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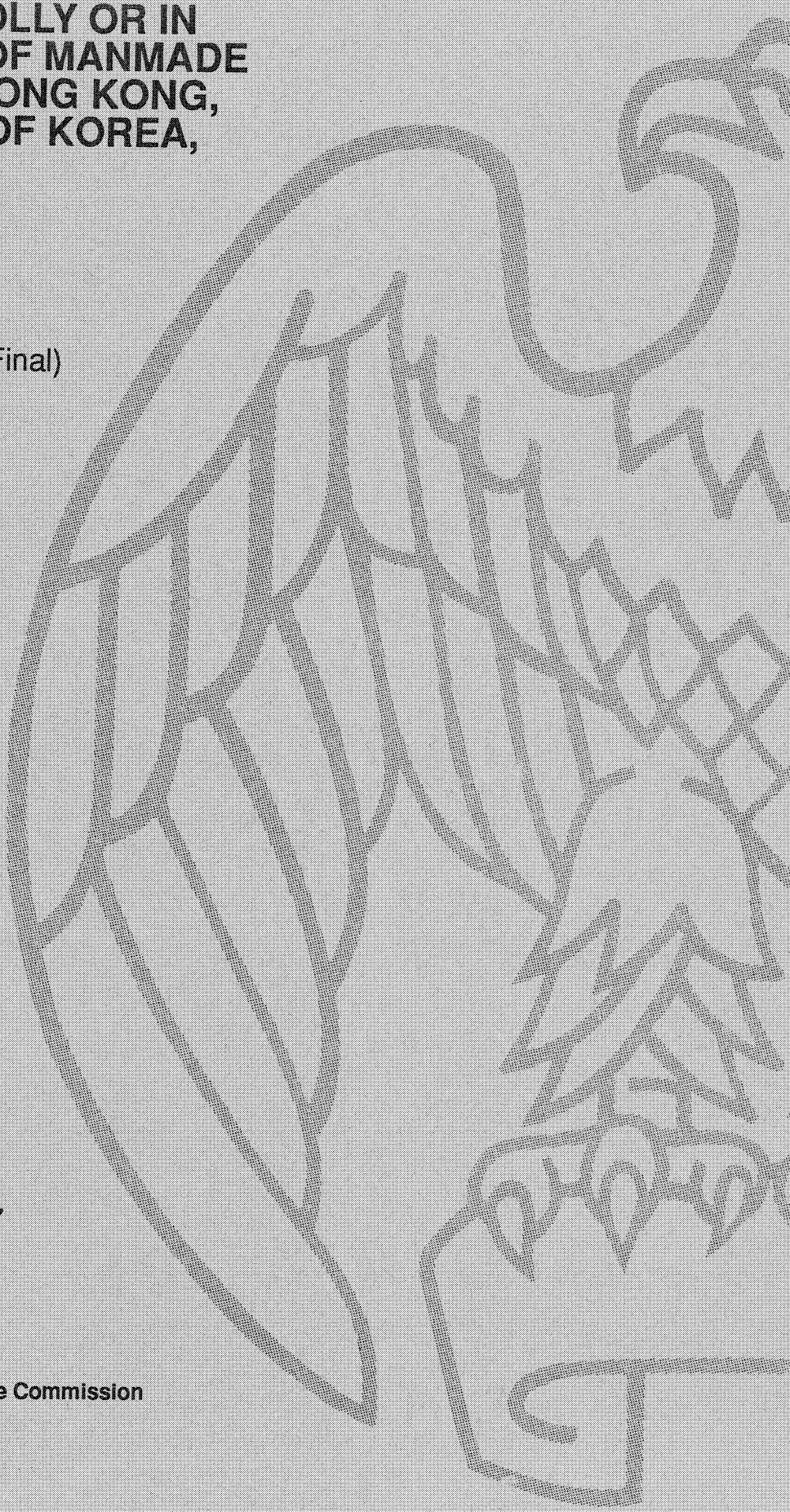
**SWEATERS WHOLLY OR IN  
CHIEF WEIGHT OF MANMADE  
FIBERS FROM HONG KONG,  
THE REPUBLIC OF KOREA,  
AND TAIWAN**

Views on Remand  
in Investigations  
Nos. 731-TA-448-450 (Final)

**USITC PUBLICATION 2577**

**NOVEMBER 1992**

United States International Trade Commission  
Washington, DC 20436





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In September 1990, the U.S. International Trade Commission determined that an industry in the United States was materially injured by reason of dumped imports from Hong Kong, the Republic of Korea, and Taiwan of sweaters wholly or in chief weight of manmade fibers (USITC Publication No. 2311 (1990)). The Commission's determinations were appealed to the Court of International Trade ("CIT"), and on July 28, 1992, the CIT remanded the Commission's determinations (Chung Ling Co. v. United States, Slip Op. 92-120 (July 28, 1992)). The attached views were submitted to the court in response to the remand.



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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

## VIEWS OF THE COMMISSION<sup>1</sup>

Based on the record in the final investigations, as supplemented by the remand investigations, we determine that an industry in the United States is not materially injured, or threatened with material injury, by reason of imports of sweaters of manmade fibers (MMF) from Hong Kong, the Republic of Korea, and Taiwan that the Department of Commerce (Commerce) has determined to have been sold in the United States at less than fair value (LTFV).<sup>2</sup>

### I. Procedural Background

On September 5, 1990, the Commission issued its final determinations in these investigations.<sup>3 4</sup> In those determinations, the Commission majority defined the like

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<sup>1</sup> Commissioner Rohr reaches the same result, but for different reasons. See his Separate Views.

<sup>2</sup> Material retardation of the establishment of a domestic industry is not an issue in these investigations and will not be discussed further.

<sup>3</sup> Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-448-450 (Final), USITC Pub. 2312 (Sept. 1990). Vice Chairman Watson, and Commissioners Brunsdale, Crawford, and Nuzum did not participate in the final investigations. They have reviewed the record de novo in reaching their determinations. See Trent Tube Div. v. United States, 752 F. Supp. 468, 472 (CIT 1990), aff'd, 975 F.2d 807 (Fed. Cir. 1992); SCM Corp. v. United States, 519 F. Supp. 911, 916 (Ct. Int'l Trade 1981).

<sup>4</sup> In the original investigations, Chairman Newquist found that the like product consisted of all sweaters, and that the domestic industry producing sweaters was not materially injured, or threatened with material injury by reason of the LTFV imports. Dissenting Views of Commissioner Newquist, USITC Pub. 2312 at 55-71. Chairman Newquist adheres to his original determination, for the reasons stated therein, but also joins these views on remand. He notes that certain data obtained on remand (e.g., corrected pricing data) reinforce his original negative determinations.

product to consist of only MMF sweaters, and found that the domestic industry producing such sweaters was materially injured by reason of the LTFV imports.<sup>5</sup> The Taiwan, Hong Kong, and Korean producers of MMF sweaters who were respondents in the Commission investigations appealed the Commission's determination to the Court of International Trade (CIT). On July 28, 1992, the CIT issued an order remanding the investigations to the Commission and ordering the Commission to report to the court on remand within 45 days.<sup>6</sup> The CIT's remand directed the Commission to reconsider four specific issues.

First, the court found that the Commission erred in basing its determination on the financial and pricing data obtained from producer questionnaire responses because those data were not representative of the domestic industry producing MMF sweaters.<sup>7</sup> The court stated that "the

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<sup>5</sup> Views of Commissioners Lodwick and Rohr, USITC Pub. 2312 at 3-54.

<sup>6</sup> Chung Ling v. United States, Slip Op No. 92-120 (July 28, 1992) (Chung Ling I).

<sup>7</sup> Because of the large number of producers and fragmented nature of the domestic industry producing sweaters, the Commission during the original investigations sent producer questionnaires to a sample believed to represent the U.S. sweater industry as a whole. The Commission sent questionnaires to 197 firms that it had reason to believe may have produced sweaters, either of manmade or natural fibers, during the period for which data were collected in the investigations (January 1987-March 1990). Twenty-five of these firms responded that they did not produce sweaters. Of the remaining firms, 58 eventually returned usable responses (10 of these firms responded only after issuance of subpoenas). See USITC Pub. 2312 at A-24.



Commission may conduct any further investigation deemed warranted to obtain data representative of the MMF sweater producers' pricing and the financial condition of the MMF sweater 'industry' as defined in the statute; and/or, the Commission may apply the adverse inference rule against the domestic industry."<sup>8</sup>

The CIT also remanded the Commission's like product determination. In defining the like product as MMF sweaters, the Commission had rejected respondents' argument that sweaters made from yarns that were blends of both MMF and natural fibers blur the distinction between the two types of sweaters.<sup>9</sup> Based on responses from 20 of 48 responding sweater producers, the Commission concluded that blends constitute only a small part of U.S. sweater production. This conclusion, therefore, was cited as support for drawing a dividing line on the basis of fiber. The CIT held that the low response rate to the question concerning the significance of blends rendered the

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The production data provided by the responding domestic firms accounted for 48 percent, by quantity, of total 1989 U.S. production of all sweaters, as measured against figures provided by the Census Bureau. Only seven domestic producers of MMF sweaters, who accounted for 7 percent of total U.S. shipments of MMF sweaters, reported any pricing data. Nine producers of MMF sweaters, accounting for 15 percent of total MMF sweater production, provided usable financial data for their MMF operations.

<sup>8</sup> Chung Ling I, Slip Op. 92-120 at 12.

<sup>9</sup> USITC Pub. 2312 at 17-18.

Commission's finding unsupported by substantial evidence.<sup>10</sup> Insofar as the Commission's like product determination found a clear dividing line between MMF and natural sweaters based on a finding of the minor position of blends in the U.S. market, the CIT remanded the determination on like product to the Commission for "further investigation and/or reconsideration."<sup>11</sup>

The CIT also remanded the investigations to the Commission to reconsider whether an adverse inference should be drawn against the domestic industry as a result of contacts by petitioner, the National Knitwear and Sportswear Association (NKSA), with domestic sweater producers. NKSA had communicated with domestic producers in a manner that respondents alleged interfered with the investigations. In the final investigations, the Commission noted only one such contact and found that NKSA's actions did not compromise the objectivity of the producers' responses.<sup>12</sup> The CIT found that the Commission's "summary" dismissal of respondents' allegations was not supported by substantial evidence. It directed the Commission to investigate further NKSA's contacts with the producers and to determine whether the objectivity of the questionnaire data was compromised by

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<sup>10</sup> Chung Ling I, Slip Op. 92-120 at 27.

<sup>11</sup> Id.

<sup>12</sup> USITC Pub 2312 at 27, n. 77.

NKSA's contacts, and whether an adverse inference was warranted.<sup>13</sup>

Finally, the CIT found that the Commission's causation analysis with respect to underselling was flawed because it was based in part on comparisons of domestic and import prices at different levels of competition. Ambiguities concerning the meaning of "net f.o.b. prices" in the importer questionnaire instructions may have caused importers to report f.o.b. foreign port prices rather than f.o.b. United States prices. The court remanded the case for further investigation or clarification of net f.o.b. import purchase prices.<sup>14</sup>

In response to the CIT's order, the Commission issued revised questionnaires to the domestic sweater producers that had provided usable responses to the original questionnaires. The new questionnaire asked producers again to supply financial and pricing information both for all sweaters and for MMF sweaters, and to respond to specific questions about the production of any blends. Also, the producer questionnaire asked a number of questions about any contacts by NKSA and whether those contacts influenced the producer's questionnaire response. The Commission also

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<sup>13</sup> Chung Ling I, Slip Op. 92-120 at 1; Chung Ling v. United States, Slip Op. 92-165 (Order addressing the Commission's motion to amend Chung Ling I order, Sept. 25, 1992) (Chung Ling II) at 15-16.

<sup>14</sup> Chung Ling I, Slip Op. 92-120 at 22.

requested importers to verify or correct the pricing information they had submitted during the final investigations so that it reflected f.o.b. prices at the U.S. port of entry.

Concurrently, the Commission filed a motion requesting the CIT to amend its decision to certify it, under 28 U.S.C. § 1292(d)(1), for interlocutory appeal to the United States Court of Appeals for the Federal Circuit. On September 25, 1992, the CIT issued an order denying the Commission's motion for certification, but granting the Commission an additional 45 days--until November 23, 1992--to report its determinations on remand to the CIT.<sup>15</sup>

## II. Like Product and Domestic Industry

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . . ."<sup>16</sup> In turn, the statute defines "like product" as "a product which is like,

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<sup>15</sup> Chung Ling Co. v. United States, Slip. Op. 92-165 (Chung Ling II).

<sup>16</sup> 19 U.S.C. § 1677(4)(A).

or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."<sup>17</sup>

Commerce has defined the class or kind of merchandise subject to these investigations as sweaters wholly or in chief weight of manmade fibers, excluding infants' sweaters and sweaters 23 percent or more by weight of wool, but including certain fine-knit garments that have a knit-on rib at the bottom.<sup>18</sup> Commerce's scope determination is the starting point for the Commission's like product analysis; however, the Commission is not bound in its like product determination by Commerce's class or kind determinations.<sup>19</sup>

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<sup>17</sup> 19 U.S.C. § 1677(10).

<sup>18</sup> Final Determinations of Sales at Less Than Fair Value; Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, 55 Fed. Reg. 30733-4 (July 27, 1990); the Republic of Korea, 55 Fed. Reg. 32659 (Aug. 10, 1990); Taiwan, 55 Fed. Reg. 34585-6 (Aug. 23, 1990).

<sup>19</sup> As the CIT has held, "[i]t is settled law that the ITC's like product determination is separate and distinct from [Commerce's] determination of the class or kind of merchandise." Torrington Co. v. United States, 747 F. Supp. 744, 748, aff'd 938 F. 2d 1278 (Fed. Cir. 1991). On the basis of its own record, Commerce defines the imports subject to investigation and determines whether they consist of one or more classes or kinds of merchandise. Commerce bases its class or kind determination on the criteria of Diversified Products Corp. v. United States, 572 F. Supp. 883 (Ct. Int'l Trade 1983), in which demand and marketing factors predominate. The Commission's like product criteria focus on both supply and demand factors applied to the information available in its record. The possibility of different product determinations by the Commission and Commerce is "built into the law." Algoma Steel Corp. v. United States, 688 F. Supp. 639, 642 (Ct. Int'l Trade 1988), aff'd 865 F.2d 240 (Fed. Cir. 1989), cert. denied 109 S. Ct. 3244 (1989).



We have considered whether the like product consists of only MMF sweaters or whether it includes sweaters of both manmade and natural fibers. The Commission's decision regarding the appropriate like product is essentially a factual determination, and the Commission applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.<sup>20</sup> The Commission generally looks for clear dividing lines among possible like products.<sup>21</sup> Based upon our analysis of the relevant criteria, we have determined that the like product consists of all sweaters, regardless of fiber.<sup>22</sup>

Sweaters are a well known type of outerwear that are made in various sizes, colors, patterns, styles, and levels of fashion. The general production process for making sweaters of any fiber is the same: designing the sweater, transmitting the design to a knitting machine, knitting the

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<sup>20</sup> See Calabrian Corp. v. United States, slip. op. 92-69 (Ct. Int'l Trade, May 13, 1992); Torrington, 747 F. Supp. at 749 n.3. Factors the Commission considers in defining the like product include: (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the products, (5) the use of common manufacturing facilities and production employees and, where appropriate, (6) price. No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. Torrington, 747 F. Supp. at 749.

