COMMERCIAL MICROWAVE OVENS, ASSEMBLED OR UNASSEMBLED, FROM JAPAN

Determination of the Commission in Investigation No. 731–TA–523 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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United States International Trade Commission
Washington, DC 20436

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Note.—Information that would reveal the business proprietary operations of individual concerns may not be published and, therefore, has been deleted from this report.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

Determination and Views of the Commission

DETERMINATION

Commercial Microwave Ovens, Assembled or Unassembled, from Japan Investigation No. 731-TA-523 (Preliminary)

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930,[3] that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of commercial microwave ovens (CMOs),[4] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 10, 1991, a petition was filed with the Commission and the Department of Commerce by Menumaster, Inc., Sioux Falls, SD, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of CMOs from Japan. Accordingly, effective June 10, 1991, the Commission instituted antidumping investigation No. 731-TA-523 (Preliminary).

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

[2] Acting Chairman Anne Brunsdale dissenting.

[3] 19 U.S.C. § 1673b(a).

[4] The products covered by this investigation are all CMOs, whether assembled or unassembled. CMOs are electronic cooking devices which heat food by application of very high-frequency energy (microwaves), used for commercial or other than domestic purposes. CMOs are provided for in subheading 8419.81.10 but may be entering under subheading 8516.50.00 of the Harmonized Tariff Schedule of the United States (HTS). The latter subheading classifies microwave ovens intended for household use only.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of June 19, 1991.[5] The conference was held in Washington, DC, on July 1, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[5] 56 F.R. 28171.

VIEWS OF COMMISSIONER LODWICK, COMMISSIONER ROHR, AND COMMISSIONER NEWQUIST[1]

Commercial Microwave Ovens, Assembled or Unassembled, from Japan Investigation No. 731-TA-523 (Preliminary)

Based on the record obtained in this preliminary investigation, we determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury[2] by reason of imports of commercial microwave ovens, assembled or unassembled, from Japan that allegedly are sold at less than fair value (LTFV).

I. Like Product

We begin our analysis by defining the "like product." The "like product" is a "product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation."[3] Generally, the Commission looks for clear dividing lines among products in terms of distinct characteristics

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[1] Acting Chairman Brunsdale concurs in parts I-III of this opinion, but makes an affirmative determination. See Concurring and Dissenting Views of Acting Chairman Anne E. Brunsdale.

[2] Material retardation was not an issue in this investigation, and will not be discussed further.

[3] 19 U.S.C. § 1677(10). Our decision regarding the appropriate like product(s) in an investigation is essentially a factual determination, based on the record, including the arguments of the parties, in each case, and we have applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 (CIT 1988) ("Asocoflores"). In analyzing like product issues, we generally consider a number of factors relating to characteristics and uses including (1) physical characteristics, (2) uses, (3) interchangeability of the products, (4) channels of distribution, (5) customer or producer perceptions, (6) common manufacturing facilities and production employees, (7) production processes and, where appropriate, (8) price. See, e.g., Asocoflores, 693 F. Supp. at 1170; Gray Portland Cement and Cement Clinker from Venezuela, Invs. Nos. 303-TA-21 and 731-TA-519 (Preliminary), USITC Pub. 2400 at 12 (July 1991); Heavy Forged Handtools from the People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357 at 4 (February 1991). No single factor is necessarily dispositive, and we may consider other factors we deem relevant based upon the facts of a particular investigation.

and uses. Minor variations in products have been insufficient to find separate like products.[4]

The articles subject to this investigation are commercial microwave ovens, assembled or unassembled,[5] (CMOs) from Japan.[6] They are typically used as cooking devices in commercial and institutional establishments such as full-service and fast-food restaurants, hotels, convenience stores, vending stands, offices, schools, and health care facilities.[7] CMOs are produced in a variety of models that differ in wattage (power) rating, oven capacity, and various features such as built-in convection cooking devices.[8] Petitioner argues that there is one like product, all CMOs. Respondents agree with petitioner's definition.[9]

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[4] See S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979); Asocoflores, 693 F. Supp. at 1169.

[5] The phrase "assembled or unassembled" refers to imported CMOs in kit form. The scope does not include subassemblies or parts. Report at II-5.

[6] The Department of Commerce (Commerce) defined the class or kind of merchandise subject to investigation as follows:

> The product covered by this investigation is all commercial microwave ovens, assembled or unassembled. Commercial microwaves are electronic cooking devices which heat food by application of very high-frequency energy (microwaves), used for commercial or other than domestic purposes, and having 1) a minimum output wattage of 700 watts (W), 2) an inner cavity and outer cabinet of stainless steel or other durable materials, and 3) heavy-duty magnetrons, transformers, electronics, and hardware. Imported commercial microwaves typically, but not necessarily, have affixed a label from one or more independent, certifying, and testing organizations (e.g., Underwriter's Laboratories (UL) or the National Sanitation Foundation (NSF)) attesting explicitly to the intended and approved "commercial" use of the microwave oven. The subject merchandise includes complete commercial microwave kits, whether wholly or partially assembled.

56 Fed. Reg. 30899 (July 8, 1991). On July 19, 1991, Commerce issued a letter of clarification specifying that the scope is intended to cover all CMOs regardless of specifications. Accordingly, we have examined all imports of CMOs from Japan, including those of less than 700 watts.

[7] Report at II-8.

[8] Petitioner sought to include CMOs whether or not they have built into the same cabinet a convection or conventional cooking device. Petition at 5. Commerce did not specifically address this issue but included all CMOs within the scope. We find that the addition of a built-in convection device does not provide grounds for a distinction among like products.

[9] Transcript of the conference (Tr.) at 96, 102.

There are two like product issues in this investigation: (1) whether domestically produced CMOs are like the subject imports, and (2) whether CMOs and household microwave ovens (HMOs) form a single like product.

No party argues explicitly that U.S.-made CMOs are not "like" the subject imports. However, respondents suggest that a difference in characteristics and uses exists because the domestic producers are concentrated in the production of lower power models in the 700-800 watt range, whereas the imports are concentrated in the 1000 watt and higher sector.[10] However, the record indicates that both domestic and Japanese producers have shipped significant quantities of both low power and high power CMOs.[11] U.S.-made and Japanese-made CMOs use microwave technology to cook food. They typically are built using durable materials such as stainless steel cabinetry, tested and certified by Underwriters Laboratories (UL) and the National Sanitation Foundation (NSF), used in commercial establishments such as restaurants and hotels, and share the same channels of distribution.[12] Accordingly, we find that CMOs produced by domestic firms are like the subject imports.

The record suggests that another like product issue exists, viz., whether the like product should include not just CMOs but also HMOs. No party has raised the issue; rather, petitioner and respondents all oppose inclusion of HMOs within the like product. The record appears to support to a large extent their claim that CMOs and HMOs have different physical and technical characteristics, uses, and channels of distribution. Whereas CMOs generally have a power rating of at least 700 watts, HMOs generally are rated at less than 650 watts.[13] CMOs are generally heavier and made of more durable parts, especially the magnetron, than other

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[10] Tr. at 77-79.
[11] Report at II-21, Table 6.
[12] Id. at II-4-11, II-28, II-57.
[13] Id. at II-8.

microwave ovens, and CMOs cost up to 3 or 4 times more than HMOs.[14] CMOs are normally distinguishable by stainless steel cabinetry, because commercial customers allegedly prefer durability to attractiveness, whereas consumers are more concerned with esthetics.[15] Unlike HMOs, CMOs are also normally certified as commercial by UL and NSF.[16]

CMOs and HMOs are sold in different channels of distribution, with CMOs sold through commercial food distributors and HMOs sold through appliance dealers.[17] Producers offer longer and more extensive warranties on CMOs, and provide more on-site service, than is the case with HMOs. An HMO's warranties and insurance are allegedly voided if it is used for commercial purposes.[18]

Although the distinction between CMOs and HMOs may not be as clear as suggested above, particularly in view of the fact that both CMOs and HMOs can be, and often are, produced on the same production lines,[19] we believe that it is appropriate to distinguish between CMOs and HMOs in our like product analysis. As evidenced by the strong agreement on the point among petitioner and respondents, the industry has no trouble telling the two types of ovens apart. Although some commercial establishments may use HMOs not certified by UL or NSF for commercial use, such a practice is limited by the fact that most state and local health codes require certification. The record indicates that in practice all U.S. CMO producers and importers seek such certification.[20] There is some

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[14] Id. at II-4-9, 17.

[15] Petitioner's postconference brief at 7.

[16] Report at II-9-11.

[17] Tr. at 25-26.

[18] Petitioner's postconference brief at 7; respondents' postconference brief at 4.

[19] Report at II-29. Because of this, certain producers were unable to provide precise capacity figures broken out between CMOs and HMOs. Id.

[20] Id. at II-9-10. One respondent, Matsushita/Panasonic, attempted to import two models of CMO that did not meet UL and NSF standards. According to Matsushita, those models could not be successfully marketed because of the lack of certification. Matsushita has replaced them with two models produced in the United States that meet UL and NSF standards. Respondents' postconference brief at 5.

overlap in uses between the types of microwave ovens, but according to petitioner it is small, less than 10 percent of the CMO market. Moreover, the overlap is only one-way, because a consumer cannot easily purchase a CMO.[21] Accordingly, we do not include HMOs within the like product.

Based on the foregoing, we find one like product, consisting of all CMOs, including ovens with built-in convection devices.[22]

II. Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines domestic industry as:

> *...the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.*[23]

We determine that the domestic industry consists of the domestic producers of CMOs. Petitioner urges that Sharp Manufacturing Corp. of America (Sharp MCA) not be considered part of the domestic industry, both because its production is located in a foreign trade zone and because it is a related party.[24]

A. Foreign Trade Zone Production

The record indicates that Sharp MCA, wholly owned by Sharp Electronics Corp., ships CMOs from a foreign trade subzone (FTZ) physically located within the United States at Memphis, TN. An FTZ is a site that is physically within the United States but outside the customs territory of the United States.[25] We have

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[21] Tr. at 26.

[22] Among CMOs, individual models are distinguished by such factors as power level, oven capacity, and type of control, i.e., mechanical or electronic. Report at II-9. No party has argued for multiple like products based on those distinctions, and the record does not suggest that the distinctions are appropriate bases for separate like products.

[23] 19 U.S.C. § 1677(4)(A).

[24] Petitioner's postconference brief at 10-16.

[25] FTZs are established under the Foreign Trade Zones Act of 1934, as amended (19 U.S.C. §§ 81(a)-(u)).

previously found that location of a firm's production facilities in an FTZ physically within the United States did not preclude finding that the producer was part of the domestic industry. This was because: (1) the antidumping laws do not confine the material injury assessment to a domestic industry within the United States customs territory but rather to the United States itself, and (2) an FTZ in the United States is generally subject to United States law, even though for the payment of customs duties it is outside the customs territory.[26] Accordingly, we consider Sharp MCA's CMO operations in Memphis to be domestic production.

B. Related Parties

Although we find that Sharp MCA is a domestic producer, we exclude it as a related party from our consideration of material injury. Under the related parties provision,[27] when a producer is related to exporters or importers of the product under investigation, or is itself an importer of that product, the Commission may exclude such producer from the domestic industry in "appropriate circumstances." Application of the related parties provision is within the Commission's discretion based on the facts presented in each case.[28]

The factors the Commission has examined include:

> *(1) the percentage of domestic production attributable to related producers.*
>
> *(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*

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[26] Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. No. 2163 at 16 (March 1989). See also A.T. Cross Co. v. Sunil Trading Corp., 467 F.Supp. 47, 51 (S.D.N.Y. 1979); Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Preliminary), USITC Pub. No. 2143 at 10-11 (December 1988).

[27] 19 U.S.C. § 1677(4)(B).

[28] Gray Portland Cement and Cement Clinker from Venezuela, Invs. Nos. 303-TA-21 and 731-TA-519 (Preliminary), USITC Pub. 2400 at 12 (July 1991); Empire Plow Co., Inc. v. United States, 675 F. Supp. 1348, 1352 (1987).

> *(3) the position of the related producers vis-a-vis the rest of the domestic industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.*[29]

The Commission has also considered whether the primary interests of the related producers lie in domestic production or in importation.[30] The Commission has stated that the related parties provision should be employed to avoid distortion in the aggregate data for the domestic industry that might result from including related parties whose operations are shielded from the effect of the unfair imports.[31]

The first step in the inquiry is to determine whether Sharp MCA is a related party. It seems clear that Sharp MCA falls within the category of related party, because it is owned by Sharp Electronics Corp., which is an importer of CMOs.[32]

As to whether Sharp should be excluded, the record indicates that Sharp Electronics Corp. does not import the models of CMOs that Sharp MCA produces domestically.[33] Thus, Sharp MCA is shielded from the unfair imports.[34] It is unlikely that Sharp needs to import in order to compete in the U.S. market, in view of the fact that other domestic producers do not import.[35] The relationship

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[29] See, e.g., Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 (1986); Empire Plow Co. v. United States, 675 F. Supp. at 1353-54.

[30] See, e.g., Rock Salt from Canada, USITC Pub. 1798 at 12.

[31] Gray Portland Cement and Cement Clinker from Venezuela, USITC Pub. 2400 at 12.

[32] Report at II-26.

[33] Sharp's postconference brief at 4.

[34] Sharp cites to Television Receiving Sets from Japan, Inv. No. 751-TA-2, USITC Pub. 1153 (June 1981), in which the Commission determined that Sharp MCA's television operations in Memphis, TN, which are allegedly of the same type as its CMO operations, were part of the domestic industry. USITC Pub. 1153 at 10-11, A-13 to A-16. That determination was based on different facts from the present case. Specifically, the Commission majority stated in that investigation that the record did not show that the imports were directed to the United States so as not to compete with the related producer.

[35] Tr. at 28.

between the value of Sharp Electronic Corp.'s imports and that of Sharp MCA's domestic shipments suggests that the interests of the Sharp companies lie more in importation than in domestic production.[36] Although Sharp MCA's share of domestic production is not insignificant, we do not believe that Sharp MCA's exclusion will skew the data for the domestic industry.[37]

Based on the foregoing, we exclude Sharp MCA as a related party from our consideration of the domestic industry in this preliminary investigation.

In addition to Sharp, Matsushita Cooking Appliance Co. (MCAC) produces CMOs in the United States to supplement its line of Panasonic imports.[38] For the same reasons discussed with respect to Sharp MCA, we exclude MCAC as a related party.

III. Condition of the Domestic Industry

In determining the condition of the domestic industry, we consider, among other factors, domestic consumption, domestic production, capacity, capacity utilization, shipments, inventories, employment, market share, profitability, the ability to raise capital, and investment.[39] In addition, we evaluate all of these factors in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."[40]

Apparent consumption of CMOs decreased between 1988 and 1990, notwithstanding a slight increase between 1989 and 1990, and decreased further between the first quarter of 1990 and the comparable period of 1991.[41]

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[36] Report, Tables 11 and 25.

[37] Id., Table 10.

[38] Id. at II-26.

[39] 19 U.S.C. § 1677(7)(C)(iii). Much of the data concerning the domestic industry and the imports are business proprietary information, and can be discussed only in general terms.

[40] 19 U.S.C. § 1677(7)(C)(iii).

[41] Report, Table 5.

Domestic CMO production rose from 1988 to 1989, and then fell from 1989 to 1990 and from interim 1990 to interim 1991. Average production capacity for CMOs remained stable from 1988 to 1989, then rose from 1989 to 1990 and from the first quarter of 1990 to the comparable period of 1991. Average capacity utilization rose from 1988 to 1989, then declined significantly from 1989 to 1990, and from interim 1990 to interim 1991.[42]

The quantity of total CMO shipments (including exports) by domestic producers declined between 1988 and 1990, and declined between the first quarters of 1990 and 1991. The value of total shipments exhibited a similar trend. In contrast, domestic shipments increased from 1988 to 1990, although they too declined in the interim periods.[43] Domestic producers' inventories of CMOs increased substantially from 1988 to 1990, although they fell between interim 1990 and interim 1991.[44]

Two significant employment-related indicators were negative. The number of production and related workers declined steadily throughout the period of investigation. Productivity was lower in 1990 than in 1988, and also declined from interim 1990 to interim 1991. Hours worked, total compensation, and hourly wages generally posted increases during the period of investigation.[45]

Domestic CMO producers' financial results significantly worsened during the period of investigation. Sales declined from 1988 to 1990 and in the interim periods. Operating income or loss declined between 1988 and 1990 and between the first quarter of 1990 and that of 1991. Cash flow exhibited a similar trend.[46]

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[42] Id., Table 10.
[43] Id., Table 11.
[44] Id., Table 12.
[45] Id., Table 13, and questionnaire responses.
[46] Report, Table 15.

Petitioner Menumaster was in bankruptcy during most of the period of investigation.[47]

The domestic industry reported cutbacks in capital investments and research and development expenditures, including those concerning the development of new products.[48]

We consequently conclude that, in light of both the business cycle and all pertinent conditions of competition, there is a reasonable indication that the industry is experiencing material injury.

IV. No Reasonable Indication of Material Injury by Reason of LTFV Imports

In making preliminary determinations in antidumping investigations, we consider whether there is a reasonable indication that the material injury being suffered by the domestic industry is "by reason of" the imports under investigation.[49] We consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers.[50] In doing so, we consider whether import volumes or increases in volume are significant, whether there has been significant underselling by imports, whether imports significantly depress or suppress prices for the like product, and economic factors having a bearing on the state of the domestic industry.[51]

The volume of import shipments declined significantly from 1988 to 1990, although it increased in the first quarter of 1991 over the comparable period of 1990. Imports lost market share from 1988 to 1990, and the increase in market penetration from interim 1990 to interim 1991 did not permit the imports to regain

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[47] Id. at II-23-25.
[48] Id., Appendix D.
[49] 19 U.S.C. § 1673b(a).
[50] 19 U.S.C. § 1677(7)(B)(i).
[51] 19 U.S.C. § 1677(7)(C).

their 1988 level.[52] We find that the volume of imports, the size of import penetration, and such increases in volume and import penetration that occurred, when considered in the context of their price effects and impact on domestic producers, are not significant.

The record indicates that the subject imports had no significant adverse price effects on the domestic industry during the period of investigation. The pricing data[53] shows generally consistent overselling by the subject imports. Although one set of price comparisons shows underselling, the record indicates that the comparison is not useful because the domestic and imported products are not truly comparable.[54] There is generally consistent overselling even considering the anecdotal lost sales data in the record.[55] Price trend data in the record show a mixed pattern, with imported and domestic prices posting both increases and declines inconsistently during the period of investigation. In some instances, domestic prices exhibited overall declines when the prices of comparable imported products were sharply rising.[56] The record thus indicates neither price depression nor price suppression by the subject imports.

The record also demonstrates that conditions in the domestic industry are responsible for any material injury suffered by the industry. Although the industry reported declining profitability, the biggest drop in that indicator occurred

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[52] Report, Table 24.

[53] The Commission received price data on products representing significant proportions of both domestic production and the imports. Report at II-58.

