical transfer presses at General Motors during the course of the investigation.

Similarly, Chrysler's purchases of mechanical transfer presses over the period of investigation also establish that the domestic industry was and is a qualified supplier of mechanical transfer presses. 75/ In 1984, Danly was awarded a contract from Chrysler for a large mechanical transfer press. 76/

Ford also purchased auto body panel mechanical transfer presses from the domestic industry during the period of investigation. The record

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72/ We note that in the preliminary investigation, respondents argued that the domestic industry was not qualified in portions of this auto body panel market segment because Verson specializes in electronic transfer feed mechanical transfer presses. See e.g. Mechanical Transfer Presses from Japan, Inv. No. 731-TA-429 (Preliminary), USITC Pub. 2160 at 17-19 (February 1989). In this final investigation, respondents argue that the domestic industry is not qualified to sell auto body mechanical transfer presses.

73/ Confidential Report at A-71-73, Table 23.

74/ Id.; Tr. at 209.

75/ Confidential Report at A-75, Table 23.

76/ See Confidential Report at A-75, Table 23; Tr. at 113-116. Komatsu's expert, Mr. Sharf, had final responsibility for the decision made by Chrysler in 1984 to purchase large mechanical transfer presses for stamping auto body panels. Because he retired from Chrysler in 1986, the only purchasing decisions at Chrysler that Mr. Sharf's testimony referred to were made in 1984, during his time at Chrysler. Tr. at 133, 164. Although Mr. Sharf testified that Chrysler was dissatisfied with Danly's subsequent performance on the 1984 contract, the fact remains that in 1984 Danly was qualified and received an order. See Confidential Report at A-78.

establishes that domestic producers were qualified at Ford to produce such presses. 77/

Mr. John Scicluna, Director of the Facilities and Tools Purchasing Office at Ford until 1989, stated that the domestic industry was not qualified to produce large auto body mechanical transfer presses for Ford. 78/ Recently in 1988, however, Verson won an award for an "auto body panel" mechanical transfer press from Ford. 79/ Accordingly, we find that even Mr. Scicluna's testimony establishes that Verson was "qualified" at Ford during the period of investigation to produce auto body panel mechanical transfer presses in the sense that Verson was awarded a contract to produce such presses. 80/

77/ Confidential Report at A-77.
78/ Komatsu's prehearing brief at Appendix B; see e.g. Tr. at 96-113, 137-138.
79/ Mr. Scicluna described two market segments within the domestic industry: the market for one-slide presses with maximum capacity of up to 1,000 to 1,500 tons and the market for larger presses which can be used to stamp auto body panels, which according to him, includes the five 3,000 ton single-slide presses awarded to Verson by Ford. Komatsu's posthearing brief at Appendix B, p. 13; Tr. at 105, 138.
80/ Mr. Scicluna stressed that Verson is not qualified to produce 4,500 ton, double-slide auto body panel transfer presses for Ford. Komatsu's prehearing brief, Appendix B at 25, 27-28; Tr. at 138, 184. Regardless of whether Verson is considered qualified to produce such a press for Ford, however, we note that Verson is qualified to supply such presses at General Motors. Tr. at 209.

We recognize Mr. Scicluna's expert knowledge of how he acted and what he perceived as the basis of Ford's purchasing decisions during his tenure with Ford. Mr. Scicluna, however, does not speak for Ford, but only for himself. Indeed, Ford spoke directly for itself in conversations with staff and through the Commission's purchaser questionnaire, and to some extent Mr. Scicluna's impressions differ from Ford's official responses to the Commission. In this regard, we note that as a purchaser of mechanical transfer presses, it is in Ford's interest to not have duties levied on mechanical transfer presses from Japan. In the final analysis, however, whether Verson is qualified at Ford to sell 4,500 ton two-slide mechanical transfer presses is not dispositive on the issue of whether U.S. producers of mechanical transfer presses are generally qualified to sell such presses to U.S. purchasers in the auto body panel market segment.

In sum, we find that over the period of investigation, the domestic industry was and is qualified to sell mechanical transfer presses to U.S. purchasers of such presses across the full spectrum of sizes and applications.

Among qualified suppliers, moreover, price is one of the most important determinates of who wins the sale. 81/ In the Japanese-owned auto manufacturer segment of the market, the winning bid was the lowest price bid in 8 of 9 purchases involving more than one bidder. 82/

Similarly, General Motors', Ford's, and Chrysler's purchases of large mechanical transfer presses reveal a strong correlation between price and the outcome of the bidding. Not only did the low bidders win 11 contracts for 24 transfer presses worth $131.7 million, but in the remaining 11 contracts, 6 of the contracts went to the second lowest bidder. 83/ Both the representations of purchasers and our analysis of the bids confirm a high correlation between low priced bids and winning bids.

We further find that the subject imports significantly suppressed or depressed prices for the like product in the United States. Importers of the subject large mechanical transfer presses submitted the low bid for 13 of the 22 contracts described above, while U.S. producers were the low bidders for only 4 contracts. 84/

81/ Confidential Report at A-70-78.
82/ Thus, price competition between Japanese producers of mechanical transfer presses appears to be fierce, and price is an extremely important factor in determining which bid wins a Japanese transplant automakers' mechanical transfer press order. Confidential Report at A-81-82, Table 25.
83/ Confidential Report at A-70, and Table 23. We note that these 22 contracts included bids from both Japanese and U.S. producers, with frequently five or more bidding producers. In the case of 2 other contracts not involving direct bidding between Japanese and U.S. producers, the lowest bid still won.
84/ Report at A-34.

We note that in many cases in which bids were not requested for a contract, price was still significant. In 13 of 15 contracts awarded without "competitive bidding," the contract was awarded to the mechanical transfer press producer who won the original bid on the specified mechanical transfer press, and in 9 of those 13 cases, the mechanical transfer producer had won the original bid by submitting the lowest price. 85/ In effect, 9 of 15 contracts for 25 mechanical transfer presses, which appear upon a cursory review to have been awarded for reasons other than price, were "won" by the lowest bidder on a previous order. 86/

Evidence of this practice of single-sourcing subsequent orders both confirms the importance of price in the large mechanical transfer press market and corroborates the special efficiencies gained in this industry by working with customers in designing, building, and installing mechanical transfer presses. 87/ Indeed, the imperative to gain market share in order to secure single-source contracts, as well as gain scale and learning efficiencies, left the domestic industry vulnerable to the general suppression of prices for large mechanical transfer presses caused by subject imports, materially injuring the domestic industry. As previously noted, the subject imports have had more than 65 percent of the U.S. market, by value, throughout the period of investigation. 88/

Respondents argued that the domestic industry is not suffering injury by

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85/ See Confidental Report at A-71-73, Table 23, and A-76-77.
86/ See Confidential Report at A-71-73, Table 23.
87/ Confidential Report at A-77, and Table 23.
88/ Report at A-30.

reason of the alleged less than fair value sales because the alleged lost sales were not lost for reasons of price. 89/

If it were true that the subject imports are preferred for reasons of quality or service, then we would expect to observe the subject imports commanding a premium over domestically produced mechanical transfer presses in the auto body panel segment of the market. The evidence in this final investigation, however, reveals that the subject imports generally have undersold the domestic like product in this market segment. 90/

According to Komatsu, this pattern of underselling is explained by the price competition between Japanese producers of mechanical transfer presses, which drives the subject imports' bid prices below those submitted by domestic producers of the like product. 91/ Although the domestic manufacturers of large mechanical transfer presses are invited to bid, Komatsu suggests there is no price competition between Japanese and U.S. large mechanical transfer press manufacturers because domestic producers' presses are not considered economically feasible substitutes for the Japanese presses. 92/ Accordingly, respondents contend that domestic producers bids for large mechanical transfer presses are a "sham," and that de facto, the market segments for the subject imports and for domestically

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89/ See e.g. Komatsu's prehearing brief at 2-8, 18-25, Appendix A, B, C, & D; Komatsu's posthearing brief at 1-10; IHI's prehearing brief at 18-26; IHI's posthearing brief at 7-10; AIDA's prehearing brief at 29-31; Hitachi's prehearing brief at 8-19; Hitachi's posthearing brief at 1-4. "In the market for these larger presses today, the U.S. companies are simply not considered competitive in terms of quality, technology, and the ability to meet delivery schedules, at least with respect to these large presses used in stamping auto-body panels." Tr. at 117.

90/ See Confidential Report at Table 23.

91/ See e.g., Komatsu's posthearing brief at 6; IHI's posthearing brief at 8; Tr. at 96, 117, 217.

92/ Tr. at 122-124, 149-150.

produced mechanical transfer presses are completely separate, even though both groups of producers putatively submit bids for the same contracts. 93/

If this allegation were true, we would expect that the domestic producers would never sell a large mechanical transfer press for use in auto body panel stamping. The record demonstrates, however, that domestic producers have sold large mechanical transfer presses, even at a premium over the subject imports, to the auto body stamping segment of the market. 94/

Mr. Scicluna stated that Ford is willing to pay a premium for domestically produced mechanical transfer presses simply to get U.S. producers into the auto body panel segment of the market. 95/ Even so, any such "premium" would increase as the price of the subject imports fell, i.e., as the margin of underselling increased, and we would still find that the price effects of the subject imports are significant. 96/

93/ Respondents rely principally upon the testimony of Mr. Scicluna as support for this proposition. Ford, however, has submitted evidence which undermines any such "sham" assertion. Confidential Report at A-77.
94/ See e.g. Confidental Report at Table 23.
95/ Tr. at 102-104, 116-119.
96/ Thus, we reject the notion that a U.S. purchaser's willingness to pay a "premium" for domestically produced mechanical transfer presses is entirely disconnected from the pricing occurring within the market segment for the subject imports, to argue otherwise is to attribute uncommon altruism to the purchaser. We reiterate that we do not find that the subject imports occupy a separate market segment from the domestic like product for the reasons set forth at 22-28, supra. Even allowing for differences of technology, quality, timeliness of delivery, or more generally, reduction of risk, the record does not support the conclusion that U.S. produced mechanical transfer presses are not substitutes for the subject imports at the prices prevailing in the market or that the price simply does not matter when choosing between the subject imports and the like product. Accord Mechanical Transfer Presses from Japan, Inv. No. 731-TA-429 (Preliminary), USITC Pub. 2160 (1989) at n. 54.; Accord Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Invs. Nos. 731-TA-426 and 428, USITC Pub. 2237 (November 1989). ("The premium price is merely the equilibrium price at which most purchasers would be relatively indifferent in choosing the premium product over the generic product. If the price difference between the imports and the premium

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Simply put, underselling by the subject imports depressed the price that the domestic industry can seek and obtain for its mechanical transfer presses. Accordingly, we reject the argument that the pricing of the subject imports did not materially injure the domestic industry.

In sum, we find that the volume of the subject imports, which by value constituted over 65 percent of the U.S. market over the period of investigation, 97/ was significant. We determine that domestic producers of large auto body panel mechanical transfer presses are qualified suppliers to the U.S. automakers. We also find that price is a significant factor in the mechanical transfer press market, that the subject imports have significantly depressed or suppressed prices in this market, and the subject imports have consistently undersold the like product. These price effects have resulted in both lower profitability for domestic producers on the volume of business they did obtain, and a lower volume of business, with consequent loss of scale economies and diminution of product development and research expertise.

Conclusion

For the reasons described above, we determine that an industry in the United States is materially injured by reason of imports of mechanical transfer presses from Japan.

96/(...continued)
domestic product exceeds the premium, price depression or suppression may appear or the market share of the premium product may decline.") Id. at 50.
97/ Report at A-30.

ADDITIONAL VIEWS OF COMMISSIONER ECKES

In the interest of greater transparency in Commission decisionmaking, I am pleased to provide these comments regarding the legal bases for my own analytical decisions in this investigation involving certain mechanical transfer presses from Japan. My approach is anchored in traditional Commission practice and the statute, and has, I believe, been approved by our reviewing courts.[1] Nonetheless, a few words of additional explanation seem in order in light of continuing Commission discussion of these issues, particularly in Certain

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[1] For a more complete discussion of my analytical approaches, see New Steel Rails from Canada, Inv. No. 701-TA-297 (Final), USITC Pub. 2217 (September 1989), at 29-70 [hereinafter "Rails"], Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Invs. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 (November 1989), at 63-100 [hereinafter "Phones I"], Drafting Machines and Parts Thereof from Japan, Inv. No. 731-TA-432 (Final), USITC Pub. 2247 (December 1989), at 67-99 [hereinafter "Drafting Machines"], and Certain Telephone Systems and Subassemblies Thereof from Korea, Inv. No. 731-TA-427 (Final), USITC Pub. 2254 (January 1990), at 15-21. [hereinafter "Phones II"]. For a similar perspective from another colleague, see the "Additional Views" of Commissioner Rohr, Rails, supra, at 71-82.

For verbal variety I use the following terms interchangeably: bifurcated analysis, dual requirement, dual standard, two-factor, or two-prong inquiry.

Telephones and Subassemblies Thereof from Korea.[2]

First, let me review briefly my own approach. In this investigation, as in other Title VII cases involving allegations or findings of injurious dumping and subsidization, I have employed the dual-requirement, or bifurcated, method of conducting injury analysis. Under this method, an affirmative injury determination can result only if two conditions are satisfied. The domestic industry producing the like product must be materially injured. Also, less-than-fair value imports must be a cause ["by reason of"] of that material injury. In essence, then, I must find a causal nexus between unfairly traded imports and injury. And, if the evidence of record fails to satisfy either of these threshold conditions, I make a negative determination.

Bifurcated analysis has been used in the Commission for about twenty years.[3] During this period the dual-requirement

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[2] Phones II, supra, at 39-57.

[3] In Rails, supra, at 67-69, I presented a lengthy discussion of Commission adherence to the bifurcated approach during the 1970s pursuant to requirements of the Antidumping Act of 1921. See also, Phones I, supra, at 66-80; Drafting Machines, supra, 84-91.

Here is a brief summary of those conclusions:

(1) By 1972 the Commission regularly applied bifurcated injury and causation analysis. Indeed, in twenty-nine of fifty-seven cases decided between May 1972 and December 1975, the bifurcated criteria were explicitly stated in the Commission's majority opinion. Moreover, in twenty-four of the twenty-nine cases the Commission said that use of the bifurcated approach was required under terms of the Antidumping Act of 1921. In the remaining five cases, the

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approach has been approved by the Commission's reviewing courts on a number of occasions.[4]

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[3](...continued)
Commission used similar language: "The Antidumping Act, 1921, as amended, imposes two conditions which must be satisfied before an affirmative determination can be made...."
See cases cited in Rails, supra, at 68-69.

(2) Over the last twenty-one years a group of twenty-two Commissioners regularly utilized bifurcated analysis and made separate findings of injury and causation. No member of the Commission since 1970, who served more than a few weeks, failed to employ this pattern of analysis.

My review of Commission findings indicates that the following Commissioners have used the bifurcated approach: (1) Glenn W. Sutton; (2) James W. Culliton; (3) Dan H. Fenn, Jr.; (4) Stanley D. Metzger; (5) Will E. Leonard, Jr.; (6) George M. Moore; (7) J. Banks Young; (8) Catherine Bedell; (9) Joseph O. Parker; (10) Italo H. Ablondi; (11) Daniel Minchew; (12) William Relph [sic] Alberger; (13) Paula Stern; (14) Michael Calhoun; (15) Alfred E. Eckes, Jr.; (16) Eugene Frank; (17) Veronica Haggart; (18) Seeley Lodwick; (19) Susan Liebeler; (20) David Rohr; (21) Anne Brunsdale; and (22) Don Newquist. The only exception in the last twenty years was Chairman Chester L. Mize, who served less than three months, and did not participate in any antidumping investigation.

Even one Commissioner who criticizes the bifurcated approach has apparently employed it in 11 separate investigations. 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, Invs. Nos. 303-TA-19 and 20, 731-TA-391-399 (Preliminary), USITC Pub. 2083 (May 1988), at 36, 42. See also my discussion of this issue later, at 13-15.

[4] Under provisions of the 1921 Antidumping Act bifurcated analysis was affirmed in Pasco Terminals, Inc., v. United States, 477 F. Supp. 201 (Customs 1979), aff'd, 634 F.2d 610 (CCPA 1980); and Armstrong Bros. Tool Co. v. United States, 483 F. Supp. 312 (Customs 1980); aff'd, 626 F.2d 168 (CCPA 1980).
Under the 1979 Act, bifurcated analysis has been approved in American Spring Wire Corporation v. United States, 590 F. Supp. 1273, 1276, 1281 (CIT 1984); aff'd, 760 F. 2d 249 (Fed.
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With respect to causation issues, I have continued the Commission practice, which began prior to the 1979 Trade Agreements Act, of seeking to determine only whether a class or kind of foreign merchandise that the Department of Commerce has found to contain unfairly traded products is materially injuring the domestic industry.[5] This approach, also, has been affirmed by the Commission's reviewing courts.[6]

Finally, in assessing the impact of less-than-fair value imports on the domestic industry, I again have sought to follow the guidance of our reviewing courts.[7] [8] An affirmative

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[4](...continued)
Cir. 1985). National Association of Mirror Manufacturers v. United States, 696 F. Supp. 642, 647 (CIT 1988); Roses, Inc. v. United States, 720 F. Supp. 180, 184 (CIT 1989).
In Rails, supra, at 70, I observed that "in light of the judicial precedents, the real question for trade law administrators is not whether the bifurcated method is lawful, but instead whether unitary analysis is in any way compatible with the required two-factor approach to material injury and causation."

[5] See Phones I, supra, at 80-84; Drafting Machines, supra, at 74-83.

[6] Algoma Steel Corp., LTD. v. United States, 688 F. Supp. 639 (CIT 1988); aff'd, 865 F.2d 240 (Fed. Cir. 1989), at 241; cert. denied, 109 S. Ct. 3244 (1989).

[7] See Phones I, supra, at 85-99; Drafting Machines, supra, at 91-99.

[8] Pasco Terminals, Inc. v. United States, 477 F. supp. 220-221 (Customs, 1979); aff'd, 634 F.2d 612 (1980); British Steel Corp. v. United States, 593 F. Supp. 405, 413 (CIT 1984); Maine Potato Council v. the United States, 613 F. Supp. 1237 (CIT 1985), at 1243; Gifford-Hill Cement Co. v. United States, 615 F. Supp. 577, 585-86 (CIT 1985); Hercules, Inc., v. United States, 673 F. Supp. 454 (CIT 1987); Citrosuco Paulista, S.A., v. United States, 704 F. Supp. 1075 (CIT 1988), at 1101, 1103; Florex et al. v. United States, 705 F.
(continued...)

determination requires only that imports be a contributing cause to the material injury experienced by the domestic industry. Such a contributing cause is clearly more than a de minimis cause but less than a sole, major, or principal cause of injury. In attempting to draw a line where Congress has been vague, the courts have apparently used the terms "minimal cause" and "slight cause" synonymously with "contributing cause."[9]

I regret to write that at least one Commissioner seems to employ divergent methods.[10] While my own additional views

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[8](...continued)
Supp. 582, 593 (CIT 1989); LMI-La Metalli Industriale, S.p.A. v. United States, 712 F.Supp. 959, 971 (CIT 1989), at 31; Wieland Werke, A.G., v. United States, 718 F.Supp. 50, 56 (CIT 1989); Granges Metallverken A.B. v. United States, slip op. 89-80 (CIT 1989), at 18; Metallverken Nederland B.V. v. United States, slip op. 89-170 (CIT 1989), at 26.

[9] For a discussion of court decisions affecting the Commission's consideration of causation issues, see my discussion in Phones I, supra, at 89-99.

[10] In examining the written views of my colleagues, it is sometimes necessary to offer critical comments, especially when I believe them flawed. I believe it is quite legitimate for them to do likewise. My criticisms occasionally may be blunt, but they are not personal.

Language directed against the person of a colleague is surely an example of what D.H. Fischer labels the "abusive ad hominem." In his book Historians' Fallacies (1970), at 291, he says: "... the classic example, perhaps apocryphal, is a note passed from one desperate lawyer to another: 'No case; abuse plaintiff's attorney.'"

Ad hominem attacks are invariably counterproductive, concludes one authority on litigation. Professor Thomas A. Mauet of the University of Arizona writes in Fundamentals of Trial Techniques (2nd ed., 1988), at 362:

(continued...)

in this investigation were prepared without the benefit of access to the additional views of other Commissioners,[11] I have

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[10](...continued)

"It is always improper to engage in personal attacks on opposing counsel or the other parties in the trial. This should never be done, for both legal and persuasive reasons. Nothing can diminish your credibility before the jury faster than resorting to this type of argument."

In my view, what applies to attorneys certainly must apply to judges, professors, and International Trade Commissioners. Not only are personal attacks counter-productive and tasteless; they also violate collegial etiquette, and most important, they debase their authors and the institutions of government they serve.

[11] Lack of access to the views of other Commissioners is from time to time a source of frustration to many Commissioners, including this one, and apparently to at least one judge on the Court of International Trade. See, e.g., Borlem S.A. v. United States, 718 F. Supp. 41, 49-50 (CIT 1989); Fresh, Chilled, or Frozen Pork from Canada, Inv. No. 701-TA-298 (Final), USITC Pub. 2218 (September 1989), at 63, note 78 (Dissenting Views of Chairman Brunsdale and Vice Chairman Cass); Rails, supra, at 126, note 2 (Dissenting Views of Vice Chairman Cass).

In the best of all worlds, in which each Commissioner worked at approximately the same pace and the institution faced no tight statutory deadlines for the completion of investigations, a complete sharing of views would be both feasible and desirable to focus argumentation and facilitate court review. But, in final ITC investigations Commissioners have approximately one week, not months, to complete their views. Within such a tight timetable, it has been my experience over the last eight and one-half years on the Commission that some of the most zealous advocates of a complete exchange of draft views are least able to provide reciprocal access to their own views in a timely manner.

Furthermore, it is important to note that according to Commission custom and practice any draft views prepared at the express direction of Commissioners voting in the majority are not the General Counsel's views, but rather are the "Views of the Majority." If dissenting Commissioners are prepared to exchange initial drafts of their dissenting views, I personally would have no objection to an exchange. To my

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reason to believe, based on the views in Certain Telephones and Subassemblies Thereof from Japan and Taiwan and Certain Telephones and Subassemblies Thereof from Korea, that another Commissioner may use a pattern of analysis described as "unitary analysis". This approach, which incidentally has not been subjected to court review, appears to rest on assumptions incompatible with dual-standard analysis.[12]

I believe there are at least three fundamental problems with what my colleague has proclaimed "unitary analysis." An estimated 1500 pages of discussion in his separate views have not adequately addressed my concerns.[13]

Problem No. 1: Examining only Dumped or Subsidized Imports?

This first issue involves a fundamental question of statutory interpretation. On the one hand, Commissioner Cass, the foremost proponent of unitary analysis, stakes out in Rails the peculiar position that our international obligations

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[11](...continued)
knowledge, those who complain loudly in public about denial of access to "Majority Views" have offered no workable proposals for a timely and equitable exchange with their colleagues. They seem more eager to engage in public criticism and debate than to consult collegially.

[12] Phones I, supra, at 143-241. I do not rule out the possibility that some future form of unitary analysis may be found compatible with the statute and case law. It may be possible to consider both injury and causation within the context of a unitary analysis that is nonetheless compatible with the case law cited in note 4.

[13] Commissioner Cass's estimate of 1500 pages appears in Phones II, supra, at 48.

under the General Agreement on Tariffs and Trade (GATT) and U.S. statute require the Commission to consider only dumped or subsidized imports in making injury determinations.[14] He states:

> ...certain of my colleagues have expressed the view that it is not the Commission's job to determine whether unfair trade practices, such as dumping or subsidization, have materially injured the domestic industry. Rather, according to these Commissioners, the Commission's task is to ascertain whether the imports that were the subject of the Commerce Department's investigation -- whether or not fairly traded -- caused material injury. [footnote omitted] In other words, in this view, the Commission need not make any effort to assess the effects of the unfair trade practices themselves.[15]

Commissioner Cass then asserts "such an interpretation of our trade law is, on its face, wholly inconsistent with the GATT." He proceeds to discuss his own interpretation of the GATT obligations, and then of U.S. law, saying: "An interpretation of our trade law that dispenses with any effort to assess the effects of unfair trade practices on domestic industry is no less inconsistent with U.S. law than it is inconsistent with the GATT." He claims further: "The evidence that Congress intended the Commission to examine the effects of the unfair trade practice at issue, rather than the effects of 'imports', whether or not dumped or subsidized, is unambiguous."[16]

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[14] Rails, supra, at 127-137.

[15] Rails, supra, at 127.

[16] Rails, supra, at 127-129.

Then, a few pages later Commissioner Cass asserts:

> The difference in approaches, thus, is not between looking for effects of imports and looking for effects of unfair trade practices without regard to the role played by imports. Rather the difference is between two approaches that look at imports. One examines the way unfairly traded [sic] imports affect the U.S. industry, in contrast to the effects that would be felt if the unfair practice did not exist. The other approach examines the effects of imports, regardless of the degree to which they are unfairly traded.[17]

What does Commissioner Cass mean? Because he has criticized the Commission in Rails for assessing the impact of imports, not unfair imports, on the domestic industry, one might look at the plain meaning of these words and reasonably conclude that Commissioner Cass believes the Commission may examine only the impact of dumped or subsidized imports. If so, however, he fails to reconcile this position with the holdings of two reviewing courts in Algoma Steel Corp. v. United States.[18] In particular, the Federal Circuit ruled that "an injury determination, not confined to the LTFV sales alone" is not "arbitrary, capricious, or otherwise contrary to the law."[19]

In Phones II, my colleague appears to take exception to that interpretation of his words. He insists instead that he

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[17] Rails, supra, at 132.

[18] 688 F. Supp. 639; aff'd, 865 F.2d 240, 241; cert. denied, 109 S. Ct. 3244. See my discussion in Phones I, supra, at 80-84; Drafting Machines, supra, at 74-83.

[19] 865 F.2d 240, 241.

does "follow the statutory direction that the Commission examine the effects of the 'class or kind of merchandise' investigated by the Commerce Department." He says by way of elaboration that

> "Algoma [sic] allows the Commission to reach a decision on effects of dumped or subsidized merchandise without tracing injury to specific units of such merchandise or to the magnitude of dumping or subsidization of those particular units. The court did not, however, suggest that we may wholly sever our determination from evaluation of the effects of dumping or subsidization...."[20]

This language points to another apparent difference with the Commission majority: Commissioner Cass apparently believes that in assessing the impact of a class or kind of merchandise found by the Department of Commerce to be dumped or subsidized, the Commission is not actually examining the effect of dumped or subsidized imports on the domestic industry. Such an interpretation, imaginative as it is, is hardly compatible with the case law of Algoma. In that case, our reviewing courts concluded that the Commission had satisfied its statutory obligations by looking only at the

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[20] Phones II, supra, at 44-45. Here he admits that "Algoma allows the Commission to reach a decision on effects of dumped or subsidized merchandise without tracing injury to specific units of such merchandise...." In making this concession, Commissioner Cass has apparently recognized the legitimacy of the majority's position. I believe other members of the Commission do assess the effects of dumped or subsidized merchandise on the domestic industry when they examine only the class or kind of merchandise found by the Department of Commerce to contain LTFV sales. This is, after all, the point of Algoma.

effect of all imports included in the class or kind on the domestic industry. As the Court of International Trade said:

> ITC is basing its decision on the affects [sic] of relevant imports from companies determined to have sold the subject merchandise at LTFV. Obviously, it is unlikely that every sale is at LTFV, and Congress may be presumed to have perceived this.
>
> Whatever the ideal embodied in GATT, Congress has not simply directed ITC to determine directly if dumping itself is causing injury....
>
> Given the complexities of determining if dumping is causing injury, it is difficult to say that an interpretation of the statute that directs ITC to focus on the effects of relevant imports from companies determined to have sold the subject merchandise at LTFV, rather than on the effects of a volume of sales deemed to be at LTFV, conflicts with GATT.

Furthermore, the Federal Circuit, in affirming the Court of International Trade, stated:

> If a 'class or kind' of that merchandise is sometimes sold at LTFV, the terms of any individual sale do not matter.... Some LTFV sales must be found, but if they occurred, the ITC is not required to pursue details as to the chain of causation of every instance where the foreign supplier supplanted the domestic one. [emphasis added][21]

In my view a careful reading of the Algoma decisions demonstrates that the ITC may satisfy its statutory obligation to examine the effects of unfairly traded merchandise on the domestic industry without undertaking the complicated task of pursuing "a chain of causation" between goods actually dumped or subsidized and injury to the domestic industry. This appears to be the principal point of difference with

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[21] 865 F.2d 240, 242; cert. denied, 109 S. Ct. 3244.

Commissioner Cass who believes that the Commission is required by both GATT obligations and statute to examine the specific chain of causation. If this is indeed Commissioner Cass's position, then the courts have visited this issue in Algoma and found Commissioner Cass's interpretation lacking.

In light of the courts' rulings, I am puzzled to find a colleague insisting that his own interpretation is the only correct method. Nonetheless, his "Views" persist with claims such as the following:

> In my view, these [other] Commissioners have misinterpreted the law in important respects, and are, as a consequence, contributing to an overall understanding of U.S. trade law that is contrary to Congressional intent as embodied in that law and contrary to our international obligations under the GATT.[22]

To summarize, although some Commissioners may wish to continue debate over whether the Commission is to assess the impact of dumped imports or to assess the impact of a class or kind of merchandise found to be sold at less than fair value on the domestic industry, this must be viewed as a moot exercise. Our reviewing courts have resolved these issues.

In Algoma both the Court of International Trade and the Court of Appeals for the Federal Circuit held the Commission may examine the entire class or kind of merchandise found by the Department of Commerce to include dumped or subsidized merchandise. The Commission is not required to examine only

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[22] Rails, supra, at 126-137, quote at 126.

dumped or subsidized imports.

Problem No. 2: Bifurcated Analysis Incompatible with U.S. Law and GATT Codes?

I have already addressed this second issue, involving Commission use of dual standard injury and causation analysis, at length in previous opinions, and will not burden the reader with a recital of those points.[23]

In Phones II, the only point Commissioner Cass raised on the bifurcation issue was to deny that he himself had employed bifurcated analysis in Antifriction Bearings.[24]

Obviously, a Commissioner should know what pattern of analysis he employed, but a close reading of the "Views" prepared in those eleven investigations demonstrates more than a little ambiguity. Interestingly, in Antifriction Bearings Vice Chairman Cass adhered to the customary Commission language signalling a separate finding of injury. Specifically, he joined the Commission view in concluding that there was "a reasonable indication that the domestic industries producing antifriction bearings are experiencing

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[23] See Rails, supra, at 29-70, and the views of Commissioner Rohr in the same case, at 71-82, as well as Phones I, supra, at 66-80. In Drafting Machines, supra, at 84-91, I respond to claims in Phones I, supra, at 144-220, that the bifurcated approach is incompatible with U.S. law and GATT obligations.

[24] Phones II, supra, at 48-51.

material injury."[25] Moreover, in the same text entitled "Views of the Commission," Commissioner Cass opted not to footnote any disagreement with those conclusions. I believe this is noteworthy because it contrasts with his operating procedure in other cases. For example, in several other cases contemporaneous with Antifriction Bearings, my colleague expressly noted his separate views on the issue of material injury.[26] More recently, in Drafting Machines he inserted words indicating that he specifically elected to "not join this conclusion."[27]

But, in his "Additional Views" for Antifriction Bearings, as if to emphasize his support for the majority's bifurcated position, he even reiterated a separate material injury finding, saying "... based upon the record before us and in light of the standards applicable to preliminary investigations under Title VII, I must find that there is a reasonable indication of material injury to the domestic

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[25] See Antifriction Bearings, supra, at 36.

[26] See, e.g., 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Preliminary), USITC Pub. 2076 (April 1988), at 3 (note 2), 29; and Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Final), USITC Pub. 2090 (June 1988), at 7 (note 17). In the latter case Commissioner Cass explicitly said he "does not ... believe a separate conclusion respecting the condition of the domestic industry is required."

[27] Drafting Machines, supra, at 11, note 30,

industries in question."[28]

More recently, however, my colleague has asserted that the meaning of his words in Antifriction Bearings has been "misconstrue[d]."[29] Upon closer examination, this comment appears to be an effort at post hoc rationalization. It is after all a basic principle of construction that "words should be given their common and approved usage." Indeed, according to the standard text on this subject: "This is also true when a custom which may have been followed for a long time is involved."[30]

It is of course helpful to have Commissioner Cass's retrospective statement that certain well-defined words and phrases, used by the Commission, for over twenty years to signal bifurcated analysis convey to him a different meaning. This clarification will undoubtedly aid the parties to future investigations in interpreting the views of at least one Commissioner.

Problem No. 3: Minimal Causation Incompatible with Law?

There is a third substantive issue that merits further comment. Commissioner Cass has claimed that the Commission majority's reliance on a "minimal causation" standard

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[28] See Antifriction Bearings, supra, at 42.

[29] See Phones II, supra, at 48-51.

[30] Sutherland Stat Const §46.01.

contradicts GATT obligations, and represents an "extreme" departure for the Commission in the aftermath of the 1979 Trade Agreements Act.[31]

In a recent set of "Dissenting Views" Commissioner Cass continues to state his belief that reliance on the so-called "minimal causation" approach "... fundamentally recasts the

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[31] Commissioner Cass has written:

> Those Commissioners who believe that the Commission must examine the effects of imports, rather than the effects of dumping or subsidization, also appear to believe that 'even a slight contribution' to overall industry injury from the imports subject to investigation is a sufficient basis for an affirmative determination....
>
> I find it difficult to believe that anyone who had not been immunized by frequent exposure to this argument could accept this standard as consistent with U.S. trade law (or with the provisions of the GATT that the law was intended to implement. [Phones I, supra, at 229-31].
>
> The minimal causation approach also is contrary to our international obligations under the GATT.... [Phones I, supra, at 149].

In Plastic Tubing Corrugators from Canada, Inv. No. 701-TA-301 (Preliminary), USITC Pub. 2246 (December 1989), at 42, Commissioner Cass offers the view that the "minimal causation" approach is an "extreme" approach. He says:

> "...some of my colleagues read the statute as imposing a much different causal requirement respecting the relation between the imports subject to investigation and the condition of the domestic industry than I find in Title VII. At the extreme [emphasis added], some have used what I have described as a 'minimal causation' approach."[footnote omitted]

statutory command, abandoning any but the most tangential connection of our decision to evaluation of the injury to American industry from dumped or subsidized goods."[32] In these views my colleague continues to claim that my previous discussion of "the law and of court and Commission precedent are flatly incorrect..." but he did not choose to offer "an extended reply...."[33] He claims, however, that the "minimal causation" approach pays "little, if any, heed" to certain basic rules of statutory construction which Commissioner Cass discussed in Phones I. He further states:

> "that the mode of analysis preferred by advocates of the minimal causation approach appears instead to consist in large measure of a single-minded effort to wrench individual sentences or sentence fragments out of context from the documents in which they appear, to impute to them a meaning that is by no means obvious, and to then elevate them as guides for statutory interpretation above clearer statements to the contrary appearing in more authoritative sources or even in the selfsame document."[34]

Once again, Commissioner Cass elects to ignore a specific discussion of the many judicial decisions upholding the Commission's use of a minimal, or contributory, causation standard. I have discussed these points previously in Phones I, at 85-99, and in Drafting Machines, at 91-99. To carry his argument and persuade his colleagues and other readers, I

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[32] See Phones II, supra, at 43.

