Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan

Investigations Nos. 731-TA-736 and 737 (Final)

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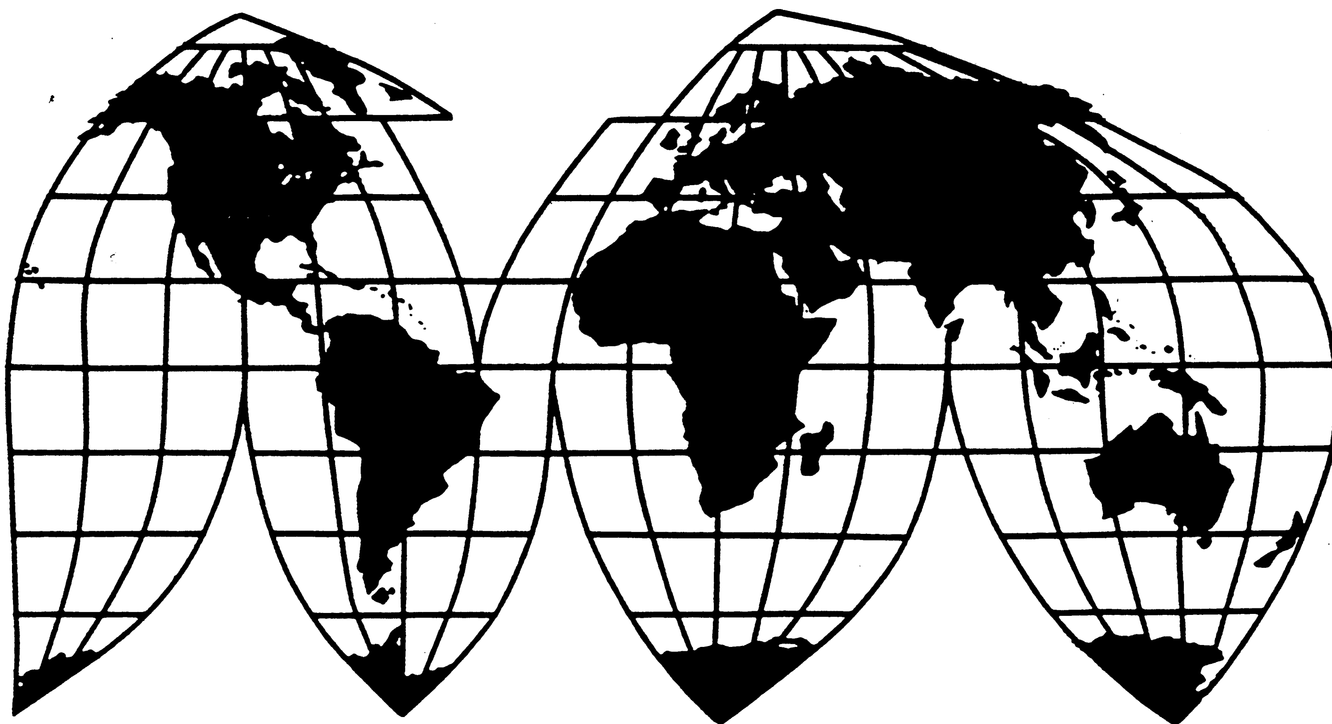

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GLOSSARY

Commerce	U.S. Department of Commerce
Commission	U.S. International Trade Commission
GAAP	Generally Accepted Accounting Principles
Goss	Goss Graphic Systems, Inc.
Heidelberg Harris	Heidelberg Harris, Inc.
HTS	Harmonized Tariff Schedule of the United States
KBA	Koenig & Bauer-Albert AG
KBA-Motter	KBA-Motter, Corp.
MAN Roland	MAN Roland, Inc.
MHI	Mitsubishi Heavy Industries, Ltd.
MLP	Mitsubishi Lithographic Presses, Inc.
MRD	MAN Roland Druckmaschinen AG
RGS	Rockwell Graphic Systems, Inc.
TKS	Tokyo Kikai Seisakusho, Ltd.
TKS (USA)	TKS (U.S.A.), Inc.
URAA	Uruguay Round Agreements Act
Wifag	WIFAG Maschinnenfabrk

Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731-TA-736 and 737 (Final)

LARGE NEWSPAPER PRINTING PRESSES AND COMPONENTS THEREOF, WHETHER ASSEMBLED OR UNASSEMBLED, FROM GERMANY AND JAPAN

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from Germany and Japan of large newspaper printing presses (LNPPs) and components thereof, whether assembled or unassembled, whether complete or incomplete, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[3] [4] The subject imports are provided for in subheadings 8443.11.10, 8443.11.50, 8443.21.00, 8443.30.00, 8443.40.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the Harmonized Tariff Schedule of the United States (HTS). LNPP computerized control systems (including equipment and/or software) may enter under HTS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90.

Background

The Commission instituted these investigations effective February 28, 1996, following preliminary determinations by the Department of Commerce that imports of LNPPs and components thereof, whether assembled or unassembled, whether complete or incomplete, from Germany and Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of March 13, 1996 (61 FR 10381). The hearing was held in Washington, DC, on July 17, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2]Chairman Miller did not participate.

[3]Commissioner Crawford determines that an industry in the United States is materially injured by reason of the LTFV imports.

[4]Vice Chairman Bragg, and Commissoners Newquist, Nuzum, and Watson, who find that an industry in the United States is threatened with material injury, further determine pursuant to 19 U.S.C. § 1673d(b)(4)(B), that they would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

VIEWS OF THE COMMISSION

Based on the record in these final investigations,[1] we find that an industry in the United States is threatened with material injury by reason of imports from Germany and Japan of large newspaper printing presses and components thereof, whether assembled or unassembled, whether complete or incomplete, that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").[2] [3] [4] [5] [6] Pursuant to 19 U.S.C. § 1673d(b)(4)(B), we further determine that material injury would not have occurred but for the suspension of liquidation of entries of the merchandise under investigation.

I. DOMESTIC LIKE PRODUCT AND DOMESTIC INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry." Section 771(4)(A) of the Act defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product."[7] In turn, the Act defines

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[1] Under the Commission's amended regulations which became effective August 21, 1996, the Commission will now conduct a single, continuous investigation, in contrast to the discrete preliminary and final investigations it conducted under its prior regulations. See Amendments to Rules of Practice and Procedure, 61 Fed. Reg. 37818, 37819 (July 22, 1996). Under these new rules, the final portion of the Commission's injury investigation will now be referred to as the Commission's "final phase of the investigation." Id. at 37832. For purposes of these determinations (which were conducted under the pre-existing rules), we refer to these investigations as these "final investigations."

[2] The question of whether the establishment of an industry in the United States is materially retarded by reason of the LTFV subject imports is not an issue in these investigations. These investigations are subject to the Uruguay Round Agreements Act ("URAA") amendments to the Tariff Act of 1930 ("the Act"). P.L. 103-465, approved Dec. 8, 1994, 108 Stat. 4809, amending section 701 et seq. of the Trade Act of 1930, 19 U.S.C. § 1671 et seq.

[3] Chairman Miller did not participate in these determinations.

[4] Commissioner Crawford determines that the domestic industry is materially injured by reason of the subject imports. See Additional Views of Commissioner Carol T. Crawford. Commissioner Crawford joins in sections I-IV of this opinion.

[5] See Additional Views of Commissioner Newquist infra.

[6] Although Commissioner Watson joins in all of the sections of this opinion, he also sets forth additional views infra.

[7] 19 U.S.C. § 1677(4)(A).

"domestic like product" as: "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[8]

The Commission's decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and it applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[9] No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation.[10] The Commission looks for clear dividing lines among possible like products and disregards minor variations.[11]

B. Products Covered by the Scope of the Investigations

In its final determinations,[12] Commerce defined the imported merchandise within the scope of its investigations as:

> [L]arge newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across.[13]

Commerce defined a press addition as "compris[ing] a union of one or more of the [five defined] press components .... and the equipment necessary to integrate such components into an existing press system."[14]

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[8] 19 U.S.C. § 1677(10).

[9] See, e.g., Nippon Steel Corp. v. United States, 19 CIT__, Slip Op. 95-55 at 11 (Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) common manufacturing facilities, production processes, and production employees; (5) customer or producer perceptions; and, where appropriate, (6) price. Timken Co. v. United States, Slip Op. 96-8 at 9 (Ct. Int'l Trade, Jan. 3, 1996).

[10] E.g., S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[11] Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

[12] Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany, 61 Fed. Reg. 38166 (July 23, 1996)("DOC Fin. Det. (Ger.)"); Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan, 61 Fed. Reg. 38139 (July 23, 1996)("DOC Fin. Det. (Jap.)")..

[13] DOC Fin. Det. (Jap.) at 38140; DOC Fin. Det. (Ger.) at 38167-68. For purposes of the scope definition, Commerce defines a "page" as "a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper." Id.

[14] Id. Commerce defined press components as including:

"1) a printing unit, which is any component that prints in monocolor, spot color and/or process (full) color;

2) a reel tension paster (RTP), which is any component that feeds a roll of paper more than two

(continued...)

Commerce has excluded spare and replacement parts and used presses from the scope of the investigation.[15]

After the Commission's preliminary determinations in these investigations, Commerce modified its scope language to include incomplete large newspaper printing press ("LNPP") systems, additions and components.[16] In particular, it specifically included in the scope "elements" (i.e., "parts" or "subcomponents") of an LNPP system, addition or component, "which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part."[17] Commerce stated in its final determination that an individual component is covered by the scope of the investigation if the "imported elements comprising it represent at least 50 percent of the value of the component, even if the contract pursuant to which the elements are imported is for an entire LNPP system and the remaining components are not within the scope."[18]

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[14](...continued)

newspaper broadsheet pages in width into a subject printing unit;

3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheets across through the production process and which provides structural support and access; and

5) a computerized control system, which is any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components."

In its scope definition, Commerce stated that "[b]ecause of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation." Id.

[15] Id. Commerce defined "spare or replacement parts" as those that are "imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise." Commerce defines "used" presses as presses that "have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business." Id.

[16] Id.

[17] Id. In this regard, Commerce decided to exclude from the definition of the five subject components any reference to specific subcomponents. It also excluded certain HTS numbers from its preliminary scope determination. Id.

[18] DOC Fin. Det. (Ger.) at 38170.

C. Analysis of Domestic Like Product Issues

In its preliminary determinations, the Commission found that there is one domestic like product consisting of all LNPPs, press additions and components.[19] In these final investigations, none of the parties have contested the Commission's preliminary determination that LNPPs, press additions and components are part of one domestic like product. Moreover, we believe that no new facts have been presented in these final investigations that would warrant a different conclusion than that preliminarily reached by the Commission with respect to LNPPs, additions and components.[20] Accordingly, we again find that LNPPs, additions and components are part of the same domestic like product in these final investigations.

The only new domestic like product issue presented in these final investigations is whether "elements" of LNPPs should be considered part of the same domestic like product as LNPPs, press additions and components.[21] Both petitioner and respondents agree that elements should be considered part of the same domestic like product as LNPPs, additions and components.[22] We have applied our semi-finished products analysis[23] and find that elements are part of the same domestic like product as LNPPs, press additions and components.

First, LNPP elements are almost exclusively dedicated to use in the production of LNPPs and components and the vast majority of LNPP elements generally have no independent uses aside from the production of LNPPs.[24] Second, there appears to be only a limited independent market, if any, for LNPP

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[19] Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan, Inv. Nos. 731-TA-736 & 737 (Preliminary), USITC Pub. 2916, at I-5-I-10 (August 1995)(hereinafter "Prelim. Det.").

[20] Commissioner Nuzum notes, however, that the market for additions differs in important ways from the market for complete press lines. Sales of additions are far more often non-competitive than are sales of press lines because purchasers prefer to obtain the addition from the same manufacturer that produced the press line. CR at II-13, PR at II-7. An addition often replaces some part of an existing press line, either for repair or upgrade purposes. Thus, purchasers do not necessarily perceive additions and press lines as the same, but instead view additions as an aftermarket product.

[21] As indicated above, Commerce defined LNPP elements to be parts and subcomponents of LNPP systems, additions or components which "taken altogether constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part." DOC Fin. Det. (Germany) at 38167-68; DOC Fin. Det. (Jap.) at 38140..

[22] Petitioner's Prehearing Brief at 9-13; Transcript of Commission Hearing, July 17, 1996, at 248 (Tr.).

[23] In a semi-finished products analysis, the Commission examines: (1) whether the upstream article is dedicated to the production of the downstream article or has independent uses; (2) whether there are perceived to be separate markets for the upstream and downstream articles; (3) differences in the physical characteristics and functions of the upstream and downstream articles; (4) differences in the costs or value of the vertically differentiated articles; and (5) the significance and extent of the processes used to transform the upstream into the downstream articles. E.g., Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 at 6-7 (July 1996); Canned Pineapple Fruit from Thailand, Inv. No. 731-TA-706 (Final), USITC Pub. 2907 (July 1995), at I-8, n.25.

[24] CR & PR at Appendix D.

elements.[25] Indeed, the vast majority of the parts and components used to produce LNPPs in the United States are produced and captively consumed by the four LNPP producers located in the United States.[26] Third, LNPP elements are specifically designed for incorporation in LNPPs and their components.[27] By definition, therefore, LNPP elements will share at least some of the functions and characteristics of the LNPP or component.[28]

Fourth, although there is somewhat limited evidence on record with respect to the price of elements,[29] the subject elements are defined to represent at least 50 percent of the cost of the component of which they are a part.[30] Thus, the value of the domestic products that are like the subject elements for a particular sales contract will always reflect a significant portion of the value of the component of which they are a part. Finally, although significant further manufacturing may be required to transform individual elements into LNPP components, by definition, the costs of further manufacturing the domestic elements that make up a particular component will always be less than 50 percent of the cost of manufacture for the finished component.[31] [32]

For the foregoing reasons, we find that LNPP elements are part of the same domestic like product as LNPPs, additions and components.

D. Domestic Industry[33]

In considering the effect of the subject imports on the domestic industry, the Commission's general practice has been to include all domestic production, whether toll-produced, captively consumed, or sold in

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[25] CR & PR at Appendix D.

[26] CR at I-18, PR at I-13.

[27] CR & PR at Appendix D.

[28] Commerce has defined the subject elements as being the parts or subcomponents that make up at least 50 percent of the cost of manufacture of the component. Thus, although individual parts and subcomponents of an LNPP may be significantly smaller than the complete LNPP or any individual component and may not perform all of the functions (i.e., printing, folding, conveying, etc.) of the complete LNPP or component, it is likely that the domestic elements that are like the subject imports will always share one or more of the functions and characteristics of an LNPP component or press. Conversely, because elements consist of parts and subcomponents of LNPPs, an element will not perform functions that are not also performed by an LNPP or addition.

[29] CR at III-9; PR at III-6.

[30] DOC Fin. Det. (Ger.) at 38167-68.

[31] DOC Fin. Det. (Ger.) at 38167-68.

[32] Commissioner Newquist notes that this 50% "standard" may not be relevant or applicable in other investigations.

[33] Commissioner Newquist concurs in the following discussion of domestic industry, including whether any producer is a "related party," and if so, whether appropriate circumstances exist to exclude such producer from the domestic industry. He notes, however, that in his view, it does not matter how these issues are resolved; these issues are not at all dispositive in these investigations.

the merchant market.[34] Because we find that there is one domestic like product in these investigations consisting of LNPPs, additions, components and elements, we find that the domestic industry includes all domestic producers of such LNPPs, additions, components and elements. In this regard, there is no dispute that petitioner Rockwell Graphic Systems, Inc. ("RGS"), the dominant producer in the United States and the largest supplier to the U.S. market, and Heidelberg Harris, Inc. ("HH"), are part of the domestic industry.

An issue is raised in these final investigations, however, with respect to three firms that have LNPP production facilities located in the United States: TKS (U.S.A.), Inc. (TKS (USA)), MAN Roland, Inc. (MAN Roland (USA)), and KBA-Motter, Inc. (KBA-Motter). Each of these companies is an importer of the subject merchandise and is a subsidiary of a German or Japanese producer of subject merchandise.[35] In its preliminary determinations, the Commission found that all three companies qualified as domestic producers and that appropriate circumstances did not exist to exclude KBA-Motter and MAN Roland (U.S.A.) from the domestic industry as related parties.[36] The Commission did find, however, that appropriate circumstances existed to exclude TKS (U.S.A.) from the domestic industry as a related party.[37] The Commission added that it intended to explore in its final investigations the extent to which all three companies engaged in production operations in the United States and whether appropriate circumstances existed to exclude any of these parties from the domestic industry as related parties.[38] Accordingly, we address these issues below.

1. Analysis of Domestic Producer Issues

In deciding whether a particular firm that operates in the United States qualifies as a domestic producer, the Commission has generally examined the overall nature of a firm's production-related activities, including the extent and source of its capital investment, technical expertise in U.S. production activities, the value added in the United States, employment, quantity and type of domestically-sourced parts, and other costs and activities in the United States leading to the production of the domestic like

[34] 19 U.S.C. § 1677(4)(A); see, e.g., United States Steel Group v. United States, Slip Op. 94-201 at 16 (Ct. Int'l Trade, December 30, 1994), aff'g, Certain Flat-Rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, and the United Kingdom, Inv. Nos. 701-TA-319-332, 334, 336-342, 344, and 347-353 and 731-TA-573-579, 581-592, 594-597, 599-609, and 612-619 (Final), USITC Pub. 2664 at 17 (Aug. 1993) ("Certain Flat-Rolled Steel").

[35] CR at III-4-9, PR at III-6.

[36] Prelim. Det. at I-10.

[37] Prelim. Det. at I-10.

[38] Prelim. Det. at I-10, n. 42.

product.[39] No single factor is dispositive, and the decision whether to include a producer in the domestic industry is made on a case-by-case basis.[40]

a. KBA-Motter[41]

On the whole, the overall nature of KBA-Motter's production-related operations in the United States indicates that KBA-Motter should be considered a domestic producer for purposes of these final investigations. First, KBA-Motter has produced, and offered to produce, LNPPs and additions in the United States during the period of investigation. Moreover, KBA-Motter has made fairly significant capital investments in its U.S. LNPP production operations,[42] has incurred relatively significant capital expenditures in its LNPP operations during the period from 1991 through the first quarter of 1996,[43] and employs a significant number of people in its U.S. production operations.[44] KBA-Motter also domestically sources the large majority of the raw material inputs used in its LNPP production operations, and the value added by KBA-Motter in the United States is substantial.[45] Finally, KBA-Motter undertakes significant engineering and design work for its LNPP operations in the United States.[46] Because KBA-Motter adds substantial value to its sales in the United States,[47] and given the highly engineered nature of LNPPs, we

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[39] E.g., Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico and Spain, Inv. Nos. 701-TA-363 & 364, Inv. Nos. 731-TA-711-717 (Final), USITC Pub. 2911 (August 1995) at I-11, n. 37; Ferrovanadium and Nitrided Vanadium from Russia, Inv. No. 731-TA-702 (Final), USITC Pub. 2904 at I-8-I-10, & n.24 (June 1995).

[40] Id.

[41] KBA-Motter is a majority-owned subsidiary of Koenig & Bauer-Albert AG ("KBA"), a German producer of LNPPs. KBA-Motter produces and sells flexographic presses and parts of offset LNPPs in the United States. CR at III-4, PR at III-3.

[42] KBA-Motter reports that the original cost of the assets used in its operations producing LNPPs in 1995 was approximately $***. (This compares with an original asset value in 1995 for Rockwell of $***, for MAN Roland of $*** and for TKS of $***.) CR at VI-22, PR at VI-6. KBA-Motter has also reported that its production facilities at York, PA (which is the location of its LNPP production facility) consisted of ***. CR at III-6, PR at III-3.

[43] KBA-Motter incurred approximately $*** in capital expenses during this period. CR at VI-23, PR at VI-7.

[44] KBA-Motter employed *** people in its LNPP operation for full year 1995. CR at III-17, PR at III-8. This compares with *** employees in Rockwell's LNPP operations, *** employees for MAN Roland and *** for TKS in 1995. CR at III-17, PR at III-8.

[45] CR at H-12-15, PR at H-3. For example, the domestic raw material content of KBA-Motter's production for its sale to the *** reflects approximately *** percent of its total raw material costs for the sale. CR at H-15, PR at H-3. The total value added by KBA-Motter as a percentage of total cost (excluding SG&A) for this sale was approximately *** percent. CR at H-15, PR at H-3.

[46] KBA-Motter Postconference Brief at 13.

[47] CR at H-12-15, PR at H-3.

find that significant technical expertise is involved in KBA-Motter's domestic production activity.[48] On the whole, we find that KBA-Motter is a domestic producer for purposes of these final investigations.

b. MAN Roland (USA)[49]

We also find that the overall nature of MAN Roland (USA)'s production-related operations in the United States indicates that it should be considered a domestic producer for purposes of these final investigations. First, MAN-Roland has produced, and offered to produce, LNPPs and additions in the United States during the period of investigation. Moreover, MAN Roland (USA) has made a relatively significant investment in its U.S. production related operations.[50] Although MAN Roland (USA) has sourced a significant amount of raw material inputs for its production operations from abroad,[51] it has also obtained the majority of the raw material inputs used in its LNPP production operations from domestic sources.[52] Further, the amount of U.S. value added by the company is significant.[53] Additionally, MAN Roland (USA) undertakes relatively significant engineering and design work for its LNPP operations in the United States.[54] Finally, MAN Roland (USA) employs a relatively small number of people in its U.S.

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[48] KBA-Motter has indicated, however, that *** CR at III-6, PR at III-3. Moreover, KBA-Motter has expended a *** amount of money on R&D during the period from 1991 through March 1996. CR at VI-23, PR at VI-7. These two facts suggest that the technical expertise for KBA-Motter's merchandise may reside largely in KBA rather than the U.S. subsidiary.

[49] MAN Roland (USA) is a majority-owned subsidiary of MAN Roland Druckmaschinen (MRD), a German producer of LNPPs and press additions. CR at III-4, PR at III-3. MAN Roland (USA) produces and sells flexographic and offset LNPPs in the United States. CR at III-4, PR at III-3.

[50] MAN Roland reports that the original cost of the assets used in its operations producing LNPPs in 1995 was approximately $***. (This compares with an original asset value in 1995 for Rockwell of $***, for KBA-Motter of $*** and for TKS of $***.) CR at VI-22, PR at VI-6. We note, however, that the value of the company's capital assets that were dedicated to the production of LNPPs dropped significantly after 1992, when the company closed an LNPP production facility located in Middlesex, New Jersey. MAN Roland incurred approximately $*** in capital expenses from 1991 through the first quarter of 1996. CR at VI-23, PR at VI-7.

[51] CR at III-7, n.16, & H-16-22, PR at III-5, n. 16, & H-3.

[52] CR at III-11 & H-16-22, PR at III-6 & H-3. For the LNPP and addition contracts MAN Roland (USA) claims to have produced domestically or to be producing domestically during the period of investigation, MAN Roland sourced raw material inputs with an approximate value of $*** from domestic sources and $*** from foreign sources. CR at III-11 & H-16-22, PR at III-6 & H-3.

[53] For its contracts during the period, the total domestic value added by the company as a percentage of total cost (excluding SG&A) was approximately *** percent. CR at III-11 & H-16-22, PR at III-6 & H-3.

[54] CR at III-7, PR at III-5; see also MAN-Roland Postconference Brief at Ex. 5, 1-7. For example, MAN Roland (USA) has reported that its production capabilities in the United States include the "basic design" of a complete press, the design of individual parts or elements for presses, the production and machining of individual parts for the press and the final assembly of the press. CR- III-7; PR at III-5; MAN Roland Prehearing Brief at 10. However, MAN Roland (USA) has also reported that, with the closure of its Middlesex, NJ production facility in 1992, it *** CR-III-7; PR-III-5. This latter fact indicates that the company is now engaged in production activities that are likely to involve a smaller amount of technical expertise than that required before the closure of its Middlesex facility. Moreover, since 1992, MAN Roland (USA) has incurred *** R&D expenses for its LNPP operations in the United (continued...)

production operations,[55] but we believe this factor is outweighed by the other domestic producer factors analyzed above. On the whole, therefore, we find that MAN Roland (USA) is a producer of the domestic like product.

c. TKS (U.S.A.)[56]

In its preliminary determinations, the Commission found that TKS (USA) was a domestic producer by "virtue of its domestic production of computer control systems," one of the subject components.[57] We again find that TKS (USA) is a domestic producer of computer control systems. First, TKS (USA) produces computer control systems, which comprise one of the five components of LNPPs included in Commerce's scope definition, in the United States. Moreover, TKS (USA) performs *** of those control systems at its U.S. facilities.[58] In addition, TKS (USA) sources domestically the large majority of inputs used in its computer control systems.[59] TKS (USA) also adds substantial value in the United States during the production of these components.[60] Finally, given that production of computer control systems requires a certain level of design and production sophistication, TKS (USA)'s production of computer control systems involves a level of technical expertise.[61] In light of the foregoing, we find that TKS is a producer of computerized control systems and thus a producer of the domestic like product.

2. Related Parties

The related parties provision, 19 U.S.C. § 1677(4)(B), as amended by the URAA, allows for the exclusion of certain domestic producers from the domestic industry for purposes of an injury determination. The Commission must first determine whether a domestic producer meets the definition of

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[54](...continued)
States. CR-VI-23; PR-VI-7. Despite this, given the highly-engineered character of LNPPs and the substantial U.S. value added by MAN Roland, we believe that available evidence indicates that the company's production operations require a significant level of technical expertise.

[55] MAN Roland (USA) employed *** people in its LNPP operations for full year 1995. CR at III-17, PR at III-8. This compares with *** employees in Rockwell's LNPP operations, *** employees for KBA-Motter and *** for TKS (USA) in 1995. CR at III-17, PR at III-8.

[56] TKS (USA) is a wholly-owned subsidiary of Tokyo Kikai Seisakusho Ltd. (TKS (Japan), a Japanese producer and exporter of LNPPs and components. CR at III-5, PR at III-4. As stated by TKS, the only domestic like products produced by TKS (USA) are computer control systems. TKS Prehearing Brief at 6; CR at III-5, PR at III-4.

[57] Prelim. Det. at I-12.

[58] CR at III-7-8, PR at III-5.

[59] CR at H-23-26, PR at H-3.

[60] CR at H-23-26, PR at H-3.

[61] See CR at III-7-8, PR at III-5. We note that, in contrast to the preliminary investigations, TKS has not argued in these final investigations that it should be considered a domestic producer of the additions produced by TKS which TKS (USA) imports into the U.S.

a related party.[62] If it does, then the Commission may exclude that producer from the domestic industry if "appropriate circumstances" exist.[63] Exclusion of a related party is within the Commission's discretion based upon the facts presented in each case.[64] In this case, we note that TKS (USA), MAN Roland (USA) and KBA-Motter are all related parties because they have imported subject merchandise during the period.[65] Moreover, all three companies are at least majority-owned by a German or Japanese producer of the subject merchandise.[66]

In our preliminary determinations, we found that appropriate circumstances existed to exclude TKS (USA) from the domestic industry as a related party, but that it was not appropriate to exclude MAN Roland (USA) or KBA-Motter from the domestic industry on this basis.[67] We also indicated that we would examine these matters in more detail in our final investigations.[68] For the reasons described below, we reach the same conclusion here as in our preliminary determinations.

a. MAN Roland (USA) and KBA-Motter

On balance, we find that appropriate circumstances do not exist to exclude MAN Roland (USA) and KBA-Motter from the domestic industry as related parties. First, although neither producer was responsible for a very substantial share of U.S. production or shipments during the period from 1991 through March 1996, both companies did produce and ship relatively significant amounts of merchandise

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[62] The term "related parties" is defined at 19 U.S.C. § 1677(4)(B) in terms of direct or indirect control or importation of the subject merchandise. Section 771(4)(B), 19 U.S.C. § 1677(4)(B).

[63] 19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

(1) the percentage of domestic production attributable to the importing producer;

(2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and

(3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

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

[64] See Torrington Co. v. United States, 790 F. Supp. at 1168.

[65] CR at III-5, III-7, IV-2 & IV-3, PR at III-4, III-5 & IV-1.

[66] CR at III-4-5, PR at III-3-4.

[67] Prelim. Det. at I-14-15.

[68] Prelim. Det. at I-14-15.

during that period.[69] Second, although both companies imported substantial amounts of subject imports during that same period,[70] those imports were, in part, imported for incorporation into LNPPs and additions produced in the United States. Moreover, there is no evidence that either company has benefitted significantly from its imports.[71] Finally, because these companies account for a relatively small share of total domestic production and shipments during the period of investigation, data for the domestic industry would not be skewed either by inclusion or exclusion of these companies in the domestic industry.[72] [73]

b. TKS (U.S.A.)

We find that appropriate circumstances do exist to exclude TKS (USA) from the domestic industry as a related party. First, TKS accounted for a small percentage of U.S. production and shipments during the period from 1991 through March 1996.[74] Second, although TKS (USA) does not appear to have benefitted significantly from imports in comparison to other producers,[75] the large majority of TKS (USA)'s sales consisted of sales of merchandise produced in Japan by TKS (Japan) for which TKS (USA) essentially acted as an importer.[76] Thus, it appears that the primary interest of TKS (USA) lies in importation rather than production and that TKS (USA) is acting primarily as a U.S. selling agent for TKS

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[69] For example, in 1995, KBA-Motter and MAN Roland (USA) accounted for *** and *** percent, respectively of total production (by man-hour) by producers located in the United States. CR at III-13, PR at III-7. In addition, in the same year, KBA-Motter and MAN Roland (USA) accounted for *** and *** percent, respectively, of production (by value) of producers located in the United States. CR at III-13, PR at III-7. Similarly, in 1995, KBA-Motter and MAN Roland (USA) accounted for approximately *** and *** percent by value, respectively, of total U.S. shipments by producers located in the United States. CR at III-15, PR at III-8.

[70] CR at III-9, PR at III-5.

[71] To the contrary, the record evidence indicates that both companies generally performed *** during the period from 1991 to March 1996, despite their importation of subject merchandise. See CR at VI-5, PR at VI-2. For example, in 1995, Rockwell's net operating income ratio was *** than those of both MAN Roland and KBA-Motter. Id. Commissioner Crawford does not join in this footnote.

[72] Commissioner Crawford does not join this statement.

[73] An issue is raised in this case with respect to the treatment of certain sales of LNPPs and additions that were produced in the U.S. by MAN Roland (USA) and KBA-Motter but that incorporate subject merchandise. As indicated in the staff report and in other record documents, *** sales by these producers contain subject merchandise. CR-IV-2-4, PR-IV-1; Letter, undated, from B. Stafford to L. Featherstone. Generally, petitioner asserts that these sales should be considered sales of subject merchandise. Petitioner's Posthearing Brief at Annex H. Respondents argue that these sales must be treated as domestic merchandise. MAN Roland Posthearing Brief at Tab 4; KBA Posthearing Brief at Appendix, p. 3. We have treated these sales as sales of domestic merchandise because we have found MAN Roland (USA) and KBA-Motter to be domestic producers of the domestic like product, due in part to the substantial value added by these producers in the United States. Accordingly, the companies must, by definition, be deemed to be producing a domestic like product. There is no indication in this case that these producers are engaged in two or more substantially different production processes in the United States or that they use substantially different inputs for separate segments of their U.S. production operations.

[74] For example, in 1995, TKS accounted for only *** percent of all production by value of producers located in the United States. CR at III-13; PR at III-7. In addition, TKS (USA) accounted for only *** percent, by value, of total U.S. shipments by producers located in the United States during 1995. CR at III-15, PR at III-8.

[75] Unlike Rockwell and Heidelberg Harris ***, TKS ***. CR at VI-5, PR at VI-2.

[76] CR at III-9, PR at III-5.

(Japan).[77] Finally, since TKS (USA) accounts for a relatively small portion of U.S. production, it is unlikely that data for the domestic industry would be skewed either by inclusion or exclusion of the company from the domestic industry.[78]

II. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether the domestic industry is materially injured or threatened with material injury by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States. These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development.[79] No single factor is dispositive, and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[80]

As an initial matter, we generally examined data for the period from 1991 through interim 1996 in these investigations.[81] Although it is the usual practice of the Commission to examine a three-year period of investigation, we note that the Commission has discretion to determine the appropriate period of investigation.[82] For purposes of these final investigations, we have also examined data from 1991 and 1992 because an examination of these data enables us to better assess conditions in the LNPP market and the nature of competition in that market.[83] We considered data from the latter part of the period of investigation, however, to be the most probative of the condition of the industry and the impact of subject imports on that industry.[84]

We also note that several conditions of competition are distinctive to the LNPP industry in the United States.[85] [86] First, given the substantial cost of LNPPs[87] and their long life expectancy,[88] the U.S.

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[77] Prelim. Det. at I-14.

[78] Commissioner Crawford does not join this statement.

[79] 19 U.S.C. § 1677(7)(C)(iii).

[80] Id.

[81] Commissioner Crawford does not join the remainder of this paragraph. For her analysis of the data collected in the period 1991 to 1995, see Additional Views of Commissioner Carol T. Crawford, infra.

[82] Gerald Metals, Inc. V. United States, ___ F.Supp. ___, Slip Op. 96-1-12 (Ct. Int'l Trade August 1, 1996); Wieland Werke, AG v. United States, 718 F. Supp. 50, 55 (Ct. Int'l Trade 1989).

[83] In this regard, we have reconsidered our decision not to use an expanded period of investigation in the preliminary determinations. See Prelim. Det. at I-16.

[84] See Grain-Oriented Electrical Steel from Italy and Japan, Inv. Nos. 701-TA-355 & 731-TA-660 (Final), USITC Pub. 2778 at I-10 (May 1994).

[85] As amended by the URAA, the Act contains a new provision on captive production at section 771(7)(C)(iv). This provision generally provides that, if domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and that if captive production meets certain threshold criteria, the Commission is required to focus primarily on the merchant market for the domestic like product when determining market share and the factors
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market for LNPPs is characterized by a relatively small number of sales in any given year. Such sales occur on a somewhat sporadic basis but involve substantial values of merchandise.[89] Because the number and value of sales fluctuate considerably from year to year, changes in industry performance on a year-to-year basis may be of limited utility;[90] thus, we have viewed data concerning trends over the period of investigation with some caution.[91] [92] [93]

Second, because each LNPP is a highly-engineered product that is custom-designed for each purchaser, LNPPs vary significantly in terms of size, value and specifications from sale to sale.[94] Because of these variations, we find it useful to rely on total value, rather than quantity-based data,

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[85](...continued)
affecting financial performance. Section 771(7)(C)(iv), 19 U.S.C. § 1671(7)(C)(iv). Although Rockwell and the other producers located in the U.S. captively consume subject elements and components in their production of the downstream articles, press additions and LNPPs, the URAA Statement of Administrative Action (SAA) expressly states that the captive production provision does not apply where the captively consumed product is used to produce a downstream product that is within the same domestic like product definition. SAA at 186; reprinted in H.Doc. No. 316, Vol. I, 103d. Cong., 2d Sess. (1994) at 852. Because captively consumed elements and components are part of the same domestic like product as LNPPs and additions, the captive production provision does not apply in this case.

[86] Commissioner Nuzum provides further comment on the characteristics of this market in her Additional Views, infra.

[87] See CR at I-16, PR at I-11.

[88] See CR at II-1 & II-4-5, PR at II-1 & II-3-4.

[89] CR at V-11-16, PR at V-7.

[90] Commissioner Nuzum notes that she did not give much weight to annual changes from one year to the next. Unlike most investigations, in which the trends of industry performance are normally informative, the unusual nature of this market makes trends analysis more difficult and less relevant. Large fluctuations in shipments, net sales and other indicators of industry performance are associated with infrequent contracts for press lines and additions that often differ greatly in value. Thus, what might appear to be a significant increase or decrease from one year to the next may simply reflect the occurrence of a single large sale rather than a trend in market characteristics or industry performance. Commissioner Nuzum did, however, give greater consideration to volume indicators based on the two-year and three-year moving averages, which more realistically reflect some degree of "trend."

[91] Similarly, we find that certain other industry data, such as inventory levels and capacity utilization, are of limited utility in these investigations. Inventory levels are of limited utility because producers do not generally make sales from inventory. Capacity levels and utilization are difficult to calculate accurately because of the highly customized nature of LNPPs.

[92] Commissioner Crawford does not rely on changes in industry performance on a year-to-year basis (i.e., trends) in her determination of material injury by reason of dumped imports. See Additional Views of Commissioner Carol T. Crawford, infra.

[93] See also Prelim. Det., "Separate Views of Commissioner Rohr and Commissioner Newquist" at I-33.

[94] See CR at V-5-62, PR at V-4-16.

to assess market share, sales, shipments and other volume indicators. We note that the parties agree with this approach.[95] [96] [97]

Third, sales of LNPPs are generally made after an extensive and highly competitive bid/negotiation procedure between the purchaser and two or more producers.[98] During the initial phase of the bid process, purchasers typically work closely with one or more producers to develop general specifications and budget considerations for an anticipated LNPP purchase.[99] The resulting specifications and budget requirements form the basis for the development of a request for quotation (RFQ) for the purchase, which is generally issued to two or more LNPP producers.[100] After receipt of initial bids from some or all of these producers, the purchaser may exclude one or more producers from further participation in the bid process, due to their perceived inability to satisfy specific technological or other customer requirements.[101]

After receipt of initial bids from the producers, purchasers often discuss informally with each producer the general contents of the other producers' bids and will, by doing so, attempt to obtain a better deal by asking the manufacturer to drop its price, adjust payment terms or provide additional equipment or services.[102] Generally, the purchaser will also use this portion of the process to work through design issues and to help the individual producers optimize their suggested design.[103] Following this initial stage of the process, the purchaser will generally ask the competing producers to submit one or more additional bids in response to the purchaser's budget, technology and/or service concerns.[104] By the end of the bid/negotiation process, the presses offered by the different producers may not be identical in all respects but are reasonably similar and meet the purchaser's specifications.[105] [106] The negotiation process can take several months to several years and will generally result in the selection and purchase of a technologically-

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[95] Petitioner's Postconference Brief, Vol. II, Part II, at 51; Prelim. Tr. at 149.

[96] Commissioner Crawford concurs that value is the most appropriate and probative focus. However, she has not focused on the value of shipments. Rather she has focused her analysis on the point in time when competition between subject imports and the domestic product occurs, that is, when a contract is awarded to the winning bid. Therefore, her analysis focuses on the value of contracts when the bid is awarded.

[97] Commissioner Crawford's analysis of specific value-based data is presented in her additional views. See Additional Views of Commissioner Carol T. Crawford, infra.

[98] CR at V-5-8, PR at V-4-5.

[99] CR-V-5, PR at V-4.

[100] CR at V-5-8 & 28-62; PR at V-4-5 & 12-16.

[101] CR at V-28-62, PR at V-12-16.

[102] CR at V-5-8, PR at V-4-5.

[103] CR at V-6, PR at V-4.

[104] CR at V-6-7, PR at V-5.

[105] CR at V-7, PR at V-5.

[106] For Commissioner Crawford's evaluation of the substitutability between domestic LNPPs and the subject imports, see Additional Views Of Commissioner Carol T. Crawford, infra.

sophisticated, highly-engineered product that is specifically designed by the producer to meet a particular purchaser's needs.[107]

Although the sales process for LNPPs is generally a highly competitive process involving head-to-head competition between two or more competitors, the sales process for additions is considerably less competitive.[108] Sales of additions tend to be less competitive because purchasers strongly prefer to purchase additions from the same manufacturer of their existing presses in order to ensure technological compatibility.[109] Because of this strong customer preference, the producer who supplied the original press often has a distinct competitive advantage over other producers when bidding on an addition.

Fourth, after finalization of the sales contract, there is generally a lengthy production and delivery period.[110] Completion and installation of an LNPP or press addition can take from several months to three years after execution of the sales contract.[111] Thus, there is normally a substantial lag between award of a sales contract and shipments of the merchandise to be delivered thereunder. Similarly, because payment on the contract is made in installments over the life of the production process,[112] the full financial impact of a sale (or its loss) is often not reflected in a producer's financial records for two or more years after the date of the sale.[113] [114]

Fifth, Rockwell is the dominant domestic supplier in the LNPP market.[115] During the period examined, petitioner accounted for the large majority of net sales value of all U.S. producers in all but one

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[107] CR at V-5-8, PR at V-4-5.