[54] Id., Tables 26 and 29. This is primarily because the imported product failed to obtain NSF certification. The imported product was so unsuccessful in the market that its production has been discontinued. Id., Table E-2; respondents' postconference brief at 5.

[55] Report at II-62. Anecdotal evidence of lost sales or revenue does not mandate an affirmative determination. USX Corp. v. United States, 11 CIT 82, 655 F. Supp. 487, 491 (1987). We note that Commission staff were unable to follow up on one lost sale allegation within the short time available.

[56] Report, Tables 26-28.

between 1989 and 1990, when imports were also declining.[57] Moreover, profitability declined principally because production costs increased.[58]

Also notable is petitioner Menumaster's bankruptcy, which lasted through most of the period of investigation.[59] That bankruptcy was apparently caused by factors other than import competition from Japan. Filings in bankruptcy court list causes such as unavailability of working capital and mismanagement, but do not place blame on allegedly LTFV imports.[60] As a result of the bankruptcy, Menumaster shut down its line of HMOs. We note in that connection that Menumaster's earlier profitability occurred only when HMOs were a major component of its operations.[61] As Menumaster shut down its HMO operations, fixed costs previously allocated to HMO operations had to be absorbed by CMO operations. Moreover, in its business plan, Menumaster relied in part on exports to improve its performance. While Menumaster's exports declined steadily throughout the period of investigation, the record does not show that this decline was attributable to the subject imports.[62]

Domestic producers claimed that the subject imports have adversely affected their development and production efforts, including efforts to develop a derivative or more advanced version of the like product.[63] However, these vague assertions

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[57] Report, Tables 15 and 24.

[58] Id., Table 15. This appears to be partially related to the accounting methods used by the industry. Id. at II-36, II-41.

[59] Id. at II-23-25.

[60] Respondents' postconference brief at Appendix B.

[61] Report at C-5; Microwave Products of America, Inc. FY 1990 Business Plan, July 24, 1989, filed with the U.S. Bankruptcy Court for the Western District of Tennessee, Western Division, Tables 14, 16, and 18. Respondents argue that another result of the bankruptcy was a loss in customer confidence in Menumaster, particularly with regard to the value of its warranties. Respondents' postconference brief at 30.

[62] Tr. at 80; Respondents' postconference brief at Appendix B; Report, Table 11.

[63] Report, Appendix D.

are contradicted by such evidence of record as the fact that petitioner has not produced a major new model since 1987, before the period of investigation.[64]

Based on the foregoing considerations, we determine that there is no reasonable indication that the domestic industry is materially injured by reason of imports of allegedly LTFV CMOs from Japan.

V. No Reasonable Indication of Threat of Material Injury

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."[65]

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[64] Tr. at 48.

[65] The Commission must consider the following ten factors in a threat analysis:
(I) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),
(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
(V) any substantial increase in inventories of the merchandise in the United States,
(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
(VII) any other demonstrable adverse trends that indicate the probability that importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,
(VIII) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation,
(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv) and

(continued...)

The record indicates that production capacity for CMOs in Japan increased only slightly from 1988 to 1990 and in the interim periods, and is projected to decline in the near future.[66] The Japanese producers of the subject merchandise operated at very high levels of capacity utilization throughout the period of investigation.[67] Consequently, we find that the status of capacity in Japan is not likely to result in a significant increase in the subject imports.[68]

Import penetration of the U.S. market has not been rapid, and there is no evidence that the subject imports will rise to an injurious level. Import shipments and their market share fell from 1988 to 1990, and the rise of their share in the interim periods did not make up the prior decline.[69] Moreover, imports are likely to decline rather than increase, now that MCAC has begun production of CMOs in the United States to replace some of the models Matsushita imported in the past.[70]

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[65](...continued)
any product processed from such raw agricultural product, the likelihood 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.
19 U.S.C. § 1677(7)(F)(i), as amended by 1988 Act §§ 1326(b), 1329.

In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. section 1677(7)(F)(iii), as amended by 1988 Act section 1329.

[66] Report, Table 22. Although four firms aside from respondents Matsushita and Sharp produce CMOs in Japan, there is no evidence that they have exported to the United States or that they plan to do so. Id. at II-49-50, Tables 21 and 22.

[67] Id., Table 22. We have considered capacity and capacity utilization figures with caution, because switching between production of CMOs and HMOs is not difficult. Tr. at 103.

[68] This conclusion is also supported by the fact that Japanese CMO producers have significant and growing markets for CMOs in Japan and other countries. Report, Table 22.

[69] Id., Table 24.

[70] Id. at II-26.

As discussed above, the subject imports have not had a significant adverse effect on the prices of domestic CMOs.[71] There is no evidence that imports will have a depressing or suppressing effect on domestic CMO prices in the future.

The record does not indicate that any product subject to investigation or to a final order can be made in the same production facilities as the subject imports.[72] We find accordingly that there is no potential for product shifting for the purposes of 19 U.S.C. § 1677(7)(F)(VIII). Importers' inventories declined from 1988 to 1990, although they rose between interim 1990 and interim 1991.[73]

As discussed above, the record does not bear out the claims of domestic producers that the subject imports have adversely affected their development efforts. We find no evidence that such adverse effects will occur in the future.

The record contains no evidence that imports of CMOs from Japan are subject to antidumping findings or remedies in third countries.[74]

Based on the foregoing, we find no reasonable indication that allegedly LTFV imports of CMOs from Japan pose a "real" threat of "imminent" material injury to the U.S. industry.

In conclusion, mindful of the standard applicable to preliminary investigations, we find that the conditions for reaching a preliminary negative determination have been met in this investigation.[75]

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[71] Id., Tables 26-29.
[72] Id. at II-49-51.
[73] Id., Table 20.
[74] Id. at II-48, n.61.
[75] American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986).

CONCURRING AND DISSENTING VIEWS OF ACTING CHAIRMAN ANNE BRUNSDALE

Commercial Microwave Ovens, Assembled or Unassembled, from Japan Investigation No. 731-TA-523 (Preliminary)

I agree with my colleagues on the issues of like product, domestic industry, and the domestic industry's condition. However, I am writing separately because I cannot accept their conclusion of no reasonable indication that a domestic industry is being injured by the alleged dumping of Japanese commercial microwave ovens. That is, I do not agree that "(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation." *American Lamb Co. v. United States*, 785 F.2d 994, 1001 (Fed. Cir. 1986).

Given the relatively high market share of Japanese imports and the, at best, ambiguous evidence of overselling, I fear that the majority reached its conclusion without considering the record as a whole.[1] In my view, the absence of clear and convincing evidence that the domestic commercial microwave oven industry is not suffering material injury by reason of dumped imports is evident from the volume of imported Japanese ovens and from the reasonably probable effects those imports have on the domestic industry's revenues.[2]

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[1] Moreover, although the majority notes the declining profitability in the domestic industry, *see* Opinion at I-15-16, it concludes that profitability "declined principally because production costs increased." *Id.* at I-16. Although that conclusion may be true, it may also be an impermissible weighing of the causes of the material injury that the domestic industry is suffering. Our role is to gauge whether the injury caused by the dumped imports is material, not whether some other cause is greater.

[2] For those interested in the continuing saga of the Commission's policy on circulation of draft opinions, *see Aspherical Ophthalmoscopy Lenses From Japan*, Inv. No. 731-TA-518 (Preliminary) USITC Pub. 2396 at 23-24, I note with great approval that the majority agreed in this investigation to a simultaneous exchange of drafts. This allows us to sharpen our analysis, better focus our writing, and even reduce the length of our

(continued...)

A. Volume and Prices of the Imports from Japan. One of the more striking problems with terminating this case at the preliminary stage is that the market share of the allegedly dumped Japanese imports is relatively high, amounting to about one-fourth of the value of all commercial microwave ovens sold in the United States last year. II-55. Moreover, this share has remained largely unchanged in the first three months of this year. II-55.

The majority reasons that a supposed absence of underselling suffices to neutralize the effects of this volume. I am always leery of placing heavy stress on underselling or overselling. My caution is even greater here. In the necessary haste of preparing a preliminary report, our staff only had time to request and compare in tabular form the prices of each commercial microwave oven manufacturer's largest sale in each of thirteen quarters for three different models. Based on the resulting table of 38 price comparisons, the majority concludes that

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[2] (...continued)
opinions.

Unfortunately, our footnotes will flourish, since the majority has now refused to append my standard footnotes to sections I-III of their opinion, which I would otherwise join. For the record, then, I join in the majority's like product discussion with the clarification, as I discussed at greater length in *Polyethylene Terephthalate Film* etc. from Japan and Korea, Inv. Nos. 731-TA-458 and 459 (Final) USITC Pub. 2383 (May 1991), that I would focus on whether dumping would induce significant substitution between the potential like products by either producers or consumers. In defining the like product in this way, I seek to identify the products that will be significantly and directly affected by any dumping of the articles subject to investigation. I agree that the best available evidence in the record in this investigation indicates that those who buy commercial microwave ovens do not view home microwave ovens as a substitute. Moreover, although there is strong evidence that a final investigation would show that manufacturers can easily switch production between the two kinds of ovens, I conclude that on the present record home microwave ovens should not be included, because the staff report simply does not contain enough data on home microwave ovens to make their inclusion in the like product feasible at this preliminary stage.

I also join in the majority's discussion of the condition of the domestic industry, subject to my usual caveat that I do not reach a separate legal conclusion regarding the presence or absence of material injury based on this information, and do not believe an independent determination is either required by statute or useful to the determination of whether a domestic industry is materially injured by reason of dumped imports. As always, I do find the discussion of the condition of the industry helpful in determining whether any injury resulting from the dumped imports is material. *See, e.g., Certain Light-Walled Rectangular Pipes and Tubes from Taiwan,* Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) at 10-15 (Views of Chairman Brunsdale and Vice Chairman Cass).

"Japanese commercial microwave ovens have not significantly undersold the domestic product. Rather, the pricing data show generally consistent overselling by the subject imports." Opin. at I-15.

There are many difficulties with this approach. The most important is that we do not have what I would regard as a statistically significant basis for comparison. Indeed, our comparisons may well be based on a tiny fraction of sales that in no way are representative of the market as a whole. One reason for this that is obvious even on the record we have now is that each manufacturer appears to sell at discounts from list price, but in different ways. One manufacturer, for example, calculates a quantity discount based on monthly order volume. Another manufacturer discounts its prices, in part, by giving rebates to purchasers based on annual volume. The incentive to order one's expected annual inventory all at once is obviously greater in the first situation than the second, yet the comparison of largest sales may reflect deep annual discounts only in one case and not the other.[3] Similarly, discounts based on a per order basis will show up in the comparisons, but expected rebates based on annual sales volume will not. It would be helpful as well to get evidence from purchasers as to the prices they claim to have paid. Further investigation may well have allowed us to make better price comparisons.

Second, the Department of Commerce's initial definition of the scope of the investigation was flawed. The notice of initiation identified the articles subject to investigation as commercial microwave ovens having a power rating of at least 700 watts, but failed to specify the standard on which that figure was based. The

[3] The instructions to our questionnaire asked manufacturers to give prices net of discounts—which would probably require looking at one piece of paper if the discount is given when the order is shipped, but a more complicated matching and allocation of rebate with old invoices if rebates are based on annual sales. In fact, the manufacturer in question noted this difficulty in its response to the questionnaire and did not deduct the rebate from the sales price.

result was that a significant portion of Japanese imports was excluded from many of the calculations in the staff report, including the price comparisons on which the majority bases its determination.

But even if we compared every model with every other similar model, looking at only the largest sales is often misleading. A better way of comparing prices would be to look at the average prices for all the units shipped each quarter. The questionnaire responses include some data on average prices, but they reveal anomalies. One manufacturer reported average sales prices that in several quarters were lower than the average sales price for its biggest customer. Another, as noted above, did not include rebates. An indicator of average prices that is available is average unit value. Comparisons of average unit value, compare II-32 with II-52, show that Japanese and American commercial microwave ovens may well have been much more closely priced than a comparison of a few dozen sales would indicate.[4]

But even if these comparisons did show significant differences in price, I would still not rely heavily on them. Persistent price differences generally indicate that some factor other than price is distinguishing the more from the less expensive good. There may be different warranties, different physical characteristics, or different contractual terms that affect buyers' decisions and incline them to pay a higher price for what is in fact a somewhat different product.[5] If there were not such differences between products, persistent price differences of the

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[4] Of course, comparing average sales is often unhelpful as well. For example, some manufacturers may sell directly to end users, while others use wholesalers. In addition, the average unit value does not take into account the different product mixes different manufacturers might have. Again, in this investigation, that seems less of a problem, because the mix of dumped imports is weighted more heavily toward the high end of the market. *See* II-21.

[5] The majority recognizes this in rejecting one series of price comparisons on the ground that the failure of the import to win safety certification meant that it was not truly comparable. *See* Opinion at I-15 n.54. And, as the majority points out, the value of two apparently identical warranties may be different if, as was the case with Menumaster, one of the warrantors was in bankruptcy. *See* Opinion at I-16 n.61.

magnitude seen here could only result from deeply irrational behavior on the part of the average consumer.

B. The Effect of Imports from Japan on Domestic Prices. Even if I thought the data on which the majority bases its determination were adequate and not subject to substantial change in a final investigation, I would still be forced to dissent. There are several factors on the present record that I find particularly important in deciding that the subject imports may be causing material injury to the domestic industry. First, the alleged dumping margin is fairly high. According to the Commerce Department's recalculation of petitioner's formulation (which is the best evidence available in a preliminary investigation because it is the only evidence), the margin ranges up to 54.65 percent, meaning that a "fair" price for Japanese microwave ovens might be 54.65 percent higher than they already are.

Second, judging by the comparisons of the various model lines, many of the commercial microwave ovens are very similar in their features. It is not surprising, then, that there is some confidential (and anecdotal) evidence that price is a decisive factor in buyers' decisions. There was also the testimony of Panasonic's sales manager for commercial microwave ovens: "The commodity pricing atmosphere [for ovens] was and is very unhealthy for the food service industry. I don't know how it was created or how it is created or where it is going . . . ." Tr. at 69-70. This reference to a "commodity price atmosphere," indicates a high degree of substitutability, and suggests that commercial microwave oven buyers would readily switch to the domestic like product if the Japanese imports cost 54.65 percent more.

Moreover, the record contains considerable evidence that the domestic industry could have increased its output to meet demand if the price of Japanese

ovens had been substantially higher. Commercial microwave ovens are typically produced by the same companies that make home microwave ovens, often on the same assembly line using the same workers. The time necessary to switch production from one type of microwave oven to the other is very small. II-13-14. The result, as the lawyer for one of the Japanese exporters put it, is that

> *[Y]ou have enormous capacity, almost unlimited capacity. Probably each one of us has the capacity to produce 10 times the units that are consumed in the commercial microwave oven market and that is because we can use the same facilities to produce either domestic or commercial ovens.*

Tr. at 103. These factors indicate that an increase in the price of commercial microwave ovens from Japan to allegedly fair levels would spur the domestic industry to increase its production to meet demand, and so increase its revenues.[6]

This lost revenue might well be substantial in light of the fairly high market share of the Japanese. Losing that revenue materially injures the domestic industry. I therefore dissent from the majority's decision to end this investigation.

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[6] I note that the present record indicates that demand for commercial microwave ovens is not very sensitive to changes in price. Most commercial microwave ovens are ultimately bought for use in restaurants or large institutional kitchens, and would represent a trivial cost in their budgets. Moreover, traditional ovens are not close substitutes, because they are so much slower and consume more energy. II-13 at n.23. Other things being equal, such indications of inelastic demand would suggest that the alleged unfair imports would have suppressed the price the domestic industry would otherwise have been able to obtain. Given the strong evidence of a highly elastic supply of commercial microwave ovens, however, I conclude that the effect of the Japanese imports on prices is small.

Information Obtained in the Investigation

INTRODUCTION

On June 10, 1991, a petition was filed with the U.S. International Trade Commission (Commission) and the U.S. Department of Commerce (Commerce) by Menumaster, Inc. (Menumaster), Sioux Falls, SD, alleging that an industry in the United States is being materially injured, and threatened with material injury, by reason of imports from Japan of commercial microwave ovens (CMOs)[1] [2] that are alleged to be sold at less than fair value (LTFV). Accordingly, effective June 10, 1991, the Commission instituted antidumping investigation No. 731-TA-523 (Preliminary) under section 733(a) of the Tariff Act of 1930[3] (the act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports of such merchandise into the United States.

Notice of the institution of this investigation was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the *Federal Register* of June 19, 1991.[4] Copies of the Commission's and Commerce's *Federal Register* notices are presented in appendix A.

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[1] The products covered by this investigation are all CMOs, whether assembled or unassembled. CMOs are electronic cooking devices which heat food by application of very high-frequency energy (microwaves), used for commercial or other than domestic purposes. CMOs have an inner cavity and outer cabinet of stainless steel or other durable materials, heavy-duty magnetrons, transformers, electronics, and hardware. Imported CMOs typically, but not necessarily, have affixed a label from one or more independent certifying and testing organizations (*e.g.* Underwriters Laboratories or the National Sanitation Foundation) attesting explicitly to the intended and approved "commercial" use of the microwave oven. The subject merchandise includes commercial microwave oven kits, whether or not partially assembled.

Petitioner's intent is to include all microwave ovens used for commercial purposes and to exclude ovens used in the home. Commerce has attempted to define the subject merchandise for purposes of initiation only. They have invited comment on technical specifications that will enable Commerce to define the subject merchandise more precisely and that will help Customs officials to distinguish between commercial and non-commercial microwave ovens.

On July 19, 1991, the Commission received a letter from Commerce stating that it is Commerce's intent to include all CMOs (regardless of wattage) within the scope of its investigation. A copy of this letter is presented in app. A.

[2] CMOs are provided for in subheading 8419.81.10 but may be entering under subheading 8516.50.00 of the Harmonized Tariff Schedule of the United States (HTS). The latter subheading classifies microwave ovens intended for household use only. These household microwave ovens are referred to in this investigation as HMOs.

[3] 19 U.S.C. § 1673b(a).

[4] 56 F.R. 28171.

The Commission held a public conference in Washington, DC, on July 1, 1991, at which time all interested parties were allowed to present information and data for consideration by the Commission. A list of the participants in the conference is presented in appendix B.

The Commission voted on this investigation on July 23, 1991. The statute directs the Commission to transmit its preliminary determination to the Secretary of Commerce within 45 days after receipt of the petition, or in this investigation by July 25, 1991.

PREVIOUS COMMISSION INVESTIGATIONS CONCERNING MICROWAVE OVENS

There have been two previous Commission investigations concerning countertop microwave ovens from Japan. In February 1980, the Commission unanimously determined that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of the importation of countertop microwave ovens from Japan. (Investigation No. AA1921-Inq.-28 and Investigation No. 731-TA-4 (Preliminary), *Countertop Microwave Ovens from Japan.*[5] The Commission instituted investigation No. 731-TA-4 (Final) following an affirmative preliminary dumping determination by Commerce. The investigation was terminated, however, when the Association of Home Appliance Manufacturers withdrew its petition on December 1, 1980.