<sup>21</sup> See S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

<sup>22</sup> Our like product conclusion differs from that made by Commissioners Rohr and Lodwick in the final investigations, but is the same as that reached by Commissioner Newquist. See USITC Pub. 2312 at 19-20; Dissenting Views of Commissioner Newquist, USITC Pub. 2312 at 55-56.

fabric, cutting it into shapes, sewing the shapes together, and pressing the finished sweater.<sup>23</sup> The major piece of production equipment, the knitting machine, is the same for sweaters of all fibers. We note that production of natural fiber sweaters requires the use of some additional equipment, such as washing machines and dryers, but such equipment is relatively inexpensive.<sup>24</sup>

As for production workers, without exception all firms that reported production of both manmade fiber and natural fiber sweaters indicated that they use the same production and related workers to make both types of sweaters.<sup>25</sup> Further, the increasing number of U.S. producers that produce both types of sweaters make both in the same facilities.<sup>26</sup>

Sweaters of all fibers are distributed in the same way. Most department stores, specialty shops, and discount stores

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<sup>23</sup> Final Staff Report in Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-448-450 (Final) ("1990 Report") at A-9.

<sup>24</sup> 1990 Report at A-29. Adjustments may need to be made to the knitting machinery in changing from one fiber to another, but such adjustments are also necessary when changing from one weight of yarn to another within a fiber type. In addition, several firms reported production of small amounts of other items, primarily other types of cut-and-sew knitwear, on the same machinery used to knit sweaters.

<sup>25</sup> 1990 Report at A-40.

<sup>26</sup> 1990 Report at A-29.

generally buy both natural and manmade fiber sweaters, and display them together.<sup>27</sup>

Because the general function of all sweaters is the same, they are in a broad sense substitutable. Although fiber may be a consideration to a consumer purchasing a sweater, it is just one factor among many. Consumers may find color, style, pattern, and price to be equally important. Therefore, fiber does not serve as a "clear dividing line."<sup>28</sup>

Natural fiber sweaters generally are somewhat more expensive than MMF sweaters, reflecting the higher cost of natural fiber yarn and additional production process for natural fiber sweaters.<sup>29</sup> Other factors, however, such as handwork and style, may account for variations in cost from one sweater to another. Also, sweaters of both manmade and natural fibers sell at the same price points.<sup>30</sup>

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<sup>27</sup> Although petitioner presented evidence that a higher percentage of manmade fiber sweaters goes to discount or chain stores (prehearing brief of NKSA at 30), testimony at the hearing also indicated that a certain segment of higher-end retailers, mail-order houses such as Land's End and L.L. Bean, deal primarily in cotton and wool sweaters. Transcript of the Hearing, August 9, 1990 ("Tr.") at 105. There is other evidence that at least one such store, K-Mart, purchased a significant and increasing amount of cotton sweaters. Tr. at 146.

<sup>28</sup> See Sony Corp of America v. United States, 712 F. Supp. 978, 983 (Ct. Int'l Trade 1989).

<sup>29</sup> 1990 Report at A-10.

<sup>30</sup> See, e.g., 1990 Report at A-11, A-66-69.

Finally, the evidence obtained on remand with respect to the presence of blends is supportive, but not dispositive, of finding a like product consisting of all sweaters. That information shows that producers accounting for 44 percent of reported sweater production produced sweaters of blended fibers.<sup>31</sup> Further, firms accounting for 8.5 percent of reported 1990 sweater production noted that blends accounted for more than a quarter of their sweater production.<sup>32</sup> This evidence further blurs any distinction between manmade and natural fiber sweaters. In any event, we would have found the same like product even if no blends were produced.

We recognize certain differences between MMF and natural fiber sweaters, such as the use of some additional manufacturing equipment, some customers' preference for sweaters of certain fibers, and some price differences. On balance, however, we find that the differences are outweighed by the similarities in general appearance and use; the commonality of the basic manufacturing process, machinery and employees, and distribution channels; and the similarities in basic customer perceptions.<sup>33</sup>

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<sup>31</sup> Remand Report at I-6-7.

<sup>32</sup> Id.

<sup>33</sup> For the reasons set forth in the Commission's final determinations, we find that the like product includes sweaters for persons of all ages, "fine knit" sweaters, and sweaters sold as part of ensembles. See USITC Pub. 2312 at 20-22.

Accordingly, we define the domestic industry as the U.S. producers of all sweaters. For the reasons set forth in the Commission's final determinations, we determine not to include in the domestic industry those jobbers who do not also manufacture sweaters.<sup>34</sup>

### III. Adverse Inferences

#### 1. Representativeness of Domestic Industry Data

We find that the financial and pricing information on the remand record is sufficiently representative to permit evaluation of the domestic sweater industry, especially given that the industry is composed of many small firms.<sup>35</sup>

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<sup>34</sup> See USITC Pub. 2312 at 22-26. We also determine for the reasons stated in those final determinations that "appropriate circumstances" do not exist to exclude any producers from the domestic industry as related parties. See 19 U.S.C. § 1677(4) (B).

<sup>35</sup> The legislative history of the statute recognizes that there is no standard numerical minimum for defining what proportion of coverage is sufficient to be representative, and that this criterion must be determined on a case-by-case basis. S.Rep. No. 249, 96 Cong., 1st Sess. at 66, 73; H.R. Rep. No. 317, 96th Cong., 1st Sess. at 73 (1979). This legislative history was cited by the CIT in Cemex, S.A. v. United States, 790 F.2d 290 (1992) and Budd Co. v. United States, 507 F. Supp. 997, 1001, 1 CIT 67 (1980).

In Chung Ling I, the CIT stated that "absolute or even majority coverage of the industry is not required." Slip. Op. 92-120 at 9. In determining whether the standard has been met in a particular investigation, the Commission may take into account factors such as the size of the typical business in the industry, and the sophistication of the industry. See Florex v. United States, 13 CIT 28, 705 F. Supp. 582, 591 n.11 (1989) ("One would not expect a large response to a lengthy questionnaire in an industry composed of numerous small owner-operated agricultural concerns.") The Commission has in the past been upheld in cases in which it relied on information obtained for comparable or smaller percentages of an industry or party than the percentage represented in these investigations. E.g., Hannibal Industries v. United States, 13 CIT 202, 710 F. Supp. 332, 336 (1989)



Of the 57 sweater companies to which remand questionnaires were sent, 42 were contractors or manufacturers which actually maintained production facilities. As a result of the remand investigations, the Commission has obtained usable financial information for U.S. sweater producers accounting for 40.8 percent of total domestic production, based on adjusted Census data.<sup>36</sup> With respect to pricing information, the Commission has obtained usable data from U.S. sweater producers accounting for approximately 31 percent of total U.S. production (by quantity), based on adjusted Census data.<sup>37</sup> For capacity and production data, the firms providing information accounted for more than 47 percent of 1989 production of all sweaters as reported by the Census Bureau.<sup>38</sup> For production and related workers,

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(upholding a negative final determination although the Commission had received capacity utilization data from only one foreign producer, accounting for less than a majority of exports of the product under investigation); Alberta Pork Producers' Marketing Bd v. United States, 669 F. Supp. 445, 458 (Ct. Int'l Trade 1987) (sustaining Commission's determination not to draw an adverse inference against the domestic industry based on a low questionnaire response rate from producers, accounting for a "negligible" share of U.S. production.)

<sup>36</sup> Remand Report at I-9, I-11 (Table 1) and D-2-3. Much of the information received on remand was obtained by subpoena. During the remand proceedings, the Commission issued 30 subpoenas, six of which the Commission had to enforce in the United States District Court for the District of Columbia.

<sup>37</sup> Memorandum INV-P-175 (November 13, 1992) at 1.

<sup>38</sup> Memorandum INV-P-177 (Nov. 17, 1992). Some firms provided shipment data but not production data. If these reported shipments are used as a proxy for the production data of these firms then firms providing shipment data accounted for 66.9 percent of 1989 production of all sweaters. Id.

the coverage was 45.3 percent of 1989 production of all sweaters as reported by Census.<sup>39</sup>

We do not find it necessary to draw an adverse inference against the industry based upon the lack of response from certain producers who originally received questionnaires. Neither the quantitative evidence received, which shows more positive production data than that shown by Census data,<sup>40</sup> nor the other evidence suggests that these producers withheld information that was inconsistent with petitioners' claims of injury.<sup>41</sup> We also note that we have reached negative determinations in these investigations based upon the information that was received, as supplemented by the Census data, without having drawn adverse inferences.

## 2. Contacts by NKSA

In both the preliminary and final investigations, Commission staff contacted petitioner's representative on several occasions concerning the low level of producer response to the questionnaire. As is usual in cases in which the companies represented by a petitioner trade

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<sup>39</sup> Id.

<sup>40</sup> See Remand Report at I-10.

<sup>41</sup> The information received from the producers who responded to the questionnaire suggests that industry reluctance to respond to the questionnaires was more likely due to the small size of the businesses and the lack of sophisticated recordkeeping. See e.g., Remand Report at 10 and Memorandum INV-P-174 (November 12, 1992).

association have not responded to the producer questionnaires, Commission staff on several occasions requested NKSA counsel to contact companies in the industry and urge them to respond.<sup>42</sup>

In response, NKSA aggressively sought to encourage its members to complete the questionnaire. As summarized by the CIT, NKSA's activities were as follows:

NKSA. . . set up a task force, retained a consultant to assist member producers in responding to questionnaires, published articles in trade publications, made numerous telephone contacts with its members, sent out letters, and distributed a 'Guide to Essential Questionnaire Items' to 'assist' questionnaire respondents.<sup>43</sup>

The "guide" referred to by the CIT encouraged firms to respond as fully and accurately as possible to the questionnaire but particularly directed firms to concentrate on certain areas--production, employment, and financial data.<sup>44</sup> The guide also indicated what the petitioner "expected" from the aggregate data--namely, declines in production, employment, and profitability and low capacity utilization. The guide was accompanied by a cover letter that informed questionnaire recipients that their answers were vital to NKSA's case and would show the government what

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<sup>42</sup> See, e.g., Memoranda dated Oct. 12, 1989, May 24, June 22, and July 13, 1990.

<sup>43</sup> Chung Ling I, Slip Op. 92-120 at 12.

<sup>44</sup> This document and accompanying cover letter are attached as exhibit 2 to Korean Respondents' Posthearing Brief.

has been happening to the U.S. sweater industry as a result of the dumped imports. The cover letter also admonished producers that failure to respond "would say to the USITC that the domestic industry doesn't care enough to help in its own defense."

A memorandum circulated to members of the task force set up by NKSA stated as follows:

This questionnaire will be the single most crucial element in establishing at the Commission the true condition of our industry. It is vital to prove injury and to connect it substantially with MMF sweater dumping from Taiwan, Korea and Hong Kong.<sup>45</sup>

During the remand investigations, the Commission received several other documents that NKSA had sent to producers during the original investigation.<sup>46</sup> "Memorandum for Sweater Manufacturers and Contractors" attached a news clipping describing the investigations and encouraged recipients to fill out the questionnaire. This memorandum stated, "We will win this fight if you fill out the

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<sup>45</sup> See id.

<sup>46</sup> On remand, the Commission subpoenaed NKSA about the activities mentioned by the CIT and other communications with producers. The subpoena ordered NKSA to supply the names of all firms to which NKSA had sent any questionnaire guides or letters discussing the questionnaire and the names of any NKSA firms that were otherwise contacted with regard to the questionnaire. See Remand Report at I-6. In response, NKSA supplied a list of nonresponsive U.S. firms received from the Commission's staff, from which list NKSA sent copies of its questionnaire Guide and/or letters encouraging completion of the Commission questionnaire. NKSA also enclosed a memoranda and a number of letters, described above. NKSA's subpoena response (September 3, 1992).

questionnaires accurately and tell the story of damage to our industry. If you fail to fill out the questionnaires, do not expect an easy victory."<sup>47</sup>

On July 3, 1990, NKSA sent letters to four large mills urging them to fill out as much of the questionnaire as they could, focusing especially on production, employment, and their profit statements.<sup>48</sup> On July 31 and August 2, 1990, NKSA sent out copies of the questionnaire forms to two producers who apparently had not previously received the questionnaires sent to them. The cover letters categorized the questionnaire as "brutal" and asked the recipients to concentrate on production, employment, and profitability.<sup>49</sup>

The Commission is quite sensitive to the need to ensure that conduct by parties to an investigation does not compromise the objectivity of the information received in response to questionnaires. For example, the Commission found interference in one investigation in which respondent's counsel had told domestic producers they did not have to respond to the questionnaire, and, in fact,

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<sup>47</sup> NKSA's subpoena response at Attachment D.

<sup>48</sup> NKSA's subpoena response at Attachment C. One of the four large mills was a non-NKSA member. NKSA stated that its records indicate that this producer was the only non-NKSA member it had contacted. Although the information received from NKSA as well as the producers indicates that virtually all of the firms contacted by NKSA were members of the trade association, we note that there is nothing inherently improper about petitioner contact with producers who were not NKSA members.

<sup>49</sup> NKSA's subpoena response at Attachment B.



Commission questionnaires and how the mechanics of a Commission investigation operate.

Further, NKSA's actions did not compromise the integrity or the objectivity of the answers the Commission received. As noted above in our discussion of the procedural background of these investigations, the remand questionnaires asked producers to detail the nature of any contact with NKSA between September 1989 and September 1990, and asked whether their responses were influenced by any such contacts. The responses indicate that, among those producers who provided information in the original investigations, any contacts from NKSA did not influence the content of the responses. A few producers indicated that NKSA influenced them to complete the questionnaire, but did not influence the content of their responses.<sup>53</sup>

The Hong Kong respondents argue, however, that NKSA implicitly discouraged its members from providing any pricing information to the Commission. Respondents claim that the NKSA letters to producers "led producers away from the pricing/causation portion of the questionnaire and toward the production/injury portion."<sup>54</sup> In support of this argument, respondents point to the NKSA letters which advised the producers to concentrate on sweater production, employment experience, and profitability. However, this

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<sup>53</sup> See Remand Report at Appendix B.

<sup>54</sup> Hong Kong respondents remand brief at 9.

directive is consistent with the focus of the investigations framed by the makeup of the industry sample. Of the producers who did not respond completely to the Commission's questionnaire, approximately half were contractors who were not requested to provide pricing information because they contract manufacture for others.

Moreover, the fact that the questionnaire response coverage for trade data was substantially higher than that for either financial or pricing data does not by itself support an inference that producers avoided answering the latter sections of the questionnaire in response to NKSA's letters. Rather, production and shipments data, which are generally readily available, could be supplied more easily by a relatively larger number of firms whereas financial and pricing data are substantially more detailed and complex. Indeed, this pattern of questionnaire data coverage is observed in the great majority of Commission investigations.