[108] Of the *** additions sales during the period from 1991 to 1995, only *** of the sales involved competition between two or more producers. CR at V-10 & V-17, PR at V-6-7. These *** sales had an aggregate final sales value of ***, or *** percent of the total winning final bid value for additions sales. By way of contrast, *** of the *** sales involving full presses were made on a competitive basis, and had an aggregate final sales value of ***, or *** percent of the total final bid value of all full press sales. CR at V-10 & V-17, PR at V-6-7.

[109] CR at II-13 & II-18-19, PR at II-7 & II-12.

[110] CR at V-7 & Tables F-2-F-8, PR at V-5.

[111] CR at V-7 & Table F-2-F-8, PR at V-5.

[112] CR at V-7, PR at V-5.

[113] *** reported data on a completed contract basis, under which revenues and costs are only recognized in the period in which a project is completed or shipped. *** reported data using the percentage of completion method, under which the company recognizes revenues and costs as each individual press, component or addition involved in a contract is shipped. CR at VI-1, PR at VI-1.

[114] Commissioner Crawford recognizes that the full financial effect of a sale or lost sale is not reflected in accounting records until two or more years after the date of sale. Consequently, when it is reflected in the accounting records, the effect likely represents the "lingering effects" of the competition that occurred earlier. Rather than evaluate the "lingering effects" of competition, in these investigations Commissioner Crawford has focused her analysis on the point in time when competition between subject imports and the domestic product occurs, that is, when a contract is awarded to the winning bid.

[115] CR at Tr. at 22, 26, 28; Joint Respondents' Brief at 9-14.

year during the period from 1991 through interim 1996.[116] Moreover, during the same period, petitioner accounted for the large majority of all shipments in the U.S. market and over half of all contracts awarded.[117]

Sixth, aggregate demand for LNPPs is derived from the demand for newspapers and newspaper advertising.[118] In particular, demand for new presses and additions is driven primarily by technological developments (such as a desire to obtain or improve color printing capability or control waste) and the age and condition of purchasers' existing presses.[119] Once a purchaser has decided to request bids for a particular purchase, however, price (together with technology, quality and service considerations) becomes a significant factor.[120] As previously noted, as part of the purchase decision, the purchaser and potential suppliers engage in extensive analysis and consultations that result in performance specifications for a particular purchase.[121] At the end of the bid process, price is a significant factor in a purchaser's decision to choose among products that meet those performance specifications.[122]

Finally, it appears that the LNPP market experienced a boom in demand during 1989-1991 that was spurred by technological developments, including primarily Rockwell's introduction of a new color printing technology in the late 1980s.[123] During 1992 and 1993, after this boom in demand, the industry and the market experienced a significant downturn in sales and sales revenue.[124] During the period from 1993 through 1995, the industry and the market have been in the process of recovering somewhat from this downturn.[125] Consistent with these developments, the data described below generally show a market in which consumption and sales declined from 1991 to 1993. Then, as contracts awarded began to recover in the middle of the period, resulting shipments and revenues began to increase in 1994 and 1995.

On a shipments-made basis, the value of apparent consumption decreased from 1991 to 1992 and 1993 and increased in 1994 and 1995, although not to the 1991 level.[126] Apparent consumption followed a

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[116] CR at VI-2 &VI-5; PR at VI-1-2.

[117] CR at IV-11 & IV-14; PR at IV-4.

[118] CR at II-4, PR at II-3.

[119] CR at II-4, PR at II-3.

[120] For Commissioner Crawford's evaluation of the importance of price in the purchase decision, see Additional Views of Commissioner Carol T. Crawford, infra.

[121] CR at I-56-I-57, PR at II-20-21.

[122] CR at II-12-15 & V-6, PR at V-4-8.

[123] CR at VI-2-VI-8, PR at VI-1-2.

[124] CR at IV-11 & VI-2-6, PR at IV-4 & VI-1-2.

[125] CR at IV-11 & VI-2-6, PR at IV-4 & VI-1-2.

[126] The value of apparent domestic consumption declined from *** in 1991 to *** in 1992 and *** in 1993, then increased to *** in 1994 and dropped slightly to *** in 1995. The value of apparent domestic consumption in interim 1995 was ***, compared to *** in interim 1996. CR at IV-11, PR at IV-4. (All amounts cited for aggregate domestic industry data in this section II and sections V and VI below reflect the exclusion of TKS (USA), unless (continued...)

different trend, however, when measured on a contracts-awarded basis. On a contracts-awarded basis, the value of apparent U.S. consumption of LNPPs increased from 1991 to 1992 and from 1992 to 1993 but has remained relatively stable during 1994 and 1995.[127]

The domestic industry's U.S. shipments declined significantly from 1991 to 1992 and from 1992 to 1993 but then increased in both 1994 and 1995, although not to the 1991 level. The domestic industry's U.S. shipments were lower in interim 1996 than in interim 1995.[128] The value of contracts awarded to the domestic industry followed a different trend, however, as the value of contracts obtained by the industry declined from 1991 to 1992, increased in 1993 and then declined in 1994 and again in 1995. They are projected to drop further in 1996.[129]

On the basis of shipments made, the domestic industry's share of the U.S. market increased from 1991 to 1992, decreased significantly in 1993, and increased in both 1994 and 1995. On a shipments made basis, the domestic industry's market share was the same in interim 1996 and 1995.[130] On the basis of contracts awarded, however, the domestic industry's market share decreased from 1991 to 1992, rebounded in 1993, and then declined significantly in 1994. In 1995, on a contracts-awarded basis, the domestic industry's share of the market was at its lowest level achieved during the period of investigation, and is projected to drop further in 1996.[131]

The domestic industry's production capacity has fluctuated throughout the period, with capacity declining from 1991 to 1993. Production capacity increased, however, in both 1994 and 1995. The industry's production capacity has remained the same in interim 1995 and 1996.[132] The industry's

(...continued)
otherwise noted.)

[127] On the basis of contracts awarded, the value of apparent consumption increased from *** million in 1991 to *** in 1992 and *** in 1993, then decreased slightly to *** in 1994 and increased slightly to *** in 1995. The value of apparent consumption on a contracts-awarded basis is projected to decline to *** in 1996. CR at IV-14, PR at IV-4.

[128] The value of domestic producers' U.S. shipments declined from *** in 1991 to *** in 1992 and to *** in 1993, then increased to *** in 1994 and *** in 1995. Id. The value of domestic producers' U.S. shipments *** in interim 1995 to *** in interim 1996. CR & PR at Table IV-5.

[129] The value of contracts awarded to the domestic industry decreased from *** in 1991 to *** in 1992, then increased to *** in 1993, and decreased to *** in 1994 and further decreased to *** in 1995. The value of contracts awarded to domestic producers is projected to drop to *** in full year 1996. CR at IV-14, PR at IV-4.

[130] On the basis of shipments, the domestic industry's market share increased from *** percent in 1991 to *** percent in 1992, decreased to *** percent in 1993, then rose to *** percent in 1994 and *** percent in 1995. The domestic industry's market share was the same (*** percent) in interim 1995 and interim 1996. CR & PR at Table IV-5.

[131] On the basis of contracts awarded, the domestic industry's market share decreased from *** percent in 1991 to *** percent in 1992, increased to *** percent in 1993, decreased to *** percent in 1994 and further decreased to *** percent in 1995. It is projected to drop to *** percent in 1996. CR at IV-14, PR at IV-4.

[132] Production capacity declined from *** man hours in 1991 to *** man hours in 1992 and to *** man hours in 1993 then increased to *** man hours in 1994 and *** man hours in 1995. Production capacity for interim 1996 and
(continued...)

production, by value, declined from 1991 to 1992 and from 1992 to 1993. Production, by value, rose in 1994 and 1995, although not to 1991 levels. Production, by value, was slightly lower for the industry in interim 1996 than in interim 1995.[133] The industry's capacity utilization declined during each year from 1991 to 1994 but increased in 1995, although to a level below the 1991 level. Capacity utilization was higher in interim 1996 than in interim 1995.[134] We note that it is difficult to accurately calculate capacity and capacity utilization rates for this industry because of variations in the physical characteristics of LNPPs. We have therefore not placed great reliance on these figures in our analysis.[135]

The domestic industry's inventory levels declined from 1991 to 1992 but increased slightly from 1992 to 1993. Inventory levels increased significantly in both 1994 and 1995. Inventory levels are higher in interim 1996 than in interim 1995.[136] Because producers do not make sales from inventory in this industry,[137] we have placed little emphasis on inventory data in our analysis.

Both the number of production and related workers and hours worked declined during each year of the period from 1991 through 1993 but increased in 1994 and 1995. The number of production and related workers and hours worked were both higher in interim 1996 than 1995.[138] Wages paid decreased erratically from 1991 to 1993, but increased in 1994 and 1995. Wages paid were slightly higher in interim 1996 than in interim 1995.[139] We note, however, that these recent improvements have apparently reversed

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(...continued)
interim 1995 was *** man hours. CR & PR at Appendix C-3.

[133] Production, by value, for the domestic industry declined from *** in 1991 to *** in 1992 and to *** in 1993, then increased to *** in 1994 and *** in 1995. Production was lower in interim 1996 (***) than in interim 1995 (***). CR & PR at Appendix C-3.

[134] Average capacity utilization declined from *** percent in 1991 to *** percent in 1992, *** percent in 1993, and *** percent in 1994. Capacity utilization rose in 1995 to *** percent, however. Capacity utilization was higher in interim 1996 (*** percent) than in interim 1995 (*** percent). CR & PR at Appendix C-3.

[135] Commissioner Crawford acknowledges that there are variations in physical characteristics of LNPPs. However, she finds that the domestic industry had significant available capacity. See Additional Views of Commissioner Carol T. Crawford, infra.

[136] Inventory levels for the domestic industry decreased from *** in 1991 to *** in 1992 but increased to *** in 1993, *** in 1994 and *** in 1995. Inventory levels were higher in interim 1996 *** than in interim 1995 ***. CR & PR at Appendix C-3.

[137] CR at II-2, PR at II-1.

[138] The number of production and related workers declined from *** in 1991 to *** in 1992 to *** in 1993. The number of production and related workers increased to *** in 1994 and *** in 1995. The number of production and related workers was higher in interim 1996 (***) than in interim 1995 (***). Hours worked declined from *** in 1991 to *** hours in 1992 to *** hours in 1993, then increased to *** hours in 1994 and *** hours in 1995. The hours worked were higher in interim 1996 (***) than in interim 1995 (***). CR & PR at Appendix C-3.

[139] Wages paid decreased from *** in 1991 to *** in 1992 and *** in 1993, then increased to *** in 1994 and *** in 1995. CR & PR at Appendix C-3. Wages paid were higher in interim 1996 (***) than in interim 1995 (***). Id.

themselves; during the past six months, the petitioner has reduced its workforce by more than 170 employees.[140]

The domestic industry's net sales declined significantly from 1991 to 1992 and exhibited a further significant decline in 1993. Net sales value increased in both 1994 and 1995, however, although not to 1991 or 1992 levels. Net sales value was higher in interim 1996 than in interim 1995.[141] Operating income and gross profits followed the same general trend as net sales revenues, declining from 1991 through 1993, then increasing in 1994 and 1995, but not to the level of 1991. Gross profits were higher in interim 1996 than interim 1995, but operating income was slightly lower.[142] On a contract basis, moreover, the domestic industry experienced declining sales revenues in 1994 and 1995 and began to experience losses in 1995 after being profitable in 1993 and 1994.[143] [144] [145]

Capital expenditures by the domestic industry declined from 1991 to 1993 but have increased slightly in 1994 and 1995. Capital expenditures were lower in interim 1996 than interim 1995.[146] Research and development spending by the domestic industry declined from 1991 to 1993, then increased in 1994 but declined again in 1995. Research and development spending was higher in interim 1996 than in interim 1995.[147] [148]

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[140] Tr. at 19.

[141] Net sales value declined from *** in 1991 to *** in 1992 and *** in 1993, then increased to *** in 1994 and *** in 1995. Net sales value was *** in interim 1996 compared to *** in interim 1995. CR & PR at Appendix C-3.

[142] Gross profits declined from *** in 1991 to *** in 1992 and *** in 1993, but increased to *** in 1994 and *** in 1995. Gross profits were *** in interim 1996, compared with *** in interim 1995. CR & PR at Appendix C-3.

Operating income declined from *** in 1991 to *** in 1992 and *** in 1993, then increased to *** in 1994 and *** in 1995. Operating income was *** in interim 1996, compared with *** in interim 1995. CR & PR at Appendix C-3.

[143] CR at VI-9, PR at VI-4.

[144] Cost of goods sold (COGS) declined from *** in 1991 to *** in 1992 and *** in 1993, then increased to *** in 1994 and *** in 1995. COGS was *** in interim 1996 compared to *** in interim 1995. CR & PR at Appendix C-3.

COGS as a percentage of net sales value increased from *** percent in 1991 to *** percent in 1993, then decreased to *** percent in 1993, to *** percent in 1994, and *** percent in 1995. COGS as a percentage of net sales value was *** percent in interim 1996 compared to *** percent in interim 1995. CR & PR at Appendix C-3.

[145] SG&A expenses decreased from *** in 1991 to *** in 1992, *** in 1993, and *** in 1994, then increased to *** in 1995. SG&A expenses were *** in interim 1996, compared to *** in interim 1995. CR & PR at Appendix C-3.

[146] Capital expenditures (including those of TKS (USA), which were minor overall) declined from *** in 1991 to *** in 1992, and to *** in 1993. Capital expenditures increased to *** in 1994 and *** in 1995. These expenditures were *** in interim 1996 compared to *** in interim 1995. CR & PR at Appendix C-3.

[147] Research and development expenditures declined from *** in 1991 to *** in 1992 and to *** in 1993, increased to *** in 1994, then decreased to *** in 1995. These expenditures were *** in interim 1996 compared to *** in interim 1995. CR at VI-23, PR at VI-7.

[148] Based on the foregoing, Commissioner Newquist finds the domestic industry producing LNPPs, additions,

(continued...)

III. NEGLIGIBILITY

The URAA has amended the statutory provisions pertaining to final antidumping duty determinations to require that investigations terminate by operation of law without an injury determination if the Commission finds that the subject imports are negligible.[149] The provision defining "negligibility", 19 U.S.C. § 1677(24), provides that imports from a subject country that are less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or self-initiation, as the case may be, shall be deemed negligible.[150]

In these final investigations, the German respondents KBA and MAN Roland argue that imports of subject merchandise from Germany are negligible.[151] According to the German respondents, German imports of LNPPs, additions and components during the twelve months preceding the filing of the petition accounted for only *** percent of total imports of such merchandise into the United States.[152] Petitioner asserts that imports of subject merchandise are not negligible.[153]

We find that imports of subject merchandise from both Germany and Japan were not negligible during the twelve-month period preceding the filing of the petition.[154] Imports of all subject merchandise from Germany and Japan each accounted for more than 3 percent of the volume of all such merchandise imported into the United States during the twelve months preceding the filing of the petition.[155]

(...continued)
components and elements to be vulnerable to the continuing adverse effects of LTFV imports. Commissioner Newquist thus proceeds directly to the "threat of material injury" discussion. He does, however, join the following discussion of "negligibility," and generally joins the cumulation discussion, but only for purposes of threat of material injury.

[149] 19 U.S.C. § 1673d(b)(1).

[150] There are three exceptions to the negligible imports provision, none of which are applicable to this investigation. see 19 U.S.C. § 1677(24)(A)(ii). The statute allows the Commission to make "reasonable estimates on the basis of available statistics" of import levels for purposes of making negligibility determinations. 19 U.S.C. § 1677(24)(C). See also SAA at 186.

[151] Man Roland Prehearing Brief at 3-4; KBA-Motter Brief at 2-4.

[152] Man Roland Prehearing Brief at 3-4; KBA-Motter Brief at 2-4.

[153] Petitioner's Prehearing Brief at 14-17; Petitioner's Posthearing Brief at Annex A, p.12.

[154] No party has argued that imports of subject merchandise from Japan were negligible during the twelve month period preceding the filing of the petition.

[155] During that twelve-month period, subject imports from Germany accounted for *** percent by value of all imports, while imports from Japan accounted for *** of all imports during the same period. CR at IV-7, PR at IV-2.

Accordingly, we find there is no legal basis for terminating these investigations with respect to Germany or Japan on negligibility grounds.[156] [157]

IV. CUMULATION[158]

Section 771(7)(G)(i) provides the general rule for cumulation for determining material injury by reason of subject imports. This provision requires the Commission to cumulate imports from all countries as to which petitions were filed and/or investigations self-initiated by Commerce on the same day, if such imports compete with each other and with domestic like products in the United States market.[159]

In assessing whether imports compete with each other and with the domestic like product, the Commission generally has considered four factors, including:

(1) the degree of fungibility between the imports from different countries and between imports and the domestic like product, including consideration of specific customer requirements and other quality related questions;

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[156] In this regard, we note that the German respondents' argument on negligibility would appear to be based on an a mistaken reading of the staff report. The German respondents based their entire argument on a portion of a chart in the prehearing staff report that included imports of subject press systems, additions and components but did not include German imports of subject LNPP elements. See Prehearing Staff Report at IV-3 (as revised by INV-T-055). Since a significant amount of the imports from Germany during the twelve months preceding the filing of the petition consisted of subject LNPP elements, the respondents' argument ignored a significant portion of German imports of subject merchandise during that time frame.

[157] MAN Roland has argued that the chart prepared by staff for negligibility purposes is based on the wrong twelve-month period. MAN Roland Prehearing Brief at 4, n. 2. As can be seen from the final staff report (CR at IV-7, PR at IV-2), the chart prepared for this purpose by staff reports import data for the period from June 1994 through May, 1995. According to MAN Roland, because the petition was filed on June 30, 1995, the most recent 12-month period preceding the filing of the petition was not the period used in the staff report but was instead July 1995 through June 1995. Man Roland asserts that, if this latter period were used to assess negligibility, the percentage of German imports to total imports would be even lower. This argument is misplaced. First, the statute states that the negligibility analysis should focus on "the most recent 12-month period for which data are available that precedes ... the filing of the petition..." 19 U.S.C. §1677(24)(A)(i). Contrary to MAN Roland's assertions, the statute does not require the Commission to include the month of filing of the petition within the twelve month period. Moreover, since the statute indicates that the period to be used is the twelve-month period preceding the filing of the petition, it is reasonable to conclude that the language of the statute suggests that the 12 month period should end with the last full month prior to the month in which the petition is filed.

[158] Commissioner Newquist notes that, in his view, once a like product determination is made, that determination establishes an inherent level of fungibility within that like product. Only in exceptional circumstances could Commissioner Newquist find products to be "like" and then turn around and find that, for purposes of cumulation, there is no "reasonable overlap of competition" based on some roving standard of substitutability. See Additional and Dissenting Views of Chairman Newquist in Flat-Rolled Carbon Steel Products, USITC Pub. No. 2664 (August 1993). Thus, for purposes of the "threat of material injury" discussion below, Commissioner Newquist joins the following discussion to the extent it is consistent with this analytical framework, particularly the evaluation of common geographic markets and simultaneous presence in the market.

[159] 19 U.S.C. § 1677(7)(G)(i).

(2) the presence of sales or offers to sell in the same geographical markets of imports from different countries and the domestic like product;

(3) the existence of common or similar channels of distribution for imports from different countries and the domestic like product; and

(4) whether the imports are simultaneously present in the market.[160]

While no single factor is determinative, and the list of factors is not exclusive, these factors are intended to provide the Commission with a framework for determining whether the imports compete with each other and with the domestic like product.[161] Only a "reasonable overlap" of competition is required.[162] Thus, even if a certain volume of subject imports from a country are of a type or specification not produced by the domestic industry, imports from that country will be cumulated if the remaining imports "collectively do compete with the domestic like product (and with other imports)."[163]

In these final investigations, petitioner argues that imports of subject merchandise from Germany and Japan should be cumulated because there is a reasonable overlap of competition among the domestic merchandise and these imports.[164] The German respondents and one Japanese respondent argue, however, that the Commission should not cumulate imports of subject merchandise from Germany and Japan because there is only a limited overlap of competition between the two countries.[165]

When analyzing whether to cumulate imports from Germany and Japan in these final investigations, we have taken into account the distinctive conditions of competition in the LNPP market. As previously discussed (in section II above), the LNPP market in the United States is characterized by a relatively small number of LNPP and addition sales that occur somewhat sporadically but involve substantial values of merchandise.[166] Moreover, unlike the majority of markets examined in other Commission investigations, price competition in this market does not occur relatively close to the time of shipment but instead occurs primarily during the extended and generally highly competitive bid/negotiation process, which can occur

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[160] See Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan, Inv. Nos. 731-TA-278-280 (Final), USITC Pub. 1845 (May 1986), aff'd, Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898 (Ct. Int'l Trade 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[161] See, e.g., Wieland Werke, AG v. United States, 718 F. Supp. 50 (Ct. Int'l Trade 1989).

[162] See id, 718 F. Supp. at 52 ("Completely overlapping markets are not required."); United States Steel Group v. United States, 873 F. Supp. 673, 685 (Ct. Int'l Trade 1994). The SAA expressly states that "the new section will not affect current Commission practice under which the statutory requirement is satisfied if there is a reasonable overlap of competition." SAA at 848 (citing Fundicao Tupy, S.A. v. United States, 678 F. Supp. 898, 902 (Ct. Int'l Trade), aff'd 859 F.2d 915 (Fed. Cir. 1988)).

[163] See Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992).

[164] Petitioner's Prehearing Brief at 17-19.

[165] TKS Prehearing Brief at 8-15; MAN Roland Posthearing Brief at 7-10; KBA Prehearing Brief at 4-15; KBA Posthearing Brief at 1-7.

[166] See CR at V-11-15; PR at V-7.

months and even years prior to the point at which any shipments are made.[167] Finally, at the end of the bid process, the presses offered by the various producers are reasonably substitutable in that they meet the specifications of the customer and are intended to accomplish the same tasks.[168]

We find that there is a reasonable overlap of competition among the subject imports and the domestic merchandise. First, during the period of investigation, subject imports from Germany and Japan and the domestic merchandise were generally sold in similar channels of trade since the large majority of German and Japanese subject imports and the domestic merchandise was sold directly by the manufacturer of the merchandise to the customer.[169]

Second, we examined the extent of simultaneous presence of subject imports from Germany and Japan in terms of both sales and offers to sell by these importers, as well as actual imports entering the United States, because the bidding process is the point at which head-to-head competition occurs. As discussed in greater detail below, subject importers were actively bidding for sales of press lines and additions in every year of the period examined.[170] In terms of the value of annual aggregate imports, significant volumes of subject merchandise entered the United States from both Germany and Japan in 1991, 1994 and 1995.[171] Fluctuations in the annual levels of subject imports from each country appear directly related to the sporadic nature of sales in the market. Finally, the German and Japanese producers competed directly with one another on several significant sales during that same period,[172] as well as with domestic producers.[173]

Third, the record evidence indicates that German, Japanese and domestic producers are not limited by geographic boundaries with respect to their submission of bids and are therefore able to -- and do -- submit bids on LNPP projects throughout the nation.[174]

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[167] CR at V-5-8 and V-26-62, PR at V-4-5 & V-12-16.

[168] CR at II-11-21 & V-5-8, PR at II-7-16 & V-4-5.

[169] CR at I-14, PR at I-10. Although the German producers transfer elements and components to their related U.S. subsidiaries while the Japanese do not, these importations are importations of semi-finished products that are incorporated in LNPPs and additions that are sold directly by these German-owned subsidiaries to the end users. Moreover, this channel of distribution is in essence the same as that used by U.S. producers, all of whom use elements or components that are captively consumed or supplied by related or unrelated entities in the production of LNPPs and additions. CR at III-2-8, PR at III-2-6.

[170] CR at V-11-16 & V-28-62, PR at V-7 & V-12-16.

[171] CR at IV-4, PR at IV-1.

[172] CR at V-11-13, PR at V-7. Chart V-1 of the final staff report shows that during the period from 1991 to 1995, KBA and/or MRD submitted final bids in direct competition with one or both of the Japanese producers on sales of LNPP press lines that had a total final contract value of $***, accounting for approximately *** percent of the total final contract value of all LNPP press line contracts awarded during that period and approximately *** percent of all LNPP and additions contracts awarded during the period. All of these bids involved competition with domestic producers. Id.

[173] CR at V-11-16, PR at V-7.

[174] CR at V-28-62 & II-18-21, PR at V-12-16 & II-12-13.

Finally,[175] we note that LNPPs are customized products that are not perfectly fungible for one another.[176] Respondents have urged that we focus our cumulation analysis solely on the extent of direct head-to-head competition (which they assert is insignificant) at the final bid stage because, they contend, competing presses offered at the initial bid stage are not highly fungible due to differences in technology. We believe respondents overstate the degree of fungibility that is necessary to satisfy the requirement for a "reasonable overlap of competition." As discussed earlier, in a number of cases, prospective purchasers of press lines consulted with and obtained extensive information from one or more of the domestic and subject LNPP producers, including German and Japanese producers.[177] These consultations and data assisted purchasers in preparing their RFQs, which contain detailed information on, among other things, the project description and technical specifications and requirements.[178] Moreover, in a number of cases, the RFQs were sent to domestic and German and Japanese LNPP producers, and initial bids, which are themselves detailed descriptions of the products being offered, were often submitted by these producers.[179] The fact that purchasers solicited detailed initial bids from both German and Japanese producers as well as domestic producers (which presumably were based on the earlier consultations and information collected) indicates to us that purchasers perceived a reasonable degree of fungibility among various producers' presses at the initial bid stage.[180]

Of course, as the bidding process continues and product specifications are refined further, those producers submitting final bids typically offer products that have an even higher degree of fungibility. As noted earlier, there was a significant degree of head-to-head competition between subject imports from Germany and Japan at this stage as well, as there also was between subject imports and domestic presses. For example, during the period from 1991 to 1995, the German producers submitted final bids in direct competition with one or both of the Japanese producers on sales of LNPP press lines that had a total final contract value of $***, accounting for approximately *** percent of the total final contract value of all LNPP press line contracts awarded during that period and approximately *** percent of all LNPP and

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[175] Commissioner Newquist reiterates his views expressed in footnote 158 supra. He does not join the discussion which follows.

[176] CR at II-11-II-21 & V-28-62, PR at II-7-13 & V-12-16. For example, certain purchasers have excluded one or more producers (whether domestic, German or Japanese) from consideration during the bid process because of customer preferences for a specific technology or concerns about quality. Id.

[177] CR at V-5 & V-28-62, PR at V-4 & V-12-16.

[178] CR at V-5 & V-28-62, PR at V-4 & V-12-16.

[179] CR at V-5, V-28-62, PR at V-4 & V-12-16. In addition to the *** bids on which German and Japanese producers competed at the final bid stage (which are described below), purchaser data indicate that there were at least *** sales of full presses in which the German and Japanese producers submitted only initial bids on a head-to-head basis. These *** sales had a final sales contract value of approximately ***, or approximately *** percent of all full press sales during the period of investigation and *** percent of all LNPP and additions sales. CR at V-11-16, PR at V-7.

[180] Commissioner Nuzum did not base her cumulation analysis on any finding that subject imports from Germany and Japan are "fungible" with each other and with the domestic like product. Presses manufactured by different producers are customized products built to customer specifications, and are not, in her view, "fungible" products. In her view, however, different presses, competing for the same sale, may be interchangeable with each other, notwithstanding physical differences in configuration or design. She notes that the statute does not require a finding of fungibility as a prequisite to cumulation.

additions contracts awarded during the period.[181] Moreover, petitioner competed at the final bid stage with every press line bid submitted by the German and Japanese producers during the period 1991 to 1995.[182]

Further, we do not interpret the differences in technology offered by different producers to be, in and of themselves, sufficient to warrant a conclusion that no reasonable overlap of competition exists. All producers produce and offer offset LNPPs and have developed (or are in the process of developing) keyless inking technologies. Importantly, German, Japanese and domestic producers also all offer color printing capability, which a growing number of newspapers are demanding. In light of these similarities, a particular purchaser's ultimate preference for one producer's press over another's due to technology or quality differences does not mean that those presses do not compete with each other.

In sum, the record in these final investigations indicates that the subject imports are reasonably fungible with each other and the domestic product, are sold in the same geographic areas through similar channels of distribution and have been simultaneously present in the market throughout the period examined. Accordingly, for purposes of our material injury analysis in these final investigations, we have cumulated subject imports from Germany and Japan.

V. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS[183]

In antidumping and countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the subject imports.[184] In making this determination, the Commission must consider the volume of subject imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[185] Although the Commission may consider causes of injury to the industry other than the LTFV and subsidized imports,[186] it is not to weigh causes.[187] [188]

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[181] CR at V-11-16, PR at V-7. The Japanese producers competed directly against German producers on *** of the *** final bids for full press lines submitted by the German producers during 1991 to 1995, while the German producers competed against the Japanese producers in *** of the *** final bids which the Japanese submitted during the period. We note that the *** bids involving such head-to-head competition were made on sales of LNPP press lines that had a total final contract value of $***, accounting for approximately *** percent of the total final contract value of all LNPP press line contracts awarded during the period from 1991 through 1995 and *** percent of all press and additions contracts awarded during the period. CR at V-11-16, PR at V-7. Because there is some question as to the country of origin for certain bids during the period, this level of overlap may in fact be understated. See footnotes 4 and 9 to Table V-1, CR at V-13, PR at V-7.

[182] CR at V-11-16, PR at V-7.

[183] Commissioner Newquist does not join this discussion. See note 148 supra.

[184] 19 U.S.C. § 1673d(b). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

[185] 19 U.S.C. § 1677(7)(B)(I). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[186] Alternative causes may include the following:

> [T]he volume and prices of imports sold at fair value, contraction in demand or changes in patterns of

(continued...)

For the reasons discussed below, we find that the domestic industry producing LNPPs, additions, components and elements is not materially injured by reason of LTFV imports from Germany and Japan.

A. Volume of Imports

For the reasons discussed in section II above, we relied primarily on the value (rather than quantity) of the subject imports when performing our analysis of the volume of imports. In this regard, we considered both shipments of the cumulated subject imports and sales (i.e., contracts awarded) of the subject imports for purposes of analyzing the significance of import volume. We analyzed import sales (i.e., contracts-awarded) as well as shipments because production and shipment of a particular order can take up to two years or more after the contract is awarded to a particular bidder, and because competition occurs in this marketplace primarily during the bid process.[189]

When analyzed on a shipments basis, the cumulated imports (measured on an absolute basis) fluctuated significantly during the period of investigation, although the subject imports generally maintained a significant level in the market throughout the period of investigation.[190] We note that the market share of cumulated subject imports (when measured on a shipments-made basis) exhibited significant declines in 1994 and 1995 following large fluctuations during 1991 through 1993.[191]

Sales awarded to cumulated subject imports during the period of investigation exhibited significantly different trends, however. Sales of the cumulated imports grew significantly during 1994 and 1995, after experiencing a period of some fluctuation during 1991 through 1993.[192] Indeed, the level of sales awarded to imports during the final two years of the period of investigation was significantly higher than that in any

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[186](...continued)

> consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

[187] See, e.g., Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

[188] For Commissioner Watson's interpretation of the statutory requirement regarding causation, see Certain Calcium Aluminate Cement Clinker from France, Inv. No. 731-TA-645 (Final), USITC Pub. 2772 at I-14, n. 68 (May 1994).

[189] CR at V-5-8, PR at V-4-5.

[190] In 1991, the value of cumulated import shipments was ***, accounting for approximately *** percent of apparent consumption in that year. In 1992, however, import shipments dropped to the relatively low level of ***, which represented *** percent of apparent consumption. In 1993 and 1994, import shipments increased to *** and ***, respectively. These amounts accounted for *** and *** percent of apparent consumption, respectively. Finally, import shipments again decreased in 1995, to ***, or *** percent of apparent consumption. CR & PR at Appendix C-5.

[191] Id.

[192] The value of cumulated imports on a contracts-awarded basis increased from *** in 1991 to *** in 1992, then decreased to *** in 1993, and then increased significantly during each of 1994 and 1995, to *** and ***, respectively. CR at IV-14, PR at IV-4.

of the first three years of the period.[193] Moreover, after a period of some fluctuation through 1993, the market share of cumulated subject imports on a sales-awarded basis increased significantly in 1994 and 1995, and in both years exceeded the cumulated subject imports' market shares during the first three years of the period.[194]

In light of the foregoing, we find that the volume of imports during the period of investigation is significant.[195] In making this finding we note that we have viewed trends exhibited by imports during the period of investigation with some caution.

B. Price Effects of Imports

As in the preliminary investigations, our pricing analysis in these final investigations is complicated by the relatively unique conditions of competition in this market, including the fact that price competition occurs primarily during the extensive and highly competitive bid/negotiation process for LNPP sales, and that every LNPP or addition sold is customized to the specifications of the individual customer.[196] Because of the nature of the sales process and the relatively unique characteristics of each LNPP or addition sold, the presses offered in different bid processes to different purchasers are not easily comparable to one another. Further, purchasers may seek to negotiate more expensive equipment or additional services at the same price level, thereby exacting a higher value product for what appears to be a price similar to that quoted by a different supplier.[197] Given this, our conventional approach to pricing analysis is not particularly useful in these investigations. However, in these investigations, we have examined in some detail the impact that LTFV imports have had on the price of domestically-produced LNPPs in individual transactions because we have detailed information concerning the competition between producers for most of the individual bids that occurred during the period of investigation.[198]

Although there are often technological and design differences between LNPPs offered during the bid process, these differences diminish throughout the bid/negotiation process.[199] At the final bid stage, the

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[193] Id.

[194] The market share of the cumulated subject imports on a contracts-awarded basis increased from *** percent in 1991 to *** percent in 1992 and decreased to *** percent in 1993. Market share then increased to *** percent in 1994 and then to *** percent in 1995, the highest level obtained by the cumulated subject imports during the period. CR at IV-14, PR at IV-4.

[195] In this regard, we note that, in these final investigations, respondents have argued that the Commission should use a three-year moving average to assess volume trends in these final investigations, while petitioner urges the Commission to use a two-year moving average. Respondents' Joint Prehearing Brief at 27-28; Tr. at 75 (testimony of Mr. Wechsler). After analysis of both methodologies, we find that the use of either methodology results in a generally similar pattern to that discussed above. See CR at IV-12, IV-13, IV-15 & IV-16. Accordingly, although we do not explicitly set forth an analysis of these moving average trends, we note that an analysis based on either of these proposed methodologies would support our findings that the volume of subject imports is significant.

[196] CR at V-5-8 & V-28-62, PR at V-4-5 & V-12-16.

[197] CR at V-6, PR at V-4.

[198] CR at V-28-62, PR at V-12-16.

[199] CR at V-5-8, PR at V-4-5.

presses offered generally meet the specifications and requirements of the purchaser and are therefore reasonably substitutable from the purchaser's perspective.[200]

There has been much disagreement between the parties about the role and importance of price in these transactions. We note that the RFQs that purchasers send out frequently contain the purchasers' maximum expenditure levels. Consequently, price is a threshold factor that competing producers must meet for their initial bids to be competitive. Once the initial bids are submitted and meet the purchaser's budgetary constraints, and the bidding process continues, then the difference in prices tend to become a less important factor as compared to other factors such as technology and quality. Although price appears not to be the dominant factor in many bid situations,[201] it is nevertheless often an important factor in the purchaser's decision at the final stage of the bid process.[202] Moreover, as previously noted, purchasers will often use the bids of various competitors to obtain price and price-related concessions from competitors whose bids are ultimately accepted.[203]

With these considerations in mind, we find that the subject imports have had a significant effect on the price of domestic LNPPs and additions. As we have noted, direct head-to-head price competition in the LNPP market occurs between domestic and foreign producers during the lengthy bidding process for an individual contract. Moreover, domestic and foreign merchandise is relatively substitutable during the final stages of the bid process. Not surprisingly, purchasers use the prices of competing bids to negotiate lower prices with other bidders. Indeed, because of the competitive advantage enjoyed by petitioner because of its large installed base of LNPPs, there is a significant incentive for foreign producers to bid aggressively in the bid process. Given the foregoing, price competition from the subject imports can have significant adverse effects on domestic producers' prices, even when the domestic producers actually win the sale.[204]

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[200] CR at V-5-8, PR at V-4-5.

[201] CR at V-18, PR at V-8. In this regard, we note that, of the *** bids involving competition between subject imports and domestic merchandise for which sufficient bid data was available, the bid was not awarded to the lowest bid in *** situations. These *** contracts had a final contract value of approximately ***, accounting for approximately *** percent of the total bids awarded during the period. CR at V-18, PR at II-7-9 & V-8. See also CR at II-12-15, PR at II-7-10.

[202] CR at V-5-8 & II-11-15, PR at V-4-5 & II-7-9. In this regard, we note that, in *** of the *** bids involving competition between domestic and subject merchandise, the bid was awarded to the lowest bidder. These *** contracts had a final contract value of *** and accounted for approximately *** percent of all bids awarded during the period. CR at V-18, PR at II-7-9 & V-8. See also CR at II-12-15, PR at II-7-10.

[203] CR at V-6-7, PR at V-4-5. In this regard, we note that certain anecdotal data provided by several purchasers indicates that price is often a significant factor in the purchase decision and that competition is used to reduce price. E.g., CR at V-8 & V-37 (Miami Herald indicates that prices tend to fall because of, among other things, degree of competition); V-52 (Rochester Democrat and Chronicle stated that it expected low prices because it was in a buyer's market in 1993 and none of the producers had enough orders); V-36 (New York Daily News used ***); PR at V-5 & V-13, V-15, & V-13; Commission Hearing Transcript, July 17, 1996, at 164-65 & 167 (Washington Post indicated that price was an important factor in choice of vendors).

[204] The anecdotal evidence suggests that petitioner and the other domestic producers dropped their initial bid prices significantly during the bid process in the face of competition from subject imports. See generally CR at V-28-62, PR at V-12-16. See also CR at V-8 & V-37 (Miami Herald indicates that prices fell during bid process because of, among other things, degree of competition among producers, including German and Japanese producers); V-52

(continued...)

Moreover, our review of the anecdotal information submitted in these investigations indicates that competition from subject imports did in fact result in significant price suppression or depression during the period on a significant amount of sales.[205] [206] For example, the record shows a number of instances in which one or more of the German or Japanese producers undersold (i.e., underbid) the domestic producers at the final bid stage for sales involving significant values.[207] Indeed, underbidding or price competition by the subject imports appears to have been at least one factor in the ability of subject imports to obtain a significant volume of sales during the period of investigation.[208] Similarly, the record indicates that domestic producers received less revenue for a significant number of sales than they might have received in the absence of competition from subject imports.[209]

On the whole, we find that the evidence in these investigations suggests that there has been significant price underselling by the subject imports during the period of investigation and that the subject imports have had a significant price suppressing or depressing effect on the price of domestic merchandise.

(...continued)
(Rochester Democrat and Chronicle stated that it expected low prices because it was in a buyer's market in 1993 and none of the producers (including German and Japanese had enough orders); V-36 (New York Daily News used ***); PR at V-5 & V-13, V-15, & V-13; Commission Hearing Transcript, July 17, 1996, at 164-65 & 167 (Washington Post indicated that price was an important factor in choice of vendors).

[205] Id.