THE PRODUCT

Description and Uses

The imported products subject to this investigation are assembled or unassembled CMOs.[6] Table 1 presents a list of CMOs sold in the United States, by maximum rated wattage and producers, in 1990.

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[5] USITC Publication No. 1003 (September 1979) and Publication No. 1033 (February 1980).

[6] Assembled and unassembled CMOs subject to this investigation are considered by U.S. Customs to be finished or unfinished units (as distinguished from parts or subassemblies) that do not require any additional manufacturing before performing their intended function. Neither separately imported parts nor subassemblies (partially assembled kits) are included in the scope of this investigation.

Table 1
CMOs: Models sold in the United States, by wattage and producers, 1990

Maximum rated output wattage[1]	*Producers*			
	Menumaster	*Amana*	*Panasonic*	*Sharp*
650-700W	SNAC-700 SAND-700 SAND-7D MP-1 2800st	RCS8710 RCS8720B RCS8720MP	NE-6035 NE-6055 NE-7050	R-20EC
750W	FS-7EVP			
800W		RCS8B RCS8MP		R-20ED R-20EP R-20ET
1000W		RFS10B RFS10MP	NE-1050 NE-1070 NE-1057	
1100W	FSP-10 FS-10EVP VEND-10			
1200W	Jet-Wave			R-22ES R-22ET
1300W			NE-1370	
1400W		RC14SE	NE-1457	R-23ET
1500W	FS-14EVP			
1600W			NE-1670	R-23ES
2000W	XLC-20	RC20SE		

[1] Based on standard IEC 59H test yields (old standard).

Source: Petition and National Sanitation Foundation.

Microwave ovens are electronic devices which use microwave or high-frequency energy to generate heat. Microwave heating has several industrial applications, such as product drying and large-scale heating and processing, but the main application is in household and commercial cooking.[7]

The basic technology behind microwave cooking is relatively simple. Microwave ovens cook foods by heating their water molecules with high-frequency radio waves. An electron tube called a magnetron converts 60-cycle electrical current to high frequency radio waves (2,350 million cycles per second or 2,350 megahertz), known as microwaves. The waves or beams emitted from the magnetron strike a small fan-like propeller (called a stirrer) placed at the entrance to the oven chamber, which scatters the microwaves around the inside of the oven. As the microwaves strike molecules of water in food, they cause the molecules alternately to align and then reverse alignment as the direction of the electrical field changes with each cycle. This extremely rapid and repeated twisting (2,350 million times per second) generates frictional heat within foods at the molecular level. The amount of heat generated can be varied through the use of electrical switches that regulate the power supply (heat setting) and turn the magnetron tube on and off. Figure 1 presents an illustration of microwave cooking technology.

The principle advantage of cooking with microwave ovens over conventional gas or electric ovens is their ability to generate heat instantaneously throughout the entire mass of food, permitting faster and more energy-efficient cooking. This quality makes microwave cooking particularly advantageous for food processes such as defrosting and reheating.

Microwave cooking has one major disadvantage: limited browning or crisping of foods. To compensate for this disadvantage, some ovens are sold with a browning unit—essentially a conventional heating element. Other ovens use special cooking utensils that can, to some extent, improve food browning.

Microwave ovens are designed either for commercial or household use and are available generally either as a single purpose microwave unit or as a combination microwave/convection unit. Both types are designed for use as built-in units (e.g., to be built into a wall space or hung under a cabinet) or as countertop models. According to industry data,[8] over 90 percent of the microwave ovens sold in the United States is of the household type.

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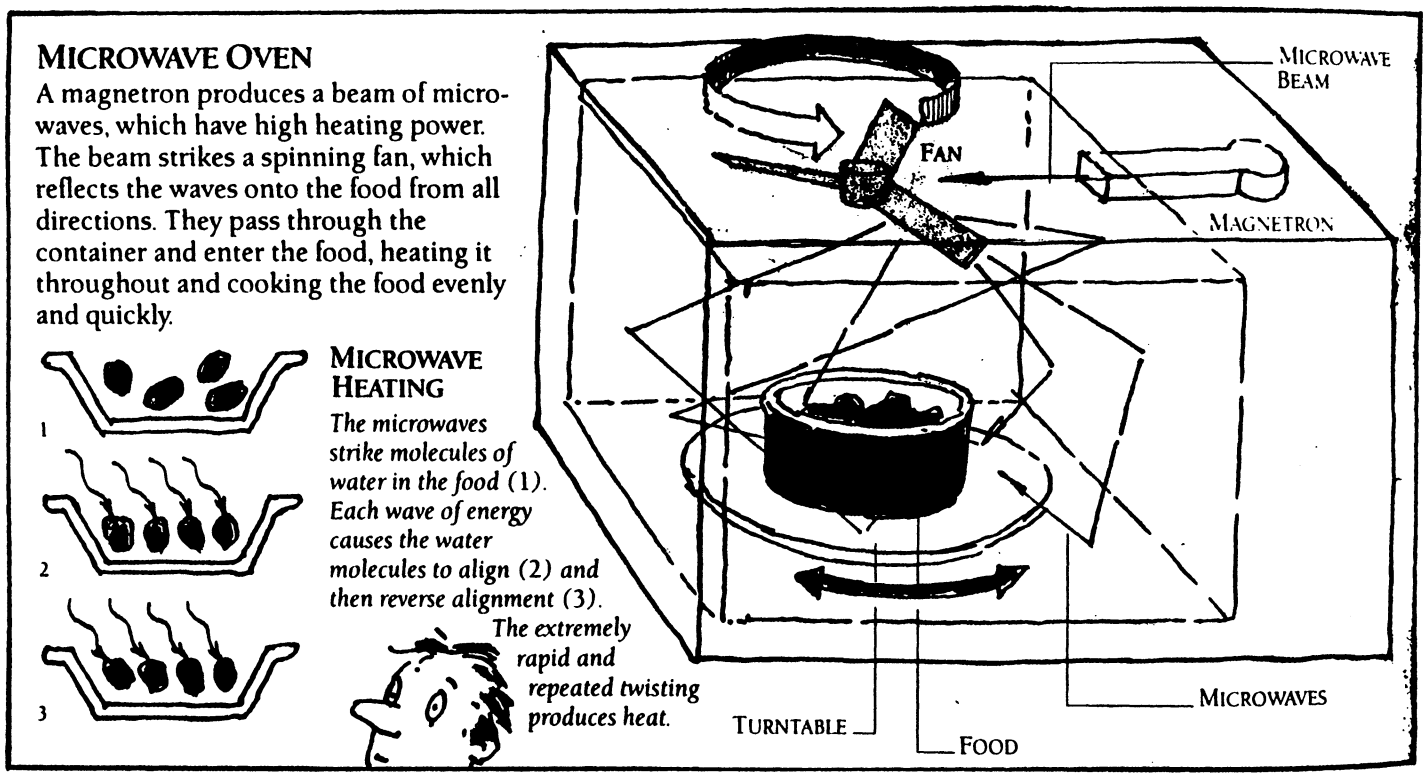
[7] Unless otherwise specified, "microwave ovens" hereafter will refer only to those used for cooking.

[8] Data gathered from *Appliance* magazine, "Statistical Review," pp. 25-28, April 1991.

Figure 1
Illustration of microwave cooking technology



Source: David Macaulay, *The Way Things Work*, Boston, Houghton Mifflin Co., 1988, p. 152.

CMOs subject to this investigation are virtually all countertop models and are specifically designed for use in commercial and institutional establishments such as hotels, restaurants, vending-stands, offices, schools, hospitals, etc. Commercial units tend to be large, durable units; typically, the enclosure is constructed of carbon steel and/or stainless steel. The wattage output is often up to 2000 watts (W), or over (in comparison, household units generally have a maximum output of up to 650W). In addition, commercial units can have as many as four magnetron tubes and cost up to three or four times more than household units. In most cases, CMOs must meet more stringent Federal and State standards and regulations than do household units.

Countertop microwave ovens for commercial use come with two control variations, either mechanical controls (turn-to-set rotary dial timers) or electronic keypads (user-programmable controls). Ovens with mechanical controls generally have fewer or simpler features and are less expensive. For example, mechanical models generally have only one power (heat) setting. The timers on these models generally have a timing capacity ranging from 2 to 6 minutes and must be reset each time for a new cooking operation. Electronically controlled ovens, on the other hand, have at least three (and sometimes more) power settings, with timers capable of operating up to 40 minutes with 1-second precision throughout the range. These ovens can be programmed to perform a series of cooking cycles (varying as to time, power, or temperature) in one continuous sequence. Approximately 60 percent of all CMOs sold in the U.S. market is equipped with electronic controls.

Both Japanese and domestic manufacturers offer a variety of commercial countertop models, which are distinguishable primarily by wattage,[9] features offered, and oven capacity. Commercial microwave oven wattage and cavity size determines what function it will best serve in a food-service operation. The cavity sizes of commercial units range from 0.5 cubic feet for small ovens to 3.0 cubic feet for heavy-duty units.

In terms of wattage, the most common models are the 700W, 1000W, and 1400W varieties.[10] A 1000W oven frequently has two magnetron tubes and is sometimes equipped with computer timers that can be programmed to fit the

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[9] Until 1989, electrical appliances were rated for wattage using test standard IEC 59H (old standard). In 1989, appliance manufacturers adopted a new international test standard, IEC 705 (new standard). The new standard rates appliances approximately 50-100W higher than the old standard. Therefore, an oven previously rated at 700W is now rated at 800W even though the power output has not changed. *See* Amana's CMO brochure for 1990. For purposes of this report, all wattage ratings are based on the old standard—the standard most familiar to the industry and the market.

[10] CMOs rated at 700W or less are primarily used in vending stands, offices, and snack bars, and usually have special controls that are preset and labeled for reheating specific foods.

operator's needs. These ovens are primarily used in light- to medium-volume fast-food operations for reheating previously prepared foods. Heavy-duty ovens range from 1400W to 2000W with two or more magnetron tubes for achieving extra power. These ovens are used in high-volume food-service kitchens to defrost meat and vegetables, cook in bulk, and reconstitute food in bulk. The control panels are nearly always computerized and are easily customized (for times and power levels), and typically have preprogrammed settings for defrosting, "medium," and "high" cycles.

Performance and safety standards, voltage requirements, and electrical outlet configurations for CMOs vary from country to country, thus requiring most products to be manufactured specifically for the country in which they are to be sold. Most countries have organizations like Underwriters Laboratories, Inc. (UL) in the United States that test and approve electrical components according to national standards. The products subject to this investigation typically meet standards set forth by the Federal Communications Commission (FCC), UL, and the National Sanitation Foundation (NSF).[11] These standards seek to ensure that users of microwave ovens are not in danger of being exposed to microwaves or electrical shock. CMOs manufactured for the U.S. market are also labeled with industry recognized UL and NSF certifications indicating approval for commercial use.

Commercial Certifications

National Sanitation Foundation Listings

The NSF is an independent, private, not-for-profit organization providing voluntary third-party certification of commercial food-processing and food-handling equipment with an interest in protecting public health and environmental quality standards.[12] NSF develops and maintains industry consensus standards, tests and certifies products, and inspects production facilities.[13] NSF publishes *Standard Number 4: Cooking & Hot Food Storage Equipment*. This publication lists the specific materials, design, construction, and performance standards required for all cooking

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[11] UL regulation UL923, *Standard for Safety: Microwave Cooking Appliances*; FCC regulation CFR-47, part 18; and NSF Standard No. 4, Commercial Cooking & Hot Food Storage Equipment.

[12] In addition to certifying commercial food processing and handling equipment, NSF also certifies swimming pools, spas, and hot tubs; home treatment of drinking water and waste water; plumbing system components, plastic pipe and fittings; and drinking water additive products and treatment chemicals.

[13] Regular inspections (plant audits) are required for all certified products. They are generally unannounced, and include comprehensive evaluations of products, materials, production techniques, and quality control.

and hot food storage equipment (including CMOs) in order to receive NSF certification. NSF also publishes the *NSF Listings of Food Service Equipment* three times a year. Each publication lists those products certified and approved by NSF by product category, manufacturer, and model.[14] NSF certification of commercial food equipment is often required by municipal regulatory officials responsible for licensing food establishments, health care facilities, schools, and building contractors, but it is not mandatory nationwide.[15]

Listed products must bear a laminated "foil" mark (or seal) with an identifying number and data plate with the company name and address. Figure 2 illustrates the NSF mark displayed on CMOs and used by producers in promotional and technical literature.

Underwriters Laboratories Commercial Certification

UL, founded in 1894, is a not-for-profit organization that tests electrical devices and systems for design, materials, and public safety. UL conducts an exhaustive list of tests for microwave oven safety. UL has separate standards for HMOs and CMOs.[16] CMOs undergo at least 50 safety tests regarding product construction and performance, including tests on internal wiring, electrical and thermal insulation, switches and controls, microwave radiation emissions, temperature control, door assembly and interlock systems, abnormal operations, mechanical endurance, fire containment, and corrosion resistance.[17]

An appliance obtaining UL certification must be marked with the manufacturer's name, trademark, the month and year of manufacture, an identification of the factory of origin, a distinctive catalog number, an electrical rating, and the word "household" or "commercial" or an acceptable equivalent wording to indicate the intended use of the appliance.[18] Figure 2 illustrates the UL commercial mark displayed on CMOs and used by producers in promotional and technical literature.

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[14] Each issue also lists those products which have been de-certified since the previous publication. Authorized listings are also provided on a continuously updated basis via computer access of NSF's Listings database.

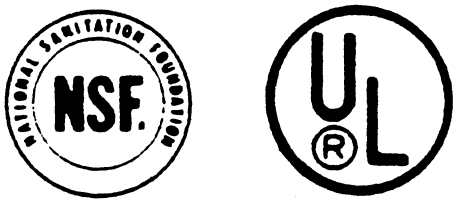
[15] The Food and Drug Administration (FDA) establishes general health and safety guidelines for food-service equipment, but is not responsible for enforcement. State and local jurisdictions often adopt these FDA guidelines and enforce them.

[16] In general, the standards for commercial ovens require higher thresholds of durability, reliability, performance, and safety than household ovens.

[17] See, *Standard for Safety: Microwave Cooking Appliances*, UL923, Aug. 10, 1990.

[18] Item 63.3, UL923.

Figure 2
NSF certification and UL commercial seals displayed on ovens and used in promotional and technical literature



Source: NSF and UL.

Manufacturing Processes

The manufacturing process for microwave ovens is basically the assembly of electronic, electrical, and mechanical components with formed metal, plastic, and glass parts. The assembly process is conducted along a production line where each worker performs one or more specific functions. The components necessary for assembly include an enclosure (inner cavity and outer cabinet), magnetron tube, controller, membrane switches, door, wiring harnesses, power supply, and miscellaneous hardware.

Parts and components may be produced by the same company or may be purchased from an outside supplier. Typically, electronic subassemblies (controllers) are manufactured by the microwave oven assembler due to their individual design characteristics, while magnetron tubes, the major component of a microwave oven, are purchased from outside sources.[19] Table 2 lists the components and parts used to produce Menumaster's CMOs, and the relative cost of the various components.

Subassemblies and components such as the power supply, enclosures, doors, membrane switches, and blower motor fan are generally produced at dedicated workstations. Due to the expertise required and the nature of operations for certain of these subassemblies, the producer may source from other firms or related companies.

Production of electronic subassemblies (controllers) involves the stuffing of printed circuit boards with discrete components, integrated circuits, and hybrid circuits. This process is normally automated using a variety of machines,

[19] Petitioner believes that all magnetron tubes used in domestic production of commercial microwave ovens are imported from Japan. Petition, p. 9.

Table 2
CMOs: Components and parts used to produce Menumaster's CMOs, and the relative cost of various components

Components	Parts	Relative cost of various components (In percent)
Cavity	Custom metal box	***
Stirrer-turntable	Stirrer blade, Bearing drive system	***
Radio frequency source	Magnetron	***
Power supply	High-voltage transformer, capacitor, diode	***
Interlock	Custom designed contacts or micro switches	***
Door	Metal outer door, inner door, choke, hinges	***
Controller	Microprocessor, display, resistor, capacitors, P.C. board	***
Cooling system	Blower motor, fan, ductwork	***
Miscellaneous parts	Hardware, labels, etc.	***
		100.0

Source: Petition, p. 8.

including radial and axial component-insertion machines, surface-mount machines, and other similar machines. The specific machines used depend on the level of technology of the producer. There are also components and parts that do not lend themselves to automatic insertion and must be attached to the printed circuit board by hand. Most components are soldered onto the board and tested to ensure accuracy and quality.

In the final assembly of microwave ovens, an enclosure is placed on a moving conveyor line where the various components and subassemblies are attached. At various stages in this process, testing and quality assurance are carried out; each microwave oven must successfully complete a test run. Company logos and labels are affixed to the product, then the oven is packaged for shipment.

Menumaster, the petitioner, produces some of the parts for its microwave ovens itself, including the controllers and membrane switches, as well as the wiring harnesses. The company purchases the enclosures, power supply, doors, and blower motors from U.S. suppliers, but not the magnetron tube, which is purchased from Japan. The percentage of U.S. content differs from model to model. However, Menumaster states that the U.S. content in some of its microwave ovens is as high as *** percent.[20]

Substitute Products

The act defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[21] Relevant factors include physical characteristics, uses, interchangeability, channels of distribution, customer and producer perceptions, common manufacturing facilities and employees, production process, and price.

Both the petitioner, through its amended petition, and the respondents, through testimony at the public conference and postconference briefs, agree that CMOs are a separate and distinct product from HMOs. If a microwave oven has a UL commercial seal and NSF certification, it is considered by all parties to be a CMO.[22]

In certain applications such as in snack bars and office galleys, HMOs are being used as substitutes for lower wattage CMOs. However, HMOs are less durable and do not meet the food-service industry's standards and regulations for commercial use.[23]

The differences in the physical characteristics of CMOs and HMOs do not require different production machinery; therefore, it would be possible to produce a commercial unit in a production facility designed to produce a household unit, and vice versa.

Manufacturers producing both CMOs and HMOs indicated in their questionnaire responses to the Commission that they typically produce CMOs and HMOs using common manufacturing facilities and production employees. Since the production of all microwave ovens essentially involves the assembling of

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[20] Telephone conversation with Louis Overton on July 3, 1991.

[21] 19 U.S.C. § 1677(4)(A) and 1677(10).

[22] See, petition, pp. 5-11; petitioner's letter of June 24, 1991, *Information Concerning Commercial Microwave Oven Standards and Scope of Investigation;* transcript, pp. 96-97; and Matsushita's post-conference brief, pp. 3-5.