[33] Phones II, supra, at 44-45.

[34] Phones II, supra, at 46.

believe that Commissioner Cass must address in a detailed and systematic way the language of our reviewing courts in a number of cases over the last eleven years.

First, in Pasco Terminals, Inc. v. United States, the U.S. Customs Court initially approved the present contributory cause standard. The court held:

> ... so long as there was a causative link between Azufrera's LTFV sales and offers and the injury to domestic industry, the Commission was correct in finding injury to domestic industry 'by reason' of these LTFV sales and offers. To establish the necessary causation, LTFV sales do not have to be the sole cause, the major ca[u]se, or greater than any other single cause of injury. Hence, once the commission found a causative link between LTFV sales and offers and injury to domestic industry, its task in this respect was finished. [footnote omitted] It simply had no reason to discuss the other causes which had contributed to the injury, be it Duval's entrance as a major producer or some other factor. In short, when the Commission found that the LTFV sales and offers of Mexican sulphur had contributed to the general depression of prices and to market disruption in Tampa and along the East Coast of the United States, it in effect, found that Duval was not the sole cause of injury.[emphases added][35]

Does Commissioner Cass believe Pasco represents a proper interpretation of the law? Does he believe that the court's standard in this case is compatible with the statutory causation requirement?[36] Does he believe the Commission may disregard this holding? To my knowledge, my colleague has never addressed in written views the legal significance of

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[35] Pasco Terminals, Inc., v. United States, 477 F. Supp. 220-221 (Customs, 1979); aff'd, 634 F.2d 612 (1980).

[36] Quote from Phones I, supra, at 229.

Pasco.

Second, in light of Pasco Commissioner Cass has an obligation to revisit British Steel Corp. v. the United States.[37] In that case the Court again upheld the "contributing cause" standard and said: "... the test of causation is whether the imports from a particular country are contributing [sic] to the injury being suffered by the domestic industry...."[38]

Third, Commissioner Cass has failed to address the Court of International Trade's holding in Maine Potato Council.[39] In that case Judge Restani cited British Steel and stated "that it is not necessary for plaintiff to show that the imports are the sole cause, nor even the major cause of injury, as long as the facts show that LTFV imports are more than a de minimis factor in contributing to the injury." Surely this additional articulation of the "minimal

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[37] 593 F. Supp. 405, 413 (CIT, 1984).

[38] In Phones I, supra, at 238, 239, Commissioner Cass claims that British Steel must be read "subject to qualification." He says further: "Read carefully, the court has not re-written the law to allow any [sic] contribution of imports to an industry's declining fortunes to be the basis for an affirmative decision without regard for whether the subsidized imports themselves cause (or imminently threaten) material injury."

In my view this statement conflicts with Pasco, a case affirmed by the Court of Customs and Patent Appeals. See supra, text with note 34.

[39] Maine Potato Council v. the United States, 613 F. Supp. 1237 (CIT 1985), at 1243.

contribution" by our reviewing court places this interpretation beyond the realm of the "extreme." Moreover, the Commission may not lawfully disregard this holding.

A fourth case inviting meaningful comment from Commissioner Cass is Gifford-Hill Cement Co. v. United States. There Judge Restani indicated that "the Commission must rule in the affirmative if it finds even slight contribution [emphasis added] from imports to material injury...."[40] I note that Commissioner Cass apparently has not discussed in his "Views" this decision, one that would seem to conflict with his comment in Phones I that the "slight contribution" standard "effectively reads the entire causation requirement out of the statute."[41]

Judge Carmen used virtually identical language in a fifth case, Hercules, Inc., v. United States. He said: "If the ITC finds material injury exists due to an even slight contribution [emphasis added] from imports, the ITC may not weigh this contribution against the effects of other factors that are not used in the determination."[42]

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[40] 615 F. Supp. 577, 585-586 (CIT 1985).

[41] Phones I, supra, at 229.

[42] 673 F. Supp. 454, 481 (CIT 1987). In Phones I, supra, at 240-241, Commissioner Cass claims that the essential guidance to be gleaned from Hercules is "that the Commission should not weigh causes of injury, and should not decline to rule in favor of the domestic industry merely because unfairly traded imports appear to have been a relatively minor cause of injury when compared to other problems experienced by the industry." Once again, Commissioner Cass has not reconciled

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Sixth, Commissioner Cass has avoided addressing the Court of International Trade's holding in LMI-La Metalli Industriale and has proffered no explanation of how his interpretation of the statute is compatible with this holding. In LMI-La Metalli the court wrote: "... the Commission is not to weigh causes of injury, but is to determine whether imports contribute to conditions of the domestic industry.... It is sufficient that the imports contribute, even minimally, [emphasis added] to material injury."[43] The court's language in LMI-La Metalli Industriale seems incompatible with Commissioner Cass' claim in Phones I:

> [T]here is no persuasive authority supporting the contention of certain of my colleagues that ... U.S. trade law requires an affirmative injury determination in any case where it can be shown that the domestic industry is experiencing difficulties to which the subject imports may have contributed minimally.[emphasis added]

Seventh, in Wieland Werke, A.G., v. United States Judge DiCarlo held: "In determining material injury by reason of imports, the Commission is not to weigh causes of injury, but is to determine whether imports contribute [emphasis added]

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[42](...continued)
the court's express support for a "slight contribution" standard with his own position. See text with note 40.

[43] LMI-La Metalli Industriale, S.p.A. v. United States, 712 F.Supp. 959, 971 (CIT 1989).

to conditions of the domestic industry." [footnote omitted][44]

Eighth, in Granges Metallverken A.B. v. United States Judge DiCarlo repeated the "minimal contribution" formulation: "It is sufficient that the imports contribute, even minimally, [emphasis added] to material injury."[45] Once again, the court's interpretation of the law appears in direct conflict with Commissioner Cass' approach.[46] To this point, my colleague has made no effort to reconcile his interpretation with the reviewing court's holding.

And, finally, in Metallverken Nederland B.V. v. United States, the Court again affirmed the "contributory cause" standard:

> "The Commission is ... to determine whether the dumped imports contribute [emphasis added] to material injury.... Although they recognized the existence of other factors, the Commissioners found that the subject imports contributed to the harm experienced by the domestic industry. [footnote omitted] The Court finds the Commissioners' causation analysis to be supported by the record

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[44] 718 F. Supp. 50, 56 (CIT 1989). See, Florex et al. v. United States, 705 F. Supp. 582, 593 (CIT 1989). Judge Restani said that "imports need not be the only cause of harm.... The record does not show that weather, and not imports, contributed to the material injury observed. ITC could conclude based on this record that both caused harm."

See also, Judge DiCarlo's ruling in Citrosuco Paulista, S.A., v. United States, 704 F.Supp 1075 (CIT 1988), at 1101, 1103. He decided that Commissioner Rohr's conclusion that the "Brazilian dumped imports are a cause [emphasis added] of material injury to the domestic industry" was "according to law and supported by substantial evidence on the record...."

[45] 716 F. Supp. 17, 25 (CIT 1989).

[46] See, Phones I, supra, at 241.

and in accordance with law."[47]

In my view, my colleague who advocates a change in the Commission's interpretation of the law must explain how his approach is compatible with these nine cases. Based on this extensive and consistent case law, it is apparent that our reviewing court does not believe that the causation standard employed by the Commission majority is "extreme." Nor, does the court evidently believe that this approach "effectively reads the entire causation requirement out of the statute."[48]

Furthermore, a variety of scholars, diplomats and trade negotiators from different countries have written that the "minimal causation" approach is the "correct" interpretation of the Tokyo Round Codes and of U.S. implementing legislation. I have previously discussed these issues more fully.[49] My

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[47] Metallverken Nederland B.V. v. United States, slip op. 89-170 (CIT 1989), at 26, 27.

[48] I find the consistency of these court holdings noteworthy because individual judges of the Court of International Trade are not bound by each other's decisions. Nonetheless, a number of judges in some ten cases have taken a virtually identical approach to interpreting the causation standard under Title VII. See also, C. Nalls and P. Bardos, Stare Decisis and the Court of International Trade: Two Case Studies of a Perennial Issue, presented to the Sixth Annual Judicial Conference, United States Court of International Trade (Nov. 3, 1989).

[49] Several prominent legal scholars have examined this issue, and they, too, have concluded that the 1979 Code adopted the contributory cause standard embodied in previous American practice. See, Edwin A. Vermulst, Antidumping Law and Practice in the United States and the European Communities: A Comparative Analysis (1987), at 559-560. Richard Dale, Anti-dumping Law in a Liberal Trade Order (1980), at 113-114.

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colleague has not attempted to rebut these interpretations, or to offer evidence from expert witnesses supporting his own

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[49](...continued)

Lawrence L. Herman, a Canadian lawyer, also notes that the "effects" test in the Antidumping Code suggests a "rather low standard of causation...." See, his article Injury Findings by the Canadian Import Tribunal: The Decisive Elements, 1 RIBL 373 (1987), at 393.

Ortwine says in his article Injury Determinations under United States Antidumping Laws Before and After the Trade Agreements Act of 1979, 33 Rutgers L. Rev. 1076 (1981), at 1098, that the causation requirement was "essentially unchanged by the Trade Agreements Act of 1979...." He further concludes: "... Congress retained the standard set forth by the Customs Court in Pasco Terminals: the import need be only an identifiable cause of the injury, not necessarily a substantial one...."[footnote omitted]

Rodney de C. Grey of Canada, a former Canadian trade negotiator, has also stated that "a weak causal link between dumping and the condition of the domestic producers of a like product has been virtually established in U.S. law implementing GATT Article VI." See his "Trade Policy and the System of Contingency Protection in the Perspective of Competition Policy," (unpublished manuscript), February 1, 1986, at 26.

Barcelo notes in his article Antidumping Laws as Barriers to Trade - the United States and the International Antidumping Code, 57 Cornell L. Rev. 555-6 (1972), that the Tariff Commission adopted the contributory cause standard in 1971.

Metzger, a former Chairman of the Tariff Commission, also traces the origins of the contributory cause standard to a 1971 case, involving Ferrite Cores from Japan, Inv. No. AA1921-65, T.C. Pub. 360 (January 1971), pp. 4-5. He claims in his book Lowering Nontariff Barriers (1974), at 96, that in the aftermath of U.S. debate over the 1967 Antidumping Code "...the Commission appeared to be guided by the conviction that little more than de minimus [sic] injury need be shown, and that the sales at less than fair value need only be a contributing cause of that injury."[emphasis added]

See also, Phones I, supra, at 85-99, and Drafting Machines, supra, at 91-99.

position.

Let me conclude this discussion with the observation that in my judgment a close review of court decisions demonstrates that the three pillars of unitary analysis are fundamentally flawed. The Courts have said the Commission is not required to examine only dumped or subsidized sales but may instead examine the entire class or kind of merchandise the Department of Commerce finds to contain less-than-fair value transactions. The Commission is not obliged to pursue the details of a chain of causation if some LTFV sales are found. Furthermore, while a unitary approach may be permissible under the statute, the claim that a bifurcated analysis of injury and causation is illegitimate has no basis in fact. Finally, on the issue of the appropriate causation standard, the Courts have repeatedly confirmed the Commission's practice of looking at "minimal" or "contributory" causation.

In my view the one advancing novel theories has an obligation and responsibility to show specifically how his interpretations can be reconciled with the holdings of our reviewing courts. Commissioner Cass observes in Phones II that the "proper interpretation of Title VII" [antidumping and countervailing duty law] "... must consider primarily the text, structure and legislative history of a statute." Later, he adds, "My views on the statute are based primarily on those

sources that are most authoritative and most instructive."[50] However, it is noteworthy that he has chosen not to address the many court decisions reviewing Commission determinations. One can speculate that Commissioner Cass neglects the case law -- especially the many cases cited in my own views -- because these contain little, if anything, to support his interpretations.

In conclusion, I believe that my colleague has failed, in his approximately 1500 pages of written views, to explain why the approaches affirmed by the Commission's reviewing courts are wrong and why his own approach is required.[51]

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[50] Phones II, supra, at 45, 51.

[51] 1500-page estimate in Phones II, supra, at 48.

Additional Views of Commissioner Lodwick

Commissioner Lodwick notes that research and development knowledge gained in a press's design aids in the development of subsequent press designs of the same specification or even of a different specification.[1] This lowers the engineering and related costs of future press construction and allows a firm to tender a lower bid than that of a rival firm without such experience. This may explain why an auto company would single source additional presses from the press manufacturer who won the initial contract for a specific press design. Costs for additional presses of the same design would consist mainly of construction costs and lower engineering and related costs than that involved in the initial press design. Bids from other firms without prior experience for that set of press specifications simply may not be a viable option for the purchaser or the other transfer press firms. Research and development knowledge gained in one type of press design may also be transferable in part to other press designs. Some transfer press components can be used in different press designs.[2] The engineering solutions to the design problems of various transfer press components may be transferable between press designs; this lowers engineering and related costs for a new set of contract specifications. Herein lies

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[1] The Final Staff Report at page 9 states: "Economies of scale in the production of presses and experience derived from working with the customer during the installation and subsequent production process add significantly to the ability of the manufacturer to design, build, and install these presses. Technological development in this industry is directly related to the number of machines installed by a particular producer."

[2] For example, an improved electronic transfer feed system can be designed to be used in a variety of transfer presses.

the impact of Japanese imports of mechanical transfer presses on the domestic industry. The winning of the U.S. auto company transfer press contracts by the Japanese using low priced bids has allowed the Japanese transfer press producers to continue to gain scale economies over the U.S. producers and move down the transfer press learning curve. The inability of domestic transfer press producers to win many U.S. auto company transfer press contracts has impaired the ability of U.S. producers to further develop their product offerings, to lower their engineering costs or even be able to qualify for future bids.

I believe that the qualification standards set by transfer press purchasers are not static and rise with the continued development and improvement of the mechanical transfer press technology and new developments in purchaser's manufacturing processes.[3]

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[3] U.S. automakers giving purchase orders to a transfer press manufacturer cooperate with the manufacturer in transfer press development. Hearing transcript at 154 and Final staff Report at 73.

Auto makers are also looking for better technology and heavier tonnage presses to handle their stamping tasks. As Mr. Sciculuna at page 186 of the Hearing Transcript noted: "I believe we are going to get to the point where the largest panel that can be run in a transfer press, because not every automotive sheet metal panel can be run in a transfer press . . . now, if its 6,000 - - it may be more than that but we have seen 6,000 ton presses."

The initial exposure of U.S. auto makers to the Japanese stamping operations in 1981 raised their expectations of their specifications for the transfer presses: "We were absolutely dumbstruck by what we saw in the stamping operations in Japan. . . . These press had tremendous capacities, capacities that we had never seen before in size and tonnage. . . . Our other alternative was to look to the U.S. suppliers who had not developed the technology and had no experience and no product available in the large body panel area." John Sciculuna's testimony at pages 98 and 101 of the hearing transcript.

The considerable testimony regarding differences between mechanical and electronic transfer feed systems, one slide and two slide presses and the dual-axial and tri-axial feeds illustrates the importance of continued technical development in this industry. As Mr. Sharf on page 3 of his written testimony states: "Normally, the decision as to which of these transfer presses to buy is a technical matter. You choose the press with the highest technical recommendation."

The continued technical development in this industry not only means that manufacturers

This implies that firms unable to win contracts based on price when they are qualified to bid for a contract, may not be able to qualify for later bids if purchasers' qualification standards have risen due to subsequent technological developments in transfer press design. The winning of a contract allows a transfer press manufacturer to increase its advantages over its rivals for future bids for similar technology but also puts the firm at an advantage to offer technologically improved products as purchasers work to develop the specifications for their future transfer press contracts.[4]

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are solving engineering problems for a differing set of specifications at the same technical level but are working to improve their technology to better perform an existing set of tasks and are also working to solve a whole set of size and tonnage problems.

[4] Mr. McGrath, in the Hearing transcript at page 41, stated: "There is a second, more insidious effect of this huge presence. As each new purchase order goes to Japan to be designed, manufactured, and returning to the United States, installed by producers, that much technological expertise is lost to American producers. We are put that much further behind on the all-important experience curve and in the final analysis made that much less competitive."

ADDITIONAL VIEWS OF VICE CHAIRMAN RONALD A. CASS

Mechanical Transfer Presses from Japan
Inv. No. 731-TA-429 (Final)

I join the majority of my colleagues in this final investigation in finding that an industry in the United States has been materially injured by reason of less than fair value (LTFV) imports of mechanical transfer presses from Japan. I also join their conclusion as to the particular firms properly included as members of the domestic industry for purposes of determining material injury. However, I differ with their definition of the relevant domestic like product and with their analysis of the determination of material injury by reason of FTFV imports. In these Additional Views, I explain the basis for these conclusions.

I. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

Like Product Definition

Our task in final investigations under the antidumping law[1] is to determine whether an industry in the United States has been

[1] 19 U.S.C § 1673d(b).

materially injured, or is threatened with material injury, by reason of less than fair value ("LTFV") imports. The statute defines the relevant United States industry as that comprised of "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of the product."[2] In order to identify the appropriate industry, therefore, we must first define the domestic product or products that are "like" the imports that are subject to investigation. The term "like product" is defined by the statute as "a product which is like, or, in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[3]

The Commission traditionally has articulated six criteria to guide like product determinations. These include (1) product characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer or producer perceptions of the relevant articles; (5) common manufacturing equipment, facilities, and production employees; and (6) the similarity or disparity of prices for imports and potential like domestic products.[4] Although this particular division of considerations does not necessarily limit the appropriate inquiry into the

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[2] 19 U.S.C. § 1677(4).

[3] 19 U.S.C.§ 1677(10).

[4] See, e.g., Fabric and Expanded Neoprene Laminate from Taiwan, USITC Pub. 2032, Inv. No. 731-TA-371 (Final), at 4 & n. 5 (Nov. 1987).

identification of a "like product," it does generally describe considerations relevant to the statutorily prescribed task.

Application of Like Product Criteria: Basic Issues

Before applying those criteria to the facts of record here, it is important to understand the statutory instruction they implement. The statute asks us to identify not a group of domestically produced products broadly similar to the imports but instead to identify products so closely substitutable for the imports as to be like them. The language in which the statute frames the alternative basis for defining the domestic industry -- in the absence of a like product, the product "most similar" in characteristics and uses -- strongly suggests that Congress intended the like product to be a relatively narrowly defined category of merchandise closely similar to the imports.[5] And in focusing our attention on product characteristics and uses, the statute also signals that product categories should be sensitive principally to the indicators that products compete closely for domestic consumers. For that reason, where the imports under investigation span a variety of disparate uses, this Commission generally has divided its investigation of effects, asking how each category of LTFV imports affected U.S. producers of the similar category of goods.[6]

We have been cautioned by our reviewing court to gather data

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[5] 19 U.S.C. § 1677(4).

[6] New Steel Rails from Canada, Inv. No. 731-TA-422 (Final), USITC Pub. 2217 (September 1989) (Dissenting Views of Vice Chairman Cass).

sufficient to allow analysis of the effects of each group of LTFV imports or U.S. producers of the corresponding like products. That injunction should not, however, impel us to reason backward from the data collected to the proper like product determination.

The imports that are the subject of this investigation are mechanical transfer presses ("MTPs") from Japan. MTPs are metal-forming machine tools which shape a piece of metal by forcing a slide mechanism and die against it. Their distinctive characteristic is a transfer mechanism synchronized with the press action which moves the metal workpiece between the several die stations of the press.[7] Thus, an MTP constitutes something akin to an independent, integrated assembly line, in which numerous tasks are performed in a synchronized manner on a single metal workpiece.[8]

Although there are other types of mechanical presses that are capable of performing the same metal-forming operations, such as vertical, straight-side, archframe, and knuckle-joint presses,[9] none of these others effectively duplicate the integrated assembly-line operation which the transfer presses provide, and thus are not regarded in the industry as acceptable substitutes for transfer presses.[10] Furthermore, none of these

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[7] Report at A-2.

[8] A wide variety of metal-forming operations can be performed by a single press on a single workpiece, including stamping, drawing, extruding, punching and shearing, bending, folding, straightening, flattening, notching, forging, and hammering. Id.

[9] Report at A-7.

[10] Id at A-8.

other presses affords the economies of operation characteristic of transfer presses; complex metal-forming operations performed on other types of presses involve substantially higher total costs in terms of press expenditures, factory floor space, in-process parts storage and handling, maintenance, energy, and labor.[11] For these reasons, it does not appear that any of these other types of presses constitutes a product "like" imported mechanical transfer presses under the Commission's traditional criteria, and none of the parties argue for including such presses in the like product definition.

Like Product Criteria: Small MTPs

There is, however, substantial variation within the category of mechanical transfer presses. The larger the piece of metal which must be formed, and the more functions to be performed upon it, the larger and more powerful the press must be. Transfer presses are generally described by a number of different specifications, including tonnage capacity (i.e., the number of tons of pressure exerted by the press), dimensions of the front-to-back and left-to-right distance of the bed against which the die presses the metal workpiece, the length and frequency of the feed stroke, and the number of separate work stations.[12] Each of these characteristics may vary independently of the others.

Nevertheless, as a matter of practice, these characteristics generally are not completely independent of each other. Of these

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[11] Report at A-8.

[12] Report at A-7.

characteristics, tonnage capacity appears to be roughly correlated with several of the more important. Greater tonnage capacity is generally associated with larger presses which generally also have tri-axial feed systems and two or more slides.[13] The correlation is again only approximate, but press tonnage capacity also appears to be generally associated with end use. MTPs are used in many industries, including the automotive, appliance, electric machining, and furniture industries.[14] However, the greater tonnage capacity presses are associated with stamping large appliance parts, and with large auto body parts such as hoods, fenders, roofs, and trunks. Smaller tonnage capacity presses are generally used for small high-speed stamping applications such as battery cans and lipstick tubes.[15]

The Petitioners in this investigation, the Verson Division of Allied Products Corp., the United Auto Workers, and the United Steelworkers of America ("Verson"), argue that all mechanical transfer presses, regardless of size or end use, should be treated by the Commission as a single like product.[16] Petitioners argue that, because all MTPs serve the same basic metal-forming functions, and because all embody integrated multiple work stations, they are therefore all basically identical in their

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[13] Report at A-7.

[14] Id.

[15] Report at A-7.

[16] Petitioner Verson's Prehearing Br. at 4.

physical characteristics[17] and in their end uses[18].

Petitioner concedes, however, that one like product distinction based on tonnage capacity does reflect economic reality. Petitioner contends that the Commission would be justified in finding a dividing line between mechanical transfer presses with capacity under 150 tons and all MTPs with larger tonnage capacity.[19] In general, Petitioner notes that MTPs under 150 tons of capacity are marketed to different end users than are larger MTPs; that they do not need manufacturing facilities and equipment with the same level of sophistication as required by larger MTPs; and can be produced in much shorter times than larger MTPs. Respondent has voiced no objection to this dividing line, and I believe that it is persuasive.

While the two categories thus should be distinguished, the lower category defined by that distinction cannot constitute a like product, as the Japanese import no MTPs under 150 tons of capacity.[20] In this case, the industry producing MTPs under 150 tons of capacity clearly is not the industry "like, or, in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[21] Since the parties accept that MTPs under 150 tons of capacity are meaningfully

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[17] Id. at 5.

[18] Id. at 6.

[19] Petitioner's Prehearing Br. at 4.

[20] Report at A-30.

[21] 19 U.S.C. § 1677(10).

different than larger MTPs, since there are no LTFV imports in this category, and since there clearly exist other MTPs which are more closely similar to the MTPs imported from Japan, I find that MTPs under 150 tons of capacity constitute a separate product which is not like the LTFV imports.

Like Products: MTPs Over 150 Tons, Auto-Body Stamping

This division of domestic MTPs does not end our like product inquiry. Respondents Aida and Komatsu argue that not all MTPs of 150 tons or greater capacity should be treated as part of a single like product category. Specifically, Respondents urge us to find that auto-body stamping MTPs do constitute a like product separate from all other MTPs. Respondents state that auto-body stamping MTPs are by far the largest MTPs built, and that the metal parts formed by such presses are far larger than the parts formed by any other MTPs.[22] They also point out, obviously correctly, that auto-body stamping presses are bought only by auto makers or by firms specializing in automobile stamping. Respondents note that auto body presses are designed to exact customer specifications while most other MTPs are more standardized in design and production; and they conclude that auto body MTPs differ in their channels of distribution from other MTPs.[23] Respondents take issue with the observation in our Report that auto presses can be interchanged with MTPs of similar size used to stamp appliance parts; although they concede that

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[22] Aida Prehearing Br. at 7.

[23] Id. at 14.

such substitution in principle is possible, they contend that it does not in fact occur and never would, since such substitution "would be difficult and would not make economic or practical sense."[24]

In rejecting this distinction between MTPs used to stamp auto body panels from other MTPs proffered by Respondents in this investigation, Petitioners contend that there is no definite line of demarcation which distinguishes MTPs used for stamping auto bodies from MTPs designed for other purposes.[25] Petitioners agree that MTPs of differing sizes (capacities) in general are used for different tasks and, beyond certain ranges one size MTP cannot be substituted for another. MTPs of the same general size are interchangeable, so that an MTP originally built to produce parts for an auto manufacturer could be converted to produce parts for an appliance manufacturer.[26] Finally, Verson argues that auto-body MTPs and other MTPs are produced using common manufacturing facilities, production employees, and engineering and manufacturing equipment and processes.[27]

My colleagues correctly point out that defining a separate like product embracing only MTPs used to stamp auto body parts is not consistent with our traditional approach to like product definition. As their opinion notes, the characteristics and

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[24] Aida Prehearing Br. at 12.

[25] Petitioner's Posthearing Br. at 6.

[26] Petitioner's Prehearing Br. at 5.

[27] Petitioner's Prehearing Br. at 6.

general uses of auto body MTPs do not differ systematically from those of MTPs used to produce metal parts for other specific end purposes. For example, very large MTPs, defined in terms of ton capacity, generally are used to stamp auto body panels, but in fact are also used for other purposes, such as to stamp metal panels for appliances such as refrigerators.

Moreover, the distinction advanced by Respondents misses the critical aspect of our like product inquiry as it applies to the facts of this investigation. By focusing on the products' characteristics and uses, we traditionally have circumscribed the products that compete most closely for consumers in the domestic market. We do not define separate like product categories simply because we can identify some physical characteristic that distinguishes some domestic products from others; were that so, each individual product would occupy a discrete like product category. Instead, we traditionally look for characteristics that matter sufficiently to consumers to alter significantly the way they view the products; that is, to reduce significantly the competition between the products.

Here, the competition takes place at the bid stage, before the finished good is produced. The fact that MTPs can be tailored to different end uses, some incompatible with others, does not indicate that a producer who successfully bids for a contract to build an MTP for one use is not competing fairly directly with a producer who successfully bids for a contract to build an MTP of generally similar characteristics for another

use. Unlike production of standard goods that compete in retail markets, the stage at which competition between MTP producers takes place makes the interchangeability of the end products far less significant to like product definition than the degree to which manufacturers are presently capable to compete for customers. The best evidence of that capacity is the general type of machine produced rather than the specific use to which a given press is put.

Respondents' point, even so, might be well taken if there is some substantial difference in the type of product suitable to use in the auto industry and elsewhere. The fact that nearly all U.S. sales of Japanese-made MTPs are to automobile manufacturers indicates that there is some difference between the market for these and other MTPs. The evidence does not, however, indicate whether that difference lies in matters such as established patterns of dealing or inheres instead in <u>product</u> differences. While the former might affect our interpretation of evidence respecting factors indicating the effects of LTFV sales of the Japanese imports, it is the latter that controls our like product determination. Certainly, the evidence does suggest that the auto industry does not use MTPs at the low end of tonnage capacity, although there is a range of different capacity MTPs sold to the auto industry. So far as the record reveals, there is no other significant basic difference between these and other MTPs.

<u>Like Products: MTPs Over 150 Tons, MTPs Over 1,000 Tons</u>

The evidence does, however, suggest that a slightly different dividing line is appropriate. It appears that a like product classification defined not in terms of end uses, but in terms of ton capacity, is meaningful and appropriate to market behavior in this investigation. I believe it is significant that the parties have already accepted without controversy one product distinction based entirely on tonnage capacity, and believe further that it is significant that the Japanese imports are so strongly concentrated in another tonnage capacity category, that of MTPs over 1000 tons.

Petitioners' arguments against Respondents' proffered distinction between auto body MTPs and all other MTPs lend support to an additional like product distinction based on tonnage capacity. Many of Petitioner's like product arguments, even though directed at other ends, concede that size, roughly expressed in terms of tonnage capacity, is closely correlated with many of the Commission's traditional like product criteria, and that size does distinguish some categories of MTPs from others. Petitioners argue that all MTPs of the same size are interchangeable, once the attached dies that actually form the metal parts are replaced. Implicitly, this means that small MTPs cannot be used for the same purposes for which large MTPs are used. Similarly, Petitioners note that MTPs of the same size sell at approximately the same price, regardless of end use; however, Petitioners recognize that there is an important distinction in

price between larger and smaller MTPs.[28] Petitioners make a persuasive case, furthermore, that MTPs under 150 tons in capacity are significantly different from other MTPs.

Petitioners, and my colleagues, point out that the Commission has not traditionally relied on size as a criterion to distinguish between alternative like products. I do not believe that this point is well directed; it seems to be an example of synecdoche, of taking a part to stand for the whole. The Commission's traditional reluctance to distinguish products on the basis of size alone reflects merely one application of the general like product criteria.

If the Commission's like product determination simply circumscribed a group of nearly identical products, this issue would not arise. The Commission's like product decision, however, both relates U.S.-produced products to the imports under investigation and delimits a cogent, narrow, but not identical, product group. It is possible to describe a cogent group of products that compete directly with another group of products even though within each group there is some variation among the products. If the variation is along a spectrum, at one end the product may be significantly different from those at the opposite end. However, there is little point to distinguish subcategories where the great bulk of products along the spectrum are largely fungible and where the competition between one group (LTFV

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[28] Petitioner's Prehearing Br. at 5; Petitioner's Post-Conference Br. at 6.

imports) and another (domestic products) appears relatively constant along the spectrum.

Here, there is a respectable argument that the first of these conditions holds, although the second does not. Even as to the first, however, I believe the evidence of record is more consistent with the view that discrete groups of products can be identified and that there is not simply a spectrum of goods differing in no important respect other than size. Here, in other words, two size distinctions closely correlate with many of the Commission's traditional like product criteria. In the instant investigation, as noted above, one appropriate division segregates MTPs of less than 150 ton capacity. Evidence respecting product prices, interchangeability, end uses, and manufacturing facilities also indicate a further division of products, differentiating MTPs under about 1000 tons in capacity from those over approximately 1000 tons in capacity.

It is suggestive in this regard that, of the MTPs sold in the United States market, the vast bulk of MTPs over 1000 tons in capacity are imported from Japan, while the very great majority of MTPs under 150 tons sold here are produced in the United States by U.S. producers. ***[29] In contrast, the Japanese have specialized almost completely in MTPs over 1000 tons in capacity, exporting to the United States none at all of the small MTPs under 150 tons in capacity and only a very small percentage of

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[29] Report at A-13. The Commerce Department's period of investigation ended on January 31, 1989. Report at A-2. ***

their total U.S. exports, whether defined in quantity or value terms, under 1000 tons in capacity.[30]

The fact that one Japanese producer has entered into an agreement with U.S. Baird not to export MTPs under 150 tons in capacity similarly suggests a market division by size. It does not provide an explanation for the absence of Japanese imports in the lower size range, as U.S. Baird has not entered into market-sharing agreements with all eighteen Japanese importers of MTPs.[31] Rather it reinforces the evidence that there are significant differences in the capabilities necessary to produce MTPs of different sizes efficiently and that these differences reflect a separation of the markets for different size MTPs.

The evidence is less persuasive respecting the proper boundaries between disparate MTPs of more than 150 ton capacity. The Commission has traditionally sought "clear dividing lines" between products. That principle, however, should not prevent the Commission from distinguishing products that are in principle distinct, but that overlap to some degree. To cite a homely but persuasive example, frogs clearly differ from tadpoles, yet there is no clear point in their development at which the transformation occurs. Likewise, large MTPs differ in end use, in price, in channels of distribution, in manufacturing facilities and in customer perceptions from smaller ones, as I argue below. It would be a distortion of market realities to treat these as a

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[30] Report at A-30, Table 19.

[31] Report at A-14.

single like product though the line between them may not occur unambiguously at a single well-defined capacity figure.

Likewise, in searching for the mythical "clear dividing line," it is asking the wrong question to inquire whether a product which appears to belong on one side of the line ever actually appears on the other. It is possible, for example, to use a press under 1000 tons, with a single slide, for stamping auto body panels, even though almost all presses used for that purpose are larger, multiple slide MTPs. Such anomalies should not alter a product distinction appropriate in the great majority of cases. Clear dividing lines should be sought on the basis of consistent market practice, rather than technical possibility or occasional use.

The relevant question, therefore, is whether there is some tonnage capacity for an MTP around which sufficient distinctions exist in products that it is appropriate to draw lines between products for like product purposes. Applying the Commission's traditional like product criteria, I believe that a distinction between larger and smaller MTPs in the neighborhood of 1000 tons of capacity is most persuasive.

MTPs in excess of that capacity figure seem consistently to be devoted to end uses different than those which have capacity less than that tonnage. Respondent Komatsu's assertion that MTPs used to stamp auto body panels always exceed 1000 tons in capacity is apparently unrefuted in the record.[32] Large transfer

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[32] Komatsu's Post-conference Br. at 4.

presses are used in the automotive industry for stamping large auto body panels, and in the appliance industry for stamping large metal panels for those products.[33] It thus appears that MTPs in excess of 1000 tons capacity have a limited number of end use applications, and those operations devoted to those end uses are at best rarely performed on MTPs under 1000 tons capacity.

None of the parties deny that price and tonnage capacity are well correlated. MTPs less than 1000 tons appear to differ consistently in price from MTPs over 1000 tons. Of the contracts for single-slide MTPs of various sizes for which contract price information has been reported, only four fell in the range between 800 tons and 1200 tons, and only thirteen in the much wider range between 800 and 2000 tons capacity.[34] In contrast, there were some fifteen which fell in the range between 250 and 800 tons. Of these reported contract prices for which the tonnage capacity of the delivered MTP is clear, the average price for MTPs over 1000 tons capacity is some $8.8 million, while that for MTPs between 150 and 1000 tons capacity was significantly lower, at some $1.2 million. The average price for MTPs of capacity between 1000 and 1250 tons over the period of investigation was some $2.8 million, while the average price for MTPs between 750 and 999 tons was some $1.6 million[35]; while the average size of the larger group is some 28% greater than the average size of the

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[33] Report at A-8.