[206] Commissioner Nuzum does not join the rest of the pricing discussion. She notes that several purchasers testified that the small difference in prices between the final contenders did not significantly affect their purchase decision, and the record in fact reflects that the lowest bid did not win the sale in about one half of press line sales with competing final bids. CR at V-18; PR at V-12 . The difference between lowest and highest final bids amounted to less than 20 percent in more than two-thirds of press line sales that had competing offers at the final bid stage. Where the lowest bid did not win the sale, the winning bid was never more than 15 percent higher, except in one instance. Table V-1, CR at V-11-12; PR at V-7. The range of these price differences provides some indication of the degree to which purchasers considered the size of price differences among final bids to be less important than other factors. The final margins of dumping found by Commerce, by contrast, range between 30 and 62 percent, a far larger magnitude than the differences between competing final bids in most press line purchases. Given the magnitude of the dumping margins and the much smaller differences among final bids, it is also reasonable to infer that many initial bids also reflected some degree of LTFV pricing. She concludes that subject importers were able to compete more aggressively with domestic producers than would have been the case had the imports been fairly priced. She further notes that there were several large transactions where price differences were at least as important as other factors at the final bid stage. CR at V-36, V-41-42, & V-51-53; PR at V13-V-15. Commissioner Nuzum thus finds that subject imports are having significant depressing and suppressing effects on domestic prices.

[207] Of the *** sales set forth in Charts V-1 and V-2 that involve competition between domestic and subject merchandise, *** involved underbidding by one or more of the German and Japanese producers. These *** sales accounted for approximately ***, or *** percent of all contracts awarded during the period of investigation. CR at V-10-V-16, PR at V-7. We note that we use this underselling analysis with some caution given the fact that price differences may reflect differences in the total packages offered, but price competition nevertheless is clearly important in purchaser decisions.

[208] In *** of the *** competitive bids awarded during the period to the German and Japanese producers, the German or Japanese producer was the lowest bidder. These *** sales involved merchandise with a value of ***, accounting for approximately *** percent of total bids awarded during the period. CR at V-18, PR at V-8.

[209] CR at V-28-62, PR at V-12-16.

However, as we discuss below, we find that subject imports are not currently having a material adverse impact on the domestic industry.

C. Impact of Subject Imports on the Domestic Industry[210] [211] [212]

Although the volume of the subject imports is significant and the subject imports have had a significant adverse effect on domestic prices, we find that the subject imports are not yet causing material injury to the domestic industry. Nonetheless, we note that the subject imports are having some adverse impact on the industry. In particular, the domestic industry lost significant market share on a contracts-awarded basis during the last two full years of the period of investigation,[213] and is beginning to experience declining sales and profitability on a contracts-awarded basis.[214] In addition, the subject imports have had significant adverse effects on the price of the domestic like product. Because the full impact of these lost sales and market share is not yet fully reflected in the financial condition of the industry, however, we conclude the adverse effect of the subject imports has not yet reached the level necessary for us to find material injury by reason of such imports.

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[210] As part of its consideration of the impact of imports, the statute as amended by the URAA specifies that the Commission is to consider "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V). The SAA indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive in the Commission's material injury analysis." SAA at 180, H.R. Doc. No. 316, Vol. 1, 103rd Cong., 2nd Sess. (1994) at 850. The weighted-average dumping margins identified by Commerce in its final investigations range from 30.80 percent to 46.40 percent for Germany and from 56.28 percent to 62.96 percent for Japan. 61 Fed. Reg. 38139 & 38167 (July 23, 1996).

[211] In these investigations, respondents have argued that it is not lawful or appropriate for the Commission to apply the final margins announced by Commerce to MHI's sale to the Washington Post. Joint Respondents' Prehearing Brief at 99-100. According to respondents, application of this margin to this sale would be inappropriate because Commerce did not calculate a margin for this sale in its final determination. Id. Petitioner argues, however, that the statute requires the Commission to apply the margins announced by Commerce to all sales of subject merchandise falling within the scope of the investigation. Petitioner's Posthearing Brief at Annex K. We find that respondents' arguments are unconvincing in this case. It is the Commission's usual practice to assume that the margins announced by Commerce for a particular producer apply to all of that producer's sales, unless certain of those sales are excluded from the scope because they are not sold at less than fair value. In this case, Commerce did not exclude the Post sale from the scope of the investigation because it was sold at more than fair value; it excluded it from its margins analysis primarily because adequate information was not available that would allow Commerce to calculate a margin on the sale.

[212] Vice Chairman Bragg notes that she does not ordinarily consider the margin of dumping to be of particular significance in evaluating the effects of subject imports on domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996).

[213] CR at IV-14, PR at IV-4.

[214] CR at VI-9, PR at VI-4.

However, as we discuss below, we find that subject imports are not currently having a material adverse impact on the domestic industry.

C. Impact of Subject Imports on the Domestic Industry[210] [211] [212]

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[213] CR at IV-14, PR at IV-4.

[214] CR at VI-9, PR at VI-4.

imports would occur unless such an order is issued . . . ."[220] In making our determination, we have considered, in addition to other relevant economic factors,[221] all statutory factors[222] that are relevant to these investigations.[223]

For the reasons discussed below, we find that the domestic industry is threatened with material injury by reason of the subject imports from Germany and Japan.

As a threshold question, we have cumulated the LTFV imports from Germany and Japan for purposes of our threat analysis. Under section 771(7)(H) of the Act, the Commission may "to the extent practicable" cumulatively assess the volume and price effects of subject imports from all countries as to which petitions were filed on the same day if the requirements for cumulation for material injury analysis are satisfied.[224] We determined in section IV above that the requirements for cumulation for material injury analysis are satisfied in these investigations, and we have determined to exercise our discretion to cumulate the LTFV imports for our threat analysis as well. Moreover, while it is difficult to assess pricing and volume trends in this market, evidence of underbidding and significant participation by subject imports in recent pending bids indicates that imports from both subject countries have exhibited similar import trends during the most recent part of the period of investigation.[225] [226]

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[220] While the language referring to imports being imminent (instead of "actual injury" being imminent and threat being "real") is a change from the prior provision, the SAA indicates that the "new language is fully consistent with the Commission's practice, the existing statutory language and judicial precedent interpreting the statute. SAA at 184.

[221] Suramerica de Aleaciones Laminadas, C.A. v. United States, 44 F.3d 978 (Fed. Cir. 1994). The Federal Circuit held that 19 U.S.C. § 1677(7)(F)(i) requires the Commission to consider "all relevant factors" that might tend to make the existence of a threat of material injury more probable or less probable. The Commission cannot limit its analysis to the enumerated statutory criteria when there is other pertinent information in the record. Moreover, the court appears to require consideration of the present condition of the industry as among the "relevant economic factors." Id. at 984.

[222] The statutory factors have been amended to track more closely the language concerning threat of material injury determinations in the Antidumping and Subsidies Agreements, although "[n]o substantive change in Commission threat analysis is required." SAA at 185.

[223] 19 U.S.C. § 1677(7)(F)(i). Three statutory threat factors have no relevance to these investigations and need not be discussed. Because there are no subsidy allegations, factor I is not applicable. Factor VII regarding raw and processed agriculture products is also inapplicable to the products at issue. Moreover, there are no outstanding dumping findings in third countries which were relevant to the Commission's consideration in these investigations. See 19 U.S.C. § 1677(7)(F)(iii)(I). Finally, because LNPP producers generally maintain only work-in-progress inventories and do not sell from inventory in the vast majority of cases, Factor V is not relevant in these investigations as well.

[224] 19 U.S.C. § 1677(7)(H).

[225] CR at V-11-16, V-28-62 & VII-6-7, PR at V-7, V-12-16, & VII-3. Commissioner Watson placed principal reliance on the likely continued competition of LTFV imports from Germany and Japan with each other and with the domestic like product in exercising his discretion to cumulate for purposes of threat analysis.

[226] Commissioner Newquist notes that when assessing whether to cumulate for purposes of a threat of material injury analysis, he places little weight on whether imports from various subject countries are increasing at similar rates or have similar margins of underselling and pricing patterns. Nowhere does the statute require that these (continued...)

In these investigations, the vulnerability of the domestic industry is an important factor in our consideration of the threat of material injury from subject imports. Although we have concluded that the domestic industry at present appears to be in relatively good financial condition, given the distinctive characteristics of this market, the financial condition of the industry is likely to deteriorate quickly in the near future.[227] As discussed previously, the value of contracts awarded to the industry and its share of the market in terms of sales awarded declined significantly during 1994 and 1995, primarily due to competition from the subject imports.[228] Consequently, because of the delay of financial effects of the contracts awarded on industry performance, the full adverse impact of these lost sales will only be reflected in the domestic industry's financial results in the near future.

The domestic industry's order backlogs declined during the latter part of 1996, partly as a result of a decline in sales in 1994 and 1995.[229] In fact, petitioner reports that the decline in pending orders has resulted in a hole in its production schedule for late 1996 and the beginning of 1997. Thus, lost sales from 1994 and 1995 will be evidenced in declines in the industry's productivity and financial performance in 1996 and 1997.

There has been a significant increase in the value of sales contracts awarded to the subject imports during the final two full years of the period of investigation and a concurrent rise in the subject imports' share of contracts awarded during the same period.[230] Further, the record shows that the German and Japanese producers are now in direct competition with domestic producers for bids that are now pending in the LNPP market. While there is evidence of *** currently pending sales of LNPPs and additions, there is a varying degree of likelihood that contracts will be awarded on these pending sales in the imminent future. Based on detailed responses from purchasers, only *** sales are likely to occur in the imminent future. (Purchasers report that bids were submitted from the German and Japanese producers in *** of these sales.) Final award decisions on these *** sales are likely to occur in the first half of 1997 or earlier.[231]

226(...continued)
"factors" be examined in determining whether to cumulate for a threat analysis. Commissioner Newquist also generally reiterates his views expressed in note 158 supra.

227 Commissioner Newquist notes that he has determined that the domestic industry is vulnerable to the continuing adverse effects of subject imports. He does not make a separate finding with regard to the industry's financial condition.

228 The value of contracts awarded to the domestic industry dropped from *** in 1993 to *** in 1994 and to *** in 1995. The industry projects only *** in sales contracts awarded in 1996. CR & PR at Table IV-6. The industry's market share on this basis has declined from *** percent in 1993 to *** percent in 1994 and *** percent in 1995. Conversely, the value of contracts awarded to the subject imports increased from *** in 1993 to *** in 1994 and *** in 1995. The share of contracts awarded to subject imports rose from *** percent in 1993 to *** percent in 1994, and to *** percent in 1995. CR & PR at Table IV-6.

229 CR at IV-8-9; PR at IV-3.

230 CR at IV-14; PR at IV-4.

231 The Commission received information on *** pending sales of press lines and additions. Based on information obtained for *** of these sales from prospective purchasers, only *** of those purchasers reported decision dates for the pending sales between now and July 1997. Based on this information, it appears that those *** pending sales are more likely to occur in the near future than other pending sales. CR at VII-7-14, PR at VII-3-5.

This small number of pending sales, valued between ***,[232] will likely result in intense competition among domestic and foreign suppliers for bid awards. Moreover, this intensified competition for a smaller pool of sales opportunities increases the incentive for suppliers of LTFV imports to compete on the basis of price. Further, based on our earlier price analysis (discussed in section V above),[233] regardless of whether LTFV imports are awarded the contracts in these sales, their presence in the bidding process will likely result in price suppression and depression.[234] This smaller value of pending sales also makes it more likely that purchasers will continue to use the LTFV imports to extract price concessions from the domestic producers. Moreover, as we noted above, the petitioner enjoys a significant competitive advantage because of its large installed base of LNPPs, particularly with regard to sales of additions. Given this factor, it can be expected that the subject producers will have an incentive to aggressively compete on price with the petitioner and other domestic producers in order to cut into that installed base.[235]

The continued entry of the subject imports into the market at LTFV prices is likely to have significant negative effects on existing production and development efforts of the domestic industry. The record of these investigations suggests that a producer's ability to compete successfully in the market depends in large measure on its ability to develop and market advanced technologies.[236] Moreover, there is a relatively direct correlation between a producer's research and development expenditures and its sales revenues.[237] It is likely, therefore,

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[232] CR at VII-7, PR at VII-3. Of *** sales (with an aggregate minimum bid value of ***) now pending in the market, the Japanese producers have submitted bids in competition with domestic producers on *** of the bids. The bids submitted by the Japanese producers have an aggregate minimum bid value of at least ***. The German producers have submitted *** bids in competition with domestic producers, with a total minimum bid value of at least ***. CR at VII-7, PR at VII-3. (In certain cases, no bid values were provided.)

Of the *** pending sales, only *** (with a minimum aggregate bid value of ***) are close to being awarded in the imminent future. Of these *** sales, the Japanese producers are directly competing with the domestic producers on ***, which have an aggregate minimum Japanese bid value of at least ***. The German producers have submitted bids in competition with the domestic producers on *** sales, with an aggregate minimum German bid value of at least ***. Again, minimum bid amounts were not available for all bids supplied by the German and Japanese producers. CR at VII-7, PR at VII-3.

[233] By virtue of his finding that the domestic industry is in a vulnerable condition, Commissioner Newquist does not join the referenced section V. He notes, however, that in his analytical framework, "evaluat[ion] of the magnitude of the margin of dumping" is not generally helpful in answering questions posed by the statute: whether the domestic industry is materially injured or threatened with material injury; and if so, whether such injury or threat of injury is by reason of the subject imports.

Commissioner Newquist does, however, concur with the conclusion in the referenced section that imports are currently entering the market at prices that have a significant price-suppressing or -depressing effects on domestic prices.

[234] Commissioner Newquist notes that although there is competition between imports from the two subject countries, as a general statement, such imports have consecutively, rather than concurrently, battered the domestic producer on individual bids. In other words, for any given bid, frequently only one German or Japanese producer offered its unfairly priced product in competition with the domestic product.

[235] Moreover, to the extent that petitioner loses that installed base, it will itself lose the competitive advantage resulting therefrom, which we regard as another sign of impending injury.

[236] E.g., CR at II-4, PR at II-3.

[237] Compare Table VI-12, CR at V-23, PR at V-10, with CR & PR at Appendix C-3.

that the continued significant presence of the subject imports in the market will significantly hamper the industry's ability to develop the advanced technologies necessary to stay competitive in this market.

We place somewhat less reliance on capacity figures in these investigations because it is difficult to calculate with precision the actual production capacity and utilization rates for LNPP producers. Moreover, although producers may be operating at high capacity utilization rates, they have demonstrated the ability to shift significant future production to the United States from other export markets in the future.[238] In this regard, because the German producers have stated that they intend to shift increasing amounts of production to the U.S., there is a significant likelihood that the German producers will continue to export subject merchandise to their related subsidiaries in order to help those companies maintain (or even increase) their presence in the market. In addition, the record evidence indicates that producers are capable of quickly increasing capacity to satisfy new sales.[239] As a result, the existence of high capacity utilization rates does not necessarily indicate an inability to increase shipments to the U.S. market, particularly where there are relatively few barriers to entry by foreign producers (as is the case in this market).

While respondents argue that a significant increase in demand for LNPPs in the Asian, Eastern European and Latin American markets could make it unlikely that there will be an increase in the volume of subject imports to the United States, the information provided by respondents on this issue appears to pertain to printing presses in general and therefore does not provide a reliable forecast for sales of LNPPs in other markets.[240] Moreover, we note that the record shows that the United States is the largest LNPP market in the world[241] and is, accordingly, the natural focal point for the marketing efforts of all LNPP suppliers.

Finally, we do not find that, but for the suspension of liquidation in March 1996, we would have found that the domestic industry is materially injured by reason of the subject imports. In view of the nature of the market for LNPPs and additions (i.e., a market characterized by a lengthy delay between contract and shipment), we do not find that suspension of liquidation altered the pattern of imports or their effect on domestic producers from what it would otherwise have been.[242]

VII. CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing LNPPs, additions, components and elements is threatened with material injury by reason of LTFV imports from Germany and Japan.

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[238] CR at VII-4-6, PR at VII-2-3.

[239] CR at VII-4-6, PR at VII-2-3. We note that the capacity of the German and Japanese producers appears to vary in correlation with their production figures. Id.

[240] MHI Posthearing Brief at Attachment 5 & 6; Man Roland Posthearing Brief at Appendix 3.

[241] Tr. at 80 (testimony of Mr. Wechsler); 128 (testimony of Mr. Kuhn).

[242] Commissioner Nuzum notes as well that although competition from foreign subject producers has adversely affected the domestic LNPP industry, the adverse impact has not yet crossed the threshold of "material injury." The continuing effects of recent lost sales and lost revenues, coupled with continued competition from subject imports in the context of likely prospective sales, suggest that "material injury" is imminent. She does not find, however, that absent suspension of liquidation in March 1996, the domestic industry would have been materially injured by reason of subject imports.

ADDITIONAL VIEWS OF COMMISSIONER NEWQUIST

I would like to provide some additional observations regarding these investigations and the administration of the unfair trade laws. I do not agree with any characterization that the petition in these investigations was particularly difficult or challenging to assess within the framework of our trade laws. In my view, the information developed by our investigative process regarding the conditions of trade and competition and the impact of unfairly traded imports easily conforms with the direction of the statute.

Thus, I do not share any equivocation which my colleagues may voice about the Commission's affirmative determination. In my view, the determination in these investigations is a classic, straight-forward affirmative determination, supported by the record and totally consistent with the type of unfair trading practices that Congress intended the antidumping laws to address. I am satisfied that the Commission has administered the trade laws as intended by Congress in these investigations.

ADDITIONAL VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in these investigations, I determine that the industry in the United States producing Large Newspaper Printing Presses (LNPPs) is materially injured by reason of imports of LNPPs from Japan and Germany that the Department of Commerce ("Commerce") has found to be sold in the United States at less-than-fair-value (LTFV). I join my colleagues in the findings with respect to like product, domestic industry, negligible imports and cumulation. I do not, however, concur in the determination that the domestic industry producing LNPPs is threatened with material injury by reason of subject imports. Rather, I determine that the industry in the United States producing LNPPs is materially injured by reason of the cumulated subject imports of LNPPs from Japan and Germany. Because my analysis differs from my colleagues', my separate views follow.

I. ANALYTICAL FRAMEWORK

In determining whether a domestic industry is materially injured by reason of the LTFV imports, 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;

(III) the impact of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . . .[1]

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination."[2] In addition, the Commission "shall evaluate all relevant economic factors which have a bearing on the state of the industry . . . within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[3]

The statute directs that we determine whether there is "material injury by reason of" the dumped imports. Thus we are called upon to evaluate the effect of dumped imports on the domestic industry and determine if they are causing material injury. There may be, and often are, other "factors" that are causing injury. These factors may even be causing greater injury than the dumping. The statute, however, does not direct us to weigh or prioritize the factors that are independently causing material injury. Rather, the Commission is to determine whether any injury "by reason of" the dumped imports is material. That is, the Commission must determine if the subject imports are causing material injury to the domestic industry. "When determining the effects of the imports on the domestic industry, the Commission must consider all relevant factors that can demonstrate if unfairly traded imports are materially injuring the domestic

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[1] 19 U.S.C. § 1677(7)(B)(i).

[2] 19 U.S.C. § 1677(7)(B)(ii).

[3] 19 U.S.C. § 1677(7)(C)(iii).

industry."[4] It is important, therefore, to assess the effects of the dumped imports in a way that distinguishes those effects from the effects of other factors unrelated to the dumping. To do this, I compare the current condition of the industry to the industry conditions that would have existed without the dumping, that is, had the subject imports all been fairly priced. I then determine whether the change in conditions constitutes material injury. The Court of International Trade has held that the "statutory language fits very well" with my mode of analysis.[5]

In my analysis of material injury, I evaluate the effects of the dumping[6] on domestic prices, domestic sales, and domestic revenues. To evaluate the effects of the dumping on domestic prices, I compare domestic prices that existed when the imports were dumped with what prices would have been if the imports had been priced fairly. Similarly, to evaluate the effects of dumping on the quantity of domestic sales,[7] I compare the level of domestic sales that existed when imports were dumped with what domestic sales would have been if the imports had been priced fairly. The combined price and quantity effects translate into an overall domestic revenue impact. Understanding the impact on the domestic industry's prices, sales and overall revenues is critical to determining the state of the industry, because the impact on other industry indicators (e.g., employment, wages, etc.) is derived from the impact on the domestic industry's prices, sales, and revenues.

I then determine whether the price, sales and revenue effects of the dumping, either separately or together, demonstrate that the domestic industry would have been materially better off if the imports had been priced fairly. If so, the domestic industry is materially injured by reason of the dumped imports.

II. APPLICATION OF ANALYTICAL FRAMEWORK TO THESE INVESTIGATIONS

The analytical challenges posed by these investigations are different from those in a "typical" antidumping investigation. In a typical investigation, Commerce investigates dumping on a relatively small number of sales of imports during a rather short and recent period of investigation, usually covering a six-month time period close to the date the petition was filed. The Commission, on the other hand, typically collects information about imports, the domestic industry and market conditions during its traditional 3-year period of investigation. This information allows Commissioners to analyze the "condition of the industry," i.e., the statutory "impact factors" of 19 U.S.C. § 1677(7)(C)(iii), in historical terms. That is, the information shows the trends in the impact factors: whether the domestic industry's production, shipments, sales, profits, etc., have increased or decreased during the 3-year period. Similarly, the information shows the trends in volume and market share of imports during the entire 3-year period of investigation, even though Commerce has not investigated dumping during most of the period. In sum, the Commission's record in a typical investigation provides historical information over a time period that does not coincide with the period in which Commerce has investigated dumping. Hence, the dumping may or may not have taken place during the

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[4] S. Rep. No. 71, 100th Cong., 1st Sess. 116 (1987)(emphasis added).

[5] U.S. Steel Group v. United States, 873 F.Supp. 673, 695 (Ct. Int'l Trade 1994), appeal docketed No.95-1245 (Fed. Cir. March 22, 1995).

[6] As part of its consideration of the impact of imports, the statute as amended by the URAA now specifies that the Commission is to consider in an antidumping proceeding "the magnitude of the margin of dumping." 19 U.S.C. § 1677(7)(C)(iii)(V).

[7] In examining the quantity sold, I take into account sales from both existing inventory and new production.

greatest part of the three year period the Commission examines to determine if there is material injury by reason of the subject imports.

In a typical investigation, I join my colleagues in a discussion of the "condition of the industry" even though I do not make my determination based on industry trends. Rather, the discussion represents, in my view, a factual recitation of the data collected concerning the statutory impact factors. In my analysis, I evaluate the data that correspond most closely to the time period in which Commerce has investigated dumping. These data reflect the condition of the industry when subject imports were dumped, and thus are the basis for my comparison of what the condition of the industry would have been if the subject imports had not been dumped. In these investigations, I join my colleagues in the factual presentation of the data collected. However, as discussed below, I focus my analysis on the point in time when competition occurs, that is, when a contract is awarded to the winning bid, rather than the point of delivery, when subject imports enter the U.S. market. In addition, I evaluate the condition of the industry based on the aggregated data collected for the five years 1991 to 1995.

The Commission record in the present investigations is far more complete than in a typical investigation, and it corresponds almost precisely with the time period in which Commerce investigated dumping of LNPPs. Commerce investigated dumping throughout the entire 5 year period 1991 to 1995, not just its usual, most recent 6-month period of investigation. Between 1991 and 1995, there were 62 sales of LNPPs. Subject imports captured 14 of those sales, and Commerce calculated or assigned dumping margins on all but one of the 14.[8] Consequently, the information provided by Commerce most accurately represents a single 5-year "period of dumping". The Commission has collected comprehensive information concerning the domestic industry, market conditions and individual sales throughout the same 5 year period. Therefore the Commission's aggregated data on the domestic industry describes the condition of the domestic industry during a period when LNPPs were known to be dumped. Because Commerce has assigned or calculated dumping margins for 13 of the 14 sales captured by subject imports, we can, in effect, examine each of these dumped sales to determine whether the domestic industry lost specific sales as a result of the dumping.[9]

Under the statute, the Commission is required to consider the magnitude of the dumping margin. The circumstances of these investigations demonstrate the obvious: the most logical application of this statutory requirement is an analysis of whether the margin of dumping resulted in lost sales that together constitute material injury to the domestic industry. In considering the dumping margins, the Commission must use the margins provided by Commerce, and may not revise or "look behind" the margins.

By evaluating the effects of the dumping, we can determine whether a sale captured by dumped subject imports would have gone to the domestic industry if the subject imports had not been dumped. We can then determine the aggregate value of the sales that would have gone to the domestic industry, and thus determine the magnitude of the increase in the domestic industry's revenues that would have resulted had the subject imports not been dumped. We can then compare this increase in revenues with the level of the domestic industry's revenues when the subject imports were dumped, i.e., the aggregate revenues of the 5

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[8] Commerce did not calculate or assign a dumping margin on the sale to the Washington Post in 1995.

[9] In a typical investigation I normally do not rely on lost sales information because it usually represents only allegations or anecdotal evidence. By contrast, the information in these investigations includes direct evidence of actual lost sales.

years. If this increase is material, the domestic industry is materially injured by reason of the dumped imports.

Such an analysis is seldom possible in a typical investigation because the record does not contain the necessary information. Fortunately, in these investigations the record contains information sufficiently comprehensive to allow analysis of most individual sales. However, we are also required to consider what Commerce has determined to be the margin of dumping.

Necessary information other than the margin of dumping includes the identification of the final bidders, the amount of the final bids, and the degree of substitutability between or among specific domestic LNPPs and specific subject imports. While the record is comprehensive, not all of this information is available for each individual sale. Consequently, while I have considered all 14 sales captured by subject imports, individual analysis of all sales has not been possible.

For my determination, I have analyzed individually most, but not all, specific sales. I have not analyzed the effects of the dumping on the 1995 sale to the Washington Post because Commerce did not calculate a margin for this sale. In four sales of press additions there was no competition.[10] In addition, bid information regarding the 1992 sale to the Dallas Morning News was not supplied to the Commission, so analysis was not possible. Of the remaining eight sales I have analyzed, at least three are likely to have gone to the domestic industry had the subject imports not been dumped at the margins directed by Commerce: the 1992 sale to the Winston-Salem Journal, the 1993 sale to the Rochester Democrat and Chronicle and the 1994 sale to the Spokesman Press. Based on my analysis of these three sales, I determine that the domestic industry producing LNPPs is materially injured by reason of the subject imports.

III. CONDITIONS OF COMPETITION

To understand how an industry is affected by unfair imports, we must examine the conditions of competition in the domestic market. The conditions of competition constitute the commercial environment in which the domestic industry competes with unfair imports, and thus form the foundation for a realistic assessment of the effects of the dumping. This environment includes demand conditions, substitutability among and between products from different sources, and supply conditions in the market.

A. General

LNPPs consist of press lines and press additions. Both are capital goods, but press lines are new acquisitions, while additions update or supplement existing lines. All LNPPs must meet the specific needs of the purchasing newspaper, and thus are "custom products". LNPP producers submit proposals designed specifically to satisfy the needs and budget of the newspaper purchaser.

For most newspapers, the purchase of a new press line represents the largest capital investment the newspaper ever makes. Accordingly, for this reason newspapers tend to use existing presses as long as possible, and it is not uncommon for a newspaper to purchase press lines only once every twenty years. Consequently, only a small number of sales occur during any given period of time. The demand and supply

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[10] The four sales are the: Global Press; Dallas Morning News (1993); The Fargo Forum; and, Paddock Publishing. See C.R. Tables V-1 and V-2.

for LNPPs is influenced by this relatively small number of large value purchases, and purchasers have considerable influence over what LNPPs are produced and when they are purchased.

Generally newspaper purchasers invite producers to submit opening bids on a proposed LNPP. The newspaper will identify the characteristics and performance capability it desires, and the bidding process may continue until the newspaper is satisfied with the final bids it has received from competing producers. For purchases of additions, in many instances only one producer submits or is requested to submit a bid. In those cases, the sole bidder usually is the same producer that produced the newspaper's existing LNPP, and other producers do not compete for the sale.

B. Demand Conditions

An analysis of the demand conditions tells us what options are available to purchasers, and how they are likely to respond to changes in market conditions, for example an increase in the general level of prices in the market. Purchasers generally seek to avoid price increases, but their ability to do so varies with conditions in the market. The willingness of purchasers to pay a higher price will depend on the importance of the product to them (e.g. how large a cost factor), whether they have options that allow them to avoid the price increase, for example by switching to alternative products, or whether they can exercise buying power to negotiate a lower price. An analysis of these demand-side factors tells us whether demand for the product is elastic or inelastic, that is, whether purchasers will reduce the quantity of their purchases if the price of the product increases. For the reasons discussed below, I find that the overall elasticity of demand for LNPPs is relatively low.

Importance of Product and Cost Factor. The first factor that measures the willingness of purchasers to pay higher prices is the importance of the product to purchasers. LNPPs are capital goods that are essential for printing newspapers. As an essential product, the demand for LNPPs is likely to be relatively inelastic. However, purchasers of LNPPs have a great deal of control over the price of the product. Purchasers encourage the producers to submit bids that fall within the newspaper's budget range. In addition, purchasers control the timing of the purchases, which increases the elasticity of demand.

When newspapers obtain a new press line all the components of the press line generally are included in the purchase. Additions to existing press lines range in size from single components to additions of new towers with a number of components that enhance the quality and production capability of the newspaper. Changes in the price of additions will have some impact on a newspaper's decision to purchase an upgrade to its press line. However, because newspapers are able to set budget limits, they can usually obtain additions that satisfy their needs within an acceptable price range.

Alternative Products. Another important factor in determining whether purchasers would be willing to pay higher prices is the availability of viable alternative products. Often purchasers can avoid a price increase by switching to alternative products. If such an option exists, it can impose discipline on producer efforts to increase prices.

Substitutes for new LNPPs are limited. Purchasers might choose a used LNPP or a small newspaper printing press (SNPP) as a substitute. However, both these alternatives have severe limitations. A used LNPP rarely will provide the newspaper with the newest technology, which is an important factor for

newspapers to consider when making a change to its press line.[11] SNPPs generally do not have the production capability to meet the circulation needs of large newspapers. Substitutes for press additions are also limited. Newspapers are hesitant to buy used parts for their presses because such parts may lack the most current technology available, and used parts may not be as reliable in performance as the newspaper requires.[12] Furthermore, additions that are purchased to update or supplement an existing press line must be compatible with the existing line. Therefore, the availability of alternative suppliers is normally limited to additions produced by the original supplier of the existing line. Consequently, the elasticity of demand for these additions is inelastic.

Even though newspapers have considerable control over the timing and specifications of their purchases, LNPPs are products that are essential to printing newspapers, and thus demand is relatively inelastic. In addition, the lack of viable alternative products reduces the elasticity of demand. Thus, I find that the overall elasticity of demand for LNPPs is relatively low. That is, purchasers will not reduce significantly the amount of LNPPs they buy in response to a general increase in the price of LNPPs.

C. Substitutability

Simply put, substitutability measures the similarity or dissimilarity of imported versus domestic products from the purchaser's perspective. Substitutability depends upon 1) the extent of product differentiation, measured by product attributes such as physical characteristics, suitability for intended use, design, convenience or difficulty of usage, quality, etc.; 2) differences in other non-price considerations such reliability of delivery, technical support, and lead times; and 3) differences in terms and conditions of sale. Products are close substitutes and have high substitutability if product attributes, other non-price considerations and terms and conditions of sale are similar.

While price is nearly always important in purchasing decisions, non-price factors that differentiate products determine the value that purchasers receive for the price they pay. If products are close substitutes, their value to purchasers is similar, and thus purchasers will respond more readily to relative price changes. On the other hand, if products are not close substitutes, relative price changes are less important and are therefore less likely to induce purchasers to switch from one source to another.

Because overall demand elasticity for LNPPs is relatively low, overall purchases will not decline significantly if the overall prices of LNPPs increase. However, purchasers can avoid price increases from one source by seeking other sources of LNPPs. In addition to any overall changes in demand for LNPPs, the demand for LNPPs from different sources will decrease or increase depending on their relative price and their substitutability. If LNPPs from different sources are substitutable, purchasers are more likely to shift their demand when the price from one source (i.e. subject imports) increases. The magnitude of this shift in demand is determined by the degree of substitutability among sources.

For all practical purposes, purchasers have only two potential sources of LNPPs: domestically produced LNPPs and subject imports.[13] Purchasers are more or less likely to switch from one source to

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[11] C.R. at II-12; P.R. at II-8.

[12] C.R. at II-6 to II-10; P.R. at II-4 to II-6.

[13] During the entire period, only two purchases of nonsubject imports were reported. One was for a ***, and the other was for the purchase of *** LNPPs valued at $***. Consequently, nonsubject imports are not a significant

another depending on the similarity, or substitutability, between those sources. In the U.S. market, the substitutability among LNPPs from different sources is largely determined by the bidding and acquisition process used by newspapers.

When newspapers first begin their process to purchase LNPPs they educate themselves about available technology, and make initial decisions regarding their needs and budget parameters. At the beginning of this process, a relatively low degree of substitutability may exist among different producers. However, the degree of substitutability increases as the bidding process continues. At the final bid stage the newspaper has reached a decision that the competing producers can provide an LNPP that satisfies the newspaper's specifications. While the producers may offer differing technologies to satisfy the newspaper's specifications, at the final bid stage the competing products are highly substitutable to the purchaser.

In contrast, a relatively low degree of substitutability exists for most purchases of additions. Newspapers generally have a preference to purchase additions from the same producer that installed the newspaper's existing LNPP, because of the high degree of compatibility between an existing LNPP and new components for the LNPP produced by the same producer. The record reveals that many additions were purchased without competitive bids, either because competing bids were not sought or not submitted. This evidence suggests the strong preference of newspapers to purchase additions that complement existing press lines, and that producers recognize these purchaser preferences. Even where there is real competition for an addition, the degree of substitutability will be lower because of the compatibility factor.

For these reasons, I find that subject imports and domestic LNPPs are quite good substitutes for each other in those sales where they both compete at the final bid stage of the buying process, which usually occurs in the purchase of new press lines, but not additions. Substitutability is lower where the domestic producer and subject imports do not compete at the final bid stage.

As noted above, my analysis focuses on three specific sales that are likely to have gone to the domestic industry had the subject imports not been sold at the prices identified by Commerce as the dumped prices. My evaluation of the substitutability between domestic LNPPs and subject imports in each sale follows.

In the Winston-Salem Journal sale the newspaper claims that it purchased subject imports based upon nonprice factors.[14] In fact the bid of subject imports that captured this sale was not the low bid, but was higher than two of the bids submitted by domestic producers.[15] The newspaper asserts that this fact demonstrates that it was not affected by the price of the competing bids when it made its purchase decision. The Winston-Salem Journal, however, also reported that its initial intention was ***. Thus, from the onset of the bidding process, price affected the newspaper's purchase decision. While the Winston-Salem Journal was willing to pay a premium for the subject imports at a dumped price, the price of subject imports reflected this premium. Therefore, the different bid prices represented the relative value of each to the purchaser, and thus were good substitutes for each other at their respective bid prices, at the time the bid was awarded.

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presence in the market and are not seen as alternatives to domestic products or subject imports. C.R. at II-21; P.R. at II-13.

[14] C.R. at V-50 to V-51; P.R. at V-15..

[15] MLP's winning bid was ***, and the losing bids of the three domestic producers were *** by RGS, *** by MAN-R, and *** by TKS.

The Rochester Democrat Chronicle acknowledged from the onset of the bidding process that it was a buyer's market and that it ***.[16] While the Rochester Democrat Chronicle asserts that the subject imports offered a product of superior quality over domestic producers, the newspaper did not eliminate the domestic producers from competition until the bidding process ended and all final bids were driven to within *** of each other. The newspaper's conduct demonstrates that, at their relative prices, subject imports and the domestic product were good substitutes for each other when the bid was awarded.

The sale to the Spokesman Press involves quality differences between the subject imports and the domestic product. Even though subject imports' bid was lower than the domestic bid, the purchaser found that subject imports were of better quality, and was not interested in buying the domestic product when it was offered at the same price. Thus, at the relative prices, subject imports and the domestic product were not very good substitutes for each other.

D. Supply Conditions

Supply conditions in the market are a third condition of competition. Supply conditions determine how producers would respond to an increase in demand for their product, and also affect whether producers are able to institute price increases and make them stick. Supply conditions include producers' capacity utilization, their ability to increase their capacity readily, the availability of inventories and products for export markets, production alternatives and the level of competition in the market. For the reasons discussed below, I find that the elasticity of supply for LNPPs is fairly high.

Capacity Utilization and Capacity. Unused capacity can exercise discipline on prices, if there is a competitive market, as no individual producer could make a price increase stick. Any attempt at a price increase by any one producer would be beaten back by its competitors who have available capacity and are willing to sell more at a lower price. During the period 1991 through 1995 domestic capacity utilization averaged *** percent,[17] and the total quantity of subject imports was less than available domestic capacity.[18] Thus, the domestic industry had capacity available to supply the entire demand for subject imports.

Inventories and Exports. Inventories are not present in this industry because of the made-to-order nature of each LNPP[19], and thus are not a factor in the elasticity of supply.

Level of Competition. The level of competition in the domestic market has a critical effect on producer responses to demand increases. A competitive market is one with a number of suppliers in which no one producer has the power to influence price significantly. In this market there have been five active producers during the period. However, RGS is by far the largest domestic producer, and is the dominant domestic supplier in the U.S. market.

Because of the ability of the domestic industry to supply the demand for subject imports, I find that the elasticity of supply is high.

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[16] C.R. at V-52 ; P.R. at V-15.

[17] C.R. and P.R. at Table III-4.

[18] C.R. at Tables III-4 and IV-5.

[19] C.R. at III-16; P.R. at III-8.

IV. MATERIAL INJURY BY REASON OF LTFV IMPORTS FROM JAPAN AND GERMANY

The statute requires us to consider the volume of subject imports, their effects on domestic prices, and their impact on the domestic industry. As discussed above, I have considered all sales of LNPPs, but particularly the fourteen sales captured by subject imports.

A. Volume of Subject Imports

In these investigations the point of competition occurs when a contract is awarded to the winning bid. Therefore, the value of the contracts awarded is the most appropriate measure of the volume of subject imports and apparent consumption. During the period 1991 to 1995, the cumulated value of contracts for sales of subject imports was $***, and the total value of contracts awarded to the domestic industry and subject imports was $***.[20] Therefore, total subject imports represented *** of total sales of LNPPs during the period 1991 to 1995.

As previously stated, whether this volume is significant cannot be determined in a vacuum, but must be evaluated in the context of the price and volume effects. Based on the market share of the contract value of the sales captured by subject imports and the conditions of competition in the domestic market, I find that the volume of subject imports is significant in light of its price and volume effects.

B. Effect of Subject Imports on Domestic Prices

To determine the effect of subject imports on domestic prices, I examine whether the domestic industry could have increased its prices if the subject imports had not been dumped. In these investigations, I find that subject imports are having significant effects on domestic prices.

At the final bid stage, domestic and subject import LNPP bid packages were good substitutes for each other. In each sale, the high dumping margin set by Commerce requires me to assume that the prices for subject imports would have been significantly higher had they not been dumped. Because of the reasonably high substitutability of the bid packages, I find that some purchasers of subject imports would not have purchased subject imports had they been bid at significantly higher, nondumped prices. The domestic industry is the only practical alternative source of supply. Hence, those purchases would have shifted to domestic LNPPs. In other words, the domestic industry would have captured at least some of the fourteen sales that went to subject imports had the subject imports been offered at nondumped prices.

The domestic industry is an oligopoly, comprised of one dominant producer, RGS, and four other smaller producers, three of which are subsidiaries of producers of subject imports. In such circumstances, the dominant producer is likely to be positioned not only to capture the major share of new sales, but also to raise prices for its products. The likelihood that RGS could have increased its prices for LNPPs is enhanced due to the practical absence of competition from nonsubject imports, the inelasticity of demand for LNPPs, and the lack of strong competition from its domestic competitors, who might otherwise be in a position to discipline prices and block RGS' price increases. Thus, had subject imports not been dumped, RGS would not have

[20] C.R. at Tables V-1 and V-2.

been prevented from increasing its prices. Therefore, I conclude that sales of dumped LNPPs are having an adverse effect on domestic prices.[21]

In my analytical framework, I determine whether the domestic industry could have materially increased its overall revenues through price increases and sale volume increases, either separately or together, had subject imports not been dumped. As discussed below, I find that the domestic industry would have materially increased its revenues through sales volume as well as price increases had subject imports not been dumped.