[23] A conventional oven does not have the cooking speed and energy efficiency of a microwave oven, thus, it is not generally considered a suitable substitute for a CMO.

prefabricated components, manufacturers produce both CMOs and HMOs on the same assembly line sharing production workers, fabrication, painting, and assembly equipment. Only minor tooling adjustments are needed by some manufacturers.[24]

The following tabulation lists the typical physical differences between CMOs and HMOs:

Typical physical differences between CMOs and HMOs

CMOs	HMOs
Underwriter's Laboratory (UL) commercial listing	UL household listing
National Sanitary Foundation (NSF) listing	No NSF listing
650W to 2600W of cooking power	Typically less than 650W cooking power
Heavier weight (40-160 pounds)	Less than 40 pounds
Stainless steel outer casing	Painted cold-rolled carbon steel
Stainless steel cooking cavities	Non-stainless steel cooking cavities
Heavy-duty transformers, magnetrons, switches, and fans	Less durable components
Fewer or no moving parts	More moving parts
Various electrical specifications (120-220 volts)	120 volts
3-year warranties covering parts, labor, and on-site service	1-year limited warranty
Various stage cooking and power levels	Preset power levels
Programmable keypads with lockout features	Pre-programmed keypads

[24] *** stated that the average labor downtime needed to make the necessary tooling changes is approximately *** hours. *** indicated that ***. *** normal downtime is approximately *** hours needed to position new parts on the line.

U.S. Tariff Treatment

CMOs, whether assembled or unassembled, are provided for in subheading 8419.81.10 of the HTS, but may be entering under subheading 8516.50.00, the subheading for HMOs.[25] [26] Table 3 presents HTS subheading 8419.81.10's rates of duty.

Table 3
HTS subheading 8419.81.10 rates of duty, 1991[1]

Eligibility status	*Duty column*	*Rate of duty (Percent ad valorem)*
Japan	Col. 1—General	4.0
Canada[2]	Col. 1—Special	2.8
Israel[3]	Col. 1—Special	Free
MFN countries[4]	Col. 1—General	4.0
GSP countries[5]	Col. 1—Special	Free
CBERA countries[6]	Col. 1—Special	Free
ATCA countries[7]	Col. 1—Special	Free
Others[8]	Col. 2	35.0

[1] The rates of duty for subheading 8516.50.00 (HMOs) are identical to those for subheading 8419.81.10. The Agreement on Trade in Civil Aircraft (ATCA) is not included in the special column for 8516.50.00.
[2] Imports are subject to provisions in the United States-Canada Free-Trade Agreement.
[3] Imports are subject to provisions in the United States-Israel Free Trade Area.
[4] Other countries eligible for most-favored-nation tariff treatment.
[5] Countries eligible for special tariff treatment under the Generalized System of Preferences (GSP).
[6] Countries eligible for special tariff treatment under the Caribbean Basin Economic Recovery Act (CBERA).
[7] Goods eligible for special tariff treatment under the ATCA.
[8] All Communist countries and areas enumerated in general note 3(b) of the HTS.

Source: Harmonized Tariff Schedule of the United States (1991).

[25] Subheading 8419.81.10 provides for microwave ovens intended for non-household or commercial use only. Subheading 8516.50.00 provides for microwave ovens intended for domestic or household use only. However, virtually all commercial microwave ovens are believed to enter under the HMO subheading. The tariff schedule provides no standard to distinguish CMOs from HMOs.

[26] CMOs were previously classified in item 684.2500 of the former Tariff Schedules of the United States (TSUS). HMOs were previously classified in item 684.2600 of the former TSUS.

The most-favored-nation (MFN) (col. 1—general) rate of duty,[27] applicable to imports of CMOs from Japan and all other MFN countries, is 4.0 percent ad valorem.[28] Imports of CMOs from MFN countries may be eligible for special tariff treatment under the Agreement on Trade in Civil Aircraft and would then enter free of duty.[29]

THE NATURE AND EXTENT OF ALLEGED SALES AT LTFV

Alleged sales at LTFV

Based on a comparison of U.S. selling prices (USP) and a discounted foreign market value (FMV), the petition alleges dumping margins ranging from 31.9 to 130.3 percent. Commerce, however, in its notice of initiation estimated that because of certain necessary adjustments to USP and FMV, the estimated dumping margins actually range from 6.30 to 54.65 percent. A copy of Commerce's notice of initiation appears in appendix A. Table 4 summarizes the petitioner's alleged estimated LTFV margins, by producers and models.

Critical Circumstances

Petitioners alleged the existence of "critical circumstances" within the meaning of section 735(a)(3) of the act with respect to imports of the subject merchandise from Japan. Section 735(a)(3) states that in any investigation in which the presence of critical circumstances has been alleged under section 733(e), Commerce shall make a finding as to whether—[30]

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[27] Rates of duty in the general subcolumn of HTS column 1 are MFN rates; for the most part, they represent the final concession rate from the Tokyo Round of Multilateral Trade Negotiations. Column 1-general duty rates are applicable to imported goods from all countries except those enumerated in general note 3(b) to the HTS, whose products are dutied at the rates set forth in column 2. Goods from the People's Republic of China, Czechoslovakia, Hungary, Poland, and Yugoslavia are among those eligible for MFN treatment. Among articles dutiable at column 1-general rates, particular products of enumerated countries may be eligible for reduced rates of duty or for duty-free entry under one or more preferential tariff programs. Such tariff treatment is set forth in the special subcolumn of HTS column 1.

[28] In addition, pursuant to the Omnibus Budget Reconciliation Act of 1986, a user fee (to cover the cost of the U.S. Customs Service's processing of imports) of 0.17 percent ad valorem on most imports is in effect.

[29] Other special tariff treatment applies to particular products of insular possessions (general note 3(a)(iv)), and articles imported from freely associated states (general note 3(c)(viii)).

[30] Such findings may be affirmative even though the preliminary determination under section 733(e)(1) was negative.

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported, knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) there have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

Table 4
CMOs: Summary of petitioner's estimated LTFV margins, by producers and models

Producer/Model	Wattage[1]	Weighted average LTFV margin (Percent ad valorem)
Matsushita (Panasonic):		
NE-1057	1000	62.0
NE-1457	1400	31.9
NE-1670	1600	32.4
Sharp:		
R-20ET	800	94.6
R-20BP	800	77.7
R-20BT	1000	130.3
R-22ET	1200	46.7
R-23ET	1600	38.0

[1] Based on standard IEC 59H test yields (old standards).

Source: Petition, app. B.

Should Commerce make an affirmative determination with respect to critical circumstances, the Commission would be required to determine "whether retroactive imposition of antidumping duties on the merchandise appears necessary to prevent recurrence of material injury that was caused by massive imports of the merchandise over a relatively short period of time."[31] The Commission would need to make an evaluation as to whether the effectiveness of the antidumping duty order would be materially impaired if retroactive duties were not imposed.[32]

[31] 19 U.S.C. § 1673d(b)(4)(A)(i).
[32] *Id.* § 1673d(b)(4)(A)(ii).

THE DOMESTIC MARKET

Apparent U.S. Consumption

Data on apparent U.S. consumption of CMOs are presented in table 5 and figure 3, and are based on U.S. producers' shipments compiled from questionnaires of the Commission.[33] Apparent U.S. consumption decreased 1.5 percent from 1988 to 1989, decreased 0.2 percent from 1989 to 1990, and decreased 2.4 percent from January-March 1990 to January-March 1991.[34]

U.S. Consumption by Market Segments

There are essentially two markets for CMOs: low- to medium-volume operations such as vending areas, snack bars, sandwich shops, and waitress stations, and medium to high-volume operations such as restaurants, fast-food outlets, cafeterias, hotels, schools, and hospitals. The low- to medium-volume operations typically purchase CMOs that are rated at less than 1000W, while medium to high-volume operations typically purchase CMOs that are rated 1000W or higher. Table 6 and figure 4 present a breakdown of shipments by maximum rated output wattage.

The Commission collected data based on wattage categories to better understand the relative size of each market. According to data for 1990 compiled from questionnaire responses, 71.0 percent of U.S.-produced CMOs were models rated under 1000W while 29.0 percent were models rated at 1000W or greater;[35] *** percent of imported CMOs were models under 1000W while *** percent were above 1000W.

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[33] Official import statistics of the U.S. Department of Commerce do not give accurate data for imports of CMOs since virtually all imports of microwave ovens (including HMOs) are believed to enter under the same HTS subheading.

[34] According to *Appliance* magazine, manufacturers' shipments of HMOs (including countertop, over-the-range, combination ranges, and microwave/convection microwave ovens) totaled 10,598,000 units in 1989, 8,856,000 units (estimated) in 1990, and are forecast to equal 8,231,000 units in 1991. HMO sales declined 16.4 percent between 1989 and 1990, and are predicted to decline 7.1 percent between 1990 and 1991. According to this same survey, CMO sales represented 4.9 percent of total microwave oven sales in 1989, 5.8 percent in 1990, and a projected 6.2 percent in 1991. *Appliance*, "Appliance 39th Annual Forecasts, 1991: Significant Economic Crosscurrents," January 1991

[35] "All other models" are included in the below 1000W category.

Table 5
CMOs: U.S. producers' domestic shipments, U.S. imports, and apparent U.S. consumption, by firms and sources, 1988-90, January-March 1990, and January-March 1991

(In 1,000 units)

Item	1988	1989	1990	January-March— 1990	1991
Domestic shipments:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Hobart	***	***	***	***	***
Total	73.4	74.8	74.3	17.8	16.7
Importers U.S. shipments:					
Matsushita	***	***	***	***	***
Sharp	***	***	***	***	***
Total, Japan	***	***	***	***	***
Other sources	0	0	0	0	0
Total imports	***	***	***	***	***
Apparent consumption	***	***	***	***	***

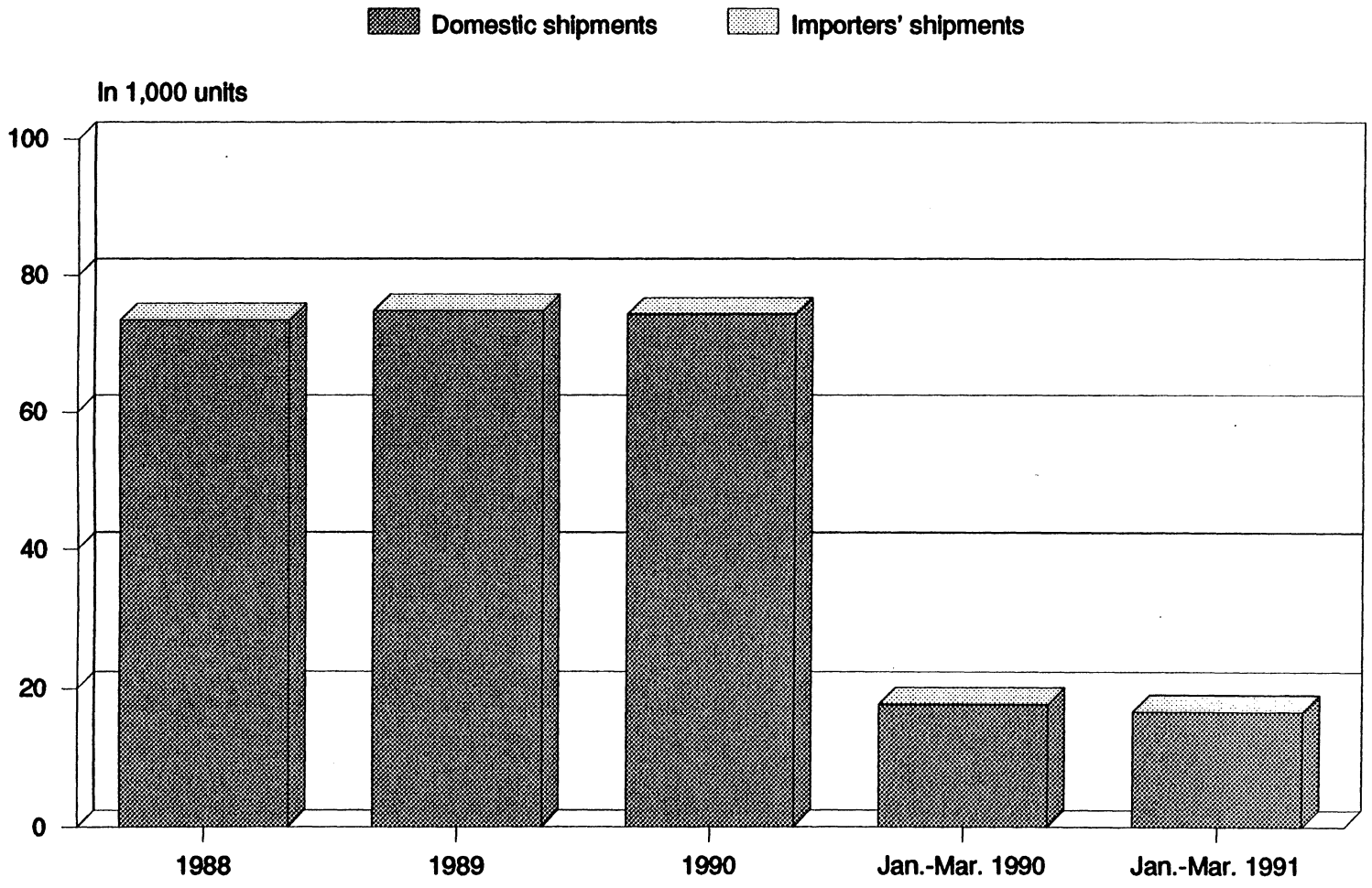
[1] Data not available.

Note.—Because of rounding, figures may not add to the totals shown.

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

Figure 3

CMOs: Apparent U.S. consumption, by sources, 1988-90, January-March 1990, and January-March 1991*



Source: Table 5.

* Importers' U.S. shipments and apparent consumption are confidential, and are therefore not shown.

Table 6
CMOs: U.S. shipments, by maximum rated output wattage and customer categories, 1988-90

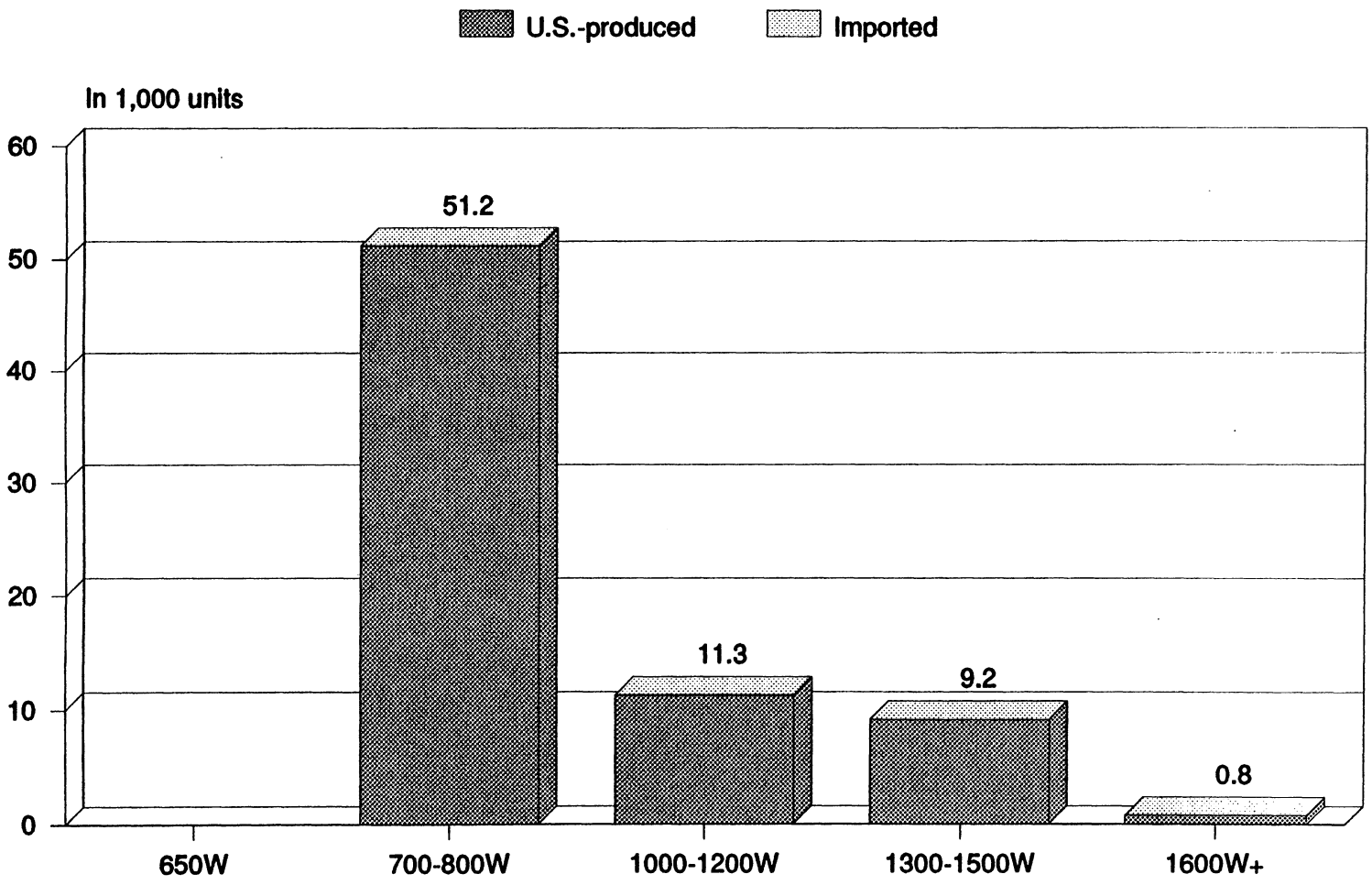
(In 1,000 units)

Item	1988	1989	1990
Shipments by maximum rated output wattage:[1]			
U.S.-produced:			
650-800W	44.8	45.5	51.2
1000-1200W	12.1	14.8	11.3
1300-1500W	7.5	6.7	9.2
1600W and greater	6.7	6.7	0.8
All other models[2]	1.0	0	1.0
Total	72.1	73.7	73.5
Imported from Japan:			
650-800W	***	***	***
1000-1200W	***	***	***
1300-1500W	***	***	***
1600W and greater	***	***	***
All other models[2]	***	***	***
Total	***	***	***
Shipments by customer categories:			
U.S.-produced:			
Food equipment dealers	6.0	6.0	4.0
Distributors	51.1	50.6	56.7
Direct sales	13.9	13.1	11.8
All other customers	1.0	4.0	1.0
Total	72.0	73.7	73.5
Imported from Japan:			
Food equipment dealers	***	***	***
Distributors	***	***	***
Direct sales	***	***	***
All other customers	***	***	***
Total	***	***	***

[1] Using standard IEC 59H test yields (old standard).
[2] Includes models that did not fit in the other categories.
Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission.

Figure 4

CMOs: U.S. shipments by maximum rated output wattage, by sources, 1990*



Source: Table 6.

* Imported shipments from Japan are confidential, and are therefore not shown.

U.S. Producers

There are currently five producers of CMOs in the United States: Menumaster, Amana Refrigeration, Inc. (Amana), Sharp Manufacturing Corp. of America (Sharp MCA), Hobart Corp. (Hobart), and Matsushita Cooking Appliance Co. The Commission received complete questionnaire responses from four of these firms.[36] The location of U.S manufacturing facilities and the position each firm has taken with respect to the petition are presented in table 7.