[34] Report at A-34, Table 35; A-85, Table 27.

[35] Id.

smaller group, the average price of MTPs in the larger group is some 75% more expensive than the average price of MTPs in the smaller group. Particularly instructive are two contracts for MTPs which appear closely comparable in characteristics: one an 800-ton single slide press, the other a single slide press of some 1250 tons capacity. While the latter is 56% larger than the former, it is 147% more expensive. It seems most consistent with this evidence that, while price is in general correlated with size, the dividing line of 1000 tons capacity separates MTPs in price in a fashion out of proportion to the increase in size, even holding constant the additional specifications which frequently accompany price.

Of particular significance here, given the nature of the markets in which these products are sold, is the clear difference in manufacturing facilities and production employees used in the production of MTPs over approximately 1000 tons of capacity from those with less capacity. U.S. producers have tended to specialize in particular size ranges. Thus, for example, ***[36] The Minster Machine Co. ***[37] [38] [39] [40] [41] [42]

It is equally the case that production processes differ

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[36] Report at A-13.

[37] Report at A-13.

[38] Report at A-13.

[39] Report at A-13.

[40] Report at A-13.

[41] Report at A-13.

[42] Report at A-18.

systematically between MTPs over 1000 tons and those under 1000 tons. Transfer presses are custom-built machines. Small transfer presses are designed from almost standardized engineering designs and are customized to the purchaser's specifications. In contrast, large transfer presses, such as those used for body panel stamping by the automobile manufacturers, are designed to the customer's precise specifications.[43] Furthermore, the learning process in the production of presses, and experience derived from working with the customer during the installation and subsequent production process add significantly to the ability of the manufacturer to design, build and install these presses. Technological development in this industry is directly related to the number of machines installed by a particular producer.[44] As a result, the manufacturing processes of large and small machines appears to be significantly different, in ways that the market regards as quite significant.

Furthermore, this information indicates that there is a good reason that the Japanese have specialized in selling very large MTPs to the U.S. market. Japanese firms apparently have more experience in building the very large machines than do their U.S. competitors;[45] they, therefore, are likely to have a special advantage in producing such large machines, since those machines tend to use intensively the very skills which experience and

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[43] Report at A-9.

[44] Id. at A-9.

[45] Komatsu Prehearing Br. at 7, 22.

learning yield, that is, the skills associated with specialized design and installation.

In summary, I find that there are two relevant domestic industries. The first is comprised of U.S. producers of MTPs greater than 150 tons in capacity, but less than 1000 tons in capacity; and the second, of U.S. producers of MTPs of 1000 tons or more in capacity. A third industry, comprised of U.S. producers of MTPs less than 150 tons in capacity, is not "like" the MTPs imported from Japan. In particular, this latter industry does not meet the statutory requirement that it be the industry which produces a product "like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle."[46]

Related Parties

Based on this industry definition, I believe it appropriate to exclude Hitachi-Zosen-Clearing, Inc., ("HZC") from the domestic industry under Section 771(4)(B) of the Tariff Act of 1930.[47] This provision allows the Commission to exclude a domestic producer from the definition of the domestic industry when that producer is related to exporters or importers of the merchandise subject to investigation, or is itself an importer of the product, when the circumstances for exclusion are "appropriate." Hitachi-Zosen-Clearing, Inc., is a wholly-owned subsidiary of Hitachi Zosen, Ltd., of Japan, which in turn

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[46] 19 U.S.C. § 1677(10).

[47] 19 U.S.C. § 1677(4)(B).

exports MTPs to the United States.[48] HZC appears, therefore, to be a related party within the meaning of the statute.

A number of factors suggest that the circumstances in this investigation are appropriate to exclude HZC from the domestic industry. First, a very substantial portion of HZC's domestic shipments during the investigation were imported from HZC's parent company in Japan.[49] These imports represented a dominant share of the total value of HZC's domestic sales.[50] This gives rise to a reasonable inference that the primary interests of the related producer with respect to the outcome of this investigation lie with the effect of an antidumping duty on the exports to the U.S. of its Japanese parent company. The Commission has frequently relied on such considerations in the past in reaching determinations on related parties questions.[51]

Second, HZC has explained to us that its financial records do not segregate revenues and expenses related to domestic production from that related to its imports of MTPs, and indeed has conceded the appropriateness of excluding financial data pertaining to it from the aggregate financial data for the

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[48] report at A-12.

[49] Report at A-12.

[50] Id.

[51] See, e.g., Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071, at 13 (March 1988); Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798, at 11 (January 1986); Butt-Weld Pipe Fittings from Brazil and Taiwan, Inv. Nos. 731-TA-239 (Final).

industry.[52] HZC, in short, seeks an intermediate status in which it is treated as a related party for some purposes but not for others. The inability of HZC to separate its own data from that of its parent company, even when arguing that it should be treated as part of the domestic industry for purposes of assessing material injury, appears to indicate a close operating relationship between HZC and the Japanese parent company.[53]

HZC has failed to present any evidence whatever that this relationship is compatible with competition between its domestically produced MTPs and those MTPs imported from Japan potentially subject to an antidumping order. This leads me to conclude that exclusion of HZC from the domestic industry will present the most accurate picture of the actual conditions of competition in the U.S. market for MTPs. I therefore believe that appropriate conditions exist to exclude HZC from the definition of the domestic industry for purposes of assessing the existence of material injury by reason of LTFV imports.

II. MATERIAL INJURY BY REASON OF LTFV IMPORTS

I have analyzed the question of causation of material injury in this investigation by conducting the three part inquiry to which the governing statute directs the Commission. Title VII directs us to

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[52] Hitachi-Zosen-CLearing Prehearing Br. at 20.

[53] Id.

consider, among other factors --

> (i) the volume of imports of the merchandise which is the subject of the investigation,
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> (ii) the effect of imports of that merchandise on prices in the United States for like products, and
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> (ii) the impact of imports of such merchandise on domestic producers of like products. . . .[54]

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

The statutory text does not identify all of the factors relevant to an assessment of whether unfairly traded imports have materially injured a domestic industry. Indeed, the statute explicitly contemplates that the Commission will consider relevant economic factors in addition to those identified in the statute.[55] The factors that are listed in the statute and the order in which they are listed nevertheless provide us with important guidance respecting the essential elements of the inquiry to be performed. Three related questions are identified as critical to an assessment of the possible existence of material injury by reason of dumped or subsidized imports.

First, we are to examine the volumes of imports of the merchandise under investigation. The absolute volumes of imports and their magnitude relative to domestic sales of the competing like product are both relevant to this question. So, too, is the effect of LTFV sales on the prices of the imports, as the change

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[54] See 19 U.S.C. § 1677(7)(B).

[55] See 19 U.S.C. § 1677(7)(C).

in import volumes brought about by dumping or subsidization will be closely related to changes in the prices of the imports that occurred as a result of those practices.

Second, we must attempt to determine how the subject imports affected prices, and concomitantly sales, of the domestic like product. Our governing statute directs us to examine the effects of the subject imports on prices of the domestic like products, not simply to examine prices, specifically directing our attention to evidence of price underselling and to evidence of price depression or suppression. This direction indicates that beyond examining evidence of the prices at which imports and domestic like products are sold, we must review evidence that reveals how the sales (or offers for sale) of the LTFV imports affected prices of the domestic product (which necessarily will be linked to effects on sales of that product). Evidence bearing on three issues is central to an analysis of this question: the share of the domestic market held by the subject imports; the degree to which consumers see the imported and domestic like products as similar (the substitutability of the subject imports and the domestic like product); and the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products.

Finally, we must evaluate the extent to which these changes in demand for the domestic like product caused by LTFV or subsidized imports affected the financial and employment performance of the domestic industry, and determine whether such

effects are material. Such factors as return on investment and the level of employment and employment compensation in the domestic industry must be examined in considering that issue. In making each of these inquiries under the statute, we are to consider the particular dynamics of the industries and markets at issue.[56]

The information presented by the Report is not organized in ways that correspond exactly to the like product distinctions that I have argued are most appropriate in this investigation. Nevertheless, the information presented by our Report, supplemented by information calculated from the data which underlies the Report, is sufficient to allow us to draw factual inferences necessary to the determination of whether material injury exists.

1. Volumes and Prices of Imports

The statute directs us to consider the volume of unfairly traded imports. As noted above, that comprehends the absolute volume of imports of the class found to have been sold at LTFV, and the volume relative to U.S. production and relative to U.S. consumption.

The period of the Commerce Department's investigation, the only period for which we know that LTFV sales occurred, embraced the period January 1, 1987, through January 31, 1989, but only

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[56] See Section 771(7)(C)(iii) of the statute (to be codified at 19 U.S.C. § 1677(7)(C)(iii).

sales which met two criteria were included by Commerce in the investigation: first, the contract or purchase order must have been made within that period; and second, the delivery of the finished product must also have occurred within that period.[57] Following this procedure, Commerce examined a total of ***[58] [59] [60] The Commission's Report does not organize the import data in a manner that precisely describes the volume of imports that meet both of the criteria used by Commerce. The difference reflects the lag between MTP order and delivery. The data underlying the Commission's Report, however, allows tabulation of the domestic sales data which corresponds to the period of investigation defined by the Department of Commerce.

A. Mechanical Transfer Presses Between 150 and 1000 Tons Capacity

The Commission collected over the course of its investigation information from purchasers of MTPs which included the date on which the contract was awarded, the date on which the MTP was shipped, and the specifications of the MTP itself. It thus is possible to compute, from the information contained on these purchasers' questionnaires, the volumes of imports in each of the size categories which corresponds to the same time period covered by the Department of Commerce's investigation.

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[57] International Trade Administration, Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan, 55 F.R. 335, Jan. 4, 1990.

[58] Report at A-2.

[59] Report at A-28, Table 17.

[60] Report at A-29, Table 18.

In the time period used by Commerce, defined in the manner in which they have chosen to define it, contracts for a total of 51 MTPs were awarded by domestic MTP users. No contracts were awarded by U.S. users to MTP suppliers other than to Japanese and U.S. producers; in short, there were no fairly traded imports which fit within the Department of Commerce's time period as they have defined it. Of the contracts for 51 MTPs awarded by domestic users fitting in this period, contracts for 39, valued at some $13.9 million, were awarded to U.S. MTP producers. ***

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Information respecting volumes of subject imports relative to domestic consumption are discussed in the following section concerning price effects.

B. Mechanical Transfer Presses Over 1000 Tons Capacity

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Information respecting volumes of subject imports relative to domestic consumption are discussed in the following section concerning price effects.

C. Prices of LTFV Imports

The record evidence before us does not reveal clearly the manner in which these volumes were increased by LTFV pricing of MTPs in each of these product categories. The Department of Commerce has calculated LTFV margins for MTPs of all size categories together. The amount by which the foreign market

value of the merchandise subject to investigation exceeded the U.S. price was 15.16% ad valorem for Komatsu, 7.49% ad valorem for Aida, and 14.51% ad valorem for all other Japanese firms making sales in the U.S. market. In the absence of information to the contrary, I believe the only assumption that reasonably can be based on the record before us is that margins apply similarly to both product categories. Given the small range of margins and number of sales at issue, I cannot find a basis for any other conclusion.

For both product categories, the evidence in this investigation suggests that the prices of the subject imports decreased by an amount approximately equal to these dumping margins for Japanese imports. The decline in the price of the subject imports that occurs as a result of dumping may be less than the full amount of the dumping margin calculated by Commerce, but the relationship between Commerce's calculated dumping margin for the associated change in imports prices and volumes depends on the type of calculation Commerce has performed. The dumping margin that Commerce has calculated here is based on a determination by Commerce that Respondents Komatsu and Aida have charged a price for its product in the United States lower than the constructed value of that merchandise. In such cases, the full amount of the relevant dumping margin is the most appropriate measure of the extent to which dumping has

affected the price of the subject imports.[61] The manner in which this change in import prices consequent to dumping affected the volumes of MTPs sold in the United States is discussed below in conjunction with consideration of effects on the U.S. like products' prices.

2. Prices and Sales of the Domestic Like Product

Analysis of the impact of unfairly traded imports on prices and sales of the domestic like product depends, in addition to consideration of the prices themselves, on consideration of the relevant evidence bearing on three issues: the share of the domestic market held by the subject imports; the degree to which consumers see the imported and domestic like products as similar (the substitutability of the subject imports); and the degree to which domestic consumers change their purchasing decisions for these products based on variations in their prices. The evidence on none of these issues is completely unambiguous, with respect to either of the domestic like product size categories, but I believe there is sufficient evidence to have reasonable confidence in the conclusions I have reached with respect to effects of the LTFV imports on industries producing both like products.

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[61] 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. No. 2185, Inv. Nos. 303-TA-19 and 20 and 731-TA-391-99 (Final) (Concurring and Dissenting Views of Vice Chairman Cass) ("Antifriction Bearings").

For the category including MTPs between 150 and 999 tons capacity, there is reason to believe that Japanese- and U.S.-produced MTPs compete rather closely in the judgment of users of these machines. Given the intermittent nature of sales in these markets, and the importance of each individual sale to total output, the share of the U.S. market held by LTFV imports from Japan, considered alone, is not so large as to compel the conclusion that such imports have caused material injury to producers of the U.S. like product. However, that share is quite large and, taken together with the evidence respecting substitutability and consumers' demand for these MTPs, suggests significant price and sales effects. For the category of MTPs which exceed 1000 tons in capacity, on the other hand, the market share held by the Japanese, standing alone, appears to be sufficiently dominant as to support a similar conclusion, even though the record raises doubts about the degree to which U.S.-produced MTPs in that size category compete effectively with Japanese imports.

The extent to which LTFV imports reduce the demand for the output of competing U.S. producers is likely to be strongly affected by the share of the U.S. market held by those LTFV imports. The aggregate data provided by the Report do not allow us to determine the share of the U.S. market in each of the size categories held respectively by the Japanese producers and the U.S. producers. However, such information can be determined from the bid data collected by the Commission staff on purchasers'

questionnaires.

Of the 51 U.S. contracts awarded and completed within the period of the Department of Commerce's investigation, from January 1, 1987, through January 31, 1989, and thus which were within the class of MTP imports for which Commerce has made a determination of less than fair sales, contracts for some 39 MTPs, worth some $13.9 million, were awarded to U.S. MTP producers, while contracts for only 12 for which we have record information were awarded to Japanese producers.[62] Of the contracts for 39 MTPs awarded to American producers, ***

In the category of MTPs with capacity in excess of 1000 tons, the Japanese dominated the market over the period of Commerce's investigation. ***

In the category between 150 and 999 tons, Japanese and American producers were in a closer competitive struggle; *** The implications of this difference are not, however, compelling. The Japanese held a market share in this category sufficient for LTFV pricing to play a role in causing material injury to the competing domestic industry, especially in light of other evidence discussed below.

While the market share held by Japanese producers for MTPs in the size range over 1000 tons capacity seems to create a strong presumption that LTFV imports have substantially reduced the demand for the domestically produced like product (a presumption I will revisit shortly), I do not find market share

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[62] ***

alone so compelling with respect to MTPs in the size range between 150 and 999 tons of capacity. Although the Japanese hold a very substantial share of that market, under the circumstances of this investigation that information is less important than in the ordinary case. Since sales in this market are by nature sporadic, and since market shares computed in value terms are likely to be dominated by the larger MTPs, one must treat with care the implications to be drawn from the market shares held by LTFV imports.

However, there is also evidence that Japanese MTPs in the size range between 150 and 999 tons capacity are likely to compete closely with American-produced MTPs in that size category. For one thing, the number of such MTPs sold respectively by the Japanese and the American producers within the relevant period are very close to equal. *** It seems clear from this information that both American and Japanese producers are viable in the U.S. market, and are considered reasonable suppliers by U.S. buyers of such MTPs.

This correlates well with what we know about the market for such MTPs. While MTPs in this size category clearly must be individually tailored to the specifications of customers, there is substantial reliance by producers on relatively standardized designs which may be only marginally altered.[63] Thus, once a producer has designed a machine capable of performing well in this size category, that producer is likely to be able to compete

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[63] Report at A-9.

well for subsequent contracts.

The evidence suggests far less substitutability between Japanese and American producers in the market for MTPs in excess of 1000 tons capacity. Large transfer presses in particular are sophisticated, complex, non-standardized machines, in which specialized design and installation skills on the part of the producer are likely to be of exceptional importance. These are not likely to be completely equivalent between different producers, and consumers are likely to differentiate between producers with some degree of sensitivity to their individual characteristics. Since almost all MTPs in this size category are made separately to the specifications of consumers, the producers are likely to be distinguished not only with respect to the characteristics of the machines themselves, but also with respect to other characteristics such as delivery speed, operating reliability, and so on. The evidence in this market strongly indicates that the Japanese have particular advantages in many of these respects.

Although most purchasers reported that both U.S. and Japanese firms are capable of producing large transfer presses, there were instances where quality differences clearly were a deciding factor between suppliers. ***[64]

Similarly, delivery speed and reliability tends to be an important distinguishing characteristic of large transfer press producers. Purchasers have reported that Japanese lead times have

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[64] ***

tended to be longer than U.S. lead times for comparable purchases, but that Japanese delivery dates were more reliable.[65]

Finally, the national identity of suppliers appears to be important. Some purchasers indicated that, in part to reduce frictions with their own workforce, they prefer to buy American presses.

Notwithstanding these differences, there is clearly some ability and willingness on the part of American users of large transfer presses to substitute between American and Japanese suppliers. The evidence indicates that users regard both U.S. and Japanese producers as capable of producing transfer presses of this size. Major purchasers of large presses have continued to request bids from U.S. transfer press producers for presses in this size category.[66] Furthermore, they have continued to make purchases from American producers.[67] During the entire period of our investigation, U.S. automakers requested bids from U.S. MTP producers for 24 contracts for 68 large MTPs worth $363.7 million, and awarded contracts for 27 such presses, worth $112.4 million, to American producers.[68]

Price clearly plays an important role in the decision as to

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[65] Economic Memorandum, Inv-N-014, January 29, 1990, at 8.

[66] Report at A-32-34.

[67] Id.

[68] This covers many more contracts than are shown by our questionnaire data for the period investigated by Commerce. The figure is not comparable to the figure for presses sold and delivered during that period. It does, however, shed light on the way American and Japanese presses in this category compete with one another.

which producer to award a contract for MTPs over 1000 tons capacity, but prices generally are offset against other characteristics. American MTP producers have frequently been awarded contracts even when not the lowest bidder. For example, between 1984 and 1989, the major U.S. automakers awarded contracts for five MTPs over 1000 tons capacity for which both Japanese and U.S. MTP makers made bids.[69] Of those five, in no case was the U.S. producer which was awarded the contract the low bidder, and in only one case was a U.S. producer awarded the contract after being underbid by another U.S. producer. *** However, there are also numerous cases in which the lower-bidding Japanese producer was awarded the contract in preference to a higher bid by an American producer. In general, in the cases in which an American producer was awarded a contract though not the low bidder, the American bid was above the Japanese bid by only a relatively small percentage; in contrast, in those cases in which an underbidding Japanese producer was awarded the contract, the contract price was frequently below the bid made by the U.S. producer by a substantial margin.[70]

This seems to indicate that price is one of a number of characteristics which enter into the purchaser's decision as to the producer from which to purchase a large MTP, but that too large a price differential will cause the purchaser to buy from the lower-cost producer. Thus, market data seems to indicate a

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[69] See Report at A-33, Table 23.

[70] Id.

reasonable degree of substitution between domestic and Japanese producers of MTPs over 1000 tons in capacity. The bid data do not reveal just what price differential will cause firms to contract with a Japanese MTP producer rather than an American MTP producer. *** No bid pairs between these points were reported, and we cannot simply extrapolate from this information some intermediate price premium. There is no reason to believe that purchasers would pay a constant premium for American presses. The amount that might be paid may depend on many factors not derivable from this data and may differ across purchasers, particular orders, and particular suppliers.

I conclude that Japanese and American producers of MTPs over 1000 tons in capacity are regarded by U.S. purchasers as alternative competitive suppliers. While the willingness of such buyers to substitute American for Japanese MTPs is lower in this size category than appears to be the case with respect to MTPs between 150 and 1000 tons capacity, substitution clearly plays an important role in this market as well.

I note that the Japanese MTPs in the over-1000 ton range have been concentrated in the upper end of this range, mostly over 3,000 tons of pressing capacity. There is some reason to believe that substitutability between American and Japanese presses diminishes significantly at this end of the product category. A degree of substitutability nonetheless exists even here, as evidenced by the awards of two contracts at the very

upper end of this range to two different American producers.[71] Even if the substitutability between the domestic like product and the subject Japanese imports was quite limited during the period critical to our determination, in combination with the evidence respecting the demand for the product and the share of the market held by Japanese imports, the substitutability does not appear to be so limited as to reduce the price and sales effects below the level normally consistent with material injury from LTFV imports.

The third fact of particular relevance to evaluating the evidence respecting price effects from the subject imports is the nature of the overall demand for the competing products. With respect to both mid-range and large product categories, the evidence suggests that consumers of MTPs exhibit a very limited sensitivity to price changes. This limited sensitivity increases the probable effects on domestic producers' prices and sales from sales (or offers for sale) of the LTFV imports.

Taken in combination, then, the evidence suggests that, for different reasons in the two like product categories, the subject imports have reduced U.S. prices and sales of MTPs below what they would have been in the absence of dumping sufficiently to indicate material injury from LTFV imports. In reaching that conclusion, I note that the evidence in this investigation is especially problematic in two respects. First, the markets we deal with are "thin" markets in which relatively few sales of

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[71] *** Report at A-35, Table 23.

non-standard products are made. These small numbers make the information of record abnormally sensitive to the timing of particular sales or to the inclusion or exclusion of particular sales data from a given tabulation. In light of the differences in questionnaire responses noted earlier, we must be unusually careful in drawing factual inferences from this record.

Second, the markets examined here operate on a bid-contract basis. This provides information about offers to sell particular equipment to particular purchasers. It does not provide information about actual competing prices of produced merchandise. The fact that a given firm bids on a certain number of contracts does not mean that, had it been successful on each bid, it could have produced all of the products bid on or would have done so at the prices bid. Indeed, a change in contracts awarded well might have changed future bids. Nor can we be certain of the direction in which those bid prices would have moved. Evidence on the record suggests that there are some economies associated with increased production, but there is also some indication that costs for some factors of production may increase with production scale over a given period.

In particular, I would eschew two possible inferences. One is that the data on bid price differences indicate that dumping had no effect on prices or sales of U.S.-produced MTPs, especially in the large MTP category, because the prices at which contracts awarded to Japanese firms were below the nearest competing U.S. bid by more proportionally than the full dumping

margin would have added to the prices of the Japanese presses. It simply cannot be known from the bid data and the dumping margin just how the bids of either Japanese or American firms would have changed in any given case; that is a far different matter from assessing the aggregate changes in the markets for these products and far more dependent on particular facts not contained in the record here.

A second inference is that the differences in bid prices constitute underselling that in and of itself suffices to evidence price effects. The statute does not define underselling as simple differences in gross prices of differentiated products; given the discussion of limitations on substitutability between Japanese and American MTPs, especially in the over 1,000 ton capacity category, I would hesitate to draw a conclusion respecting underselling from this record. Moreover, given the discussion of effects on U.S. producers prices above, concerning the depressing or suppressing effect of Japanese LTFV sales, no conclusion respecting any other source of price effects is required.

3. Investment and Employment

The data complied by the Commission cannot readily be broken down along the industry lines which I have found most persuasive in this investigation. Though financial and employment data are collected by the Commission on an establishment basis, as I have

noted above, several of the U.S. producers have made MTPs in both the relevant size categories, and there is no way to tell from the aggregate information what share of costs, profits, or employees are attributable to each of the respective products. For that reason, it is difficult to draw firm conclusions with respect to each of these product lines.

Furthermore, the Commission does not have the relevant information with respect to the majority of American producers. ***[72]

Employment data is somewhat broader in its reach. The two labor unions which are co-Petitioners here with Verson represent production and related workers at several U.S. producers in addition to Verson.[73] Apparently in part because of this arrangement, most, but not all, of the U.S. producers at which members of these unions are employed have provided the Commission with employment data covering at least their members.[74]

Thus, both financial and employment data are provided only for some U.S. producers, and those data do not yield information about the separate like products which I have deemed relevant to this investigation. However, because the implications of Japanese LTFV sales for the demand for each of the two like products is, as I have argued above, generally persuasive of the existence of material injury from the LTFV imports, and because workers and

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[72] See, e.g., Report at A-19, 21. ***

[73] Report at A-19.

[74] Report at A-19.

production facilities may move relatively easily between alternative producers, we may look at this somewhat broader data as representative of the state of affairs prevailing in each of the separate like product industries.[75]

The under reporting of data on a firm basis is a more serious problem, particularly because sales in this market tend to be sporadic and because individual sales play a large role in the financial and employment situation of each firm. There is no easy solution to this problem; however, despite their limitations, the data collected in the Commission's investigation surely constitute the best evidence available to us, and I therefore rely on that information in concluding that the evidence respecting employment and financial returns is not at odds with the conclusion that the domestic industries producing medium and large MTPs have been materially injured by reason of subject LTFV imports.

Taken as a whole, the financial data seem to indicate that the U.S. MTP industry has suffered aggregate operating losses over much of the period of investigation.[76] Likewise, the reporting firms suffered operating losses over the period of the Commission's investigation.[77] No causal connection can readily be

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[75] Our governing statute expressly provides for examination of broader employment and financial information in just these circumstances.

[76] Report at A-20.

[77] Report at A-41. Although the operating losses disappeared at the end of the period, the relevance of such changes is

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drawn between the LTFV sales and these financial losses. However, the data are consistent with the evidence of injury from subject imports discussed above.

Similar problems plague the employment data, and only a similarly limited inference from those data is possible. Partial reporting of data over a time period that corresponds only loosely to that in which LTFV sales are known to have occurred are at best of impressionistic relevance. Data for 1986 may be clearly disregarded on that ground, since Commerce did not look at any sales for which contracts were formed prior to January 1987. For that reason, the very slight improvements which appear in the employment data over the 1987-1988 period must be regarded skeptically.[78] Presumably the level of employment over this period was strongly related to the need to complete existing contracts, as well as the need to provide manpower for newly formed contracts, although the latter alone relates to the information regarding competition with the class of imports found by Commerce to have been sold at LTFV. There is, however, nothing in the employment data which is inconsistent with the conclusion that LTFV sales may have caused material injury to the two domestic industries.

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[77](...continued)
questionable, since the basis for reporting such information is not comparable to the time period over which the Commerce Department has determined the existence of LTFV sales.

[78] Report at A-36 Table 7.

CONCLUSION

For the foregoing reasons, I conclude that LTFV sales of mechanical transfer presses from Japan between 150 and 999 tons overall capacity have materially injured an industry in the United States. Similarly, I conclude that LTFV sales of mechanical transfer presses from Japan which have a capacity of 1000 tons or greater also have materially injured an industry in the United States.

Dissenting Views of Chairman Anne E. Brunsdale

Mechanical Transfer Presses from Japan

Investigation No. 731-TA-439 (Final)

February 8, 1990

Based on the evidence gathered in this investigation, I dissent from the Commission's finding that the domestic industry producing mechanical transfer presses (MTPs) is materially injured by reason of dumped imports from Japan. While I join in the Commission's determination of like product and members of the domestic industry, I reach a different conclusion on the question of material injury by reason of dumped imports. My reasoning is outlined below.

Material Injury by Reason of Dumped Imports

In assessing material injury, the Commission is required to evaluate all relevant economic factors within the context of the business cycle and conditions of competition that are distinctive to the domestic industry.[1] Specifically, we are instructed to consider in each case "(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 the like products, and (III) the impact of imports of such merchandise on domestic producers of the like product."[2]

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[1] 19 U.S.C. 1677(7)(C)(iii)

[2] 19 U.S.C. 1677(7)(B)(i).

As I have discussed in previous cases, a simple recounting of industry trends does not provide a sufficient basis for establishing the causal relationship between dumped imports and the condition of the domestic industry. In this case I think trends analysis could be particularly misleading. First of all, in value terms, the domestic MTP industry is dominated by the sales of two firms, Verson and Danly.[3] Staff was not able to get financial information from Danly, because of two changes in the company's ownership between 1985 and 1987. Therefore, conclusions based on changes in the financial data could be mistaken.

Furthermore, because three years or more may elapse between the time an order is placed and the time a press is delivered and because sales are sporadic, it is difficult to tell whether changes in capacity utilization, employment, or market shares reflect temporary demand fluctuations or more permanent changes. For example, domestic shipments of MTPs fell by almost half between 1986 and 1988. This is primarily attributable to the large number of orders that were placed in 1984 and 1985 and that took two or three years to complete.[4] However, domestic purchase orders increased by over 1000 percent between 1986 and 1988.

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[3] They account for over [***] percent of domestic shipments, not including the shipments of HZC, which is not considered to be part of the domestic industry for purposes of this investigation. See Staff Report at A-12.

[4] See Id. at A-17.

In an industry characterized by sporadic sales of large value, one would assume that, unless capacity was flexible, firms could have periods of either very high or very low capacity utilization. Evidence on the record suggests that most of the capital and labor used to produce MTPs can be used to produce other presses.[5] Therefore, capacity utilization figures based on the production of only one product may be deceptive.[6] Accordingly, I believe that in this case, it is extremely difficult to draw useful conclusions about the health of the industry, let alone about injury by reason of imports, by examining trends over the relatively short period of the investigation.

In order to reach a more rational decision on material industry by reason of dumped imports, I have applied simple tools of economic analysis. This allows me to organize and evaluate the evidence on the record in such a manner that I can assess the impact of dumped imports in a rigorous fashion. Specifically, I analyze (1) the degree to which overall demand for MTPs responds to changes in price, (2) the degree to which the subject imports and domestic products are substitutable, (3) the degree to which domestic supply responds to changes in price, and (4) the

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[5] See Id. at A-9, A-26. In fact, we have been told that the large pits in which mechanical transfer presses are produced can be covered to create more normal floor space. See Hearing Transcript at 75 (Testimony of Mr. German).

[6] See Memorandum to the Commission From International Economist, dated January 29, 1990 (INV-N-014) at 5 ("Elasticities Memo").

response of fairly traded imports to changes in price.[7] Using these tools to evaluate the evidence on the record, I can assess, as required by law, the impact of dumped imports on prices, on the volume of output, and on the domestic industry.

Import Penetration and Dumping Margins

In determining the effect of dumped imports on the domestic industry, two factors are particularly important--the share of the domestic industry accounted for by the unfairly traded imports and the size of the dumping margin. The greater the share of unfairly traded imports, the more likely it is that any change in the price of these imports will alter demand for domestic products and fairly traded imports. And the higher the dumping margin, the more likely it is that the unfairly traded imports will adversely affect the domestic industry. In the current case the level of import penetration is high, but the

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[7] For a more thorough discussion of my analysis, see Internal Combustion Forklift Trucks from Japan, Inv. No. 731-TA-377 (Final), USITC Pub. 2082 (May 1988), at 66-83 (Additional Views of Vice Chairman Anne E. Brunsdale); see also Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046 (December 1987), at 23-32 (Additional Views of Vice Chairman Anne E. Brunsdale); Cold-Rolled Carbon Steel Plates and Sheets from Argentina, Inv. No. 731-TA-175 (Final) (Second Remand), USITC Pub. 2089 (June 1988), at 31-51 (Additional Views of Vice Chairman Anne E. Brunsdale). The Court of International Trade has also discussed with approval the use of elasticities. See Copperweld Corp. v. United States, No. 86-03-00338, slip op. 88-23, at 45-48 (Ct. of Int'l Trade, February 24, 1988); USX Corp. v. United States, 12 CIT _____, slip op. 88-30, at 19 (March 15, 1988): Alberta Pork Producers' Marketing Board v. United States, 11 CIT _____, 669 F.Supp. 445, 461-65 (1987).

dumping margin is small.[8] The import penetration of Japanese MTPs based on value of domestic shipments ranged from 72.8 percent in 1986 to 65.7 percent in the first nine months of 1989. As for the margin, the Commerce Department found it to be 14.51 percent, based on estimates of the constructed value. The investigation covered imports that were sold and shipped during the period January 1, 1987 to January 31,1989.

The Market for MTPs

Background. MTPs are considered to be one like product for the purpose of this investigation, even though the MTP industry is dominated in terms of value by sales of large presses to automobile producers. Over 70 percent of domestic shipments and over 99 percent of Japanese imports were used to make auto parts.[9] Therefore, while I do not think it is proper to make like-product determinations solely on the basis of end users, I will concentrate my discussion on the segment of the industry that sells MTPs to the auto industry. Because large MTPs sold to auto producers so dominate the value of subject imports, the effect of dumping on other segments of the industry is overshadowed by the effect of dumping on sales of these presses.

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[8] Staff notes that industry indicators including shipments must be viewed with caution. Therefore import penetration data may not be reliable. See Staff Report at A-17.

[9] See Id. at A-17 and A-30.

MTPs are sold through a bidding process, in which purchasers request firms to bid on contracts for a specific press.[10] In each case a different group of firms may be asked to bid for the contract. For example, Japanese auto manufacturers with plants in the United States (known as transplants) did not generally solicit bids from U.S. MTP manufacturers during the period of investigation.

Each order is bid to spec and presses generally differ in terms of size, tonnage capacity, number of slides, etc. In addition, products made by the various manufacturers may differ in terms of quality, conditions of sale, time of delivery, etc. Therefore, it is very difficult to make any kind of comparison across presses.

Between 1984 and 1989, U.S. auto makers awarded 40 contracts, 24 of which followed competitive bids.[11] The contract was awarded to the low bidder in thirteen instances and to the second lowest bidder in six cases. On average, when the low bid was not accepted, the winning bid was 11 percent higher than the lowest bid.

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[10] Often, however, orders for presses that are identical to presses that have been purchased previously are not sold through competitive bids, but rather are simply awarded to the MTP producer that produced the original press.

[11] The purchases covered in the automaker bid data account for 79 percent of the total value of reported purchase orders for imported MTPs and 63 percent of the total value of reported purchase orders for domestic MTPs over the period 1986 to 1989. See Staff Report at A-17, A-29, A-32, and A-34.

Domestic firms were awarded eight contracts, five of which followed competitive bids.[12] The winning U.S. firm was not the low bidder in any case. In two cases a domestic firm was awarded a contract despite a lower bid from a domestic competitor, and in the other three cases a Japanese firm submitted a lower bid.[13] Japanese producers were awarded eighteen contracts, seven following competitive bids. The Japanese firm was the low bidder in all but one case.[14]

During the same period, Japanese transplants awarded fifteen contracts, nine of which followed competitive bids. In four of these cases at least one domestic firm bid on the contract. Japanese producers awarded the contract to the low bidder in all but one case.[15] The Japanese transplants awarded only one contract to a U.S. firm.[16] In all other cases, Japanese firms received the contracts.