C. Impact of Subject Imports on the Domestic Industry

To assess the impact of subject imports on the domestic industry, I consider output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise to raise capital, research and development and other relevant factors.[22] These factors together either encompass or reflect the volume and price effects of the dumped imports, and so I gauge the impact of the dumping through those effects.

In these investigations, I have considered all sales of LNPPs during the period 1991 to 1995, but particularly the fourteen sales captured by subject imports. My analysis of each sale has included the margin Commerce calculated or assigned to the transaction,[23] and the degree of substitutability when the bid was awarded. As I have found, subject imports and domestic LNPP bid packages are quite good substitutes in those sales where the subject imports and the domestic product are competing at the final bid stage of the process.

A detailed review of each of the fourteen sales won by subject imports reveals three that are highly likely to have gone to the domestic industry in the final bidding if subject imports had not been dumped at the rates set by Commerce. Those three sales are: the 1992 sale to the Winston-Salem Journal, the 1993 sale to the Rochester Democrat and Chronicle and the 1994 sale to the Spokesman Press.

The 1992 sale to the Winston Salem Journal was awarded to MLP, a producer of subject imports. The winning bid was $*** million, greater than two of the three domestic losing bids of $*** million, $*** million, and $*** million. The buyer stated that it was willing to pay the higher price for the MLP product because of its relative value, specifically its superior technology, print quality and web control. However, the buyer also gave indications that overall cost was an important factor in its decision, explaining that it had originally wanted ***, but could not afford that option. Commerce set the margin for this sale at *** percent. Using that margin, which we are required to do in our analysis, I must assume that a "fair" bid price would have been substantially higher than the actual $*** million bid, and could have been as high as $*** million,

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[21] Additional price effects are likely even for sales won by the domestic industry. At the margins set by Commerce, subject import prices would have been sufficiently higher, which would have allowed the domestic industry to capture sales at prices greater than the final bid prices. In such a case, the difference between the final bid price and the higher price the domestic industry could have charged equals the price suppression resulting from the dumping. The difference translates to an increase in the domestic industry's revenues that would have occurred had the subject imports not been dumped.

[22] 19 U.S.C. § 1677(7)(C)(iii).

[23] See INV-T-062.

compared with the domestic bids of $*** million, $*** million, and $*** million. Thus, had the subject imports not been dumped, the price of subject imports would have exceeded the buyer's stated cost constraints, while at least two of the three bids by domestic producers would not have done so. Consequently, I must conclude that the buyer would have awarded the sale to the domestic industry had subject imports not been dumped.

The 1993 sale to the Rochester Democrat and Chronicle was awarded to MRD, a producer of subject imports. The winning bid was $*** million, compared to domestic producer bids of $*** million and $*** million. The buyer stated that its preference for subject imports was based upon MRD's superior product and its demonstrated commitment to the project. However, the closeness of the final bids suggests real price competition. The buyer in fact stated that it was a buyer's market, and that it ***. Commerce set the margin for this sale at *** percent. Thus I must assume that a "fair" bid price would have been substantially higher, and could have been as high as $*** million. It also would have been substantially higher than either of the domestic producers' bids. Given the buyer's stated sensitivity to price, I conclude that this sale would have been awarded to the domestic industry absent the dumping.

The 1994 sale to the Spokesman Press was awarded to TKS, a Japanese producer of subject imports. The winning bid was $*** million, compared to RGS' bid of $*** million. The buyer stated its concern for quality, noting that it had visited another newspaper that used TKS products and was very impressed with TKS quality. In fact, when RGS *** the TKS bid price, the buyer still preferred the TKS product. However, it is not likely that this preference would have existed had the TKS product been priced fairly. Commerce set the margin for this sale at *** percent. Thus I must assume that, if the TKS product had been "fairly" priced, the bid would have been very substantially higher and could have been as high as $*** million. It also would have been very substantially higher than the RGS bid of $*** million. At this large price differential, I must conclude that the buyer would have awarded the bid to RGS had the subject imports not been dumped.

A conservative estimate of the value of these three contracts is $*** million, based upon the final losing bids submitted by the domestic producers.[24] Thus, absent the dumping in these three sales alone, the domestic industry would have increased its sales and therefore its revenues by at least $*** million. This represents an increase of *** percent in domestic industry's sales and revenues over the period 1991 to 1995, an amount that I find material in this industry. Having found evidence in these three sales alone constituting material injury to the domestic injury, I need not reach the question of whether other dumped sales of subject imports might also have gone to the domestic industry, had they been fairly traded. Nor do I reach the question of whether there was price suppression in the domestic industry's winning final bids. Based upon the three sales for which the record supports a finding that the domestic industry would have won the contract but for the dumping, I find that this industry would have been materially better off had the subject imports been fairly traded.

V. CONCLUSION

On the basis of the foregoing analysis, I determine that the domestic industry producing LNPPs is materially injured by reason of cumulated LTFV imports of LNPPs from Germany and Japan.

[24] Had the subject import winning bids been priced at the substantially higher nondumped prices as established by the Commerce margins, the domestic industry's final bids likely would have been even higher, as the competitive pressure to hold prices down would have been eliminated.

ADDITIONAL VIEWS OF COMMISSIONER JANET A. NUZUM

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan

Invs. Nos. 731-TA-736 and 737 (Final)

These investigations presented particularly unusual facts and market dynamics. Although a number of these characteristics, individually, have presented themselves in other cases, the uniqueness of this case was the combination of so many unusual circumstances in the same investigation. Although all voting Commissioners made an affirmative determination, this unanimity belies the complexity, and difficulty, of the decision. This was anything but a straightforward case for an affirmative decision. These additional views are intended to highlight some of the unusual circumstances which, together, made this a rather unique case.

Large newspaper printing presses are, first of all, not purchased frequently.[1] One reason for this is the long life cycle of a newspaper press line -- typically 15 to 30 years.[2] Another reason is the extremely large price tag of such a purchase -- in the tens of millions of dollars.[3] Furthermore, the pool of potential customers -- publishers of large-circulation newspapers -- is limited. In terms of the Commission's task, this means that the number of sales transactions subject to examination during our period of investigation was much less than would ordinarily be the case. It also means that consumption patterns in this market are much less stable than in the average injury investigation. On the other hand, the relative infrequency of sales means that the loss of a single sale can have a more significant adverse impact than normally the case, especially if it is a large volume sale.

Another complicating characteristic of this market is the long period of time it takes for the typical purchase to be under consideration, contractually agreed upon, and completed. Newspapers can take from several months to a few years to purchase a press, particularly when it involves an entire press line. The preliminary stage frequently involves a period of time during which the newspaper, typically with one or more potential suppliers, collects information which enables it to identify the parameters of its purchase needs, in terms of specifications and budget, given the particular newspaper's situation. At this stage, it is very difficult to ascertain the likelihood of when a sale will be completed, or even whether it will occur at all.

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[1] Contracts for purchases of press lines in the United States during the period 1991 through 1995 ranged, on an annual basis, from four (1991, 1994, and 1995) to eight (1992). Table V-1, CR at V-11-12, PR at V-7. Contracts for purchases of additions were greater in number, but much lower in dollar value, accounting for less than 30 percent of total sales revenues of press lines and additions combined during the five-year period. CR at V-10, PR at V-7. Moreover, additions are commonly supplied by the same manufacturer as produced the original press line. Therefore, the more important sales activity, in terms of significance to press producers, occurs at the level of press line purchases.

[2] CR at II-4, PR at II-3.

[3] Sales of press lines averaged more than $27 million each for the 25 sales that occurred in the United States during the period. Five of these sales exceeded $50 million each. Table V-1, CR at V-11-12, PR at V-7.

The newspaper may then solicit a formal round of bids, usually inviting bids from most established suppliers. Even after receiving initial bids, the newspaper may not yet be committed to making a purchase, and may delay further negotiations. Several rounds of negotiations with different bidding suppliers may generate, over time, changes in product content or price. In light of the fact that there are only a handful of manufacturers of large newspaper printing presses, competing suppliers usually know which other manufacturers are under consideration for the same purchase. Although it is not an open bidding process, it is not unusual for purchasers to give vying suppliers a general indication as to whether their particular bid is high in comparison to other bids. Indeed, a number of purchasers indicated that they do so to obtain lower prices from competing producers. Finally, once a contract is awarded, there is a lag, sometimes of one to two years, for production, delivery and installation of the press.[4] Payment for the purchase is also typically in installments, spread out between contract signing and product installation.

The implications of this lengthy process of sale and delivery on the Commission's task of injury analysis are several. First, it makes trends analysis difficult if not impractical. Whether one considers volume effects (as evidenced through, for example, trends in production levels, shipments, market share, lost sales) or price effects (as evidenced by changes in market prices in comparison with changes in costs and in demand) the impact of any one single sale is spread out over a period in excess of one year and as much as several years. Consequently, the evidence of financial performance of the domestic industry in any given year is typically a reflection of production activity which relates to sales contracts concluded in a prior year. In other words, analyzing and comparing the standard indicia of industry performance and of competition in the market could not be done in this case in a simple, chronological context.

Moreover, printing presses are not "off-the-shelf" products. Newspaper publishers typically work with one or more producers on design aspects, what equipment is available, and whether a particular configuration will fit an existing building.[5] Particular configurations of a press line sold to one newspaper will often differ considerably from the configurations of a press line sold to another newspaper, even when both press lines are made by the same producer. The customization of the product to the needs and circumstances of the particular purchaser makes pricing analysis very difficult. Since the products offered by competing suppliers, even to the same purchaser, are not completely identical, price differences between competing suppliers, even at the final bid stage, may reflect differences in certain attributes of the product offered (e.g., a particular technology feature). Prices of the same type of press manufactured by the same producer but offered or sold to different purchasers may also differ because of different customization features. In short, the usual task of analyzing price trends and price comparisons, to ascertain whether there is evidence of price suppression or depression by the unfair imports, was extraordinarily difficult.

The difficulties posed by the nature of market behavior and structure were only compounded by the conflicting accounts of factual information as recalled or described by different parties. Although it is common in these types of investigations for petitioners and respondents to have a different interpretive spin on the same issue or event, the complexities described above meant that, in this case, the "numbers" did

[4] One press line contract awarded to Rockwell, for example, took 29 months for production and delivery. Table F-2, CR at F-7, PR at F-3.

[5] One paper reported, for example, that a team of production specialists and mechanical engineers worked for some 18 months in reviewing the available and developing technology and market for LNPPs, during which time they consulted with six different LNPP manufacturers about their products.

not speak for themselves and testimonial information was critical. More than in previous investigations, my analysis necessitated making judgment calls on the credibility of witness testimony.[6]

Yet another unusual aspect of this case was the dominance of one single U.S. producer in the U.S. market. Petitioner Rockwell Graphic Systems has an established role as a supplier of quality newspaper presses and additions. During the period 1991 through 1995, petitioner accounted for more than 50 percent of total shipments in the U.S. market.[7] It also won a majority of the contracts awarded for sales of new press lines, both in terms of number of contracts and in terms of dollar value.[8] It won two-thirds of its bids for sales of additions.[9] Moreover, more than two-thirds of all press lines operating in the United States today are petitioner's presses. By virtually any measure, Rockwell presses have a substantial and dominant role in the U.S. market for large newspaper printing presses.

This fact, in and of itself, does not dictate the outcome of an injury determination. Nevertheless, it affected how I interpreted the significance of certain parts of the record. For example, the frequency and degree of underselling by subject imports are ordinarily important factors in my injury analysis. Here, however, the significance of underselling (to the extent there was any) was countered by the dominant, historic role of Rockwell. Many purchasers acknowledged a preference for Rockwell presses, based on previous experience with petitioner's presses or a perception of Rockwell being a "known" supplier. Some publicly indicated a willingness to pay a premium for a Rockwell press. In this type of market, one would expect less established competitors to offer to sell "competing" products for lower prices. The well-established, dominant producer should be able to get higher prices for its product. Thus what might in another case be "significant" underselling was not "significant" here.

In addition, Rockwell's large installed base of presses gives it a significant competitive advantage in the additions market. Sales of additions typically are non-competitive because purchasers prefer to match the new addition to the existing press. Rockwell's dominance in terms of installed base thus protects its market share in additions. This is important because a good year in sales of additions can soften the effects of a weak year in sales of new press lines.

Finally, another unusually important factor in this case was the large size of the dumping margins. Although it is not unusual for dumping margins to be in the range, as they are here, of 30 percent to 62 percent, the magnitude of the margins had a more influential role in the outcome of my determination than in the typical case. This is primarily because of the ambiguities and complexities of the standard evidentiary indicia of adverse effects -- such as loss of market share over time, pricing comparisons and pricing trends.

In this case, the dumping margins ranged from 30 to 62 percent, with three of the four company-specific margins exceeding 45 percent. Thus, the size of the dumping margins was generally more than twice as large as the margin of difference between the highest winning bid and the low bid during the final bid round. For example, for those sales where subject imports won and were examined by Commerce, the

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[6] The outcome of my decision should not be interpreted, however, to suggest that I found petitioner's witnesses to be more credible than respondent's witnesses. My point is intended to emphasize that the evidence in this investigation was neither clear-cut nor one-sided.

[7] Table IV-5, CR at IV-11, PR at IV-4.

[8] Table V-1, CR at V-11, PR at V-7.

[9] Table V-2, CR at V-14, PR at V-7.

dumping margins were as much as ten or twelve-fold the difference between the winning subject import bid and the domestic industry's bid.[10] It is true that purchasers often were willing to pay a premium for a particular product based on a particular technology or a particular producer's reputation. There is no credible evidence, however, that purchasers would have been willing to pay a premium that approached the magnitude of these dumping margins.[11]

In the end, I did not find persuasive evidence to rebut the inference that the magnitude of the dumping margins[12] contributed to the ability of subject imports to compete head to head with domestic presses and to exert pricing pressure on the competitive situation. Without unfair pricing, suppliers of subject imports may not have been able even to offer a viable bid within the purchaser's budget or spending constraints.

If the dumping margins had been much smaller -- such as in the range of 5 to 20 percent -- I would have reached a negative determination. That magnitude of dumping more closely approximates the differences in the prices of competing final bids which reflected the level at which purchasers were relatively indifferent to price differences. Thus, dumping margins of that magnitude would likely not have had a material adverse impact on the domestic industry.

Given this record -- with all its evidentiary complexities -- the relative weight attached to the magnitude of dumping was more influential in determining the outcome of my determination than is ordinarily the case. Another case, and another record, could easily lead to a different result. The sporadic nature of sales, their high dollar value, the extent of customization of each product to be sold, the nature of the bidding process and the pricing pressures it brings, the protracted effect that any sale has between contract and delivery dates -- all these factors, and more, made a determination in this case challenging at best. It is unlikely that another case would present the same combination of facts and degree of difficulties.

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[10] Compare Table V-1, CR at V-11-12, PR at V-7 and Letter from Louis Apple to Diane Mazur, dated August 9, 1996, attached to INV-T-062.

[11] For example, one purchaser specifically stated that he did not think there was a significant difference among the final bids that he considered (which were within 15 percent of one another), but that his decision would have been affected by price differences greater than 25 percent.

[12] In considering the effect of the dumping margins, I did not rely on the precise numerical value of the specific margins, but rather their order of magnitude. Moreover, I did not necessarily assume a full pass-through of the dumping margin in assessing the impact of LTFV import competition at stages earlier than the final bid stage.

ADDITIONAL VIEWS OF COMMISSIONER WATSON

Although I join the majority in finding that the domestic industry in these investigations is threatened with material injury by reason of subject imports, I do so only reluctantly and with no small degree of reservation. In this regard, and without reference to her discussion of the margins in these investigations, I share many of the same concerns Commissioner Nuzum expresses in her own additional views.

I commend the Commission investigative staff for its demonstrated flexibility and innovation in response to the unique demands of these investigations. Yet, despite the best efforts of all who have assisted in preparation and analysis of the record, I cannot help but suspect that the Commission's traditional analysis — in keeping with our statutory mandate — has great difficulty in rationally dealing with the dynamic of the industry subject to these investigations.

As noted during the Commission meeting at which we cast our votes, these investigations lead me to question whether the drafters of the dumping laws actually contemplated cases of this nature. The indicia our governing statutes require us to examine seem more probative of injury by reason of subject imports in investigations concerning largely fungible commoditites (i.e., chemicals or other goods conforming to an established industry-wide testing procedure or standard) or upstream industrial goods sold in an efficient, spot-contract market, after which sale end-user purchasers add value. Clearly, that is not the case in the instant investigations. However, for the reasons set forth in the majority opinion, and in keeping with that legal analysis as it reflects the strictures of the law, I must determine that the domestic industry is threatened with material injury.

The first Justice Harlan cautioned long ago that "it is the duty of all courts of justice to take care, for the general good of the community, that hard cases do not make bad law." United States v. Clark, 96 U.S. 37, 49, 24 L.Ed. 696 (1878) (Harlan, J., dissenting) (quoting East India Co. v. Paul, 7 Moo. 85, 111, 13 Eng. Rep. 811, 821) (P.C. 1849). It has also been suggested that courts should observe similar caution with regard to easy cases. Cf. O'Bannon v. Town Court Nursing Center, 447 U.S. 773, 804, 65 L. Ed. 2d 506, 100 S. Ct. 2467 (1980) (Blackmun, J., concurring in judgment) ("easy cases make bad law"); Burnham v. Superior Court of Cal., Marin Cty., 495 U.S. 604, 640, 109 L. Ed. 2d 631, 110 S. Ct. 2105 (1990) (Stevens, J., concurring in judgment). I do not presume to elevate the quasi-judicial functions of this agency to a position of equal importance with the deliberations of the high court. Nonetheless, as the "general good of the community" (supra) presumably engendered the antidumping and countervailing duty laws,[1] Justice Harlan's admonition and its corollary seem applicable to Commission determinations.

More precisely, perhaps the corpus of extant antidumping and countervailing duty practice is firmly rooted in past "easy" cases which the statutes sought to address and at which the Commission excelled. Now, however, it would appear that the analytical framework mandated by statute is inadequate to the task at hand: the "hard" law has made for a bad decision.

[1] For a succinct yet incisive overview of the genesis of the antidumping laws, *see generally* How the GATT Affects U.S. Antidumping and Countervailing-Duty Policy, Chapter III, "The Evolution of U.S. Laws: An Economic Perspective" (Congressional Budget Office, September 1994).

PART I: INTRODUCTION

BACKGROUND

These investigations result from a petition filed by Rockwell Graphics Systems, Inc. (RGS), Westmont, IL, on June 30, 1995, alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of large newspaper printing presses (LNPPs) and components thereof, whether assembled or unassembled,[1] from Germany and Japan. Information relating to the background of the investigations is provided below.[2]

Effective Date	*Action*
June 30, 1995	Petition filed with Commerce and the Commission; institution of Commission preliminary investigations (60 FR 35564, July, 10, 1995)
July 20, 1995	Commerce's notice of initiation (60 FR 38546, July 27, 1995)
August 15, 1995	Commission's preliminary determinations (60 FR 43816, August 23, 1995)
March 1, 1996	Commerce's preliminary determinations and postponement of final determinations (61 FR 8029)[3]
February 28, 1996 ...	Institution of Commission final investigations (61 FR 10381, March 13, 1996)
July 17, 1996	Commission's public hearing[4]
July 23, 1996	Commerce's final determinations (61 FR 38139 (Japan) and 61 FR 38166 (Germany))
August 21, 1996	Commission's vote
August 28, 1996	Commission determinations transmitted to Commerce

[1] A complete definition of the products subject to these investigations is presented in the section of this report entitled *The Product.* The subject imports are provided for in subheadings 8443.11.10, 8443.11.50, 8443.21.00, 8443.30.00, 8443.40.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the Harmonized Tariff Schedule of the United States (HTS). LNPP computerized control systems (including equipment and/or software) may enter under HTS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Excluded from these investigations are spare or replacement parts, as well as used LNPPs.

[2] *Federal Register* notices relating to the final investigations and final determinations cited in the tabulation are presented in app. A.

[3] Commerce granted requests for 60-day postponements of the final determinations for both countries.

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

SALES AT LTFV

Commerce determined that the subject products from Germany and Japan are being, or are likely to be, sold in the United States at LTFV. The following tabulation provides the preliminary and final weighted-average estimated dumping margins (in percent ad valorem) determined by Commerce for each country and company subject to these investigations:

Country/company	Dumping margins-- Preliminary	Final
Germany:		
Koenig & Bauer-Albert AG [1]	46.40	46.40
MAN Roland Druckmaschinen AG [2]	17.70	30.80
All others	17.70	30.80
Japan:		
Mitsubishi Heavy Industries, Ltd. [3]	47.57	62.96
Tokyo Kikai Seisakusho, Ltd. [4]	58.14	56.28
All others	53.72	58.97

[1] KBA did not respond to Commerce's questionnaire and, as facts otherwise available, was assigned the margin stated in Commerce's notice of initiation.

[2] The period of investigation for MRD was July 1, 1993 through June 30, 1995. Sales investigated included the Charlotte Observer, Fargo Forum, Global Sales, Rochester Democrat & Chronicle, and Wilkes-Barre Times Leader LNPP contracts (the contracts investigated were identified in the public version of Commerce's May 1996 verification report for MRD). In its final determination, Commerce excluded the Charlotte Observer contract from its analysis, because the imports of LNPP elements for the contract did not meet Commerce's value test, and therefore did not constitute subject merchandise. (See *The Product* subheading of this section for a discussion of Commerce's value test).

[3] The period of investigation for MHI was July 1, 1991 through June 30, 1995. Sales investigated included the Eugene Register Guard and Winston-Salem Journal LNPP contracts (the contracts investigated were identified in the public version of Commerce's May 14, 1996 verification report for MHI). The Washington Post sale was excluded from Commerce's margin analysis because (1) the sale was unbuilt, unshipped, and uninstalled at the time of analysis; (2) Commerce determined that the historical bench-marking integral to the use of estimated costs was not reasonably available; and (3) Commerce had two other sales available for analysis which were built, delivered, and installed.

[4] The period of investigation for TKS was July 1, 1992 through June 30, 1995. Sales investigated included the Dallas Morning News (3 sales), Dow Jones, and Spokane Spokesman Review LNPP contracts (the contracts investigated were identified in the public version of Commerce's May 14, 1996, verification report for TKS USA).

SUMMARY DATA

A summary of data collected in the investigations is presented in appendix C. Except as noted, U.S. industry data are based on questionnaire responses of five firms that accounted for all known U.S. production of LNPPs and components thereof during 1995. U.S. import data are based on questionnaire responses of four firms whose U.S. imports are believed to account for virtually all of the subject imports and all known imports of LNPPs and components thereof, whether assembled or unassembled, from other countries during 1995.[5]

THE PRODUCT

This section of the report presents information on both imported and domestically produced LNPPs and components thereof, as well as information related to the Commission's "domestic like product" and intermediate product determinations.

Scope of Products Subject to Investigation

As defined by Commerce,[6] the imported products subject to these investigations are large newspaper printing presses, including press systems, press additions, and press components, whether assembled or unassembled, whether complete or incomplete,[7] that are capable of printing or otherwise manipulating a roll of paper more than two pages across.[8] In addition to complete systems and additions, the scope of these investigations includes the five LNPP components. These five components are printing units, reel tension pasters (RTPs), folder(s), conveyance and access apparatus, and computerized control systems, and are described below:

Printing unit.--A printing unit is any component that prints pages in monocolor, spot color, and/or process (full) color.[9]

Reel tension paster.--An RTP is any component that feeds a roll of paper more than two broadsheet pages in width into a subject printing unit. The principal function of an RTP is to support the entire press and to feed a continuous stream of paper through the printing unit into the folder. RTPs typically have two or

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[5] With respect to LNPP elements (see *The Product* section for a discussion of LNPP elements), a limited amount of data were received from eight suppliers to the U.S. producers of LNPPs, and that information is discussed within appropriate sections of this report.

[6] Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany, 61 FR 38167, July 23, 1996. Similar language was included in Commerce's notice regarding Japan (61 FR 38139, July 23, 1996). (Collectively referred to as "Commerce final LNPP determinations.")

[7] Irrespective of any different definition that may be found in Customs rulings, U.S. Customs law, or the HTS, for purposes of these investigations Commerce has defined (1) the term "unassembled" to mean fully or partially unassembled or disassembled, and (2) the term "incomplete" to mean lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for an LNPP system, addition, or component.

[8] A page means a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper, or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

[9] Black, cyan, magenta, and yellow are the four ink types used to produce full color.

three arms, and as one arm holds the roll that is being fed into the press the other arm(s) hold(s) a new roll in readiness for feeding the press. Before the roll that is feeding the press runs out, one of the ready rolls rotates into place and is automatically pasted to the end of the expended roll, maintaining a continuous feed of paper into the press.[10]

Folder.--A folder is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format. The folder gathers together either a single web[11] or multiple webs, and makes up to four slits, arranges the pages, folds them into sections, and compiles the sections into a finished paper. Folders, cited by industry participants as the most critical element of a printing press, determine the output speed of a printing press.[12] [13]

Conveyance and access apparatus.--Conveyance and access apparatus are capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and provide structural support and access. Conveyance and access apparatus include all the platforming required for operation and maintenance, as well as the drives and other apparatus that provide structural support for and access to the LNPP.[14]

Computerized control systems.--Computerized control systems are any computer equipment and/or software designed specifically to control, monitor, adjust, and coordinate the functions and operations of LNPPs or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system. Press components are the "building blocks" of presses and press additions. A complete press requires all of the press components, whereas press additions use selected components to expand or modify an existing press.

Because of their size, LNPP systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process. Any of the five components, or collection of components, the use of which is to fulfill a contract for LNPP systems, press additions, or press components, regardless of degree of disassembly and/or degree of combination with nonsubject elements before or after importation, are included in the scope of these investigations. Further, these investigations cover all current and future printing

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[10] Petition, vol. 1, pp. 11-12.

[11] A web is created when large rolls of newsprint are attached to other large rolls during printing to form a continuous supply of paper (Ibid, p. 10).

[12] At the Commission's public hearing, Dr. Al Sheng, RGS Vice President of Engineering and Technology, testified that the folder is the "heart of the press" and "typically the folder is considered to be the most critical component" (July 17, 1996, hearing transcript (TR), pp. 66 and 68). In addition, Donald Graham, Publisher of the Washington Post, testified that the folder is the "heart of a newspaper press...It is a complex of cylinders, rollers and knives where streams of newsprint are cut and folded...A folder has to operate flawlessly, hour after hour, night after night...If a folder breaks, it could mean catastrophe, and it certainly means the idling of that press, at least for a significant amount of time" (TR, pp. 162-163).

[13] ***.

[14] Petition, vol. 1, p. 14.

technologies capable of printing newspapers, including, but not limited to lithographic (offset or direct), flexographic, and letterpress systems.

Elements

Also included in the scope, as defined by Commerce, are elements of an LNPP system, addition, or component which, taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.[15] Individual parts *per se* are not covered by the scope of these investigations unless taken as a whole they constitute a subject component used to fulfill an LNPP contract.

In analyzing what governs the inclusion of parts or subcomponents, other than spare or replacement parts, within the scope of these investigations, Commerce considered two alternative approaches: an "essence" test which would focus on the question of which parts are most critical to the operation of the subject merchandise, and a "value" test which would consider the value of the imported parts or subcomponents relative to the total value of the finished LNPP component, addition, or system. In exercising its discretion to develop an administrable scope, Commerce adopted a value test to determine which LNPP elements are subject merchandise. Commerce determined that if the sum of the value of elements imported to fulfill an LNPP contract is at least 50 percent of the value, measured in terms of the cost of manufacture, of any of the five named components covered by the scope into which they are incorporated, then the imported elements are covered by the scope. An individual component is covered by the scope if the imported elements comprising it represent at least 50 percent of the value of the component, even if the contract pursuant to which the elements are imported is for an entire LNPP system and the remaining components are not within the scope.[16]

Exclusions

The scope of these investigations does not cover spare or replacement parts. Spare or replacement parts imported pursuant to an LNPP contract which are not integral to the original start-up and operation of the LNPP and are separately identified and valued in an LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of these investigations. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Since the preliminary investigations, Commerce has also excluded HTS subheadings that provided for magnetic tape, i.e., HTS subheadings 8524.51.30, 8524.52.20, 8524.53.20, 8524.91.00, and 8524.99.00, because it had no evidence on its record to indicate that computer control subcomponents are imported under the categories at issue. In addition, Commerce has excluded the Charlotte Observer contract from its final margins analysis because the sum of the manufacturing cost of the imports of LNPP elements for that contract, relative to the manufacturing cost of each of the components of which they are a part, is less than 50 percent.

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[15] Commerce final LNPP determinations, 61 FR 38167.

[16] Ibid.

DOMESTIC LIKE PRODUCT

For purposes of the preliminary investigations, the Commission determined that there is one like product consisting of all LNPPs, press additions, and components. During these final investigations, no party has argued against this like product determination. Nonetheless, this section of the report provides information on comparisons of LNPPs to small newspaper printing presses (SNPPs) and press additions, as well as discussions of LNPP technologies, including flexographic and offset printing, and keyed and keyless inking systems.

Physical Characteristics and Uses

LNPPs, also known as double-width or four-wide presses, are designed to print major daily papers for large metropolitan newspapers with substantial circulations. These machines are capable of producing tens of thousands of newspapers per hour.[17] LNPPs are individually designed to meet each purchaser's requirements and require sophisticated engineering, programing, and manufacturing (custom or special order sale); and must be extremely reliable. Design, construction, and installation require long-term contracts covering all aspects of the sale and installation.

LNPPs use large rolls of newsprint that, when attached to other rolls during printing, constitute a continuous supply of paper (called a web). As the web is drawn through the printing unit, each couple (the combination of a plate and blanket cylinder is called a couple)[18] produces a one-color image on a given page; multiple couples enable multicolor printing (see figure 1 for a graphic presentation of an LNPP printing unit). As the web moves through the press at a high speed (up to 30 mph), a great degree of precision in placement of the images is required, particularly when the web passes through more than one couple to produce multicolor images.[19]

Press manufacturers use different configurations of cylinders to achieve the desired combination of colors. Stacking printing units into a multi-unit module (called a "tower") or placing them in line both achieve the desired print characteristics. The more modern approach is the blanket-to-blanket "four-high tower" configuration that RGS pioneered in the late 1980s. It revolutionized the industry by permitting full color printing on both sides of the web simultaneously. Petitioner claims that its' blanket-to-blanket four-high tower approach is the standard for virtually all new LNPP installations in the United States and throughout the world,[20] color printing on both sides of the web simultaneously. Petitioner claims that its blanket-to-blanket four-high tower approach is the standard for virtually all new LNPP installations in the United States and throughout the world.[21]

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[17] As an example of the capital intensive nature of an LNPP project, RGS reported the dimensions of a New York Times LNPP to be 190 ft. long, 40 ft. high, and weighing 1,500 tons (TR, p. 65, and conference of the preliminary investigations transcript, p. 40).

[18] Petition, vol. I, pp. 9-10.

[19] Ibid, pp. 10-11.

[20] Ibid, p. 11.

[21] Ibid.

Figure 1.
3-D model of an LNPP printing unit

Source: Rockwell Graphics Systems, Inc.

The blanket-to-blanket approach is used only in offset printing and places two plate-blanket couples side by side with the blankets impressed upon each other. The web of paper is drawn between the couples, printing both sides of the web simultaneously at high speed. Additional couples placed above them may add colors. Full color blanket-to-blanket printing requires a tower with four two-couple printing units. The tower configuration gives the printer great versatility. For example, if the newspaper wants only one or two colors on a page, it can pass two webs through a single tower, with the bottom module printing one web and the top module printing the other.[22]

The other cylinder configuration, the common impression cylinder ("CIC," also known as the "satellite"), is an older technology. It places one or more couples in contact with a central cylinder that itself does no printing. The central cylinder keeps the web in contact with the couples, each of which prints a single color onto one side of the web. Printing the other side of the web requires passing the web through another couple. These different approaches to cylinder arrangement are not mutually exclusive. Customers occasionally combine CIC units and towers in the same press line. This typically occurs when a customer adds a tower to an existing press in order to add color printing.[23]

Flexographic vs. Offset

In offset lithographic printing, the image to be printed, composed of text, line art, and/or half-tone reproductions (photographs), is typically transferred to a metal plate. The plate is chemically treated so that the image-bearing portions of the plate attract oil-based liquids and repel water-based liquids, while the reverse is true of the non-image portions. The plate is then mounted around a plate cylinder. Ink rollers and dampener rollers coat the plate cylinder with ink (an oil-based liquid) and an aqueous dampening solution. The dampening solution selectively wets the nonimage portion of the plate, which prevents the ink from doing so. The ink image on the plate cylinder is then transferred (offset) by contact to the blanket that is wrapped around the blanket cylinder. As paper is drawn through the press by the blanket cylinder and its opposing cylinder, the image is transferred to the paper. This combination of plate cylinder and a blanket cylinder is called a couple.[24]

In the flexographic process, the image to be printed is exposed onto a light-sensitive, flexible, plastic-coated metal plate that, after development, yields a raised image on the surface of the plate. The plate is placed on a cylinder and coated with water-based ink by an anilox roller. The image is transferred directly to the paper when the web passes between the plate cylinder and an opposing impression cylinder. This

[22] Ibid, pp. 11-12.

[23] Ibid, p. 12.

[24] Ibid, pp. 9-10.

combination of plate cylinder and impression cylinder, required for flexographic printing, is also called a couple.[25]

Keyed vs. Keyless Inking Systems

LNPPs use four basic types of inking systems: keyed open fountain, keyed digital injection, active-feed keyless, and passive-feed keyless.[26] In general, keyed inking systems require mechanical adjustment of the amount of ink delivered to each segment of the newspaper page, while keyless systems regulate ink flow and delivery automatically.[27] Keyless printing enables newspapers to increase productivity, achieve consistent color, and improve operating efficiencies by reducing waste.

Press Additions

Press additions are smaller mechanical units that are purchased by newspapers to expand, change, or enhance the capabilities of their existing presses, such as to increase the amount of color they can print or to increase the number of pages. It is possible to buy a press addition from a producer that did not make the original press.[28]

SNPPs

As reported during the preliminary investigations, there are obvious physical differences between SNPPs and LNPPs. By definition, SNPPs are single-width presses that are designed and manufactured to print newspapers on a roll or sheet of paper two pages across. Each component is considerably smaller and narrower than that of an LNPP.[29] Producers have reported that similar types of components but of different sizes, as well as certain electronics and generic parts, are used in both SNPPs and LNPPs.[30]

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[25] Ibid, pp. 10-11.

[26] Keyless systems are divided into two groups--passive-feed (including anilox systems) and active-feed. Active-feed systems use machinery, like a pump, to deliver ink onto the roller. Passive-feed systems rely on the roller coming into contact with the bulk supply of ink, picking up a quantity of ink, and delivering it to the cylinder. The system is passive because the roller accepts the ink rather than receiving it through some mechanism. The most common passive-feed system uses an anilox roller originally designed for printing fabrics. Active-feed systems use a mechanical intermediary to convey ink to the roller. In RGS' system, a series of pumps deliver a fixed volume of ink to the roller. Since the pumps actively take in a fixed volume of ink, variations in viscosity do not affect the amount of ink delivered to the roller. Thus, the active-feed system can accept any manufacturer's ink and function consistently throughout a print run. Posthearing brief of Wiley, Rein & Fielding, attach. F.2, pp. 21-24.

[27] Postconference brief of Wiley, Rein & Fielding, vol. II, pp. 20-21.

[28] During these final investigations, responses to the Commission's questionnaires indicate that in one instance TKS sold an LNPP addition to the ***.

[29] Preliminary conference transcript, pp. 73-74.

[30] ***.

Interchangeability and Customer and Producer Perceptions

Flexographic vs. Offset

During the preliminary investigations, counsel for petitioner argued that there was little or no functional difference between offset and flexographic newspaper printing presses.[31] Differences lie only in the printing plates, conveyance rollers, press cylinders and rollers, and the inking systems. All other components, according to RGS, including the folders, RTPs, conveyance and access apparatus, and computer controls, are the same for offset and flexographic printing presses.[32]

Counsel for MAN Roland, on the other hand, argued that flexographic and offset presses represent entirely distinct approaches to printing. Counsel indicated that offset and flexographic presses require different components and parts, use different inks and printing plates, produce different print and color qualities, have different cost structures, and are totally different in appearance.[33] MAN Roland contended that they are entirely different products that accomplish a similar result. Flexography, according to MAN Roland, is a mechanical application, while offset is a chemical process that relies on a different method of applying ink. Nonetheless, counsel for MAN Roland did accept the inclusion of offset and flexographic technologies within a single like product,[34] and has not argued for separate products in these final investigations.

During these final investigations, comments were received from purchasers of LNPPs regarding the importance of flexographic vs. offset technology in their LNPP purchasing decisions. Thirty purchasers, or approximately 60 percent of purchasers providing responses, reported that offset technology was of critical importance in their purchasing decision, and purchasers clearly had preferences for one or the other.

Keyed vs. Keyless Inking Systems

During these final investigations, comments were received from purchasers of LNPPs regarding the importance of keyed vs. keyless technology in their LNPP purchasing decisions. Eight purchasers, or approximately 16 percent of purchasers providing responses, reported that a keyless inking system was of critical importance in their purchasing decision.

SNPPs

During the preliminary investigations TKS (USA) argued that an overlap market exists between SNPPs and MAN Roland's and KBA-Motter's smaller flexographic presses, both of which are marketed to and used by smaller metropolitan newspapers; therefore, large and small presses coexist and overlap on the same product continuum with no obvious breaking or dividing point.[35] At the preliminary conference, MAN Roland cited *USA Today* as an example of a newspaper that uses both single-width and double-width printing

[31] Preliminary conference transcript, p. 65.

[32] Postconference brief of Wiley, Rein & Fielding, p. 6.

[33] Preliminary conference transcript, pp. 160-161.

[34] Postconference brief of Shearman & Sterling, p. 11.

[35] Postconference brief of Foley & Lardner, pp. 6 and 10.

presses.[36] Counsel for RGS maintained that parts of SNPPs and LNPPs are not interchangeable, their physical appearances are noticeably different, customers choose between the two based on their specific marketing and circulation needs and do not consider them to be interchangeable, and they are produced in separate manufacturing facilities using different machine tools and different production workers.[37] RGS argued that, taking into account the combination of circulation, page count, and number of sections, there is no meaningful overlap between newspapers that use LNPPs and those that can use SNPPs.[38] [39]

During these final investigations, comments were received from purchasers of LNPPs regarding the interchangeability of SNPPs for LNPPs. The vast majority of purchasers indicated that they did not consider SNPPs in their purchasing decisions because SNPPs cannot meet the page capacity, color requirements, sectioning needs, and circulation size of large newspaper dailies. Comments of the five purchasers that identified SNPPs as substitutes for LNPPs are presented in appendix D.

Channels of Distribution

LNPPs and additions are sold directly to the end user,[40] i.e., large metropolitan newspapers with high circulations and high page counts requiring presses capable of printing newspapers between 64 and 160 pages and at rates of more than 60,000 copies per hour.[41]

Common Manufacturing Facilities and Production Employees

LNPP production generally consists of two stages of manufacturing: machining and assembly. The following is a discussion of RGS's manufacturing operations.[42]

RGS produces both large offset and flexographic newspaper printing presses, press additions, and LNPP components and elements at its Cedar Rapids, IA, production facility, using the same equipment and the same employees,[43] and produces SNPPs at its facility in Reading, PA. RGS receives its iron and steel

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[36] Single-width presses are designed and manufactured to print newspapers on a roll or sheet of paper two pages across. Each component is considerably smaller and narrower than that of an LNPP. Single-width presses are less complex in design, less complicated to produce, and are priced substantially lower than large printing presses. They are best suited for relatively small newspapers printing less than 50,000 copies per hour with a limited number of sections. Postconference brief of Wiley, Rein & Fielding, p. 12.

[37] Postconference brief of Wiley, Rein & Fielding, p. 14.

[38] Ibid, pt. II, p. 62.