History of Microwave Oven Production in the United States

Although Raytheon Corp. produced microwave ovens (for industrial use) as early as the 1940's, it was not until the mid-1950's that an oven was designed for household or commercial use. The first countertop microwave oven was introduced in 1967 by Amana, a subsidiary of the Raytheon Corp. Menumaster stated in its petition that Atherton Division of Litton Industries, Inc. introduced a line of CMOs in 1965.[37]

In 1980, 14 firms produced HMOs in 17 plants in primarily the Midwestern and Southeastern States. Three of these firms, Litton Industries, Amana, and Thermador, manufactured CMOs in addition to HMOs.

In 1990, 10 firms produced HMOs. Three of these firms, Amana, Sharp MCA, and Matsushita Cooking Appliance Co., also produced CMOs.

Menumaster

Menumaster, the petitioner, is a wholly owned subsidiary of the American Cooking Products Division of Litton Systems, Inc., a Litton Industries company. Menumaster has one production facility located in Sioux Falls, SD, in which it currently produces CMOs.[38]

Menumaster's business history began in 1963, when Litton Industries, Inc. established its Atherton Division to investigate the possibilities of developing and selling microwave ovens. In 1965, Litton introduced its line of "Litton" brand CMOs to the U.S. market. In 1973, the Atherton Division changed its name to Litton Microwave Cooking Products.

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[36] Hobart, which is a small manufacturer, supplied the Commission with only limited data. ***.

[37] Petition, p. 2.

[38] Until the spring of 1989, Menumaster produced both CMOs and HMOs at its Sioux Falls, SD, plant.

Table 7
CMOs and HMOs: U.S. producers, plant locations, and position taken with respect to the petition

Firm	Plant location(s)	Position taken with respect to the petition
U.S. CMO producers:		
Menumaster[1]	Sioux Falls, SD	Petitioner
Amana[2]	Fayetteville, TN	***
Sharp MCA[3]	Memphis, TN	Opposes
Hobart[4]	Troy, OH	***
Matsushita Cooking Appliance Co.[5]	Franklin Park, IL	Opposes
U.S. HMO producers:		
Amana[2]	Fayetteville, TN	***
Sharp MCA[3]	Memphis, TN	Opposes
Matsushita Cooking Appliance Co.[5]	Franklin Park, IL	Opposes
Magic Chef Co.[6]	Anniston, AL	***
GoldStar of America, Inc.[7]	Huntsville, AL	***
White Consolidated Industries[8]	Dalton, GA	***
Whirlpool Corp.	Benton Harbor, MI	***
Thermador[9]	Los Angeles, CA	***
General Electric Co.[10]	Louisville, KY	***
Toshiba America Consumer Products, Inc.	Lebanon, TN	***

[1] A wholly owned subsidiary of Litton Industries, Beverly Hills, CA.
[2] A wholly owned subsidiary of Raytheon Corp., Lexington, MA.
[3] A wholly owned subsidiary of Sharp Electronics Corp., Osaka, Japan.
[4] A wholly owned subsidiary of PMI Food Equipment Group, Troy, OH.
[5] A wholly owned subsidiary of Matsushita Electric Corp. of America, Secaucus, NJ. Sells microwave ovens under the Panasonic and Quasar brand names.
[6] A wholly owned subsidiary of Maytag Corp., Newton, IA.
[7] A wholly owned subsidiary of GoldStar Co., Ltd., Seoul, Korea.
[8] Sells under the Frigidaire, Gibson, Tappan, and White Westinghouse brand names.
[9] A wholly owned subsidiary of Masco Co.
[10] Sells under the General Electric, Hotpoint, RCA, and private-label brand names.

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

In August 1988, the Litton Microwave Cooking Products Division of Litton Systems, Inc. was sold by Litton Industries and purchased by Microwave Products of America, Inc. (MPA).[39] Two months later, in October 1988, MPA filed for

[39] MPA was a wholly owned subsidiary of Microwave Holdings, Inc., a privately held Delaware corporation.

reorganization under Chapter 11 of the U.S. Federal Bankruptcy Code.[40] In August 1989, MPA changed the brand name of its commercial microwave oven line from Litton to Menumaster. In 1990, the Federal Bankruptcy Court approved a reorganization plan for MPA sponsored by Litton Industries, Inc., and MPA became Menumaster, Inc., a subsidiary of Litton industries, Inc., on January 24, 1991.[41]

Menumaster accounted for *** percent of U.S.-produced shipments in 1988, *** percent in 1989, *** percent in 1990, *** percent in January-March 1990, and *** percent in January-March 1991. Menumaster accounted for *** percent of U.S.-produced exports in 1988, *** percent in 1989, *** percent in 1990, *** percent in January-March 1990, and *** percent in January-March 1991. ***.

Amana

Amana is a wholly owned subsidiary of Raytheon Corp. with a microwave production facility located in Fayetteville, TN.[42] Amana produces both CMOs and HMOs. According to questionnaire responses received by the Commission, Amana is ***, accounting for *** percent of U.S. production in 1990. In addition to microwave ovens, Amana manufactures a wide variety of other household and commercial appliances, including freezers, refrigerators, electric cooking equipment, room air conditioners, heat pumps, waste compactors, washers, and dryers.

Amana accounted for *** percent of U.S.-produced shipments in 1988, *** percent in 1989, *** percent in 1990, *** percent in January-March 1990, and *** percent in January-March 1991. Amana accounted for *** percent of U.S.-produced exports in 1988, *** percent in 1989, *** percent in 1990, *** percent in January-March 1990, and *** percent in January-March 1991. ***.

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[40] See, *Microwave Products of America, Inc. FY 1990 Business Plan,* July 24, 1989; *Disclosure Statement Relating to Second Amended Plan of Reorganization Filed By Litton Industries, Inc.,* January 1990; and *Trustee's Annual Report: Possible Sale to Litton,* October 1990, filed with the U.S. Bankruptcy Court for the Western District of Tennessee, Western Division.

[41] For a more complete discussion of the reorganization involving Litton and Menumaster, see the "Financial Experience of U.S. Producers" section of this report.

[42] ***.

Sharp MCA

Sharp MCA, is wholly owned by Sharp Electronics Corp.[43] Its production facility is in a foreign trade subzone in Memphis, TN. In addition to microwave ovens, Sharp MCA manufacturers color television receivers. CMOs accounted for *** percent of total microwave oven production in 1988, *** percent in 1989, *** percent in 1989, *** percent in January-March 1990, and *** percent in January-March 1991.

Sharp MCA accounted for *** percent of total U.S.-produced shipments in 1988, *** percent in 1989, *** percent in 1990, *** percent in January-March 1990, and *** percent in January-March 1991. ***.

Hobart

Hobart, Troy, OH, is a diversified manufacturer of commercial food-service equipment.[44] Hobart produced only *** CMO units in 1988, *** units in 1989, and *** units in 1990, all in the 1000W-1500W range. Hobart accounted for *** percent of total U.S.-produced shipments in 1988, *** percent in 1989, and *** percent in 1990.

***. Hobart provided only a partial response to the Commission's questionnaires.

Matsushita Cooking Appliance Co.

Matsushita Cooking Appliance Co., Franklin Park, IL, a subsidiary of Matsushita Electric Industrial Co. of Japan, produces both HMOs and CMOs. The company has been producing HMOs for several years, but it did not begin production of CMOs until May 1991. Because Matsushita Cooking Appliance Co. did not produce CMOs between January 1988 and March 1991, the company did not submit complete data on the firm's CMO operations.

Matsushita Cooking Appliance Co. currently produces two CMO models in the United States. Both of these models have a maximum rated output wattage of 700W, and are intended to replace the company's Panasonic models NE-6035 and NE-6055, which were previously imported by Matsushita until early 1991. The two imported models were rated at 650W and did not meet certification by the NSF.

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[43] Sharp MCA indicated that is opposing the imposition of antidumping duties.

[44] ***.

Commerce, in its notice of initiation, tentatively defined the scope of the investigation as CMOs with a minimum wattage rating of 700W. However, Commerce informed the Commission on July 19, 1991, that it intends to include all CMOs within its scope, regardless of wattage. Therefore, Matsushita's imports of models NE-6035 and NE-6055, which are rated at less than 700W, have been included in the data presented in this report.[45]

U.S. Importers

Three firms were identified as importers of CMOs from Japan during the period of investigation.[46] The Commission sent importers' questionnaires to these firms, and to approximately 10 importers of HMOs from Japan. The Commission requested information on both CMOs and HMOs.

Respondents to the Commission's importers' questionnaire who import CMOs are believed to represent virtually all imports of such goods from Japan. Respondents importing HMOs from Japan are believed to represent approximately 50 percent of such imports. Table 8 lists those firms responding to the Commission's importers' questionnaire.

Table 8
CMOs and HMOs: U.S. importers of microwave ovens from Japan, 1990

Firm	Company location
*	*
*	*
*	*
*	*
*	*
*	*
*	*

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

[45] Commerce requested public comment on the technical specifications set forth in its scope definition until July 22, 1991.

[46] Sharp and Matsushita imported *** CMOs during the period of investigation. ***.

Channels of Distribution

Table 9 presents U.S. producers' and importers' shipments of CMOs to related and unrelated distributors and end users in 1990. According to questionnaire responses, no U.S.-produced or imported CMOs were distributed through related distributors or end users in 1990. The overwhelming majority of U.S.-produced CMOs, 81.7 percent, are sold to unrelated distributors, with the remaining 18.3 percent sold to unrelated end users. Imported CMOs share a similar pattern of distribution, with *** percent of imports sold to unrelated distributors, with the remaining *** percent sold to unrelated end users.

Table 9
CMOs: U.S. producers' and importers' shipments to distributors and end users, by maximum rated output wattage, 1990

(In 1,000 units)

Maximum rated output wattage[1]	Shipments to related— Distributors	Shipments to related— End users	Shipments to unrelated— Distributors	Shipments to unrelated— End users
U.S. produced—				
650-800W	0	0	41.1	8.8
1000-1200W	0	0	10.3	4.0
1300-1500W	0	0	8.2	1.0
1600W or greater	0	0	0.8	0
All other models	0	0	1.0	0
Total	0	0	61.7	13.8
Imported from Japan—				
650-800W	0	0	***	***
1000-1200W	0	0	***	***
1300-1500W	0	0	***	***
1600W or greater	0	0	***	***
All other models	0	0	***	***
Total	0	0	***	***

[1] Using standard IEC 59H test yields (old standard).

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

CONSIDERATION OF ALLEGED MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

U.S. Capacity, Production, and Capacity Utilization[47]

The Commission requested U.S. CMO producers to provide data on their average-of-period and end-of-period practical capacity, production, and capacity utilization for 1988-90, January-March 1990, and January-March 1991. These data are presented in table 10.[48] Because both CMOs and HMOs are produced on the same production lines, producers had to estimate CMO capacity based on their total microwave oven capacity, adjusting these data according to each company's normal product mix.

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[47] In addition to requesting data on CMOs, the Commission also requested data on HMOs. Available data on CMOs and HMOs combined are presented in app. C.

[48] The Commission defined capacity or full production capability as the maximum level of production that an establishment could reasonably expect to attain under normal operating conditions. In estimating full production capability, the following was to be taken into consideration:

- Assume that only the machinery and equipment in place and ready to operate will be utilized. Do not consider facilities or equipment that would require extensive reconditioning before they can be made operable.
- Assume normal downtime, maintenance, repair, and cleanup.
- Do not assume number of shifts and hours of plant operations under normal conditions to be higher than that attained by your plant any time during the past 5 years.
- Do not consider overtime pay, availability of labor, materials, utilities, etc., to be limiting factors.
- Assume a product mix that was typical or representative of your production during the period. If your plant is subject to considerable short-run variation, assume the product mix of the current period.
- Do not assume increased use of productive facilities outside the plant for services (such as contracting out subassembly work) in excess of the proportion that would be normal during the time periods covered by this questionnaire.

End-of-period capacity was defined as full production capability of a plant(s) to produce for a period of time using the machinery and equipment in place at the end of the period.

Average-of-period capacity was defined as full production capability of a plant(s) to produce for a period of time using the machinery and equipment actually in place during the period. Unless there has been a change in full production capability (e.g., as a result of equipment or plant startup or shutdown) during the period, the end-of-period and average-of-period capabilities should be the same.

Table 10
CMOs: U.S. capacity,[1] production, and capacity utilization, 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March— 1990	January-March— 1991
	Quantity (1,000 units)				
Production:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Hobart	***	***	***	***	***
Total	92.3	100.6	89.9	21.1	18.7
End-of-period capacity:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp[2]	***	***	***	***	***
Hobart	***	***	***	***	***
Total	133.5	133.9	192.5	32.9	48.5
Average-of-period-capacity:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp[2]	***	***	***	***	***
Hobart	***	***	***	***	***
Total	133.5	133.9	161.5	32.9	48.5
	Ratio (percent)				
End-of-period capacity utilization:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp[2]	***	***	***	***	***
Hobart	***	***	***	***	***
Total[3]	68.0	74.3	46.3	64.1	38.5
Average-of-period capacity utilization:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp[2]	***	***	***	***	***
Hobart	***	***	***	***	***
Total[3]	68.0	74.3	55.2	64.1	38.5

[1] Practical capacity was defined as the greatest level of output a plant can achieve within the framework of a realistic work pattern. Producers were asked to consider, among other factors, a normal product mix and an expansion of operations that could be reasonably attained in their industry and locality in setting capacity in terms of the number of shifts and hours of plant operations. The capacity was reported using industry ranges of 40 hours per week and 46.4-50.0 weeks per year.
[2] Sharp did not break out capacity by products. ***.
[3] Calculated using data from firms that provided information on both production and capacity.

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

Reported average-of-period capacity increased 0.3 percent from 1988 to 1989, and increased 20.6 percent from 1989 to 1990. During the interim periods January-March 1990 and January-March 1991, average-of-period capacity increased 47.4 percent. Average-of-period capacity utilization increased from 68.0 percent in 1988 to 74.3 percent in 1989, but declined to 55.2 percent in 1990. During January-March 1990, average-of-period capacity utilization was 64.1 percent, decreasing to 38.5 percent in January-March 1991.

U.S. Producers' Shipments

Data for U.S. producers' shipments are presented in table 11 and figure 5. According to data collected from the Commission's questionnaires, U.S. shipments of CMOs by U.S. producers[49] increased 1.9 percent in quantity from 1988 to 1989, decreased 0.7 percent from 1989 to 1990, and decreased 6.2 percent between the interim periods. The value of U.S. shipments increased 0.4 percent from 1988 to 1989, increased 1.7 percent from 1989 to 1990, but decreased 16.6 percent between the interim periods. The unit value of domestic market shipments decreased 1.9 percent from 1988 to 1989, increased 2.0 percent from 1989 to 1990, but decreased 11.1 percent during the interim periods. None of the U.S. producers reported any intracompany transfers. Export shipments represented *** percent of total U.S. producers' shipments in 1988, *** percent in 1989, *** percent in 1990, *** percent in January-March 1990, and *** percent in January-March 1991.

U.S. Producers' Inventories

Data for U.S. producers' inventories are presented in table 12. According to data collected from the Commission's questionnaires, end-of-period inventories of CMOs by U.S. producers[50] increased 24.1 percent from 1988 to 1989, decreased 4.1 percent from 1989 to 1990, and decreased 0.8 percent during the interim periods.

[49] Hobart did not provide the value of its shipments in its response to the Commission's producers' questionnaire.

[50] Hobart did not provide inventory data in response to the Commission's producer's questionnaire.

Table 11
CMOs: Shipments of U.S. producers,[1] 1988-90, January-March 1990, and January-March 1991

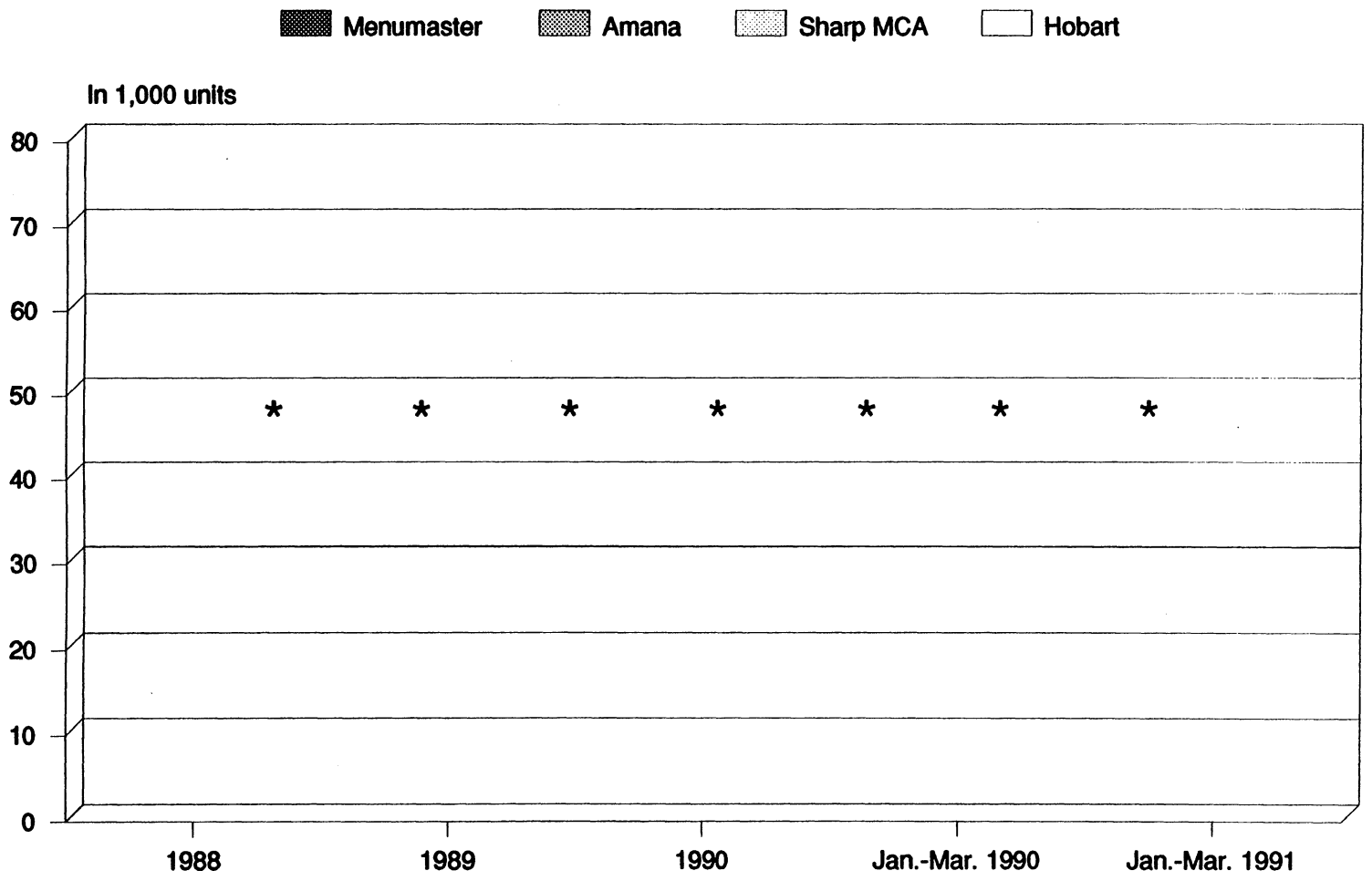
Item	1988	1989	1990	January-March 1990	January-March 1991
			Quantity (1,000 units)		
U.S. shipments:[2]					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Hobart	***	***	***	***	***
Subtotal	73.4	74.8	74.3	17.8	16.7
Exports:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Subtotal	***	***	***	***	***
Total	***	***	***	***	***
			Value (1,000 dollars)		
U.S. shipments:[2]					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Subtotal	23,260	23,357	23,759	5,800	4,835
Exports:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Subtotal	***	***	***	***	***
Total	***	***	***	***	***
			Unit value (per unit)		
U.S. shipments:[2]					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Average[3]	$323.06	$316.92	$323.25	$325.84	$289.52
Exports:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Subtotal	***	***	***	***	***
Total	***	***	***	***	***

[1] ***. Hobart did not provide the value of its shipments.
[2] U.S. shipments equals company transfers plus domestic market shipments.
[3] Calculated using data from firms providing both quantity and value of shipments.