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[12] [***] When discussing contracts awarded to domestic producers or to Japanese firms, I do not include contracts awarded to Hitachi Zosen-Clearing ("HZC"), a related party for purposes of this investigation, in either the domestic firm data or the Japanese import data throughout this opinion.

[13] [***] See Staff Report at A-33.

[14] [***]

[15] In that case the low bid was only $1,000 less than the accepted bid.

[16] [***] See Staff Report at A-34.

Demand for MTPs

Substitutability of U.S. and Japanese Presses. Drawing a conclusion as to the substitutability of the domestic like product and the unfairly traded imported product is vital to determining whether material injury in a Title VII case is by reason of dumped imports.[17] The greater the substitutability between the domestic like product and the subject imports, the more likely that even small price changes will induce customers to switch suppliers, and therefore the greater the impact of import sales on sales of the domestic like product, all other things being equal.

The issue of substitutability was the most controversial matter discussed by Petitioners and Respondents. Unfortunately, the discussion was limited to the question of whether U.S. manufacturers are considered to be qualified producers of large MTPs. Petitioner Verson argued that its presses are comparable to Japanese presses. It made two points: that customers do not request bids from producers they do not believe to be qualified, because it is costly to evaluate bids, and that Verson and Danly

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[17] This can be determined by examining the elasticity of substitution, an economic concept defined as the percentage change in the ratio of the quantities of two products demanded divided by the percentage change in their relative price. A positive elasticity of substitution indicates that goods are substitutes. The higher the elasticity of substitution, the closer the goods are as substitutes. For a fuller discussion of the elasticity of substitution and related economic concepts, see Forklift Trucks, supra, note 4, at 75-76.

must be considered to be qualified since they both have sold MTPs to auto manufacturers.[18]

Respondents argue that domestic auto makers do not perceive large domestic and imported transfer presses to be comparable and, for this reason, will not buy domestic MTPs under most conditions. They also asserted that while price is not an issue in the MTP market until adequate quality is established, there is fierce price competition among importers. Finally, they claimed that since Verson and Danly were not qualified to produce large transfer presses, the dumping had not affected the domestic industry.

According to ITC staff, while most purchasers reported that U.S. and Japanese firms are equally capable of producing large transfer presses, there were instances where quality differences were a deciding factor in which firm was awarded a contract. For example, one domestic automaker disqualified a bid from one of the domestic firms because of problems at one of that firm's plants.[19] One automaker cited another maker of MTPs as technically inferior, even after accepting its bid.[20] Staff also reported that one automaker no longer buys presses from one of the domestic MTP-makers because of a bad experience they had in the past.[21] Staff nevertheless suggested that both U.S. and

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[18] See Petitioners' Post-Hearing Brief at 5.

[19] [***]

[20] [***]

[21] [***] See Elasticities Memo at 9.

Japanese producers are capable of producing transfer presses and that their products are generally substitutable.[22]

I believe that the extreme positions taken by Petitioners and Respondents do not have substantial support in the record. Taking Petitioners first, I do not find their arguments to be convincing. The record clearly shows that customers accept bids from companies that are determined to be inadequate, ex-post. There are many instances when the low bidder does not receive the contract.

There may be reasons to request bids from MTP producers even if they are considered to be inferior, ex-ante. If customers buy other products or smaller presses from firms in the domestic industry, they may find it to be a good business practice to allow these firms to bid on large contracts. A firm may be asked to bid on a project because it is the easiest way for the purchaser to determine if the producer is qualified.

In addition, given Japanese import competition in the U.S. auto industry, one would expect U.S. auto makers to be particularly sensitive about excluding U.S. firms from the bidding process. A witness appearing for Respondents testified that U.S. auto makers have a preference for dealing with other

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[22] Staff estimates the elasticity of substitution to be between 2 and 4. See Elasticities Memo at 8. While Respondents believe that this is too high, neither they nor Petitioners offer a specific numerical estimate of the elasticity of substitution.

U.S. producers if they can produce products of acceptable quality.[23]

Finally, although U.S. firms were awarded some contracts, this is not evidence of close substitutability, in general. Since each MTP may be different in terms of size, quality, terms of sale, features, and particular end uses, a U.S. producer may qualify for some jobs and not for others. For example, a customer may be less likely to award a contract to a domestic producer when ordering MTPs for a new plant, if punctual delivery is crucial.[24] It is also possible that if a domestic MTP firm does not perform well on an initial contract, it will not be awarded another one until it demonstrates improved performance. In addition, the fact that Japanese transplants did not request bids from domestic MTP producers until 1989 may indicate that they did not find those firms to be satisfactory.

As for the Respondents, they oversimplify the issue of substitutability by stating simply that U.S. MTP producers are inferior. Clearly the fact that these firms received contracts for transfer presses of 2000 tons and over tells us that their bids have been found to be acceptable by various purchasers. Nonetheless, I believe that Respondents' argument is valid in

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[23] See Hearing Transcript at 101 (Testimony of Mr. Scicluna).

[24] Mr. Scicluna suggested that the contract awarded to Verson for a single-slide 3000 ton press was a test to see if Verson is capable of producing large machines. He claimed that since this press would be replacing an existing press, Ford was able to gamble. However, he noted that Verson is already 16-20 weeks late in delivery. See Id. at 110.

certain cases. John Scicluna of Ford Motor Company testified that Danly presses never worked right.[25] Another firm described one of the domestic MTP makers as inadequate in designing certain parts, late with automation delivery and start-up, inexperienced in the production of various systems, and generally not very interested in the business.[26] The bid data reveal a number of cases where a domestic firm was not awarded a contract even when it offered a lower bid than the eventual winner.[27] In addition, the bid data provide information on the length of time it takes a producer to complete an order, since for each sale, both the date the contract was awarded and the date of final delivery are reported.[28] These data show that one domestic firm's average time to complete a contract was more than fifty percent greater than the average for other firms.[29] I believe there is

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[25] Id. at 103.

[26] [***]

[27] [***] See Staff Report at A-33.

[28] See Id. at A-33, Table 23, and A-34, Table 25.

[29] [***] The difference between the two averages is significantly different from zero at the 5 percent level of statistical significance. (The t-ratio for significance is 2.08.) [***] This analysis is based on data for 51 sales to automakers where data were provided on both the month the contract was awarded and the month of final delivery. (In four other cases, either the month the contract was awarded or the month of completion was not reported.)

Of course, other factors could also be affecting the time needed to complete a contract. Completion times may be longer for contracts for larger presses or where the contract is for multiple MTPs. As additional experience in building MTPs is gained, completion times may shorten. Estimation of a simple regression model which controls for these other factors confirmed

(continued...)

sufficient evidence to conclude that at least one domestic firm is, indeed, considered to be inferior in the production of large mechanical transfer presses.[30,31]

I do not believe that the issue of substitutability rests simply on the determination of whether domestic auto manufacturers consider U.S. MTP producers as capable of producing the like product. Rather I believe that there are various factors, including quality, past experience, country of origin, price, delivery time, terms of sale, and third-country imports that determine the degree of substitutability between the imported and domestic products.

There is evidence that high tonnage, multi-slide presses produced by domestic firms are considered to be of inferior quality and that purchasing domestic products is considered risky.[32] Domestic producers have much less experience in

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[29](...continued)
our earlier finding that one domestic firm's completion times [***] were significantly longer than those for other firms and, in addition, indicated that these other factors do affect delivery times. (The specific regression results will be furnished to parties with APO clearance on request.)

[30] [***]

[31] [***]

[32] I find unpersuasive the majority's argument in this case that the development of heavy presses in the U.S. has been impeded by the dumped imports. First, this argument does not jibe with Petitioners' contention, also relied upon by the majority, that domestic producers submitted qualified bids for heavy presses, and indeed did so over the entire period of investigation. Second, I do not believe that the "derivative product" amendment to the 1988 Trade Act applies to cases where, as here, the foreign producers developed a new product in their home market

(continued...)

producing large, multi-slide presses than the Japanese producers and have had some problems with on-time delivery. In addition, the bid prices of one of the domestic producers appear to be much higher than Japanese bid prices for products bid to spec, even though there is evidence that the domestic-firm's product may be of lower quality.[33] It is not clear how large a premium customers would be willing to pay in order to buy from a domestic supplier or how the "Buy America" preference would interact with various quality differentials in determining the relative price at which a bid would be awarded to a domestic firm. However, I observe that when a Japanese firm bid at least 33 percent lower than a domestic firm, the Japanese firm was awarded the bid and when a Japanese firm bid less than 8 percent lower than one of the domestic firms [***], the domestic firm won the bid.[34] Unless customers strongly preferred the domestic product, it is unlikely that they would switch suppliers when faced with only a small relative price change.[35]

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[32](...continued)
which they then exported to the U.S. Such a reading of the statute would effectively exclude innovative products from the U.S. market. Rather, the provision makes more sense if it is applied to the situation where the domestic industry's efforts to compete with dumping hamper its ability to develop new product innovations of its own.

[33] [***] See Staff Report at A-33.

[34] [***]

[35] See the Appendix for a discussion on using bid data and how my approach differs from "margins analysis" which was used previously.

Finally, there is evidence that third-country imports may be closer substitutes for Japanese presses than are the U.S. presses.[36]

Based on the evidence in the record, I conclude that Japanese and domestic MTPs are not very close substitutes.[37]

Aggregate Price Effects. To evaluate the effect of dumped imports on the demand for MTPs, it is necessary to judge how consumers would respond to a decline in MTP prices.[38] The effect of dumped imports on the domestic industry would be mitigated if a price decline led to a relatively large increase in purchases, since in that event a greater portion of the increased sales of imports would result from market expansion rather than from decreased domestic producers' sales.

Demand for MTPs is derived from the demand for automobiles, appliances, and other products whose components are produced on transfer presses. Large MTPs are generally ordered for newly constructed auto facilities or for facilities that are being modernized. The only substitutes for MTPs are groups of older

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[36] [***]

[37] I would estimate the elasticity of substitution to be approximately 1.5.

[38] This economic concept is known as the elasticity of demand. To be more exact, the elasticity of demand is defined as the percentage change in the quantity of a good demanded divided by the percentage change in its price, all other things being equal. If demand is elastic (that is, the elasticity of demand is greater than 1) consumers will increase their total expenditure on a product when its price falls.

technology presses used in a tandem line. If a producer were to build a new facility, it is very unlikely that it would use the older technology since it is less flexible, requires more floor space and more employees, and operates more slowly.[39] In fact, in recent years the competitive conditions in the auto industry have prompted domestic auto producers to modernize their facilities by installing MTPs.

In cases where a new facility is being built, the elasticity of demand for MTPs is quite low. In cases where plants are being modernized, it is not clear how the decision to modernize would be affected by marginal changes in the price of MTPs. Respondents argue that firms would not modernize their plants if the price of MTPs was too high.[40] Staff believes that demand for MTPs would not be affected much by changes in their price.[41] While I agree with Respondents' argument, I think staff's overall conclusion about the relationship between demand for MTPs and their price is correct.

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[39] See Elasticities Memo at 11.

[40] See Hearing Transcript at 138 (Testimony of Mr. Scicluna).

[41] Staff estimates the elasticity of demand to be between 0.6 and 1.0. Neither Petitioners nor Respondents suggest a particular elasticity estimate.

The Supply of Domestic and Imported Mechanical Transfer Presses

In order to assess the effect of dumping on the domestic volume of production and the prevailing price, one must ascertain how the domestic industry and fairly traded imports would respond to an increase in the price of MTPs.[42]

Domestic Supply. Generally, if the quantity of domestic output is not responsive to price changes--that is, if a slight change in price causes domestic firms to increase the quantity they produce by a small amount--then dumping would have little effect on domestic output, but a relatively large effect on domestic prices. On the other hand, if domestic firms are highly responsive to price increases, then dumping would have more of an effect on the volume of output than on domestic prices. The supply response can be evaluated by looking at the extent of excess capacity, the ease with which capacity could be added or reduced, the availability of alternative markets, and the ease of entry and exit from the U.S. market. Staff estimates that domestic supply would be quite responsive to price changes.[43] However, it cautions that capacity figures may be misleading in

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[42] This economic concept, the elasticity of supply, is defined as the percentage change in the quantity of a good supplied divided by the percentage change in its price, all other things being equal.

[43] Staff estimates the domestic supply elasticity to be between 5 and 10. See Elasticities Memo at 5. Respondents and Petitioners offer no comments on domestic elasticity of supply.

this case. Evidence on the record appears to support staff's estimate.

Supply of Non-Subject Imports. Another factor that influences the effect of dumping is the responsiveness of fairly traded imports to changes in price. A large increase in the supply of fairly traded imports as a result of a slight price increase reduces the likelihood that the domestic industry is materially injured by unfairly traded imports. That is because third countries will bear more of the costs of dumping and so there will be less of an impact on the domestic industry.

While staff did not discuss this issue, its analysis implies that third-country imports would be quite responsive to price changes.[44] Imports from Germany and Brazil compete for sales to auto manufacturers. Although the record on this point is vague, I believe that these imports would be responsive to changes in price.[45]

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[44] Staff uses an infinite supply elasticity for fairly traded imports in their analysis. See Memo to Chairman Brunsdale and Vice Chairman Cass from the International Economist, dated January 30, 1989 (INV-N-015) at 5-6.

[45] I believe that an elasticity of supply between 5 and 10 would be reasonable.

The Effect of Dumping on the Domestic Industry

In evaluating the effect of dumping, I address the question of whether dumping caused a decrease in the volume of domestic industry output or a decline in the price of the domestic like product. Based on those determinations, I can assess the impact of the dumped imports on factors such as employment, investment, and capacity utilization. While I believe this is the correct way to conduct the analysis directed by the statute, the use of an approach such as this is particularly crucial in the current case because the data in this case are sketchy at best. It is, therefore, even more difficult than usual to rely on the various industry trends. For example, as noted above, the information on import market share and financial trends are questionable.

The Commerce Department conducted its investigation on whether the imports were dumped into the domestic market during the period between January 1, 1987 and January 31, 1989. Unfortunately, very few large MTPs were shipped and sold during that period. Of the six contracts for sales of nine MTPs made to auto producers, only one followed a competitive bidding process that included a U.S. firm. This contract was awarded to a Japanese firm whose bid was more than 65 percent below the price quoted by the domestic firm. Given a dumping margin of 15 percent, the contract would have been awarded to the domestic firm even if there had been no dumping, only if the auto producer had been willing to pay a premium of at least 50 percent for the domestic product. There is no evidence that a firm would be

willing to pay such a high premium for an MTP.[46] Given that the contract was for a very large, multi-slide press and that Japanese firms appear to be more qualified producers of presses of this size, it seems even less likely that the contract would have been awarded to the domestic firm, absent the dumping.

Three contracts were awarded to Japanese producers by Japanese transplants after competitive bids that did not include a domestic firm. Therefore, it is hard to imagine that dumping affected the domestic firms' sales in those cases. Finally, two contracts were awarded to a Japanese firm without a competitive bid. In one case the contract was for a press that was identical to a press the Japanese producer had previously built for the purchaser and there is no evidence that the Japanese firm was dumping when the contract was originally awarded. In the other case the award was made by a Japanese transplant. It seems unlikely that either of these contracts would have been awarded to a domestic firm absent the dumping.

Since the domestic industry made no sales and shipments of large transfer presses to the auto industry during this period, it is not possible to conclude that dumping lowered the price of the domestic like product.[47] Since there is no evidence that either prices or output were affected by the dumped imports, I conclude that factors such as employment, capacity utilization,

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[46] As stated earlier, the average premium that was paid on contracts when firms were not the low bidder was 11 percent.

[47] [***]

and investment would also not have been affected by dumping. Therefore, by looking at the sales that occurred during the period of dumping, I determine that the domestic industry was not materially injured by reason of dumped imports.

To repeat, very few sales were made during the period when dumping was determined to have occurred. I note here that even if I had assumed that dumping occurred over the entire period of the investigation, I would have reached the same conclusion. Based on my determination regarding the economic determinants of supply and demand in this market and the relatively low dumping margin, I conclude that the domestic industry producing MTPs was not materially injured by reason of dumped imports from Japan. In particular, because I believe that the elasticity of substitution is low, it is unlikely that dumping by Japanese producers had a significant effect on either the price of the domestic like product or the volume of output. The data on the bids supports my conclusion.

Threat of Material Injury

My approach to threat determinations is fully outlined in my recent opinion in Fresh, Chilled, or Frozen Pork from Canada.[48] This approach is captured in three propositions. First, Congress has explicitly indicated in the statutory language and the legislative history that "threat analysis" should not be used to avoid difficult judgments on actual injury. Second, the

[48] Inv. No. 701-TA-298 (Final), USITC Pub. 2218 (September 1989).

statutory standard for an affirmative threat determination is high. That is, an affirmative determination must be based on evidence that "the threat of injury is real and actual injury is imminent," and may not be based on supposition or conjecture.[49] Our reviewing courts have ruled that the mere possibility of future injury does not meet this standard.[50] Finally, the threat factors listed in 19 U.S.C. § 1677(7)(F), together with information obtained from the inquiry into actual injury, are to form the basis of our threat inquiry. These factors focus on two issues: the likelihood that the foreign industry will sustain or increase its penetration of the U.S. market to levels that would produce material injury in the relatively near future and the sensitivity of the domestic industry to imports.[51] Threat analysis, which necessarily involves prognostication, is a very difficult task.

Likelihood of Increased or Sustained Penetration by Subject Imports. The issue of the sensitivity of the domestic industry to imports is covered in my discussion of the substitutability between the imported and domestic products and the responsiveness

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[49] 19 U.S.C. 1677(7)(F)(ii).

[50] Alberta Gas Chemical Corp. v. United States, 515 F.Supp. 781, 791 (Ct. of Int'l Trade 1981).

[51] I address the pertinent threat factors here. Factors not specifically mentioned are either inapplicable, were discussed in connection with present injury, or have no material bearing on my decision.

of aggregate demand to a change in price.[52] Here I focus on the factors related to the likelihood of increased import penetration. In this case, examination of this issue focuses on the following three considerations.[53]

Likelihood of Increased Import Penetration. Imports of Japanese mechanical transfer presses accounted for a declining percentage of U.S. apparent consumption during the period of investigation. On the basis of value of shipments, the share of Japanese imports increased slightly from 72.8 percent to 85.1 percent between 1986 and 1987. After 1987, the Japanese share declined, falling to 65.7 percent during the first nine months of 1989.[54] The percentage of the value of purchase orders received by Japanese firms declined from 84.3 percent in 1986 to 69.2 percent in 1987. After a slight rise to 70.8 percent in 1988, the Japanese share again declined, falling to 61.9 percent of the value of all orders placed for MTPs during the first nine months of 1989.[55]

The value of purchase orders received by Japanese firms apparently increased by about two-thirds between 1986 and 1988.[56] This might seem to suggest substantial increases in shipments of

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[52] See pages 114-122.

[53] Inventories are not an issue in this case as mechanical transfer presses are built to order. (Staff Report at A-18)

[54] Id. at A-30, Table 20. The pattern is the same if one looks at quantities shipped as opposed to value of shipments.

[55] Id. at A-31, Table 21.

[56] Id. at A-29, Table 18.

mechanical transfer presses from Japan in the next year or two. However, that outcome would be unlikely, inasmuch as most of the presses ordered in 1987 and 1988 appear to have been delivered by the end of 1989.[57]

Capacity and Changes in Capacity Utilization. Data contained in the staff report show unchanged Japanese capacity to produce mechanical transfer presses during the period of investigation.[58] Because of the decline in shipments,[59] capacity utilization reportedly declined by more than half.

However, the measurement of capacity is particularly difficult in this case. As a result, any consideration of increases in the capacity of Japanese firms or decreases in capacity utilization is highly problematic. Mechanical transfer presses are not manufactured in plants dedicated solely to their production. Both U.S. and foreign producers make other types of presses and other machine tools; and equipment and labor can be shifted from the production of one product to another as demand shifts.[60]

Where two or more products can be manufactured using the same equipment and labor, it is extremely difficult if not

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[57] Id. at A-33, Table 23, and A-34, Table 25.

[58] Id. at A-27, Table 16. Capacity is measured as the largest number of labor hours devoted to the production of mechanical transfer presses during the 1980s. (Id. at A-27.) Given this definition, capacity could not decline and would only increase if new firms began production of the product.

[59] Id. at A-27, Table 16.

[60] Id. at A-9.

impossible to determine the capacity to produce just one of the products. Theoretically, all of the capacity could be used for some period of time to produce one of the products. Whether this would ever be done, however, depends on the profitability of making this product in comparison with the profitability of making other products that can use the same resources. Thus, the capacity that would be used to produce MTPs can change significantly with changes in the relative prices of presses and other machine tools. Certainly, the fact that MTPs are found to be sold at prices that do not cover the costs of production suggests that producers would prefer to use much of the capacity of their plants to produce other products. However, without a complete analysis of the markets for all of the products that can be produced with these resources, it is not possible to say anything meaningful about how many mechanical transfer presses producers would choose to produce.

Because one cannot talk sensibly about capacity and capacity utilization in the context of the current case, I do not find that the available information provides the requisite level of evidence of the presence of underutilized capacity.

Potential Product Shifting. The statute directs us to consider the likelihood that productive capacity currently employed in the production of other products subject to antidumping or countervailing-duty investigations will be shifted into production of the subject merchandise.[61] In the current

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[61] 16 U.S.C. 1677(7)(F)(i)(VIII).

case, there is no evidence that any of the other presses or other machine tools manufactured by the Japanese producers of mechanical transfer presses are either under order or under investigation.[62] While some of the machine tool products are the subject of voluntary restraint agreements,[63] I note that these agreements have been in place since 1986. It therefore seems likely that any shifting that is going to occur would have already taken place and that additional shifting which could provide a threat of future injury is unlikely.

Conclusion. Based on the three issues discussed above and on the relatively low level of sensitivity of domestic producers to changes in the price of imports, I find that there is no threat of future material injury.

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[62] Staff Report at A-25 - A-26.

[63] Id. at A-26.

Appendix: Comparing the Evidence on Bids to "Margins Analysis"

In this case, bid data were collected and assembled by staff. These data are particularly useful in cases like this one where there are a small number of very large sales. They are not included in our usual framework of analysis, because most products are not sold through bids. Since bid data play an important role in this case and to avoid any confusion, I want to distinguish my analysis that was used here from an approach called "margins analysis" that was used by certain Commissioners in the past.[64]

In a market where producers' brands may differ by actual quality, perception of quality, features, country of origin, or terms of sale, we would expect prices charged by producers to vary. Firms that are able to charge higher prices for their brands are assumed to offer something of value to their customers. In addition, there are some customers who prefer to buy the less expensive brand, either because they prefer it absolutely or because the extra satisfaction they would get from consuming the expensive product is not worth the price differential. In general, as long as both products are sold, it is assumed that a higher price indicates some higher value. Otherwise, we would have to assume that consumers who pay the

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[64] A history and explanation of margins analysis can be found in Carbon Steel Wire Rod from Brazil, Inv. Nos. 731-TA-113 and 114 (Preliminary), USITC Pub. 1316 (November, 1982), (Views of Commissioner Paula Stern).

higher price are simply irrational. If the relative price of th more expensive good falls, some consumers are likely to switch and buy the higher quality good at the lower relative price, regardless of the absolute price difference.

Therefore, when comparing the difference in "absolute" prices of domestic and foreign goods--the margin of underselling--we are generally able to conclude more about the heterogeneity of the products, than about the "fairness" of the various prices. Margins analysis compares dumping margins and margins of underselling in order to determine injury. Put simply, if the dumping margin is less than the margin of underselling, then it is assumed that if dumping had not taken place, the imported product would still be cheaper than the domestic product. Therefore, it is assumed that no sales would be lost to the dumped imports. This approach is implicitly based on the erroneous assumption that the imported and domestic products are strictly homogeneous. As discussed above, the very fact that imported and domestic products are being sold at different prices means that they are not homogeneous. On this basis, I believe that margins analysis is flawed.

There is one major difference between the analysis of bid data and margins analysis. The products offered through the bids that are not accepted are never produced or sold. Therefore, the fact that one firm bids a higher price on a contract does not necessarily tell us that it is offering a superior product. Rather, it may indicate that for the specific project the higher

pricing firm is simply not competitive. On the other hand, if a low bid is not accepted, we would assume that the winning firm offered something that was preferable to the customer. Because differences in bids may be caused by either quality differences or cost differences, one must be careful in drawing conclusions and look for evidence on the record that supports either position. Because there is an enormous amount of information that can be gained by looking at the prices offered on the bids as a group, I believe that bid information is critical to understanding this case.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

Following a preliminary determination by the U.S. Department of Commerce that imports of mechanical transfer presses [1] from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective August 18, 1989, instituted investigation No. 731-TA-429 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's final investigation, and of the public hearing to be held in connection therewith, was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on September 13, 1989 (54 F.R. 37839). [2] The hearing was held in Washington, DC, on January 4, 1990. [3]

Commerce made its final affirmative LTFV determination on January 4, 1990 (55 F.R. 335). The applicable statute directs that the Commission make its final injury determination within 45 days after the final determination by Commerce, or by February 20, 1990.

Background

This investigation results from a petition filed by Verson Division of Allied Products Corp., the United Auto Workers, and the United Steelworkers of America (AFL-CIO-CLC) on January 12, 1989, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of mechanical transfer presses from Japan. In response to that petition the Commission instituted investigation No. 731-TA-429 (Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C § 1673b(a)) and, on February 27, 1989, determined that there was a reasonable indication of material injury.

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[1] For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or as parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled. Mechanical transfer presses and parts thereof are provided for in subheadings 8462.99.00 and 8466.94.50, respectively, of the Harmonized Tariff Schedule of the United States.

[2] Copies of cited Federal Register notices are presented in app. A.

[3] A list of witnesses who appeared at the hearing is presented in app. B.

Nature and Extent of Sales at LTFV

On August 18, 1989, the Department of Commerce published in the Federal Register its preliminary determination that imports of mechanical transfer presses are being, or are likely to be, sold at LTFV.

Commerce made its final determination that imports of mechanical transfer presses are being, or are likely to be, sold at LTFV, effective January 4, 1990. Commerce used data from Komatsu Ltd.'s (Komatsu) and Aida Engineering Ltd.'s (Aida) responses to compare the U.S. purchase price with foreign market value based on constructed value. The period of investigation for the Commerce proceeding covered mechanical transfer presses sold and shipped in the period January 1, 1987, through January 31, 1989. The amount by which the foreign market value of the merchandise subject to investigation exceeded the U.S. price was 15.16 percent ad valorem for Komatsu, 7.49 percent ad valorem for Aida, and 14.51 percent ad valorem for all other manufacturers/producers/exporters.

The Product

Description and uses

Mechanical transfer presses are part of a larger family of metal-forming machine tools--mechanical presses. Mechanical presses form a metal workpiece by forcing a slide mechanism against the workpiece and press bed, thus forcing the metal to conform to a desired shape. The term "mechanical" refers to the method used to create the force that causes the slide to move. Mechanical presses use cranks, cams, or gears to create the force. [4]

Mechanical transfer presses, hereinafter called "transfer presses," are automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action.

Transfer presses function as self-contained production lines that fabricate a high volume of identical parts requiring two or more production operations or a family of parts that are similar in size, shape, and thickness. Depending upon the dies used in the press, a wide variety of metal-forming operations can be performed, including stamping, drawing, extruding, punching and shearing, [5] bending, folding, straightening, flattening, notching, forging, and hammering. Transfer presses are used in many industries, including the automotive, appliance, electric machining, and furniture industries.

Although all mechanical presses technically have a crown assembly, slide assembly, bed assembly, and column assembly, only transfer presses have a

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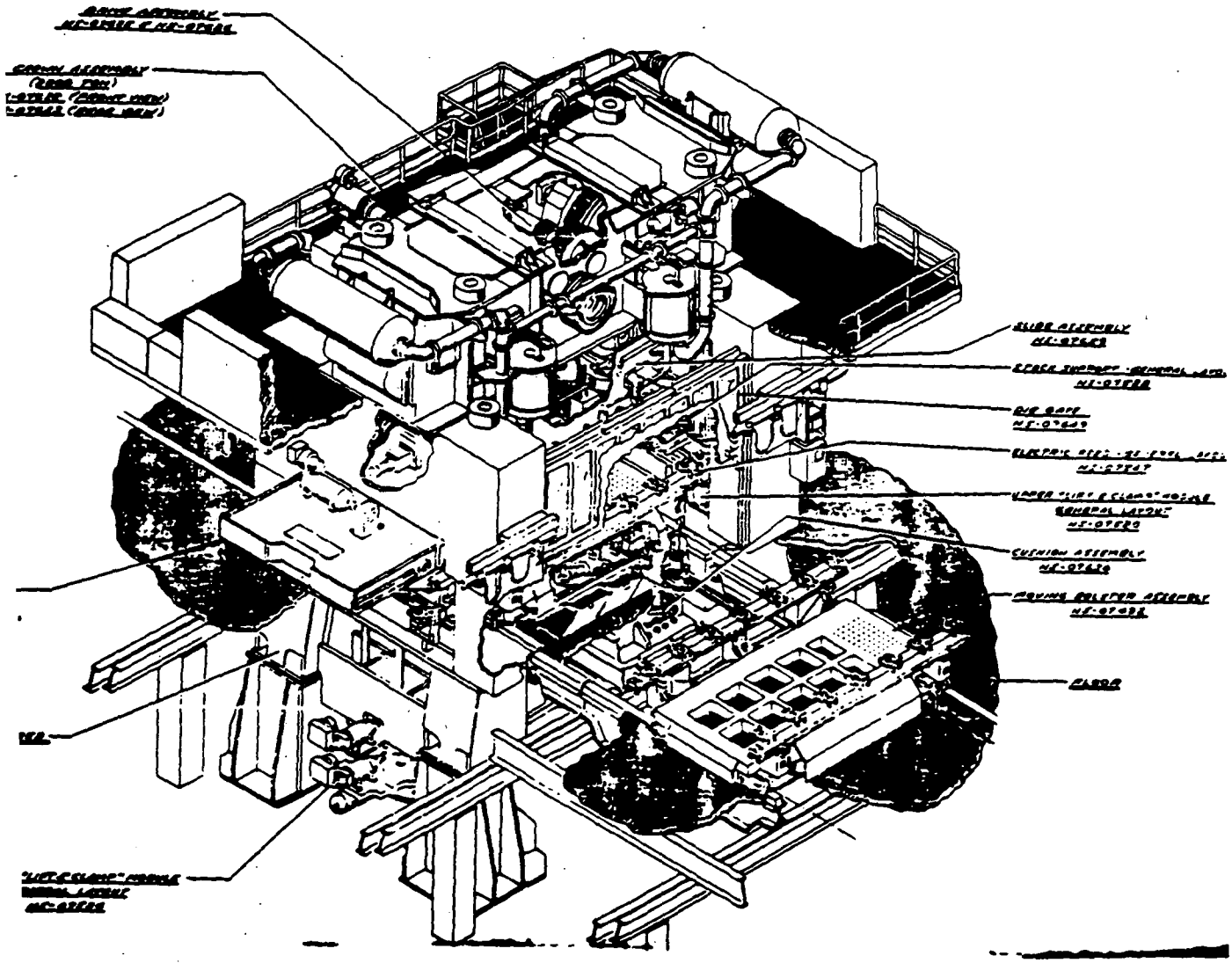
[4] Other types of presses may use hydraulic or pneumatic methods to create the force that causes the slide to move. Hydraulic presses use liquid and pneumatic presses use air.

[5] Metal-forming operations, including punching and shearing, are differentiated from metal-cutting operations, in which metal is removed in the form of chips.

synchronized transfer feed. (See fig. 1.) The transfer feed automatically moves a workpiece from one work station to another with the action of the

Figure 1
Basic configuration of a mechanical transfer press



Source: Verson Division of Allied Products Corp.

press. Auxiliary equipment, including destackers and scrap conveyors, are frequently offered by producers of transfer presses.

The following definitions describe the major components of transfer presses:

Bed assembly.--The bed assembly functions as a frame to support the press. The bed assembly houses the bolsters, cushion, and lower dies, but its design may vary to accommodate scrap chutes and a conveyor system for gathering scrap generated during the forming process. The bed is in the shape of a hollow rectangle, having reinforcing webs and flanges of thick steel plate. Generally, the ends of the bed are reinforced with tie-rods of forged steel that run the length of the bed and are secured by nuts, typically hydraulic nuts.

The lower dies rest on the bolster, to which the dies are clamped. The bolster is solid metal with scrap chutes or die bays cut into it. The bolster in turn rests on the cushion, which applies an upward pressure on the bolster and lower dies to absorb shock. The cushion is pneumatically or hydraulically powered. Much of the bed, the conveyor system for gathering and removing scrap, and the cushion typically reside below the factory floor in a pit, when the transfer press is sufficiently large. The bolster is at floor level.

On many large transfer presses, the bed is designed to allow the bolster to move in and out of the press on rails so that dies can be changed rapidly. An extra bolster with new dies is generally exchanged in the press, replacing the bolster and dies currently in use. Such die changes can usually be accomplished in under five minutes. Transfer presses designed for a rapid change of dies result in less machine downtime and increased flexibility. Consequently, the production of smaller lot sizes of parts that fit into just-in-time inventory systems becomes more physically feasible and less costly.

Crown assembly.--The crown assembly houses the drive or drives which transmit power to the slide assembly. The crown is a box-type shape constructed of heavy-gauge steel plates and is designed to provide rigidity, which minimizes deflection (bending of the bed under impact of the slide); to absorb stress from the operation of the press; and to disperse the weight load of the drive mechanism. The links, also called pitmans, that connect the drive mechanism to the slide assembly are also housed in the crown. The crown also houses the drive motor, the drive shaft, brakes, gears, and flywheel. The crown may house more than one drive motor, depending on the number of slides in the transfer press and their respective power requirements. The motors are electric and range from 50 to 800 horsepower. The crown may also have catwalks and railings, which allow for monitoring and maintenance of the equipment.

Slide assembly.--The slide assembly moves up and down in the press and imparts force to the workpiece being formed. Attached to the slide are the upper dies. The slide has the shape of a hollow rectangle and is constructed of heavy steel plate with reinforcing steel-plate ribs. The slide is designed to absorb shock from hitting the workpiece and bed assembly and to minimize deflection. The slide is connected to the drive in the crown by a link or series of links that screw into the slide. There are either one, two, or four connections, or points of suspension, between the crown and the slide. The number of suspension points is determined by the press application, which in turn dictates the length of the slide and the front-to-back distance of the bolster; the greater those distances the more points of suspension are required.