[39] Counsel for petitioner argued that each issue of the *USA Today* is relatively small with standardized sections of similar page length. Thus, the newspaper's product plan does not require the flexibility of an LNPP. However, where its circulation needs require a large number of copies, *USA Today* utilizes an LNPP; it uses a single-width press only in an area of lower circulation where a small number of copies will suffice. Ibid, p. 14.

[40] During these final investigations, information was reported regarding a sale from a manufacturer to a broker. ***.

[41] Preliminary conference transcript, p. 70.

[42] RGS reports that its facility that produces LNPPs and LNPP elements contains approximately *** sq. ft. of space (May 22, 1996, questionnaire response of RGS, attach. 1, p. 3).

[43] In 1990, to supplement Cedar Rapids' production and maintain core competency among its skilled workers, RGS transferred production of commercial and publication printing presses from Chicago, IL, and Peterborough, England.

(continued...)

printing unit frames, brackets, angle bars, and gear blanks, and its solid stainless steel cylinders and rollers as raw castings and forgings. RGS uses machine tools to perform complex machining, turning, grinding, milling, and boring procedures to form the frames, gears, cylinders, and rollers to extraordinarily precise specifications and tolerances. Over *** percent of RGS' machine tools are computer controlled.

RGS performs its complex machining in a special production unit called the flexible manufacturing system. The raw castings are mounted on an automated system that maintains the part in near-perfect horizontal and vertical alignment. The system shuttles the part among *** automated machining stations that perform different processes. The computerized controls place holes in a precise relationship to one another. To avoid metal contraction or expansion that could distort machining, RGS maintains the entire system in a controlled environment at a constant temperature. Flexible manufacturing system processing is especially useful for producing large numbers of identical heavily machined parts.[44] Cylinders are configured to conform to the width of paper (newsprint) each customer plans to use. Computer-based press control systems employed by RGS' LNPPs are provided by RGS' sister company, Allen-Bradley.

Finished press systems are never fully assembled and tested at the plant. However, before a press is ready for shipment, RGS will perform certain electrical and mechanical tests on the printing units, and will run paper through the folders. The presses are then knocked down, packaged, and readied for shipment by truck. Final testing is conducted at the newspaper printing facilities after installation.

Price

Sales of LNPPs, as reported in Part V and appendix F of this report, ranged from approximately $***. Sales of additions ranged from approximately $***. Price variations often reflect differences in specifications, e.g., the number of couples and printing units, RTPs, and folders. Traditionally, flexographic presses were slightly less expensive to produce than offset presses because they used keyless inking systems, while offset printing units were keyed. With respect to keyless and keyed systems, counsel for petitioner has reported that RGS offers its new Newsliner press model in both keyed and keyless options, and the price is the same for both.[45] Regarding SNPPs, average unit values for SNPPs were reported during the preliminary investigations to be approximately $*** during 1994.[46]

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[43] (...continued)
These presses are produced on their own separate, dedicated assembly lines (Cedar Rapids plant visit, July 13, 1995).

[44] Petition, vol. III, pt. 1, pp. 38-39.

[45] Posthearing brief of Wiley, Rein & Fielding, annex F, p. 7.

[46] Confidential staff report of the preliminary investigations, app. E.

INTERMEDIATE PRODUCTS

LNPP Additions

During the preliminary investigations, the Commission applied its semi-finished products analysis[47] and found that (1) press additions have no independent use aside from being an addition to or an enhancement of an existing LNPP; (2) press additions are sold in the same markets as LNPPs; (3) press additions share many of the same physical characteristics and functions as LNPPs; (4) price differences appear to be proportional to the price of LNPPs; and (5) installation costs were a relatively minor portion of the overall cost of the press addition. Therefore, for purposes of the preliminary investigations, the Commission determined that there is one like product consisting of all LNPPs, press additions, and components. During these final investigations, no party has argued against the Commission's preliminary determination.

LNPP Elements

In its preliminary determinations Commerce clarified the scope of these investigations to include elements (otherwise referred to as parts or subcomponents) of LNPPs, which taken as a whole are used to fulfill an LNPP contract. Commerce did not identify individual LNPP elements, but rather indicated that it would make its final determinations regarding merchandise covered by the scope of the investigations, after consideration of party comments regarding the use of an essence or a value approach to governing the inclusion of LNPP elements within the scope. The Commission's questionnaires in these final investigations attempted to gather as much information as possible regarding (1) the cost to produce LNPPs by component (value approach) and (2) production, trade, financial, and import data for the following list of 26 elements if they are used to fulfill a contract for an LNPP system, addition, or component (essence approach):[48] [49]

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[47] The five factors that the Commission considers in analyzing semi-finished products include: (1) uses (Is the upstream product dedicated to the production of the downstream product or does it have independent uses?); (2) markets (are there separate markets for the upstream and downstream products?); (3) characteristics and functions (are there differences in the physical characteristics and functions of the upstream and downstream products?); (4) value (are there differences in the production costs and/or sales values (transfer values or market prices as appropriate) of the upstream and downstream products?); and (5) transformation processes (what is the significance and extent of the processes used to transform the upstream product into the downstream product?).

[48] The list of LNPP elements was derived from information received during the Commission's preliminary investigations, as well as a review of information available in Commerce's public record of its investigations regarding the issue of scope (see, for example, July 20, 1995, response of MAN Roland to the Commission's producer's questionnaire, attach. to sec. I.2.(1); and August 25, 1995, letter to Commerce regarding definition of terms from Wiley, Rein & Fielding, attach.).

[49] The comprehensive nature of the list with respect to value was affirmed by data received from TKS (USA) during these final investigations. TKS (USA) reported separate data for imports of LNPP elements from Japan which it considered "non-subject" because the elements were not identified in the Commission's questionnaire list (e.g., ***). (See July 2, 1996, response of TKS (USA) to supplemental questions, exh. 2). The value of those "non-subject" elements accounted for approximately *** percent of TKS (USA)'s total LNPP imports from Japan during the period 1993-95. (See June 13, 1996, responses of TKS (USA) to supplemental questions, attach. 3).

- Machined frames for printing units
- Columns for RTPs
- Folder frames
- Blanket, plate, folding, cutting, and other cylinders
- Driven and non-driven rollers
- Inking systems
- Dampening systems
- Proprietary gears
- Bearers and eccentric sleeves
- Formers for use in folders
- Apparatus for moving finished newspaper out of press to interface with mailroom system
- Reel shaft and spider arms for RTPs
- Pasters
- Automatic reel loader interface systems
- Angle bars
- Press drives and motors
- Drive trains
- Customized press superstructures
- Control systems for press components
- Web tension control system
- Registration and compensation systems and associated controls
- Master press consoles
- Software designed to control, monitor, adjust or coordinate the functions of newspaper presses, additions, or components
- Circuit boards designed for use in newspaper presses, additions, or components
- Connecting structures
- Functional equivalents of items listed above

A review of the responses to the LNPP elements section of the producer's questionnaire reveals that LNPP producers account for the vast majority of LNPP elements production, and that most elements are internally consumed in the production of downstream components for LNPPs. Further, based on these responses, there appears to be a limited "merchant market" for such LNPP items as ***. [50] For a discussion of LNPP elements, see industry participants' comments presented in appendix D.

[50] See elements producer's questionnaire comments of *** (sec. IV.5, p. 10).

U.S. TARIFF TREATMENT

The imported LNPPs, additions, components, and elements that are subject to these investigations are classified in the following subheadings of the HTS and have the below-listed 1996 column 1-general rates of duty (in percent ad valorem), for products of the countries subject to these investigations:

Subheading	Description	Duty
8443.11.10	Offset, reel-fed, double-width printing presses . .	3.3
8443.11.50	Offset, reel-fed, other	2.0
8443.21.00	Letterpress, reel-fed printing machinery	2.9
8443.30.00	Flexographic printing machinery	2.9
8443.40.00	Gravure printing machinery	2.9
8443.59.50	Other printing machinery	2.0
8443.60.00	Machines for uses ancillary to printing	2.0
8443.90.50	Printing machinery, other parts	2.0

LNPP computerized control systems (including equipment and/or software) may enter under these HTS subheadings and rates (in percent ad valorem):

Subheading	Duty
8471.49.10	3.1
8471.49.21	Free
8471.49.26	2.2
8471.50.40	Free
8471.50.80	3.1
8537.10.90	4.3

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET

LNPPs are purchased primarily for printing large circulation newspapers.[1] LNPPs are major capital purchases that are expected to last from 10 to 50 years, depending on use and maintenance, changes in the newspaper's circulation or other market conditions, technology changes, and the cost of purchasing and installing a new LNPP. Additions are used to upgrade existing LNPPs and a larger number of newspaper firms purchased these rather than full press lines during the period of investigation. Since newspapers vary in circulation, complexity, size, use of color, zoning, and sectioning, they employ different numbers and types of LNPPs. The design and cost of an LNPP may not only vary significantly between manufacturers bidding for the same contract, but also between bids for different contracts by the same producer. Manufacturers are continually updating their technology.

New press lines can either be added to existing facilities, usually with existing press lines remaining in place, or a new facility may be built for the new equipment. Newspaper firms, when they replace all of their press lines, may also build a new facility for them; this facility typically costs more than the press itself.[2] Thus, the price of purchasing new LNPPs and building the facility can be much greater than the cost of the LNPPs.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on available information, staff believes that U.S. producers can respond to price changes with large changes in the quantities shipped to the U.S. market. Factors increasing supply responsiveness include low levels of capacity utilization, the ability to increase capacity utilization in the short run, the ability to outsource some of the work, and the existence of a significant export market.

Industry capacity

Average capacity utilization[3] for the U.S. industry decreased from *** percent in 1991 to *** percent in 1994, increased to *** percent in 1994, and was *** percent in the first quarter of 1996.

RGS reported that because demand for LNPPs is currently so low, it has ***[4] ***.[5]

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[1] In addition, some newspaper firms also use LNPPs to print commercial printing products, advance run products, preprinted tabs, shoppers, and circulars. As reported in purchaser questionnaires, ***.

[2] ***.

[3] Capacity utilization in the LNPP industry can fluctuate a great deal because LNPPs are built to order.

[4] ***.

[5] ***.

Inventory levels

Typically, LNPPs are produced to order and are therefore not kept in inventory.[6] However, ***[7] and ***.[8] ***.[9]

Export markets

Export sales accounted for *** percent of the value of U.S. producer shipments from 1991 through the first quarter of 1996. This provides flexibility in shifting production between the U.S. market and other markets. In the questionnaire responses, U.S. producers reported that there were no significant barriers to increasing export sales. Sales, however, are based on contracts and products are specifically produced for each purchaser; this would reduce producers' ability to shift production between markets. Any shifts made would tend to be made with the normal production time lags.

Subject Imports

Foreign producers reported shipping less than *** percent of their production to the United States, and therefore have the flexibility to shift production from producing for non-U.S. markets. Data provided by the foreign producer's questionnaires, however, suggest that LNPP producers in the subject countries are operating at over *** percent capacity utilization.

Available information suggests that producers and importers of Japanese LNPPs may have some flexibility to increase or decrease shipments of LNPPs to the U.S. market. Shipments to the U.S. market comprised between *** percent of total shipments during the period of investigation, and in 1997 they are projected to be *** percent. The existence of significant home and third markets suggests that Japanese producers could significantly increase shipments to the U.S. market. Capacity utilization was over *** percent throughout the investigation period and was projected to be *** percent in both 1996 and 1997.

Available information suggests that in the short run, suppliers of German LNPPs may have some ability to increase shipments to the U.S. market. U.S. shipments were *** percent of total shipments throughout the period of investigation. The two German producers operated at *** percent of capacity throughout the period of investigation and were projected to be at *** percent of capacity for 1996.

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[6] ***.

[7] ***.

[8] ***.

[9] ***.

U.S. Demand

Demand Characteristics

Demand for LNPPs is derived from the demand for newspapers and newspaper advertising. Individual purchaser's demand for LNPPs and components depends on the age of and wear on existing LNPPs; the availability of support from manufacturers;[10] technological innovations such as color;[11] demand by readers and advertisers for improvements such as print clarity, zoning, and sectioning, circulation, the availability/cost of financing; and the availability of substitutes. An LNPP is expected to last a long time before it is replaced. Of the 51 responding purchasers, over half *** reported a minimum life expectancy in excess of 25 years (figure II-1). While the purchasers that reported the age of the LNPP they replaced usually reported these were over 30 years old,[12] one (***) reported replacing a relatively new *** LNPP.

Both wear and tear on equipment and technological change can be major factors driving firms to purchase new LNPPs and additions. Changes in technology such as the availability of color can lead to a boom in demand for new LNPPs and additions. ***.

LNPPs and additions generally account for a small percentage of the final cost of newspapers.[13] Most purchasers reported that there are no economically feasible substitutes for LNPPs, although some smaller newspapers considered SNPPs, and a number of newspapers reported purchasing never-used or used LNPPs, although most of these needed additions to be used.[14]

Based on the available information regarding substitute products and estimates of the percentage of the cost of the final end-use products accounted for by LNPPs and their components,it is likely that in the short run, the quantity demanded for LNPPs will change moderately with changes in the price level of LNPPs. This is mainly due to the ability of newspapers to extend the length of time they use their LNPPs by

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[10] ***.

[11] When technological improvements occur, it is sometimes possible to incorporate them in existing press systems with additions.

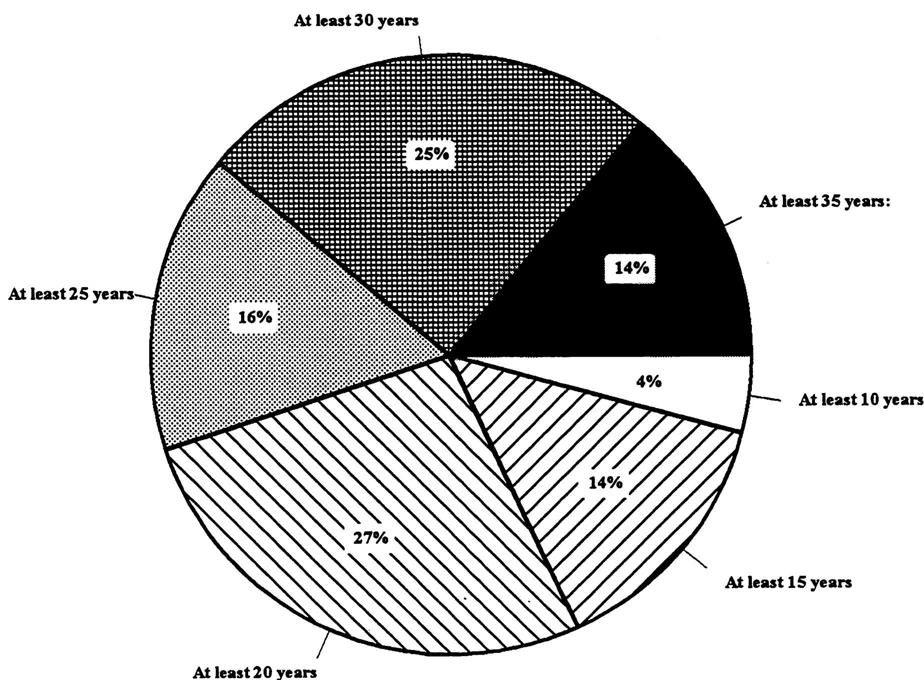
[12] ***.

[13] *** the petitioner's economic consultants' claim in the hearing that the press made up less than 5 percent of the cost of newspaper production; TR. p 71.

[14] Never-installed LNPPs fall under the definition of LNPPs for these investigations; however, these are typically owned by newspaper firms and sold by these firms.

Figure II-1

Expected Life Expectancy of New LNPP



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

continued maintenance and the short run availability of used LNPPs. In contrast, as machines wear out, continuing to use the existing LNPPs will become more costly and begin to threaten the dependability of production (sale of these used LNPPs will also be less viable). As a result, the long-run demand will be less sensitive to changes in the price of LNPPs.

Demand for additions will be less affected by price changes for a number of reasons. If the price of LNPPs and additions is high, newspapers will more likely use additions or used presses rather than new press lines to update their LNPPs. If a used press is purchased instead of a new press, this usually also requires the purchase of additions.

Substitute Products

Possible substitutes for new LNPPs purchased from the producer include SNPPs, used LNPPs, increased maintenance of current LNPPs to increase their life span, and outsourcing of printing. Purchasers reported no substitute products besides SNPPs. There are fewer substitutes for additions; some possibilities include a new or used LNPP with the additional capacity required, SNPPs ***, or outsourcing. Any of these

alternatives to additions ***, however, would usually be much more expensive than purchasing additions. Ninety percent of purchasers (48 of 53) stated that SNPPs are not practical substitutes for LNPPs. Five firms reported that SNPPs are substitutes for LNPPs.[15] Some of the smaller circulation newspapers that purchased a new LNPP reported considering an alternative purchase of SNPPs. Reasons for not purchasing SNPPs included that it would have required such a large number of the SNPPs that the factory would have needed to be enlarged; they would be two slow; and components were being purchased.[16]

Used LNPPs are better substitutes for new LNPPs than SNPPs for most newspaper firms that own LNPPs. Five newspaper firms were found by the Commission to have purchased used equipment during the period of investigation.[17] In addition, ***.[18] There is also evidence that LNPPs may be built for another newspaper but never installed; these frequently required the purchase of additions from the manufacturer.[19] *** newspapers reported acquiring LNPPs which had been built for other locations but never installed at the locations for which they were built.[20] Older never-installed LNPPs would have many of the disadvantages reported for used LNPPs.

The advantages of a used LNPP are lower price and more immediate installation. Most used LNPPs sold are not competitive with new LNPPs; however, some relatively new, used LNPPs are available and these do compete with new LNPPs. Used LNPPs have a number of disadvantages compared to a new LNPP, including slower speed, no manufacturer's warranty, higher labor costs, less capacity for sectioning and zoning, less color, a shorter life expectancy, and higher paper use.[21] Used LNPPs also cost as much to install in a new location as it would cost to install a similar new LNPP. These disadvantages will be felt most strongly by large newspapers, so used LNPPs tend to be sold to smaller circulation newspapers, ***.[22]

Newspaper firms may also purchase additions to increase the capacity of their LNPPs rather than purchasing new LNPPs. Sometimes this is done in conjunction with purchasing used (or never-installed) equipment and sometimes the addition is added to an existing LNPP. An addition can provide some of the benefit of new equipment, for example increasing page capacity, or color, or by modernizing letter press technology with flexographic or offset additions.

All newspaper firms maintain their LNPPs to prolong their lives. If the price of new LNPPs were higher, some firms would increase maintenance rather than purchase new equipment. There is, however, a limit to this because reliable LNPPs are essential in the newspaper business.

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[15] ***.

[16] ***.

[17] ***.

[18] ***.

[19] ***.

[20] ***. The high cost of a new facility and the relatively long time lag between purchase and installation may explain why a number of never-installed LNPPs are available. While the LNPP is expensive, the cost of creating a new facility is greater. If the economic conditions of the newspaper firm deteriorate after the LNPP is ordered, the new facility may not be built and the LNPP may be sold.

[21] Staff telephone interviews with ***.

[22] ***.

A final alternative to purchasing new LNPPs is to outsource some or all of the production. This requires a nearby cooperative publisher with excess capacity.

In the long run, the substitutes for new LNPPs are limited, and the substitution of used LNPPs for new LNPPs is limited. Most used LNPPs only come on the market when a newspaper firm entirely replaces its printing plant or goes out of business. In these cases, existing LNPPs are of varying ages, with some being relatively new and therefore suitable for resale.[23] Also limiting the substitutability is the likelihood that when new LNPP prices rise, newspapers will be more reluctant to replace all their LNPPs and mainly very old used LNPPs will be available alternatives. Outsourcing requires excess printing capacity at a nearby plant.

SNPPs and used or never-installed LNPPs are poor substitutes for additions. None works within the existing press line and small presses usually do not have the capabilities such as color that newspapers purchase additions to provide. Used components may substitute for new additions but usually the latest technology will be unavailable used.

The petitioner's economic consultants report that price is not very important in determining whether or not to purchase a new LNPP[24] and that the decision to purchase a new LNPP stems mainly from physical and operational problems with old existing equipment.[25] They argue that the price of an LNPP does not represent a large part of operating costs and, as a result, a change in the price of an LNPP is not likely to appreciably change the timing of a newspaper's decision to purchase a new LNPP. Further, they argue that the substitution of used LNPPs for new LNPPs is rare and involves a small displacement of sales and cite the fact that the much lower prices of used LNPPs suggests their lack of interchangeability.[26]

Respondents' economic consultants assert that the cost of a new LNPP is very high for the typical newspaper.[27] According to respondents, purchasers have the incentive and inclination to defer their purchase for years or reduce the number of units purchased.[28] Purchasers often take a period of years in evaluating bids.[29] Respondents report that substitutes for purchasing new LNPPs include continued use of the existing LNPP with maintenance, purchasing previously-owned LNPPs, and refurbishing LNPPs with additions.[30] Respondents assert that trade in previously-owned LNPPs shows there is some competition between new LNPPs and previously-owned LNPPs.[31] Respondents also contend that certain alternatives to LNPPs such as previously-owned LNPPs may be closer substitutes for additions than for new LNPPs.[32]

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[23] ***.

[24] TR, p. 71.

[25] Ibid, p. 70.

[26] Petitioner's prehearing brief, p. IX-7.

[27] Respondents' common issues prehearing brief, app. II, p. 4.

[28] TR, p. 147; respondents' common issues prehearing brief, app. II, p. 17.

[29] Respondents' common issues prehearing brief, app. II, p. 17.

[30] Ibid, p. 18.

[31] Ibid, pp. 18-19.

[32] Ibid, p. 20.

SUBSTITUTABILITY ISSUES

U.S. Purchasers

The Commission received questionnaires from 54 purchasers of LNPPs and additions, all newspaper publishers.[33] The average daily circulation of the newspapers responding to the questionnaire ranged from *** readers. Forty-three of 54 purchasers answering the question reported changes in demand for their final products in the last 3 years. Demand changes reported covered both advertising, the newspaper's main source of revenue, and circulation. Nineteen purchasers reported increased demand for color (mainly from advertisers) or other product changes (such as sectioning) that required new LNPPs. Sixteen purchasers reported that increased competition for advertisers from print and non-print media has reduced demand for advertising. Six reported increased demand due to increased circulation and three reported declining circulation due to economic problems in their area. Three purchasers reported that other changes influenced their purchases, including the need to reduce newsprint waste, winning commercial jobs with their new LNPP because of the improved print quality, and the elimination of subscriber discounts, which reduced circulation and allowed them to purchase fewer units.

When asked how changes in demand for newspapers have affected purchases of LNPPs in the past 3 years, the most common purchaser response (by 29 firms) was increased color. Many of these also listed other changes such as increased sectioning and zoning,[34] less waste, less rub off of ink, and better quality. Ten firms listed changes in capacity, one listed faster printing speed and less waste, four noted that LNPPs were purchased infrequently, and one reported adding section formers and press units for an existing LNPP.

Factors Affecting Purchasing Decisions

Forty-eight purchasers listed the major factors determining the timing of when to replace/upgrade an LNPP in order of importance. See table II-1.

Purchasers were also asked to list in order of importance the major factors considered in deciding from whom to purchase. There were 52 responses from the 50 firms because 2 of the purchasers listed different criteria for the 2 different pieces of equipment they purchased. See table II-2.

Most purchasers reported that they prefer to use additions from the manufacturer of the original LNPP for a number of reasons. Seventeen of the 42 purchasers answering the question on interchangeability reported that some specific parts were interchangeable, including inking systems, anilox rolls, doctor blades, some printing units, and the RTP (provided the electronic controls can be integrated with other systems console). Thirteen purchasers reported that additions were not interchangeable. Seven purchasers reported that additions were interchangeable but with costly work and redesign. Two reported that components were interchangeable. One wrote that a number of parts might be interchangeable but this was not a good idea, and another wrote of the added risk associated with mixing parts from different producers.

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[33] ***.

[34] Advertisers frequently want to advertise only to readers in certain locations; for example, locations near where the business is located. Zoning occurs when newspapers vary a daily newspaper for these local needs.

Table II-1
Most important factors for purchasers in the timing of replacement or upgrade of LNPPs

Item	Most important	Second	Third	Other
Reliability/age of existing press	30	11	7	2
Growth in demand and other commercial considerations	10	5	0	1
Demand for color	6	5	5	5
Technology or efficiency	4	5	9	4
Corporate consideration/ price availability of capital	2	12	14	2
Quality	2	8	3	0

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

Table II-2
Major factors purchasers considered in deciding which vendor to use

Item	Most important	Second	Third	Other
Compatibility with existing equipment	19	5	0	3
Quality	12	11	5	3
Characteristics of manufacturer; i.e., commitment to technology, customer support, traditional supplier	9	6	18	16
Technology, including specific technologies	7	6	5	5
Availability/timing	3	0	5	3
Price or budget	1	11	6	14

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

Purchasers were asked to rate 22 different factors in terms of their importance in their decision to purchase an LNPP and components (table II-3). Where firms reported that a factor was not applicable the factor has been given a rating of not important. Average ratings reported in the table are the average of the numerical scores for the ratings. The scores for the ratings were critical (5), very important (4), moderately important (3), somewhat important (2), and not important (1).

Price and the characteristics of the manufacturer may have higher ratings than specific technological factors because price and the characteristics of the manufacturer are important in every purchase. In contrast, where there are competing technologies, purchasers do not agree on the best technological choice. They chose between a pair of technological alternatives, usually rating only one of these as critical or very important. (For example, most purchasers that rate flexographic as critical, rate offset as unimportant). In addition, if a firm is buying a component, only the technologies related to the component will be important. For example, if a newspaper were purchasing a folder, the question of whether it was an offset printer or a flexographic printer may have been reported to be irrelevant/not important, since it was not purchasing a printer.

Most purchasers (40) reported that the types/sizes/specifications of LNPPs and components are available from more than one source. Eleven reported that there were differences by source; most of these reported either that a certain technology was available only from a particular manufacturer or that additions were only available from the manufacturer of the original LNPP.

Different manufacturers may use different technologies and may have different levels of experience in some technologies. Although purchasers want to use the latest available technology, they are usually reluctant to purchase the first of any model because of the risk of technical problems. These sometimes conflicting objectives give an advantage to producers who can be the first to sell a new technology. New technologies are sometimes introduced in other countries, and manufacturers may try to use this experience to foster sales in the United States. (All manufacturers in this industry have overseas production capacity.)

The supplier's reputation for quality, reputation for service, availability of service and support, and the warranty all were given average ratings higher than price. Since the characteristics of the producer are so important, newspapers satisfied with one manufacturer may be reluctant to try a different producer.[35]

The newspaper industry is consolidating, with independent newspapers becoming parts of chains. Chains purchase LNPPs more frequently and may become more sophisticated buyers.[36] This may increase substitution among suppliers. Chains have a better idea of the price of LNPPs and may have more knowledge of different LNPP producers.

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[35] ***.

[36] Chains reporting more than one purchase during the period of investigation included ***.

Table II-3
Factors rated by purchasers in order of their importance and ratings given

Item	Average rating	Critical	Very important	Moderately important	Somewhat important	Not important
Supplier's reputation for quality	4.5	28	20	0	1	0
Supplier's reputation for service	4.2	20	24	3	1	1
Delivery and installation schedule	4.2	19	20	7	0	1
Availability of service and support	4.2	24	18	3	0	4
Maximum press speed	4.0	17	26	1	1	4
Offset	4.0	30	8	1	1	9
Supplier's warranty terms	4.0	11	29	7	1	1
Total price	3.9	13	21	10 [1]	3	1
Supplier's training package	3.8	13	20	10	4	2
Projected maintenance cost	3.7	10	29	3	2	5
Folder capacity/simplicity	3.6	15	21	1	0	11
Maximum web capacity	3.5	17	13	6	3	10
Keyed inking systems	3.3	15	11	8	1	13
Tower configuration	3.2	17	12	2	2	16
Brand of existing presses at facility	3.1	15	9	5	5	15
Payment terms	3.0	4	14	15	8	7
With bearers	2.8	10	9	4	6	18
CIC configuration	2.6	10	8	5	5	21
Keyless inking system	2.2	8	4	5	4	28
Automatic reel loading	2.1	3	7	5	9	24
Flexographic	1.8	7	3	1	0	37
Bearer-less	1.5	1	1	7	5	34

[1] ***.

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

Substitution Among Suppliers

In the case of new LNPPs, substitution among suppliers depends upon the extent of product differentiation between the domestic and imported products. Product differentiation, in turn, depends upon such factors as quality (e.g., print quality, the reputation of the manufacturer, traditional supplier, ability to produce color, low paper and ink waste, ability to do zoning, speed, appropriateness of the LNPP to the particular purchaser's application, ease of maintenance, strength, and durability),[37] technology, and conditions of sale (e.g., service and availability).

The petitioner reports that once a newspaper has decided to purchase a certain type of LNPP, price plays a decisive role in the decision of which supplier to use.[38] According to the petitioner, the purchasers, when choosing among final bids, tend to decide among very similar LNPPs.[39] In this case, the price of the LNPP is very important in determining which supplier is used.[40] In addition, the petitioner asserts that when purchasing LNPPs, the purchasers have relatively little concern with whether the manufacturer of an LNPP is the same as that of their existing LNPPs.[41]

Respondents' economic consultants report that each producer acts to differentiate its LNPPs from others.[42] According to the consultants, customers' preferences in the desired characteristics of the LNPP they purchase make price of secondary importance as long as the total is affordable.[43] Reputation of the brand for service, reliability, and proven operation is critical.[44] Different producers have different areas of expertise and this differentiation, according to the respondents, is the main determinant of which LNPP a purchaser buys.[45] The respondents report that many of the purchasers (68 percent) which reported price as critical or very important in their purchase decisions award their contract on a sole-source basis.[46]

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[37] Purchaser questionnaire responses.

[38] TR, p. 60.

[39] Ibid.

[40] Ibid.

[41] Ibid., p. 88.

[42] Respondents' common issues prehearing brief, app. III, p. 6.

[43] Ibid.

[44] Ibid., p. 7.

[45] Ibid., pp. 9-14.

[46] Ibid., app. II, p. 7.

Comparison of Domestic Products and Subject Imports[47]

The staff notes that substitutability among producers differs between new press lines where substitutability is moderate and additions where substitutability is low. The low substitutability for additions among producers is indicated by the large number of non-competitive sales. Even in press purchases, however, substitutability is imperfect. Newspaper firms often want to match their existing presses when they purchase additional presses and may not always take competing bids for additional presses.[48] Even in cases where a new facility is being equipped, the bids are not always competitive.[49] In addition, a number of purchasers did not purchase the lowest priced LNPP offered because they believed the higher priced LNPP better suited their needs.[50] A number of newspaper firms' representatives at the hearing reported that they would have been willing to pay substantially more for the imported presses they purchased from Germany.

No producer or group of producers from the subject countries or the United States is a clear quality leader, according to purchasers. Purchasers frequently report differences from firm to firm rather than from country to country. Newspaper firms reported technological differences among vendors, including quality of web control, available of flexographic technologies, experience in producing color keyless printing, experience producing large folders, quality of color towers, and the complexity of the LNPPs.

Most newspaper firms prefer to use models of LNPPs which are as similar as possible and from only one manufacturer in a facility[51] and to use additions from the same manufacturer that produced the LNPPs.[52] Using one type of LNPP simplifies training and reduces the number of different spare parts required. Using additions from the same manufacturer as the original LNPP reduces the risk that parts will not be compatible and makes applying for assistance from the manufacturer easier since only one producer is responsible. When newspapers purchase whole new plants, LNPPs made by different producers are more substitutable. In these purchases, purchasers typically evaluate a number of LNPPs from different manufacturers. For three examples of purchasers' evaluations of LNPPs from different manufactures, see appendix E.

If a newspaper firm has decided on a particular technology, this may limit the LNPP manufacturers that are capable of providing equipment. For example, although most purchasers prefer offset and tower technologies, some newspapers prefer flexographic printers, and some prefer CIC to tower technology. The "size" of the LNPPs also varies, where size refers to the basic level of circulation the LNPP is designed to

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[47] The COMPAS model has not been used to analyze the effect of imports on domestic firms' profitability for LNPPs. This is because the ability of both the buyers and sellers to influence the price through their behavior contradicts the competitive assumptions of the COMPAS model. In addition, the COMPAS model would be less applicable because of the lack of comparable price data; the small number of sales; and the separation between the timing of the transactions and the payments.

[48] ***.

[49] ***.

[50] Purchasers which did not purchase lowest priced LNPPs include ***.

[51] ***.

[52] For example, of 52 purchasers reporting, 21 firms reported that the most important reason they chose the manufacturer they used was compatibility with existing equipment, or traditional supplier, or they reported both technology and match to existing equipment. Most of these were purchasing additions.

handle. In some cases, purchasers rejected vendors because they bid LNPPs that were either too large or too small for their needs. Differences in size can also explain some of the price differences among bids.[53]

United States vs. Germany

There is no clear quality difference between U.S.-produced LNPPs and German-produced LNPPs, but some technologies are available from only one producer or country. KBA and MRD report that they are leaders in color keyless inking systems and keyless anilox offset LNPPs, and that these are not available from *** firms, which use active-feed systems.[54] Additions from German manufacturers may be required to match German machines but they may be available from the U.S. subsidiaries of these firms. ***.

United States vs. Japan

There is no clear quality difference between U.S.-produced LNPPs and Japan-produced LNPPs, but some technologies are available from only one producer or country. Purchasers report that ***.[55] This can be particularly important when ***. ***. Unlike the German manufacturers, Japanese manufacturers do not have U.S. subsidiaries that produce full LNPPs.

Comparison of Subject Products from Different Countries

Competition between equipment from Japan and Germany differs between LNPPs and components. LNPPs, while not identical between these countries, can and do compete. Technology and service between LNPPs and their producers allow some vendors to sell even if they do not bid the lowest price and cause some vendors to be eliminated from the competition before the final bidding process.

As discussed above, differences in the additions used in equipment from Japan and Germany reduce competition between these sources for additions. ***. There were no reports of any Japanese or German additions being sold to fit into LNPPs made by firms from the other country.

Comparison of Domestic Products and Subject Imports to Non-Subject Imports

Imports from non-subject countries comprised a very small share of the value of total U.S. shipments during 1991-96. Sources of non-subject LNPPs include Switzerland and the United Kingdom.[56] *** and the Tulsa World purchased two LNPPs with a final bid value of $*** from Wifag, a Swiss company (these LNPPs are reported to be expensive and high quality).[57] Wifag is known as an innovative firm, and its shaftless press design is seen to be an important advance.

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[53] ***.

[54] KBA and KBA-Motter's prehearing brief, p. 7.

[55] ***.

[56] ***.

[57] ***.

PART III: CONDITION OF THE U.S. INDUSTRY

Section 771(7)(B) of the Act (19 U.S.C. § 1677(7)(B)) provides that in making its determinations in these investigations the Commission--

> shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and. . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

> In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.
>
> . . .
>
> In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.
>
> . . .
>
> In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to, (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in [an antidumping investigation], the magnitude of the margin of dumping.
>
> The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and condition of competition that are distinctive to the affected industry.

Information on the margins of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V. Information on the other factors specified is presented in this section and/or part VI and (except as noted) is based on the questionnaire responses of five firms that accounted for all known U.S. production of LNPPs and components thereof, whether assembled or unassembled. The data presented in the body of the report are, unless otherwise noted, for LNPPs and press additions.

U.S. PRODUCERS

LNPP Producers

A list of the firms responding to the Commission's questionnaires on LNPPs and components thereof, their shares of the value of reported shipments in 1995, and the firms' positions with respect to the petition are presented in table III-1. These producers are described below.

Company Profiles

Rockwell Graphic Systems

During the period of investigations, RGS, the petitioner, has been a wholly owned subsidiary of Rockwell International Corp., Seal Beach, CA, and produces LNPPs in Cedar Rapids, IA. ***. Rockwell's operations producing LNPPs accounted for *** percent of its establishment's total net sales in FY 1995 (FY ending June 30), with the remainder accounted for by commercial presses.

On January 16, 1996, Rockwell International Corp. announced that it planned to sell its Graphic Systems Division "in order to focus our resources on our electronics, automotive and aerospace core businesses."[1] On April 30, 1996, Rockwell announced that it had signed a definitive agreement with Stonington Partners, Inc., under which a new corporation formed by Stonington Partners would purchase Rockwell's Graphic Systems business, in partnership with Graphic Systems management. The total purchase price was approximately $600 million. It was announced that Stonington Partners will operate Graphic Systems under a newly formed company named Goss Graphic Systems, Inc. Stonington Partners is a New York-based private investment firm that acts as a management company for Stonington Capital Appreciation 1994 Fund, L.P., a $1 billion fund formed to make controlling investments in privately negotiated acquisitions.[2] The sale of RGS to Stonington is still pending, and according to Mr. Robert Kuhn, President of RGS, ***.[3]

[1] Jan. 16, 1996, press release of Rockwell International Corp.

[2] Apr. 30, 1996, press release of Rockwell International Corp.

[3] Confidential transcript of the public hearing (CTR), p. 358.

Table III-1
LNPPs, press additions, and components thereof: U.S. producers, locations of corporate offices, shares of value of reported total (domestic and export) shipments in 1995, and positions on the petition

Firm	Firm location	Share of shipments	Position on petition
		Percent	
Rockwell	Westmont, IL	***	Petitioner
Heidelberg Harris	Dover, NH	***	***
KBA-Motter	York, PA	***	Opposes
MAN Roland	Groton, CT	***	Opposes
TKS (USA)	Richardson, TX	***	Opposes
		100.0	

[1] ***.

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

Heidelberg Harris

Heidelberg Harris, Inc., produces LNPPs at its facility in Dover, NH. The firm is a wholly owned subsidiary of Heidelberg North America, Inc. and is primarily a producer of small newspaper and commercial printing presses. Heidelberg Harris' operations producing LNPPs accounted for *** percent of its establishment's total net sales in FY 1995 (FY ending March 31), with the remainder accounted for by SNPPs and commercial presses.

KBA-Motter

KBA-Motter, Corp., produces LNPPs at its facility in York, PA, and accounted for *** percent of total shipments of such products in 1995. The firm is owned *** percent by Koenig & Bauer-Albert AG (KBA), Wuerzberg, Germany. KBA produces and exports LNPPs from Germany to the United States. During the period of investigation, KBA-Motter produced flexographic LNPPs and ***.[4] KBA-Motter's operations producing LNPPs accounted for *** percent of its establishment's total net sales in 1995, with the remainder accounted for by ***.

MAN Roland

MAN Roland, Inc., produces both flexographic and offset LNPPs at its facility in Groton, CT, and accounted for *** percent of total shipments of such products in 1995. The firm is owned by MAN Roland Druckmaschinen AG (MRD), Offenbech, Germany (*** percent); MAN Antiengenesellschaft, Munich, Germany (*** percent); and MAN Futzfahrezeuge AG, Munich, Germany (*** percent. MRD is a German

[4] June 20, 1996, response of KBA-Motter to supplemental questions, p. 2.

producer and exporter of LNPPs to the United States. MAN Roland's U.S. operations producing LNPPs accounted for *** percent of its establishment's total net sales in FY 1995 (FY ending June 30), with the remainder accounted for by ***.

TKS (USA)

TKS (USA), Inc., is wholly-owned by Tokyo Kikai Seisakusho, Ltd. (TKS), Tokyo, Japan. TKS is a Japanese manufacturer and exporter of LNPPs to the United States. TKS (USA) designs and manufactures its TKS Newspaper Production Control System (T-NPC) at its facility in Richardson, TX.[5] TKS (USA)'s operations producing computerized controls systems for LNPPs accounted for approximately *** percent of its establishment's total net sales in FY 1995 (FY ending March 31), with the remainder accounted for by sales of imports of LNPP additions.[6]

Question of Domestic Producer and Related Party Status

During the preliminary investigations, counsel for petitioner argued that KBA-Motter, MAN Roland, and TKS (USA) should be excluded from the domestic industry producing LNPPs as related parties[7] that perform only minor assembly and installation functions in the United States. In these final investigations, counsel for petitioner has not argued for inclusion or exclusion of affiliated firms of foreign producers.[8]

In determining whether a firm is a domestic producer of the subject product, the Commission considers six factors relating to the overall nature of a firm's production-related activities in the United States.[9] Comments were submitted by KBA-Motter, MAN Roland, and TKS (USA) in response to the Commission's producer's questionnaires relating to the firms' production-related activities, technical expertise involved in U.S. production activities, and where production decisions are made. The comments are provided below.