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

Figure 5

CMOs: Domestic shipments of U.S. producers, by firms, 1988-90, January-March 1990, and January-March 1991



Source: Table 11.

Table 12
CMOs: U.S. producers' end-of-period inventories, 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March— 1990	January-March— 1991
	Quantity (1,000 units)				
End-of-period inventories:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Total	13.7	17.0	16.3	15.3	15.2
	Ratio of inventories to— (percent)				
U.S. shipments:[1]					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp	***	***	***	***	***
Total	19.0	23.1	22.2	21.5	22.8

[1] U.S. shipments equals company transfers plus domestic market shipments.

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

U.S. Employment, Wages, Compensation, and Productivity

Data for employment, wages, and productivity are presented in table 13. According to data collected from the Commission's questionnaires, the number of production and related workers (PRWs) producing CMOs decreased 3.5 percent from 1988 to 1989, decreased 6.6 percent from 1989 to 1990, and decreased 18.8 percent during the interim periods. The number of hours worked by PRWs producing CMOs declined 9.1 percent from 1988 to 1989, increased 58.6 percent from 1989 to 1990, and increased 3.8 percent during the interim periods.

Table 13
Average number of production and related workers producing CMOs, hours worked,[1] total compensation paid to such employees, hourly compensation, productivity, and unit labor costs, 1988-90, January-March 1990, and January-March 1991[2]

Item	1988	1989	1990	January-March— 1990	1991
Number of production and related workers (PRWs)	141	136	127	165	134
Hours worked by PRWs (1,000 hours)	154	140	222	52	54
Total compensation paid to PRWs (1,000 dollars)	1,453	1,383	2,138	470	517
Hourly total compensation paid to PRWs[3]	$9.44	$9.88	$9.63	$9.04	$9.57
Productivity[4] (units per hour)	0.59	0.71	0.40	0.41	0.35
Unit labor costs[5] (per unit)	$15.99	$13.89	$23.99	$22.30	$27.71

[1] Includes hours worked plus hours of paid leave time.
[2] Firms providing employment data accounted for 100.0 percent of reported total U.S. shipments (based on quantity) in 1990.
[3] Calculated using data from firms that provided information on both compensation paid and hours worked.
[4] Calculated using data from firms that provided information on both hours worked and production.
[5] On the basis of total compensation paid. Calculated using data from firms that provided information on both total compensation paid and production.

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

Total compensation paid to PRWs decreased 4.8 percent from 1988 to 1989, increased 54.6 percent from 1989 to 1990, and increased 10.0 percent during the interim periods. Hourly total compensation paid to PRWs increased 4.7 percent from 1988 to 1989, decreased 2.5 percent from 1989 to 1990, but increased 5.9 percent during the interim periods.

Productivity (units per hour) increased 20.5 percent from 1988 to 1989, decreased 43.5 percent from 1989 to 1990, and decreased 14.8 percent during the interim periods. Unit labor costs decreased 13.1 percent from 1988 to 1989, increased 72.6 percent from 1989 to 1990, and increased 24.3 percent during the interim periods.

Menumaster's production employees are members of the United Electrical Radio and Machine Workers of America, Local 118. ***.[51]

Amana's production employees are members of the International Association of Machinists and Aerospace Workers, AFL-CIO, Local Lodge 1526. ***.

Sharp's production employees are members of the International Brotherhood of Electrical Workers, Local 474. ***.

Financial Experience of U.S. Producers

Three producers ***, accounting for *** percent of 1990 U.S. production of CMOs, furnished usable income-and-loss data. Two (***) of these producers plus *** also provided income-and-loss data on HMOs. Combined financial information on CMOs and HMOs is presented in appendix C.

Amana produces primarily refrigeration equipment within its establishment. Microwave ovens accounted for *** percent (CMOs represented *** percent and HMOs *** percent) of total establishment sales in 1990. Sharp MCA produces both color television receivers and microwave ovens in its establishment. CMO production is *** portion of Sharp MCA's total establishment manufacturing operations.[52] In contrast, Menumaster currently produces only CMOs and parts in its establishment.[53]

The income-and-loss experience of the CMO producers is shown in table 14. Operating income and pretax net income of U.S. producers on CMO operations are presented in figure 6. Net sales declined by *** percent from *** in 1988 to *** in 1989. In 1990 sales were ***, an increase of *** percent over 1989 sales of ***. Operating income was *** in 1988 and *** in 1989. An operating loss of *** was incurred in 1990. Operating income (loss) margins, as a share of net sales, were *** percent in 1988, *** percent in 1989, and *** percent in 1990. One firm incurred an operating loss in 1990.

Interim 1991 sales were ***, a decline of *** percent from interim 1990 sales of ***. Operating losses were *** in interim 1990 and *** in interim 1991. Operating (loss) margins were *** percent in interim 1990 and *** percent in interim 1991. One firm incurred an operating loss in interim 1990, and two firms

---

[51] ***.

[52] ***.

[53] For these reasons, the overall establishment operations of the U.S. producers are not presented. Menumaster's operations will be discussed separately in a subsequent section.

in interim 1991. Selected income-and-loss data, by producers, are shown in table 15.

Table 14
Income-and-loss experience of U.S. producers on their operations producing CMOs, fiscal years 1988-90, January-March 1990, and January-March 1991[1]

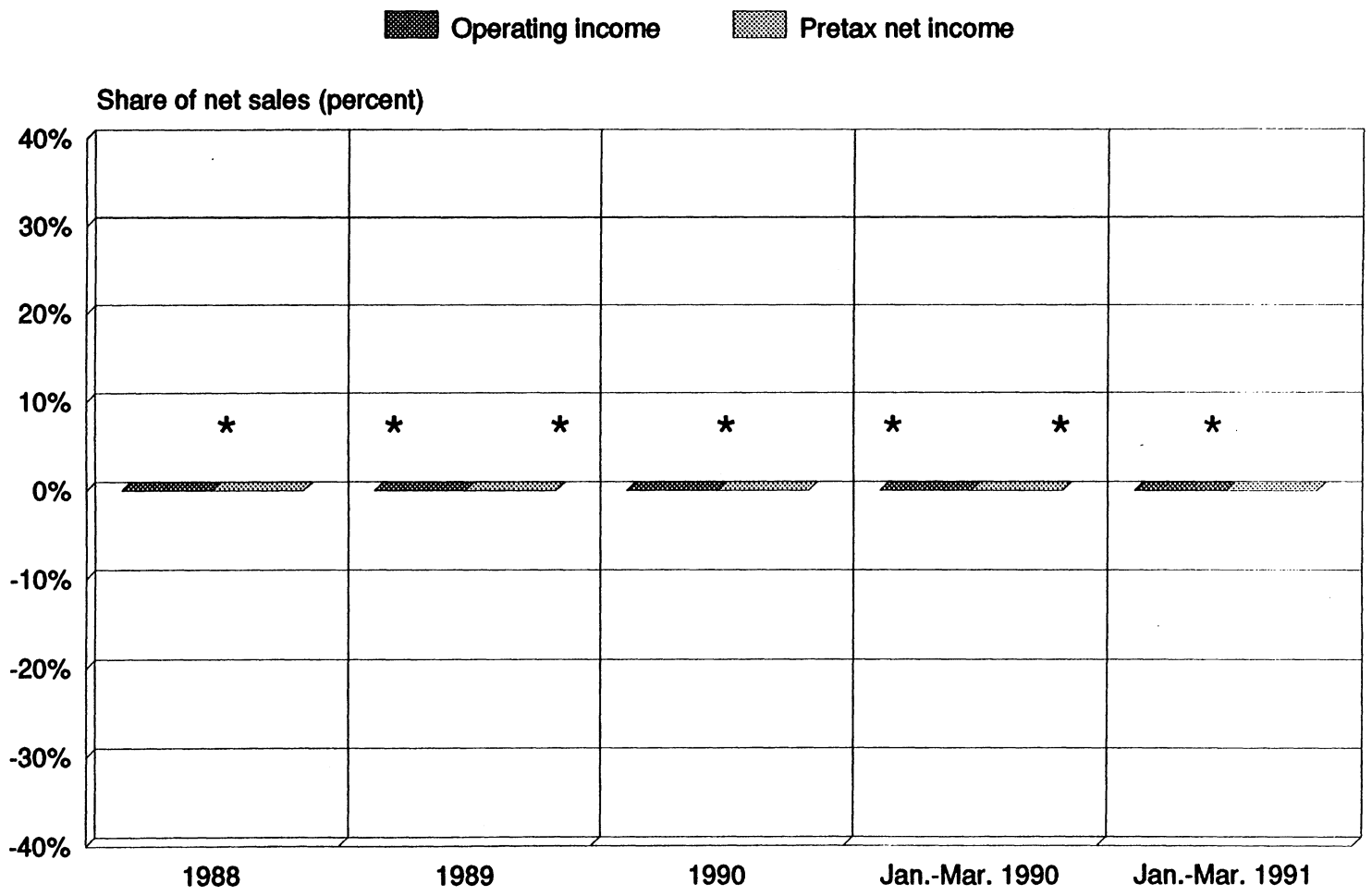
Item	1988	1989	1990	January-March— 1990	1991
			Value (1,000 dollars)		
Net sales	***	***	***	***	***
Cost of goods sold	***	***	***	***	***
Gross profit	***	***	***	***	***
Selling, general, and administrative expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Startup or shutdown expense	***	***	***	***	***
Interest expense	***	***	***	***	***
Other income or (expense), net	***	***	***	***	***
Net income or (loss) before income taxes	***	***	***	***	***
Depreciation and amortization	***	***	***	***	***
Cash flow[2]	***	***	***	***	***
			Ratio to net sales (percent)		
Cost of goods sold	***	***	***	***	***
Gross profit	***	***	***	***	***
Selling, general, and administrative expenses	***	***	***	***	***
Operating income or (loss)	***	***	***	***	***
Net income or (loss) before income taxes	***	***	***	***	***
			Number of firms reporting		
Operating losses	***	***	***	***	***
Net losses	***	***	***	***	***
Data	***	***	***	***	***

[1] Fiscal years are: ***.
[2] Cash flow is defined as net income or loss plus depreciation and amortization.

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

Figure 6

Operating income and pretax net income margins of U.S. producers on CMO operations, fiscal years 1988-90, January-March 1990, and January-March 1991



Source: Table 14.

Table 15
Selected income-and-loss data of U.S. producers on their operations producing CMOs, by firms, fiscal years 1988-90, January-March 1990, and January-March 1991[1]

Item	1988	1989	1990	January-March 1990	January-March 1991
	Value (1,000 dollars)				
Net sales:					
Menumaster[2]	***	***	***	***	***
Amana[2]	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***
Cost of goods sold:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***
SG&A:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***
Operating income (loss):					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***
Net income (loss):					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***
Cash flow (deficit):					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***

(table continued)

Table 15—*Continued*
Selected income-and-loss data of U.S. producers on their operations producing CMOs, by firms, fiscal years 1988-90, January-March 1990, and January-March 1991[1]

Item	1988	1989	1990	January-March— 1990	1991
	Share of net sales (percent)				
Cost of goods sold:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***
SG&A:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***
Operating income (loss):					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***
Net income (loss):					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***
Cash flow (deficit):					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Total	***	***	***	***	***

[1] Fiscal years are: ***.
[2] Includes ***.

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

* * * * * * *.[54]

***.[55] SG&A expense varied sharply between the producers. Details of SG&A expense will be discussed in the analysis of Menumaster's operations.

Analysis of Menumaster's Operations

As a result of the elimination of HMO production in 1990, Menumaster is a one product company producing only CMOs (including parts). Menumaster's phaseout of HMOs began before the period of investigation. At its peak in 1985, HMO sales were over *** and total establishment sales, including CMOs, were over ***. This level of sales was supported by a significantly higher manufacturing cost structure and SG&A expense level than exists today. ***.[56]

After the bankruptcy, The Belet Group Partners (Crisis Management Professionals) were employed (as of May 22, 1989) to develop and implement a turnaround plan which would curb the massive operating losses and restructure the company's operations in conjunction with a Chapter 11 reorganization.[57] The plan included reorganizing manufacturing and marketing operations, and reducing SG&A, as part of a transition from a large consumer-oriented business to a company concentrating on commercial food-service equipment.

According to Belet's letter (dated October 12, 1990) to the Trustee, the turnaround should be completed in fiscal year 1991 (ending July 31), as the burden of approximately $1 million in various expenses is eliminated. The following was noted in the above referenced letter:

> *In FY 1991, Partners expects to complete the turnaround by demonstrating the ability to sustain an operating profit, once relieved of the burdens of administration and bankruptcy which total almost $1 (million) per year at present.*[58]

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[54] ***.

[55] If a final investigation occurs, the accounting methodology for *** will be reviewed for possible adjustments.

[56] A copy of this exhibit is presented in app. C as fig. C-1.

[57] According to the plan of reorganization filed by Litton Industries, Inc., "(a)pparently, the most direct cause of the debtor's financial failure was the unavailability of working capital." See, *Trustee's Annual Report: Possible Sale to Litton,* October 1990, p. 23.

[58] Excerpt from letter dated Oct. 12, 1990 from The Belet Group Partners to Mr. John Dunlap, Trustee.

As part of the plan, the manufacturing facility in Sioux Falls was reduced from 350,000 square feet in three buildings to approximately 150,000 in one building. Unnecessary assets were sold, with the exception of a warehouse building for which the company has been unable to locate a buyer. These actions, plus the closure of the Memphis facility and reduction/transfer of some personnel, sharply diminished the level of fixed costs.

SG&A expenses were also reduced substantially. An analysis of Menumaster's sales and SG&A expenses by establishment, HMOs, and CMOs is shown in table 16. As a result of the downsizing, SG&A for the total establishment *** percent from *** million in 1988 to *** million in 1990. In interim 1991, SG&A was ***, *** over interim 1990 SG&A of ***. SG&A, as a ratio to net sales, was *** in 1988, *** in 1989, and *** in 1990. In interim 1990 it was ***, but in interim 1991 the ratio was ***, ***.

Menumaster's SG&A ratios for CMOs are considerably higher than the comparable ratios for Amana (table 15). ***.

Investment in Productive Facilities

Of the three producers of CMOs, only *** reported property, plant, and equipment (PP&E) that was related to CMOs. *** reported the total for its establishment with the notation that ***. *** only reported its total establishment PP&E. As a result, the data reported in this section are not suitable for computing rates of return for CMOs. The data reported are presented in table 17.

Table 16
Analysis of Menumaster's sales and SG&A expenses, fiscal years 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March 1990	January-March 1991
*	*	*	*	*	*	*

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

Table 17
CMOs: Value of assets and return on assets of U.S. producers, fiscal years 1988-90, January-March 1990, and January-March 1991

(In 1,000 dollars)

Item	As of the end of fiscal year			As of March 31—	
	1988	1989	1990	1990	1991
CMOs:[1]					
Fixed assets:					
Original cost	***	***	***	***	***
Book value	***	***	***	***	***
Menumaster:					
Fixed assets:					
Original cost	***	***	***	***	***
Book value	***	***	***	***	***
Total assets[2]	***	***	***	***	***

[1] Data are for *** only.
[2] Defined as book value of fixed assets plus current and noncurrent assets.

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

Capital Expenditures

All three producers reported capital expenditure data, which are presented in table 18.

Table 18
CMOs: Capital expenditures by U.S. producers, fiscal years 1988-90, January-March 1990, and January-March 1991

(In 1,000 dollars)

Item	1988	1989	1990	January-March— 1990	1991
Land and land improvements	***	***	***	***	***
Building and leasehold improvements	***	***	***	***	***
Machinery, equipment, and fixtures	***	***	***	***	***
Total	***	***	***	***	***

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

Research and Development Expenses

All three producers reported their research and development expenses for CMOs. These data are presented in table 19.

Table 19
CMOs: Research and development expenses of U.S. producers, fiscal years 1988-90, January-March 1990, and January-March 1991

(In 1,000 dollars)

Item	1988	1989	1990	January-March— 1990	1991
Research and development expenses	***	***	***	***	***

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

Impact of Imports on Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of CMOs from Japan on their existing development and production efforts, growth, investment, and ability to raise capital. Their responses are presented in appendix D.

CONSIDERATION OF ALLEGED THREAT OF MATERIAL INJURY

Subsection 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 the merchandise, the Commission shall consider, among other relevant economic factors*[59]*—*
>
> *(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),*
>
> *(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,*
>
> *(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,*
>
> *(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,*
>
> *(V) any substantial increase in inventories of the merchandise in the United States,*
>
> *(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,*
>
> *(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,*
>
> *(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,*

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[59] Subsection 771(7)(F)(sub) 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."

(IX) in any investigation under this subtitle 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.[60]

Subsidies (item (I)) and agricultural products (item (IX)) are not issues in this investigation; 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;" 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." Following is available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets.

U.S. Importers' Inventories

U.S. importers' end-of-period inventory data are presented in table 20. According to responses to Commission questionnaires, end-of-period inventories of CMOs from Japan decreased *** percent from 1988 to 1989, increased *** percent from 1989 to 1990, and increased *** percent during the interim periods.

[60] 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."

Table 20
CMOs from Japan: End-of-period inventories of U.S. importers, 1988-90, January-March 1990, and January-March 1991[1]

Item	1988	1989	1990	January-March 1990	January-March 1991
Quantity (1,000 units)	***	***	***	***	***
Ratio to imports (percent)	***	***	***	***	***
Ratio to U.S. shipments of imports (percent)	***	***	***	***	***

[1] Data presented on inventories of CMOs were reported by ***, ***.

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

Ability of Foreign Producers to Generate Exports and Availability of Export Markets Other Than the United States[61]

There are presently 6 manufacturers of CMOs in Japan; however, only two firms, Matsushita and Sharp, exported to the United States during the period of investigation. The four firms which manufacture but do not export to the United States are Hitachi Corp., Mitsubishi Corp., Sanyo Corp., and Toshiba Corp. Table 21 presents Japanese home-market sales of CMOs and market shares, by producers, in 1989.