Before the CIT, respondents also suggested that the producers who did not respond to the questionnaire were likely to have not done so because their responses would have shown a healthier industry. The Commission's experience with respect to initially nonresponding producers in these investigations is not necessarily consistent with this conclusion.<sup>55</sup> The record does not show any correlation

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<sup>55</sup> In the final investigations, the Commission subpoenaed information from ten uncooperative producers. For the firms that were subpoenaed, data trends on most indicators--capacity,

between a producer's reluctance to cooperate and the company's profitability or pricing data.<sup>56</sup>

For the reasons explained above, we have taken no adverse inference against the domestic industry based upon NKSA's contacts with producers. We note that we have reached negative determinations in these investigations based upon the information that was received, as supplemented by Census data where noted, without having drawn adverse inferences.

#### IV. No Material Injury by Reason of LTFV Imports

##### 1. Condition of the Industry

In determining whether an industry is materially injured by reason of LTFV imports, the Commission considers "all relevant economic factors which have a bearing on the state of the industry in the United States . . . ."<sup>57</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investments, ability to raise capital, and research and development.<sup>58</sup> No single factor is determinative, and the Commission considers all relevant

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production, quantity of shipments, value of shipments--were actually more indicative of material injury than were responses for the rest of the data pool.

<sup>56</sup> There were no clear trends in either direction among the many producers who were subpoenaed in the remand investigation. See Remand Report at Appendix F.

<sup>57</sup> See 19 U.S.C. § 1677(7)(C)(iii).

<sup>58</sup> Id.

factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."<sup>59</sup>

There are several conditions of competition distinctive to the domestic sweater industry. As a background to our discussion of these conditions, we note that domestic producers tend to produce sweaters using basic yarns and styles, whereas Hong Kong, Korea, Taiwan, and other foreign producers are better able to produce fancier sweaters requiring more handwork.<sup>60</sup> With this in mind, we note first that there have been changes in consumer preferences. For example, consumers have become more conscious of style and fashion trends, resulting in a shift in consumer taste toward sweaters with more intricate designs and patterns.<sup>61</sup> In addition, the evidence in these investigations indicates a significant shift in sweater consumption away from MMF sweaters toward cotton sweaters.<sup>62</sup> Furthermore, there has

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<sup>59</sup> Id.

<sup>60</sup> Memorandum INV-N-101 (September 4, 1990) at 14. 1990 Report at A-69.

<sup>61</sup> 1990 Report at A-19.

<sup>62</sup> 1990 Report at A-19. Although petitioner's prehearing brief questions this fact, few members of the manufacturing or retailing industry disputed the existence of a significant shift in demand away from manmade fibers toward cotton. See, e.g., Tr. at 166, 174-75.

been an overall decrease in consumer demand for sweaters and a shift towards fleecewear and other knitwear.<sup>63</sup>

Second, the sweater industry is characterized by easy entry and exit for most firms.<sup>64</sup> Many operations have low fixed costs and plants can be set up relatively quickly in various countries. In this competitive global market, it is not surprising that there were many domestic plant closings in the latter years of the period of investigation.

In making our determinations, we have taken into account petitioner's argument that the data collected by the Commission in its questionnaires are upwardly biased because the data include only the "survivors" of the industry and do not capture data of firms that have ceased operations during the period of investigations. The information collected in these investigations, however, indicates that in addition to plant closings, there have also been several plant openings. Thus, while we recognize that the record may lack specific evidence of certain plant closings over the period of investigation, we believe that the record as a whole (including Census data showing declines in domestic production) adequately reflects this phenomenon.

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<sup>63</sup> Memorandum INV-P-176 at Table 1.

<sup>64</sup> 1990 Report at A-19. There is little in the record to suggest that this pattern of entering and exiting the market is a recent or uncharacteristic development for this industry. Nor does this pattern by itself suggest injury for an industry characterized by low barriers to entry, such as low capital requirements and unskilled labor.



Third, we recognize that the U.S. trade in sweaters is regulated by the Multifiber Arrangement (MFA), a system of bilateral quotas designed to prevent market disruption in importing countries.<sup>65</sup> Nonetheless, we note that the existence of the MFA itself does not mean that the U.S. industry could not be materially injured by reason of imports from a country that is a party to a U.S. textile agreement.

Based on official import statistics compiled by the U.S. Census Bureau, apparent U.S. consumption of sweaters decreased in quantity by 9.2 percent overall, falling from 37.5 million dozen in 1987 to 34 million dozen in 1989, with a period low of 30 million dozen in 1988.<sup>66</sup> By value, sweater consumption followed the same trends, decreasing from \$4.6 billion in 1987 to \$3.9 billion in 1988 and then rebounding somewhat to \$4.4 billion in 1989, for an overall decrease of 4.5 percent.<sup>67</sup>

The Census data show that production decreased steadily from 1987 to 1989, dropping by 27.4 percent in quantity, and

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<sup>65</sup> Arrangement Regarding International Trade in Textiles, 25 U.S.T. 1001, T.I.A.S. No. 7840. The United States has entered into bilateral agreements under the MFA with each of the countries subject to these investigations. Those agreements set quotas on a number of textiles and apparel products, including sweaters wholly or in chief weight of manmade fibers and sweaters of other fibers.

<sup>66</sup> Memorandum INV-P-176 (Nov. 16, 1992) at Table 1.

<sup>67</sup> Id.

by 21.6 percent in value.<sup>68</sup> Capacity to produce sweaters as reported in the original Commission questionnaires increased from 1987 to 1989 by 5.4 percent.<sup>69</sup> At the same time, reported capacity utilization remained fairly stable at around 82 percent.<sup>70</sup>

Questionnaire data on domestic shipments show that while total U.S. shipments fell by less than 5 percent from 1987 to 1989, the value of reported shipments increased by more than 10 percent, due to consistent increases in reported unit values.<sup>71</sup> U.S. producers' reported yearend inventories increased over the period of investigation, from 368,000 dozen in 1987 to 471,000 dozen in 1989.<sup>72</sup>

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<sup>68</sup> INV-P-176 (Nov. 16, 1992) at Table 1. Because the production data compiled by the Census Bureau are more comprehensive than those obtained from the questionnaire responses, we have relied on the Census data in evaluating U.S. production. The questionnaire data shows some growth in production, as contrasted with the declines shown by the Census data. See id.

<sup>69</sup> Memorandum INV-P-176 at Table 1.

<sup>70</sup> 1990 Report at A-26. Although a comparison of the data for the first quarter of 1989 with that for the first quarter of 1990 shows a decrease in capacity utilization, we do not place much weight on these data because only a few questionnaire responses contain interim data. Further, respondents have argued that the productive activity of the industry has become increasingly concentrated in the latter part of the year. Prehearing brief of Hong Kong respondents at 27-29; prehearing brief of Korean respondents at 25-26; prehearing brief of Taiwan respondents at 21. Vice Chairman Watson and Commissioners Brunsdale and Crawford are careful not to draw any conclusions about a full year based on interim data.

<sup>71</sup> Memorandum INV-P-176 at Table 1.

<sup>72</sup> 1990 Report at A-35.

The financial data obtained on remand reveal a mixed picture. Net sales for U.S. sweater producers increased steadily from \$299.7 million in 1987 to \$350.4 million in 1988 and then to \$389.1 million in 1989, for an overall increase of 29.8 percent.<sup>73</sup> Operating income levels, however, fell from \$18.4 million in 1987 to \$13.3 million in 1988, but then rose to \$14.8 million in 1989.<sup>74</sup> Operating income margins, as a share of sales, dropped from 6.1 percent in 1987 to 3.8 percent in 1988, but remained steady in 1989.<sup>75</sup>

Forty-two producers provided usable employment data. These data show that the number of production and related workers, the number of hours worked by these employees, and their hourly compensation increased from 1987 to 1988, and then decreased somewhat in 1989, but were nonetheless slightly higher in 1989 than in 1987.<sup>76</sup> The number of production and related workers increased from 8,754 in 1987 to 9,306 in 1988, then declined to 9,194 in 1989. Hours worked increased by 7 percent from 1987 to 1988, from 6,935 hours to 7,271 hours, and then fell 3 percent in 1989.

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<sup>73</sup> Remand Report at I-13, Table 2.

<sup>74</sup> Id.

<sup>75</sup> Id.

<sup>76</sup> 1990 Report at A-37-A-38, Table 9.

Hourly compensation increased from \$6.36 in 1987 to \$6.78 in 1988, and then fell to \$6.42 in 1989.<sup>77</sup>

Seventeen U.S. sweater producers reported capital investments in new production equipment and facilities.<sup>78</sup> Although the data show substantial declines in capital investment from 1987 to 1989, this decline is mostly attributable to the fact that the 1987 data include major investments in new production facilities by two of the largest producers. Combined capital expenditures by the other firms reporting such expenditures increased from 1987

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<sup>77</sup> Id. Petitioner argued that these reported data on employment understate employment losses within the industry. Petitioner's prehearing brief at 57. Petitioner noted that since May 1988, the Department of Labor has issued determinations of eligibility to apply for Worker Adjustment Assistance to 18 firms, based upon a finding that imports have "contributed importantly" to workers' separation from employment and to their employers' declines in production or sales. See 19 U.S.C. § 2272. These determinations, however, relate to the impact of all sweater imports, not just LTFV imports of MMF sweaters or just imports originating from the countries under investigation here. In addition, the total number of firms found eligible for import adjustment assistance over the period of investigation is actually fairly small in relation to the estimated number of domestic producers. In addition, a number of adjustment assistance applications have been denied, either because the customers of the affected firms did not reduce their purchases or because it was not shown that layoffs were tied to import competition. See Posthearing Statement of the Taiwan Man-Made Fiber Sweater Producers and Exporters, at A-4, Tab 6.

<sup>78</sup> 1990 Report at A-47 and Appendix J.

to 1989.<sup>79</sup> Research and development investment, reported by 13 firms, also increased during these years.<sup>80</sup>

## 2. Causation

In determining whether the domestic industry is materially injured by reason of the imports under investigation, the statute directs the Commission to consider:

(I) the volume of imports of the merchandise which is the subject of the investigation;

(II) the effect of imports of that merchandise on prices in the United States for like products, and

(III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States.<sup>81</sup>

In making this determination, the Commission may consider "such other economic factors as are relevant to the determination . . . ." <sup>82</sup> Although we may consider information that indicates that injury to the industry is

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<sup>79</sup> Id.

<sup>80</sup> Id. Chairman Newquist finds the Census data showing declines in production and shipments and the evidence of declining profitability to be indicative of material injury. He concludes, however, that any such injury is not by reason of the subject imports.

<sup>81</sup> 19 U.S.C. § 1677(7)(B)(i).

<sup>82</sup> 19 U.S.C. § 1677(7)(B)(ii).

caused by factors other than the LTFV imports, we do not weigh causes.<sup>83</sup>

We have assessed cumulatively the volume and price effects of imports of the three countries subject to investigation.<sup>84</sup> The quantity of subject imports declined approximately 6 percent during the three year period of investigation, from 8.43 million dozens in 1987 to 7.93 million dozens in 1989.<sup>85</sup> The value of subject imports decreased approximately 6 percent over the period of investigation.<sup>86</sup>

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<sup>83</sup> Views on the proper standard of causation of Chairman Newquist and Commissioner Nuzum (jointly), and of Vice-Chairman Watson and Commissioner Crawford are most recently set out in Certain Circular, Welded, Non-Alloy Steel Pipes and Tubes from Brazil, the Republic of Korea, Mexico, Romania, Taiwan, and Venezuela, Invs. Nos. 731-TA-532-537 (Final), USITC Pub. 2564 (October 1992) at 33-34, notes 147, 148 and 149, respectively.

<sup>84</sup> See 19 U.S.C. § 1677(7)(C)(iv), (v). Sweaters from all three countries subject to investigation and domestic sweaters were simultaneously present in the U.S. market during the period of investigation. 1990 Report at 63, Table 20. The subject imports competed amongst themselves and with domestic sweaters, and were sold nationwide through the same channels of distribution. We reject the argument that imports from Hong Kong should be exempt from cumulation under the "negligible imports" exception. Imports of the subject articles from Hong Kong totalled over 3 million dozen from 1987 through 1989, and were valued at over a quarter of a billion dollars. 1990 Report at A-59. In each of the years 1987 through 1989, subject imports from Hong Kong accounted for more than a negligible share of the quantity of apparent U.S. consumption of sweaters.

<sup>85</sup> 1990 Report at A-59, Table 17. Commerce excluded two Hong Kong firms and one Taiwan firm from its final dumping determinations. 55 Fed. Reg. 30733 (July 27, 1990), 55 Fed. Reg. 34585 (August 23, 1990). Accordingly, we have not included the imports from those firms in our evaluation.

<sup>86</sup> Report at A-59, Table 17. The exact figures for the value of subject imports are confidential.

As a share of total U.S. sweater consumption, the imports under investigation were relatively stable over the period of investigation.<sup>87</sup> The U.S. producers' market share went up from 28.3 percent in 1987 to 30.1 percent in 1988, and the market share held by the subject imports also increased, from 22.5 percent in 1987 to 25.1 percent in 1988.<sup>88</sup> In 1989, U.S. producers' market share dropped significantly, to 22.7 percent, while the market share held by the subject imports also experienced a drop, albeit a smaller one, to 23.3 percent. At the same time the market share held by nonsubject imports declined from 49.2 percent in 1987 to 44.9 percent in 1988, when U.S. and LTFV import shares rose; and nonsubject imports increased market share, to 54.1 percent in 1989, when domestic and LTFV imports both lost market share. The domestic producers' loss of U.S. market share during the period of investigation therefore does not coincide with a significant increase in market share by the subject imports.

In evaluating the effect of LTFV imports on prices, the Commission considers whether there has been significant price underselling of imports and whether the imports depress prices to a significant degree or prevent price increases that otherwise would have occurred, to a

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<sup>87</sup> INV-P-175 at 2.

<sup>88</sup> Memorandum OINV-P-176, table 1.

significant degree.<sup>89</sup> A number of factors in these investigations are relevant to the determination as to price suppression, including the degree of substitutability between the domestic and subject imports, the availability of nonsubject imports from other countries, the size of the market share held by subject imports, and the size of the actual dumping margins.<sup>90 91</sup>

During the period of investigation, the market for sweaters shifted to more complicated styles that used special yarns and decorations. Many producers stated that domestic and imported sweaters of less complicated styles were comparable in quality, but that domestic producers did not have access to the labor or to the novelty yarns needed to manufacture fancier styles.<sup>92</sup> Thus, as the demand for more complicated styles and special yarns increased, substitutability of domestic and imported sweaters decreased.

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<sup>89</sup> 19 U.S.C. § 1677 (7) (C) (ii).

<sup>90</sup> In view of the statutory directive to assess the impact of unfairly traded imports, rather than the unfair trade practice itself, Chairman Newquist notes that a margins analysis is not part of his analytical framework in Title VII investigations. See 19 U.S.C. sec. 1677(7)(B), (C); Encon Industries v. U.S., Slip op. 92-164 (CIT, Sept. 24, 1992) at 7 ("[M]argin analysis may deflect ITC from the proper injury analysis.").

<sup>91</sup> Commissioner Nuzum does not place much weight on the size of dumping margins in light of the variety of methodologies used by the Commerce Department to calculate margins.

<sup>92</sup> Memorandum INV-N-101 at 14-15.