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[5] The five U.S. producers of LNPPs were sent both the Commission's producer's and importer's questionnaires. In responding to the producer's questionnaire, TKS (USA) chose to provide only data for its U.S. production of T-NPCs (this approach was consistent with its response to the producer's questionnaire during the preliminary investigations). Data relating to its LNPP additions operations were reported by TKS (USA) in its response to the importer's questionnaire.

[6] As described in TKS (USA)'s notes to financial statements for FY '95 and FY '94, the firm ***.

[7] By statute, a producer and an exporter or importer shall be considered related parties if: (1) the producer directly or indirectly controls the exporter or importer; (2) the exporter or importer directly or indirectly controls the producer; (3) a third party directly or indirectly controls the producer and the exporter or importer; or (4) the producer and the exporter or importer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

[8] TR, p. 119.

[9] The six factors are: (1) source and extent of the firm's capital investment; (2) technical expertise involved in U.S. production activities; (3) value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product.

KBA-Motter

KBA-Motter reported production facilities in York, PA, of ***.[10]

With respect to production decisions, KBA-Motter reported that it "***."[11] The firm also reported that it "***."[12] KBA-Motter further reported that "***."[13]

MAN Roland

In its questionnaire response, MAN Roland reported that ***.[14] MAN Roland also indicated that the manufacturing equipment that it utilized consisted of ***.[15] MAN Roland further reported that, as a result of ***[16] and ***.[17]

TKS (USA)

TKS (USA) reported that its T-NPC computerized control system is designed and manufactured at its Richardson, TX, facility. The firm reported that ***.[18]

Data relating to imports relative to production for U.S. subsidiaries of foreign corporations are presented in table III-2 and figures III-1 and III-2. In addition, information concerning value and source of materials, value-added, and domestic content calculations for MAN Roland are presented in table III-3.

Table III-2
LNPPs: U.S. subsidiaries' production, imports, and ratio of imports to production, 1991-96, and POI totals 1991-96 and 1993-96

* * * * * * *

[10] Mar. 29, 1996, questionnaire response of KBA-Motter, sec. II.6.

[11] Ibid.

[12] June 6, 1996, response of KBA-Motter to supplemental questions, pp. 8-9.

[13] June 28, 1996, response of KBA-Motter to supplemental questions, p. 3.

[14] June 6, 1996, response of MAN Roland to supplemental questions, p. 1.

[15] Ibid, p. 2.

[16] MAN Roland reported that during the period of investigation, *** (May 22, 1996, questionnaire response of MAN Roland, attachment to sec. II.8).

[17] June 28, 1996, response of MAN Roland to supplemental questions, sec. II.13.

[18] May 22, 1996, questionnaire response of TKS (USA), sec. II.6.

Figure III-1
LNPPs: U.S. production and imports for MAN Roland, 1991-95 and projected 1996

* * * * * * *

Figure III-2
LNPPs: U.S. production and imports for KBA-Motter, 1991-95 and projected 1996

* * * * * * *

Table III-3
LNPPs: Value and source of materials, value-added, and domestic content calculations for MAN Roland

* * * * * * *

Elements Producers

As a result of Commerce's clarification of the scope of these investigation to include elements of LNPPs, on April 17, 1996, the Commission requested from each producer of LNPPs, a listing of their suppliers of elements for LNPP production operations. On May 10, 1996, Commission staff sent a 7-page elements producer's questionnaire (i.e., part V of the LNPP producer's questionnaire) to approximately 90 firms that had been identified by the LNPP producers.[19] [20] Responses were received from *** firms, of which *** indicated that they did not produce the subject LNPP elements, and the remaining *** firms provided a limited amount of data. The most significant data for LNPP elements operations was reported by RGS for its subsidiary company during the investigations, the Allen-Bradley Co., which is RGS' supplier of computer controls and drive systems.[21] Summary data relating to Allen-Bradley are presented in appendix C. The residual data from the other LNPP elements suppliers consisted of total sales during 1995 of approximately $***.

[19] ***.

[20] The LNPP producers provided listings with the following number of LNPP element suppliers: ***. Some suppliers sold elements to more than one LNPP producer.

[21] Counsel for RGS reports that "***" (Aug. 2, 1996, letter from Wiley, Rein & Fielding, pp. 5 and 8).

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Data for U.S. production, capacity, and capacity utilization of LNPP manufacturers are presented in table III-4 and figure III-3. These data are influenced by a number of industry occurrences, including: ***;[22] ***;[23] and ***.[24]

Table III-4
LNPPs: U.S. capacity, production, and capacity utilization, by firms, 1991-95, Jan.-Mar. 1995, and Jan.-Mar. 1996

* * * * * * *

Figure III-3
LNPPs: U.S. capacity, production, and capacity utilization, 1991-95

* * * * * * *

U.S. PRODUCERS' SHIPMENTS

Company-specific data regarding total shipments, based on value, by U.S. LNPP producers are presented in figure III-4 and table III-5. Shipment data may not reconcile with data presented in part VI of this report due to differences between fiscal years and calendar years, and also the fact that KBA-Motter's shipments are reported on the basis of revenue recognized in table III-5 while revenues are reported on a completed-contract basis in part VI.

Figure III-4
LNPPs: U.S. producers' shipments, 1991-95

* * * * * * *

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[22] May 22, 1996, questionnaire response of MAN Roland, sec. II.5, p. 4.

[23] May 29, 1996, questionnaire response of KBA-Motter, sec. II.5, p. 4.

[24] Notes to TKS (USA) financial statements for FY '95 and FY' 94, note 1.

Table III-5
LNPPs: U.S. producers' shipments, by firms, 1991-95, Jan.-Mar. 1995, and Jan.-Mar. 1996

* * * * * * *

U.S. PRODUCERS' INVENTORIES

LNPPs and LNPP additions are produced in response to bids for specific newspaper projects. Therefore, finished presses and press additions are generally not held in inventory by LNPP producers, but are shipped to the customers' site for installation as the various press components are completed. The size of LNPPs precludes shipment of a completed press.[25]

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data relating to the number of production and related workers (PRWs) producing LNPPs, hours worked by and wages paid to such employees, hourly wages, and productivity are presented in table III-6, by firms. Rockwell reported that its production and related workers who produce LNPPs belong to the International Association of Machinists & Aerospace Workers, AFL-CIO, Harmony Lodge 831 and Progressive Lodge 126. KBA-Motter reported that its production and related workers belong to the United Steelworkers union.

Table III-6
Average number of production and related workers producing LNPPs, hours worked, wages paid to such employees, and hourly wages and productivity, by firms, 1991-95, Jan.-Mar. 1995, and Jan.-Mar. 1996

* * * * * * *

[25] Preliminary conference transcript, p. 15.

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS

Based on information developed during the investigations, there are four U.S. importers of LNPPs and components thereof from Germany and Japan: KBA-Motter, York, PA; MAN Roland, North Stonington, CT; Mitsubishi Lithographic Presses, Inc. (MLP), Lincolnshire, IL; and TKS (USA), Richardson, TX. Responses to the Commission's importers' questionnaire were received from those four firms.

U.S. IMPORTS

As a result of Commerce's final decision to utilize a 50 percent value test to determine whether imports of LNPP elements are within the scope of investigation, Commission staff has applied Commerce's value test to the LNPP elements data submitted in response to the Commission's questionnaires. The LNPP elements determined to be subject merchandise are identified in table IV-1 for MAN Roland and table IV-2 for KBA-Motter. U.S. imports of LNPPs, press additions, components thereof, and subject elements are presented in table IV-3 and figure IV-1.

Table IV-1
LNPPs: Application of 50-percent value test to imports of elements by MAN Roland for contracts not examined by Commerce, 1991-96

*   *   *   *   *   *   *

Table IV-2
LNPPs: Application of 50-percent value test to imports of elements by KBA-Motter for contracts not examined by Commerce, 1991-96

*   *   *   *   *   *   *

Table IV-3
LNPPs: U.S. imports, by sources, 1991-95, projected 1996, and POI totals 1991-96 and 1993-96

*   *   *   *   *   *   *

Figure IV-1
LNPPs: U.S. imports, by sources, 1991-95 and projected 1996

* * * * * * *

U.S. Producers' Imports

Data relating to U.S. producers' imports on a contract-specific basis, in comparison to contract-specific data for U.S.-produced products, are presented in appendix F. The Commission's questionnaires requested that U.S. producers of LNPPs discuss the reasons that they decided to import rather than produce LNPPs internally in the United States. KBA-Motter reported that "***."[1] MAN Roland reported that it "***."[2] TKS (USA) reported that "***."[3] ***.[4]

The Issue of Negligible Imports

The URAA amended the statutory provisions pertaining to negligibility. The provision defining negligibility provides that imports from a subject country corresponding to the domestic like product are negligible if such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition. The following tabulation presents import value data (in thousands of dollars) reported by U.S. importers of LNPPs for June 1994 through May 1995, the 12-month period preceding the filing of the petition:

Source	Import value	Share of total *(in percent)*
Germany[1]	***	***
Japan	***	***
Other[2]	***	***
Total	***	100

[1] Includes ***. (See footnote 1 to table IV-2 for a discussion of ***.
[2] Represents data for imports of ***.

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[1] May 24, 1996, questionnaire response of KBA-Motter, sec. II.5.

[2] May 22, 1996, questionnaire response of MAN Roland, sec. II.5.

[3] May 22, 1996, questionnaire response of TKS (USA), sec. II.5.

[4] Aug. 2, 1996, response of *** to supplemental questions, pp. 5 and 6.

Import Orders

The Commission's questionnaires requested firms to report their backlog of production and import orders for which contracts have been received for LNPPs and components thereof, as of the first day of each quarter since January 1991. Data submitted in response to that question by U.S. producers and importers are presented in table IV-4, and figure IV-2.

Table IV-4
LNPPs: U.S. producers' and importers' backlog of orders for which contracts have been received, as of the first day of each quarter, 1991-96

* * * * * * *

Figure IV-2
LNPPs: U.S. producers' and importers' backlog of orders for which contracts have been received, as of the first day of each quarter, 1991-96

* * * * * * *

APPARENT U.S. CONSUMPTION

The data on apparent U.S. consumption of LNPPs, press additions, components thereof, and elements are composed of U.S. producers' U.S. shipments/contracts reported in response to the Commission's producer's questionnaires plus shipments/contracts of U.S. imports reported in response to the Commission's importer's questionnaires.[5] No imports of complete LNPPs or press additions from countries other than Germany and Japan have occurred during the period of investigation. However, on June 15, 1996, WIFAG America, the selling agent for a manufacturer/exporter of LNPPs in Switzerland, announced that it had sold two new LNPPs to the Tulsa World newspaper, and that production is planned for Spring 1998.[6] In addition, imports of certain components have been reported from non-subject countries.[7] The data presented in this section of the report are, unless otherwise noted, for LNPPs, additions, components, and elements.

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[5] The petitioner in these investigations requested that the Commission collect data for a period beginning in 1991. Petition, vol. 1, pp. 18-19. Although respondents have opposed the collection of data prior to 1993, counsel for respondents have relied upon the prior-year data in pre- and posthearing briefs with respect to moving-average analyses.

[6] June 15, 1996, press release of WIFAG America.

[7] ***.

U.S. MARKET SHARES

Data relating to U.S. market shares are presented in tables IV-5 on a shipments basis and IV-6 on a sales (contract date) basis, and data are also presented in figure IV-3. Data for each of the tables is further presented on a two-year moving average basis (tables "A"), on a three-year moving average basis (tables "B"), and figure IV-4.

Table IV-5
LNPPs: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, by SHIPMENT DATE, 1991-95, Jan.-Mar. 1995, Jan.-Mar. 1996, projected 1996, and POI totals 1991-96 and 1993-96

* * * * * * *

Table IV-5A
LNPPs: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, by SHIPMENT DATE, two-year moving average, 1991-96, and POI averages 1991-96 and 1993-96

* * * * * * *

Table IV-5B
LNPPs: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, by SHIPMENT DATE, three-year moving average, 1991-96, and POI averages 1991-96 and 1993-96

* * * * * * *

Table IV-6
LNPPs: U.S. sales of domestic product, sales of imports, by sources, and apparent U.S. consumption, by INSTALLED VALUE, CONTRACT DATE, 1991-95, Jan.-Mar. 1995, Jan.-Mar. 1996, projected 1996, and POI totals 1991-96 and 1993-96

* * * * * * *

Table IV-6A
LNPPs: U.S. sales of domestic product, sales of imports, by sources, and apparent U.S. consumption, by INSTALLED VALUE, CONTRACT DATE, two-year moving average, 1991-96, and POI averages 1991-96 and 1993-96

* * * * * * *

Table IV-6B
LNPPs: U.S. sales of domestic product, sales of imports, by sources, and apparent U.S. consumption, by INSTALLED VALUE, CONTRACT DATE, three-year moving average, 1991-96, and POI averages 1991-96 and 1993-96

* * * * * * *

Figure IV-3
LNPPs: U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1991-95 and projected 1996

BY SHIPMENT DATE

* * * * * * *

BY CONTRACT DATE

* * * * * * *

Figure IV-4
LNPPs: Two- and three-year moving averages of U.S. shipments of domestic product, U.S. import shipments, by sources, and apparent U.S. consumption, 1991-95 and projected 1996

BY SHIPMENT DATE

* * * * * * *

BY CONTRACT DATE

* * * * * * *

PART V: PRICING AND RELATED DATA

FACTORS AFFECTING PRICING

Raw Material Costs

Prices of specific raw material products used in the production of LNPPs are not available. Total raw material costs reported by U.S. and subject foreign producers of LNPPs include a variety of inputs, including basic products such as steel shapes and further downstream products such as parts and components.

Transportation Costs to the U.S. Market

LNPPs are imported under several HTS categories, most of which are basket categories of products. Imports of these product categories on a c.i.f. value basis include too many other products to provide a meaningful foreign transportation figure.

U.S. Inland Transportation Costs

The U.S. inland freight component was not broken out separately by U.S. producers or importers in their reported cost figures. Although specific figures are not available, U.S. transportation costs to the purchaser reportedly average less than 1 percent of the delivered installed price of LNPPs.[1]

Importer Mark-Ups

Importers did not report the requested information on their mark-ups of the subject imported LNPPs.

Commerce Margins of Dumping

On July 16, 1996, Commerce issued its final determinations that imports of LNPPs from Germany and Japan are sold at LTFV. The weighted-average dumping margins are shown below by country and company.

Country	Margin (percent)
Germany:	
MRD	30.8
KBA	46.4[1]
All others	30.8
Japan:	
MHI	62.96
TKS	56.28
All others	58.97

[1] Based on best information available (BIA).

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[1] ***.

Exchange Rates

Quarterly data reported by the International Monetary Fund and compiled in figure V-1 indicate that the currencies of Germany and Japan fluctuated in relation to the U.S. dollar during the period from January 1991 through December 1995. The nominal values of the German mark and the Japanese yen fluctuated over the period, ending with net appreciations of 7.5 percent and 31.9 percent, respectively. When adjusted for relative movements in the producer price indexes in the United States and the specified countries, the real value of the German mark appreciated by 5.7 percent and the real value of the Japanese yen appreciated by 13.4 percent. This implies that if German and Japanese producers wished to maintain a constant real value of their products as measured by their respective currencies, the dollar price of German products would need to have increased by approximately 5.7 percent and the dollar price of the Japanese products would need to have increased by 13.4 percent during the period. Care must be taken in interpreting these price adjustments since they are approximations based on economy-wide inflation rates as opposed to industry-specific changes in the cost of productive inputs.

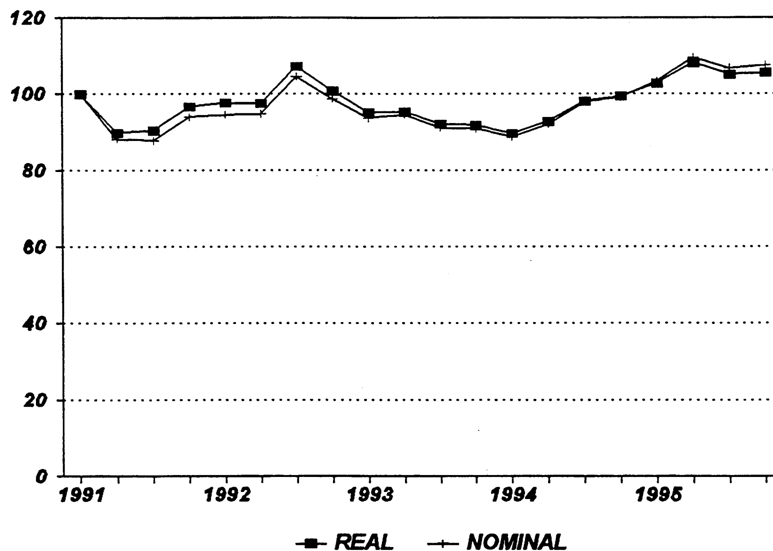
Tariff Rates

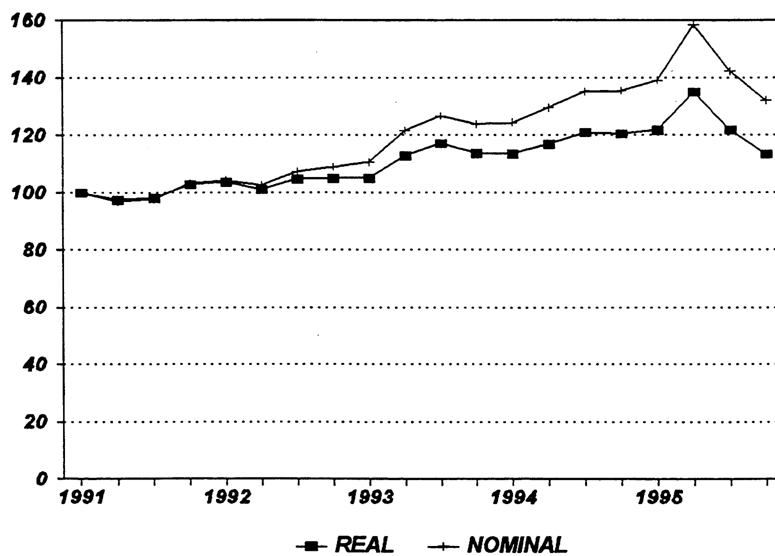
Imports of LNPPs from Germany and Japan covered by these investigations are classified in a number of different HTS subheadings; the following tabulation presents the relevant HTS subheadings and the duty rate for each subheading.[1]

HTS number	Duty rate *(in percent, unless otherwise noted)*
8443.11.10	3.3
8443.11.50	2.0
8443.21.00	2.9
8443.30.00	2.9
8443.40.00	2.9
8443.59.50	2.0
8443.60.00	2.0
8443.90.50	2.0
8471.49.10	3.1
8471.49.21	Free
8471.49.26	2.2
8471.50.40	Free
8471.50.80	3.1
8537.10.90	4.3

[1] Of these HTS subheadings, only 8443.11.10, which became effective January 1, 1995, is specific to certain LNPPs, whereas the other subheadings also cover a multitude of other products

Figure V-1
Exchange rates: Indexes of real and nominal exchange rates between the U.S. dollar and the currencies of Germany and Japan, by quarters, Jan. 1991-Dec. 1995[1]





[1] Exchange rates are expressed in U.S. dollars per unit of foreign currency; Jan.-Mar. 1991 = 100.

Source: International Monetary Fund, *International Financial Statistics*, June 1996.

PRICING PRACTICES

The market for LNPPs can be broadly described as consisting of two types of sales: new press lines and additions. Additions include both add-ons and slip-ins; additions normally require some modification to the existing system before they are installed, especially if they are not from the manufacturer of the existing press. The majority of additions involve add-ons. Add-ons do not replace existing units or components but involve the addition of printing units and/or other components for the purpose of upgrading an existing press line (e.g., adding color printing capabilities or expanding capacity). Slip-ins replace existing equipment. Due to compatibility concerns indicated in purchaser questionnaire responses, sales of additions are frequently non-competitive, with the final contract price negotiated between the newspaper firms and the manufacturer of the existing press. Purchasers still often issue requests for quotations (RFQs) for additions to identify the scope of work. New press line sales involve a completely new product and generally involve a highly competitive bid/negotiation procedure.

Most LNPPs are sold through a closed-bid procedure, although bidding firms usually know who they are competing against.[2] Purchasing newspaper firms initiate the process by formulating a plan covering technical specifications and economic considerations. Purchasers typically work closely with one or more manufacturers concerning design aspects, information on the available equipment, and evaluating whether certain configurations will fit into existing buildings. This plan serves as the basis for the RFQ issued by purchasers to approved LNPP manufacturers. The RFQ generally contains the project description, technical specifications and requirements, procedures to be used in bidding, contract terms and conditions, and frequently the purchaser's maximum expenditure level for the purchase.

Manufacturers determine their bids on the basis of estimated production costs, anticipated profit, transportation and installation costs, and, in the case of foreign bids, changes in exchange rates. Because RFQs contain precise specifications that vary widely from project to project, each LNPP is engineered to order, and estimated costs depend upon the specifications contained in any one RFQ. In this sense, each RFQ describes a unique, custom-built product. In addition, there can be substantial differences in the technology and design of competing manufacturers' proposals for any particular RFQ, which may lead to different bid prices among the bidding firms.

In a typical bid process, the purchaser reviews the initial bids of participating manufacturers and may reject unacceptable bids or require certain manufacturers to submit new bids. After the initial bid submissions, purchasers will begin negotiations with one or more manufacturers. Although the bidding/negotiation process is formally closed, the purchaser may informally discuss the bid price, terms, and specifications with the various bidding manufacturers. Purchasers will often attempt to get a better deal by asking manufacturers to drop their prices or adjust payment terms, or add additional equipment, more expensive equipment, or additional service without raising the price. This process can take several months as purchasers try to decide which package offers the best value on the basis of price, specifications, reputation, and service-related aspects. Information supplied by purchasers indicates that the primary factors considered in the purchase decision include technology, efficiency, quality, price, and service. Through much of the bidding process, price is not the primary focus, with technology, quality, service, and/or compatibility with

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[2] In purchaser questionnaire responses, all but one purchaser reported that it was common knowledge what firms were bidding or that it was not applicable because only one firm was bidding. The one purchaser that did not report that vendors knew who they were competing against reported that vendors probably knew.

existing presses more important. Nonetheless, given a particular specification and level of quality, the final installed price to the customer will be a significant deciding factor.

Negotiations conclude with the award of a sales contract, but delivery and installation can take from several months to 1-3 years after the contract is signed. Payment terms usually include a down-payment of 10-20 percent of the contract price, with 50-70 percent of the contract price paid during production, 5-15 percent of the contract price paid at installation, and 5-10 percent paid upon acceptance by the purchaser that the equipment is operating satisfactorily.

It is not uncommon for bidding firms to submit initial bids that are somewhat high. This leaves them room to negotiate, depending on the degree of competition in the bid process. It also assures that where competition is not keen the supplier does not "leave money on the table." For example, *** reported that the first budget bids tend to be high, but that over the bid process the price tends to fall.[3] According to ***, the majority of the reduction in price normally occurs during the "budget bid" process. The budget bid process, however, is not intended to resolve which firm's press should be purchased. Budget bids give basic quality and hardware but do not produce an apples-to-apples comparison. Over this budget bid process, the bids are expected to converge, and, by the time of the final budget bid, the presses offered by the different makers generally are reasonably similar and meet specifications. The budget bid process provides cost numbers that can be presented to the purchaser's board of directors. If the board agrees to the purchase and the amount, the purchaser enters the final round of negotiations which mainly determines which supplier's press is purchased. During this stage, many purchasers perform detailed analyses of the presses available.

The *** also reported that initial bids tend to be high, in part as a negotiating position. According to the ***, prices tend to fall over the bidding process for four reasons:

- primarily, clarification of the scope of the requirements;
- the element of negotiating posture in the initial bid, since most producers of LNPPs do not start with their lowest price;
- internal fine tuning of price estimates, particularly in the case of subcontracting, where producers may not initially know the exact price; and
- degree of competition.

The process is simpler if a firm is purchasing on a non-competitive bid basis.[4] In this case, purchasers still need to develop specifications, which may be done with the supplying manufacturer. Purchasers may also negotiate with the supplying manufacturer to reduce the price of their purchase. Purchasers buying on a non-competitive basis can benefit from the appearance of competition by asking other producers for estimates, even if they are not interested in purchasing from those particular producers, to determine if the bid they receive is reasonable.

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[3] ***.

[4] ***.

BID-PRICE SALES TO U.S. PURCHASERS[5]

U.S. producers and importers were requested to report in their questionnaire responses the details of bid-price transactions for LNPPs sold to U.S. purchasers.[6] Similar information was requested from 78 U.S. purchasers (newspapers). The following producers and/or importers that sold LNPPs since January 1991 provided information on bids for sales to domestic newspaper companies: RGS, the petitioner; MAN Roland Druckmaschinen AG (MRD), a producer in Germany, and MAN Roland, its U.S. subsidiary and a U.S. producer and importer of subject merchandise from Germany;[7] KBA-Motter, a U.S. producer and importer of subject merchandise from Germany;[8] Mitsubishi Lithographic Presses, Inc. (MLP), a U.S. importer of subject merchandise from Japan;[9] and TKS (USA), a U.S. producer and importer of subject merchandise from Japan.[10]

Details for RFQs on LNPPs for delivery during 1991 or later were provided. A total of 106 RFQs were reported,[11] of which 79 resulted in sales contracts, 18 are still pending,[12] and 9 were discontinued by the purchaser (in 4 of these latter RFQs, purchasers reportedly bought used presses or bought additions instead).[13] Of the 79 RFQs that resulted in sales contracts, 17 occurred before 1991 but the products were not fully shipped until 1991 or later.[14] Only the 62 RFQs that resulted in sales contracts since January 1991, which totaled $981,762,000 in winning final-bid values, are presented in the data below. Details of final-bid information for each of the 62 RFQs that resulted in a sales contract since January 1991 are provided for press lines in table V-1 and for additions (including slip-ins) in table V-2. A summary by firm of final bids was used to group data; when competing final bids for an individual RFQ covered more than a single year, the latest year that a final bid was provided was used to group all such bids. Because bids in response to RFQs vary widely in terms of product descriptions, only the reported value of bids is presented. All final bids reported were on a delivered, installed basis. Since installation can amount to a significant portion of a contract (averaging around 10 percent), installed prices are the most appropriate for purposes of comparison.

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[5] ***.

[6] Bid-price transactions occurred when suppliers submitted price bids in response to RFQs of purchasers. Some bid transactions involved only a single supplier being sent an RFQ.

[7] MRD is used when referring to the firm's German LNPP production and MAN Roland is used when referring to the firm's asserted U.S. LNPP production.

[8] KBA-Motter is a subsidiary of and imports merchandise produced by Koenig & Bauer-Albert AG. KBA is used when referring to the firm's German LNPP production and KBA-Motter is used when referring to the firm's asserted U.S. LNPP production.

[9] MLP is a subsidiary of and imports merchandise produced by Mitsubishi Heavy Industries, Ltd.

[10] TKS (USA) is a subsidiary of and imports merchandise produced by Tokyo Kikai Seisakusho, Ltd. TKS is used when referring to the firm's Japanese LNPP production and TKS (USA) is used when referring to the firm's U.S. LNPP production.

[11] Some RFQs reported by the petitioner identified its competitors as German firms, whereas MAN Roland and KBA-Motter reported these firms as U.S. producers. In such instances, the disputed producer origins for bids won by MAN Roland or KBA-Motter are shown in this section as U.S. producers based on cost information reported by MAN Roland and KBA-Motter in their U.S.-producer questionnaire responses. Two exceptions to this approach were the ***.

[12] ***.

[13] ***.

[14] ***.

Table V-1
LNPPs: Final-bid price information by bidding firm and purchaser and market shares by bidding firm for contracts ***involving press lines***, by year, 1991-95

* * * * * * *

Table V-2
LNPPs: Final-bid price information by bidding firm and purchaser and market shares by bidding firm for contracts ***involving press additions***, by year, 1991-95

* * * * * * *

Of the 62 RFQs that resulted in contracts since January 1991, 25 involved press lines (table V-1) and 37 involved additions, including slip-ins (table V-2). Press lines accounted for 71.2 percent of the total winning final-bid values of all products reported; additions accounted for the remaining 28.8 percent. Inter-firm price competition (involving two or more competing suppliers) is significantly greater for press lines than for additions. Nineteen of the 25 RFQs that involved press lines reportedly were awarded on a competitive basis; the 19 RFQs accounted for 76.3 percent, or $533,586,000, of the total winning final-bid values for these 25 RFQs. On the other hand, only 7 of the 37 RFQs that involved additions were reportedly awarded on a competitive basis; the 7 RFQs accounted for 34.5 percent, or $97,426,000, of the total winning final-bid value for these 37 RFQs. The total of 26 RFQs that involved competition with two or more suppliers accounted for 64.3 percent, or $631,012,000, of the total winning final-bid values of all 62 RFQs reported.

Eighteen of the 26 RFQs with two or more competing suppliers involved firms which reported that they were domestic suppliers in competition with firms which reported they were subject importers and accounted for 52.0 percent, or $510,526,000, of the total winning final-bid values of all 62 RFQs reported.[15] The remaining 8 RFQs involved competition among firms which reported that they were U.S. producers and accounted for 12.3 percent, or $120,486,000, of the total winning final-bid values of all 62 RFQs reported.[16] Of the 18 RFQs involving competition between products of firms reporting to be domestic producers and those reporting to be subject importers, the lowest-bid price was awarded the contract in 7 RFQs, a higher-

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[15] Twelve of the 18 RFQs involving competition with the subject imports were for press lines and 6 were for additions. Of the 12 press-line RFQs, *** were awarded to ***, *** to ***, *** to ***, and *** to ***. Of the 6 add-on RFQs, *** were awarded to *** and *** were awarded to ***.

[16] *** of the *** RFQs involving competition only among vendors that reported they were domestic producers for press lines and *** was for an addition. Of the *** press line RFQs, *** was awarded to ***, *** were awarded to ***, and *** was awarded to ***. The *** add-on RFQ was awarded to ***. *** of the *** RFQs, or *** percent (by final-bid value) of such RFQs, were awarded to vendors that reported they were U.S. producers offering the lowest price. The other *** RFQs, or *** percent of such RFQs, were awarded to vendors that reported they were U.S. producers that did *not* offer the lowest price.

bid price was awarded the contract in another 9 RFQs, and insufficient information was reported in 2 RFQs.[17] Most of the 18 RFQs that involved competition between products from firms reporting to be domestic producers and those reporting to be subject importers are discussed in detail in the *Lost Revenue and Lost Sales* section of the report. In addition, the *Lost Revenue and Lost Sales* section includes 7 purchases where all producers reported that they were domestic producers and that they bid product which would be domestically produced. Details of the other RFQs are discussed at the end of this section. Summary data for the RFQs shown in tables V-1 and V-2 are discussed below.

In the 7 bids awarded to the lowest-price bidder involving competition between the firms reporting that they bid domestic product and those bidding subject imported products, the subject imports were awarded *** bids totaling $*** or *** percent of the total value of all 62 RFQs reported;[18] these *** winning bids awarded to the subject importers undersold bidding U.S. producers by margins ranging from *** percent to *** percent, or by an average of *** percent.[19] *** won the other *** lowest-price bid awards, which totaled $*** or *** percent of the total value of all 62 RFQs reported;[20] *** winning final-bid prices in these *** transactions averaged about *** percent below prices of the competing subject imports.

In the 9 awards involving competition between the firms reporting that they bid domestic product and those bidding subject imported products where the lowest price did not win, the subject imports were awarded *** bids totaling $*** or *** percent of the total value of all 62 RFQs reported;[21] these *** winning bids awarded to the subject importers oversold the lowest-priced bidding firm which reported being a U.S. producer by margins ranging from *** percent to *** percent, or by an average of *** percent. RGS won the other *** bid awards, which totaled $*** or *** percent of the total value of all 62 RFQs reported;[22] *** winning final-bid prices in *** of these *** transactions averaged *** percent above prices of the lowest-priced competing subject importers. In the other transaction won by ***, its final bid price was *** percent above that of the other competing firm which reported it was a U.S. producer but below the price of the single competing subject foreign producer, by a margin of *** percent.

Thirty-six of the 62 RFQs reported in tables V-1 and V-2 reportedly resulted in non-competitive contracts and represented 35.7 percent ($350,750,000) of the total winning final-bid value of the reported 62 RFQs. Of the 36 non-competitive sales, *** contracts representing *** percent of the final-bid value of such sales were awarded to ***, while *** was awarded *** non-competitive contracts representing *** percent of the final-bid value of such sales, *** was awarded *** contracts representing *** percent, and *** sale each was awarded to *** representing *** percent and *** representing *** percent. The point that price, though important, is not always the deciding factor is also indicated by the fact that in at least 13 of the 26

[17] Both sales where incomplete data were available involved additions. In one purchase, ***. In the other purchase, ***.

[18] The following purchasers awarded these *** bids, of which the first *** involved press lines and last *** involved additions: ***.

[19] Care should be taken in comparing competing bid prices since physical differences in the products of competing firms, changes in purchaser specifications during the bid process, nonprice considerations, and different dates of the bids along the time spectrum of the bidding process, make bid-price comparisons difficult to evaluate.

[20] The following purchasers awarded these *** bids, all of which involved press lines: ***.

[21] The following purchasers awarded these *** bids, of which the first *** involved press lines and the last *** involved additions: ***.

[22] The following purchasers awarded these *** bids, of which the first *** involved press lines and the last *** involved additions: ***.

competitive sales,[23] the lowest bidder was not awarded the contract. It should be noted, however, that four purchasers cited by *** in its questionnaire response withdrew their RFQs for new presses and bought used presses or additions instead because the used presses were lower priced.

The aggregate final-bid price data presented in tables V-1 and V-2 illustrate the reported fall-off in sales experienced by this industry during 1991-92 compared to 1990.[24] Of the *** sales noted above that were contracted for prior to 1991 for delivery in 1991 or later, *** sales totaling approximately $*** (based on final-bid prices) were contracted for during 1990. Hence, the market for LNPPs experienced a decline in sales volume of about *** percent ($*** decline) from 1990 to 1991. The market has turned up from the low in 1991, but has remained below the 1990 value.[25] Respondents have argued that 1991 marked the end of a surge in sales that began in 1989 owing to the success of new technology introduced by RGS (i.e., the four-high tower design) and a desire for color printing. Further, respondents argue that the recent decline in the share of total sales captured by RGS is simply a return to the market structure that prevailed prior to 1989. In effect, respondents argue that RGS' competitors are now beginning to recoup the advantage won by RGS' introduction of the tower technology.[26]

Transactions Investigated by Commerce

In making its affirmative final LTFV determinations, Commerce investigated 5 sales of MRD,[27] 2 sales of MHI (MLP), and 5 sales of TKS. Final bid information reported by U.S. producers, importers, and purchasers in response to questionnaires of the U.S. International Trade Commission for the 10 transactions involving the subject imports that Commerce used in its margin calculations are shown, with other transactions, in tables V-1 and V-2. The winning final-bid values of these 10 transactions totaled $*** or *** percent of the total winning final-bid value of all 62 RFQs reported to the Commission that resulted in contracts since 1991. These 10 transactions are discussed briefly below by foreign producer.

MRD

Of the 4 transactions investigated and used by Commerce that involved MRD, 2 involved *** purchased by the Democrat & Chronicle in *** and the Wilkes-Barre Leader in ***, and 2 involved *** purchased by the Fargo Forum and Global Press Sales, both in ***.

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[23] In 2 RFQs that reportedly involved competing suppliers, only the winning supplier reported a final bid.

[24] Although the data showed the reported fall-off in sales of press lines and in combined sales of press lines and additions, sales (measured on a value basis) of additions bottomed in 1991 but recovered in 1992. Such year-to-year changes, however, may be difficult to interpret. Substantial variation among purchasers in the time between initial efforts to buy LNPPs and actual contracts naturally give rise to sometimes significant variations from year to year in the total value of contracts awarded.

[25] The total value of reported pending contracts ranges from approximately $368,000,000 to $431,000,000, based on initial bids of the competing firms. Although these amounts are substantial, it is difficult to determine in which year or years, if ever, these pending contracts will result in sales.

[26] See joint postconference brief submitted by Mitsubishi Heavy Industries, Ltd., and other respondents, at pp. 18-21.

[27] One of these 5 transactions involved ***. Final bids for this RFQ were reported in U.S. producer questionnaires of the U.S. International Trade Commission by ***.

Democrat & Chronicle ***--Final bids for the Democrat & Chronicle RFQ were reported ***.

Wilkes-Barre Leader ***--Final bids for the Wilkes-Barre Leader RFQ were reported ***.

Fargo Forum ***--A final bid for the Fargo Forum RFQ was reported ***.

Global Press Sales ***--A final bid for the Global Press Sales RFQ was reported ***.

MLP

The 2 transactions investigated by Commerce that involved MLP were for *** purchased by the Eugene Register Guard in *** and the Winston-Salem Journal in ***.

Eugene Register Guard ***--Final bids for the Eugene Register Guard RFQ were reported ***.

Winston-Salem Journal ***--Final bids for the Winston-Salem Journal RFQ were reported ***.

TKS

The 5 transactions investigated by Commerce that involved TKS were additions purchased by the Dallas Morning News in ***, ***, and ***; the Dow Jones & Co. in ***; and the Spokane Spokesman Review in ***.

Dallas Morning News ***--The final bid for the Dallas Morning News *** RFQ was reported ***. The final bid for the Dallas Morning News *** RFQ was reported ***. The final bid for the Dallas Morning News *** RFQ was reported ***.

Dow Jones & Co. ***--Final bids for the Dow Jones & Co. RFQ were reported ***.

Spokane Spokesman Review ***--Final bids for the Spokane Spokesman Review RFQ were reported ***.

Non-Competitive Purchases

The section below discusses only those transactions in tables V-1 and V-2 that are not discussed in detail in the *Lost Revenue and Lost Sales* section. Such transactions involve purchases that did not involve competing bids or involved competition where no lost sales or lost revenue was alleged.

The information on each of the sales below mainly comes from purchaser questionnaire responses and telephone conversations with the purchasers. Purchasers and producers sometimes report different bid dates and different prices. This reflects the complex bidding process.[28] Initial budget bids[29] may not meet all the purchaser's specifications. Initially, purchasers may not know in detail what equipment is available and what the benefit is from all the possible options available. As purchasers discuss their needs and the

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[28] ***.

[29] Budget bids are the earliest bids for press lines or additions. They are used by the purchaser to determine the budget for the purchase and if the purchase will go forward.

technology available with sellers, the specifications for equipment may change. At the beginning of the process, different producers may propose very different systems.

A purchaser may initially give out an RFQ for one type of project but decide the price is too high and reconfigure the purchase, or decide it wants additional features, thereby increasing the price. When these changes occur, the original bids may be seen as no longer applicable by the purchaser, some manufacturers may fall out of the bidding, and a project may be awarded on a non-competitive basis. In addition, vendors may be rejected because the purchasers want to match the new equipment with what they already have installed, because the technology is old or untested, or because the press being offered is too small for their needs. This may result in disagreements between purchasers and sellers as to whether the bids were competitive or not. This section includes purchases involving only sales that both the seller and the purchaser agree are not competitive. A number of sales listed in the *Lost Revenue* section were reported to be non-competitive by the purchaser and ***.

Baltimore Sun (Maryland)--***.

Lakeland Ledger (Florida)--***.

The New York Times--***.[30] [31] [32]

The Seattle Times (Washington)--***.

Louisville Courier Journal (Gannett) (Kentucky - 1991 purchase)--***.

Decatur Herald and Review (Illinois) and the Racine Journal Times (Wisconsin)--***.[33] [34]

Jackson Clarion Ledger (Gannett) (Mississippi)--***.