The movement of the slide in forming metal is complex, requiring precision and control of the speed of the slide as it pushes the dies into the metal. A press that uses only the stroke of the upper slide to form the metal is known as a "single action" press. In deeper drawing operations on the larger transfer presses, an outer slide comes down to hold the workpiece outside the die area, then an inner slide comes down with the dies and forms the workpiece. This is known as a "double action" press. A "triple action" press has double action from the upper slides but also includes an upward movement of the lower dies attached to the bolster or "lower slide."

On large transfer presses, multiple slides may be required in operations for which deeper draws or extensive forming of the metal are needed, and where more die stations are used. The slides are sequential, and are separated by column assemblies. The first slide in the press may have larger tonnage capacity than the remaining slides, as more force might be required to form the metal initially. The main components of the slide are gib blocks, links or suspension points, elevating parts, slide face drilling, slide clamps, counterbalance assemblies, and the slide motor. The upper dies are attached to the slide by clamps that allow for rapid mounting and dismounting.

Column assembly.--The column assemblies support the crown and slide assemblies and are designed to give the press stability against lateral forces. Piping, controls, die lights, die safety lights, and monitoring equipment are housed in the column assemblies. Steel plate is welded into square, column-like structures. On the larger transfer presses tie-rods are used to connect the crown to the bed through the column assemblies.

Feeds.--Transfer presses are designed with either a mechanical feed or an electronic feed system. Generally, there are two methods of feeding the workpiece through the press: dual-axial feed, and tri-axial feed. In both mechanical and electronic feed systems, two feed bars run the length of the press above the lower dies near the outer edges of the bolster. Fingers are attached to the feed bars to grab the workpiece and move it from work station to work station. In a dual-axial feed system, the feed bars' motion is clamp and feed (move forward). The feed bars move inward toward the workpiece, fingers clamp the workpiece, the feed bars feed the workpiece to the next station, unclamp the fingers by moving away from the workpiece, and return to the previous station. In a tri-axial feed system, the feed bars' motion is clamp, lift, and feed. The feed bar moves inward toward the workpiece, fingers clamp the workpiece, the feed bars lift, and the workpiece comes out of

the die. Then the workpiece is fed to the next station, lowered, unclamped from the fingers by being moved away from them, and the feed bars return to the previous station. In both the dual-axial and tri-axial feeds, as the slide descends, the workpiece is unclamped, the feed bar moves away, the feed bars return to the previous station as the slide hits the bottom of its stroke, the dies close, and the workpiece is formed. This cycle is repeated over and over.

In a mechanical feed system, the main gear assembly in the crown drives a power-take-off (PTO) shaft that powers the cams driving the feed bars. The cams are located underneath the feed bars at one end of the press. The press and feed operations are synchronized by the cams, which are mounted on a shaft so they are locked into synchronous movement.

In an electronic feed system, separate electric DC servo motors drive the motions of the feed bar and are synchronized by electronic control. The motors are controlled by microprocessors that send electronic signals to encoders, which in turn control the motors by duplicating the motion profile of a mechanical cam in clamping, lifting, and feeding. Feedback devices, such as transducers or resolvers, verify that the feed bars are within the proper time and space coordinates. [6]

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[6] Manufacturers and users of mechanical and electronic feeds offer differing views on the reliability, safety, and efficiency of these feed systems. A mechanical feed is cited as being highly developed in the industry and a proven successful system. The cams and linkages of the transfer feed are mechanically linked to the drive system of the slide so the downstroke of the slide is physically synchronized with the transfer feed stroke. The longer the transfer feed stroke, however, the more pressure is put on the cams, which over time will begin to wear. If the user desires to change the transfer feed stroke length, the cams and linkages must be adjusted. Electronic systems have a power source independent from the press. As press speed is increased and transfer stroke distance is increased, more power is demanded by the electric motors. These motors can overload, or "trip out," and an emergency shutdown of the press can result. Also, the electronic feed is susceptible to slight variations in synchronization, leading to a degradation in the precision of the forming process. However, the electronic feed system is believed to offer the user great flexibility, as the electronic feed control system is programmable and individual components of the system can be easily replaced when necessary.

Controls.--The type of controls for the press and the feed are usually specified by the customer and then purchased by the press builder and installed in the press and/or in a panel control box located on the factory floor next to the press. Generally, U.S. automobile manufacturers have specified either UNICO, Square D, or Allen-Bradley controls. Such controls are compatible with other industrial controls that the customer is already using in its plant, thereby reduceing the need for training on a different brand of controls. Japanese producers meet the specifications of U.S. automobile producers for U.S. controls, purchase those electronics in the United States, and ship them to Japan, where they are integrated with the press during its production. Japanese press builders are known to use controls from Mitsubishi, Yaskawa, and Fuji Electric for Japanese and other purchasers.

Transfer presses are generally described by a number of different specifications, including tonnage capacity, [7] front-to-back and left-to-right distance of the bolster, the length and frequency of the feed stroke, the pitch (distance between stations), the number of stations, slides, and columns, type of gear, number of drives, and the number of suspension points. Greater tonnage capacity is generally associated with larger transfer presses, which generally have tri-axial feed systems and two or more slides. Generally, the greater tonnage capacity presses are associated with stamping large auto body parts, such as hoods, fenders, roofs, and trunks, and large appliance parts. [8] Smaller tonnage capacity presses are generally used for small, high-speed stamping applications, such as battery cans and lipstick tubes.

Presses can also be categorized by type of construction, solid frame or tie-rod construction. Solid-frame presses are constructed from a solid frame in which all the assemblies are built together. Tie-rod presses are constructed by connecting the individual assemblies with tie rods (prestressed forged rods threaded on the ends) that hold the press assemblies together. Although small transfer presses may use solid-frame construction, most transfer presses are of tie-rod construction.

Substitute products

There are other types of mechanical presses that are capable of performing the same metal-forming operations as transfer presses. These include, but are not limited to: open-back inclinable, vertical, straight-side, archframe, knuckle-joint, gap-and-horn type, and single-, double-, and triple-action mechanical presses. The type of metal-forming application and its costs frequently determine the type of press selected by the user.

Straight-side presses are perhaps most like transfer presses; both can contain one or more die stations and may include one or more slides.

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[7] Tonnage capacity is the number of tons of pressure exerted by the press.

[8] Verson officials testified at the hearing that the same "large" transfer press may be used for auto body panels or large appliance panels, depending on the dies used in the press. Although automakers do not have any reason to manufacture large appliance panels on their transfer presses, they could do so given the appliance die sets. Transcript of hearing, pp. 52-53.

Straight-side presses may be grouped together in a production line, also known as a tandem press line. Workpieces are then transferred from press to press either manually, semiautomatically, or by automated material-handling machinery. Lines of straight-side presses or a mechanical transfer press are usually employed in high-volume production runs. However, because it is capable of performing as many operations as numerous straight-side presses, a single transfer press may reduce overall press investment expenditures, conserve floor space, eliminate in-process parts storage and handling, and reduce maintenance, energy consumption, and required labor. In addition, compared to a line of straight-side presses, a transfer press has greater flexibility to move between variable lot sizes because of automated die-change capabilities and typically produces more parts per minute. Transfer presses are normally used when there is a daily need for 4,000 or more identical stampings requiring three or more operations. Most transfer presses are designed to make more than one part. Runs of 30,000 to 50,000 pieces of any one part are generally economical between tooling changes. Transfer presses produce stampings from coil stock, blanks, or slugs. [9]

Purchasers reported that hydraulic presses can also be substituted for large transfer presses. Most of the purchasers that bought small transfer presses (under 150 tons) reported that there were no substitutes for transfer presses in their end uses.

Manufacturing processes

Both U.S. and foreign producers of transfer presses fabricate and machine components and assemble the finished product by job-shop production processes. Since both U.S. and foreign producers also manufacture other types of presses, engineers and workers may work on different product lines. In some cases, contract engineering may be employed.

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[9] The following is an excerpt from a recent trade publication describing the benefits of transfer presses:

> Corresponding to the increasing investment for the plant modernization in the automobile industry, the press machine has been automatized rapidly and progressed outstandingly during the last decade. First conventional tandem lines have been completely replaced with the large transfer presses. Those companies that do not have a transfer press are now considered as out-of-date manufacturers. The transfer press has been employed since 1980 with its advantages; high production capacity, labor-saving function, and space-saving design. Mr. Yamaguchi (managing director of press business department, Komatsu, Ltd.) further said, 'for productivity, the stroke of a transfer press has been doubled (20 spm (strokes per minute) even for 2,700- or 3,000-ton presses as compared with that of 8 to 10 spm in a tandem line). Also the transfer press is so compact that it requires about half the space of a tandem line.' Therefore, two large transfer presses can be installed in a space for one tandem line. Only about 5 persons, including operators, are required to take care of a line of the transfer presses. Thus more than half of the personnel can be reduced as compared with conventional tandem lines.
>
> "Full Automation with Transfer Presses," METALWORKING Engineering and Marketing, March 1987, pp. 49-50.

Generally, because of the degree that transfer presses are custom-built, the value added by the producer will vary by press project. Certain producers, due to their small size and physical plant, either do not produce large presses, or when they do, purchase or subcontract some components; larger firms tend to produce more components in house. Value added will also vary because of the extent of engineering required for a particular press project.

Transfer presses are custom-built machines. Small transfer presses are designed from almost standardized engineering designs and are customized to the purchaser's specifications. Large transfer presses, such as those used for body panel stamping by the automobile manufacturers, are designed to the customer's precise specifications. The buyer gives a purchase order to the press builder, who in turn generates a production order. An engineering design is created on the basis of the production order, and a bill of materials is drawn up specifying the components to be manufactured in-house and to be purchased or subcontracted from outside suppliers. Engineering drawings are frequently constructed on computer-aided-design (CAD) systems.

Economies of scale in the production of presses and experience derived from working with the customer during the installation and subsequent production process add significantly to the ability of the manufacturer to design, build, and install these presses. Technological development in this industry is directly related to the number of machines installed by a particular producer.

The major assemblies of a mechanical transfer press--crown, slide, column, and bed assemblies--are all boxlike structures of welded steel plate and sheet, with reinforcing steel plate ribs, webs, and flanges. The steel plate used is generally low-grade carbon steel. Steel plate is generally cut by the press builder using burning machines controlled by X-Y coordinate tracing machines or numerical controls (NC). Steel plate in varying degrees of thickness is cut by this process in the desired shapes for plate structures and other press components that are later machined. During the cutting process, the steel lies on a studded bed. This bed is flooded with water until the water and the steel contact. During the cutting process, the water cools the workpiece as it is cut, so that the steel retains its physical characteristics. Blanks for gears, pitmans, flywheels, pinions, cams, and component plate parts are cut in this fashion.

Large, boxlike constructions for the crown, slide, column, and bed assemblies are formed from steel plate and are manually welded together. Such constructions are then baked in a temperature-controlled furnace to relieve the stresses in the steel created during welding. After this baking process, weld spatter and scale generated in stress relief furnaces are cleaned off using steel shot-blasting. Once cleaned, such structures, as well as other components, are machined to desired shapes.

The machine tools used in machining operations include horizontal and vertical boring machines, radial drills, jig borers, and grinding machines. Many of these machines are large, costing more than $6 million, and are controlled by digital-readout systems, NCs, or computer NC devices. Smaller components are machined on smaller machine tools, such as machining centers. Gears are cut and finished on a variety of special gear-cutting machines. The gear teeth are hardened by special heat-treating methods to improve wear life. Gears must be ground precisely in order to prevent "noise" from developing as the teeth from one gear mesh with those of another.

Since many of the steel plate structures and components weigh several tons or more, large, cab-operated overhead cranes running at the ceiling of the plant move components from station to station. Since a press can stand 25 feet below the factory floor and have a height of 35 feet or more above the factory floor when in operation, the manufacturer must have an assembly building that is quite high; the assembly area can also have a pit in which the bed rests, simulating an actual installation site. [10]

Due to the heavy investments in capital assets required in this industry, certain components are purchased from outside suppliers. Some of the press components are off-the-shelf or standardized products, such as air cylinders, surge tanks or other pressure vessels, and certain electronics, electric motors, and controls. Other components, such as gears, forgings, forged tie-rods, steel plate, and castings, are subcontracted for and are then machined and turned into finished components in-house. [11]

The feed bars used in either the mechanical or electronic feed systems are generally machined in-house by the press builder. Other components used in a mechanical feed, such as gearing, cams, cam shafts, and linkages, generally are machined in-house and assembled into the press as appropriate. For electronic feed systems, programmable controllers, other electronics, and DC servo motors are purchased from outside suppliers. Much of the assembly of the feed systems occurs after the major assemblies of the press have been fitted together. [12]

Major modules of the press are then completed, with internal components and assemblies added. Overhead cranes stack up the modules of the press from the ground up--bed, column, slide, and crown assemblies. Tie-rods are inserted and capped with nuts as appropriate. Other components, such as

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[10] For more information on the plant specifications of the U.S. industry, see app. D. For more information regarding the plant specifications of the Japanese industry, see app. G.

[11] Certain producers * * * produce only the mechanical press itself, and purchase the entire transfer feed system from companies that specialize in producing machinery automation systems. These producers "stack" the transfer press in their facilities, and test the press functions for their customers. These firms have been considered to be producers of transfer presses in this report. Certain other firms manufacture mechanical presses destined to be combined with transfer feed mechanisms by their customers. Such firms have no involvement with the companies producing automation systems, and are considered mechanical press producers, but not producers of transfer presses. In addition, the firms producing machinery automation systems actively market transfer feed mechanisms to be retrofitted to older, straight-sided mechanical presses, to increase stamping efficiency. The transfer feed systems producers are not considered producers of transfer presses, as they have no experience in press building. For more information on individual U.S. producers, see the section of this report entitled "U.S. producers."

[12] The Commission has requested specific information on the imported content and subcontracted portion of the value of the cost of goods sold for both U.S. and Japanese transfer presses. Available information is presented in the section of this report entitled "Financial experience of U.S. producers."

electronic controls, are then added. The entire production process, from start to finish, can take several months to several years.

The press is then run and tested. In some cases, actual dies from the customer will be used to simulate production runs in the testing phase. Finally, the press is tested in the presence of the customer's engineering and purchasing personnel. After customer approval, the press is disassembled and its major modules are cleaned and painted manually. The press modules are then prepared for shipment. Most assemblies and components of transfer presses are shipped by extra-large trucks. Certain large components are shipped by railroad. Most manufacturers have rail spurs coming into their factories, both for receiving steel and for shipping the final product.

At the customer's plant, independent "riggers" that specialize in moving heavy machinery in plants are employed to drop the bed into the press pit in the factory floor and assemble the other modules. Assembly is usually done under the supervision of the press builder. Other material-handling devices, such as a destacker, are connected with the press. The press builder then begins training the customer's staff in press maintenance. The manufacturer of the controls will train the press buyer's staff in the operations of the controls.

U.S. tariff treatment

As mentioned above, transfer presses, whether imported or domestically produced, are disassembled and shipped unassembled to the customer/end user. When shipped from an overseas location and when all (or substantially all) unassembled parts for a transfer press are imported in one shipment, they are classified in subheadings 8462.99.00 (nonenumerated machine tools) and 8466.94.50 (parts thereof) of the Harmonized Tariff Schedule of the United States (HTS). [13] The applicable column 1-general (most-favored-nation) rates of duty are 4.4 percent ad valorem under subheading 8462.99.00 and 4.7 percent ad valorem under subheading 8466.94.50.

The U.S. Industry

U.S. producers

There are eight producers of transfer presses located in the United States. The Commission sent questionnaires to 11 firms: 3 reported no production during the investigation period (January 1, 1986, to September 30, 1989) and 8 firms responded with usable data. With the exception of * * * all producers also build other types of presses or machine tools, including mechanical presses, hydraulic presses, turning machines, and grinders. The eight producers, their plant locations, their respective shares of the cumulative reported value and quantity of U.S. producers' domestic shipments and domestic purchase orders during the period of investigation, and their positions with regard to the petition are shown in table 1.

Petitioners requested in the preliminary investigation that because of Hitachi Zosen-Clearing, Inc.'s (HZC) ownership by Hitachi Zosen Corp.

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[13] These items were formerly provided for in items 674.3583, 674.3586, 674.3587, 674.3592, 674.3594, 674.3596, 674.5315, and 674.5320 of the former Tariff Schedules of the United States Annotated (TSUSA).

Table 1
Transfer presses: U.S. producers, plant locations, shares of cumulative value and quanti of domestic shipments and purchase orders, January 1, 1986-September 30, 1989, and positi on the petition, by firms

Firm	Plant location	Share of-- Shipments Value	Shipments Quantity	Purchase orders Value	Purchase orders Quantity	Position the petit
		Percent	Percent	Percent	Percent	
U.S. Baird.....	Stratford, CT	***	***	***	***	***
Danly Machine.....	Chicago, IL	***	***	***	***	***
H.Z. Clearing.....	Chicago, IL	***	***	***	***	***
	Houston, TX	***	***	***	***	***
Minster Machine...	Minster, OH	***	***	***	***	***
Niagara Machine...	Buffalo, NY	***	***	***	***	***
Samson Machine....	Wolcott, CT	***	***	***	***	***
Verson Division...	Chicago, IL	***	***	***	***	***
Waterbury Farrel..	Cheshire, CT	***	***	***	***	***
Total.....		100.0	100.0	100.0	100.0	

Note.--Because of rounding, numbers may not add to the totals shown.

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

(Hitachi), a Japanese producer and exporter of transfer presses, it should be excluded from the domestic industry under the related parties provision of the statute. [14] Counsel for HZC argued that its client is not "substituting its interest as an importer for that as a domestic manufacturer," and that, therefore, it would be "inappropriate to exclude this company from the scope of the domestic industry." [15] Counsel for the petitioner continued to request exclusion of HZC in the final investigation, and counsel for HZC continued to argue for its inclusion in the U.S. industry, modified only by its concession that financial data for Hitachi and HZC could not be separated. [16] In the preliminary investigation, the Commission concluded that HZC should be excluded from the definition of the domestic industry. [17] Information regarding the U.S. producers in the sections of this report covering material injury will be presented without data from HZC. Tables presenting U.S. industry data including HZC's figures are presented in appendix C. Background information on U.S. producers of transfer presses is presented below.

U.S. Baird Corp. (Baird), has been a builder of high-production machinery since 1846. Baird produces transfer presses, turning (chucking) machinery, barrel-finishing machinery, and wire and strip metal-forming machinery in its Stratford, CT, plant. * * *. According to sources at the U.S. Embassy in Tokyo, Baird had a technical licensing agreement with a

[14] 19 U.S.C. § 1677 (4)(B). Transcript of conference, p. 36.

[15] Ibid., pp. 111-112.

[16] Hitachi's prehearing brief, p. 4.

[17] Mechanical Transfer Presses from Japan, Inv. No. 731-TA-429 (Preliminary), USITC Pub. No. 2160, February 1989, p. 10.

Japanese company, Asahi Seiki, for Asahi Seiki to produce transfer presses in Japan, with the understanding that it would not export transfer presses to the United States. The licensing agreement expired in 1981, but Asahi Seiki has not exported transfer presses to the United States to date. [18]

Danly Machine Division, Connell Limited Partnership (Danly) currently produces transfer presses at its plant in Chicago, IL.

* * * * * * *

HZC produces transfer presses in its facilities in Chicago, IL, and Houston, TX. HZC also produces other types of mechanical presses. * * *.

The Minster Machine Co. (Minster) is a privately held company located in Minster, OH. * * *.

Niagara Machine and Tool Works (Niagara), located in Buffalo, NY, is mainly a producer of mechanical presses, press brakes, shears, and tools, that * * *.

Samson Industrial Machinery, Inc. is a relatively new company * * *.

Verson Division of Allied Products Corp. (Verson) produces transfer presses * * *.

Waterbury Farrel * * *.

U.S. importers

Twenty-three firms imported transfer presses during the investigation period. Of these, 18 firms imported from Japan (including one U.S. producer, HZC), 2 imported from the United Kingdom, 2 imported from the Federal Republic of Germany (1 of which also imported from Brazil), and 1 U.S. producer (Danly) * * *. These importers are believed to account for virtually all imports of transfer presses into the United States during the investigation period. The Commission mailed questionnaires to 49 firms, of which 19 reported no imports of transfer presses during the investigation period, 1 questionnaire could not be delivered, and 6 firms did not respond. The unresponsive firms are believed to account for no more than 5 percent of imports of transfer presses from countries other than Japan. The 18 responding firms with imports from Japan are believed to account for 100 percent of imports from Japan.

The U.S. sales subsidiaries of the major Japanese producers of transfer presses accounted for a large portion of imports from Japan, including Aida Engineering, Inc. (Aida USA), HZC, and Komatsu America Industries Corp. (Komatsu USA). * * *. The names of the importers, by country of foreign producer, and their shares of shipments of imports during the period of investigation are shown in table 2. Background information on the U.S. importers of transfer presses responding to the Commission's importers' questionnaire is presented below.

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[18] For more information on Japanese capacity to produce transfer presses, see the section of this report entitled "Ability of foreign producers to generate exports and the availability of export markets other than the United States."

Table 2
Transfer presses: U.S. importers, country of foreign producer, and shares of cumulative value of U.S. shipments of imports, January 1, 1986-September 30, 1989, by firms

Firm	Origin of imports	Share of U.S. imports Percent
Aida Engineering Inc.....	***	***
Bellemar Parts.....	***	***
Calsonic Yorozo Corp.....	***	***
C. Itoh & Co.....	***	***
Gates Power Drive.....	***	***
Honda of America.....	***	***
Hitachi Zosen Clearing....	***	***
KI (USA) Corp.....	***	***
Komatsu America Corp.....	***	***
Mazda Motor Manufacturing.	***	***
Mitsubishi Int'l Corp.....	***	***
Mitsui America.....	***	***
Ogihara America.....	***	***
Okaya (USA) Inc.....	***	***
Subaru Isuzu Amer. Inc....	***	***
Sumitomo Corp.....	***	***
Toyota Tsusho Amer. Inc...	***	***
Yamakawa Manufacturing....	***	***
INA Bearing Co.....	***	***
Plataarg Engineering.....	***	***
Luk Inc.....	***	***
Schuler, Inc.....	***	***
Danly Machine.....	***	***
Total.....		100.0

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

Aida Engineering, Inc. (Aida) * * *.

Background on HZC is discussed in the section of this report entitled "U.S. producers."

Ogihara is a stamping company that * * *.

Komatsu America Industries Corp. (Komatsu USA) * * *.

Of the Japanese transplant companies * * *.

U.S. Market Factors

The U.S. market for transfer presses is characterized by infrequent sales. Transfer presses are purchased for use in many industries, including the automotive, appliance, electric machining, and furniture industries. Most of the transfer presses shipped in the United States during the period of investigation (by value of shipments) went to the automotive and automotive-related industries.

Transfer presses have been very important in the revitalization of the automotive and automotive-related industries in the United States. [19] Many of the transfer presses purchased by the automakers are used to stamp auto-body parts, e.g., hoods, fenders, door panels, etc. Channels of distribution for U.S. domestic shipments and shipments of imports from Japan of transfer presses during the investigation period are summarized in table 3.

Table 3
Transfer presses: U.S. shipments, by markets, January 1, 1986-September 30, 1989

* * * * * * *

The majority of the value of both producers' domestic shipments and importers' shipments of imports were made to unrelated end users. By quantity of presses, the majority of U.S. producers' shipments were made to related distributors. This trend is accounted for by * * *. For purposes of this investigation, the trends expressed in terms of value should carry more weight.

The demand for large transfer presses depends on automakers' plans to modernize transfer press operations by replacing tandem press lines with transfer presses, and on new construction of automobile manufacturing facilities. * * *. In addition, the recent construction of Japanese-owned automobile manufacturing facilities in the United States has increased demand for transfer presses. However, in some cases, these Japanese automakers have not requested bids from U.S. producers.

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[19] For additional information on the use of transfer presses in the U.S. automotive industry, see Donald N. Smith and Peter G. Heytler, An Emerging Model for Future Automotive Stamping Plants, SAE, SAE Technical Papers Series No. 880211, Mar. 4, 1988.

Consideration of Alleged Material Injury to an Industry in the United States [20]

U.S. production, capacity, and capacity utilization

Verson measures production and capacity on the basis of direct labor hours because "direct labor hours more accurately reflect the actual resources expended in the manufacturing process due to the wide divergence in size and complexity of these made-to-order items." [21] Verson adds that using units as the basis for measuring capacity and capacity utilization "would not account for the fact that units may be produced during several accounting periods and then shipped in one accounting period." [22] As a result of these concerns, the Commission's producers' questionnaire requested capacity and production on the basis of available direct labor hours and labor hours worked. Although measuring capacity on the basis of available labor hours appears to most closely reflect the nature of the production process involved in making a transfer press, several problems did arise.

For example, in its questionnaire response, Verson indicated that its capacity was based on the assumption "that any capacity available for mechanical presses would also be available for transfer presses." Using this approach (also followed by other producers), capacity utilization for Verson during much of the investigation period would * * *. * * *.

Producers were then given the opportunity to list their highest level of production of transfer presses, measured in direct labor hours, during the decade. No U.S. producer reported its highest level of production to fall outside the period of investigation. Accordingly, the capacity shown in table 4 reflects the highest level of production of mechanical transfer presses during the 1980s, expressed in direct labor hours. Although these capacity utilization figures for transfer presses are probably overstated, they appear to be the best indicators available.

Table 4
Transfer presses: U.S. capacity, production, and capacity utilization, 1986-88, January-September 1988, and January-September 1989

* * * * * * *

Capacity increased slightly between 1986 and 1987 because * * *. Capacity increased between the interim periods because * * *. Production decreased from 1986 to 1988 by 38.7 percent and increased between the interim periods by 59.8 percent. Capacity utilization fluctuated from 1986 to 1988,

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[20] Eight U.S. producers, believed to account for all U.S. producers' domestic shipments of transfer presses during the period of investigation, returned a completed or partially completed producers' questionnaire. As mentioned earlier in this report, data for the U.S. industry including HZC will not be presented in the body of the report but can be found in app. C.

[21] Petition, p. 25.

[22] Ibid.

for an overall decrease of 39.1 percent, and increased by 48.0 percent between the interim periods. [23]

U.S. producers' domestic shipments, purchase orders, and exports [24]

Because the transfer press market is characterized by infrequent and sporadic sales, with two or more years between the purchase order date and the delivery date on large transfer presses for auto-body applications, the Commission's questionnaires collected data for the investigation period on U.S. domestic shipments and purchase orders, by quantity and value. These data together give an approximation of U.S. producer activity in the market.

* * *. Accordingly, for purposes of this investigation, the trends expressed in terms of value should carry more weight. * * *. Table 5 presents data on domestic shipments, purchase orders, and exports of transfer presses.

Table 5
Transfer presses: U.S. producers' domestic shipments, domestic purchase orders, and exports, 1986-88, January-September 1988, and January-September 1989

* * * * * * *

The value of shipments declined by 47.2 percent from 1986 to 1988 and by 67.2 percent between the interim periods. The value of purchase orders, however, increased by over 1,000 percent from 1986 to 1988, after which it declined by 49.7 percent between the interim periods. The decline in shipments is largely attributable to * * *. At the same time, the Japanese share of apparent U.S. consumption measured in dollars increased from 72.8 percent in 1986 to 85.1 percent in 1987, then declined to 68.3 percent in 1988, for an overall decrease of 4.5 percentage points. [25] The fluctuations in average unit values of shipments and purchase orders during the investigation period partly reflect * * *.

In addition to aggregate shipment data, the Commission's questionnaires requested detailed breakouts of producers' domestic shipments, including data on the type and origin of transfer feed, the tonnage capacity, and the end use of domestic shipments. These data are shown in table 6.

Table 6
Transfer presses: Shares of U.S. producers' domestic shipments, by types and origins of transfer feed, by tonnage capacities, and by end uses, January 1, 1986-September 30, 1989

* * * * * * *

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[23] For more detailed information regarding capacity, including the dimensions of U.S. manufacturing facilities and the current backlog of domestic orders of transfer presses, see app. D.

[24] No U.S. producer reported company transfer shipments of transfer presses.

[25] More detailed information concerning import penetration is presented in the section of this report entitled "Apparent U.S. consumption."

The following tabulation, constructed from telephone conversations with company officials, January 17-18, 1990, summarizes the tonnage capacity of transfer presses produced during the period of investigation (POI) and during the history of the company for each producer:

Producer	Largest ever produced	Smallest ever produced	Largest produced during POI	Smallest produced during POI
Baird	***	***	***	***
Danly	***	***	***	***
Minster	***	***	***	***
Niagara	***	***	***	***
Samson	***	***	***	***
Verson	***	***	***	***
Waterbury Farrel	***	***	***	***

Respondents have argued that transfer presses used to make auto body panels constitute a separate like product from all other transfer presses. However, respondents were unable to identify a clear demarcation in physical differences between auto body panel transfer presses and other transfer presses. [26] According to Verson officials, auto body panels could be produced on transfer presses from 600 tons upward. * * *. According to Verson, the tonnage capacity necessary to stamp a particular part depends more on the definition (shape) of the part than the size of the part. However, there is a general correlation between size of the part to be made and the tonnage capacity of the press used to manufacture the part. Further, the definition of "auto body panel" is unclear, as conversations with Verson officials indicate that an auto body panel could be either an inner panel or an outer panel and that the dimensions of such panels would vary considerably. [27]

Petitioner has argued that transfer presses under 150 tons constitute a separate like product from all other transfer presses. [28] Data for the U.S. industry defined as producers of "large" (over 150 tons) transfer presses, and excluding HZC, are also presented in appendix C.

U.S. producers' inventories

Because transfer presses are usually custom-made products, they are not inventoried.

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[26] Counsel for Aida has made the argument that transfer presses with a front-to-back bed measurement of 108 inches or greater constitute auto body panel transfer presses (p. 205, transcript of hearing). However, * * *. Counsel for Komatsu has made the argument that transfer presses over 3,000 to 4,000 tons are used exclusively for auto body panels (pp. 131, 183-184, transcript of hearing), however Verson produced a 6,000 ton transfer press in the late 1960s that is being used today to stamp out brake backing plates for automobiles.

[27] Staff conversations with Vince Pisciotta and Ken Otsuka, Jan. 17, 1990.

[28] See petitioner's prehearing brief, pp. 6-8.

Employment and wages

Production and related workers at Verson and Niagara are represented by the United Auto Workers of America. The United Steelworkers of America (AFL-CIO-CLC) represents the production and related workers at Danly, Waterbury Farrel, and Minster. These two unions are copetitioners with Verson. * * *.

In its producers' questionnaire, the Commission requested U.S. producers to provide detailed information concerning reductions in the number of production and related workers producing transfer presses occurring between January 1986 and September 30, 1989. Three producers reported reductions of production workers for the subject product. [29]

* * * * * * *

Available information on employment by U.S. producers of transfer presses is presented in table 7. Because of the enormous differences in the types of transfer presses produced, statistically meaningful calculations of productivity and unit labor costs are impossible on an aggregate basis.

Table 7
Transfer presses: Average number of production and related workers, hours worked, wages and total compensation paid to employees producing such presses, and hourly compensation, 1986-88, January-September 1988, and January-September 1989

* * * * * * *

Financial experience of U.S. producers

Four U.S. producers--* * *--accounting for * * * percent of the cumulative value of domestic shipments of transfer presses during the period of investigation, provided income-and-loss data on their transfer presses and on their establishment operations. [30] Aggregate data of these four producers are presented in tables labeled "a" in appendix C. Data excluding HZC are discussed in this section * * *. Danly Machine, an additional producer accounting for approximately * * * percent of the cumulative value of domestic shipments, could not furnish accurate data on the direct costs attributable to its transfer press projects, because there had been two changes in the ownership of the company during 1985-87. * * *. Data for only "large" (over 150 tons) transfer presses * * * [31] are shown in the tables labeled "b" in appendix C.

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[29] As mentioned above, * * *. Information supplied by HZC is presented at app. C.

[30] The largest producer and petitioner, Verson, was visited for verification. Some changes, though not material except in asset valuation, were made in the data submitted by Verson during verification. These revised data are reflected in this final report.

[31] These firms accounted for * * * percent of the cumulative value of domestic shipments of transfer presses during the period of investigation.

The revenues and costs reported on long-term press projects can be recognized under two methods: (1) the completed-contract method or (2) the percentage-of-completion method. Under the completed-contract method, no revenue is recognized until the period in which the project is completed or shipped. The costs incurred on the project are accumulated and are charged t expenses in the period in which the revenue is recognized. Under the percentage-of-completion method, revenue, costs, and net income are recognize periodically on the basis of the estimated stage of completion of the project It should be noted that the estimate of costs and/or net income may not necessarily correspond to the final costs and/or net income determined when the press is finally completed. The underestimated or overestimated costs will be adjusted, together with net income, in the year in which the transfer presses are completed.

The Commission asked U.S. producers to provide data on the basis of the percentage-of-completion method. * * *.

Transfer press operations.--The income-and-loss data for transfer press operations on the basis of the percentage-of-completion method are presented in table 8. * * *.

Net sales (revenues recognized under the percentage-of-completion method) declined * * * from * * * 1986 to * * * 1987. Such sales increased * * * in 1988. During January-September 1989, net sales rose * * * compared with * * * in the corresponding period of 1988. * * *.

The industry reported aggregate operating losses during 1986-87; however, such losses declined from * * * in 1986 to * * * in 1987. During th same period, operating loss margins rose * * *. In 1988, the reporting firms earned an aggregate operating income of * * *. During the January-September periods, operating income margins increased from * * * in 1988 to * * * in 1989.

Selected income-and-loss data of each responding firm are presented in table 9.

* * * * * * *

Excerpts from Verson's annual reports are presented in appendix E.

Table 8
Income-and-loss experience of U.S. producers on their operations producing transfer presses on the basis of percentage-of-completion method, accounting years 1986-88, January-September 1988, and January-September 1989

* * * * * * *

Table 9
Selected income-and-loss data of U.S. producers on their operations producing transfer presses on the basis of percentage-of-completion method, by firms, accounting years 1986-88, January-September 1988, and January-September 1989

* * * * * * *

In view of the long-term construction period for many of the larger presses, the Commission requested the revenue, cost of goods sold, and the gross profit or loss for each transfer

during the period of the investigation. When aggregated, this information for completed press projects is more reliable than the historic financial information compiled on the percentage-of-completion method as there are no estimates necessary for revenues and costs. For press projects that are currently in-process, revenue is calculated based on fixed-price contracts and costs are estimated on the basis of information available at the time the Commission's questionnaire was completed.

The revenues, cost of goods sold, and gross profit or loss for the 104 completed presses and the 29 presses in-process were aggregated by firm on the basis of two dates: (1) the year in which the construction contract for the transfer press was executed (table 10), and (2) the year in which the transfer press was delivered to the customer (table 11). Table 10 may be preferred for analytical purposes, as the revenues reflect bidding conditions and press producers' cost estimates at the time the contract was executed. Data presented in table 11 approximates that which would be reported using the completed-contract method of accounting for long-term construction contracts.