For some consumers, fashion plays an important role in purchasing decisions and price plays a lesser role.<sup>93</sup> Other consumers purchase sweaters for practical purposes, such as warmth, and are more likely to switch to substitute products, such as sweatshirts, jackets, shirts or sportscoats, when the price of sweaters increases.<sup>94</sup>

Material injury to the domestic industry must be by reason of the LTFV imports.<sup>95</sup> In this case, the dumping margin on imported sweaters from Hong Kong, which accounted for less than 4 percent of the domestic market, in 1989, was found to be 5.86 percent on average. The margin for sweaters from Korea, which accounted for 10.5 percent of the domestic market was found to be 1.3 percent on average, and the dumping margin for sweaters from Taiwan, which accounted for less than 10 percent of the domestic market was found to be 21.05 percent on average.

If the subject imports had been traded fairly, it is unlikely that demand for domestic sweaters would have increased significantly. Given that sweaters are a highly differentiated product, as discussed above, it is likely that many consumers would have purchased the imported

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<sup>93</sup> Id. at 16-17.

<sup>94</sup> Id.

<sup>95</sup> Chairman Newquist and Commissioner Nuzum do not join in this discussion of dumping margins, or of how domestic demand and purchasing patterns could have differed but for the sale of subject imports at less than fair value.

sweaters (particularly from Hong Kong and Korea) even at the fairly traded price. Those who would not have purchased the higher priced subject import would not necessarily have purchased a domestic sweater. Some customers would drop out of the market entirely, and instead purchase a different article of clothing (e.g., blouse, jacket, fleecewear, sweatshirt). Since sweaters are largely a fashion item, and therefore a discretionary purchase, some customers would forgo the purchase of an additional sweater and continue to wear an older article of clothing. Still others would have purchased a nonsubject import, since they accounted for over 50 percent of the market in 1989, compared to 22.7 percent for domestic sweaters.

Because it is unlikely that demand for domestic sweaters would have increased substantially, it is also unlikely that prices of domestic sweaters would have increased had imports been fairly traded. This is particularly true in this highly competitive industry in which it is easy to increase the supply of sweaters in response to any increase in demand. Thus, we do not believe that domestic prices were suppressed by the LTFV imports.

We note that the pricing information received in these investigations is not particularly probative.<sup>96</sup> Even within

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<sup>96</sup> During the original and remand investigations, three types of price comparisons were made. First, prices reported by domestic producers were compared with prices reported by importer/wholesalers; second, prices reported by domestic producers were compared with prices reported by

product categories, there were wide fluctuations in reported prices, both for a particular product from one country compared with the same product from another country and for a product from a single country at different points in time.<sup>97</sup> Although the Commission requested pricing data on sweaters of comparable size, style, and color patterns, the price fluctuations suggest that the questionnaire responses for any particular product category reflect prices for sweaters with a variety of quality or style differences. Therefore, we are inclined to place limited probative weight on the pricing data.<sup>98</sup>

We also note, however, that the data on the record do not necessarily demonstrate significant underselling, price suppression, or price depression. The evidence, as supplemented by the remand investigations, reveals no discernible price trends for either the like product or for subject imports.<sup>99</sup> The prices for U.S. products and subject imports fluctuated without any particular pattern within each product category.

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importer/retailers; and third, prices for domestic sweaters reported by purchasers were compared with prices for subject imports reported by purchasers.

<sup>97</sup> Remand Report at I-20. The differences between the minimum price reported and the maximum price reported for the same quarter within the same product category ranged between 10 and 100 percent. Id.

<sup>98</sup> See Copperweld Corp. v. United States, 12 CIT 148, 682 F. Supp. 552, 565 (1988).

<sup>99</sup> Remand Report at I-21.

Questionnaire responses from 11 retail purchasers show 26 instances of underselling and 51 instances of overselling.<sup>100</sup> A comparison of producer questionnaire responses (including information obtained on remand) with importer/wholesalers responses (based on data corrected or verified on remand), shows 25 instances of underselling and 54 instances of overselling. Finally, a comparison of the producer responses with corrected responses of importer/retailers showed 57 instances of underselling and 46 instances of overselling.<sup>101</sup> While these comparisons may indicate price competition between domestic sweaters and the subject imports, they do not necessarily show a pattern of significant underselling. Further, the margins of underselling generally were far smaller than the margins of overselling.<sup>102 103</sup>

Additional information concerning petitioner's claim of injury by reason of low-priced LTFV imports was provided in

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<sup>100</sup> 1990 Report at A-69-71.

<sup>101</sup> 1990 Report at A-70.

<sup>102</sup> Margins of underselling as reported by purchasers ranged between 0.3 percent and 48.5 percent, while margins of overselling ranged between 1.3 percent and 232.2 percent. 1990 Report at A-71. The margins of underselling and overselling shown by comparisons of producer responses with both importer/wholesalers and importer/retailers are confidential, but also show significantly greater overselling margins than underselling margins. Remand Report at I-24.

<sup>103</sup> Chairman Newquist and Commissioner Brunsdale do not find any comparison between the margins of overselling and the margins of underselling to be particularly useful in their analysis.

the form of lost sales and lost revenue allegations.<sup>104 105</sup> While the Commission's investigation of these allegations did reveal some instances in which the subject imports enjoyed a price advantage, several of the specific sales allegedly lost on the basis of price underselling by the subject imports could not be substantiated.<sup>106</sup> Purchasers contacted in these investigations confirmed that there has been a shift in demand from manmade to natural fiber sweaters, and from conventional "long-production-run styles" produced in the United States to more intricate sweaters requiring the kind of detailed handwork which foreign suppliers can better supply.<sup>107</sup> This type of product differentiation between the subject imports and domestically produced sweaters further leads us to conclude that the mixed pattern of underselling and overselling by subject

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<sup>104</sup> The lost sales and revenues alleged by petitioner together represented only about 1 percent of the value of domestic sweater shipments reported in questionnaire responses.

<sup>105</sup> Commissioners Brunsdale and Crawford do not rely on anecdotal evidence showing that competition from the imports caused domestic producers to lose particular sales or forced them to reduce their prices on other sales in reaching their determinations.

<sup>106</sup> Certain buyers stated that they had shifted from imports to domestic sources of supply or that the "lost sales" in question went to other domestic producers or to non-subject imports. 1990 Report at A-71-78.

<sup>107</sup> See Memorandum INV-N-101 at 14.

imports is not indicative of significant price depression or suppression.<sup>108</sup>

We have evaluated the impact of the subject imports on domestic sweater operations in the context of the distinctive conditions of competition that we have set out in our discussion of the condition of the industry. The evidence suggests that occurrences resulting from the particular competitive conditions may have adversely affected many domestic producers, but these adverse effects cannot be said to have been caused by the subject imports. The significant decline in apparent domestic consumption of all sweaters along with the increased popularity of designs requiring labor-intensive production methods have undoubtedly had a severe impact on the small contract producers. These factors also appear to have had a negative impact on producers of all sweaters, who rely on obtaining orders for acrylic sweaters months in advance of the Fall season to keep their equipment running, and employees working, on a year-round basis.<sup>109</sup>

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<sup>108</sup> Vice Chairman Watson, Commissioner Brunsdale and Commissioner Crawford believe that the mixed pattern of overselling and underselling in this investigation is indicative of an industry where there is significant product differentiation. The mixed pattern of overselling and underselling does not, however, lead them to conclude that LTFV imports have not been a cause of price suppression or depression in this case.

<sup>109</sup> Tr. at 48, 146.

A number of domestic producers may have encountered difficulties, or even gone out of business, as a result of these changes in the conditions of competition in the market. We must determine, however, whether the domestic industry is materially injured by reason of the LTFV imports. Based upon our evaluation of the statutory factors, we determine that the domestic sweater industry is not materially injured by reason of the subject imports.

**VI. No Threat of Material Injury by Reason of the Subject Imports**

Section 771(7)(F) of the Act directs the Commission to consider whether a U.S. industry is threatened with material injury by reason of the subject imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."<sup>110</sup> While an analysis of the statutory threat factors necessarily involves projection of future events, "[s]uch a determination may not be made on the basis of mere conjecture or supposition."<sup>111</sup> We consider all the relevant statutory factors under the particular

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<sup>110</sup> 19 U.S.C. § 1677(7)(F)(ii).

<sup>111</sup> 19 U.S.C. § 1677(7)(F)(ii). See, e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); see also Metallwerken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990).

facts of the investigation.<sup>112</sup> The presence or absence of any single threat factor is not dispositive.<sup>113</sup>

In analyzing whether unfair imports threaten to cause material injury to a domestic industry, the Commission is not required, but has the discretion, to cumulate the volume and price effects of imports from two or more countries if such imports compete with each other and with the like product of the domestic industry in the United States market, and are subject to investigation.<sup>114</sup> We note that the varying import trends among the products from the three countries make cumulation difficult.<sup>115</sup> Nonetheless, we have evaluated the relevant threat criteria on both a cumulative and a disaggregated basis.

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<sup>112</sup> See U.S.C. § 1677(7)(F)(i)(I)-(X). Several of the statutory factors are not relevant here. Since there are no subsidy allegations, factor I regarding subsidies is not applicable. Also, factor VIII, regarding potential product-shifting from other products covered by antidumping orders to MMF sweaters, is not applicable. Finally, factor IX, regarding raw and processed agricultural products, is not applicable to the facts of this case.

We also 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. 19 U.S.C. § 1677(7)(F)(iii)(I). We received no information about dumping findings against the subject products in foreign markets for us to consider in these investigations.

<sup>113</sup> See, e.g., Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318, 1324 n.18 (Ct. Int'l Trade 1984).

<sup>114</sup> 19 U.S.C. § 1677(7)(F)(iv).

<sup>115</sup> See, e.g., Tart Cherry Juice and Tart Cherry Juice Concentrate from Germany and Yugoslavia, Invs. Nos. 731-TA-512 and 513 (Preliminary), USITC Pub. 2378 (May 1991) at 24.



We find that the subject imports from Hong Kong, Korea, and Taiwan, whether evaluated independently or cumulatively, do not threaten the domestic industry with material injury.<sup>116</sup> Some of the data upon which we base our determination are business proprietary and can only be discussed in general terms.

We are required to consider "any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports,"<sup>117</sup> and "the presence of underutilized capacity for producing the merchandise in the subject exporting country."<sup>118</sup> Although there was a large increase in Hong Kong production capacity and a decrease in capacity utilization from 1987 to 1989, the evidence does not suggest that these factors are likely to result in a significant increase in LTFV imports into the United States. In all three years under investigation, Hong Kong virtually filled its MFA quota limits for the subject imports.<sup>119</sup> The contemporaneous bilateral agreement with Hong Kong, which was in effect until after the period of investigation, did

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<sup>116</sup> 19 U.S.C. § 1677(7)(F)(i)(VII).

<sup>117</sup> 19 U.S.C. § 1677(7)(F)(i)(II).

<sup>118</sup> 19 U.S.C. § 1677(7)(F)(i)(VI).

<sup>119</sup> 1990 Report at 15.

not permit imminent, significant increases in subject imports.<sup>120</sup>

During the period of investigation, there was a small decrease in Korean production capacity and small decrease in capacity utilization. In all three years under investigation, Korea virtually filled its quota limits for the subject imports.<sup>121</sup> The renegotiated bilateral agreement with Korea, which covered the period from January 1, 1990 to December 31, 1991, did not permit imminent, significant increases in subject imports.<sup>122</sup>

During the period of investigation, there was a steady decrease in Taiwan production capacity and an overall small decrease in capacity utilization. Although subject imports from Taiwan fell from 98.9 percent of the quota limit in 1987 to 73.9 percent in 1989, there is evidence that Taiwan producers experienced rising labor costs and labor shortages, as well as exchange rate fluctuations.<sup>123</sup> The renegotiated bilateral agreement with Taiwan, which covered the period from January 1, 1990 to December 31, 1991, did not permit any increases at all for MMF sweaters.<sup>124</sup>

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<sup>120</sup> See 1990 Report at A-14, n. 42.

<sup>121</sup> 1990 Report at 15.

<sup>122</sup> See 1990 Report at A-14, n. 42.

<sup>123</sup> See Staff Report at A-15, A-79; Tr. at 48; Posthearing Statement of the Taiwan Producers and Exporters.

<sup>124</sup> See 1990 Report at A-14, n. 42.

With respect to "any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,"<sup>125</sup> when all subject imports are evaluated on a cumulative basis, their market share has been fairly stable in terms of both quantity and value. As such, there has been no rapid increase in penetration of the subject imports. In light of the nearly-filled quotas for all subject countries, there is no indication that penetration of the subject imports will increase to injurious levels.<sup>126</sup>

Using a disaggregated analysis, both the volume and market share of Hong Kong products remained low throughout the investigated period.<sup>127</sup> Although imports from Hong Kong gained some market share during that period, the actual quantity of such imports decreased during from 1987 to 1989.<sup>128</sup> Further, the bilateral agreement with Hong Kong makes it unlikely that penetration will increase to an injurious level.

Although imports from Korea increased somewhat and gained market share during the period of investigation,<sup>129</sup> the bilateral agreement with Korea likewise makes it

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<sup>125</sup> 19 U.S.C. § 1677(7)(F)(i)(III).

<sup>126</sup> See 1990 Report at A-15.

<sup>127</sup> 1990 Report at A-62, Table 19.

<sup>128</sup> Id.

<sup>129</sup> Id.

unlikely that penetration will increase to an injurious level. An evaluation of volume and market penetration of imports from Taiwan shows that both the volume and market share of Taiwan imports decreased during the period of investigation.<sup>130</sup> Further, the bilateral agreement with Taiwan makes it virtually impossible for penetration to increase to an injurious level.

We must also consider "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."<sup>131</sup> As explained in our discussion of present material injury, there is no indication that the prices of the subject imports from any of the subject countries have depressed or suppressed domestic sweater prices, or that they will do so in the future.

With respect to "any substantial increase in inventories of the merchandise in the United States,"<sup>132</sup> although inventories of subject imports cumulatively, and from both Hong Kong and Taiwan individually, increased significantly from 1987 to 1989, the inventories were relatively low.<sup>133</sup> Importers did not maintain large

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<sup>130</sup> 1990 Report at A-62, Table 19.

<sup>131</sup> 19 U.S.C. §1677(7)(F)(i)(IV).

<sup>132</sup> 19 U.S.C. § 1677(7)(F)(i)(V).

<sup>133</sup> 1990 Report at A-50 (Table 13).

inventories of subject imports, because large retailers ship imported merchandise directly to their stores.<sup>134</sup> There is evidence that because sweaters are rapidly becoming more of a fashion item and are increasingly concentrated in the fourth quarter of each year, holding substantial levels of inventories serves no purpose.<sup>135</sup> Inventories of subject imports from Korea decreased, not increased from 1987 to 1989.<sup>136</sup>

There is no evidence of "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."<sup>137</sup> Nor is there any indication that the subject imports, whether evaluated cumulatively or independently, will adversely impact upon domestic research and development efforts.<sup>138</sup>

### CONCLUSION

On the basis of the foregoing discussion, we find on the record in the final investigations, as supplemented by the remand investigations, that an industry in the United States is not materially injured or threatened with material

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<sup>134</sup> 1990 Report at A-49-50.

<sup>135</sup> Id.

<sup>136</sup> 1990 Report at A-50, Table 13.

<sup>137</sup> 19 U.S.C. § 1677(7)(F)(i)(VII).