Boston Globe (Massachusetts)--***.

Greensburg Tribune Review (Pennsylvania)--***.

The News-Journal, Wilmington (Delaware)--***.[35] [36]

Arizona Republic and Gazette, Phoenix (Arizona)--***.

Fort Lauderdale Sun-Sentinel (Florida)--***.

Las Vegas Review Journal (Nevada)--***.

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[30] ***.

[31] ***.

[32] ***.

[33] ***.

[34] ***.

[35] ***.

[36] ***.

Paddock Publishing, Arlington Heights Daily Herald (Illinois)--***.

Louisville Courier Journal (Gannett) (Kentucky - 1995 purchase)--***.

Purchases with Competition

In these purchases, there was competition between producers which report they are bidding domestic production and importers (some of which are subject importers), however, there was no allegation of lost sales or lost revenue due to competition from dumped imports. Sales where the producers allege that they are domestic (or that they were bidding on domestically produced equipment) but where RGS alleges lost sales or lost revenue are listed in the *Lost Sales and Lost Revenue* section.

El Paso Times (Gannett) (New Mexico)--***.

Tulsa World, Tulsa (Oklahoma)--***.

Greensburg Tribune Review (Pennsylvania)--***.[37] [38]

LOST REVENUE AND LOST SALES[39]

The staff investigated the petitioner's reported allegations of lost revenue and lost sales. In the following discussion of individual transactions, RGS' assertions as detailed in its questionnaire responses are summarized, followed by a summary of purchaser comments reported in their questionnaire responses or discussed in telephone conversations with commission staff.[40]

Lost Revenue Details

The bidding details of 15 sales occurring during between January 1991 and December 1995 asserted by petitioner to have resulted in lost revenues due to competition from subject imports are reported in tables V-3 and V-4. These tables include lost revenue allegations where RGS reports lost revenue but the competitors reported that they were bidding only domestically produced goods. ***.

Table V-3

LNPPs (press lines): Lost revenue allegations reported by RGS, initial and final bid prices for RGS, and reductions in RGS' bids for all sales occurring between January 1991 and December 1995

* * * * * * *

[37] ***.

[38] ***.

[39] RGS was the only U.S. producer alleging lost sales and lost revenue. U.S. producers MAN Roland, KBA-Motter, TKS (USA), and Heidelberg Harris reported in their questionnaire responses that they have not suffered any lost revenue or lost sales due to imports of the subject merchandise.

[40] As reported above, it is not uncommon for bidding firms to submit initial bids that are somewhat high. This leaves them room to negotiate, based on the degree of competition in the bid process. It also assures the supplier does not "leave money on the table" where competition is not keen. Because of such bid behavior, it may be difficult to evaluate allegations of lost revenue.

Table V-4
LNPPs (additions): Lost revenue allegations reported by RGS, initial and final bid prices for RGS, and reductions in RGS' bids for all sales occurring between January 1991 and December 1995

* * * * * * *

The Cleveland Plain Dealer (Ohio)--***.

The Everett Herald (Washington)--***.[41] [42]

Santa Barbara News Press (California)--***.[43] [44]

San Juan, El Nuevo Dia (Puerto Rico)--***.

New York Daily News--***.

The Miami Herald (Knight Ridder) (Florida)--***.

Altoona Mirror (Pennsylvania)--***.

The Denver Post (Colorado - 1991 purchase)--***.

The Greenville News (Gannett) (South Carolina)--***.

The Modesto Bee (California)--***.[45] [46]

The Chicago Tribune (Illinois)--***.[47] [48] [49]

Dow Jones, New York--***.

The Sacramento Bee (California)--***.

The St. Joseph News-Press (Missouri)--***.

The Denver Post (Colorado - 1994 purchase)--***.

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[41] ***.

[42] ***.

[43] ***.

[44] ***.

[45] ***.

[46] ***.

[47] ***.

[48] ***.

[49] ***.

Lost Sales Details

The bidding details of 15 sales occurring during between January 1991 and December 1995 asserted by petitioner to have resulted in lost sales due to competition from subject imports are reported in table V-5. This table includes lost sales allegations where the competing suppliers reported they were selling domestically produced equipment. As shown in table V-5, the alleged lost sales totaled $***.

Table V-5
LNPPs: Lost sale allegations reported by RGS, final bid prices as reported by RGS, and percent under/(over) bidding by competing firms vis-a-vis RGS for press lines and additions

* * * * * * *

<u>Eugene Register Guard (Oregon)</u>--***.[50] [51] [52]

***.[53] [54] [55] [56] [57]

<u>South Bend Tribune (Indiana)</u>--***.[58] [59] [60] [61] [62]

<u>Winston-Salem Journal (North Carolina)</u>--***.[63] [64]

<u>Rochester Democrat and Chronicle (Gannett) (New York)</u>--***.[65]

* * * * * * *

<u>Wilkes-Barre Leader (Pennsylvania)</u>--***.

---

[50] ***.

[51] ***.

[52] ***.

[53] ***.

[54] ***.

[55] ***.

[56] ***.

[57] ***.

[58] ***.

[59] ***.

[60] ***.

[61] ***.

[62] ***.

[63] ***.

[64] ***.

[65] ***.

The Washington Post (DC)--***.[66] [67] Detailed staements on the bidding process by both RGS and the Post are presented in appendix G.

Dallas Morning News (Texas 1994 sale)--***.

Dow Jones, New York--***.

Spokane Spokesman Review (Washington)--***.[68] [69]

Tri-City Herald, (Kennewick, Washington)--***.

Observer Reporter, Washington (Pennsylvania)--***.

Fargo Forum (North Dakota)--***.[70] [71] [72]

Charlotte Observer (Knight Ridder) (North Carolina)--***.[73] [74]

Raleigh News and Observer (North Carolina)--***.[75] [76] [77]

Beacon Journal, Akron (Knight Ridder) (Ohio)--***.[78] [79] [80]

* * * * * * *

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66 ***.

67 ***.

68 ***.

69 ***.

70 ***.

71 ***.

72 ***.

73 ***.

74 ***.

75 ***.

76 ***.

77 ***.

78 ***.

79 ***.

80 ***.

PART VI: FINANCIAL EXPERIENCE OF U.S. PRODUCERS

INTRODUCTION

Five producers--Heidelberg Harris, KBA-Motter, MAN Roland, RGS[1] and TKS (USA)--furnished financial data on their U.S. operations producing LNPPs and components thereof. These producers accounted for all known U.S. production of LNPPs and their components in 1995. RGS' fiscal year ends September 30, KBA-Motter's ends December 31, MAN Roland's ends June 30, and the year-end for the two other producers is March 31.

Revenues and costs associated with long-term press projects can be recognized under two GAAP methods--the completed-contract method and the percentage-of-completion method.[2] Under the completed-contract method, revenues and costs are only recognized in the period in which the project is completed or shipped. This is in contrast to the percentage-of-completion method, where revenues and costs are periodically recognized on the basis of the estimated percentage of completion of the project. It should be noted that the estimate of the costs and/or net income may not necessarily correspond to the final costs and/or net income determined when the press is finally completed.

All producers except *** provided data under the completed-contract method. RGS reported its data using the percentage-of-completion method, and estimated progress toward completion using the units-of-delivery method. The units-of-delivery method works as follows: The contracts RGS enters into to deliver LNPPs often provide for the delivery of more than one press and/or additions; as each individual press, addition, or major component is completed and delivered, RGS recognizes the revenues and costs associated with it.

OPERATIONS ON LNPPs

Profit-and-loss data on the producers' sales of LNPPs are shown in table VI-1. 1991, which was a *** net sales and all levels of profitability ***.

Table VI-1
Income-and-loss experience of U.S. producers on their operations producing LNPPs, fiscal years 1991-95, Jan.-Mar. 1995, and Jan.-Mar. 1996

* * * * * * *

Selected revenue and cost information on a company-by-company basis is shown in table VI-2. RGS is ***.

---

[1] RGS' producer's questionnaire data were verified. Minor changes made due to the verification are reflected in this report.

[2] 1994 Miller GAAP Guide by Jan R. Williams, p. 29.03.

Table VI-2
Selected financial data of U.S. producers on their operations producing LNPPs, fiscal years 1991-95, Jan.-Mar. 1995, and Jan.-Mar. 1996

*   *   *   *   *   *   *

Because of the limited number of systems produced and sold each year and the large variation in product specifications from contract to contract, per-unit and variance analysis are both of limited relevance in this particular case and are not being presented.

In view of RGS' ***, we are including a discussion on the operations of the company's Graphic Systems segment. RGS' Graphic Systems segment consists of operations on high-speed printing presses (including LNPPs) and related graphic arts equipment. As mentioned in a previous section of this report, RGS has agreed to sell its Graphic Systems segment for approximately $600 million, with the sale expected to close in the summer of 1996.[3]

A summary of Graphic Systems segment sales and operating income for 1990 to 1995 is shown in the following tabulation (in millions of dollars, except as noted):[4]

Year[5]	Net sales	Operating earnings[6]	Operating earnings as a share of net sales
			(Percent)
1990	967	118.6	12.3
1991	962	121.0	12.6
1992	688	21.5	3.1
1993	632	14.8	2.3
1994	655	31.2	4.8
1995	697	66.0	9.5

The following discussion on Graphic Systems' operations is from RGS' Annual Reports.

[3] Footnote 2 to RGS' financial statements in its form 10-Q for the quarter ending Mar. 31, 1996. According to information in the 10-Q, the net proceeds RGS will realize from the sale will exceed the net assets of the business.

[4] 1994 and 1995 Annual Report of Rockwell International, p. 23 and p. 29, respectively..

[5] Fiscal year ended Sept. 30.

[6] Earnings of the Graphic Systems segment have been adjusted to include interest income related to customer financing receivables as follows (in millions): 1990, $19.1; 1991, $15.8; 1992, $16.8; 1993, $18.5; and 1994, $11.0, as per 1994 Annual Report, p. 23. Before this adjustment, operating earnings were reported as follows (in millions): 1990, $99.5; 1991, $105.2; 1992, $4.7; and 1993, $(3.7), as per 1992 and 1993 Annual Reports, p. 6.

1991 Annual Report

"Several new products were introduced in an aggressive development program to strengthen our leadership position in the global market for web offset presses.

Expertise in the design and development of vertical stacked press arrangements--applied to the Goss Colorliner, the most successful new product in the history of this business--was extended to other new presses.

MetroColor equipment is available as slip-in units, press additions, or complete new presses.

Higher 1991 earnings from the newspaper press business were offset by lower earnings resulting from the continuing severely depressed commercial press market."[7]

1992 Annual Report

"Graphics earnings declined 96 percent and sales dropped 28 percent on a dramatic decline in the newspaper printing press market and continued severe depression in the market for commercial printing presses. These market declines were worldwide. Major restructuring actions will improve Graphics profitability in 1993."[8]

1993 Annual Report

"Faced with a second year of continued worldwide recession in newspaper and commercial web offset printing press markets we completed a program to bring capacity in line with market realities, while also maintaining or increasing market penetration and building backlog. We maintained our major share of the large newspaper press market in the Americas and strengthened our share in Europe. U.S. sales of commercial and small newspaper presses improved as did our share of the small newspaper press market in Europe.

Graphics had a small loss for the year due to a $140 million, or 26 percent, decrease in newspaper printing press sales. It is expected that the improvement in Graphics sales and earnings which began in 1993's fourth quarter will continue in 1994."[9]

1994 Annual Report

"We are the world's leading supplier of web offset printing presses for newspapers and the commercial printing of advertising inserts, catalogs, magazines, and books.

Some of these markets worldwide are beginning to demonstrate renewed strength following their worst recession in 50 years. In the United States increased expenditures for print advertising, demand for more

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[7] RGS' 1991 Annual Report, pp. 14 and 24.

[8] RGS' 1992 Annual Report, p. 2.

[9] RGS' 1993 Annual Report, pp. 12 and 17.

color in newspapers, and the replacement cycle for printing equipment have contributed to an improved backlog of newspaper and commercial orders. The backlog of our U.S. factory orders for large newspaper presses at year-end reached the highest level since 1990. These factors, coupled with emphasis on greater productivity, resulted in improved financial performance by RGS Graphic Systems.

Graphic Systems - Earnings in 1994 more than doubled from 1993 due to improved profitability in all its product lines. Over the past several years this business has substantially lowered its cost structure and downsized its manufacturing capacity to reflect market realities."[10]

1995 Annual Report

"Graphic Systems - Earnings more than doubled 1994 earnings due to increased sales, particularly in the large newspaper printing press business, and continuing cost containment and productivity programs."[11]

Table VI-3 and figure VI-1 present the producers' revenue and cost data for domestic LNPP contracts based on the year each contract was entered into. ***. Table VI-4 presents the producers' revenue and cost data for export LNPP contracts based on the year each contract was entered into. ***.

Table VI-3
U.S. producers' revenues and costs for domestic LNPP contracts, by contract years and firms, fiscal years 1991-95

* * * * * * *

Figure VI-1
LNPPs: U.S. producers' revenues, cost of goods sold, gross profit or loss, and net income or loss (in $1,000) for their domestic contracts, by contract years, total and by firms, calendar years 1991-95

* * * * * * *

Table VI-4
U.S. producers' revenues and costs for export LNPP contracts, by contract years and firms, fiscal years 1991-95

* * * * * * *

[10] RGS' 1994 Annual Report, pp. 19 and 24.

[11] RGS' 1995 Annual Report, p. 30.

The producers' revenue and cost data for domestic and export LNPP contracts on a contract-by-contract basis are shown in tables VI-5 through VI-9 as follows:

Table	Content
VI-5	RGS' revenue and cost information on a contract-by-contract basis
VI-6	Heidelberg Harris' revenue and cost information on a contract-by-contract basis
VI-7	KBA-Motter's revenue and cost information on a contract-by-contract basis
VI-8	MAN Roland's revenue and cost information on a contract-by-contract basis
VI-9	TKS (USA)'s revenue and cost information on a contract-by-contract basis

The tables contain detailed information on the individual contracts that form the basis of the data in tables VI-3 and VI-4.

Table VI-5
RGS' revenue and cost information on a contract-by-contract basis on its operations producing LNPPs, calendar years 1987-present

*   *   *   *   *   *   *

Table VI-6
Heidelberg Harris' revenue and cost information on a contract-by-contract basis on its operations producing LNPPs, calendar years 1987-present

*   *   *   *   *   *   *

Table VI-7
KBA-Motter's revenue and cost information on a contract-by-contract basis on its operations producing LNPPs, calendar years 1987-present

*   *   *   *   *   *   *

Table VI-8
MAN Roland's revenue and cost information on a contract-by-contract basis on its operations producing LNPPs, calendar years 1987-present

*   *   *   *   *   *   *

Table VI-9
TKS (USA)'s revenue and cost information on a contract-by-contract basis on its operations producing LNPPs, calendar years 1987-present

* * * * * * *

In order to compute domestic value added to product, the Commission requested domestic and foreign content costs from each producer for their last four LNPP sales. These data are presented in appendix H.

OPERATIONS ON ELEMENTS OF LNPPs

Producers were asked to supply revenue and cost information on their operations on elements of LNPPs. ***.

PROJECTED REVENUES AND COSTS ON LNPP OPERATIONS, 1996-97

RGS, KBA Motter, and TKS (USA) submitted projected revenue and cost data on presses in-process, firm LNPP contracts already entered into, and anticipated LNPP contracts for 1966 and 1997. These projections are shown in table VI-10. ***.

Table VI-10
U.S. producers' projected revenues and costs on their operations producing LNPPs, fiscal years 1996-97

* * * * * * *

INVESTMENT IN PRODUCTIVE FACILITIES

The value of property, plant, and equipment for the producers is shown in table VI-11. Since the use of these assets in the production of LNPPs was based on the production of customer orders each year, their values are irregular.

Table VI-11
Value of assets of U.S. producers used in their operations producing LNPPs, fiscal years 1991-95, Jan.-Mar. 1995, and Jan.-Mar. 1996

* * * * * * *

CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

Capital expenditures and research and development (R&D) expenses on LNPP operations, by firms, are presented in table VI-12. ***.

Table VI-12
Capital expenditures and research and development expenditures of U.S. producers in their operations producing LNPPs, fiscal years 1991-95, Jan.-Mar. 1995, and Jan.-Mar. 1996

* * * * * * *

CAPITAL AND INVESTMENT

The Commission requested U.S. producers to describe and explain the actual and potential negative effects of imports of LNPPs and their components, whether assembled or unassembled, from Germany and Japan on their return on investment or their growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or improved version of the product), or their scale of capital investments. The producers' responses are presented in appendix I.

PART VII: THREAT CONSIDERATIONS

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors[1]--

> (I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,
>
> (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
>
> (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
>
> (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,
>
> (V) inventories of the subject merchandise,
>
> (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,
>
> (VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or

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[1] Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "The Commission shall consider [these factors] . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition."

735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

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

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).[2]

Subsidies have not been alleged in these investigations; information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

FOREIGN PRODUCERS' OPERATIONS

The Industry in Germany

Data were received from Koenig & Bauer-Albert AG (KBA) and MAN Roland Druckmaschinen AG (MRD) in Germany and are presented in table VII-1.

Table VII-1
LNPPs: Reported data for producers of LNPPs in Germany, 1991-95, Jan.-Mar. 1995, Jan.-Mar. 1996, and projected 1996 and 1997

* * * * * * *

The Industry in Japan

Data were received from Mitsubishi Heavy Industries, Ltd. (MHI) and Tokyo Kikai Seisakusho, Ltd. (TKS) in Japan and are presented in table VII-2.

---

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

Table VII-2
LNPPs: Reported data for producers of LNPPs in Japan, 1991-95, Jan.-Mar. 1995, Jan.-Mar. 1996, and projected 1996 and 1997

* * * * * * *

Combined data

Data for Germany and Japan combined are presented in table IV-3.

Table VII-3
LNPPs: Reported data for producers of LNPPs in Germany and Japan, 1991-95, Jan.-Mar. 1995, Jan.-Mar. 1996, and projected 1996 and 1997

* * * * * * *

U.S. IMPORTERS' INVENTORIES

As previously noted in the section on U.S. producers' inventories, LNPPs and additions are shipped to newspaper customers as produced, and finished presses are not held in inventory.

THE QUESTION OF MARKET TRENDS

Counsel for petitioner has argued that "increased imports, coupled with steadily expanding bidding activity," are taking place "in a stagnant domestic market for presses."[3] Counsel for respondents have argued that there is a "huge build-up of deferred business" caused "primarily by the impending sale of Goss by Rockwell."[4] During the period July 26 through July 31, 1996, Commission staff conducted a telephone survey of prospective LNPP purchasers as identified in table VII-4, seeking information relating to the status of their pending purchases.[5] Information received in response to that survey is presented below.

Table VII-4
LNPPs: Initial-bid figures for sales that are pending, as of August 1, 1996

* * * * * * *

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[3] Posthearing brief of Wiley, Rein & Fielding, p. 14.

[4] Respondents' joint prehearing brief, pp. 58-59, and posthearing brief of Steptoe & Johnson, p. 8.

[5] The firms in the listing were identified in questionnaire responses, as well as in respondents' joint prehearing brief, pp. 58 and 59, and exh. 13; and the posthearing brief of Wiley, Rein & Fielding, annex C.1.

***

*** reported that the newspaper was not currently in the market for new equipment, that it had no formal plans to purchase presses, and that they are always "looking around."[6]

***[7]

***.

***[8]

***.

***[9]

***.

***[10]

***

***[11]

***.[12] ***.

***[13]

***.

***[14]

***.

[6] July 26, 1996, telephone interview with staff investigator.

[7] July 29 and Aug. 2, 1996, telephone interviews with staff investigator.

[8] July 26, 1996, telephone interview with staff investigator.

[9] July 26, 1996, telephone interview with staff investigator.

[10] July 29, 1996, telephone interview with staff investigator.

[11] July 26, 1996, telephone interview with staff investigator.

[12] *** (July 26, 1996, telephone interview with staff investigator).

[13] July 26-30, 1996, telephone interviews with ***.

[14] July 29, 1996, response to written questions of ***'

***[15]

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[15] July 29, 1996, response to written questions, by ***.

[16] July 30, 1996, telephone interview with staff investigator.

[17] May 14, 1996, cover letter from ***.

[18] *** (July 30, 1996, telephone interview with staff investigator).

[19] July 31, 1996, telephone interview with staff investigator.

APPENDIX A

FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–736 and 737 (Preliminary)]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany and Japan

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)),[2] that there is a reasonable indication that an industry in the United States is materially injured [3] by reason of imports from

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

[2] These investigations are subject to the Uruguay Round Agreements Act amendments to the Tariff Act of 1930.

[3] Commissioner Rohr and Commissioner Newquist determine that there is a reasonable indication of threat of material injury.

Germany and Japan of large newspaper printing presses and components thereof, whether assembled or unassembled, provided for in subheadings 8443.11.10, 8443.11.50, 8443.21.00, 8443.30.00, 8443.40.00, 8443.60.00, 8443.90.50, 8471.91.40, 8471.91.80, 8524.21.30, 8524.90.20, 8524.90.30, 8524.90.40, 8537.10.30, 8537.10.60, and 8537.10.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 30, 1995, a petition was filed with the Commission and the Department of Commerce by Rockwell Graphic Systems, Inc., Westmont, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany and Japan.

Accordingly, effective June 30, 1995, the Commission instituted antidumping investigations Nos. 731–TA–736 and 737 (Preliminary). Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 10, 1995 (60 F.R. 35564). The conference was held in Washington, DC, on July 21, 1995, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 14, 1995. The views of the Commission are contained in USITC Publication 2916 (August 1995), entitled "Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan: Investigations Nos. 731–TA–736 and 737 (Preliminary)."

Issued: August 15, 1995.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 95–20901 Filed 8–22–95; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–736 and 737 (Final)]

Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of final antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping Investigations Nos. 731–TA–736 and 737 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Germany and Japan of large newspaper printing presses (LNPP) and components thereof, whether assembled or unassembled. Also included in these investigations are elements (also referred to as parts or subcomponents) of LNPP systems, additions, or components, which taken as a whole, constitute a subject LNPP system, addition, or component used to fulfill an LNPP contract. The subject imports are provided for in subheadings 8443.11.10, 8443.11.50, 8443.21.00, 8443.30.00, 8443.40.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the Harmonized Tariff Schedule of the United States (HTS). LNPP computerized control systems (including equipment and/or software) may enter under HTS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, 8524.51.30, 8524.52.20, 8524.53.20, 8524.91.00, 8524.99.00, and 8537.10.90. Excluded from these investigations are spare or replacement parts, as well as used LNPPs.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: February 28, 1996.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. 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. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of large newspaper printing presses and components thereof from Germany and Japan are being sold in the United States at less-than-fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on June 30, 1995, by Rockwell Graphic Systems, Inc., Westmont, IL.

Participation in the Investigations and Public Service List

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

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

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these final investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than 21 days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on July 3, 1996, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on July 17, 1996, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 10, 1996. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 12, 1996, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigations as possible any requests to present a portion of their hearing testimony *in camera*.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is July 11, 1996. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is July 23, 1996; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before July 23, 1996. On August 13, 1996, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 16, 1996, but such final comments must not contain new factual information, or comment on information disclosed prior to the filing of posthearing briefs, and must otherwise comply with section 207.29 of the Commission's rules. 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 sections 201.6, 207.3, and 207.7 of the Commission's rules.

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

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.20 of the Commission's rules.

Issued: March 7, 1996.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 96-5999 Filed 3-12-96; 8:45 am]
BILLING CODE 7020-02-P

[A-588-837]

Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: Bill Crow or Dennis McClure, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; Telephone: (202) 482-0116 or (202) 482-3530, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act ("URAA").

Final Determination

We determine that large newspaper printing presses and components thereof ("LNPPs") from Japan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act.

Case History

Since the preliminary determination on February 23, 1996 (60 FR 8029, March 1, 1995), the following events have occurred:

On February 26 and 27, 1996, the respondents, Mitsubishi Heavy Industries Ltd. ("MHI") and its U.S. affiliate Mitsubishi Lithographic Printing ("MLP"); Tokyo Kikai Seisakusho Ltd. ("TKS") and its U.S. affiliate TKS USA; and the petitioner, Rockwell Graphics Systems Inc. and its parent company, Rockwell International Corporation, requested disclosure of the Department's calculation methodologies used in the preliminary determination. On March 4, 1996, the petitioner alleged that the Department made two ministerial errors in its calculation with respect to constructed value ("CV") and further manufacturing costs. The Department determined that neither of the allegations constituted ministerial errors. (See Memorandum from the Team to Richard W. Moreland, March 11, 1996.)

On February 27, 1996, the Department issued supplemental sales questionnaire to MHI and TKS. On March 7, 1996, the respondents submitted their responses to the supplemental sales questionnaire. On March 5, 1996, the Department issued a supplemental cost questionnaire to TKS and on March 8, 1996, TKS submitted its response.

In March and April 1996, we conducted verification of the sales and cost questionnaire responses of the respondents in Japan and the United States.

On May 8, 1996, the Department received comments it solicited from interested parties in its preliminary determination regarding scope issues. On May 31, 1996, respondents submitted new sales and cost databases which incorporated factual corrections noted during verification.

The respondents and the petitioner submitted case briefs on June 3, 1996 and rebuttal briefs on June 10, 1996. The Department held a public hearing for this investigation on June 17, 1996. On June 19, 1996, MHI protested that certain elements of the petitioner's rebuttal brief contained new factual information. On June 20, 1996, the petitioner objected to MHI's complaint. On June 26, 1996, the Department returned the rebuttal brief to the petitioner, and notified the petitioner that the new material to which MHI had objected should be removed from the record of the investigation. The petitioner submitted a revised rebuttal brief on June 27, 1996.

Scope of Investigation

Note: The following scope language reflects certain modifications from the notice of the preliminary determination. As specified below, we have clarified the scope to include incomplete LNPP systems, additions and components. We have also clarified the scope to include "elements" (otherwise referred to as "parts" or "subcomponents") of a LNPP system, addition or component, which taken altogether constitute at least 50 percent of the cost of manufacture of the LNPP component of which they are a part. We have also

excluded from the definition of the five subject LNPP components any reference to specific subcomponents (i.e., the reference to a printing-unit cylinder in the definition of a LNPP printing unit). In addition, we have excluded the following Harmonized Tariff System of the United States ("HTSUS") subheadings from the scope: 8524.51.30, 8524.52.20, 8524.53.20, 8524.91.00, and 8524.99.00. See "Scope Comments" section of this notice and the July 15, 1996 Decision Memorandum to Barbara Stafford from The Team Re: Scope Issues in the Final Determinations.

Scope: The products covered by these investigations are large newspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper.

In addition to press systems, the scope of these investigations includes the five press system components. They are:

(1) A printing unit, which is any component that prints in monocolor, spot color and/or process (full) color;

(2) A reel tension paster ("RTP"), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) A folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) Conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) A computerized control system, which is any computer equipment and/or software *designed specifically* to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the HTSUS: the term "unassembled" means fully or partially unassembled or disassembled; and (2) the term "incomplete" means lacking one or more elements with which the LNPP is intended to be equipped in order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this investigation. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this investigation covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this investigation are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

We have included scope issues for this investigation and the concurrent investigation of LNPP from Germany in the *Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany ("LNPP from Germany")*. The issues are voluminous and the resolution of these issues affects both investigations equally, as reflected in the universal comment period in the public hearing on LNPP scope. We have therefore utilized the German FR Notice as the vehicle to publish the scope comments from all interested parties in both investigations.

Period of Investigation

The POI for MHI is July 1, 1991 through June 30, 1995, and July 1, 1992 through June 30, 1995 for TKS. See: *Preliminary Determination of Sales at LTFV: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 60 FR 8029 (March 1, 1995) (*"LNPPs from Japan Preliminary Determination"*).

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based normal value ("NV") on constructed value ("CV") because we determined that the particular market situation, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to-price comparisons. See: *Preliminary Determination: LNPPs from Japan.*

Fair Value Comparisons

To determine whether MHI's and TKS's sales of LNPPs to the United States were made at less than fair value, we compared Constructed Export Price ("CEP") to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(ii), we calculated transaction-specific CEPs (which in this case were synonymous with model-specific CEPs) for comparison to transaction-specific NVs.

Constructed Export Price ("CEP") and Further Manufacturing ("FM")

TKS

TKS reported its sales as CEP and CEP/FM sales. Because we have

classified installation expenses as further manufacturing, we have treated all TKS sales as CEP/FM sales. We calculated CEP, in accordance with subsections 772(b) and (d) of the Act, for (1) Those sales to the first unaffiliated purchaser that took place after importation by a seller affiliated with the producer/exporter, and (2) those sales involving further manufacturing in the United States.

We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions:

(1) We deducted those indirect selling expenses that were associated with economic activity in the United States, whether incurred in the United States or in Japan, and irrespective of where recorded. We revised the reported indirect selling expense ratio to include all Japanese indirect selling expenses in the numerator and allocated this amount over the total value of TKS sales to be applied to U.S. sales value, not transfer prices; TKS had previously excluded branch sales office expenses from the numerator and included some transfer prices in the denominator. We also calculated these indirect selling expenses in accordance with the methodology explained in the *DOC Position* to *Comment 1* of the "Common Issues" subsection of the "Interested Party Comments" section of the final notice of the companion investigation of LNPP from Germany.

(2) We recalculated TKS's reported indirect selling expenses incurred in the United States using the total expenses and total revenue for TKS USA during the fiscal years 1991 through 1995, in order to remove distortions in TKS USA's financial statements caused by auditors' modifications to revenue recognized during the POI. Our revision included additional selling expenses and excluded common G&A, as detailed in our July 15, 1996, calculation memorandum.

(3) We recalculated the U.S. insurance premiums expenses for both marine insurance and for U.S. inland insurance, increasing the amounts reported to match the acceptable loss/premium ratio established by Yasuda Fire and Marine Insurance in its official correspondence.

MHI

Although MHI reported its sales as EP sales, we reclassified all MHI sales as CEP/FM sales because MHI's affiliated U.S. sales agent acted as more than a processor of sales-related documentation and a communication link with the unaffiliated U.S. customers. The U.S. affiliate engaged in a broad range of activities including purchasing parts, warranty, technical services, and the coordination of installation, which we have classified as further manufacturing. We calculated CEP, in accordance with subsections 772 (b) and (d) of the Act, for these sales because they involved further manufacturing in the United States.

We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions:

(1) We treated post-sale warehousing in Japan as a movement charge and not as a direct selling expense;

(2) We deducted the unpaid portion of the total contract price from the gross price of the Guard sale as a discount. The proprietary details of this adjustment do not allow further elaboration; the July 15, 1996, MHI calculation memo records the methodology.

(3) We deducted those indirect selling expenses that were associated with economic activity in the United States, whether incurred in the United States or in Japan, and irrespective of where recorded. We also calculated these indirect selling expenses in accordance with the methodology explained in the *DOC Position* to *Comment 1* of the "Common Issues" subsection of the "Interested Party Comments" section of the final notice of the companion investigation of LNPP from Germany.

(4) We modified the calculation of MLP's reported indirect selling expenses to no longer include an allocation of common G&A expenses, since total G&A applicable to LNPP is accounted for in the calculation of further manufacturing costs.

(5) We have modified the calculation of MHI's indirect selling expenses incurred in the United States but recorded in Japan to remove the salary expenses for an MLP employee where those expenses were already accounted for in the calculation of the MLP indirect selling expenses.

(6) We excluded from the calculation of the Guard commission those additional revenues remitted to MLP by Sumitomo Corporation ("SC") from the total interest income earned while SC collected and held payment from Guard.

(7) We increased the amount of the spare parts adjustment to the Piedmont gross price in order to account for the value of materials supplied by MHI for the Piedmont sale in excess of the contracted value of spare parts.

Normal Value/Constructed Value

For the reasons outlined in the "Product Comparisons" section of this notice, we based NV on CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's materials and fabrication costs plus amounts for selling, general and administrative ("SG&A") expenses, U.S. packing costs. We based CV on the same methodology used in the preliminary determination, with the following exceptions:

TKS

(1) We adjusted TKS USA's SG&A and indirect overhead costs in accordance with the submitted reclassification of rent, workmen's compensation and employee insurance.

(2) We recalculated CEP profit to include packing, transportation and installation costs.

(3) We modified our calculation of TKS USA's further manufacturing G&A rate by excluding the inputs acquired from TKS.

MHI

(1) We recalculated MLP's G&A rate using the cost of goods sold ("CGS") incurred in the United States and applied that rate to further manufacturing costs for each U.S. sale.

(2) We recalculated home market profit to reflect the deduction of freight costs.

(3) We recalculated CEP profit to reflect the deduction of home market packing costs.

(4) We reallocated MHI's R&D costs to all LNPP contracts based on the relative manufacturing costs incurred for each contract.

(5) We adjusted NV to include the loss on sale of obsolete LNPP inventory.

Price to CV Comparisons

For CEP to CV comparisons, we deducted from CV the weighted-average home market direct selling expenses, pursuant to section 773(a)(8) of the Act.

Verification

As provided in section 782(i) of the Act, we conducted verification of the information submitted by the respondent. We used standard verification procedures, including examination of relevant accounting and sales records and original source documents provided by the respondent.

Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward

markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. In this case, although MHI reported that forward currency exchange contracts applied to certain U.S. sales, we verified that these contracts were linked to certain payments, not to the particular dates of sale of the contracts (and thereby to calculation exchange rates) in question. See May 14, 1996, MHI Verification Report at 9. Therefore, for the purpose of the final determination, we made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." For this final determination, we have determined that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined that a fluctuation existed, we substituted the benchmark for the daily rate. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see *Policy Bulletin 96-1: Currency Conversions*, 61 FR 9434, March 8, 1996.) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the yen did not undergo a sustained movement of appreciation against the U.S. dollar affecting any date of sale during the POI.

Interested Party Comments

Common Issues in the German and Japanese LNPP Investigations

We have included all issues which are common to both this investigation and the concurrent investigation of *LNPP from Germany*, and which were commented on by parties in both proceedings, in the *Final Determination of Sales at LTFV: LNPP from Germany*, which is being published concurrently with this notice.

Common Issues for LNPP From Japan

Sales Issue

Comment 1 CEP Offset: As noted in the *Common Issues* section of the German notice, MHI argues that its sales should be treated as EP sales and not as CEP sales. Further, MHI argues that if a CEP analysis is applied, then the Department must consider a CEP offset to MHI's NV. MHI claims that the Department will not look to the initial sales price for CEP sales, but will instead look to the price as calculated after CEP adjustments are made to make level-of-trade ("LOT") comparisons. MHI explains the statute recognizes that, in certain cases, while sales may have been made at different levels of trade, the data may not exist to make an LOT adjustment. According to MHI, comparing CEP to an unadjusted NV would not result in the "fair comparison" mandated by the statute. Thus, MHI states that in order to make a fair comparison, the statute allows for a deduction of indirect selling expenses from the NV by an amount not more than the amount of U.S. indirect selling expenses.

MHI states that, if the Department continues to use CEP analysis for purposes of the final determination, an LOT adjustment would be warranted because of the activities that would be removed from the CEP. According to MHI's interpretations, because a CEP analysis implies that MLP's economic activities are significant, removing the expenses incurred for such activities would likely change the level of trade at which CEP is calculated. Furthermore, MHI maintains that a CEP analysis would remove from U.S. price all of MHI's U.S. economic activity as well, further necessitating an LOT adjustment, since the starting price for MHI's U.S. sales and home market sales is at the same level of trade, *i.e.*, direct to the end-user. MHI maintains that since there is no data on the record to make an actual LOT adjustment, the Department should make a CEP offset adjustment to NV instead.

TKS maintains that the Department should grant to it a CEP offset pursuant to section 773(a)(7)(B) of the Act because: (1) TKS's home market sales are all at a single level of trade which is identical to that of TKS's unadjusted CEP sales; (2) the adjustments made to CEP place it at a different level of trade than its home market sales; and (3) no level of trade adjustment can be quantified. TKS claims that section 773(a)(7)(B) of the Act, which authorizes application of the CEP offset, applies to all of TKS's CV-to-CEP sales comparisons used in this investigation. TKS maintains that TKS's home market LNPP sales involve only one type of customer—newspaper publishing companies, and only one channel of distribution—direct sales to those publishing companies. According to TKS, the sales and distribution process for all these sales is straightforward, as TKS's own specialized sales force initiates and maintains customer relations.

According to TKS, all of its U.S. sales involve a single type of customer—newspaper publishers, and a single channel of distribution—customer-direct sales. TKS states that it is undisputed that TKS's U.S. sales are CEP sales due to the numerous critical activities performed by its subsidiary, TKS USA. According to TKS, it is the CEP adjusted for the various expenses related to such activities which determines the level of trade of a CEP sale.

TKS states that after the adjustments mandated by section 772(d) are completed, the level of trade of its CEP sales is nearer to the factory gate than the level of TKS's customer-direct home market sales, because the Act requires the deduction of all the direct and indirect selling expenses included in the CEP sale. Maintaining that the level of trade for the NV calculation is a CV that includes both direct and indirect selling expenses, TKS contends that its home market sales, in comparison with adjusted CEP sales, are at a more remote stage of distribution. Thus, TKS argues, it is entitled to a CEP offset.

In complete disagreement with the respondents, the petitioner maintains that no CEP offset is warranted in this investigation. It argues that MHI and TKS have failed to establish that NV and CEP were at different levels of trade. The petitioner points out that MHI had maintained up until verification that no LOT adjustment was required, and that TKS had only asserted in a footnote to one of its responses that it was entitled to a CEP offset. Given that neither respondent substantiated the necessity for an LOT adjustment which underpins a CEP offset, the petitioner maintains that no CEP offset is warranted. The petitioner's primary objection to MHI's contention that it is entitled to a CEP offset simply because the Department made CEP adjustments as required by the statute, rests on the observation that the Department appears to have flatly rejected such a position in its proposed antidumping regulations:

> It would not be appropriate to assume that the CEP is at a different level of trade than the prices used as the basis of normal value or that any such differences in the level of trade affect price comparability.

See Antidumping Duties; Countervailing Duties (Notice of Proposed Rulemaking and Request for Public Comments), 61 FR 7308, 7348 (February 27, 1996). Although MHI has three different channels of distribution in the home market, the Department cannot ascertain which selling functions are performed by MHI and which are provided by trading companies or other entities for each type of home market sale. The petitioner argues that the lack of a factual foundation for evaluating levels of trade means that a LOT adjustment under section 773(a)(7)(A) cannot be made and, further, that a CEP offset under section 773(a)(7)(B) is not authorized.

The petitioner also takes issues with the respondents' argument that an LOT adjustment is warranted because of the activities that would be removed from the CEP starting price. The petitioner's interpretation is that such a position runs counter to the preamble to the CEP provision in the proposed regulations. The petitioner further argues that, should the Department follow the methodology of the *Preliminary Results of Administrative Review: Armid Fiber from the Netherlands,* 61 FR 15766, 15768 (April 9, 1996) (*"Armid Fiber"*), then it would still contest the notion that for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. According to the petitioner, stripping away the actual selling functions reflected in the CEP price before comparison for level of trade purposes amounts to an artificial reconfiguration of the CEP level of trade. The petitioner argues that this has the effect of creating the appearance of different levels of trade when in the commercial market the levels are the same. Thus, the argument is set forth that if the Department adjusts the CEP for U.S. selling expenses and artificially views the CEP sale as not including the selling functions represented by those expenses, then it will be positing a difference in level of trade that does not exist. According to the petitioner, if the Department were to allow a CEP offset, then the Department must deduct all of the indirect selling expenses from the U.S. price.