Table 10 shows data for each of the three firms separately.

* * * * * * *

Table 11 shows data of the three firms classified by the year when the presses were delivered. The reporting firms suffered aggregate gross loss margins of * * * in 1985, * * * in 1986, and * * * in 1987. However, they reported aggregate gross profit margins of * * * in 1988 and * * * in 1989.

Table 10
Gross profit-and-loss experience of U.S. producers on their operations producing transfer presses, classified by the year when the contract for the presses was executed, by firms, 1984-89

* * * * * * *

Table 11
Gross profit-and-loss experience of U.S. producers on their operations producing transfer presses, classified by the year when the presses were delivered, by firms, 1985-90

* * * * * * *

The firms estimated an aggregate gross profit margin of * * * in 1989 and * * * in 1990 for presses in-process. * * *.

The Commission, on the basis of a request made by the counsel for Komatsu America Industries Corp., asked U.S. producers as well as the major foreign producers of transfer presses to supply data with respect to their imported and domestic content of materials used to produce transfer presses. It was further requested that the cost of their domestic materials be disaggregated into (1) subcontracted cost and (2) remaining cost for parts, components, basic raw materials, etc. These data are presented in table 12.

Table 12
Breakdown of material costs as a percentage of total material costs, by firms, 1986-88, January-September 1988, and January-September 1989

* * * * * * *

Overall establishment operations.--Income-and-loss data of the three producers on their overall establishment operations within which transfer presses are produced are presented in table 13.

As a share of the establishments' net sales, transfer press net sales accounted for * * *. Establishment net sales increased by 10 percent from 1986 to 1988 and further rose by 28 percent between January-September 1988 and January-September 1989. * * *. Operating income margins improved from a negative * * * in 1986 to a positive * * * in 1987, * * * in 1988, and * * * in January-September 1989.

Table 13
Income-and-loss experience of U.S. producers on the overall operations of their establishments within which transfer presses are produced, accounting years 1986-88, January-September 1988, and January-September 1989

* * * * * * *

Investment in productive facilities.--The value of property, plant, and equipment for the three firms is shown in table 14. The return on book value of fixed assets and the return on total assets are also presented in table 14. * * *.

Table 14
Transfer presses: Value of property, plant, and equipment of U.S. producers, as of the end of accounting years 1986-88, September 30, 1988, and September 30, 1989

* * * * * * *

Capital expenditures.--The capital expenditures reported by the three firms are presented in table 15. * * *.

Table 15
Transfer presses: Capital expenditures by U.S. producers, accounting years 1986-88, January-September 1988, and January-September 1989

* * * * * * *

Research and development expenses.--Research and development expenses fc transfer presses, for the three firms, in thousands of dollars, are shown in t following tabulation. * * *.

Item	Research and development expenses of U.S. producers 1/				
				Jan.-Sept.--	
	1986	1987	1988	1988	1989
All products of establishments.....	***	***	***	***	***
Mechanical transfer presses.....	***	***	***	***	***

1/ These firms are * * *.

Effects of imports on ability to raise capital, investment, and development and production efforts.--The Commission requested U.S. producers to describe any actual or potential negative effects of imports of mechanical transfer presses from Japan on their firm's ability to design, build, and install such presses, existing and/or derivative product development and production efforts, growth, investment, and ability to raise capital. Their responses are shown in appendix F.

Consideration of the Question of Threat of Material Injury

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

> In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors-- [32]
>
> (I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),
>
> (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
>
> (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
>
> (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

[32] 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."

(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. [33]

The available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury or the threat thereof;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of alleged material injury to an industry in the United States." Available information on 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,

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[33] 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."

follows. As mentioned above, transfer presses are generally made-to-order products and are not inventoried. Therefore, item V is not applicable in this investigation. Items (I) and (IX) are also not applicable.

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

There are five known Japanese companies that manufacture, produce, and/or export transfer presses to the United States: Aida Engineering, Ltd; Hitachi Zosen, Ltd; Ishikawajima-Harima Heavy Industries Co., Ltd. (IHI); Komatsu, Ltd.; and Ashai Seiki. Three of these companies have U.S. sales subsidiaries that are importing transfer presses into the United States. [34] The four producers that export, their plant locations in Japan, and their respective shares of the cumulative value of shipments exported to the United States are shown in the following tabulation (in percent):

Producer	Plant location	Percent of cumulative exports
Aida	Yokohama	***
Hitachi	Sakurajima	***
IHI	Yokohama	***
Komatsu	Komatsu	***
Total		100.0

The following tabulation, compiled from telephone conversations with counsels for IHI and Komatsu, and written submissions by counsels for Aida and Hitachi, Jan. 17-23, 1990, summarizes the tonnage capacity of transfer presses produced during the period of investigation (POI) (although not necessarily exported to the United States), and during the history of the company for each producer:

Producer	Largest ever produced	Smallest ever produced	Largest produced during POI	Smallest produced during POI
Aida	***	***	***	***
Hitachi	***	***	***	***
IHI	***	***	***	***
Komatsu	***	***	***	***

Aida Engineering, Ltd. (Aida Ltd.), founded in 1917, as Aida Ironworks, Ltd., has been producing transfer presses since 1960. * * *.

In the 1950s, Clearing, Inc., formerly an independent U.S. producer of transfer presses, licensed Hitachi Zosen, Ltd. (Hitachi) to produce transfer presses in Japan. * * *.

According to information supplied by its counsel, Komatsu, Ltd. has been engineering and producing transfer presses for more than 25 years. * * *.

Respondents argued that in the 1970s Japanese producers developed and perfected transfer presses for stamping large auto-body panels. When the U.S. automakers pushed to modernize their production facilities and lower costs, they went to the Japanese, who had "honed and improved that product, enhancing

[34] For additional information regarding these firms' import operations, see section of this report entitled "U.S. importers."

its quality and reliability through their work with the Japanese car industry." [35] Respondents conclude that it is natural for the Japanese to have dominated the market for a product that they had developed, and that "what is significant is that the U.S. press producers, starting basically from scratch, have made such a substantial inroad into this market for transfer presses for large auto-body panels."

As mentioned above, both U.S. and foreign producers of transfer presses fabricate and machine components and assemble the finished product by job-shop production processes. Furthermore, both U.S. and foreign producers also produce other types of presses/machine tools. Although none of these other products are subject to investigation(s) under section 701 or 731 or to final orders under section 736, some are covered by the voluntary restraint agreement (VRA) between the Governments of Japan and the United States. [36]

At the Commission's conference held in connection with the preliminary investigation, counsel for Komatsu, Hitachi, and Aida indicated that they are unaware of any outstanding dumping findings or antidumping orders against their Japanese clients in third-country markets. [37]

In order to obtain information regarding the producers of transfer presses in Japan, the Commission requested information of the U.S. Embassy in Tokyo. [38] In addition, requests were made of counsel representing the foreign producers that filed entries of appearance with the Commission.

The data supplied in response to these requests regarding capacity were as problematic as data on capacity supplied by U.S. producers, with a slightly different emphasis. Foreign respondents argued that using the highest level of production in labor hours significantly overstates capacity, as there were special situations in each case that enabled the firms to produce more than their estimated capacity * * *. The Commission then requested data concerning overall capacity utilization for all products of their plants. Again, capacity utilization was * * *. In order to compare capacity utilization on the same basis for the U.S. and Japanese industries, capacity in this section is expressed as the highest level of production of transfer presses achieved during the investigation period (no firm reported higher production levels

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[35] Transcript of conference, p. 61.

[36] See letter from Commerce Secretary Baldrige to His Excellency Nobuo Matsunaga regarding trade in certain machine tools between Japan and the United States of America, Dec. 16, 1986.

[37] Transcript of conference, pp. 55, 95, 115, and 120. Counsel for IHI indicated in its post-conference brief that it also is unaware of any outstanding dumping findings or antidumping orders against its Japanese client in third countries.

[38] The Embassy responded that the information requested is either not available or not readily available. It added that four of the Japanese producers named in the Commission's request for information would be providing data through their respective Washington counsels. It stated that Ashai Seiki has been producing small transfer presses (under 100 tons) since around 1960, but because of its licensing agreement with U.S. Baird, it has not exported transfer presses to the United States.

during the 1980s). Data compiled in response to the requests are presented in table 16.

Table 16
Transfer presses: Japanese production, capacity, capacity utilization, domestic shipments, exports to the United States, and exports to third countries, 1986-88, January-September 1988, January-September 1989, and projected 1990

* * * * * * *

Production, capacity utilization, and total shipments (by quantity and value) declined steadily during the investigation period, with an increase in production, and a decrease in shipments expected in 1990. [39] The share of total shipments exported peaked in 1986, with declines projected through 1990, and the U.S. share of total exports declined steadily over the investigation period.

Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury or the Threat Thereof

Imports

Because the transfer press market is characterized by infrequent and sporadic sales, with two or more years between the purchase order date and the delivery date on large transfer presses for auto-body applications, the Commission's questionnaires collected data for the investigation period on U.S. importers' shipments and purchase orders, by quantity and value. These data together give an approximation of U.S. importer activity in the market. Data on U.S. importers' domestic shipments of transfer presses and purchase orders of transfer presses, by principal sources, are presented in tables 17 and 18, respectively.

Shipments of imports from Japan and from all sources including Japan declined by quantity and value throughout the period of investigation. Average unit values of all imports declined during the period of investigation; however the average unit value of Japanese presses increased between 1987 and 1988. Declining unit values for all imports are partly attributable to a decline in imports from Japan, for which average unit values were relatively high.

The total value of purchase orders for Japanese transfer presses and their average unit values increased from 1986 to 1988, but declined between the interim periods. This parallels the trend in U.S. producers' purchase orders, and the trend in apparent consumption by purchase orders, shown in the section of this report entitled "Apparent U.S. consumption."

In addition to aggregate shipment data, the Commission's questionnaires requested detailed breakouts of importers' domestic shipments, including data on the type and origin of transfer feed, the tonnage capacity, and the end use of shipments of imports. These data are shown in table 19. (Comparable data for U.S. domestic shipments are presented in table 6.)

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[39] For more detailed information regarding capacity, including the dimensions of Japanese manufacturing facilities and the current backlog of orders of transfer presses, see app. G.

Table 17
Transfer presses: U.S. importers' domestic shipments, by principal sources, 1986-88, January-September 1988, and January-September 1989 1/

Source	1986	1987	1988	January-September-- 1988	1989
	Quantity (number of presses)				
Italy	***	***	***	***	***
Japan	***	***	***	***	***
Brazil	***	***	***	***	***
United Kingdom	***	***	***	***	***
FRG	***	***	***	***	***
Total	***	***	***	***	***
	Value (1,000 dollars)				
Italy	***	***	***	***	***
Japan	***	***	***	***	***
Brazil	***	***	***	***	***
United Kingdom	***	***	***	***	***
FRG	***	***	***	***	***
Total	***	***	***	***	***
	Unit value (1,000 dollars)				
Italy	***	***	***	***	***
Japan	***	***	***	***	***
Brazil	***	***	***	***	***
United Kingdom	***	***	***	***	***
FRG	***	***	***	***	***
Average	***	***	***	***	***
	Percent of total quantity				
Japan	55.6	69.6	57.6	53.8	61.5
All others	44.4	30.4	42.4	46.2	38.5
Total	100.0	100.0	100.0	100.0	100.0
	Percent of total value				
Japan	83.2	93.3	87.9	88.7	95.6
All others	16.8	6.7	12.1	11.3	4.4
Total	100.0	100.0	100.0	100.0	100.0

1/ Data are for firms accounting for 100 percent of shipments of imports from Japan and *** percent of shipments of imports from all other countries during the investigation period.

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

Table 18
Transfer presses: U.S. importers' purchase orders, by principal sources, 1986-88, January-September 1988, and January-September 1989

Source	1986	1987	1988	January-September--1988	January-September--1989
	Quantity (number of presses)				
Italy	***	***	***	***	***
Japan 1/	***	***	***	***	***
United Kingdom	***	***	***	***	***
FRG	***	***	***	***	***
Total	***	***	***	***	***
	Value (1,000 dollars)				
Italy	***	***	***	***	***
Japan	***	***	***	***	***
United Kingdom	***	***	***	***	***
FRG	***	***	***	***	***
Total	***	***	***	***	***
	Unit value (1,000 dollars)				
Italy	***	***	***	***	***
Japan	***	***	***	***	***
United Kingdom	***	***	***	***	***
FRG	***	***	***	***	***
Average	***	***	***	***	***
	Percent of total quantity				
Japan	45.8	52.2	59.1	52.6	70.6
All others	54.2	47.8	40.9	47.4	29.4
Total	100.0	100.0	100.0	100.0	100.0
	Percent of total value				
Japan	96.3	92.0	98.2	98.2	96.3
All others	3.7	8.0	1.8	1.8	3.7
Total	100.0	100.0	100.0	100.0	100.0

1/ Data are for firms accounting for *** percent of shipments of imports from Japan during the investigation period.
2/ Not applicable.

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

Table 19
Transfer presses: Shares of U.S. importers' shipments of imports from Japan, by types and origins of transfer feed, by tonnage capacities, and by end uses, January 1, 1986-September 30, 1989

* * * * * * *

Apparent U.S. consumption

Data on apparent U.S. consumption of transfer presses, based on shipment data and purchase order data, are presented in tables 20 and 21, respectively.

Table 20
Transfer presses: Apparent U.S. consumption and ratios of imports to consumption, based on shipments, 1986-88, January-September 1988, and January-September 1989

Period	Apparent U.S. consumption 1/	Ratio of imports to consumption--		
		For Japan	For all other sources	Total
	Units	Percent		
1986.....	***	36.8	29.5	66.3
1987.....	***	45.7	20.0	65.7
1988.....	***	28.4	20.9	49.3
Jan.-Sept.--				
1988.....	***	27.5	23.5	51.0
1989.....	***	18.6	11.6	30.2
	1,000 dollars	Percent		
1986.....	***	72.8	14.7	87.5
1987.....	***	85.1	6.1	91.2
1988.....	***	68.3	9.4	77.7
Jan.-Sept.--				
1988.....	***	70.2	8.9	79.1
1989.....	***	65.7	3.0	68.7

1/ U.S. producers' shipments, shipments by HZC, plus shipments of imports.

Note.--Because of rounding, numbers may not add to the totals shown.

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

Apparent U.S. consumption based on shipment data, by quantity and value, declined steadily over the investigation period. The share of apparent consumption captured by imports from Japan fell in terms of quantity but fluctuated in terms of value, whereas the U.S. producers' share (excluding HZC) increased by quantity * * * and fluctuated by value * * * in interim 1988, for an overall decrease of * * * during the investigation period). [40] For this investigation, as mentioned earlier, trends by value should be given more weight.

[40] U.S. producers' shares were calculated using domestic shipments from table 5.

Table 21
Transfer presses: Apparent U.S. consumption and ratios of imports to consumption, based on purchase orders, 1986-88, January-September 1988, and January-September 1989

Period	Apparent U.S. consumption 1/	Ratio of imports to consumption-- For Japan	For all other sources	Total
	Units	----------Percent----------		
1986.....	***	24.4	28.9	53.3
1987.....	***	26.7	24.4	51.1
1988.....	***	24.5	17.0	41.5
Jan.-Sept.--				
1988.....	***	22.2	20.0	42.2
1989.....	***	24.5	10.2	34.7
	1,000 dollars	----------Percent----------		
1986.....	***	84.3	3.2	87.5
1987.....	***	69.2	6.0	75.2
1988.....	***	70.8	1.3	72.1
Jan.-Sept.--				
1988.....	***	67.3	1.2	68.5
1989.....	***	61.9	2.4	64.3

1/ U.S. domestic shipments, shipments by HZC, plus shipments of imports.

Note.--Because of rounding, numbers may not add to the totals shown.

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

Apparent U.S. consumption measured in terms of purchase orders increased from 1986 to 1988 and increased slightly (by value) between the interim periods. The share of apparent consumption captured by imports from Japan fluctuated during the period, and the U.S. producers' share (excluding HZC) fluctuated in terms of quantity * * * and in terms of value *** for an overall decrease of * * * during the investigation period. [41] Again, for this investigation, the trends by value should be given more weight.

Prices

Most transfer presses are sold through a closed bid procedure, although firms usually know who their competitors are. Customers initiate the bid process by issuing a request for quotation (RFQ) to approved transfer press suppliers. The RFQ generally contains a project description, procedures to be used in bidding, contract terms and conditions, and technical specifications and requirements. The RFQ may request that the total transfer press price be segmented with separate prices for such major items as the base machine, engineering and design, the die set, automation controls, motors, installation supervision and training, and optional equipment.

The suppliers usually have from 4 to 6 weeks to submit a bid. Each bid is determined on the basis of estimated production costs, anticipated profit, and, in the case of foreign bids, the forward foreign exchange rate. Because

[41] U.S. producers' shares were calculated using domestic shipments from table 5.

RFQs contain precise specifications that vary widely from project to project, each large transfer press is engineered to order and estimated costs depend upon the specifications contained in any one RFQ.

The purchaser reviews the bids and selects a firm. Generally, firms are allowed only one bid, although, in some instances, suppliers ask for rebids from firms that have met the specifications of the project. The bid evaluation begins with a technical analysis by the purchaser's engineering department of the specifications detailed in each bid. Bids that don't meet the project specifications are dropped from consideration and the remaining bids are outlined in a quotation chart or quotation inquiries document. A recommendation to purchase is based on many different factors including price, the ability to deliver on time, previous experience with the supplier's transfer press, the available capacity of suppliers to build the required mix of presses, and the producer's experience with transfer feed mechanisms.

Purchasers, domestic producers, and importers were all requested to report the details of bid competition for transfer presses. Purchaser information was received from U.S.-owned automobile producers, Japanese-owned automobile producers, and other firms that bought transfer presses for shipment during the period of investigation. U.S. producers and importers of these transfer presses also provided corresponding bid information.

Bid competition for sales to U.S.-owned automobile producers.--The three major U.S.-owned automobile producers, General Motors, Ford, and Chrysler, provided information on all bids awarded for transfer presses for shipment during 1986 or later, citing bids from five domestic producers and seven importers. Three U.S. producers and four importers reported on their transfer press bids to the U.S. automakers for presses shipped during 1986 and later.

Aggregate quote information for contracts reported by the U.S.-owned automakers for sales of transfer presses delivered during 1986-89 is presented in table 22. The information provided by the purchasers gives the most direct and consistent comparison of bids for specific contracts, whereas matching bids provided by producers and importers are often difficult to reconcile because of differences in bid or shipment dates and different ways of reporting quantities and values. [42] When specific purchaser bid information was unavailable or incomplete, producer and importer bid information was used as a supplement. Quote information derived from producer or importer responses is identified in the tables throughout this section of the report.

Table 22
Transfer presses: Aggregate bid information reported by U.S.-owned automobile producers for transfer presses delivered during 1986 or later, by year of purchase order, bidders' country of origin, and bidders

* * * * * * *

During the period 1984-89, the U.S. automakers awarded 40 contracts for 113 transfer presses valued at $690.0 million. U.S. producers won 15 contracts for 28 presses worth $114.0 million. * * *. Importers of Japanese presses won 18 contracts for 54 presses worth $408.8 million. Importers of German presses were awarded * * *. Importers of Brazilian presses won 4

[42] Differences between bids reported by purchasers and bids reported by suppliers are usually due to changes in the options packages. * * *.

contracts for 4 presses valued at $47.5 million, and importers of Italian presses won * * *.

Both 1984 and 1985 were years of high automaker demand for transfer presses. In 1984, U.S producers won contracts for 19 transfer presses worth $71.7 million, * * *, importers of Japanese presses were awarded contracts for 30 transfer presses valued at $194.2 million, importers of German presses won contracts for * * *, and importers of Brazilian presses won * * *. During 1985, U.S. producers were awarded contracts for 4 transfer presses valued at $12.8 million, * * *, importers of Japanese presses won contracts for 17 transfer presses valued at $148.4 million, and importers of German presses won * * *.

Automaker demand for transfer presses fell sharply in 1986. During 1986, the U.S. automakers bought * * *. The slump in transfer press sales continued in 1987, with importers of Japanese presses winning * * *.

Transfer press sales to U.S. automakers increased during 1988. U.S. producers won contracts for 5 presses worth $30.4 million, and importers of Japanese presses were awarded contracts for 5 transfer presses valued at $52.9 million. During January-September 1989, U.S. automakers negotiated * * *.

There was direct competition between U.S. producers and importers of Japanese presses for 22 contracts for 61 transfer presses worth $334.6 million in 1984-89. The low bidders won 11 contracts for 24 transfer presses worth $131.7 million, and higher bidders won the remaining contracts. The fact that the low bidders did not win 11 of the contracts indicates that, in these cases, price was not the deciding factor. Importers of Japanese presses submitted the low bids for 13 contracts, U.S. producers were the low bidders for 4 contracts, * * *, and importers of Italian presses and importers of Brazilian presses were the low bidders * * *. U.S. producers won contracts for 18 presses worth $85.6 million, * * *, importers of Japanese presses won contracts for 18 presses worth $126.1 million, importers of German presses won contracts for * * *, importers of Italian presses were awarded * * *, and importers of Brazilian presses won * * *.

Details on the competition between U.S. transfer press producers and importers of Japanese transfer presses for sales to U.S.-owned automakers are summarized in table 23. [43] Because the information presented in this table is based primarily on the questionnaire responses of each of the U.S. automakers, the discussion of prices is organized according to the automobile producer requesting the quote. An explanation of the transfer press specifications presented in the tables appears in appendix H.

Table 23
Transfer presses: Bid information on contracts to U.S.-owned automobile producers for shipment during 1986 and later, by purchasers, types of presses, and shipment dates

* * * * * * *

General Motors.--* * *.

* * * * * * *

[43] Lost sales and lost revenues were alleged based on the quotes issued to the purchasers. Tables 22-28 indicate the winners of the contracts for production of transfer presses during the period of investigation, the specifications of the transfer presses, the value of the quotes, the competing quotes, and the

Ford.--* * *.

* * * * * * *

Chrysler.--* * *.

* * * * * * *

Quote competition for sales to Japanese-owned automobile producers.--The Commission requested information from 7 Japanese-owned automobile producers (Japanese automakers) for all bids awarded for transfer presses for shipment during 1986 or later. Five Japanese automakers provided purchaser questionnaire responses. * * * and 3 of the importers reported incomplete information on transfer press bids issued to the Japanese automakers. The quote information presented in the tables is primarily based on the Japanese automakers' purchaser questionnaire responses with bid information from the U.S. producers and importers used to supplement incomplete purchaser responses.

Aggregate quote information for contracts reported by the Japanese automakers is presented in table 24.

Table 24
Transfer presses: Aggregate bid information reported by Japanese-owned automobile producers for transfer presses delivered during 1986 or later

* * * * * * *

During 1984-89, the Japanese automakers awarded 15 contracts for 25 transfer presses valued at $190.3 million. * * *.

Details on the competition between U.S. transfer press producers and importers of Japanese transfer presses are summarized in table 25. [44] Because the information presented in these tables is based primarily on the questionnaire responses of Japanese automakers, the discussion of prices is organized according to the company requesting the quote.

Table 25
Transfer presses: Bid information on contracts to Japanese-owned automobile producers for shipment during 1986 and later, by purchasers, types of presses, and shipment dates

* * * * * * *

Diamond-Star Motors.--* * *.

Nissan Motor Manufacturing Corporation U.S.A.--* * *.

Subaru-Isuzu Automotive Inc.--* * *.

---

[44] Lost sales and lost revenues were alleged on the basis of quotes issued to the purchasers. Table 25 indicates the winners of the contracts for production of transfer presses during the period of investigation, the value of the quotes, the competing quotes, and the amount quotes were lowered in order to obtain a contract. * * *.

Quote information on contracts for other press projects with 150 tons or greater capacity for shipment during 1986 or later (large transfer presses).--The Commission received bid information from 13 firms, other than automobile producers, that purchased transfer presses with capacities exceeding 150 tons (other purchasers). These firms produce automotive stampings, metal furniture parts, parts for home appliances, and other metal stampings.

Aggregate quote information for contracts reported by the other purchasers for shipment during 1986 or later is presented in table 26.

Table 26
Transfer presses: Aggregate bid information reported by other firms for large transfer presses delivered during 1986 or later

* * * * * * *

During 1985-89, the other purchasers awarded 23 contracts for 25 transfer presses worth $47.2 million for shipment during 1986 or later. U.S. producers were awarded 8 contracts for 8 transfer presses valued at $12.3 million. Importers of Japanese presses won 14 contracts for 16 transfer presses worth $32.7 million and an importer of German presses was awarded * * *.

Details on the competition between U.S. transfer press producers and importers of Japanese transfer presses are summarized in table 27. The information presented in this table is based primarily on the purchaser questionnaires and is organized according to the firm requesting the quote.

During 1985, purchasers bought * * * from a U.S. producer, * * * from an importer of Japanese presses, and * * * from an importer of German presses. In 1986, other purchasers bought * * * from a U.S. producer and 5 transfer presses valued at $12.1 million from importers of Japanese presses. During 1987, other purchasers bought * * * from U.S. producers and 3 transfer presses worth $3.4 million from importers of Japanese presses. In 1988, other purchasers bought 4 transfer presses worth $5.5 million from domestic producers and * * * from importers of Japanese presses. During 1989 they bought 3 transfer presses valued at $3.3 million from importers of Japanese presses. * * *.

The purchasers reported competing U.S. and Japanese bids for 4 of the 23 contracts they awarded for shipment during 1986 and later. [45] Importers of Japanese presses were the low bidders 2 times, an importer of Italian presses was the low bidder once, and a U.S. producer was the low bidder for the remaining competing bid.

Table 27
Transfer presses: Bid information on contracts for press projects with greater than 150 tonnage capacity for shipment during 1986 and later, by purchasers, types of presses, and shipment dates

* * * * * * *

[45] The Nov. 8, 1988, quote requested by * * * was not included, because the Komatsu and Bliss quotes did not meet the specifications, and thus are not comparable to the * * * bid.

Quote competition for sales of transfer presses having tonnage capacity of less than 150 (small transfer presses).--The Commission has been able to identify 4 vendors that sold small transfer presses in the United States during the period of investigation. * * *.

None of these vendors sold Japanese transfer presses or reported that they competed with Japanese transfer press vendors for U.S. sales during the period of investigation. Aggregate quote information for transfer press contracts awarded to these 4 vendors for shipment during 1986 and later is presented in table 28.

In 1985, purchasers bought 7 transfer presses valued at $1.4 million from U.S. producers and * * *. In 1986, U.S. producers were awarded contracts for 28 transfer presses worth $4.2 million and * * *. Purchasers bought 11 transfer presses worth $2.0 million from domestic producers and * * * during 1987. During 1988, domestic producers won contracts for 23 transfer presses valued at $3.9 million while * * *. During the period January-September 1989, domestic producers sold * * *.

Table 28
Transfer presses: Aggregate quote information for press projects with tonnage capacity of 150 or less for shipment during 1986 and later

* * * * * * *

Lost sales and lost revenues

Specific allegations of lost sales and lost revenues are identified in the "Prices" section of this report. A summary of the allegations follows.

* * * * * * *

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during January 1986-September 1989 the nominal value of the Japanese yen appreciated 32.0 percent relative to the U.S. dollar (table 29). [46] Adjusted for movements in producer price indexes in the United States and Japan, the real value of the Japanese currency appreciated 13.1 percent during the same period.

[46] International Financial Statistics, November 1989.

Table 29
Exchange rates: Indexes of the nominal and real exchange rates between the U.S. dollar and Japanese yen, 1/ and indexes of producer prices in Japan and the United States, by quarters, January 1986-September 1989

Period	Nominal exchange-rate index	Real exchange-rate index 2/	Japanese producer price index 3/	U.S. producer 3/ price index
1986:				
Jan.-Mar.....	100.0	100.0	100.0	100.0
Apr.-June.....	110.4	108.3	96.3	98.2
July-Sept.....	120.6	115.8	93.8	97.7
Oct.-Dec.....	117.2	111.0	92.8	98.1
1987:				
Jan.-Mar.....	122.7	114.0	92.2	99.2
Apr.-June.....	131.7	119.5	91.5	100.8
July-Sept.....	127.9	116.2	92.6	101.9
Oct.-Dec.....	138.4	124.8	92.3	102.3
1988:				
Jan.-Mar.....	146.8	130.1	91.3	102.9
Apr.-June.....	149.6	129.8	90.9	104.8
July-Sept.....	140.5	121.5	91.8	106.2
Oct.-Dec.....	150.0	128.0	91.0	106.7
1989:				
Jan.-Mar.....	146.3	122.7	91.5	109.0
Apr.-June.....	136.1	115.3	93.9	110.9
July-Sept.....	132.0	113.1	94.6	110.4

1/ Exchange rates are expressed in U.S. dollars per unit of foreign currency.
2/ The indexed real exchange rate represents the nominal exchange rate adjusted for relative movements in producer price indexes in the United States and Japan. Producer prices in the United States increased 10.4 percent between January 1986 and September 1989 compared with a 5.4-percent decrease in Japan during the same period.
3/ Producer price indexes--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of the International Financial Statistics.

Note.--January-March 1986=100.

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

APPENDIX A

THE COMMISSION'S AND COMMERCE'S FEDERAL REGISTER NOTICES

[Investigation No. 731-TA-429 (Final)]

Mechanical Transfer Presses From Japan

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-429 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of mechanical transfer presses,[1] provided for in subheadings 8462.99.00 and 8466.94.50 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce will make its final LTFV determination on or before December 26, 1989 and the Commission will make its final injury determination by February 8, 1990 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207, as amended by 53 FR 33041, August 29, 1988, and 54 FR 5220, February 2, 1989), and part 201, subparts A through E (19 CFR part 201 as amended by 54 FR 13672, April 5, 1989).

[1] For purposes of this investigation, the term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

EFFECTIVE DATE: August 18, 1989.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-252-1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of mechanical transfer presses from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on January 12, 1989, by Verson Division of Allied Products Corporation, Chicago, IL, the United Auto Workers of America, and the United Steelworkers of America (AFL-CIO-CLC). In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 9905, March 8, 1989).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

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

identified by the service list), and a certificate 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 final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) 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.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 15, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 4, 1990, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 21, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 27, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 27, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 10, 1990. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 10, 1990.

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 Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than January 16, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

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

Issued: September 7, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-21505 Filed 9-12-89; 8:45 am]

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Notices

Federal Register
Vol. 55, No. 3
Thursday, January 4, 1990

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-810]

Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that mechanical transfer presses (MTPs) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of MTPs from Japan. The ITC will determine within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: January 4, 1990.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, James P. Maeder, Jr. or V. Irene Darzenta, 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) 377-3965, 377-4929 and 377-0186, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

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

Case History

On August 18, 1989, the Department published an affirmative preliminary determination (54 FR 34208). Since that time, the following events have occurred. On August 31, 1989, at the request of the petitioners, the Department published the postponement of both the final determination and public hearing (54 FR 36046). Verification of the questionnaire responses of Komatsu Ltd. (Komatsu) and Komatsu America Industries Corp. (KAIC), and Aida Engineering, Ltd. (Aida) and Aida Engineering Inc. (Aida U.S.) was conducted in Japan from September 11 through 22, 1989. Prior to verification on August 30, 1989, Komatsu submitted corrections to certain clerical errors it found in its response. Interested parties submitted comments for the record in their case briefs dated November 6, 1989, and in their rebuttal briefs dated November 14, 1989. A public hearing was held on November 16, 1989.

Period of Investigation

The period of investigation (POI) covers MTPs sold and shipped in the period January 1, 1987 through January 31, 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 this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of product coverage.

Prior to January 1, 1989, mechanical transfer presses were classifiable under items 674.3583, 674.3587, 674.3592, 674.3594, 674.3596, 674.5315, and 674.5320 of the *Tariff Schedules of the United States Annotated* (TSUSA). Until July 1, 1989, this merchandise was classifiable under HTS subheadings 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00, and 8466.94.50. Effective July 1, 1989, the Committee for Statistical Annotation of the Tariff Schedules changed the tariff classification of mechanical transfer presses. Mechanical transfer presses are currently classifiable under HTS item numbers 8462.99.0035 and 8466.94.5040.

For purposes of this investigation, the term "mechanical transfer press" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

For purposes of the final determination, we have clarified the scope language describing the merchandise under investigation by adding the phrase "designed as an integral part of the press" when referring to the transfer mechanism. This clarification is based on comments received from petitioners and respondents in their case and rebuttal briefs, respectively.

Such or Similar Comparisons

Komatsu, whose home market was viable, claimed that it had sales of merchandise in the home market during the period of investigation which were similar to certain MTPs sold to the United States. For purposes of the preliminary determination, we found that for all except one of the recommended comparisons, the claimed differences in merchandise adjustment exceeded 20 percent of the home market price. Therefore, we preliminarily determined that with the exception of one model, the home market MTPs were not similar to the U.S. MTPs.

For purposes of the final determination, however, we determined that none of the MTPs sold to the United States could reasonably be compared to an MTP sold in the home market because the claimed cost differences could not be tied to differences in the physical characteristics of the MTPs. (*See, DOC Position* to *Comment 26* in the "Interested Party Comments" section of this notice.) Therefore, we have used constructed value as the basis for calculating foreign market value.

Similarly, although its home market was viable, Aida claimed that there were no sales of merchandise which were sufficiently similar to those sold to the United States to serve as a basis for comparison. Based on information developed during the investigation, we agree with Aida. Therefore, we have used constructed value as the basis for calculating foreign market value.

Fair Value Comparisons

To determine whether sales of MTPs from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Because all sales were made to unrelated parties prior to importation, we based the United States price on purchase price, in accordance with section 772(b) of the Act, for both respondents in this investigation.

A. Komatsu

For Komatsu, we calculated purchase price based on packed, f.o.b. Japanese port prices; packed, p.o.e., duty paid, on carrier prices; or packed, delivered prices, as appropriate. We based gross unit price on the documented contract price, rather than the "allocated price" as reported by Komatsu. (*See, DOC Position* to *Comment 1* in the "Interested Party Comments" section of this notice.) We made deductions where appropriate for foreign inland freight, foreign inland insurance, ocean freight, air freight, U.S. inland freight, loading charge, unloading charge, brokerage and handling, marine insurance, U.S. Customs duty and fees, export proceed insurance, reassembly insurance, installation and installation supervision, and discounts. We added uncollected or rebated duties pursuant to section 772(d)(1)(B) of the Act and section 353.41(d)(ii) of the Department's regulations (19 C.F.R. § 353.41(d)(ii)). For an explanation of the treatment of spare parts, and installation and supervision, see *DOC Position* to *Comment 3* in the "Interested Party Comments" section of this notice.