<sup>138</sup> See 19 U.S.C. § 1677(7)(F)(i)(X).

injury by reason of imports of sweaters wholly or in chief weight of manmade fibers that the Commerce Department has determined to have been sold in the United States at less than fair value.

**SEPARATE VIEWS OF COMMISSIONER DAVID B. ROHR****Certain Sweaters from Hong Kong, the Republic of Korea and Taiwan  
Invs Nos. 731-TA-448 through 450 (Remand)**

I determine that the domestic industry producing manmade fiber sweaters is not materially injured or threatened with material injury by reason of imports of the subject merchandise from Hong Kong, Korea, and Taiwan. I make this determination in accordance with the instructions from the Court of International Trade, which remanded the Commission's original affirmative determinations in these investigations.<sup>1</sup> I base my determinations on the record compiled both in the original investigations and during the course of these remand investigations.

I find, based upon the instructions of the court and the record, that I am compelled to take the inference, adverse to the domestic industry, that it is not currently materially injured, nor is it significantly vulnerable to material injury. Because the domestic industry is not currently experiencing material injury, I must make a negative determination with regard to present material injury. In light of the finding that the domestic industry is not significantly vulnerable to material injury, I cannot find that the evidence is sufficient to support a finding that imports threaten the industry.

**Like Product/Domestic Industry**

I find that the product that is "like" the imported sweaters wholly or in chief weight of manmade fibers from Hong Kong, Korea, and Taiwan are sweaters made of manmade fibers, and that the domestic industry is comprised of the domestic producers of such sweaters. I hereby readopt for purposes of these remand determinations the Views of the Commission

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<sup>1</sup> Chung Ling Co. v. United States, Slip op. 92-120 (July 28, 1992), as explained in Slip op. 92-165 (September 1992).

on like product and domestic industry contained in the original investigation.

I further note that the Court's instructions in these remand investigations required the Commission to reevaluate the role of sweaters made of blends of natural and manmade fibers in its like product analysis. I begin by noting that the articles subject to investigation are the starting point for the Commission's like product analysis. The articles subject to these investigations include sweaters made wholly of manmade fibers and sweaters made in chief weight of manmade fibers. Thus, generally, a sweater made of a blend of manmade fibers and natural fibers, whose chief weight is of manmade fiber, is an article subject to investigation.

For purposes of my like product analysis, the situation of blended fiber sweaters presents two questions. First, are sweaters made of blends of natural and manmade fibers a separate and distinct like product from sweaters made wholly of manmade fibers? Second is there a group of blended fiber sweaters whose content is such that they are not of chief weight of manmade fibers and so should be treated as a separate like product from those that are of chief weight of manmade fiber? In my view, the record in these investigations does not support either contention.

With regard to the issue of whether blended fiber sweaters should be treated as a separate and distinct like product, there is no evidence on the record which supports separate like product treatment for such blends.<sup>2</sup> Most producers contacted by the Commission indicated that blends were a relatively insignificant portion of their product line. There was no indication that such sweaters are produced in any manner different from the other sweaters produced by such firms. There is no evidence that any separate types of data are collected on blended sweaters apart from the other sweaters being produced by the firms. I therefore find there is no basis for treating blends as a separate like product.

With regard to whether blended sweaters of chief weight made of natural fibers should be included or excluded from the like product, I note that no arguments were made by any of the parties with regard to the existence of, much less the significance of any such products.

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<sup>2</sup> Original Report of the Commission at A-47; Remand Report at I-6-7 and Appendix C.



I note that the domestic producers of blended fiber sweaters were unable to provided the Commission with any information on the fiber content of their blended fiber sweaters.

There is therefore, in my view, no basis for believing that blended fiber sweaters should be treated apart from the general category of manmade fiber sweaters.

#### **Condition of the Domestic Industry**

I interpret the Court's remand decision to require one of three courses of action. First, the Commission could obtain enough new information from a sufficiently large group of domestic producers as to constitute substantial evidence on the question of material injury to the domestic industry as a whole. Second, I believe that, under the terms of the remand, I should look to find in the record other evidence that would enable me to determine that the information obtained from a more limited number of responses from the domestic producers are truly representative of conditions in the industry as a whole.<sup>3</sup> Third, if neither of the first two conditions can be fulfilled, I would be required to draw an adverse inference against the domestic industry on the issue of the condition of the domestic industry.

I find that the Commission, despite its strenuous efforts, was unable to substantially increase the response rate of domestic producers in the remand investigation, although the record clearly demonstrates that we tried every possible avenue of obtaining such information. Because the Court found the response rate in the original investigation was too low to constitute substantial evidence, I cannot find that the insignificant improvement in the response rate in this remand investigation supports an affirmative determination.<sup>4</sup>

Second, I find no other evidence in this record which would allow me to conclude that the responses of the limited number of producers that choose in answer the Commission's questionnaires is for any other reason representative of the industry as a whole. I note that although this industry is composed of many small companies it also is composed of a number

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<sup>3</sup> See Slip op. 92-120 at 11-12.

<sup>4</sup> Remand Report at I-9.

of rather large companies. The Commission's sample focussed on these larger companies. Had these larger companies responded in sufficient numbers, the lack of responses from the smaller firms, which based on experience I have come to expect from such smaller firms, would not be a significant matter. Further, there is no alternative public source of information from which I can draw any conclusions regarding the profitability or financial performance of the industry as I am required to do by the statute.<sup>5</sup>

I am therefore left with only the third alternative which I believe the Court has left to me. I must draw an adverse inference against the domestic industry. This inference must be that the information would not support the finding that the industry is materially injured or that it is experiencing such downward trends in performance as to be susceptible to injury within an imminent time frame.

Because, under the bifurcated mode of analysis that I employ, a finding that the industry is not currently experiencing material injury compels a negative determination on the issue of present material injury, I therefore am making such determinations in all three investigations.

### **Threat of Material Injury**

As I have noted on previous occasions, my analysis of whether the imports subject to investigation pose a threat of real and imminent material injury to a domestic injury involves my assessment of the likely future effects of imports, reflected in my analysis of the statutory threat factors in section 771 (7) of the statute, in light of the condition of the industry, reflected in my analysis of the vulnerability of the industry. For purposes of my analysis I adopt the explanation of the statutory threat factors contained in the views of my colleagues in this remand investigation. In light of the fact that I cannot conclude that the domestic industry is vulnerable to the effects of imports, I cannot conclude that the likely future course

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<sup>5</sup> I note that these factors distinguish these investigations from some others conducted by the Commission where in addition to the large number of producers, there are fewer of significant size and often public data, for example Department of Agriculture farm income data, which are useable by the Commission. See Slip op. 92-120 at 11.

of the imports is such as to threaten real and imminent material injury to the domestic industry.

### **Interference with the Commission's Proceedings**

Finally, the Court has instructed the Commission to examine the question of whether the activities of the petitioner in contacting members of the domestic industry in connection with the Commission's questionnaires was an improper interference in the Commission's proceedings. The activities are extensively documented in the Commission's Report on this remand investigation. I find there was nothing improper in petitioner's activities. I also find that these activities were undertaken in response to the Commission's warnings to the petitioner about the consequences of the Commission's inability to obtain sufficient information from the industry.

The Commission is always very concerned about the integrity of its investigative process. On several occasions the Commission has not hesitated to publicly condemn actions by any party which it has felt has compromised that process. The petitioner's actions in this investigation were directed solely to urging cooperation with the Commission in an effort, ultimately unsuccessful, to obtain a sufficient data base for the Commission's decision. To urge that particular attention be paid to particular questions is not improper. This was clearly not a case in which people were being told not to complete a portion of the questionnaire for some reason. I further note that the Commission is fully capable of assigning whatever weight it deems proper to questionnaires that are only partially filled out.

There is nothing in the record to indicate that petitioner's activities affected the content of any responses to the questionnaire. The Commission dealt summarily with the issue of interference in its original decisions because, on the basis of our experience and the record at that time, which has been more than adequately confirmed in this record, that there was nothing to the allegations. That is also my finding in these remand decisions.



# ADDITIONAL VIEWS OF COMMISSIONER JANET A. NUZUM

I join my colleagues in the determinations and views set forth in the majority's opinion. I submit these additional views to provide further detail of my analysis with respect to certain issues.

## A. Interference With the Investigations by Petitioner

In its remand to the Commission, the Court of International Trade ("CIT") directed the Commission to investigate further the allegations that certain actions of the National Knitwear & Sportswear Association ("NKSA") urging domestic producers to complete the ITC questionnaires compromised the objectivity of the questionnaire responses. The CIT also directed the Commission to reconsider whether to draw an adverse inference against the domestic industry on this basis.<sup>1</sup> After careful examination of the evidence and circumstances surrounding this issue, I conclude that, although one document (the "Guide to Essential Questionnaire Items") contained inappropriate references to "expected results," the objectivity of the information received by the Commission was not compromised. Therefore, I find it neither necessary nor appropriate to draw an adverse inference against petitioner on this particular basis.

My analysis begins with the CIT's observation that there is

no objectionable conduct in a trade association petitioner's communications, advertising activities, or other promotional efforts aimed in good faith simply to encourage interest by its members in an antidumping investigation and promote their

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<sup>1</sup> Chung Ling Co., Ltd. v. United States, Slip Op. 92-120 (Ct. Int'l Trade July 28, 1992) ("Chung Ling I") at 12.

cooperation with the association's and Commission's data requests. Clearly, the support of the domestic industry and the active cooperation with and assistance to the Commission of the parties to the investigation in the Commission's data collection efforts is imperative.

Chung Ling I at 15-16.

The efforts by NKSA to encourage responses by domestic producers were, for the most part, entirely appropriate. The record indicates that most of the communications informed domestic producers of the importance of the questionnaire data and promoted the producers' cooperation with the ITC investigations.<sup>2</sup> Furthermore, the Commission staff on more than one occasion requested petitioner's assistance to improve the industry's response rate to the questionnaire.<sup>3</sup> Such assistance is often needed, and particularly important, when the domestic industry is comprised of numerous producers, many of them small in size, and aggregate industry data for key indicia are not publicly available. As a general matter, therefore, I think the NKSA is to be commended for its efforts to assist the Commission.

In many situations, it is in the interests of a party (whether a petitioner or a respondent) to focus only on those facts and arguments which support its desired outcome. In this situation, however, the integrity of the Commission's investigative process depends on the accumulation of a data base that is generally representative of the domestic industry as a whole -- not just injured parts of the domestic industry. Therefore, any efforts to assist the Commission must respect this objective.

In other words, communications that encouraged all questionnaire

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<sup>2</sup> See NKSA subpoena response (September 3, 1992) at Attachments B, C and D.

<sup>3</sup> Staff memoranda dated October 12, 1989; May 24, 1990; June 22, 1990; and July 13, 1990.

responses, and did not encourage only certain types of questionnaire responses, are entirely appropriate. Many of the NKSA communications fall into this category.<sup>4</sup>

On the other hand, communications which would tend to discourage certain types of responses (i.e., those in which the data would be inconsistent with the theory of petitioner's injury allegations) might compromise the integrity of the questionnaire data base. In this connection, I find the document entitled "Guide to Essential Questionnaire Items," that petitioner distributed during the original investigations, to be troubling. This document summarized particular questions in the questionnaire and, for each item, indicated what the petitioner "expected" the data to show with respect to that item.<sup>5</sup> Specifically, the "Guide" identified the type of trend the petitioner "expected" the data to show for profitability, practical capacity, production, trade and inventory data, and employment information.

Although producers were not explicitly instructed by NKSA to fill out the questionnaire only if their data supported the "expected results," producers whose data did not reflect the "expected results" may have been discouraged from either answering that question or answering the questionnaire altogether. The implicit message was that, if the company's data supported the "expected results," then filling out the questionnaire was particularly important. Selective encouragement of responsiveness to questionnaires undercuts the Commission's ability to compile a data base that is broadly representative of the domestic industry.

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<sup>4</sup> See NKSA subpoena response, Attachments B and D.

<sup>5</sup> See "Guide to Essential Questionnaire Items" (attached as Exhibit 2 to Post-Hearing Brief of Korean Respondents dated August 14, 1990).

In my view, the degree of specificity and slant of the "Guide" crossed over the line of appropriate actions, even for an interested party. This document, unlike other documents, did not simply make a general statement that NKSA expected to show a declining domestic industry injured by low-priced imports; this document went through the questionnaire item by item, and identified for each question what specific data results were "expected." Such suggestiveness was at odds with the Commission's objective of compiling a broad-based and high rate of response to the questionnaires.

Respondents also claimed that petitioner's efforts improperly emphasized production, employment, and profitability data. Although certain NKSA correspondence did encourage the companies to focus on these three areas,<sup>6</sup> this suggestion was made in the context of urging parties at least to provide information on production, employment, and profitability. For example, in one document NKSA wrote: "If you can possibly fill out the USITC questionnaire do as much of it as you can focusing especially on the following three points . . . . Time is absolutely essential [and] the answers to whatever extent you can must be at the ITC in the next few days."<sup>7</sup>

It is important to keep in mind that these communications were targeted at companies that had not yet responded to the questionnaire, and may not have had ready resources to fill it out completely. Given the importance of production, employment, and profitability data to ITC determinations, and the fact that NKSA did not in these communications selectively focus on declining

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<sup>6</sup> See, e.g., Letter dated July 31, 1990 from Mr. Seth Bodner to Mr. Frederick Keller; Letter dated August 2, 1990 from Mr. Seth Bodner to Mr. Sandor Schwartz (NKSA subpoena response, Attachment B).

<sup>7</sup> Memoranda from NKSA to various parties, dated July 3, 1990 (NKSA subpoena response, Attachment C).



production, declining employment, and declining profitability, I find that these communications did not constitute improper action by NKSA.

In addition to investigating the nature of the NKSA communications, the Commission specifically asked the domestic producers who submitted questionnaire responses, "Did NKSA influence your decision to respond to the Commission's questionnaire and/or the content of the information that you reported to the Commission?"<sup>8</sup> Thirty producers (out of 37 producers responding to the question) replied "no." Other producers indicated that the content of their responses was not affected, although petitioner was influential in their decision to respond. Only one producer answered "yes" without any explanation or elaboration.

In light of such meager indication of any influence by NKSA with respect to the content of the questionnaire responses, the nature of the NKSA communications, and my review of the record as a whole, I do not believe that petitioner's actions affected the objectivity of the information which was received by the Commission.<sup>9</sup>

#### B. No Material Injury By Reason of the Subject Imports

##### 1. Volume of Subject Imports

As noted in the majority's opinion, the share of the U.S. market held by the subject imports remained relatively stable during the period of

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<sup>8</sup> Remand Report at B-6.