[61] The Commission also sent a telegram soliciting data from the U.S. embassy in Tokyo for the purpose of gathering information on the ability of foreign producers to generate exports, the availability of export markets other than the United States, and whether the subject merchandise is subject to antidumping findings or remedies in any Gatt-member countries.

The Commission received a response dated July 10, 1991, presenting data regarding HMOs only. The telegram indicated that data on CMOs was not readily available.

Table 21
CMOs: Japanese home-market sales and estimated market shares, by producers, 1989

Manufacturer	Home-market sales (In units)	Market share (In percent)
Matsushita	***	***
Sharp	***	***
Hitachi	***	***
Toshiba	***	***
Others[1]	***	***
Total	***	100.0

[1] Includes sales by Sanyo Corp., Mitsubishi Corp., and imports.

Source: Petitioner's amendment to the petition, June 26, 1991.

Table 22 presents capacity, production, capacity utilization, home-market shipments, and exports for producers of CMOs in Japan.

Matsushita Electric Industrial Co., Ltd.

Matsushita Electric Industrial Co., Ltd. (Matsushita) manufactures CMOs and HMOs through its Matsushita Housing Products Co., Ltd. subsidiary located in Nara, Japan. This company manufacturers microwave ovens and built-in gas ovens.[62] CMOs accounted for *** percent of the company's microwave oven sales in fiscal year 1990, while HMOs accounted for *** percent of microwave oven sales.[63] In its response to a request for information, Matsushita indicated that ***. *** U.S. imports of its CMOs are through its subsidiary, Matsushita Electric Corp. of America, Special Products Group.[64]

[62] Built-in gas ovens are sold in the domestic market only.

[63] ***.

[64] Matsushita is also ***. Matsushita imports its HMOs through ***. ***. ***.

Table 22
CMOs: Japan's capacity, production, capacity utilization, home-market shipments, and exports, by firms, 1988-90, January-March 1990, January-March 1991, and projections for 1991 and 1992[1]

(In 1,000 units, unless otherwise noted)

Item	1988	1989	1990	January-March— 1990	January-March— 1991	Projections— 1991	Projections— 1992
Capacity:							
Matsushita	***	***	***	***	***	***	***
Sharp[2]	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***
Production:							
Matsushita	***	***	***	***	***	***	***
Sharp	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***
Capacity utilization (in percent):							
Matsushita	***	***	***	***	***	***	***
Sharp	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***
Home-market shipments:							
Matsushita	***	***	***	***	***	***	***
Sharp	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***
Exports to the United States:							
Matsushita	***	***	***	***	***	***	***
Sharp	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***
Exports to all other countries:							
Matsushita	***	***	***	***	***	***	***
Sharp	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***
Ratio of U.S. exports to total shipments (in percent):							
Matsushita	***	***	***	***	***	***	***
Sharp	***	***	***	***	***	***	***
Total	***	***	***	***	***	***	***

[1] There are four other manufacturers of CMOs in Japan: Toshiba, Sanyo, Hitachi, and Mitsubishi. These manufacturers did not supply data on capacity, production, home-market shipments, or exports. Therefore, this table includes data of Matsushita and Sharp only.
[2] Sharp did not break out capacity by products. ***.

Note—Because of rounding, figures may not add to the totals shown.

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

Sharp Corp.

Sharp Corp. (Sharp) has a production facility located in Osaka, Japan.[65] CMOs accounted for *** percent of Sharp's total sales in its most recent fiscal year. HMOs accounted for *** percent of total sales. Sharp indicated in its response to a request for information that ***. Sharp Electronics Corp., Sharp's U.S. subsidiary, ***.[66]

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

U.S. Imports

Data on U.S. imports have been compiled from questionnaire responses because official statistics of the Department of Commerce do not accurately distinguish between CMO and HMO imports. Table 23 and figure 7 present U.S. imports for consumption, by firms, for the period under investigation.

The quantity of imports of CMOs from Japan decreased *** percent from 1988 to 1989, increased *** percent from 1989 to 1990, and increased *** percent during the interim periods. The value of imports decreased *** percent from 1988 to 1989, increased *** percent from 1989 to 1990, and decreased *** percent during the interim periods. The average unit value (dollars per unit) of imports decreased *** percent from 1988 to 1989, increased *** percent from 1989 to 1990, and decreased *** percent during the interim periods.

[65] The manufacturing facility in Japan was opened in 1970. Sharp also has HMO manufacturing plants in Wrexham, United Kingdom, (opened 1986), and Chachoengsao, Thailand (opened in 1987).

[66] Sharp imports HMOs through ***.

Table 23
CMOs: U.S. imports for consumption, by firms, 1988-90, January-March 1990, and January-March 1991[1]

Item	1988	1989	1990	January-March— 1990	1991
			Quantity (1,000 units)		
Matsushita	***	***	***	***	***
Sharp	***	***	***	***	***
Total	***	***	***	***	***
			Value (1,000 dollars)		
Matsushita	***	***	***	***	***
Sharp	***	***	***	***	***
Total	***	***	***	***	***
			Unit value (per unit)		
Matsushita	***	***	***	***	***
Sharp	***	***	***	***	***
Total	***	***	***	***	***

[1] Only ***.

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

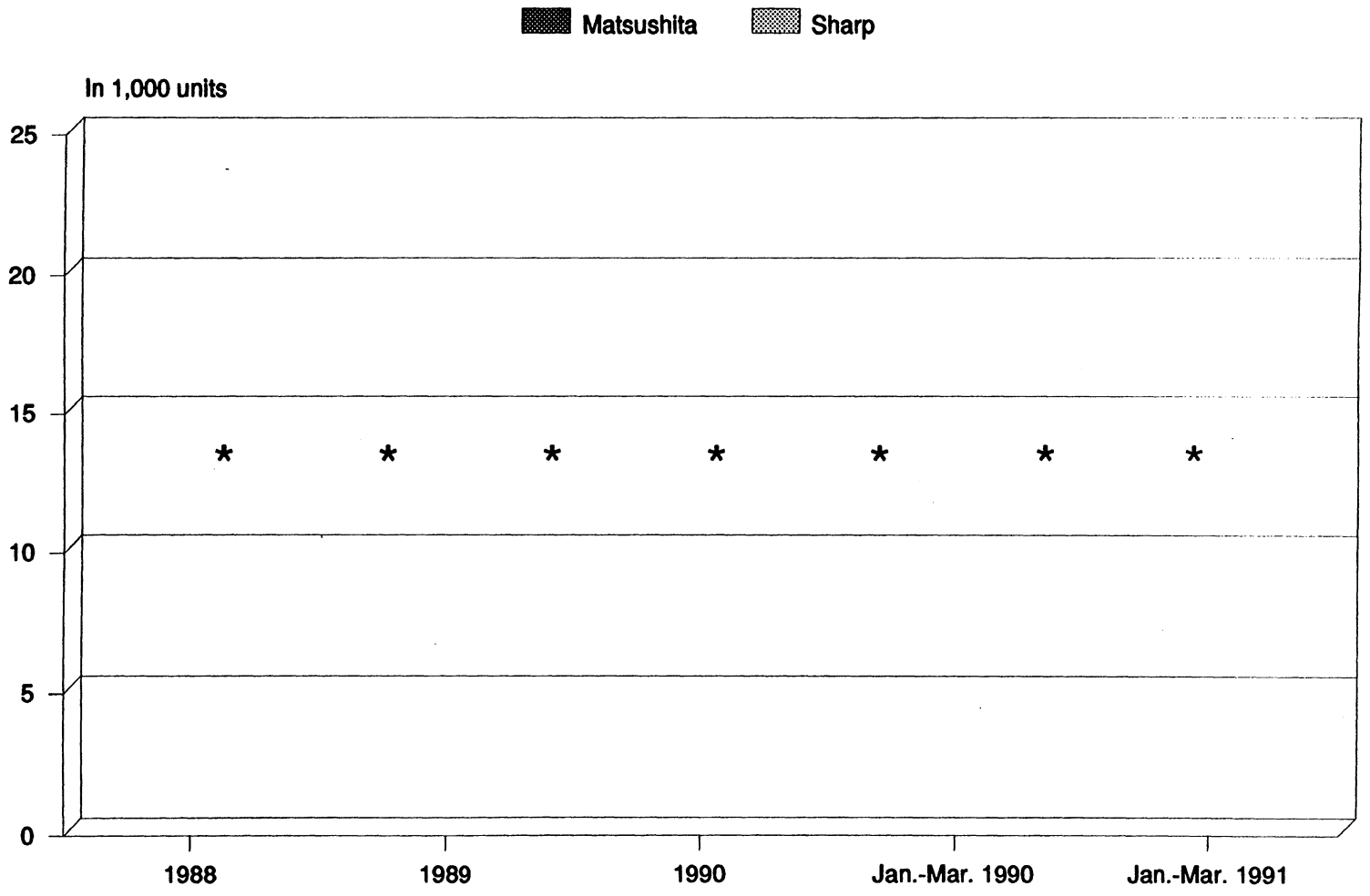
U.S. Market Penetration By Imports

Market penetration ratios of imports from Japan as a share of the quantity and value of U.S. consumption are presented in table 24, table 25, figure 8, and figure 9. U.S. market penetration ratios based on the quantity of imports of CMOs from Japan were *** percent in 1988, *** percent in 1989, *** percent in 1990, *** percent in January-March 1990, and *** percent in January-March 1991.

U.S. market penetration ratios based on the value of imports of CMOs from Japan were *** percent in 1988, *** percent in 1989, *** percent in 1990, *** percent in January-March 1990, and *** percent in January-March 1991.

Figure 7

CMOs: U.S. imports for consumption, by sources, 1988-90, January-March 1990, and January-March 1991



Source: Table 23.

Table 24
CMOs: Apparent U.S. consumption and market shares based on quantity, by firms, 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March 1990	January-March 1991
	Quantity (1,000 units)				
U.S. producers' domestic shipments:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Hobart	***	***	***	***	***
Total	73.4	74.8	74.3	17.8	16.7
U.S importers' shipments:					
Matsushita	***	***	***	***	***
Sharp	***	***	***	***	***
Total	***	***	***	***	***
Apparent consumption	***	***	***	***	***
	Share of the quantity of U.S. consumption (percent)				
U.S. producers' domestic shipments:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Hobart	***	***	***	***	***
Total	***	***	***	***	***
U.S importers' shipments:					
Matsushita	***	***	***	***	***
Sharp	***	***	***	***	***
Total	***	***	***	***	***

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.

Table 25
CMOs: Apparent U.S. consumption and market shares based on value, by firms, 1988-90, January-March 1990, and January-March 1991

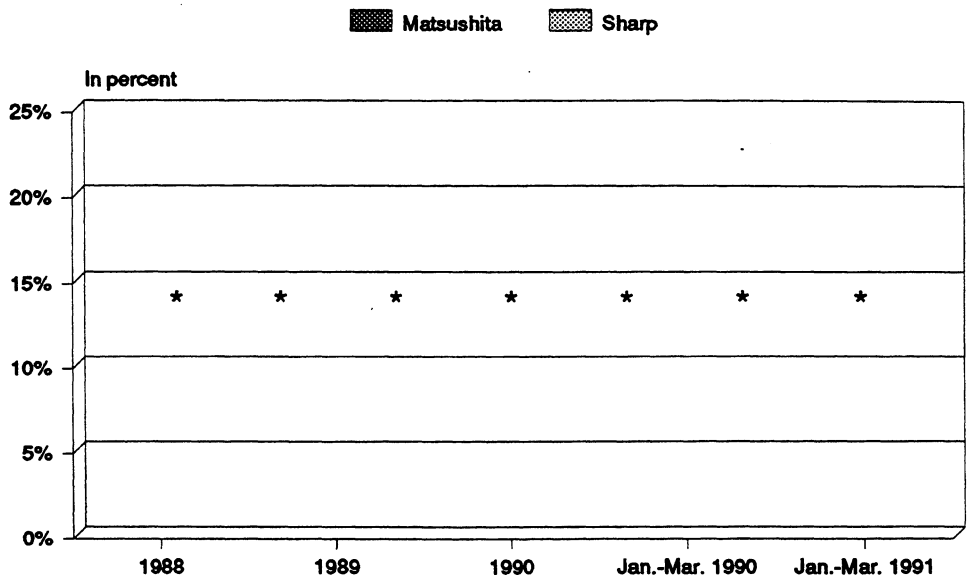
Item	1988	1989	1990	January-March— 1990	1991
	Value (1,000 dollars)				
U.S. producers' domestic shipments:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Hobart	***	***	***	***	***
Total	23,260	23,357	23,759	5,800	4,835
U.S importers' domestic shipments:					
Matsushita	***	***	***	***	***
Sharp	***	***	***	***	***
Total	***	***	***	***	***
Apparent consumption	***	***	***	***	***
	Share of the value of U.S. consumption (percent)				
U.S. producers' domestic shipments:					
Menumaster	***	***	***	***	***
Amana	***	***	***	***	***
Sharp MCA	***	***	***	***	***
Hobart	***	***	***	***	***
Total	***	***	***	***	***
U.S importers' domestic shipments:					
Matsushita	***	***	***	***	***
Sharp	***	***	***	***	***
Total	***	***	***	***	***

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.

Figure 8

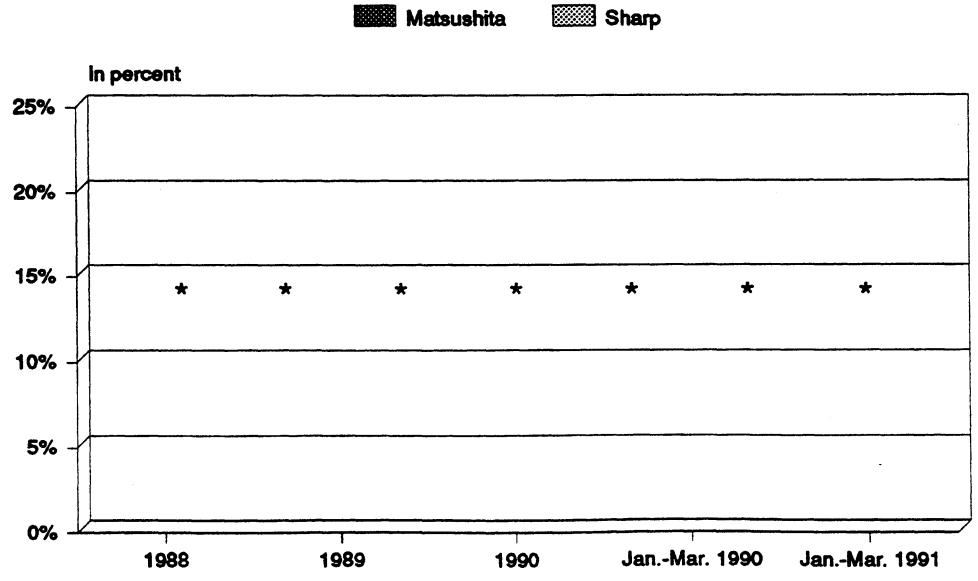
CMOs: Market penetration ratios based on quantity, 1988-90, January-March 1990, and January-March 1991



Source: Table 24.

Figure 9

CMOs: Market penetration ratios based on value, 1988-90, January-March 1990, and January-March 1991



Source: Table 25.

Prices

Market Characteristics

CMOs are used by a variety of end users involved in food preparation. Low- to medium-volume installations such as snack bars, waitress stations, sandwich shops, and bar and grills can generally use smaller, lower wattage CMO models. Medium- to high-volume installations such as restaurants, fast-food outlets, cafeterias, hotels, and hospitals generally require large, high wattage CMOs.

U.S. producers and importers of Japanese CMOs sell to distributors, food equipment dealers, and directly to end users. Both U.S. producers and importers of Japanese CMOs commonly issue price lists. ***.[67] ***.

Both U.S. producers and importers of Japanese CMOs offer a variety of discounts based on purchase volume. ***.

In addition to the common use of quantity discounts, U.S. producers and importers of Japanese CMOs also offer sales incentive programs to distributors and food equipment dealers. ***.

U.S.-produced and imported Japanese CMOs are sold on both a contract and a spot basis. ***.

Prices for U.S.-produced and imported Japanese CMOs are typically quoted on an f.o.b. manufacturing site or U.S. warehouse basis.[68] ***.

The vast majority of CMOs, whether U.S.-produced or imported from Japan, are shipped by truck. U.S. producers and importers of Japanese CMOs reported similar average lead times; U.S. producers reported average lead times of ***, whereas importers of Japanese CMOs reported average lead times of ***. ***.

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[67] ***.

[68] ***.

Questionnaire Price Data

The Commission requested U.S. producers and importers to provide quarterly price data during January 1988-March 1991 for each firm's sales of the products listed below:

Product 1: CMO with a maximum output wattage of 650-800W

Product 2: HMO with a maximum output wattage of 650-800W[69]

Product 3: CMO with a maximum output wattage of 1000-1200W

Product 4: CMO with a maximum output wattage of 1300-1500W

The Commission requested f.o.b. price data for each firm's largest sale of products 1 and 2 to distributors, product 3 to food equipment dealers, and product 4 to end users. The specific channels of distribution represent the largest categies of buyers for each of the four products.

Four U.S. producers reported price data.[70] ***.

Two importers, Matsushita and Sharp, reported price data ***.[71] These products represented *** of 1990 imported Japanese CMOs. Price data reported by Matsushita and Sharp were for imports of Japanese-produced CMOs accounting for *** percent of total reported 1990 imports of Japanese CMOs.

Price Trends

Company specific prices of U.S. and imported Japanese products 1, 3, and 4 sold to distributors, food equipment dealers, and end users, respectively, during January 1988-March 1991 are shown in tables 26-28. Overall, prices of both the U.S. and Japanese products showed indications of both upward and downward movement, but little evidence of consistent trends.

During the investigation period, ***.[72]

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[69] Product 2 data (HMOs) are presented in table E-1 in app. E.

[70] ***.

[71] ***.

[72] An alternate price comparison for product 1 is presented in table E-2 in app. E. This table substitutes a 700W Panasonic model for the 650W (non-certified) Pansonic model which is presented in table 26. Table E-3 presents weighted-average margins of under/overselling based on table E-2.

Table 26
CMOs: Company-specific f.o.b. prices of 650-800W[1] models, by quarters, January 1988-March 1991

(In dollars per unit)

	U.S.			Japan	
	Menumaster	Amana[2]	Sharp	Matsushita	Sharp
Period	SNAC-7TP		R20BP	NE-6035[3]	R21BT
*	*	*	*	*	*	*

[1] Maximum rated output wattage. Please note that models vary slightly by minor features.
[2] ***.
[3] This is a 650W CMO that lacks NSF cerification. As of May 1991, Matsushita has discontinued this model and replaced it with a higher-power 700W CMO produced in its production facility in Illinois.