B. Aida

For Aida, we calculated purchase price based on packed, ex-go down, Japanese port prices or packed, f.o.b., U.S. port prices, as appropriate. We made deductions, where appropriate, for foreign inland freight and insurance, ocean freight, brokerage and handling, stevedoring charges, marine insurance, air freight, U.S. Customs duty and fees, and installation supervision. For an explanation of the treatment of accessory items and installation supervision, see *DOC Position* to *Comment 3* in the "Interested Party Comments" section of this notice.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we calculated foreign market value for both respondents based on constructed value for the reasons stated in the "Such or Similar Merchandise" section of this notice.

Constructed Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value (CV). The CV included materials, fabrication, general expenses, profit, and packing. For both respondents: (1) Actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of materials and fabrication; (2) the statutory eight percent minimum profit was applied; and (3) imputed credit costs were included in home market selling expenses. Home market selling expenses were used pursuant to section 773(e)(1)(b) of the Act, which provides that constructed value include an amount for general expenses equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the home market.

Because of the inclusion of imputed credit costs in selling expenses, the interest expenses reflected in the company books were reduced in order to avoid double counting. We adjusted CV for differences in circumstances of sale in accordance with 19 CFR 353.56. For Komatsu, this adjustment was made for differences in credit, warranty, technical service, and after-sale expenses. For Aida, this adjustment was made for credit and warranty expenses. The CV data submitted by the respondents were relied upon except in those instances when the costs were not appropriately quantified or valued.

The following adjustments were made to Komatsu's CV data:

(1) Loss on disposal of inventories, idle depreciation expense, disposal of fixed assets, and special profits and losses related to labor costs were included in CV.

(2) General expenses were revised by adjusting the cost of sales (COS) on which the G&A expense ratio was calculated to be consistent with the methodology used to calculate each product's cost of manufacture (COM).

(3) Net interest expense was adjusted to include the short-term interest income related to production operations as an offset to total interest expense.

(4) Capitalized interest was recalculated for three of the projects using the average annual short-term interest rate experienced during the POI as reported in Komatsu's consolidated financial statement as of March 31, 1989. Interest was not capitalized on the other projects. *See, DOC Position* to *Comment 4.*

(5) The cost of spare parts was included in the COM of the MTPs in those cases in which spare parts were included as part of the MTP sale.

The following adjustments were made to Aida's CV data:

(1) The COM of each MTP was adjusted: (a) To include costs which had been erroneously omitted from cost accounting reports due to errors; (b) to eliminate freight and packing expenses which had been included in COM; (c) to include freight-in costs which had been excluded from COM; (d) to include scrap expenses charged to "Loss on Sale of Inventories and Write-down of Inventories"; and (e) to reclassify installation supervision from COM to movement charges.

(2) The COM for the two MTPs sold as part of a package was adjusted: (a) To eliminate the cost of a load meter and sensors, which were determined to be a separate sale of accessories; and (b) to include miscellaneous processing costs related to the package. These processing costs were allocated to each piece of equipment in the package based upon the COM.

(3) The COM of one MTP was adjusted to eliminate the cost of production of tooling dies which was determined to be a separate sale of an accessory.

(4) General expenses were revised by adjusting the COS on which the G&A expense ratio was calculated to be consistent with the methodology used to calculate each product's COM.

Interested Party Comments

Comment 1: Petitioners argue that the Department should reject Komatsu's constructed unit prices for the MTPs contained in package sales. Petitioners contend that clearly identifiable prices exist in the sales documentation for nine of the presses included in package sales and that these prices should be used in the Department's analysis. Petitioners allege that Komatsu constructed prices solely for the purpose of this investigation.

Komatsu contends that the individual prices indicated in the sales contracts are not commercially or economically meaningful to it or its customers. Further, Komatsu contends that once a customer has agreed upon a particular package of equipment, the customer does not have the option of cancelling any part of the package without the total package price being renegotiated. Therefore, Komatsu argues, the only meaningful price is the total package price.

Komatsu argues that it was appropriate to calculate the prices for individual MTPs sold in packages by allocating the total package price on the basis of cost of manufacturing. Komatsu cites *Large Power Transformers (LPTs) from Japan*, 51 FR 21197 (June 11, 1986), in which the Department developed prices for individual transformers in package or system sales on the basis of cost plus an allocated portion of the profit.

Komatsu further asserts that its internal orders to the plant should not be used to assign values to individual items in a package because they do not establish meaningful prices. Komatsu states that the orders to the plant are internal Komatsu documents that are not reviewed or confirmed by the customers and that the prices shown on them do not represent negotiated and agreed-upon unit prices. Komatsu explains further that the orders to the plant assign a price to individual items in the package by allocating the total package price based on the estimated cost of manufacture of the items. The prices in the orders to the plant are often adjusted by Komatsu for internal accounting purposes. Komatsu contends that the allocation of the package price based on cost of manufacture actually prevents manipulation of prices.

DOC Position: We agree with petitioners. The Department prefers not to engage in the allocation of prices because allocations can introduce distortions. Therefore, the Department's policy is to use line-item contract prices where they exist. Only if line-item contract prices do not exist, or if the Department has no confidence in those that do, does it accept alternative pricing methodologies. Where available, contract prices for the MTPs were used.

In *LPTs from Japan*, Hitachi (the respondent in that case) claimed that it was unable to identify a price or value for LPTs in package sales. Therefore, as best information available, the Department developed a price for the individual machines on the basis of cost plus an allocated portion of profit. Nevertheless, the Department's preference in the LPTs investigation was for an actual contract price.

Contrary to Komatsu's assertions about the role of internal orders to the plant, the Department did not rely on these documents for purposes of determining individual MTP prices. However, the Department did use internal orders to the plant in order to break down line item prices for certain movement charges and specification changes contained in the purchase orders related to one particular sale. In fact, the Department relied on sales contracts and purchase orders to determine individual MTP prices.

In this investigation, separate contract prices exist for the MTPs in three of the four package sales. Moreover, Komatsu did not provide sufficient support for its argument that the contract prices were not commercially or economically meaningful to its customers. In fact, many of the sales documents that Komatsu submitted specifically indicate that the individual prices for each piece of equipment and service were important to the customer. For instance, for two of the sales, one of which was a package sale, the customers specifically required in their requests for quotation that suppliers quote separate, per unit prices for each machine in order to afford individual analysis.

Furthermore, contrary to Komatsu's arguments about its cancellation policy, according to express provisions in the terms and conditions sections in certain of its sales documentation, the buyers had the option of terminating part of the contract without having to renegotiate the terms and prices for the remainder of the merchandise covered by the contract. The Department found another indication that individual MTP prices existed and had commercial and/or economic significance by virtue of the fact that the terms and conditions sections of certain sales documents contained various state sales and use tax provisions. These provisions would apply depending on an individual MTP's ultimate state of destination.

In addition, the Department notes that petitioners' arguments regarding the customer's need to know individual press costs for corporate record-keeping, accounting, tax, and Customs duty purposes were uncontroverted by Komatsu. The Department finds petitioners' point reasonable that because the typical customer in this industry has to track its capital expenditures and depreciation expenses, it would require a price for each piece of equipment purchased. Because Komatsu failed to demonstrate that the allocation formula it used to value its individual presses was ever used for either corporate record-keeping, accounting, tax, or Customs duty purposes, the Department had no reason to believe that the values resulting from Komatsu's proposed methodology were either commercially or economically meaningful.

Finally, while the Department considers the contract prices in this investigation to be reliable indicators of the value of the subject merchandise, the Department is mindful of Komatsu's point that prices can be "manipulated." Should the Department find, in the context of any administrative reviews of this case, that individual contract prices are not meaningful, it will reexamine this issue.

Comment 2: Aida contends that the Department should treat the sales of two MTPs as components of a single contract and should allocate the total contract price among the two presses in the package based on COM. Aida claims that the low gross profit found on one press in the preliminary determination was not due to underpricing, but was caused by the fact that actual production cost turned out to be higher than expected. As such, Aida should not be penalized with a dumping margin due to this unanticipated higher cost. Alternatively, the Department should combine these presses for purposes of margin calculation.

Petitioners maintain that the Department correctly calculated the margins of dumping on Aida's package sale and that Aida's claim should be rejected because it is untimely and unreasonable. Petitioners believe that Aida must accept the consequences of its business decisions. They point out that Aida priced two presses of different sizes separately and incurred different manufacturing costs to produce each press. Thus, the Department should perform its analysis for each of these presses based on the prices actually charged and the manufacturing costs incurred to produce each press.

DOC Position: We agree with petitioners. At verification, we observed that separate prices were actually charged for the presses at issue. As explained in the verification report, we verified these prices based on contractual documentation. It is the Department's preference to base its fair value analysis on line-item prices, rather than price allocations, whenever possible. *See, DOC Position to Comment 1.*

Comment 3: Petitioners argue that the prices charged for options (such as installation and supervision, spare parts and tooling) purchased along with the presses should not be included in the gross price of the MTP used as the starting price in the Department's analysis. They claim that the options provided by the respondents are not similar to the expense items generally encountered by the Department because in this case the customers pay clearly identifiable and segregable prices for these options. Petitioners cite *Certain Internal-Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552 (April 15, 1989) (Forklifts), to support their argument.

Specifically, petitioners argue that (1) the reported MTP prices should be reduced by the price of spare parts and tooling to arrive at a starting price for each MTP; and (2) Department precedents do not support deducting installation costs from price because they are neither charges nor a circumstance of sale.

Komatsu argues that the prices paid by customers for installation and installation supervision should be included as part of the MTP price in the Department's analysis. Komatsu maintains that these services should be treated as either charges or circumstances of sale adjustments because reassembly and installation are necessary upon delivery to the customer's facilities due to the large size of the presses. Komatsu maintains that costs for reassembly and installation are not costs of manufacturing, as they are incurred after the MTP has left the factory. Accordingly, these costs should be treated as an adjustment to price in order to make the comparison at the ex-factory level pursuant to the Act, and should be excluded from the constructed value calculation pursuant to 19 U.S.C. 1677(e)(1)(A). Furthermore, Komatsu states that not all customer contracts specify a clearly identifiable and segregable price for these services. Also, Komatsu contends that these services, with the exception of installation, are not optional because they can only be provided by Komatsu. Komatsu asserts that it does not sell these services apart from its press sales. With respect to spare parts, Komatsu argues that the Department should not include profit in the adjustment for spare parts because the furnishing of spare parts is actually a service provided with the sale and not a separate product. Any profit in the MTP package sale relates to the sale of

the MTP or other equipment, and not to the provision of spare parts.

Aida argues that the items petitioners seek to exclude from margin analysis have been included by the Department from the outset of the investigation. The Department required that installation supervision, spare parts and tooling dies included in a mechanical transfer press sale be treated as part of the sale of subject merchandise for purposes of both price and cost in the questionnaires. Furthermore, Aida notes that the petition itself mentions these items as possible parts of the total MTP price. Additionally, Aida states that it does not view these items as options. In none of Aida's sales did separate prices or price break-outs exist in the contractual documentation for either spare parts or installation supervision. With respect to one U.S. sale, die tooling was purchased by the customer with the press and was part of the delivered press. Aida maintains that the fact that the die tooling was covered by a separate purchase order does not separate it from the sale of the press.

DOC Position: For purposes of the final determination, we have determined that the prices charged for spare parts, tooling and other accessories associated with the basic machine which are separately identified in the contractual sales documentation should not be included in the gross price of the MTP used in our analysis. *See, DOC Position to Comment 1* regarding the significance of the individual prices in "package" deals.

First, with respect to spare parts, we have not included the price and/or cost of spare parts in the MTP price and/or constructed value where the price and/or cost of spare parts has been separately broken out from the price of the basic machine in the sales documentation because they are not subject to this investigation. The Department has determined that there is a separate sale of spare parts when the price has been broken out in the sales documents.

Where the price of spare parts has not been separately identified in the sales documentation, the Department has used, as best information available, the verified reported prices for MTPs inclusive of spare parts. For certain package sales made by Komatsu where the price and cost of the spare parts for each press in the package have not been separately identified, we have allocated the cost of the spare parts to the individual pieces of equipment in the package according to the cost of manufacture, as best information available pursuant to section 776(c) of the Act. *See, Large Power Transformers from France,* 49 FR 36888, 36893 (September 20, 1984); and *Forklifts.* (In these instances, we also included the cost of the spare parts in the constructed value.)

Second, we have determined that certain accessories associated with the basic machine, such as die tooling, the load meter and load sensor, which are separately identified in the contractual documentation, are not an "integral part" of the press and are, therefore, outside the scope of this investigation. Where appropriate, therefore, we have segregated these elements of the sale from the verified price and cost of manufacture of the MTP, respectively, for purposes of our analysis.

With respect to installation and installation supervision, however, we have determined that these expenses should be treated as movement charges. Due to their large size, it is necessary to disassemble MTPs for shipment and delivery to the customer's facilities. Upon delivery to the customer's premises, the presses must be reassembled (installed) in order to function. Because disassembly and reassembly are necessary to deliver the merchandise, we have determined that installation and related supervision expenses are movement charges. Therefore, we have deducted the installation and installation supervision costs from the verified MTP prices when installation and/or supervision of installation were included in the contract price for the press.

Comment 4: Petitioners argue that the respondents should be required to capitalize interest expenses on the production of MTPs. Petitioners claim that MTPs meet the capitalized interest requirements of Financial Accounting Standards Board (FASB) #34, (*i.e.*, MTPs are discrete projects which are produced over a period of time, and the effect of capitalizing interest would be material). Petitioners cite *Offshore Platform Jackets and Piles from Japan,* 51 FR 11788 (April 7, 1986) in support of their argument.

Komatsu argues that interest expense should not be capitalized for the following reasons: (1) The classification of interest expense as either capitalized interest or general expenses is irrelevant because Komatsu's general expenses exceed the ten percent minimum required by the statute for CV; (2) the period of financing is relatively short because the production period is typically less than one year and the actual production costs occur late in the production cycle; and (3) according to Japanese Generally Accepted Accounting Principles (GAAP), interest is not capitalized on these products. Komatsu maintains that Japanese GAAP, not U.S. GAAP, should be used with respect to interest capitalization because the legislative history supports the use of GAAP in the home market for determining the cost of manufacturing (COM).

Aida argues that it does not capitalize interest on MTPs in its normal accounting records and that Japanese GAAP does not allow interest to be capitalized on these products. Furthermore, Aida argues that interest would not be capitalized on these products even if the Department applied U.S. GAAP because: (1) Capitalized interest must be an allocation of actual interest costs during the period, but Aida had a zero net interest expense; (2) even if there were interest expenses, the difference between expensing and capitalizing interest would be immaterial given that production takes less than one year; (3) presses are products which are routinely manufactured and, therefore, would not qualify for interest capitalization under FASB #34; and (4) capitalization of interest in constructed value is the exception, not the rule.

Moreover, Aida claims that MTPs are not the size of the products in the *Offshore Platform Jackets and Piles* case, no special financing is required, and the manufacturing process is not a long-term project. Therefore, Aida asserts that capitalized interest is not applicable to its cost of manufacturing.

DOC Position: The Department was guided by U.S. GAAP on this issue. In general, the Department adheres to GAAP in the country of manufacture when the Department is satisfied that such principles reasonably reflect the variable and fixed costs incurred by that company. However, in those cases where we found that foreign GAAP does not appropriately value all costs, we generally apply U.S. GAAP. We determined that Japanese GAAP did not adequately account for the cost of financing long-term production.

In terms of determining whether interest expenses had to be capitalized, pursuant to the criteria of FASB #34, we analyzed the financing costs of work-in-process inventory using company-specific interest rates and production periods to determine the materiality of these costs in relationship to the other manufacturing costs. For three of Komatsu's thirteen presses, the impact on financing costs of capitalizing interest as opposed to expensing it was material. Since these financing costs were necessary for the manufacturing process and could be identified with the production of specific presses, the

Department capitalized interest and considered it part of COM for these presses. Appropriate adjustments were made to general interest expenses to account for this capitalization. Interest was not capitalized for the other Komatsu MTPs or for those manufactured by Aida because the capitalized interest would not be material. Therefore, FASB #34 does not apply.

Comment 5: Komatsu argues that petitioners lack standing to file the petition underlying the antidumping proceeding, claiming, among other things, that Verson is not a producer of MTPs, and that the Department should investigate whether the petition was filed "on behalf of" the domestic industry. Komatsu contends that the Department should investigate Verson's status as an interested party because Verson has subcontracted some of its work for orders of large MTPs in the past, acting as an assembler rather than a producer. Furthermore, Komatsu contends that there is nothing in the statute, its legislative history, or the Department's regulations that requires petitioners or respondents to affirmatively demonstrate that the petitioners have or lack standing. Rather, it should be the responsibility of the Department to conduct an investigation to obtain the relevant information in order to ensure that the statutory requirements are met, especially in this case where there are relatively few domestic producers.

Petitioners maintain that they have standing for basic reasons: (1) Verson is an MTP producer; and (2) two of the petitioners are certified unions which are representative of the workers in the mechanical transfer press industry.

DOC Position: We agree with petitioners. The Department presumes that a petitioner has standing unless it is informed to the contrary. The Department has consistently taken the position that the "on behalf of" requirement does not mandate a petitioner to establish affirmatively that the majority of a particular industry supports the petition. *See, e.g., Frozen Concentrated Orange Juice from Brazil,* 52 FR 8324 (March 17, 1987); *Atlantic Groundfish from Canada,* 51 FR 1010 (January 9, 1986); *Stainless Steel Hollow Products from Sweden,* 52 FR 37810 (October 9, 1987). Rather, the Department accepts the petitioner's representation that it has filed "on behalf of" the domestic industry until it is positively established that a majority of the domestic industry opposes the petition. Thus, the onus is on the domestic industry opposing the investigation to demonstrate that the petitioner's standing is in jeopardy.

As stated in our final determination in the antidumping investigation *Certain Electrical Aluminum Redraw Rod from Venezuela,* 53 FR 24755 (June 30, 1988), "When a member or members of the domestic industry challenge the assertion of the petitioner that it has filed 'on behalf of' the domestic industry, the Department will examine the challenge." *See also, Offshore Platform Jackets and Piles from Korea,* 51 FR 11772 (April 7, 1986) (petition stands as long as no opposition from domestic industry). In this case, no member of the domestic industry has made such a challenge. Furthermore, while Komatsu originally raised the standing issue within the time period prescribed in 19 CFR 353.31, it failed at that time to provide supporting factual information for its allegation, as required by 19 CFR 353.31(c)(2). Therefore, because no member of the U.S. industry has challenged petitioners' standing and Komatsu has failed to substantiate its standing allegation with supporting factual documentation in a timely manner, the Department has no basis upon which to investigate this issue.

Comment 6: Petitioners assert that the Department should reject Komatsu's submissions of August 24 and 30, 1989, because they were unsolicited and the corrections contained therein amounted to a new questionnaire response. Petitioners further object to revisions to the response which were submitted at verification.

Komatsu argues that the Department's regulations permit submissions of factual information up until seven days before the scheduled date on which the verification is to commence. Komatsu maintains that the corrections submitted in its August 30, 1989 submission did not constitute a new questionnaire response and that the corrections submitted at verification were minor.

DOC Position: We agree with Komatsu. The Department's memorandum to the file dated August 22, 1989, outlines a telephone conversation with counsel for Komatsu during which we requested the information contained in Komatsu's August 24, 1989 submission. Also, in the Department's letter dated August 25, 1989, to counsel for Komatsu, we requested the revised data contained in Komatsu's submission of August 30, 1989. The corrections, while affecting many of the data fields, were not so extensive as to warrant rejection of the submissions. No new sales or methodologies used to calculate the reported data were submitted. The revised data contained in the August 30, 1989 response and that submitted at verification are appropriately characterized as corrections of clerical errors.

Comment 7: Petitioners contend that, with regard to the presses for which the prices were not verified, the Department should either apply the highest dumping margin listed in the petition as best information available or exclude these presses from our analysis.

DOC Position: We disagree. The Department normally does not verify the sales data for each reported transaction, either because of the number of transactions or the complexity of the sales involved. Instead, the Department normally selects a sample of transactions for review at verification. In this case, due to the complexity of the sales process, the number of specification changes throughout the production process, and the number of sales documents involved, we followed our usual practice of selecting only certain sales for verification. We reviewed the sales documentation for four of the reported sales to the United States, which covered nine of the thirteen reported presses sold during the POI.

Comment 8: Petitioners argue that averaging the prices and the cost of manufacturing for two presses that Komatsu sold to the United States, which were sold in a package along with other equipment and are alleged to be identical by Komatsu, is unreasonable because Komatsu has not demonstrated that the units are identical. Petitioners also argue that averaging the movement charges for these presses is unreasonable and that the Department should use press-specific charges.

Komatsu claims that these MTPs are identical. Komatsu explains that it averaged the data for these MTPs because it seemed the logical course given the fact that the presses were identical. Komatsu states that if the Department were to decide that use of averages is not appropriate, the Department could use the separate data for each press which was submitted with its June 26, 1989 response.

DOC Position: We used the individual contract prices, as described in our response to *Comment 1.* Because we have a preference for and have used the line-item contract prices in this case, we also used specific cost data for the individual presses, where available, in the calculation of constructed value, and specific movement charges.

Comment 9: Petitioners argue that the Department should not accept

Komatsu's adjustments for unidentified specification changes for two presses, which occurred after shipment of these MTPs.

Komatsu maintains that modifications that are based on oral agreements are often made before shipment and the formal documents are not prepared until later. Komatsu further maintains that the customer sometimes requests additional changes after shipment as part of the installation process.

DOC Position: We agree with Komatsu. It is the nature of these machines that specification changes can be and frequently are made throughout the entire production process and after delivery. During the installation of an MTP and after the MTP has begun to operate, the customer may determine that certain changes and/or additions must be made to the press in order for it to produce the optimum product. Therefore, any charge resulting from such changes has been included in the price.

Comment 10: Petitioners claim that the sales documentation for one Komatsu sale indicates that a "commission" to the customer was included in the price to the customer. Petitioners urge that this commission be treated as a discount. Further, petitioners argue that the formal purchase order from the customer indicates that Komatsu agreed to incur certain charges for shipping the merchandise from the Japanese port to the United States, including Customs duty charges, even though the reported delivery terms were FOB Japanese port.

Petitioners also state that prices which are listed on an internal notice of order acceptance do not coincide with those in the purchase order. Petitioners argue that the Department should use the lower prices in its analysis. Petitioners further point out that in Komatsu's narrative history of the sale, it misquoted the contract.

Komatsu argues that the commission paid to the customer of this sale was treated as a discount, not as a commission. Komatsu further argues that the translation of the portion of the sales documentation regarding the Customs duty charges was an incorrect translation of the Japanese. Komatsu contends that the quoted section of the purchase order stated that Komatsu was to pay any excess of the actual charges over the estimated amounts. Komatsu states that, in the end, it did not have to pay any amounts for the charges because the amounts paid by the customer under the contract were sufficient.

DOC Position: We treated the commission to the customer as a discount in the preliminary determination, which is how it was reported by Komatsu. With regard to the alleged price discrepancies in the internal notices of acceptance and the purchase order, because we have decided to use contract prices, as described in the *DOC Position* to *Comment 1*, we used the prices listed in the formal purchase order for the MTPs in this package. We disagree with petitioners about the significance of the misquotation of a sales document price in the narrative description of the history of this sale. Because we are relying on the actual sales documents for purposes of our analysis, Komatsu's written description of them is not dispositive.

Comment 11: Petitioners argue that the Department should reject Komatsu's reported price for one MTP. Petitioners assert that Komatsu has not submitted complete sales documentation for this MTP and that the reported price for it includes merchandise not subject to this investigation.

Komatsu contends that all sales documentation was provided and that no document exists with a more detailed price breakdown for this sale.

DOC Position: We agree with petitioners that the sales documentation clearly indicates that merchandise which is not subject to this investigation is included in the reported price for one MTP. Komatsu had allocated this price based on the cost of manufacturing of the MTP plus equipment not subject to the investigation. At verification, we were unable to find any sales documentation which provided a separate price or cost breakdown for the MTP. However, we did find orders to the plant which broke down the total package price in the sales contract between the MTP with the attachments and a blanking press, which is not under investigation. As described in the *DOC Position* to *Comment 1*, we used the sales documentation to determine prices to the extent possible. Because we had neither an individual price for the MTP in this package sale, nor an individual cost of manufacturing with which we could allocate the total package price, the Department used, as best information available, the price breakdowns in the orders to the plant as the price for the MTP inclusive of the attachments that are not under investigation, pursuant to 19 CFR 353.37 (1989).

Comment 12: Petitioners argue that the Department should reject Komatsu's reported dates of sale for three of the MTPs sold to the United States because Komatsu and the customers continued to negotiate specification changes after those dates.

Komatsu contends that, for two of the MTPs, the Department should use the date of the initial agreement as the date of sale. With regard to the other MTP, Komatsu argues that the Department should base the date of sale on the date the internal order to the plant was issued. Komatsu argues that internal orders to the plant are sufficient evidence of the date of sale.

DOC Position: We agree with Komatsu. While the term "sale" is not defined in either the Act or the regulations, the Department has consistently found that a sale has occurred when all basic terms are agreed upon. *See, e.g., Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan*, 53 FR 3227 (February 4, 1988). In the case of large, custom-made merchandise, the Department's policy regarding date of sale has favored establishing date of sale at an earlier point in the sale transaction process than at a later point, as it might in the case of fungible-type commodities wich are offered for sale in the ordinary course of trade. *See, eg., Offshore Platform Jackets and Piles from Japan;* and *Large Power Transformers from Japan.* The Department's differential approach to the date of sale issue, depending on the type of merchandise involved, reflects its recognition of the commercial realities and issues that are unique to the construction and sale of products that constitute large capital equipment. Therefore, in this case, the Department found it appropriate to use the date that the initial order was made as the date of sale when, as here, this document represented the parties' agreement as to the basic terms of the sale. The Department also considered it appropriate to use an internal order to the plant to determine the date of sale when no documentation prior to the date of this document existed, as was the case with certain Komatsu transactions. In *Certain Forged Steel Crankshafts from the Federal Republic of Germany*, 52 FR 28179 (July 28, 1987), the Department detemined that, in the absence of a formal written confirmation of a sale, the date of sale could be based on the earliest written evidence of an agreement. Furthermore, given the industry involved and the inherent nature of the construction process of these large, custom-made machines, it is routine for minor specification changes to be made, as occurred in this case, during the production process and after delivery. The specification changes in this case were minor and did not significantly alter the basic terms of the sales contracts.

Comment 13: Petitioners argue that Komatsu understated the amounts of certain movement charges associated with its U.S. sales. Specifically, petitioners assert that a service charge that was charged to Komatsu by Komatsu's subsidiary which usually arranges for transportation services with unrelated subcontractors should be included in Komatsu's movement charges and deducted from the United States price. Since such data was not provided for each reported sale, petitioners argue that the Department should apply the highest percentage observed at verification to all foreign inland freight, loading and ocean freight deductions.

Komatsu argues that it would be inappropriate to make an adjustment for payments to a related company. Komatsu points out that, under U.S. GAAP, a parent and subsidiary are a single consolidated entity and the payments from a parent to its subsidiary do not constitute an expense to the consolidated company.

DOC Position: We agree with Komatsu. Because the party which arranged the transportation services is a wholly-owned subsidiary of Komatsu, we consider all charges made by the subsidiary to Komatsu to be intra-company transfers of funds. Therefore, we have only deducted the movement charges paid by the subsidiary to the unrelated transportation subcontractors.

Comment 14: Petitioners argue that the Department should make an adjustment for commissions which were paid by Komatsu to KAIC. Petitioners contend that evidence of these commissions appears on the orders to the plant for two MTPs. Petitioners also argue that what Komatsu reported as commission expenses for certain sales were either found not to be sales commissions or did not have sufficient specific supporting documentation and should not be accepted as commissions by the Department.

Komatsu argues that it paid a commission to KAIC on only one sale. In this instance, KAIC paid a commission to an unrelated company and that commission was reported in Komatsu's response. Komatsu also argues that it is not the Department's practice to make adjustments for commissions paid to related companies. Komatsu further argues that the reported commission expenses that the Department found at verification to be expenses for after-sales servicing and maintenance or expenses for services provided in arranging U.S. transportation of the MTPs to the end-user were necessary for the consummation of the sale. Therefore, a commission offset should be made for them to foreign market value. Komatsu argues that in *Large Power Transformers from Japan*, 48 FR 26498 (June 8, 1983), the Department considered a commission paid by Toshiba to Mitsui to be a selling expense for which an offset to the foreign market value was made.

DOC Position: With regard to the commission paid by Komatsu to KAIC, the Department found at verification that this was not actually the payment of a sales commission. We determined that the payment from Komatsu to KAIC was an intra-company transfer of funds that were used to pay an unrelated U.S. subcontractor for after-sales servicing and maintenance for two MTPs. Therefore, we did not perform a commission offset adjustment for this expense.

Further, the Department has determined that after-sales servicing and maintenance expenses and expenses for arranging transportation services are not similar to the situation regarding commissions in *Large Power Transformers from Japan*. In that case, Mitsui possessed the licenses necessary to consummate the sale. The sale could not have been made without the product being sold through Mitsui. In this case, however, the after-sales servicing and maintenance and expenses incurred for arranging transportation services were not necessary to consummate the sale of the MTPs. We find that these expenses are directly related to the sales under consideration and included them in our adjustment to FMV for differences in circumstances of sale, in accordance with 19 CFR 353.56(b) (1989).

In addition, we did not accept commissions for which no supporting documentation was provided at verification.

Comment 15: Petitioners argue that the Department should reject Komatsu's revised interest rate reported in its August 30, 1989 submission. In the calculation of its revised interest rate, Komatsu excluded foreign currency loans from banks, Tokkin Money Trust loans, and back-to-back purchasing agreements because it claimed that these were investment loans. Petitioners assert that Komatsu was unable to distinguish these loans from other borrowings. Petitioners state that money is a fungible commodity and that Komatsu used all of its short-term borrowings to finance its working capital requirements. Therefore, all of its borrowings should be used to calculate Komatsu's short-term borrowing rate.

Komatsu argues that the borrowings that were excluded from its revised interest rate calculation were used exclusively for investment purposes and not to finance its working capital requirements. Komatsu contends that the revised interest rate more accurately reflects the true cost of its short-term borrowings during the POI and that it should be used in the final determination.

DOC Position: We agree with petitioners. The foreign currency loans, Tokkin Money Trust loans, and back-to-back purchasing agreements that Komatsu excluded in the calculation of its revise short-term interest reported in its August 30, 1989 submission are classified as short-term loans in Komatsu's financial system. We accept petitioners, argument that money is a fungible commodity and that all short-term borrowings can be used to finance working capital requirements. In fact, at verification, Komatsu was unable to show how its foreign currency or overdraft loans were used. Therefore, the Department used all of Komatsu's short-term borrowings to calculate Komatsu's short-term borrowing rate.

Comment 16: Petitioners argue that KAIC's short-term interest rate reported in its June 26, 1989 submission and the revised rate presented at verification should be rejected, and, as best information available, the U.S. prime commercial rate be used. Petitioners explain that KAIC's reported interest rate is at odds with both the interest rates of the company's short-term loans, as reported in its audited financial statements, and with the U.S. commercial bank lending rates to prime borrowers during the POI. This latter rate ranged from 7.5 percent during January 1987 to 10.50 percent duing January 1989.

Komatsu argues that, at verification, the Department traced KAIC's reported loans to bank invoices and advices and that no discrepancies were found. Therefore, KAIC's reported interest should be used in the final determination.

DOC Position: We agree with respondent. We found no discrepancies with the data reviewed at verification. Therefore, the Department used Komatsu's revised interest rates presented at verification. The revision of this rate is appropriately categorized as the correction of a clerical error.

Comment 17: Petitioners argue that the credit period should begin at the time that shipment of the MTP from the plant has begun, not at the time when the MTP has already been delivered. Petitioners argue that once shipment has begun, Komatsu is incurring the cost of financing a completed product that is on its way to the customer. Petitioners further claim that merely because it may

take several weeks to complete shipment from the plant to the customer does not reduce the financing expenses incurred by Komatsu.

Komatsu argues that the Department should use the date that shipment was completed as date of shipment. Komatsu maintains that shipment cannot be considered made until all parts of the MTP have actually left the factory since, in any case, payment for the merchandise can not be claimed by Komatsu until the entire product has been shipped.

DOC Position: We agree with Komatsu. We found at verification that the shipping invoice from the common carrier to Komatsu's related company which arranges for shipment was not issued until the last day of the month of the ending date of shipment. This indicates that the date on which shipment of the last part of an MTP from the plant occurs is considered by the shipper and Komatsu to be the date of shipment for the MTP as a unit and the point at which the shipment is concluded.

Comment 18: Petitioners argue that, with regard to package sales, the Department should assign the earliest payments made for the package to the items in the package that are not subject to this investigation, not to the MTPs in the package.

Komatsu contends that the Department verified the payments by reviewing the documentation that was available and that no discrepancies were found. Komatsu states that (1) KAIC was not involved in the sale of two MTPs, and (2) the Department reviewed the payment documents associated with this sale. Therefore, the Department reviewed the payment documentation from the unrelated customer to Komatsu. Komatsu asserts that the reported dates of payment should be used in the final determination.

DOC Position: We agree with Komatsu. Upon review of the payment documentation, the Department has determined that payments received for a package sale cannot be attributed to any particular item in the package. Therefore, a payment made for the package was allocated to the MTPs according to the ratio of the payment amount to the total package price.

Comment 19: Petitioners allege that Komatsu's warranty claim methodology is unreasonable. They assert that Komatsu's warranty claim categories are too broad. Petitioners claim that instead of Komatsu basing its home market expense claim on such or similar merchandise, Komatsu's claim reflects all large- and medium-sized home market MTPs without regard to the design or size of the U.S. MTP sales under investigation. Petitioners claim that this methdology creates distortions. They further assert that Komatsu has failed to explain whether the warranty expenses incurred on Komatsu's U.S. transplant sales (sales to Japanese companies in the United States) were included in its home market or U.S. warranty expense claim. Thus, the Department should use the best information available to calculate Komatsu's warranty expense claims in the home market and the United States. As best information available, the Department should calculate one weighted-average warranty expense amount applicable to medium-sized presses and one weighted-average warranty expense amount applicable to large size presses, and factor in the respective expenses to the appropriate constructed values and U.S. sales values.

Komatsu argues that it is appropriate to calculate separate warranty expense rates for large- and medium-sized presses because the warranty services for them were generally provided through different organizational structures. In addition, Komatsu states that the warranty expense and sales figures used in the U.S. warranty calculation included expenses and sales for transplants and that the figures used in the home market warranty calculation do not. With regard to the warranty calculation methodology, Komatsu contends that the methodology matches the current warranty costs to the sales to which they relate and predicts the costs likely to be incurred in the future. Komatsu argues that a ratio derived by dividing current warranty costs by current sales would not provide an accurate prediction of the warranty expenses that are likely to be incurred in the future on the current sales. Komatsu contends that its methodology is the most reasonable and accurate method for predicting the warranty costs to be incurred on the sales during the period of investigation and that the reported warranty expenses should be used in the final determination.