<sup>9</sup> Respondents contend that the Commission does not know how many companies decided not to respond to the questionnaire as a result of petitioner's actions. Although this is a valid concern, I am reasonably confident that the information which the Commission has received has not been tainted. I note that those questionnaire responses submitted following issuance of subpoenas in either the final or remand investigations do not show stronger or more positive data than do the voluntary responses.

investigation. Indeed, I also find it significant that the trends in import penetration by the subject imports during the period of investigation corresponded to the trends in market share held by the domestic industry. From 1987 to 1988, the domestic industry's market share increased (from 28.3 percent to 30.1 percent based on quantity), while the subject imports' market share also increased (from 22.5 percent to 25.1 percent). On the other hand, the market share of non-subject imports declined (from 49.2 percent to 44.9 percent).<sup>10</sup>

From 1988 to 1989, the domestic industry's market share dropped significantly (from 30.1 percent to 22.7 percent based on quantity); at the same time, the subject imports' market share decreased (from 25.1 percent to 23.3 percent). This drop in domestic market share coincided with a dramatic increase, on the other hand, in market share by the non-subject imports, which rose from 44.9 percent to 54.1 percent during the same period.<sup>11</sup>

It is true that the market share held by the subject imports was slightly higher at the end of the period of investigation -- 0.8 percentage points -- than it was at the beginning. I do not find this small increase in volume to be significant, however, in light of the parallel trends between domestic shipments and subject imports, and the much larger volumes of non-subject imports. The evidence with respect to volume, therefore, does not support a causal link between the subject imports and the condition of the domestic industry.

## 2. Impact of the Subject Imports on Domestic Prices

In addition to examining the pricing data obtained by the Commission, I

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<sup>10</sup> See Memorandum INV-P-176 at Table 1.

<sup>11</sup> Id.

also examined the unit values of domestic sweaters, the subject imports, and the non-subject imports to see whether there was any discernible connection between the subject imports and domestic prices. The unit values I evaluated were based on data from the U.S. Bureau of the Census.

I begin with several cautionary notes about the use of unit values. Differences in unit values in general may reflect differences in product mixes rather than in prices for comparable products. In this product market in particular, differences in unit values may reflect shifts towards more costly natural fibers and/or more intricate designs. Nevertheless, keeping these caveats in mind, examining unit values can be useful, particularly when actual pricing data are unreliable or inconclusive.

The unit values of domestic sweaters increased consistently between 1987 and 1989, from \$122.56 to \$132.35.<sup>12</sup> I find it noteworthy that the unit values increased irrespective of the changes in market share held by domestic producers.

For subject imports, unit values decreased from about \$125 in 1987 to about \$120 in 1988, before rising to somewhat less than \$125 in 1989.<sup>13</sup> The unit value trends run counter to the market share trends. The unit values of non-subject imports increased from \$121.77 in 1987 to \$137.58 in 1988, while their market share declined. Unit values then dropped in 1989 to \$130.29 -- considerably higher than the level in 1987 -- while market share increased by nearly ten percentage points.<sup>14</sup> Thus, for both subject and non-subject

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<sup>12</sup> Id.

<sup>13</sup> The exact unit values for the subject imports are confidential. Memorandum INV-P-176 at Table 1.

<sup>14</sup> Id.

imports alike, unit values and market share followed contrasting trends, whereas domestic sweater unit values and market share did not.

I find that these trends do not provide clear evidence of price suppressing or depressing effects caused by the subject imports.

3. No Other Evidence of Causal Link

I also examined the correlation between the financial condition of the domestic industry and the respective market shares of domestic producers and the subject imports. I find it significant that the decline in the domestic industry's profitability coincided with its increase in market share from 1987 to 1988. Specifically, while the domestic industry's market share increased from 28.3 percent to 30.1 percent, its operating income as a ratio to net sales decreased from 6.1 percent to 3.8 percent.<sup>15</sup> Moreover, while the industry's market share dropped so dramatically in 1989, its operating income remained stable.<sup>16</sup> I find this evidence suggests that factors other than the subject imports account for the industry's condition.

Furthermore, I note that the financial performance of the manufacturers was generally more positive than that of contractors.<sup>17</sup> Specifically, the manufacturers saw a decline in operating income from 7.4 percent in 1987 to 4.8 percent in 1988. Operating income then increased to 4.9 percent in 1989.<sup>18</sup> Contractors also saw a decline in operating income from 2.2 percent in 1987 to the barely profitable margin of 0.7 percent in 1988, where it

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<sup>15</sup> Remand Report at I-13, Table 2.

<sup>16</sup> Id.

<sup>17</sup> Memorandum INV-P-176 at Tables 3 and 4.

<sup>18</sup> Id. at Table 3.

remained for the next year.<sup>19</sup>

The relatively stronger performance by the manufacturers is consistent with evidence in the record of a consolidation in the retail industry towards fewer larger retailers.<sup>20</sup> One retailer specifically testified that it prefers to purchase sweaters from manufacturers who can supply larger volumes with greater consistency in color and quality.<sup>21</sup> This evidence suggests that contractors cannot meet the needs of larger retailers.<sup>22</sup> This consolidation in the retail industry appears, therefore, to be causing a corresponding consolidation in the sweater industry. In any event, neither of these developments appears to have any causal connection to the subject imports.

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<sup>19</sup> Id. at Table 4.

<sup>20</sup> Transcript of Hearing, Aug. 9, 1990 ("Tr.") at 133, 134; see also Prehearing Brief of American Association of Exporters and Importers (AAEI) Sweater Group (August 3, 1990) ("AAEI Prehearing Brief") at 39.

<sup>21</sup> Tr. at 188.

<sup>22</sup> See AAEI Prehearing Brief at 39.



INFORMATION OBTAINED IN THE REMAND PROCEEDINGS





## INTRODUCTION

In September 1990, the Commission determined that an industry in the United States was materially injured by reason of imports from Hong Kong, the Republic of Korea, and Taiwan of sweaters wholly or in chief weight of manmade fibers, provided for in specified subheadings of the Harmonized Tariff Schedule of the United States, that were found by the U.S. Department of Commerce to be sold in the United States at less than fair value. The Commission's determinations were appealed to the Court of International Trade ("CIT"), and on July 28, 1992, the CIT remanded the Commission's determinations (Chung Ling Co. v. United States, Slip Op. 92-120 (July 28, 1992)). On August 24, 1992, the Commission requested that the CIT certify its decision for interlocutory appeal and also sought a concurrent stay of the remand proceedings. The CIT issued a temporary stay of the remand proceedings on August 28, 1992. On September 25, 1992, the CIT rejected the Commission's motion for certification for interlocutory appeal of the court's decision and instructed the Commission to transmit its new determinations and report on remand by November 23, 1992 (Chung Ling Co. v. United States, Slip Op. 92-165 (Sept. 25, 1992)). Notice of the Commission's remand proceedings and establishment of a schedule for their conduct 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 (57 F.R. 47352, October 15, 1992).<sup>1</sup>

## BACKGROUND

The court found that the Commission's determinations erred in four areas: (1) its stated justifications for not drawing an adverse inference against the domestic industry were "inherently unsound;"<sup>2</sup> (2) not properly considering whether the petitioner's contacts with the domestic producers during the data collection process compromised the objectivity of the questionnaire response data and possibly required drawing an adverse inference; (3) basing its causation analysis on inadequate and/or inaccurate import price data; and (4) reaching a like product conclusion based on fiber composition predicated in part on a "relatively minor position of blends" of fibers, even though the so-called minor position of blends was not supported by substantial evidence in the record.

In order to seek additional information to comply with the remand instructions, the Commission reopened the record in the underlying investigations. The Commission sought to obtain additional information in the

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<sup>1</sup> A copy of the Commission's Federal Register notice is presented in app. A.

<sup>2</sup> Slip Op. 92-120, July 28, 1992, p. 7. The court stated (p. 12) that "On remand, the Commission may conduct any further investigation deemed warranted to obtain data representative of the MMF sweater producers' pricing and the financial condition of the MMF sweater 'industry,' as defined in the statute; and/or, the Commission may apply the adverse inference rule against the domestic industry." In Slip Op. 92-165, Sept. 25, 1992, p. 14, the court further stated that "the remand order in Slip Op 92-120 was couched to afford the Commission wide latitude and discretion in further investigation and/or drawing of an adverse inference."

following areas: (1) more complete questionnaire responses in the areas of income-and-loss and pricing from the producers that had responded to the Commission's questionnaire in the final investigations; (2) the effect, if any, of the petitioner's activities on the accuracy of the producers' questionnaire data collected by the Commission; (3) clarification of and, if necessary, correction of importers' price information to ensure that price comparisons are made at the same level of trade; and (4) additional information concerning the significance of different fiber blends.

In the Commission's final antidumping investigations, usable, or partially usable, questionnaire responses were received from 57 identifiable U.S. producers of sweaters. During the Commission's remand proceedings, the staff attempted to contact all of these 57 producers. It was learned that 14 producers have gone out of business since the Commission's final investigations, no longer produce sweaters, or are in the process of liquidating their operations.<sup>3</sup>

Information collected during the Commission's remand proceedings on producers' income-and-loss is presented in the section of this report entitled "Financial Experience of U.S. Producers;" information on producers' and importers' pricing is presented in the section entitled "Prices;" and summary information on petitioner's activities during the Commission's data collection process and information concerning different fiber blends, follows.

#### INTERFERENCE WITH THE INVESTIGATIONS BY PETITIONER

During the course of the Commission's final investigations, the petitioner, the National Knitwear and Sportswear Association (NKSA), contacted members of the domestic industry concerning questionnaire responses. On August 13, 1992, the Commission served an administrative subpoena on the NKSA to collect information which would allow the Commission to further evaluate the nature of the NKSA's communication with the domestic industry. The subpoena ordered the submission of the following information:

1. The names of all U.S. firms to which the "Guide to Essential Questionnaire Items," found at Tab 15 of your posthearing brief, was sent by the NKSA or by any person representing or otherwise acting on behalf of, or at the request of, the NKSA.
2. The names of all U.S. firms to whom letters such as, or similar to, the one found at Tab 2 of the posthearing brief of the Korean respondents (dated May 17, 1990) were sent by the NKSA or by any person representing or otherwise acting on behalf of, or at the request of, the NKSA, as well as copies of the letters.

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<sup>3</sup> These firms are: \*\*\*.

3. The names of non-NKSA members to whom the Commission sent producer questionnaires who, in addition to the contacts listed in response to inquiries (1) and (2), were sent any other documents in any way discussing the questionnaire or were otherwise contacted with regard to the questionnaires by the NKSA or by any person representing or otherwise acting on behalf of, or at the request of, the NKSA. Please provide copies of any documents sent to such producers and describe the contacts and provide copies of any other documents relating to those contacts.

On September 3, 1992, the Commission received a response to the subpoena from the NKSA. The Office of the Secretary circulated the response to the Commission on October 15, 1992.

In addition to the subpoena of information from the NKSA, the questionnaire sent to U.S. producers in connection with the remand proceedings asked firms to detail the nature of any contact with the NKSA between September 1989 and September 1990. Nineteen of the 38 firms responding to the questions indicated having some contact with the NKSA during the course of the Commission's final investigations. Although several firms indicated that the NKSA influenced their decision to respond to the Commission's producers' questionnaire, none of the 19 firms responded that the NKSA influenced the content of the information that was submitted to the Commission. The actual responses by producers are presented in appendix B.

#### SWEATERS OF BLENDED FIBERS

U.S. producers were asked to summarize the nature of any production of sweaters with a blend of manmade and natural fibers by their firm. Twenty of the 36 firms responding to the Commission's producers' questionnaire did not produce sweaters of blended fibers. Of the 16 producers which did produce sweaters of blended fibers, 9 reported that during 1987 to 1989 25 percent or less of the total quantity of their U.S. shipments of sweaters were accounted for by sweaters of blended fibers;<sup>4</sup> 3 reported that between 26 and 50 percent of the total quantity of their U.S. shipments of sweaters were accounted for by sweaters of blended fibers;<sup>5</sup> 1 reported that 85 to 90 percent of its U.S. shipments of sweaters were accounted for by sweaters of blended fibers;<sup>6</sup> and 3 producers were unable to accurately estimate the share.<sup>7</sup> The actual responses by producers are presented in appendix C.

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<sup>4</sup> These 9 firms accounted for 43.9 percent of total sweater production reported by the 36 responding firms and 46.2 percent of manmade-fiber sweater production reported by the 36 firms.

<sup>5</sup> These 3 firms accounted for 6.8 percent of total sweater production reported by the 36 responding firms and 4.1 percent of manmade-fiber sweater production reported by the 36 firms.

<sup>6</sup> This firm accounted for \*\*\* percent of total sweater production reported by the 36 responding firms and \*\*\* percent of manmade-fiber sweater production reported by the 36 firms.

<sup>7</sup> These 3 firms accounted for 7.8 percent of total sweater production reported by the 36 responding firms and 2.4 percent of manmade-fiber sweater production reported by the 36 firms.

## FINANCIAL EXPERIENCE OF U.S. PRODUCERS

In the remand investigations, questionnaires were sent to 57 companies that provided partial or complete trade data in the final investigations.<sup>8 9</sup> The income-and-loss data requested in the remand investigations were like those requested in the final investigations, i.e., overall establishment operations, operations on all sweaters, and operations on manmade-fiber sweaters; the period for which data were collected consisted of fiscal years 1987, 1988, and 1989, plus the January-March interim periods of 1989 and 1990.

## Questionnaire Response Database Summary

The number of firms that provided usable income-and-loss data in the final investigations and in the remand investigations and the percent coverage of U.S. production (based on Census data) in 1989 are presented in the following tabulation:

<u>Item</u>	<u>Number of firms</u>		<u>Percent coverage</u>	
	<u>in the--</u>		<u>in the--</u>	
	<u>Final</u>	<u>Remand</u>	<u>Final</u>	<u>Remand</u>
Manmade-fiber sweaters...	9	13	16 <sup>1</sup>	19.6
All sweaters.....	28	39	35	40.8

<sup>1</sup> Although Judge Carmen's Memorandum Opinion and Order (Slip Op. 92-120, July 28, 1992, p. 5) stated that it was 15 percent, the number in the staff report in the final investigations was 16 percent.

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<sup>8</sup> One additional company (\*\*\*) was not sent a questionnaire because its original questionnaire response was not located. However, \*\*\*'s data were obtained from the case file computer run in the final investigations and were used in the compilation of data for this section of the report.

<sup>9</sup> There are three types of firms involved in the production and sales of sweaters in the United States: manufacturer/sellers, contractors, and jobbers. Some firms are a combination of the three types. Manufacturer/sellers produce sweaters in their own facilities and also market the sweaters themselves using their own sales forces; these firms tend to be relatively large, usually with more than 100 employees. Contractors produce sweaters in their own plants, but do not have sales capability, nor do they procure supplies (e.g., yarn) independently. Rather, contractors are usually provided with raw materials and are paid only for their labor; thus, they work strictly under "contract." Contractors are usually very small, often with only a handful of employees. Finally, jobbers are firms that sell sweaters either under their own label or on a private-label basis for their customers, but have no production facilities. Jobbers arrange for contractors to produce sweaters, usually to the jobbers' designs and with raw materials supplied through the jobbers.

Some of the producers in the final investigations have since terminated (or are in the process of terminating) their operations. Thus, since they were unable to respond to the remand questionnaire, their original questionnaires were used in compiling the remand data.

A listing of the 58 companies directly involved in the remand investigations and the type of data each firm provided are presented in appendix D. Each firm's U.S. production of all sweaters and of manmade-fiber sweaters in 1989 is presented in appendix E.