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

Table 27
CMOs: Company-specific f.o.b. prices of 1000-1200W[1] models, by quarters, January 1988-March 1991

(In dollars per unit)

	U.S.		Japan	
	Menumaster	Amana[2]	Matsushita	Sharp
Period	FS10EVP	RFS10B	NE-1057	R22DP
*	*	*	*	*	*	*

[1] Maximum rated output wattage. Please note that models vary slightly by minor features.
[2] ***.

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

Table 28
CMOs: Company-specific f.o.b. prices of 1300-1500W[1] models, by quarters, January 1988-March 1991

(In dollars per unit)

	U.S.		Japan	
	Menumaster	Amana[2]	Matsushita	Sharp
Period	FS14EVP	RC14SE	NE-1457	R23BT
*	*	*	*	*	*	*

[1] Maximum rated output wattage. Please note that models vary slightly by minor features.
[2] ***.

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

* * * * * * *

Price Comparisons

Comparisons of weighted-average U.S. f.o.b prices for U.S.-produced and imported Japanese CMOs are presented in table 29. The U.S. and Japanese products are not always closely comparable because of the differences in features of the competing products. For example, the 700W Sharp R21BT has 10 power level sittings, whereas the other 700W CMOs (Menumaster's SNAC-7TP, Sharp's U.S.-produced R20BP, and Matsushita's NE-7050) only have one power level setting.

* * * * * * *

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January 1988-March 1991 the nominal value of the Japanese yen fluctuated, depreciating 4.4 percent overall relative to the U.S. dollar (table 30).[73] Adjusted for movements in producer price indexes in the United States and Japan, the real value of the Japanese currency showed an overall depreciation of 10.4 percent against the dollar for the period January 1988 through March 1991.

Lost Sales and Lost Revenues

***.[74]

* * * * * * *

[73] *International Financial Statistics, May 1991.*

[74] ***.

Table 29
CMOs: Weighted-average margins of underselling/(overselling), by products and quarters, January 1988-March 1991

(In percent)

Period	Product 1 (650-800W)	Product 3 (1000-12000W)	Product 4 (1300-1500W)
*	*	*	*	*	*	*

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

Table 30
Exchange rates:[1] Indexes of nominal and real exchange rates of the Japanese yen and indexes of producer prices in the United States and Japan,[2] by quarters, January 1988-March 1991

Period	U.S. producer price index	Japanese producer price index	Nominal exchange rate index	Real exchange rate index[3]
1988:				
January-March	100.0	100.0	100.0	100.0
April-June	101.6	99.7	101.9	100.0
July-September	103.1	100.6	95.7	93.4
October-December	103.5	99.8	102.2	98.4
1989:				
January-March	105.8	100.2	99.6	94.4
April-June	107.7	102.9	92.7	88.6
July-September	107.3	103.7	90.0	86.9
October-December	107.7	103.5	89.5	86.0
1990:				
January-March	109.3	103.9	86.5	82.3
April-June	109.1	104.7	82.4	79.2
July-September	111.0	104.7	88.1	83.1
October-December	114.4	105.4	97.9	90.2
1991:				
January-March	112.7[4]	105.5	95.6	89.6

[1] Exchange rates expressed in U.S. dollars per Japanese yen.
[2] Producer price indexes—intended to measure final product prices—are based on period-average quarterly indexes presented in line 63 of the *International Financial Statistics*.
[3] The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and Japan.
[4] Derived from U.S. price data reported for January-February only.

Source: International Monetary Fund, *International Financial Statistics*, May 1991.

Appendix A

Federal Register Notices and Letter from Commerce

[Inv. No. 731-TA-523 (Preliminary)]

Commercial Microwave Ovens, Assembled or Unassembled, From Japan

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-523 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of commercial microwave ovens, assembled or unassembled, (CMOs),[1] that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by July 25, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: Fred Fischer (202-252-1179), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. 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 in response to a petition filed on June 10, 1991, by Menumaster, Inc., Sioux Falls, SD.

Participation in the investigation and public service list. Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public 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.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on Monday, July 1, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Fischer (202-252-1179) not later than Wednesday, June 26, 1991, to

[1] The products covered by this investigation are commercial microwave ovens, whether assembled or unassembled. These products are provided for in subheading 8419.81.10 but may enter under subheading 8516.50.00 of the Harmonized Tariff Schedule of the United States (HTS).

arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before Friday, July 5, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

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

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

Issued: June 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14593 Filed 6-18-91; 8:45 am]

BILLING CODE 7020-02-M

[A-588-821]

Initiation of Antidumping Duty Investigation: Commercial Microwave Ovens, Assembled or Unassembled, From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: July 8, 1991.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4087.

Initiation

The Petition

On June 10, 1991, Menumaster, Inc. filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing commercial microwave ovens, assembled or unassembled (commercial microwaves). In accordance with 19 CFR 353.12, the petitioner alleges that imports of commercial microwaves from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these are materially injuring, or threaten material injury to, domestic producers of commercial microwaves.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the U.S. industry producing commercial microwaves. If any interested party, as described in 19 CFR 353.2(k)(3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

The petitioner's estimate of United States Price (USP) is based on sales through three primary distribution channels: Direct sales; sales through commission agents; and sales through stocking distributors. To establish the respective USPs, petitioner compiled pricing quotations to dealers of commercial microwave ovens from published price lists and dealer communications. In addition, petitioner obtained copies of invoices and price lists for sales via commission representatives and stocking representatives.

For one Japan producer, petitioner calculated USP based on 1990 U.S. price lists. For a second Japanese producer, petitioner calculated USP based on calendar 1990 U.S. price lists derived from 1991 Canadian price lists, adjusted for the exchange rate. We are accepting petitioner's USPs based on 1990 prices to the U.S.; we have rejected petitioner's estimate of USP based on price charged in the Canadian market.

Petitioner calculated USP pursuant to exporter's sales price (ESP) methodology (19 CFR 353.41(c)). Adjustments were made, where appropriate, for ocean freight, insurance, prepaid freight, U.S. duties, customs handling and processing fees, sales commissions, discounts,

rebates, and direct and indirect selling expenses. Direct selling expenses included direct advertising expenses, warranty expenses, service support expenses, and inventory carrying costs. Indirect selling expenses included office and staff expenses and indirect advertising expenses. Petitioner was unable to determine the extent of applicable deductions for inland freight expenses incurred in the United States or Japan. Petitioner states that the calculated USPs may require further downward adjustment to reflect the Japanese producer's respective sales incentives.

Petitioner's estimate of Foreign Market Value (FMV) is based on January 1991 price data obtained through a market research study conducted in Japan. In calculating the FMV for the various models of commercial microwaves, petitioner relied on retail prices and, based on the channel of distribution, adjusted those prices for applicable retail discounts, dealer mark-ups, inland freight, incentives/commissions, and direct and indirect home market selling expenses. Direct selling expenses included expenses incurred by the producer and related sales subsidiaries. Indirect selling expenses consisted of advertising expenses.

The amount of home market indirect selling expenses deducted was subject to the ESP cap, which in this case is the total of U.S. commissions to the U.S. indirect selling expenses. Home market indirect selling expenses consisted of advertising expenses. Petitioner made adjustments to the calculated ex-factory USPs and FMVs to account for the three percent consumption tax in Japan. Based on a comparison of USP and a discounted FMV, petitioner has alleged dumping margins ranging from 31.9% to 130.3%.

Because certain adjustments to USP and FMV were not adequately substantiated, the Department has recalculated these prices. We did not accept petitioner's USP adjustments for inventory carrying costs, warranties, service support, and office and staff expenses, because petitioner did not make corresponding adjustments to the FMV. We recalculated the direct and indirect selling expenses adjustments to FMV because certain expenses (*e.g.*, advertising and incentives/commissions) appear to have been doubled-counted. We recalculated the consumption tax as three percent of the gross USP or FMV, less discounts. Petitioner made FMV comparisons for identical and non-identical models of commercial microwaves. Where non-identical comparisons were made, petitioner made a difference in merchandise adjustment to the home market sales price to account for the differences in the physical characteristics of the merchandise sold in the United States and Japan. These adjustments were not adequately substantiated, and we are therefore accepting only those fair value comparisons of identical merchandise. Based on a comparison of FMV to USP as estimated by the Department, the alleged margins range from 6.30% to 54.65%.

Petitioner also alleges that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of commercial microwaves from Japan.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on commercial microwave ovens from Japan and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of commercial microwaves from Japan are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The product covered by this investigation is all commercial microwave ovens, assembled or unassembled. Commercial microwaves are electronic cooking devices which heat food by application of very high-frequency energy (microwaves), used for commercial or other than domestic purposes, and having 1) a minimum output wattage of 700 watts (W), 2) an inner cavity and outer cabinet of stainless steel or other durable materials, and 3) heavy-duty magnetrons, transformers, electronics, and hardware. Imported commercial microwaves typically, but not necessarily, have affixed a label from one or more independent, certifying, and testing organizations (*e.g.*, Underwriter's Laboratories (UL) or the National Sanitation Foundation (NSF)) attesting explicitly to the intended and approved "commercial" use of the microwave oven. The subject merchandise includes complete commercial microwave kits, whether wholly or partially assembled.

Commercial microwaves are provided for in the Harmonized Tariff Schedule (HTS) subheading 8419.81.10, but may enter under HTS subheading 8516.50.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Petitioner also contends that commercial microwaves are typically used in full-service and fast-food restaurants, hotels, convenience stores, businesses, schools, health care facilities, and retail locations.

Petitioner's intent is to include all microwave ovens used for commercial purposes and to exclude ovens used in the home. Although petitioner has offered various criteria for making the distinction between commercial and non-commercial microwave ovens, we believe that these criteria may not clearly distinguish between commercial and non-commercial microwaves, and therefore may preclude effective administration of any antidumping order by the Customs Service. We have attempted to define the subject merchandise only for purposes of initiation. We invite comment on technical specifications that will enable the Department to more precisely define the subject merchandise and that will enable Customs officials to distinguish between commercial and non-commercial microwaves. Any comments concerning the scope of this investigation should be submitted to the Department no later than July 22, 1991.

Preliminary Determination by ITC

The ITC will determine by July 25, 1991, whether there is a reasonable indication that imports of commercial microwave ovens from Japan are materially injuring, or threaten material injury to, a regional U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before November 18, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: July 1, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-16158 Filed 7-5-91; 8:45 am]

BILLING CODE 3510-DS-M

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

'91 JUL 19 P4 33

JUL 19 1991

A-588-821
Investigation
Public Document

731-TA-523C PJ

Honorable Anne E. Brunsdale
Acting Chairman
United States International
Trade Commission
Washington, D.C. 20436

Re: Antidumping Duty Investigation of Commercial Microwave Ovens, Assembled or Unassembled, from Japan (A-588-821)

Dear Madam Chairman:

As you know, on July 1, 1991, we initiated an antidumping duty investigation covering all commercial microwave ovens. Because there were substantial difficulties in determining an appropriate and adequate definition of commercial microwave ovens, we tentatively included certain specifications in our definition of commercial microwave ovens. At the same time we requested that interested parties provide us with additional guidance as to the specifications which should be included in a final definition of a commercial microwave oven. Nevertheless, all commercial microwave ovens are intended to be within the scope of our investigation.

If you have any further questions, please contact John Beck or Kate Johnson of my staff at (202) 377-3464 or (202) 377-8830, respectively.

Sincerely,

Francis J. Sailer
Deputy Assistant Secretary
for Investigations

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U.S. INT'L TRADE COMM.
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Appendix B

List of Participants in the Public Conference

United States International Trade Commission

List of Participants in the Public Conference

Commercial Microwave Ovens, Assembled or Unassembled, from Japan

Inv. No. 731-TA-523 (Preliminary)

DATE AND TIME

July 1, 1991 - 9:30 a.m.

LOCATION

Main Hearing Room 101
United States International Trade Commission
500 E Street, S.W., Washington, D.C.

LIST OF PARTICIPANTS

Those listed below appeared at the United States International Trade Commission's conference held in connection with the subject investigation.

In Support of Imposition of Antidumping Duties:

Balch & Bingham, Washington, D.C.
On behalf of--

MENUMASTER, INC.
Kenneth Button, V.P., Economic Consulting Services
Lewis Overton, Jr., Chief Executive and
Chief Operating Officer, Menumaster, Inc.

Karl R. Moor)--OF COUNSEL
Edwina Rogers

LIST OF PARTICIPANTS—*Continued*

In Opposition to Imposition of Antidumping Duties:

Willkie Farr & Gallagher, Washington, D.C.
On behalf of--

MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.
MATSUSHITA ELECTRIC CORP. OF AMERICA

Raymond Leibman,
National Sales Manager - Commercial/Special Products Division

John G. Reilly
P. Lance Graef
Trade Research & Analysis, Economic Consultants for
Sharp and Matsushita

William H. Barringer)
James P. Durling)--OF COUNSEL
Christopher S. Stokes)

Donovan, Leisure, Newton & Irvine, Washington, D.C.
On behalf of--

SHARP CORP.
SHARP ELECTRONICS CORP. (SEC)
SHARP MANUFACTURING CO. OF AMERICA (Division of SEC)

Michael Williamson, V.P., Sales and Marketing, Appliance Division

Peter J. Gartland)
Raymond Paretzky)--OF COUNSEL
Maryanne S. Foglia)

Appendix C

Selected Data on All Microwave Ovens

Table C-1
All microwave ovens: Selected data, 1988-90, January-March 1990, and January-March 1991[1]

Item	*1988*	*1989*	*1990*	*January-March— 1990*	*1991*
Production (1,000 units)	3,148	3,156	2,274	632	598
Average-of-period capacity (1,000 units)	4,493	4,831	3,811	1,028	987
Average-of-period capacity utilization (percent)	70.1	65.3	59.7	61.5	60.7
U.S. producers' domestic shipments (1,000 units)	3,078	2,888	2,249	524	529
U.S. producers' domestic shipments ($1,000)	394,972	354,959	280,295	68,206	63,607
U.S. producers' exports (1,000 units)	455	514	251	78	61
U.S. producers' exports ($1,000)	76,923	82,918	45,110	13,411	10,943
U.S. producers'end-of-period inventories (1,000 units)	109	149	116	153	93
U.S. imports:[2]					
Japan (1,000 units)	1,864	1,233	1,155	299	211
All other countries (1,000 units)	5,348	5,174	4,175	1,049	753
Total imports (1,000 units)	7,212	6,408	5,330	1,349	964
Apparent U.S. consumption (1,000 units)	10,290	9,296	7,579	1,873	1,493

[1] Includes data from ***. These firms are believed to represent over *** of U.S. production of all microwave ovens.
[2] Compiled from official statistics of the U.S. Department of Commerce.

Note—Because of rounding, some totals may not add to those shown.

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

Table C-2
Income-and-loss experience of U.S. producers on their operations producing all microwave ovens, fiscal years 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March— 1990	January-March— 1991
	Value (1,000 dollars)				
Net sales	407,974	365,249	248,421	58,704	51,889
Cost of goods sold	377,241	343,779	239,194	57,020	51,183
Gross profit	30,733	21,470	9,227	1,684	706
Selling, general, and administrative expenses	38,866	27,191	16,512	3,496	3,403
Operating income or (loss)	(8,133)	(5,721)	(7,285)	(1,812)	(2,697)
Startup or shutdown expense	0	4,290	487	195	611
Interest expense	4,956	5,521	1,456	425	141
Other income or (expense), net	70	546	2,121	750	317
Net income or (loss) before income taxes	(13,019)	(14,986)	(7,107)	(1,682)	(3,132)
Depreciation and amortization	9,564	7,910	6,973	1,925	1,633
Cash flow[1]	(3,455)	(7,076)	(134)	243	(1,499)
	Ratio to net sales (percent)				
Cost of goods sold	92.5	94.1	96.3	97.1	98.6
Gross profit	7.5	5.9	3.7	2.9	1.4
Selling, general, and administrative expenses	9.5	7.4	6.6	6.0	6.6
Operating income or (loss)	(2.0)	(1.6)	(2.9)	(3.1)	(5.2)
Net income or (loss) before income taxes	(3.2)	(4.1)	(2.9)	(2.9)	(6.0)
	Number of firms reporting				
Operating losses	3	4	3	3	4
Net losses	4	4	3	3	4
Data	7	7	7	7	7

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

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

Figure C-1
Petitioner's exhibit 11E showing Menumaster's income statement, fiscal years 1980-90

* * * * * * *

Source: Petition, app. 11.

Appendix D

Effects of Imports on Producers' Existing Development and Production Efforts, Growth, Investment, and Ability to Raise Capital

EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

The Commission requested U.S. producers to describe and explain the actual and anticipated negative effects, if any, of imports of CMOs from Japan on their investment, abiltity to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of CMOs). Producers were also asked whether the scale of capital investments undertaken has been influenced by the presence of imports of CMOs from Japan. Responses are presented below:

* * * * * * *

Appendix E

Additional Price Data

Table E-1
HMOs: Weighted-average f.o.b. prices, by quarters, January 1988-March 1991[1]

Period	United States (Per unit)	Japan (Per unit)
1988:		
January-March	***	***
April-June	***	***
July-September	***	***
October-December	***	***
1989:		
January-March	***	***
April-June	***	***
July-September	***	***
October-December	***	***
1990:		
January-March	***	***
April-June	***	***
July-September	***	***
October-December	***	***
1991:		
January-March	***	***

[1] Only one U.S. producer, ***, reported usable pricing data. *** reported unit prices, but did not report total quantities or total values sold. *** reported total quantities and total values sold, but did not report unit prices. Three importers, ***, reported usable pricing data.

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

Table E-2
CMOs: Company-specific f.o.b. prices of 700-800W[1] models, by quarters, January 1988-March 1991

(In dollars per unit)

	U.S.			Japan	
Period	Menumaster SNAC-7TP	Amana[2]	Sharp R20BP	Matsushita NE-7050[3]	Sharp R21BT
1988:					
January-March	***	***	***	***	***
April-June	***	***	***	***	***
July-September	***	***	***	***	***
October-December	***	***	***	***	***
1989:					
January-March	***	***	***	***	***
April-June	***	***	***	***	***
July-September	***	***	***	***	***
October-December	***	***	***	***	***
1990:					
January-March	***	***	***	***	***
April-June	***	***	***	***	***
July-September	***	***	***	***	***
October-December	***	***	***	***	***
1991:					
January-March	***	***	***	***	***

[1] Maximum rated output wattage. Please note that models vary slightly by minor features.
[2] ***.
[3] This is a 700W model with NSF certification.

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

Table E-3
CMOs: Weighted-average margins of underselling/(overselling), by products and quarters, January 1988-March 1991[1]

(In percent)

Period	Product 1 (700-800W)	Product 3 (1000-12000W)	Product 4 (1300-1500W)
1988:			
January-March	***	***	***
April-June	***	***	***
July-September	***	***	***
October-December	***	***	***
1989:			
January-March	***	***	***
April-June	***	***	***
July-September	***	***	***
October-December	***	***	***
1990:			
January-March	***	***	***
April-June	***	***	***
July-September	***	***	***
October-December	***	***	***
1991:			
January-March	***	***	***

[1] These are the margins when Panasonic's 700W model NE-7050 is substituted for its 650W model NE-6035. These margins are based on data presented in table E-2.

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