DOC Position: We agree with Komatsu. Komatsu allocated warranty costs on the basis of total warranty costs incurred on MTPs sold during discrete periods in past years. In doing so, Komatsu estimated total warranty costs it anticipates may be claimed on the presses under investigation over the life of those MTPs. Since such costs may be incurred several years from now, we have determined that this methodology was reasonable and, accordingly, have used it in our final analysis.

Comment 20: Petitioners argue that Komatsu understated its U.S. advertising expense claim because, while Komatsu acknowledged that certain home market advertising expenses were actually incurred on behalf of U.S. transplant sales, Komatsu did not provide a breakdown of these expenses. Petitioners argue that, as best information available, the Department should base Komatsu's U.S. advertising expense claim on the total of its claimed U.S. advertising expenses and its home market advertising claim amount. With regard to KAIC's U.S. advertising expense claim, petitioners argue that the Department should adjust the advertising expense ratio using the total sales revenues reported in KAIC's audited financial statements.

Komatsu argues that KAIC's advertising expense relates to the sales made through the Detroit and Chicago offices. Komatsu asserts that it was, therefore, appropriate to assign a portion of KAIC's advertising expenses to the sales made through the Detroit office and to include the value of those sales in the denominator of the advertising expense rate calculation.

DOC Position: We agree with petitioners. Komatsu officials acknowledged at verification that many of the reported advertising expenses incurred in the home market for home market sales were also incurred for sales to Japanese transplant companies in the United States. Komatsu provided no breakdown as to which expenses were incurred on behalf of sales to the Japanese transplants. Therefore, the Department has based Komatsu's U.S. advertising expense claim on the total of its claimed U.S. and home market advertising expenses. Further, we adjusted KAIC's advertising expense ratio using the total sales revenue in KAIC's audited financial statements.

Comment 21: Petitioners claim that Komatsu is not entitled to a duty drawback adjustment under section 772(d)(1)(B) of the Act. Petitioners argue that because the constructed value of the U.S. merchandise does not include these duties, it would be inappropriate to add these duties to U.S. price.

DOC Position: The Department added the claimed duty drawback amounts to the U.S. price, in accordance with section 772(d)(1)(B) of the Act. Because these amounts were not included in the materials costs in the calculation of COM, the Department has added these uncollected duties to the CV.

Comment 22: Petitioners argue that the Department should reject Komatsu's U.S. import duty reduction claims that it made on one sale. Petitioners claim that

Komatsu has not demonstrated that it received, or will receive, U.S. import duty refunds on any of its units. Petitioners also argue that the amounts of the duty refund claimed by Komatsu are overstated, in that the refund claim covers machines not under investigation.

Komatsu argues that there is no reason to believe that it will not receive the claimed refunds. Komatsu further contends that the claimed duty refund amount for one MTP related only to that MTP. It did not include the refund attributable to other equipment in the same entry.

DOC Position: We agree with petitioners. We cannot take unliquidated claims into account. There is no guarantee that Komatsu will receive the reported U.S. import duty refunds. Komatsu did not demonstrate that similar claims have been granted, in the full amounts claimed, in the past. Therefore, the Department did not allow a reduction in the amount of duty paid for this one sale.

Comment 23: Petitioners argue that the Department should include bad debt expense in Komatsu's indirect selling expenses on its U.S. sales. Petitioners claim that bad debt expenses were included in indirect selling expenses for home market sales.

Komatsu argues that it excluded bad debt expenses in its response because it has never incurred bad debt expenses on sales of MTPs and it does not expect that it ever will. Moreover, Komatsu is required to obtain export proceed insurance on all of its export sales of all products to protect it against non-payment. Further, Komatsu contends that bad debt expenses were not included in indirect selling expenses for home market sales of MTPs. Komatsu argues that bad debt expenses should not be included in SG&A in the constructed value calculation because adjustments should only be made for expenses actually incurred. Provisions for bad debt do not constitute actual expenses.

DOC Position: A provision for bad debt expense is included in Komatsu's financial statements. Accordingly, the Department used home market indirect selling expenses, inclusive of bad debt expense, in the calculation of constructed value.

Comment 24: Komatsu argues that the Department should treat fixed warranty and technical service expenses as direct expenses. Komatsu cites *AOC International* v. *United States*, Slip Op. 89-127 (Sept. 11, 1989), where the Court of International Trade found that, in order to qualify for a circumstance-of-sale adjustment under the regulations, it is only necessary for the circumstance to be directly related to the sales. The costs used to determine the amount of the adjustment do not need to be directly related to the sales.

DOC Position: We disagree with respondent. The Department has followed its normal policy and treated fixed warranty and technical service expenses as indirect selling expenses. The AOC decision is not yet final. Accordingly, the Department does not consider it binding precedent.

Comment 25: Petitioners argue that the weighted-average interest rate used in the calculation of credit expense should be used in the calculation of Komatsu's capitalized interest. Komatsu claims that the Department should use the average actual interest cost based on average asset value for the POI.

DOC Position: We disagree with both the petitioners and the respondent. We used the average of the annual short-term interest rates experienced during the POI that was reported in Komatsu's consolidated 1989 financial statements. We consider this rate to accurately reflect Komatsu's experience during the production periods.

Comment 26: Petitioners argue that the Department should reject Komatsu's differences in merchandise (difmer) adjustments and use CV as the basis for determining FMV. Petitioners claim that the difmers are substantial and that Komatsu made adjustments for differences in cost, not adjustments for differences in merchandise.

Komatsu argues that the Department erred in rejecting most of its difmer claims for the preliminary determination because the Department incorrectly based the 20 percent test for comparison purposes on the home market sales prices and not on the U.S. COM. Furthermore, Komatsu states that the difmers it reported are only for the differences in merchandise, not for differences in cost, and should be accepted for the final determination.

DOC Position: We agree with petitioners. The methodology used by Komatsu to account for difmers did not identify the costs specifically related to the different characteristics of the MTPs being compared. Komatsu netted all variable costs incurred to build the MTPs being compared, adjusting for certain cost differences arising from the different time periods during which the two presses being compared were being produced. Because the manufacturing costs were not associated with specific physical characteristics, there was no basis for determining if the adjusted net variable costs related only to the different physical characteristics or included other costs resulting from other production efficiencies and other timing differences. Furthermore, Komatsu's method of identifying identical parts may not have accounted for all identical characteristics of the MTPs being compared. Hence, a difmer adjustment may have been made for items which were ineligible for a difmer claim.

Moreover, MTPs are extremely complex pieces of equipment consisting of thousands of different components and requiring months to produce. Thus, even if the costs had been identified with the specific physical characteristics, thousands of adjustments would be required. In these circumstances, the Department determined that merchandise sold in the home market could not be reasonably be compared to merchandise sold in the United States and, hence, could not be considered similar within the meaning of section 771(16)(c) of the Act.

Comment 27: Petitioners argue that the "payment delay offset" should not be included in the calculation of capitalized interest for related party purchases. They contend that the grace period for payment allowed by related suppliers represents an interest-free, related party loan in which the related suppliers finance a portion of Komatsu's carrying costs. Therefore, this "payment delay offset" should not be deducted from interest expense.

DOC Position: We agree with petitioners. However, the portion of materials and services provided by related suppliers is relatively small. A disallowance of the "offset" would have an insignificant effect on the interest calculation and, consequently, an insignificant effect on CV. Therefore, no adjustment was made pursuant to 19 CFR 353.59 (1989).

Comment 29: Petitioners argue that the depreciation expense on idle equipment should be included in factory overhead as these expenses are part of the cost of maintaining all factory assets.

Komatsu argues that since it follows Japanese GAAP, it did not include non-operating depreciation expense in the COM or in general expenses. Komatsu also claims that including this expense would have had an insignificant effect on CV.

DOC Position: We agree with petitioners. The depreciation expense on idle equipment was classified as a non-operating expense on Komatsu's MOF reports. The depreciation was incurred on idle manufacturing equipment. Therefore, this depreciation is a manufacturing cost incurred in the course of doing business. Thus, the

Department included this expense in its CV calculations.

Comment 30: Petitioners argue that the costs of inventory items which are scrapped or disposed of due to obsolescence should be included in the cost of materials.

Komatsu argues that the losses on disposal of inventories are not related to the production of the MTPs under investigation and, therefore, should be excluded from CV.

DOC Position: We agree with the petitioners. Because the loss on disposal of inventories is a manufacturing cost, it was included in CV.

Comment 31: Petitioners argue that Komatsu's revised calculation of net interest expense should be rejected as it was submitted after the preliminary determination and verification. Petitioners also claim that it is not consistent with Department's normal practice of offsetting short-term interest income against long-term interest expense.

Komatsu argues that it is the Department's normal practice to offset total interest expense with short-term interest income. Accordingly, Komatsu submitted a revised interest expense calculation in its case brief.

DOC Position: We agree with Komatsu. Short-term interest income related to operations may be used as an offset to total interest expense. Komatsu did not submit any new information after verification, only a revised interest calculation based on data which was in its original submission. All components of interest income and interest expense were reviewed during verification.

Comment 32: Petitioners argue that Komatsu has understated its reported home market profit by including the profit earned on the sale of *all* presses in the home market, not just MTPs. The petitioners claim that each type of press has a different cost and profit structure and the profits of the other types of presses should not be aggregated with those of the MTPs.

Komatsu argues that, for purposes of calculating profit, the "general class or kind" is "all presses" as reported in its response. Komatsu notes that no matter how profit is calculated, whether from audited company-wide financial statements, parent-company Ministry of Finance reports, or internal management reports, the profit is less than eight percent. Therefore, the statutory minimum profit of eight percent should be applied.

DOC Position: Because all alternative methods of calculating profit result in profit percentages less than the statutory minimum, we do not need to make a decision relative to this issue. Therefore, we have used the statutory eight percent minimum in the CV calculations.

Comment 33: Aida disagrees with the methodology used by the Department in its preliminary determination which entailed making a credit expense adjustment for differences in circumstances of sale by adding imputed U.S. interest expense to general expenses and decreasing actual interest expense by a factor proportional to Aida's accounts receivable in calculating constructed value. Aida argues that this methodology was incorrect because (1) interest and other costs in constructed value are to be actual costs, not imputed costs, and (2) imputed interest is a circumstance of sale adjustment to be applied after constructed value is calculated. Aida maintains that the circumstance of sale adjustment for differences in credit terms should be made after constructed value is calculated, by deducting home market imputed credit and adding U.S. imputed credit.

Petitioners maintain that the methodology used by the Department in its preliminary determination was appropriate. Alternatively, if the Department accepts Aida's argument, petitioners argue that the home market credit expense claim should be based solely on sales of MTPs with the same tonnage capacity. The Department should not accept Aida's credit expense claim based on the weighted-average payment period for all of its home market MTP sales, as not all types of presses sold in the home market during the POI were sold in the United States market during the POI.

DOC Position: Section 773(e)(1)(b) of the Act states that constructed value shall include "an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, * * * " Therefore, it is appropriate to include *home market* selling expenses, including credit, in constructed value. (*See, Tapered Roller Bearings from Japan,* 52 FR 30700 (August 17, 1987))

Although Aida has claimed no sales of merchandise in the home market during the POI which were similar to that sold to the U.S., it has claimed that it has sales to the U.S. of the same general class or kind. Accordingly, we have used home market credit costs in calculating constructed value and made a circumstance of sale adjustment for U.S. credit costs.

Moreover, in computing the home market credit expense, we have calculated an imputed value based on the terms of those home market sales. At the same time, actual finance expenses of the company were reduced to avoid double counting. This imputation is necessary because once the constructed value has been calculated, a circumstance of sale adjustment is made to account for differing credit terms in the home and U.S. markets. Given that the circumstance of sale adjustment is made on the basis of imputed home market and U.S. credit exenses, it would be inconsistent not to use the imputed home market credit expense in the constructed value.

Comment 34: Petitioners maintain that the Department should base its credit expense calculation solely on the payment dates and amounts of the MTP sale for one of Aida's U.S. sales, excluding tooling.

Aida maintains that the die tooling was sold and delivered with the press and, therefore, was properly included in the overall press price and cost of manufacture in accordance with the Department's instructions. Based on this fact, the Department should reject petitioners' argument with respect to the credit expense calculation for this U.S. sale.

DOC Position: We agree with petitioners. See *DOC Position* to *Comment 3* above.

Comment 35: Petitioners argue that Aida failed to report ocean freight and marine insurance charges on one U.S. sale in the currency in which the charges were incurred. Petitioners claim that Aida reported the ocean freight and marine insurance charges for this sale in yen. However, Aida U.S. was first invoiced for these charges in U.S. dollars. Due to exchange rate fluctuations that occurred from the date of sale to the time the charge was incurred, petitioners maintain that the ocean freight charge used by the Department in its preliminary determination was substantially understated. In order to be consistent with U.S. GAAP, petitioners argue that the Department should convert Aida's ocean freight and marine insurance charges: for this U.S. sale from yen to dollars based on the exchange rate in effect on the date Aida incurred the ocean freight charge.

Aida maintains that it was invoiced for ocean freight and marine insurance charges in yen, paid these charges in yen, and correctly reported these charges in yen. Aida refutes petitioners, argument that the yen cost incurred by

Aida should be converted to U.S. dollars at the exchange rate used on the bill of lading by citing 19 CFR 353.60 (1989). Aida points out that the regulations require that all conversions of foreign currency into U.S. currency be made at the rate in effect on the date of sale.

DOC Position: We agree with Aida. Our review of the subject invoices at verification showed that the charges were incurred in yen. Furthermore, pursuant to section 773(a)(1) of the Act and 19 CFR 353.60 (1989), the Department is directed to convert foreign currency into U.S. currency at the exchange rate in effect on the date of sale.

Comment 36: Petitioners maintain that Aida's reported price for one U.S. sale is overstated. Because the load meter will be used commonly among the five different presses in the package, petitioners argue that the Department should allocate the price of the load meter based on the manufacturing costs of each of the five presses.

Aida contends that the price and cost of the load meter were properly assigned to that particular press for the reasons set forth in its July 24, 1989 response. Furthermore, Aida's treatment of the load meter in its sales and constructed value submissions was consistent with the treatment of the load meter in its financial and cost accounting documents (*i.e.*, the price and cost of the load meter was included in the amounts recorded in Aida's accounting system and cost accounting for that particular press, respectively).

DOC Position: In this case we have determined that the load meter assigned to this sale is not within the scope of the investigation because it is an accessory, and not an "integral" part of the basic machine. Furthermore, the load meter has an identifiable and segregable price. See also *DOC Position* to *Comment 3* above. Therefore, we have not included the price or manufacturing cost for this item in either the MTP price or COM.

Comment 37: Petitioners argue that the Department should deduct Aida's advertising expenses directed to the end-user from the U.S. price. Petitioners contend that Aida U.S. was reimbursed by Aida for certain operating expenses incurred on behalf of Aida, including advertising. Furthermore, they maintain that because Aida did not provide the precise amount of advertising expenses associated with its three U.S. sales to trading companies, the Department should deduct the total reimbursement amount for certain operating expenses that Aida U.S. reported in its audited financial statements from the purchase price.

Aida maintains that the advertising expenses incurred by Aida U.S. were incurred for advertising directed to end-users in the U.S. for sales (including various products not under investigation) by Aida U.S. to U.S. end-users. Aida states that the sales to the trading companies were negotiated and concluded by the parent company in Japan. Therefore, the expenses of advertising in the U.S. were completely unrelated to the sales of the trading companies. Aida points out that an adjustment for advertising is not required for advertising directed to end-users. Aida states that it did not assume any advertising costs on behalf of a purchaser. Advertising was directed to end-users by Aida on Aida's behalf. The trading companies who purchased presses for resale to end-users were not dealers or merchandisers of Aida presses, and none of the advertising was made in order to assist them in making sales of Aida products.

DOC Position: We agree with Aida. At verification, Aida explained that, with respect to product specifications on which advertising is focused, negotiations occurred between the end-user and Aida, not between the trading company and Aida. We found no evidence to the contrary during our review of the sales documentation. Therefore, pursuant to 19 CFR 353.56(a)(2) (1989), Aida appropriately claimed these advertising expenses as indirect selling expenses. Futhermore, advertising expenses are not deducted from U.S. price for purchase price transactions.

Comment 38: Petitioners argue that the Department should deduct as a direct expense from Aida's reported U.S. sales price an amount equal to the ratio of the product liability insurance premium to the total insured value of Aida's U.S. gross price in the final determination.

Aida maintains that its single product liability insurance policy covers all sales without regard to product or market. As such, the amount of premium cost was properly allocated as a general and administrative expense. Furthermore, Aida argues that even if the premium were to be directly allocated, the appropriate method of allocation is to divide the annual premium by Aida's total annual sales or cost of manufacture.

DOC Position: We verified that the product liability insurance policy covered all sales of Aida presses on a worldwide basis. The policy was not solely and directly applicable to MTPs. Therefore, we have treated product liability insurance premiums as indirect selling expenses since these are fixed expenses and are not incurred with each sale made. We saw no evidence of reserves for settlements or litigation fees concerning the subject merchandise during the POI. *See, Antifriction Bearings (Other Than Tapered Roller Bearings) from the FRG*, 54 FR 18992, 19065 (May 3, 1989); and *Forklifts*.

Comment 39: Petitioners contend that Aida failed to explain the transaction process for sales to trading companies. Specifically, Aida did not explain whether it invoiced the end-user or the trading company, nor did it provide the Department with the invoice amount from Aida to the trading company. Petitioners argue that the Department should deduct a portion of sales value from the gross price as best information available because Aida failed to provide commission amounts usually paid to trading companies in conjunction with three of its sales.

Aida maintains that it has provided the Department with all requested information concerning the sales made through trading companies in its responses and at verification. As reported in its responses and confirmed at verification, the sales were made by Aida to the trading companies, and Aida invoiced the trading companies for the presses. With respect to petitioners, arguments concerning commissions, Aida states that it paid commissions only on the sale of one U.S. press. No commissions were paid on the sales made to trading companies.

DOC Position: We agree with Aida. Both in its responses and at verification, Aida explained the transaction process for the sales made through trading companies. Invoices to the trading companies and payment documentation were examined at verification. Trading companies became involved only after negotiations were already in progress. We found no evidence of commissions for these sales at verification.

Comment 40: Petitioners maintain that the Department should follow the methodology for treating indirect selling expenses used in the preliminary determination for two of Aida's U.S. sales; however, for a third U.S. sale it should include U.S. indirect selling expenses in constructed value. With respect to this third sale, petitioners contend that U.S. indirect selling expenses reported in Aida Engineering, Inc.'s audited financial statements should be used as a percentage of sales value during 1988 and 1989.

Aida argues that the Department should use Aida's verified home market indirect selling expenses in calculating general expenses for the final determination in accordance with

section 773(e)(1)(B) of the Act, as amended. Aida states that U.S. indirect selling expenses are relevant only in analyzing ESP transactions, not purchase price transactions as in the case of Aida's four U.S. sales.

DOC Position: We agree with respondent. Based on Departmental practice, home market selling expenses are appropriate for use in constructed value. See *DOC Position* to *Comment 33* above. Though Aida has claimed no sales of "similar" merchandise in the home market during the POI, it has claimed sales of the same general class or kind. Therefore, in accordance with section 773(e)(1)(b) of the Act, we have used Aida's home market indirect selling expenses in constructed value for purposes of the final determination.

Comment 41: Petitioners argue that Aida should be required to calculate profit on MTPs of similar tonnage rather than on all MTPs for CV.

Aida argues that profit was correctly calculated on the basis of home market sales of the general class or kind of merchandise subject to investigation. Aida notes that the profit on similar tonnage MTPs was also less than eight percent. Therefore, the statutory minimum should be used.

DOC Position: At verification, the Department reviewed the profit earned on similar-sized MTPs and on all MTPs sold in the home market. In all cases the profit earned on sales was less than the statutory minimum of eight percent. Therefore, we used the statutory minimum in the CV calculations.

Comment 42: Petitioners argue that certain processing costs accumulated by Aida in a separate job order for a package sale should be allocated to each piece of equipment in the package based upon the COM of each press or piece of equipment.

Aida argues that although it had no records of the actual time spent on each piece of equipment, the work report indicates that work was performed on all of the machines. Therefore, the aggregate costs in the separate job order should be allocated equally to all of the equipment. Aida states that although there are a greater number of descriptive work entries related to the MTPs rather than to the other equipment, these entries do not indicate the amount of time and effort involved in these processing costs.

DOC Position: We agree with petitioners. Aida could not specifically identify the costs incurred for each specific press or piece of equipment. However, we reviewed the work report related to these costs at verification and it appeared that a greater amount of work was performed on the more expensive pieces of equipment. Therefore, we allocated these miscellaneous costs based on the COM of each press or piece of equipment in the package.

Comment 43: Petitioners argue that the Department should value Aida's related party purchases at the transfer price if they resulted in profitable transactions, or at the fully absorbed cost of production if the transfer price was less than the subsidiary's cost of production.

Aida argues that the parts which were purchased exclusively from its wholly-owned subsidiaries, and produced and sold by its subsidiaries exclusively to Aida should be valued at actual cost because no reference market prices exist. Aida maintains that the wholly-owned subsidiaries function as divisions of Aida, not as separate entities.

DOC Position: For CV, pursuant to section 773(e)(2) of the Act, the Department uses transfer prices between related companies unless such prices do not fairly reflect market prices in the market under consideration."

However, we were unable to test transfer prices against market prices because Aida and the industry are characterized by: (a) Fully integrated producers, and (b) custom-designed products of varying size requiring exact specifications. Although the wholly-owned subsidiaries are separate legal entities, Aida performs all of the administrative functions for these operations. At verification we observed that the subsidiaries produce these parts only pursuant to orders from Aida, and sell exclusively to Aida. Therefore, the market for MTP components was non-existent, and credible market prices could not be obtained.

Therefore, lacking arm's length prices and having observed that certain purchases were made at transfer prices below the cost of production (COP), we used the COP as representative of fair market prices in the market under consideration in determining the cost of materials obtained from related suppliers.

Comment 44: Petitioners argue that the Department should include in CV the scrap costs charged by Aida to an account titled "Loss on Sale of Inventories and Write-down of Inventories." Furthermore, these scrap costs should be allocated based on the COM.

Aida claims that no project-specific costs on the U.S. presses sold to the U.S. were transferred to the "Loss on Sale of Inventories and Write-down of Inventories" account and, therefore, no allocation should be made to these presses.

DOC Position: We agree with petitioners. Aida does not attribute the scrapped parts charged to "Loss on Sale of Inventories and Write-down of Inventories" to any particular press or equipment. However, scrapped parts are a manufacturing cost of doing business. Therefore, we have allocated these costs over all production based upon COM.

Comment 45: Petitioners argue that the Department should not offset Aida's interest expense with interest income because the claim was untimely and the interest income includes interest other than that earned on short-term investments.

DOC Position: We disagree. Aida's interest offset claim was made in its July 26, 1989 submission, and we verified that the offset included only interest income related to production operations. Therefore, we have offset its interest expense with interest income.

Continuation of Suspension of Liquidation

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

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Komatsu Ltd.	15.16
Aida Engineering, Ltd.	7.49
All others	14.51

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business

proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to MTPs, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on TPs from Japan entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

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

Dated: December 22, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-68 Filed 1-3-90; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

LIST OF WITNESSES WHO APPEARED AT THE HEARING

CALENDAR OF PUBLIC HEARINGS

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

Subject:	Mechanical Transfer Presses from Japan
Inv. No.:	731-TA-429 (Final)
Date and Time:	January 4, 1990 - 9:30 a.m.

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

In Support of the Imposition of Antidumping Duties:

Collier, Shannon & Scott
Washington, D.C.
on behalf of

Verson Division of Allied Products Corporation; the United Auto Workers; and the United Steel Workers of America (AFL-CIO-CLC)

Martin A. German, Corporate Vice President of Allied Products Corporation

Vincent D. Pisciotta, Vice President, Verson/Littell Division of Allied Products Coporation

Steven Beckman, International Economist, United Auto Workers of America

Samuel Eugene Jones, former Chrysler employee

Dr. Patrick J. Magrath, Chief Economist and Managing Director, Georgetown Economic Services

Paul C. Rosenthal)
)--OF COUNSEL
Carol A. Mitchell)

In Opposition to the Imposition of
Antidumping Duties:

Shearman & Sterling
Washington, D.C.
on behalf of

Komatsu Limited

Komatsu America Industries Corporation

Jack Weber, Technical Coordinator, Komatsu America Industries Corporation

John Scicluna, Consultant, formerly Director of Purchasing for Ford

Stephan Sharf, President, SICA Corporation, formerly Executive Vice President of Chrysler

Robert Litan, Fellow, Brookings Institute

Robert Herzstein)
Thomas B. Wilner)
)--OF COUNSEL
Jeffrey M. Winton)
Shelley R. Slade)

Squire, Sanders and Dempsey
Washington, D.C.
on behalf of

Ishikawajima-Harima Heavy Industries Company, Limited ("IHI")

IHI Incorporated

Robert H. Huey)
Ritchie T. Thomas)--OF COUNSEL
Dana M. Stein)

In Opposition to the Imposition of
Antidumping Duties cont'd:

Graham and James
Washington, D.C.
on behalf of

Hitachi Zosen, Limited

Hitachi Zosen Clearing, Incorporated

Brian McGill)
)--OF COUNSEL
Yoshihiro Saito)

Arent, Fox, Kintner, Plotkin
and Kahn
Washington, D.C.
on behalf of

Aida Engineering Limited

Aida Engineering, Incorporated

Stephen L. Gibson)
)--OF COUNSEL
Callie Georgeann Pappas)

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APPENDIX C

U.S. INDUSTRY DATA INCLUDING HZC AND U.S. INDUSTRY DATA FOR "LARGE" TRANSFER PRESSES

Table 4a
Transfer presses: U.S. capacity, production, and capacity utilization, 1986-88, January-September 1988, and January-September 1989

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Table 4b
Large transfer presses: U.S. capacity, production, and capacity utilization, 1986-88, January-September 1988, and January-September 1989

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Table 5a
Transfer presses: U.S. producers' domestic shipments, domestic purchase orders, and exports, 1986-88, January-September 1988, and January-September 1989

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Table 5b
Large transfer presses: U.S. producers' domestic shipments, domestic purchase orders, and exports, 1986-88, January-September 1988, and January-September 1989

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Table 6a
Transfer presses: Shares of U.S. producers' domestic shipments, by types and origins of transfer feed, by tonnage capacities, and by end uses, January 1, 1986-September 30, 1989

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Table 6b
Large transfer presses: Shares of U.S. producers' domestic shipments, by types and origins of transfer feed, by tonnage capacities, and by end uses, January 1, 1986-September 30, 1989

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Employment

Production and related workers at HZC are represented by the International Association of Machinists. * * *.

Table 7a
Transfer presses: Average number of production and related workers, hours worked, wages and total compensation paid to employees producing such presses, and hourly compensation, by firms, 1986-88, January-September 1988, and January-September 1989

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Table 7b
Large transfer presses: Average number of production and related workers, hours worked, wages and total compensation paid to employees producing such presses, and hourly compensation, by firms, 1986-88, January-September 1988, and January-September 1989

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Table 8a
Income-and-loss experience of U.S. producers on their operations producing transfer presses on the basis of percentage-of-completion method, accounting years 1986-88, January-September 1988, and January-September 1989

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Table 8b
Income-and-loss experience of U.S. producers on their operations producing large transfer presses on the basis of percentage-of-completion method, accounting years 1986-88, January-September 1988, and January-September 1989

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Table 9a
Selected income-and-loss data of U.S. producers on their operations producing transfer presses on the basis of percentage-of-completion method, by firms, accounting years 1986-88, January-September 1988, and January-September 1989

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Table 9b
Selected income-and-loss data of U.S. producers on their operations producing large transfer presses on the basis of percentage-of-completion method, by firms, accounting years 1986-88, January-September 1988, and January-September 1989

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Table 10a
Gross profit-and-loss experience of U.S. producers on their operations producing transfer presses, classified by the year when the contract for the presses was executed, by firms, 1984-89

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Table 10b
Gross profit-and-loss experience of U.S. producers on their operations producing large transfer presses, classified by the year when the contract for the presses was executed, by firms, 1984-89

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Table 11a
Gross profit-and-loss experience of U.S. producers on their operations producing transfer presses, classified by the year when the presses were delivered, by firms, 1985-90

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Table 11b
Gross profit-and-loss experience of U.S. producers on their operations producing large transfer presses, classified by the year when the presses were delivered, by firms, 1985-90

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Table 13a
Income-and-loss experience of U.S. producers on the overall operations of their establishments within which transfer presses are produced, accounting years 1986-88, January-September 1988, and January-September 1989

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Table 13b
Income-and-loss experience of U.S. producers on the overall operations of their establishments within which large transfer presses are produced, accounting years 1986-88, January-September 1988, and January-September 1989

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Table 14a
Transfer presses: Value of property, plant, and equipment of U.S. producers, as of the end of accounting years 1986-88, September 30, 1988, and September 30, 1989

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Table 14b
Large transfer presses: Value of property, plant, and equipment of U.S. producers, as of the end of accounting years 1986-88, September 30, 1988, and September 30, 1989

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Table 15a
Transfer presses: Capital expenditures by U.S. producers, accounting years 1986-88, January-September 1988, and January-September 1989

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Table 15b
Large transfer presses: Capital expenditures by U.S. producers, accounting years 1986-88, January-September 1988, and January-September 1989

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Transfer presses: Research and development expenses of U.S. producers, accounting years 1986-88, January-September 1988, and January-September 1989

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Large transfer presses: Research and development expenses of U.S. producers, accounting years 1986-88, January-September 1988, and January-September 1989

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APPENDIX D

ADDITIONAL CAPACITY INDICATORS FOR U.S. PRODUCERS

Because of the difficulty in estimating capacity in the transfer press industry, the Commission gathered data on several additional indicators of production capacity expressed in physical measurements, including total square feet of floor space for production of transfer presses, total square feet of assembly bays for transfer presses, crane clearance/assembly bay height measured in feet, crane capacity in tons, total number of assembly pits, and the maximum dimension of the largest pit in each plant.

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In addition to physical measurements of capacity, the Commission also gathered data on the backlog of transfer press orders, because production of a single transfer press can span 2 years, and the ability of firms to take on new business depends heavily on the amount of backlog in addition to the physical constraints of the manufacturing facility.

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APPENDIX E

EXCERPTS FROM VERSON'S ANNUAL REPORTS

Allied Products Corp. (Verson Division)

From 1986 Annual Report.--"Verson/Litte11 enjoys a strong competitive position. Its major domestic and foreign competitors still lag behind Verson/Litte11's technology. The price advantage that foreign pressmakers once enjoyed has largely vanished as the yen and deutschmark increased in value relative to the U.S. dollar." [47]

From 1987 Annual Report.--"With American manufacturers expanding, thanks in part to the decline of the dollar, our Verson Division should capture an increasing share of a growing market for sophisticated new equipment. The lower dollar also strengthens Verson's position relative to key Japanese and German competitors.

Our Verson Division did well in 1987 despite the fact that orders for its big presses were scarce. Instead of relying on that market, which is very competitive and highly unpredictable, Verson has made a commitment to serve the market for small and medium sized presses, and that market is quite strong right now. However, we are not abandoning the market for big presses and are looking at new ways to improve our competitiveness." [48]

From 1988 Annual Report.--"The automotive tooling and capital improvement market also improved significantly, with the industry undergoing major retooling, resulting in our Verson and Litte11 divisions achieving very good performance.

The soft markets faced by Verson in 1987 were reversed in 1988, and the division experienced a strong increase in both sales and earnings. Sales during the year increased 19% over those of 1987. While these results are due, in part, to the general increase in demand for all capital goods experienced in 1988, several factors in Verson's performance directly contributed to the significant improvement in operations. These factors include: employee involvement programs, cost reduction projects, major productivity increases, the aggressive pursuit of multiple press orders and the extensive engineering efforts to redesign components, resulting in the division's ability to secure major orders.

Management's focus on reducing material and manufacturing costs, while maintaining strict delivery schedules, resulted in success against competitive challenges during the year.

Additional productivity increases were realized during the year through a $900,000 capital expenditure program, which improved facilities and machine tools. Productivity enhancement programs begun in 1988 will continue into 1989.

Despite management's efforts to improve its competitiveness, the Verson Division is still suffering from the adverse effects of unfair trade

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[47] Allied Products Corp. 1986 Annual Report from the item titled "Pressing Ahead" on p. 11.

[48] Allied Products Corp. 1987 Annual Report from the item titled "'Plus' Factors" on p. 3 and the item titled "Richard Drexler Replies to Investors" on p. 12.

practice from certain foreign manufacturers in the transfer press segment of the business.

As Verson moves into 1989, the overall order backlog is approximately double what it was at the end of 1987; and expectations for 1989 are very optimistic except as they relate to the transfer press business." [49]

[49] Allied Products Corp. 1988 Annual Report from the item titled "Verson" on pp. 5-6.

APPENDIX F

COMMENTS ON EFFECTS OF IMPORTS ON ABILITY TO RAISE CAPITAL, INVESTMENT, AND DEVELOPMENT AND PRODUCTION EFFORTS

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APPENDIX G

ADDITIONAL CAPACITY INDICATORS FOR JAPANESE PRODUCERS

Because of the difficulty in estimating capacity in the transfer press industry, the Commission gathered data on several additional indicators of production capacity expressed in physical measurements, including total square feet of floor space for production of transfer presses, total square feet of assembly bays for transfer presses, crane clearance/assembly bay height measured in feet, crane capacity in tons, total number of assembly pits and the maximum dimension of the largest pit in each plant.

* * * * * * *

In addition to physical measurements of capacity, the Commission also gathered data on the backlog of transfer press orders, because production of a single transfer press can span 2 years, and the ability of firms to take on new business depends heavily on the amount of backlog in addition to the physical constraints of the manufacturing facility.

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APPENDIX H

TRANSFER PRESS SPECIFICATIONS

Transfer presses are generally described by a number of different specifications, including tonnage capacity and the dimensions of the front-to-back and left-to-right distance of the bolster (slide). Three common examples of transfer press specifications that appear in tables 23, 25, and 27 are presented below.

The specifications 2000-216x108 indicate that the transfer press has a 2,000 ton capacity with a slide measurement of 216 inches front-to-back and 108 inches left-to-right. The specifications 3000-108-108x108 indicate that the transfer press has two slides and a total capacity of 3,000 tons. The left slide measures 108 inches front-to-back and 108 inches left-to-right, and the right slide also measures 108 inches front-to-back and 108 inches left-to-right. The specifications 1800/1200-1500-248-248x120 indicate that the transfer press has two slides and a total capacity of 4,500 tons. The left slide has a 3,000 ton capacity, with an 1,800 ton capacity for the left two connection points and a 1,200 ton capacity for the right two connection points. The right slide has a 1,500 ton capacity. Both slides measure 248 inches front-to-back and 120 inches left-to-right.