The usable income-and-loss data obtained as a result of the final investigations and the remand investigations have been compiled into three tables: (1) a table for all sweaters, comprising those firms that provided data on their all sweaters operations or (if they were not able to provide such data) on their overall establishment operations where sweaters accounted for 85 percent or more of such operations; (2) a table for manmade fiber sweaters, comprising those firms producing any manmade-fiber sweaters that provided data on their manmade-fiber sweater operations or (if they were not able to provide such data) for their all sweaters operations or for their overall establishment operations where sweaters accounted for 85 percent or more of such operations; and (3) a table for manmade-fiber sweaters, comprising those firms producing manmade-fiber sweaters that provided data on their manmade-fiber sweater operations or (if they were not able to provide such data) for their all sweaters operations where manmade-fiber sweater operations accounted for 85 percent or more of all sweater operations or for overall establishment operations where manmade-fiber sweaters accounted for 85 percent or more of overall establishment operations. Companies in the sweater industry, whether large or small, generally do not maintain separate income-and-loss records by type of fiber.<sup>10</sup>

### Representativeness of the Data

Most of the aggregate industry data obtained by the Commission from questionnaires contrast sharply with adjusted U.S. Census production data for 1987-89 that were obtained in the final investigations.<sup>11</sup> Census data for both all sweaters and manmade-fiber sweaters declined substantially between 1987 and 1989, whereas most of the trade and financial indicators obtained through Commission questionnaires either show increases or smaller declines. The differences between the Census data and the questionnaire responses may be due to the non-responses of firms which have exited the business, but whose

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<sup>10</sup> \*\*\* indicated that small contractors such as his firm are just "cut and sew" operations. All they do is supply the labor. His firm does not maintain separate records by fiber content. Telephone conversation, Oct. 23, 1992.

<sup>11</sup> In the remand investigations, adjustments have been made to the questionnaire trade data and the Census production data that were obtained in the final investigations, such as adding late questionnaire data from the final investigations into the data base and adjusting Census data to account for changes in Census "weights" that were not on the record in the final investigations.

production data may be in the industry Census totals.<sup>12</sup> Accordingly, the companies that responded to the Commission's questionnaires may not be representative of the industry. Table 1 presents a summary of data obtained in the investigations.

#### Reliability of the Data

Most of the firms in this industry do not maintain extensive records of trade, financial, or pricing data. Companies are more apt to have records by type of fiber on a quantity and/or customer basis. This presents a difficulty for firms in allocating cost data to manmade-fiber sweaters, and more so in the case of blends. As a result, the reliability of the all sweater income-and-loss data would be greater than that for manmade-fiber data. Seventeen firms did not attempt to, or were not able to, allocate their all sweater data to manmade-fiber sweaters.<sup>13</sup> Also, five companies that produce various types of apparel including sweaters were unable to provide income-and-loss data on all sweaters.

#### All Sweater Income-and-Loss Data

The remand income-and-loss data for all sweaters are shown in table 2.<sup>14</sup> Net sales increased between 1987 and 1989, but profitability declined. Eight of the producers (\*\*\*) also utilize subcontractors.<sup>15</sup> This purchased subcontractor production was commingled with their sweater production and included in their reported income-and-loss data. The sales from these purchases were approximately \$29 million (approximately 7.5 percent) of all

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<sup>12</sup> The number of firms which actually produced all sweaters and manmade-fiber sweaters that exited the market during the period of investigation is unknown.

<sup>13</sup> All sweaters income-and-loss data for 30 companies (including the 13 that provided income-and-loss data on manmade-fiber sweaters) that produced manmade-fiber sweaters are presented in the section of this report entitled "Sweater Income-and-loss Data (Producers of Manmade-Fiber Sweaters Only)".

<sup>14</sup> Income-and-Loss data by producer are shown in appendix F.

<sup>15</sup> Some of these subcontractors are included in the database for this report.

Table 1

All sweaters and manmade-fiber sweaters: Summary data concerning the U.S. market, 1987-89<sup>1</sup>

(Quantity = 1,000 dozen; value = 1,000 dollars; period changes = percent, except where noted)

Item	1987	1988	1989	Period changes, 1987-89
<b>Census data<sup>2</sup></b>				
All sweaters:				
Production (quantity)....	10,635	9,010	7,722	(27.4)
Production (value).....	1,303,400	1,119,000	1,022,000	(21.6)
Manmade-fiber sweaters:				
Production (quantity)....	5,588	4,408	3,808	(31.9)
<b>Questionnaire responses</b>				
All sweaters:				
Capacity (quantity).....	4,254	4,484	4,485	5.4
Production (quantity)....	3,567	3,510	3,721	4.3
Shipments (quantity).....	5,708	5,463	5,432	(4.8)
Shipments (value).....	587,733	605,253	648,321	10.3
Inventories (quantity)...	368	387	471	28.0
Production and related workers.....	8,776	9,318	9,219	5.0
Net sales (value).....	299,734	350,410	389,052	29.8
Operating income (loss) (value).....	18,353	13,330	14,790	(19.4)
Operating income (loss) ratio to net sales (percent) <sup>3</sup> .....	6.1	3.8	3.8	(2.3)
Manmade-fiber sweaters:				
Capacity (quantity).....	3,277	3,445	3,426	4.5
Production (quantity)....	1,987	2,021	1,920	(3.4)
Shipments (quantity).....	3,123	3,162	2,730	(12.6)
Shipments (value).....	312,390	318,556	287,599	(7.9)
Inventories (quantity)...	223	238	300	34.5
Production and related workers.....	3,864	4,067	4,134	7.3
Net sales (value).....	45,961	53,640	68,063	48.1
Operating income (loss) (value).....	1,494	1,108	790	(47.1)
Operating income (loss) ratio to net sales (percent) <sup>3</sup> .....	3.3	2.1	1.2	(2.1)

<sup>1</sup> All data, except net sales and operating income (loss), were from tables in the staff report in the final investigations.

<sup>2</sup> Census data include adjustments made by staff in the final investigations.

<sup>3</sup> Reported data are in percent and period changes are in percentage points.

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

Table 2

Income-and-loss experience of U.S. producers on their operations producing all sweaters, fiscal years 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
Value (1,000 dollars)					
Net sales.....	299,734	350,410	389,052	45,780	37,505
Cost of goods sold.....	234,980	281,013	312,603	36,393	30,181
Gross profit.....	64,754	69,397	76,449	9,387	7,324
Selling, general, and administrative expenses...	46,401	56,067	61,659	8,403	8,775
Operating income or (loss)...	18,353	13,330	14,790	984	(1,451)
Other expense, net.....	4,660	5,651	9,411	1,072	1,233
Net income or (loss) before income taxes.....	13,693	7,679	5,379	(88)	(2,684)
Depreciation and amortiza- tion.....	9,650	12,923	14,224	1,845	1,805
Cash flow <sup>1</sup> .....	23,343	20,602	19,603	1,757	(879)
Ratio to net sales (percent)					
Cost of goods sold.....	78.4	80.2	80.3	79.5	80.5
Gross profit.....	21.6	19.8	19.7	20.5	19.5
Selling, general, and administrative expenses...	15.5	16.0	15.8	18.4	23.4
Operating income or (loss)...	6.1	3.8	3.8	2.1	(3.9)
Net income or (loss) before income taxes.....	4.6	2.2	1.4	(0.2)	(7.2)
Number of firms reporting					
Operating losses.....	15	16	18	12	14
Net losses.....	15	16	15	12	14
Data.....	36	39	39	21	21

<sup>1</sup> 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.



reported sweater sales in 1989. A tabulation of all sweater income-and-loss data for the final and remand investigations is shown below (in thousands of dollars, except as noted):

<u>Item</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>January-March</u>	
				<u>1989</u>	<u>1990</u>
Net sales:					
Original data.....	264,150	313,473	342,411	40,222	30,677
Remand data.....	299,734	350,410	389,052	45,780	37,505
Operating income or (loss):					
Original data.....	16,983	13,069	13,965	882	(1,506)
Remand data.....	18,353	13,330	14,790	984	(1,451)
Operating income or (loss) ratio to net sales (percent):					
Original data.....	6.4	4.2	4.1	2.2	(4.9)
Remand data.....	6.1	3.8	3.8	2.1	(3.9)

#### Sweater Income-and-Loss Data (Producers of Manmade-Fiber Sweaters Only)

The remand income-and-loss data for sweater operations for producers of manmade fiber sweaters only are shown in table 3.<sup>16</sup> This table comprises those firms that produced any manmade-fiber sweaters that provided data on their manmade-fiber sweater operations or (if they were not able to provide such data) for their all sweaters operations or for their overall establishment operations where sweaters accounted for 85 percent or more of such operations. These 30 firms accounted for approximately 36 percent of the U.S. production of all sweaters in 1989.

<sup>16</sup> Income-and-loss data by producer are shown in appendix G.

Table 3

Income-and-loss experience of U.S. producers of manmade-fiber sweaters on their operations producing all sweaters,<sup>1</sup> fiscal years 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
	Value (1,000 dollars)				
Net sales.....	240,372	278,679	312,231	36,845	28,190
Cost of goods sold.....	188,827	227,015	255,123	29,316	23,239
Gross profit.....	51,545	51,664	57,108	7,529	4,951
Selling, general, and administrative expenses....	34,870	41,496	45,696	6,548	6,696
Operating income or (loss)...	16,675	10,168	11,412	981	(1,745)
Other expense, net.....	4,588	5,557	9,174	1,033	1,139
Net income or (loss) before income taxes.....	12,087	4,611	2,238	(52)	(2,884)
Depreciation and amortiza- tion.....	7,844	10,743	11,988	1,526	1,493
Cash flow <sup>2</sup> .....	19,931	15,354	14,226	1,474	(1,391)
	Ratio to net sales (percent)				
Cost of goods sold.....	78.6	81.5	81.7	79.6	82.4
Gross profit.....	21.4	18.5	18.3	20.4	17.6
Selling, general, and administrative expenses....	14.5	14.9	14.6	17.8	23.8
Operating income or (loss)...	6.9	3.6	3.7	2.7	(6.2)
Net income or (loss) before income taxes.....	5.0	1.7	0.7	(0.1)	(10.2)
	Number of firms reporting				
Operating losses.....	12	16	16	12	14
Net losses.....	14	16	15	12	14
Data.....	29	30	30	16	16

<sup>1</sup> This table comprises those firms that produced any manmade-fiber sweaters that provided data on their manmade-fiber sweater operations or (if they were not able to provide such data) for their all sweaters operations or for their overall establishment operations where sweaters accounted for 85 percent or more of such operations.

<sup>2</sup> 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.

### Manmade-Fiber Sweater Income-and-Loss Data

The remand income-and-loss data for manmade-fiber sweaters are shown in table 4.<sup>17</sup> Net sales increased between 1987 and 1989, but profitability was at relatively low levels during this period. A tabulation of manmade-fiber sweater income-and-loss data for the original and remand investigations is shown below (in thousands of dollars, except as noted):

<u>Item</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>January-March</u>	
				<u>1989</u>	<u>1990</u>
Net sales:					
Original data.....	38,995	55,046	69,723	780	600
Remand data <sup>1</sup> .....	45,961	53,640	68,063	1,955	1,771
Operating income or (loss):					
Original data.....	322	1,263	1,040	80	(40)
Remand data.....	1,494	1,108	790	36	(277)
Operating income or (loss) ratio to net sales (percent):					
Original data.....	0.8	2.3	1.5	10.3	(6.7)
Remand data.....	3.3	2.1	1.2	1.8	(15.6)

<sup>1</sup> Net sales were less in the remand investigations because of revisions by \*\*\*. \*\*\*'s data were subject to verification.

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<sup>17</sup> Income-and-loss data by producer are shown in appendix H.

Table 4

Income-and-loss experience of U.S. producers on their operations producing sweaters of manmade fibers, fiscal years 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
	Value (1,000 dollars)				
Net sales.....	45,961	53,640	68,063	1,955	1,771
Cost of goods sold.....	36,750	42,836	54,488	1,453	1,345
Gross profit.....	9,211	10,804	13,575	502	426
Selling, general, and administrative expenses....	7,717	9,696	12,785	466	703
Operating income or (loss)...	1,494	1,108	790	36	(277)
Other income or (expense), net.....	268	140	(33)	(39)	(37)
Net income or (loss) before income taxes.....	1,762	1,248	757	(3)	(314)
Depreciation and amortiza- tion.....	1,861	2,221	2,671	109	111
Cash flow <sup>1</sup> .....	3,623	3,469	3,428	106	(203)
	Ratio to net sales (percent)				
Cost of goods sold.....	80.0	79.9	80.1	74.3	75.9
Gross profit.....	20.0	20.1	19.9	25.7	24.1
Selling, general, and administrative expenses....	16.8	18.1	18.8	23.8	39.7
Operating income or (loss)...	3.3	2.1	1.2	1.8	(15.6)
Net income or (loss) before income taxes.....	3.8	2.3	1.1	(0.2)	(17.7)
	Number of firms reporting				
Operating losses.....	5	8	6	3	4
Net losses.....	6	7	6	3	4
Data.....	12	13	13	4	4

<sup>1</sup> 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.

## PRICES

U.S. Producers' and Importers' Questionnaire Price Data<sup>18</sup>

In the remand investigations, the Commission requested pricing information from the U.S. producers who did not provide usable pricing information during the final investigations, but who did provide at least some trade data.<sup>19</sup> The Commission also requested U.S. importers to verify or correct the pricing information they submitted during the final investigations.<sup>20</sup>

The final investigations' questionnaires requested quarterly price data between January 1987 and March 1990 for each firm's largest sale of six categories of manmade-fiber sweaters. U.S. producers were also requested to provide similar data for two types of natural-fiber sweaters. U.S. retailers that imported directly from Hong Kong, Taiwan, or Korea were also requested to provide purchase price information on their imports of the six manmade-fiber products. The specified sweater products for which price data were requested are listed below:<sup>21</sup>

Product 1: Sweaters of manmade fibers, 100 percent acrylic, plain stitch (including shaker or jersey), crew neck, pullover, solid color, for men.

Product 2: Sweaters of manmade fibers, 100 percent acrylic, jacquard pattern, crew neck, pullover, for men.

Product 3: Sweaters of manmade fibers, 100 percent acrylic, all over cable stitch, crew neck, pullover, solid color, for women.

Product 4: Sweaters of manmade fibers, 100 percent acrylic, jacquard pattern, crew neck, pullover, for girls' sizes 7 to 14.

Product 5: Sweaters of manmade fibers, 100 percent acrylic, plain stitch (including shaker or jersey), crew neck, pullover, for boys' sizes 7 to 14.

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<sup>18</sup> This section refers only to pricing information provided by U.S. producers and importers of manmade-fiber sweaters from Hong Kong, Korea, and Taiwan. For information on pricing and marketing characteristics of this industry, see pp. A-87-A-90 of the final confidential staff report. For pricing information provided by purchasers, see pp. A-97-A-105 of the final confidential staff report. For lost sales and revenues information, see pp. A-106-A-118 of the final confidential staff report.

<sup>19</sup> Although questionnaires were sent to 57 producers in the remand investigations, 7 of these producers had supplied pricing data in the final investigations, and 27 producers were contractors only and were instructed not to provide pricing information.

<sup>20</sup> Some importers had improperly reported f.o.b. prices as foreign port of entry rather than U.S. port of entry.

<sup>21</sup> These product categories were selected after extensive consultation with the petitioner and after contacting selected producers, importers, and retailers to confirm that they could provide price data for the categories.

Product 6: Sweaters of manmade fibers, 100 percent acrylic, plain stitch (including shaker or jersey), crew neck, pullover, solid color, for women.

Product 7: Sweaters of natural fibers, 100 percent cotton, plain stitch (including shaker or jersey), crew neck, pullover, solid color, for men.

Product 8: Sweaters of natural fibers, 100 percent cotton, cable stitch front and back, crew neck, pullover, solid color, for women.

Overall, there are now 14 U.S. producers and 24 importers that have reported usable pricing data, although not for all periods or for each product requested.<sup>22</sup> The responding producers accounted for over 45 percent of total reported U.S.-produced shipments of manmade-fiber sweaters in 1989.<sup>23</sup> Their shipments of products 1-6 accounted for just over 22 percent of total reported U.S. producers' shipments of manmade-fiber sweaters in 1989.<sup>24</sup> The responding importers accounted for approximately 64 percent of total reported imports of manmade-fiber sweaters from Hong Kong, approximately 44 percent of total reported imports of manmade-fiber sweaters from Korea, and approximately 48 percent of total reported imports of manmade-fiber sweaters from Taiwan in 1989.<sup>25</sup> Their shipments of products 1-6 accounted for 28 percent of total reported imports from Hong Kong, 12 percent of total reported imports from Korea, and 19 percent of total reported imports from Taiwan.<sup>26</sup>

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<sup>22</sup> Seven U.S. producers and 38 importers reported price data during the final investigations. Final confidential staff report, p. A-91. (The final staff report incorrectly identified 39 importers.) In these remand investigations, pricing data reported during the final investigations from one U.S. producer and 14 importers were not used. Of these 14 importers, three either had disconnected telephone numbers or did not answer the telephone, three did not provide usable pricing data during the final investigations (two of these importers are wholesalers and had reported retailer purchase price information during the final investigations instead of sales price information), two reported that they did not have enough time to research the pricing information before the remand deadline, and four did not verify the information provided. Five of the latter six importers were believed not to have provided usable pricing data in the final investigations and only received the remand questionnaire in early November 1992.

<sup>23</sup> However, the responding U.S. producers accounted for approximately 33 percent of total production of manmade-fiber sweaters and 31 percent of production of all sweaters according to 1989 Census data. In the final investigations, the responding U.S. producers accounted for approximately 14 percent of total shipments of manmade-fiber sweaters and 14 percent of total shipments of all sweaters based on Census data.

<sup>24</sup> During the final investigations, the coverage for responding producers was approximately 19 percent of total reported U.S.-produced shipments of manmade-fiber sweaters and just under 10 percent for reported shipments of products 1-6. Final confidential staff report, p. A-91.

<sup>25</sup> However, the responding importers accounted for approximately 43 percent, 17 percent, and 21 percent of all imports of manmade-fiber sweaters from Hong Kong, Korea, and Taiwan, respectively, according to Census data.

<sup>26</sup> In the final investigations, the responding importers from Hong Kong, Korea, and Taiwan accounted for approximately 42 percent, 25 percent, and 32 percent, respectively, of total reported imports of manmade-fiber sweaters

## Price Trends

Although pricing coverage has increased due to more U.S. producers' submissions during these remand investigations, pricing data should still be viewed with caution due to the wide fluctuations in reported prices for the sweater product categories. A wide range of prices was reported for most of the product categories by both U.S. producers and importers. Moreover, within the quarterly periods in which pricing data were reported by 2 or more respondents, the difference between the minimum price reported and the maximum price reported generally ranged between 10 percent and 100 percent. The wide variation in the price data suggest possible quality or style differences between the sweaters within each product category.

Reported weighted-average net f.o.b. selling prices of U.S. producers resulted in five complete price series for manmade-fiber products 1, 2, and 4, and for natural-fiber products 7 and 8, and a relatively complete price series for product 3 (table 5).<sup>27</sup> The other price series were incomplete. U.S. producers' selling prices for product 1 fluctuated upward, whereas the remaining five products fluctuated with no apparent trend during January 1987-March 1990.

Selling prices reported by U.S. importers of manmade-fiber sweaters resulted in five relatively complete price series covering 4 sweater products: Hong Kong's product 1, Korea's product 2, and Taiwan's products 2, 3, and 4. Prices for Hong Kong's product 1, Korea's product 2, and Taiwan's product 2 and 4 fluctuated to varying degrees. Prices for Taiwan's product 3 were stable through the first quarter of 1989, then declined through the first quarter of 1990.<sup>28</sup>

Table 5

Sweaters: Weighted-average net f.o.b. sales prices of manmade-fiber products 1-6 reported by U.S. producers and importers and weighted-average net f.o.b. prices of cotton-fiber products 7 and 8 reported by U.S. producers, by quarters, January 1987-March 1990<sup>1</sup>

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<sup>1</sup> U.S. producers that reported usable sales price data are: \*\*\*.

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

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<sup>26</sup>(...continued)

Their imports of products 1-6 accounted for \*\*\* percent, 21 percent, and \*\*\* percent, respectively, of total reported imports of manmade-fiber sweaters from these countries. Final public staff report, p. A-67.

<sup>27</sup> During the final investigations, only products 1, 4, and 7 had complete price series for U.S. producers.

<sup>28</sup> \*\*\*.

Reported f.o.b. purchase prices (landed, duty-paid) of manmade-fiber sweaters by U.S. retailers who imported directly from Hong Kong, Korea, and Taiwan produced 11 relatively complete price series covering five sweater products: Korea's products 1, 2, 3, 5, and 6; Taiwan's products 1, 2, 3, and 6; and Hong Kong's products 3 and 6 (table 6). Prices for most of these products fluctuated during January 1987-March 1990 with no apparent trend. Retailers' purchase prices for Korea's product 3 fluctuated upward.

Table 6

Sweaters of manmade fibers: Weighted-average net f.o.b. purchase prices (landed, duty-paid) of products 1-6 imported directly from Hong Kong, Korea, and Taiwan by U.S. retailers, by quarters, January 1987-March 1990<sup>1</sup>

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\*       \*       \*       \*       \*       \*       \*

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<sup>1</sup> U.S. retailers that reported usable purchase price data are: \*\*\*.

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

### Price Comparisons

Price comparisons varied widely. The reported sales information for U.S. producers' and importers' quarterly shipments to unrelated customers during January 1987-March 1990 resulted in 79 direct price comparisons within five product categories between the U.S.-produced and imported sweaters from Hong Kong, Korea, and Taiwan (table 7). Fifty-four of these comparisons are based on one U.S. producer or importer response. There were 25 instances of underselling and 54 instances of overselling as follows: 24 price comparisons with Hong Kong, 6 underselling and 18 overselling; 17 price comparisons with Korea, 10 underselling and 7 overselling; and 38 price comparisons with Taiwan, 9 underselling and 29 overselling. Margins of underselling ranged between 0.5 percent and 48.2 percent. Margins of overselling ranged between 1.3 percent and 402.0 percent.

Comparisons of U.S. producers' quarterly selling prices to unrelated customers to f.o.b. purchase prices by U.S. retailers who imported directly during January 1987-March 1990 resulted in 103 direct price comparisons within six product categories (table 8).<sup>29</sup> Fifty-five of these comparisons are based on one U.S. producer or importer response. There were 57 instances of underselling and 46 instances of overselling as follows: 20 price comparisons

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<sup>29</sup> U.S. producers' selling prices and retailers' f.o.b. purchase prices (landed, duty-paid) for their direct imports may not be entirely comparable. For example, U.S. retailers' purchase prices do not include any transportation costs to their U.S. shipping point, do not include any relevant inventory costs, and may not include any overhead costs relating to their international purchases. Also, retailers that import directly typically purchase large



with Hong Kong, 10 underselling and 10 overselling; 46 price comparisons with Korea, 29 underselling and 17 overselling; and 37 price comparisons with Taiwan, 18 underselling and 19 overselling. Margins of underselling ranged between 0.5 percent and 59.3 percent. Margins of overselling ranged between 0.1 percent and 134.0 percent.

Table 7

Sweaters of manmade fibers: Average margins of underselling (overselling) by imports from Hong Kong, Korea, and Taiwan, by products and by quarters, January 1987-March 1990

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\*       \*       \*       \*       \*       \*       \*

---

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

Table 8

Sweaters of manmade fibers: Average margins of underselling (overselling) by U.S. retailers' direct imports from Hong Kong, Korea, and Taiwan, by products and by quarters, January 1987-March 1990

---

\*       \*       \*       \*       \*       \*       \*

---

<sup>1</sup> U.S. producers' selling prices and retailers' f.o.b. purchase prices (landed, duty-paid) for their direct imports may not be entirely comparable. For example, U.S. retailers' purchase prices do not include any transportation costs to their U.S. shipping point, do not include any relevant inventory costs, and may not include any overhead costs relating to their international purchases. Also, retailers that import directly typically purchase large quantities of sweater products qualifying for volume discounts.

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



APPENDIX A

THE COMMISSION' S FEDERAL REGISTER NOTICE

**SUMMARY:** The Commission hereby gives notice of the Court-ordered remand of its final antidumping investigations Nos. 731-TA-448 through 450 (Final) to determine whether an industry in the United States is materially injured, or is threatened with material injury, by reason of imports from Hong Kong, the Republic of Korea, and Taiwan of sweaters wholly or in chief weight of manmade fibers that are sold at less than fair value.

**EFFECTIVE DATE:** September 25, 1992.

**FOR FURTHER INFORMATION CONTACT:** Brian Walters (202-205-3198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20438. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

**SUPPLEMENTARY INFORMATION:**

**Background**

In September 1990, the Commission determined that an industry in the United States was materially injured by reason of imports from Hong Kong, the Republic of Korea, and Taiwan of sweaters wholly or in chief weight of manmade fibers, provided for in specified subheadings of the Harmonized Tariff Schedule of the United States, that were found by the U.S. Department of Commerce to be sold in the United States at less than fair value. The Commission's determinations were appealed to the Court of International Trade ("CIT"), and on July 28, 1992, the CIT remanded the Commission's determinations. On August 24, 1992, the Commission requested that the CIT certify its decision for interlocutory appeal and the Commission sought a concurrent stay of the remand proceedings. The CIT issued a temporary stay of the remand proceedings on August 28, 1992. On September 25, 1992, the CIT rejected the Commission's motion for certification for interlocutory appeal of the court's decision and instructed the Commission to transmit its new determinations and report on remand by November 23, 1992.

**Participation in the Proceedings**

Only those persons who were interested parties to the original administrative proceedings (i.e., persons listed on the Commission Secretary's service list) may participate in these

remand proceedings. Eligible persons wishing to participate in the remand proceedings must file an entry of appearance with the Secretary to the Commission not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who were interested parties and parties to the Commission's initial investigations.

**Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List**

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these proceedings available to authorized applicants under APO, 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.

**Written Submissions**

All legal arguments, economic analyses, and factual information relevant to the remand proceedings should be included in briefs, limited to twenty-five pages in length, and must be submitted no later than October 28, 1992.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules. Any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.3 of the Commission's rules.

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

**Authority:** These proceedings are being conducted under authority of the Tariff Act of 1930, title VII.

Issued: October 9, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-25060 Filed 10-14-92; 8:45 am]

BILLING CODE 7020-02-M

(Investigations Nos. 731-TA-448 Through 450 (Court Remand))

**Sweaters Wholly or in Chief Weight of Manmade Fibers From Hong Kong, the Republic of Korea, and Taiwan**

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice and scheduling of remand proceedings.

APPENDIX B

PRODUCERS' RESPONSES TO THE COMMISSION'S QUESTIONS  
REGARDING CONTACT WITH THE NKSA

1. At any time between September 1989 and September 1990, did you receive from the National Knitwear and Sportswear Association (NKSA) or its counsel a document entitled "Guide to Essential Questionnaire Items"?

\* \* \* \* \*

2. At any time between September 1989 and September 1990, were you contacted in any way by the NKSA or its counsel concerning your completion of a questionnaire response?

\* \* \* \* \*

3. Did NKSA influence your decision to respond to the Commission's questionnaire and/or the content of the information that you reported to the Commission?

\* \* \* \* \*

APPENDIX C

PRODUCERS' RESPONSES TO THE COMMISSION'S QUESTIONS  
REGARDING SWEATERS OF BLENDED FIBERS

1. At any time between January 1, 1987, and March 31, 1990, did your firm produce sweaters with a blend of fibers (i.e., manmade fibers and natural fibers blended)?

\* \* \* \* \*

2. How significant were sweaters with a blend of manmade and natural fibers in the U.S. markets for sweaters between January 1, 1987, and March 31, 1990?

\* \* \* \* \*



APPENDIX D

LISTING OF U.S. COMPANIES CONTACTED AND FINANCIAL  
DATA OBTAINED IN THE REMAND INVESTIGATIONS

Firm name and status and/or type of data provided

---

Provided all sweater data:

\* \* \* \* \*

Producers of manmade-fiber sweaters that provided data on their all sweater operations:

\* \* \* \* \*

Producers of manmade-fiber sweaters that provided data on their manmade-fiber sweater operations:

\* \* \* \* \*

Supplied establishment data only and whose sales of all sweaters constituted less than 85 percent of overall establishment data:

\* \* \* \* \*

Produce sweater fibers only:

\* \* \* \* \*

Jobbers with no production facilities:

\* \* \* \* \*

Producers that submitted a questionnaire in the final investigations without financial data, but have terminated their operations since the final investigations:

\* \* \* \* \*

Companies that indicated they would comply but did not. They were not issued subpoenas:

\* \* \* \* \*

APPENDIX E

PRODUCERS' SHARES OF PRODUCTION IN 1989

Each firm's share of U.S. production in 1989

<u>Company</u>	<u>U.S. production (in 1,000 dozens) of--</u>	
	<u>All sweaters</u>	<u>Manmade-fiber sweaters</u>

*	*	*	*	*	*	*
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APPENDIX F

INCOME-AND-LOSS DATA OF PRODUCERS OF ALL SWEATERS, BY FIRMS

Table F-1

Income-and-loss experience of U.S. producers on their operations producing all sweaters, by firms, fiscal years 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990

\* \* \* \* \*

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

APPENDIX G

INCOME-AND-LOSS DATA OF PRODUCERS OF MANMADE-FIBER SWEATERS  
ON THEIR OPERATIONS PRODUCING ALL SWEATERS, BY FIRMS

Table G-1

Income-and-loss experience of U.S. manmade-fiber sweater producers on their operations producing all sweaters,<sup>1</sup> by firms, fiscal years 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
	*	*	*	*	*

<sup>1</sup> This table comprises those firms that produced any manmade-fiber sweaters that provided data on their manmade-fiber sweater operations or (if they were not able to provide such data) for their all sweaters operations or for their overall establishment operations where sweaters accounted for 85 percent or more of such operations.

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



APPENDIX H

INCOME-AND-LOSS DATA ON MANMADE-FIBER SWEATERS, BY FIRMS

Table H-1

Income-and-loss experience of U.S. producers on their operations producing sweaters of manmade fibers, by firms, fiscal years 1987-89, January-March 1989, and January-March 1990

Item	1987	1988	1989	January-March--	
				1989	1990
	*	*	*	*	*

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