DOC Position: We disagree with the respondents. In this instant investigation, the respondents failed to provide the Department with the necessary data for the Department to consider an LOT adjustment. Without such data, a LOT adjustment under section 773(a)(7)(A) cannot be made and, further, that a CEP offset under section 773(a)(7)(B) is not authorized. Absent this information, the Department cannot determine whether an LOT adjustment is warranted, nor whether the level of trade in the home market is in fact further removed than the level of trade in the United States. We agree with the petitioner that a respondent is required to affirmatively demonstrate all the requirements which would entitle it to a CEP offset as a surrogate for an LOT adjustment. The petitioner correctly noted that the Department's questionnaire requested from respondents all the relevant information required for an LOT analysis and for the documentation and explanation of any claim for an LOT adjustment. We agree with the petitioner that this information was not provided. We note MHI's claim in its section A response that a "level of trade adjustment is unnecessary," though at the time of the submission, MHI did not know that the Department's analysis would classify its U.S. sales as CEP transactions. Without the possibility of making a proper level of trade analysis, the Department cannot and should not grant a deduction from NV for home market indirect selling expenses.

Further, we disagree with the respondents' most basic representation of their home market sales. Respondents now contend that there is one home market level of trade to which CEP is being compared, but this claim is not well substantiated. The information we have on the record for sales in the home market does not support this conclusion. For TKS, sales were not made only to end-users, *i.e.*, newspaper publishers, but, as discovered during verification, were sometimes made to middle-men, such as leasing companies, in the home market. For MHI, we knew in general that the company made some sales involving trading companies based on one paragraph of explanation in MHI's section D response. We were informed during the "sales and distribution" portion of the verification that MHI had three distinct channels of distribution in the home market: (1) direct sales to end-users; (2) sales through trading companies and (3) sales to trading companies. See May 14, 1996, verification report at pp. 4–5. For neither TKS nor MHI can we ascertain which selling functions are performed by them and which are provided by leasing companies, trading companies or other entities for each type of home market sale. Thus, the minimal amount of information provided does not support the conclusions reached by respondents.

We note, however, that we also disagree, in part, with the petitioner. In those cases where an LOT comparison is warranted and possible, then for CEP sales the level of trade will be evaluated based on the price after adjustments are made under section 772(d) of the Act. As stated in *Armid Fiber* "the level of trade of the U.S. sales is determined by the adjusted CEP rather than the starting price."

Cost Issue

Comment 2 Collection of Cost Data in Absence of the Initiation of a Cost Investigation: MHI argues that the Department's collection of cost data on all home market sales in the absence of the initiation of a cost investigation not only violates the 1994 GATT Antidumping Agreement ("the Agreement"), but is inconsistent with U.S. law and administrative practice. MHI cites Article 2.2.2 of the Agreement and section 773(e)(2)(A) of the Act to support its contention that the Department should not have solicited contract price and cost data in order to compute SG&A expenses and profit. MHI contends that there is no provision in either the Agreement or U.S. law which provides that a foreign producer automatically shall be subject to a sales-below-cost investigation after CV is determined to be the appropriate basis for NV. Instead, MHI contends that both the Agreement and U.S. law instruct the Department to conduct cost calculations on the basis of records kept by the respondent, provided that such records are in accordance with the generally accepted accounting principles ("GAAP") of the exporting country and reasonably reflect the costs of production and sale of the product. MHI cites the *Final Results of Administrative Review: Large Power Transformers from Italy,* 52 FR 46,806 (1987) (*"LPTs from Italy"*), *Preliminary Results of Administrative Review: Large Power Transformers from France,* 61 FR 15461, 15462 (April 8, 1996) (*"LPTs from France"*), and *Preliminary Results of Administrative Review and Partial Termination in Part: Mechanical Transfer Presses from Japan,* 61 FR 15034, 15035 (April 4, 1996) (*"MTPs Preliminary Results (1996)"*), in contending that the Department has resorted to CV as the basis for NV for reasons similar to those enunciated in the preliminary determination of this investigation, without automatically subjecting respondents to cost investigations. In those investigations, MHI maintains, the Department was correct to request product-line profit and loss information for its calculations of SG&A expense and profit. MHI states that it complied fully by submitting its internal profit and loss statements for LNPPs. Accordingly, MHI argues that SG&A and profit should be calculated

from MHI's internal profit and loss statements in the Department's final calculations.

The petitioner maintains that the Department's request for home market contract price and cost data "in order to compute SG&A and profit" for its CV calculations in accordance with section 773(e)(2)(A) of the Act was a reasonable action within its discretion in light of the requirements of the 1994 WTO Antidumping Agreement ("the Agreement") and U.S. law.

According to the petitioner, the Agreement and the Act which implements the Agreement require the Department to exclude below-cost sales from the calculation of SG&A and profit. The petitioner contests MHI's statement that section 773(f)(1) of the Act forbids the Department to examine transaction-specific data for profit and SG&A because it had a product-line financial statement. According to the petitioner, this position is without merit because nothing in the cited statutory provision in the URAA restricts the Department from requesting transaction-specific data. Petitioner also notes that MHI was capable of providing the information in a timely manner.

The petitioner also objects to MHI's characterization of the collection of transaction-specific information on SG&A and profit as an "aberrational" practice. According to the petitioner, at this early stage of implementation of the URAA, any such characterization is not credible, as the Department is entitled to evolve its practice under the new statute. Petitioner also points out that MHI failed to mention that in *LPTs from France*, the preliminary notice makes clear that substantial questions arose regarding profit and SG&A on the eve of the preliminary determination, and that, although the Department calculated profit based upon the LPT respondent's parent company's financial statements, the Department noted for the final determination that it would consider calculating the respondent's profit based only on above-cost data if it had cost data for home market sales.

Based on the record of this investigation, the petitioner maintains that it was clear from the response to section A that companies could report transaction-specific data, and that evidence pointed to below-cost sales. According to the petitioner, given the recent changes in the law and congressional intent to exclude below-cost sales from CV profit in most cases, it was reasonable for the Department to seek transaction-specific data in this investigation in order to analyze whether below-cost sales should be excluded from CV profit, either on a mandatory or discretionary basis.

DOC Position: We disagree with MHI that the Department violated the Agreement and U.S. law in soliciting and collecting cost and sales data for each home market sale. There is nothing in the Agreement or the statute which precludes the Department from requesting sales-specific cost and sales data for home market sales, regardless of whether a sales-below-cost investigation had been initiated. In addition, we disagree with MHI that the collection of project-specific home market sales and cost data was an aberration from the Department's normal practice. In this case, the petitioner provided a timely allegation of sales below cost and our review of the respondents' section A questionnaire responses revealed that transaction-specific cost information was readily available and could be provided by the respondents. This being one of the first cases under the new law, we are still developing our practice for computing profit and SG&A in accordance with the new law.

Comment 3 If the Department Must Formally Initiate a Cost Investigation in Order to Disregard Below-Cost Sales: MHI argues that the Department did not act in accordance with the law when it excluded sales below cost as being outside the ordinary course of trade under sections 771(15) and 773(b)(1) of the Act. MHI contends that sales made below cost can be disregarded but that, as a prerequisite, the Department must have reasonable grounds to believe or suspect that below-cost sales have been made. Thus, the Department must formally initiate a cost investigation in order to disregard the below-cost sales, which it did not do in this instant investigation. MHI states that it would be consistent with the SAA and the proposed regulations to include below-cost sales in the calculation of SG&A and profit. MHI maintains that the facts in this investigation are consistent with the recognition by the SAA of those situations where unprofitable sales will be included in the calculation of the antidumping duty margin because, in this investigation, the Department determined that it was unnecessary to initiate and conduct a sales-below-cost inquiry. Also, MHI cites *Federal-Mogul Corporation* v. *United States,* 20 CIT ____, Slip.Op. 96–37 (February 13, 1996)(*"Federal Mogul"*), to support its claim that no home market sales should be excluded, because the burden of presenting evidence of below-cost sales rests on the petitioner, who failed to do so in this case. Absent a formal investigation of sales-below-cost, MHI argues, there is no showing that MHI's home market sales are not in the ordinary course of trade.

The petitioner asserts that MHI has misread *Federal Mogul* in its arguments. First, the petitioner maintains that *Federal Mogul* is of little relevance since it was decided under the former statute and Congress has effectively revised this area of agency practice. The petitioner states that the SAA clearly provides that, in most investigations, profit will be calculated using only above-cost sales. Second, the petitioner maintains that even under the old law, *Federal Mogul* does not support MHI's proposition that the petitioner bears the burden of presenting evidence that below-cost sales are outside of the ordinary course of trade. According to the petitioner, the court's ruling actually said that the reviewing court owed substantial deference to the agency and that, on appeal, the petitioner bore the burden of showing that the agency abused its administrative discretion. The petitioner states that the proposition that the Department unlawfully excluded below-cost home market sales is untenable, because no requirement for a formal initiation of a below-cost sale investigation is found in the new statute. Rather, the petitioner contends, the statute at section 773(b)(1) of the Act provides that the Department need only have "reasonable grounds to believe or suspect" that the home market sales of the respondent have been made at prices below the cost of production.

DOC Position: We disagree with MHI. While the Department will typically initiate a sales-below-cost investigation before excluding home market sales as being outside the ordinary course of trade for purposes of calculating profit and SG&A for CV, the unique circumstances in this case required that we perform a below-cost analysis even though the Department elected not to formally initiate a sales-below-cost investigation.

Early on in this investigation it was argued by all parties that we should base NV on CV due to the unique and customized nature of LNPPs. The Department determined that the particular market situation of these highly customized and unique products did not permit proper price-to-price comparisons and, accordingly, we based NV on CV. The petitioner subsequently filed a timely and proper cost allegation which alleged that "Japanese producers have sold the foreign like product at less than the cost of production in the home market." We elected not to formally address petitioner's below-cost allegation because we knew that we were going to base NV on CV for all

respondents, and the respondents'' questionnaire responses confirmed that transaction-specific cost data was readily available. Moreover, we did not want to burden respondents with having to respond to the very detailed section D questionnaire for home market sales that a formal below-cost investigation would require. Although, arguably, we should have formally addressed the sales-below-cost allegation, at the time of its filing, we did not foresee the implications a formal initiation of a sales-below-cost investigation would have on the CV profit and SG&A calculations.

In past cases, under the old law, with similar types of products (i.e., large customized products that are manufactured over an extended period of time) in which we automatically based foreign market value (now NV) on CV, the Department relied on the statutory minimum of eight percent for profit. See, *e.g., Preliminary Results of Administrative Review: LPTs from Japan,* 57 FR 23,204 (June 2, 1992); and *Final Determination of Sales at LTFV: MTPs from Japan,* 55 FR 335 (January 4, 1990) ("*MTPs Final Determination (1990)*"). We realized early in this case that in accordance with the new law, we would have to compute actual profit and SG&A as opposed to simply relying on the statutory minimum of eight percent. Accordingly, we requested sales and cost data for each sale in the home market which fell within the purview of this investigation.

Section 773(e)(2)(A) of the Act specifies that SG&A and profit for CV be computed using only those sales of the foreign like product that were made in the ordinary course of trade. We analyzed the contract-specific price and cost information we received from respondents. This information indicated that there were below-cost sales made in the home market, in substantial quantities, and over an extended period of time. Although we did not *formally* initiate a cost investigation under section 773(b) of the Act (despite the fact that a timely allegation had been made by the petitioner based on the respondent's data), the unique cost reporting aspects of this case were such that, in effect, the Department conducted a cost investigation and our analysis revealed evidence that there were home market sales of merchandise within the purview of this investigation which were below cost. Section 771(15) provides that sales and transactions considered outside of the ordinary course of trade include "among others" below-cost sales disregarded under section 773(b)(1). The Department interprets this provision to apply to the exclusion of below-cost sales, even if such sales were not formally disregarded pursuant to section 773(b)(1) of the Act.

Comment 4 Each Home Market Sale of a LNPP, Addition, or Component Constitutes a Distinct Model for Purposes of Performing the Cost Test: MHI argues that even if the Department's exclusion of home market sales below cost from its SG&A and profit calculations was permissible, it should not treat the home market sales as distinct models for purposes of performing the cost test. Respondent refers to section 773(b)(1) of the Act that says the Department is required to exclude home market sales below cost if (1) they are made in substantial quantities, (2) over an extended period of time, and (3) at prices which do not permit recovery of costs in a reasonable period of time. MHI also cites section 773(b)(2)(C) of the Act, which states that substantial quantities must represent 20 percent or more of the volume of sales. In undertaking its preliminary analysis, MHI claims that the Department ignored this statutory definition of substantial quantities and automatically applied its model-specific cost test. Moreover, according to MHI, the Department's normal model-specific cost test loses relevancy when NV is based on CV. MHI refers to Policy Bulletin, No. 94.3, "Disregarding Sales Below Cost-Extended Period of Time" (March 25, 1994) to explain that the rationale for this test is to ensure that NV is not calculated for a particular pricing comparison by reference to sales made exclusively below cost.

According to TKS, the Department's model-specific COP analysis and its consequential exclusion of below-cost sales from normal value calculations are not in accordance with subsection 773(b), the SAA, and the Department's own interpretation of the statute. TKS argues that the methodology employed by the Department "practically read the "substantial quantities" and cost recovery requirements out of the law." Yet TKS also concedes that the inherent physical diversity among LNPPs is such that "it would be equally improper" if the Department were to change the definition of model to encompass all home market sales during the POI. TKS maintains that, with a class of products consisting of highly-valued, uniquely customized machines, model-specific analysis is not possible. TKS argues that disregarding sales made at below-cost prices is discretionary because the wording in section 773(b)(1) is that the Department "may" disregard sales. TKS concludes that because, in its view, the COP test cannot be conducted on a model-specific basis in this case, the Department should exercise its discretion and not disregard home market sales for normal value.

The petitioner maintains that even if the Department decides that the statute does not require exclusion of below-cost sales, it plainly permits the Department to do so. Assuming *arguendo* that the Department did not investigate below cost sales pursuant to section 773(b)(1) of the Act, the petitioner maintains that it could nonetheless properly exercise its discretion to exclude such sales from its profit calculations under section 771(15).

Concerning the proper definition of a "model" in this investigation, the petitioner agrees with the Department's finding that "each home market sale of an LNPP, addition, or component, constitutes a distinct model for purposes of performing the cost test" because of the unique nature of the product under investigation. Accordingly, the petitioner supports the use of individual models to determine which home market sales should be excluded from profit and SG&A calculations because they were sold at less than the cost of production. The petitioner maintains that since the Department's model-specific test was not altered when the statute was amended, the Department properly applied its model-specific test in the preliminary determination. The petitioner disagrees with the respondents'' contention that full cost recovery on each sale is unreasonable in a large capital goods industry. The petitioner asserts that, in setting prices, LNPP producers typically perform cost estimates based on the full cost of production with an allowance for profit so as to cover their production costs on every sale. Thus, the petitioner maintains, a model-specific analysis is appropriate.

DOC Position: We disagree with the respondent that the substantial quantities test must be performed on a basis other than a model-specific basis. In past cases, the Department has routinely performed the cost test on a model-specific basis. See, *e.g., Certain Cut-to-Length Carbon Plate from Sweden,* 61 FR 15,772, 15,775 (April 9, 1996) (Comment 5); *Stainless Steel Angle from Japan,* 60 FR 16,608, 16,616 (1995) (Comment 12). As indicated in the SAA, at page 832, the Department will continue to perform the cost test on no wider than a model-specific basis. In this case, each LNPP sale clearly represents its own unique, customized, model of merchandise.

Comment 5 The Department Should Calculate Profit on the Foreign Like

Product: MHI argues that the Department's preliminary analysis calculated SG&A and profit on both LNPP additions and systems in contravention of section 773(e)(2)(A). MHI notes that additions and systems are not equal in commercial value. Thus, MHI argues that if the Department continues its present methodology then it should only calculate SG&A and profit using home market sales of systems which are MHI's foreign like product.

The petitioner objects to MHI's hypothesis that LNPP systems are a separate like product from LNPP additions. According to the petitioner, the Department has determined that a single like product exists which consists of all LNPP systems, press additions, and press components, regardless of state of completion. The petitioner argues that the Department made home market viability and other determinations required by the statute based on this definition, and that changing the like product definition without cause at this late stage of an investigation would involve reassessment of numerous issues which form the foundation of the Department's proceeding. Thus, the petitioner maintains, MHI's suggestion must fail as an argument unsupported by either the record or administrative precedent.

DOC Position: We disagree with MHI that computing a single profit for both additions and systems is in contravention of section 773(e)(2)(A) of the statute, which merely states that CV shall include, *inter alia,* "actual amounts" for profits "in connection with the production and sale of a foreign like product. * * *" The SAA makes no mention that the profit calculation should consist of different rates for different pools of products within the foreign like product. From early in the investigation we have determined that a single like product exists, and accordingly have computed profit based on all sales of the foreign like product occurring in the ordinary course of trade.

Comment 6 Home Market LNPP Sales Do Not Constitute a Foreign Like Product: TKS maintains that the Department should base its CV profit calculation on either TKS's average LNPP profit or on the company's financial statement. TKS first argues that section 773(e)(2)(A) of the Act is not applicable to the CV profit calculation because the Department determined that TKS's home market LNPPs do not constitute a foreign like product. According to TKS, because the Department determined that TKS's Japanese sales of LNPP systems, additions and components could not be used as the basis for NV due to the particular market situation, the underlying analysis for that determination compels a conclusion that home market LNPPs are not a foreign like product within the meaning of section 771(16) of the Act (19 U.S.C. section 1677(16)). Accordingly, TKS maintains that section 773(e)(2)A) is not the applicable rule for CV profit calculation. TKS cites the Department's November 9, 1995, CV decision memorandum to support its contention that the Department determined that each LNPP sold by TKS in the United States and in Japan is unique and that the models sold in the two markets are not approximately equal in commercial value. Finally, TKS holds that the Department determined that the LNPPs sold in the United States and in Japan are not "reasonably comparable" to each other.

TKS also argues that the correct rule for CV profit calculation in this case is found in section 773(e)(2)(B) of the statute, because the Department found that the particular market situation precluded price-to-price comparisons. According to TKS, the SAA requires that the Department utilize section 773(e)(2)(B) in those instances where the method described in section 773(e)(2)(A) cannot be used, either because there are no home market sale of the foreign like product or because all such sales are at below-cost prices.

TKS also argues that if, assuming *arguendo,* TKS's home market LNPP sales constitute a foreign like product, section 773(e)(2)(B) is still the applicable rule for CV profit calculation in this case because TKS's LNPPs are not sold in the ordinary course of trade. According to TKS, the fact that technical specifications are vastly different within the respective groups of components, additions and systems, LNPPs are, *prima facie,* merchandise produced according to unusual product specifications, which should be excluded from analysis according to section 771(15) of the Act.

TKS offers a second subsidiary argument, that if, further assuming *arguendo,* its home market LNPP sales both constitute a foreign like product and are sold in the ordinary course of trade, section 773(e)(2)(B) still controls CV profit calculations where, as here, the Department has determined that the "particular market situation" affecting home market sales does not render price-to-price comparisons feasible. TKS maintains that the SAA language does not limit the applicability of section 773(e)(2)(B) to situations where there are no home market sales of the foreign like product or situations where all sales are found to be made at below-cost prices. TKS argues that the applicability is, generally, for all situations where the NVs resulting from the application of section 773(e)(2)(A) would be "irrational" and "unrepresentative." TKS argues that because profits are a significant element of price, it would be illogical for the Department to utilize, for CV purposes, the profits of those sales which it rejected for price comparison purposes.

The petitioner believes that TKS's position is wrong because the Department has clearly defined the foreign like product to be LNPP systems, additions and components. The petitioner states that the fact that price-to-price comparisons could not be made does not mean that home market sales are outside the ordinary course of trade. The petitioner supports the Department's analysis that matching sales would require cost adjustments tantamount to computing a CV for each sale. The petitioner maintains that TKS's arguments are inconsistent with the precedents in *MTPs Preliminary Results (1996)* and *LPTs from France* (60 FR 62808, December 7, 1995), wherein the Department rejected price-to-price comparisons and instead used CV. According to the petitioner, in those cases the Department continued to use the home market profit data even though it could not perform price-to-price assessments, thereby negating the idea that the lack of price-to-price comparisons indicate that domestic sales are outside of the ordinary course of trade.

DOC Position: We disagree with TKS that there were no sales of the foreign like product in the home market during the POI. TKS is incorrect to suppose that because we did not find home market sales which provided practicable price-to-price matches, no foreign like product existed. The foreign like product as defined by section 771(16) of the Act, (*i.e.,* sales of LNPP in Japan) did exist, as revealed by our examination of LNPP equipment sold in the home market for purposes of the Department's home market viability test (pursuant to section 773(a)(1)(C) of the Act) as stated in our November 9, 1995, decision memorandum regarding the determination of the appropriate basis for NV. However, the degree of unique customization for customers made the difference-in-merchandise adjustment for product price matching potentially so complex that the use of CV provided a more reliable and administrable methodology for establishing NV. As stated in our November 9, 1995, decision memorandum, the Department

declined comparison of products within the same class of products which have such prominent physical dissimilarities as to make comparisons and calculations of adjustments for such physical differences impracticable, pursuant to the "particular market situation" provision, section 773(a)(1)(C)(iii) of the Act.

Because we have not determined the absence of the foreign like product in Japan, we disagree with TKS's suggestion that section 773(e)(2)(B) should apply in determining CV profit. The correct statutory provision for CV profit calculations in this instance is section 773(e)(2)(A) and, accordingly, the Department's final margin calculations were formulated under its guidelinesse.

Comment 7 The Department Has Discretion Not to Disregard Below-Cost Sales: TKS maintains that the legislative history of the 1974 Trade Act, as reemphasized in the URAA with respect to section 773(b), shows the Congressional intent that certain types of below-cost sales should not be disregarded for foreign market value (now NV) determinations. According to TKS, this legislative history reveals the intent of Congress that the Department exercise discretion under section 773(b) based upon the "rationality of exporters pricing practices." TKS lists three reasons why the Department should consider the characteristics of the LNPP market and the rationality of the pricing practices of market participants such that it should exercise its discretion not to disregard sales made below cost. First, TKS claims that below-cost sales of LNPPs are not systematic, since they are infrequent transactions for unique, customized products. Second, TKS claims that below-cost sales of LNPPs occur for reasons beyond the producer's control. Third, TKS maintains that even though the producer may sustain losses in isolated sales, the producer usually recovers the losses over a period of three to four years. TKS claims that this is an appropriate case for the Department to exercise its discretion by not disregarding below-cost sales, as this instant case is the first antidumping investigation in which the Department considers the application of section 773(e)(2)(A) in the context of job-order cost accounting.

With respect to the enforcement of the statute, the petitioner's approach is diametrically opposed to that of TKS. The petitioner maintains that, even if the Department decides that the statute does not require exclusion of below-cost sales, it plainly permits the Department to do so. The petitioner therefore urges the Department to use that discretion for the express exclusion of those home market sales below the cost of production.

DOC Position: We disagree with TKS. The circumstances in the instant investigation do not call for the Department to exercise its discretionary authority to include sales made below cost, which were determined to be in substantial quantities, over an extended period of time, and prices which do not permit recovery of costs in a reasonable period of time. We agree with the petitioner's earlier comment that, that even if the statute does not require exclusion of below-cost sales, it plainly permits the Department to do so. If a company's market strategy results in below-cost sales of LNPPs, then a willingness to sell below cost is not negated by the relative infrequency of transactions for unique, customized products. First, the Department does not analyze the intent, *per se*, of the respondent in dumping its products, whether above, at or below cost. Second, even if intent were a factor, we believe TKS's arguments regarding job-order costing are incorrect. The procedure of developing each project during the sales negotiating and pricing process gives LNPP manufacturers every opportunity to recognize that they are concluding transactions that will be below the cost of production. Also, TKS's claim that it recovers its losses from a particular sale over time shows that it is necessary to analyze each sale as its own model. If costs cannot be recovered for each sale, which takes several years to conclude in delivery and installation, then that sale should be excluded. If TKS is willing to sell below cost for a particular sale, hoping to recover costs through other projects, whether subsequent sales of press additions and/or through servicing contracts, then it has, in effect, purposely used a transaction as a loss-leader, to the point of selling below cost.

If we examine past circumstances where the Department has exercised its discretionary powers, and investigated the issue, not in terms of intent, but in terms of unique market conditions for particular products, we must still conclude that TKS has no basis to claim that below-cost sales of LNPPs occur for reasons beyond the producer's control. An example of sales where the Department has historically exercised its discretion not to exclude certain sales below cost occurs in the case of perishable agricultural products. *See, e.g., Final Results of Administrative Review: Certain Fresh-Cut Flowers from Mexico,* 56 FR 1794 (January 17, 1991). Flowers, fruits and vegetables are raised and sold en-masse, are subject to various conditions of weather, have a short shelf-life, and are often sold on a consignment basis. Thus, the Department has considered such products subject to forces beyond the producer's control which may cause occasional sales below cost. By comparison, LNPPs are precisely the appropriate case for the Department to exercise its discretion to disregard the below-cost sales in the context of job-order cost accounting, for in the context of this industry, the foreign like product is as removed as possible from the forces affecting perishable products.

Comment 8 Circumstance of Sale adjustment for Credit Expenses: The petitioner argues that the Department should not have deducted credit expenses from MHI's and TKS's CV because CV did not include credit expenses in its original composition. According to its analysis of the preliminary determination calculations, the Department inappropriately failed to include home market credit expenses when calculating CV. Citing *Final Determination of Sales at LTFV: Certain Granite Products from Italy,* 53 FR 27187, 27191 (July 19, 1988), *Final Determination of Sales at LTFV: PET Film, Sheet and Strip from the Republic of Korea,* 56 FR 16305, 16307 (April 22, 1991); *Final Results of Administrative Review: Roller Chain, Other than Bicycle, from Japan,* 55 FR 42602, 42606 (October 22, 1990); and *Preliminary Results of Administrative Review: Certain Fresh Cut Flowers from Colombia,* 60 FR 30270, 30274 (June 8, 1995), the petitioner argues the Department's standard practice requires the addition of imputed credit to CV. The petitioner maintains that in the instant investigation, when the Department made a circumstance of sale adjustment by subtracting home market credit expenses from CV, it removed an expense from a price that did not include that expense in the first place.

MHI argues that the Department properly excluded home market credit expenses in its CV calculations. MHI further argues that the Department has recently changed its practice as found in *Final Determination of Sales at LTFV: Certain Pasta from Italy,* 61FR 30326, at Comment 14 (June 14, 1996) ("*Pasta*"). MHI explains that the Department justified its change in practice by citing sections 773(b)(3)(B) and 773(e)(2)(A) of the Act, which direct the Department to calculate SG&A, including interest expense, based upon actual experience of the company. MHI contends that because the Act defines the calculation of general expenses for COP and CV in the same way, the Department stated that it would be inappropriate to

calculate interest expense differently for COP and CV. Furthermore, MHI contends that because the Department computes profit as the ratio of profit earned on home market sales to the cost of production, applying the ratio to a COP inclusive of imputed credit would be mathematically incorrect.

TKS maintains that the petitioner's arguments are moot because they rely solely on the Department's practice prior to the 1994 amendments to the Act. TKS argues that the petitioner's position would only have validity if applied to cases investigated under the old law. According to TKS, the Department" treatment of imputed credit is correctly based on the current section 773(e) of the Act, which requires that the "actual general expenses" be added to CV. Since the current Act now provides that general expenses added to CV be limited to actual expenses, TKS maintains that imputed credit cannot be utilized, as it is not an actual expense, but a measure of opportunity cost. TKS cites to the basic rationale for the calculation of CV outlined in *Pasta,* to support its contention that only actual expenses will be applied to CV.

DOC Position: We agree with respondents. Section 773(e)(2)(A) of the Act requires that the Department include in CV the actual amount of SG&A expenses (including net interest expense) incurred by the exporter or producer. Imputed credit is, by its nature, not an actual expense. Therefore, we did not include imputed credit in the CV calculation for the final determination.

Comment 9: Headcount Methodology vs. CGS Methodology: TKS and MHI offer similar arguments concerning the proper methodology for allocation of general and administrative expenses. Below, Part A summarizes the arguments concerning TKS USA's operations and Part B the arguments concerning MLP's operations.

A. Allocation of TKS USA's Office Administration Expenses

TKS objects to the allocation of TKS USA's office administration expenses on the basis of total CGS. TKS states that these expenses should be allocated on the basis of headcount, which impacts the calculation of both further manufacturing costs and reported selling expenses. TKS maintains that this is required because TKS USA's commercial activities include merchandise other than LNPP, namely (1) Sale of spare parts; (2) the conduct of press audits; (3) the sale and production of control systems; (4) the sale and production of digital ink pumps; and (5) independent maintenance/technical work, which are each conducted by a separate division with specific personnel assigned to each division.

TKS maintains that the Department's allocation of SG&A expenses ignores the diversity of activities at TKS USA and assigns an inordinate share of the expenses to press sales. Although TKS admits that a CGS-based allocation is common Department practice, it claims that such practice is not mandated by either the Act or the Department's regulations. TKS maintains that for the final determination, the Department should exercise its discretion and utilize TKS's proposed headcount methodology to allocate administrative expenses.

TKS maintains that the Department should give consideration to the fact that the headcount methodology is utilized internally by TKS USA in the normal course of business. Thus, TKS argues, to the extent that TKS USA has any historical practice employed previous to the investigation, it involves the headcount methodology.

Finally, TKS cites to the Department's *Final Results of Antidumping Duty Administrative Review: DRAMS of One Megabit or Above from the Republic of Korea* (61 FR 20216, 20217, May 6, 1996), to support its contention that, just as the Department affirms that indirect selling expense allocations are not inflexibly limited to a value-based methodology, the Department should also recognize that G&A expenses should not be limited to a value-based approach.

The petitioner argues that TKS's claim that it allocates G&A expenses based on headcount in the ordinary course of business to each of its separate divisions appears to contradict its submissions. The petitioner cites to TKS's section A response, where it stated that TKS USA "does not maintain any internal financial statements of profit and loss statements for specific product lines, or specific internal business units." The petitioner also notes that TKS seems inconsistent in concluding that allocating TKS USA's G&A costs based on CGS is distortive in light of its position in favor of a value-based allocation of product-specific factory overhead and engineering costs. Finally, the petitioner juxtaposes TKS's reasoning with that of MRD, a respondent in the companion German LNPP investigation, who re-allocated G&A expenses on a value basis while citing to the Department's *Final Determination: Certain Carbon and Alloy Steel Wire Rod from Canada,* 59 FR 18791, 18795 (April 20, 1994) ("*Carbon and Alloy Steel Wire Rod*)", MRD recognized the "subjective allocations" which management often makes in allocating G&A using bases other than CGS.

B. MHI's Indirect Selling and G&A Expense Allocation

MHI argues that the common G&A portion of MLP's indirect selling expenses should be allocated to LNPPs based on the number of employees involved in LNPP operations. MHI states that allocating common G&A by LNPP sales value does not accurately reflect the common G&A expenses incurred for LNPP sales activity. According to MHI, a headcount methodology of allocation reflects the greater importance and number of resources required to support its commercial press sales at MLP. MHI explains that MLP's staff must spend more time attending to issues related to commercial press sales activities than a sales-based allocation would reflect (*e.g.,* personnel in MLP's accounting and purchasing sections spend significantly more time issuing invoices, monitoring sales accounts receivable, purchasing parts, and recording expenses related to commercial press operations than they do to LNPP operations). MLP explains that it provides financing services solely for commercial press sales. MHI claims that while a headcount methodology would still allocate too much common expense to LNPPs, such an allocation would nonetheless be more accurate than allocation by sales value. MHI states that its existing base of commercial press customers is vastly larger than the LNPP base and that the Department's methodology fails to capture the inherent slant of general expenses toward the servicing and maintenance of MLP's existing commercial press sales. MHI states that a sales-based allocation is a reasonable measure of cost when the only activity is selling. MHI also argues that the Department should consider that headcount methods are employed by MHI in the normal course of business, as would be expected, since sales-based allocations of indirect expenses are uncommon in normal commercial systems.

The petitioner argues that the Department's long-standing policy is to allocate U.S. indirect selling expenses on the basis of sales value, citing *Final Determination of Sales at LTFV: Certain Internal-Combustion, Industrial Forklift Trucks From Japan,* 53 FR 12552, 12577 (April 15, 1988) and the Department's questionnaire. The petitioner notes that the Department rejected the headcount allocation method at the preliminary determination and applied the standard allocation methodology. The petitioner

argues that MHI's use of headcount to allocate these expenses was created for purposes of this investigation and asserts that the Department has rejected such subjective management allocations of U.S. affiliate G&A expenses in prior cases, even where such methods were used in the normal course of business (citing the German companion case to this investigation). The petitioner takes issue with MHI's suggestion that indirect selling expenses are incurred only as a function of the number of employees directly involved in sales and servicing and states that this assertion ignores the fact that companies expend more common effort (*e.g.*, senior management time, travel expenses, and entertainment) to win large-value sales.

DOC Position: The Department disagrees with TKS's contention that TKS USA's office administration expenses should be allocated to its LNPP operations based on relative headcounts.

Similarly, the Department disagrees with MHI's contention that MLP's common G&A expenses should be allocated to its LNPP and commercial press operations based on relative headcount.

As set forth in *Carbon and Alloy Steel Wire Rod*, our normal methodology for allocating G&A expenses to different operations is based on CGS. Our methodology recognizes the fact that the G&A expense category consists of a wide range of different types of costs which are so unrelated or indirectly related to the immediate production process that any allocation based on a single factor (*e.g.*, headcount) is purely speculative. The Department's normal method for allocating G&A costs based on CGS takes into account all production factors (*i.e.*, materials, labor, and overhead) rather than a single arbitrarily chosen factor. Absent evidence that our normal G&A allocation method unreasonably states G&A costs, we continued to allocate such costs for the final determination based on CGS.

Further, because we have treated the common G&A expenses in question as part of total G&A rather than as part of our calculation of total indirect selling expenses, the allocation methodology issue for the common G&A expenses impacts the calculation of the G&A rate and has no effect on the indirect selling expense calculations.

TKS-Specific Comments

Sales Issues

Comment 1 Deduction of U.S. Indirect Selling Expenses from CEP: As noted in detail in the *Common Issues* section in the companion German notice, the petitioner maintains that the Department failed to deduct many of TKS's U.S. indirect selling expenses because they were recorded in the accounts of the foreign LNPP manufacturer. According to the petitioner, the Department should deduct all indirect selling expenses incurred on behalf of U.S. sales, irrespective of the location at which the expenses are actually incurred or the location of the company in whose books the expenses are recorded.

As noted in the *General Comments* Section, above, TKS maintains that the Department has adopted a new methodology for calculating indirect selling expenses pursuant to the enactment of the URAA which make petitioner's arguments moot. TKS also makes the following arguments specific to its questionnaire response.

TKS disagrees with the assertion that it was unwilling to accurately segregate expenses related to Japanese versus U.S. economic activity. TKS maintains that the record of the investigation demonstrates that it properly reported expenses and that there is no indication of unwillingness to comply with Department instruction to separately report expenses; TKS cites to the verification report to bolster its conclusion that the reported indirect expenses incurred in Japan on behalf of sales, including exports, do not contain U.S. economic activity.

Lastly, TKS argues that if the Department does deduct from CEP indirect selling expenses incurred in Japan on behalf of U.S. sales, then the amount reported by TKS is the correct amount. TKS argues that its methodology, whereby it divided total indirect selling expenses incurred in Japan by the company headquarters, exclusive of branch office expenses, by the total transfer price value of all sales, is methodologically sound. It maintains that the expenses reported are in support of TKS USA and related to intra-company communications. Furthermore, TKS argues that since it is the sales price between TKS Ltd. and TKS USA which is reported in the company's financial statements, TKS should allocate total selling expenses incurred by the Tokyo office over the total sales as shown in the financial statements. TKS maintains that if the DOC does deduct indirect selling expenses associated with U.S. sales but incurred in Japan, then it should apply this ratio to the transfer price of each U.S. sale. TKS maintains that deriving a factor based on total sales revenue and then applying that ratio to each transaction's gross sales value would distort the results for two reasons: (1) The U.S. subsidiary is involved in further manufacturing for some sales, so that there can be a significant difference between transfer price and sales price; and (2) theoretically, the Department's proposed calculation method should not result in significant differences in the final calculated per-unit amount of U.S. selling expenses.

DOC Position: We disagree with respondent's arguments. Since TKS calculated a universal indirect selling expense factor, including therein all expenses incurred in Japan associated with U.S. sales (and even included trade show expenses which were physically incurred in the U.S.), such expenses should be deducted from CEP, in keeping with the Department's definition of U.S. indirect selling expenses in *Final Determination of Sales at LTFV: Certain Pasta from Italy*, 61 FR 303256 (June 14, 1996).

With respect to the numerator of TKS's reported indirect selling expense factor, TKS must report all home market expenses since it is including all home market sales in its denominator. TKS's argument in its submissions that the branch offices have nothing to do with export sales is besides the point—the sales revenues included in the denominator have nothing to do with export sales either. The fact is that TKS has calculated a universal indirect selling expense factor for all sales in all markets, not a factor pertaining exclusively to TKS USA sales, not even exclusively to export sales.

With respect to the denominator, TKS is mixing apples and oranges in its calculations. The portion of its denominator for home market and third-country revenue represents gross sales values; it is only the U.S. sales value which represents TKS Ltd.'s sales to a subsidiary. As TKS reported, and the Department verified, TKS Ltd. sold direct to end-users and, on occasion, direct to unaffiliated middlemen such as leasing companies in the home market. In fact, it is this absence of a Japanese sales subsidiary which is part of TKS's arguments for a CEP offset based on a claimed single level of trade in Japan different from that in the United States. The indirect selling expenses which are incurred for all sales should be allocated over the sales value of all sales, not over a mix of domestic sales value, third-country sales value and U.S. transfer prices.

It is because TKS's original calculations are such a hybrid that the correction to total revenue in the denominator slightly decreases the indirect selling expense ratio, whereas the proper application to gross sales

value increase what TKS called the "per-unit" amount. TKS, arithmetically speaking, was slightly overstating the size of the expense factor, but in applying that factor to non-arm's-length transfer prices, was significantly understating the per-press sales expenses. Even if all of the denominator were comprised of transfer price values, it would not necessarily be allowable as an allocation basis. TKS points out that the transfer-prices and sales prices differ greatly, which only underscores why the Department is reluctant to utilize in margin calculations prices that, by definition, were not set at arm's length. There may be specific, compelling circumstances whereby the Department exercises its discretion to rely on transfer prices to a limited degree. For example, for MAN Roland Druckmaschinen AG, a respondent in the companion investigation of LNPPs from Germany, the Department applied the indirect selling expense factor to the transfer price for certain sales which consisted only of parts and subcomponents which had no separate contract value. See *Comment 1* of the "Common Issues" section of the Federal Register notice for LNPPs from Germany.

We have recalculated the universal indirect selling expense accordingly and applied it to the gross sales value of U.S. sales.

Comment 2 Reporting of All Selling Expenses Related to U.S. Economic Activity: Petitioner maintains that the Department discovered during its Japan verification that TKS incurred selling expenses related to U.S. economic activity, but failed to include the expenses in its reported U.S. indirect selling expenses. The petitioner points to the verification report stating that TKS splits the annual U.S. trade show expenses between TKS USA and TKS Ltd. Japan. Because the trade show is economic activity occurring in the United States, the petitioners argue that TKS should have reported the entire trade show expense as a U.S. selling expense rather than including a substantial portion of the expenses as part of general indirect selling expenses incurred in Japan. Further, the petitioner states that the practice of charging back expenses for U.S. economic activity occurred for numerous other expenses, including testing and training costs. The petitioner points out that since the indirect selling expenses of TKS Ltd. Japan were not subtracted from the U.S. price in the preliminary determination, TKS's charge-back procedures had the effect of overstating the U.S. price in the margin calculations. The petitioner argues that, even if the Department rejects the general argument that all indirect selling expenses supporting U.S. sales, including those incurred as well as recorded in Japan, be deducted from CEP, the Department should at a minimum deduct the Japan indirect selling expenses reported by TKS because of the inclusion of definite elements of U.S. economic activity.

DOC Position: We agree in general with petitioner's argument. We have revised our general treatment of indirect selling expenses incurred on behalf of U.S. sales and recorded by the parent company in this final determination. As detailed in Common Issues comment 1, the Department is deducting from CEP indirect selling expenses associated with U.S. economic activity. We thus capture the expenses which pertain to economic activity in the United States which had not been deducted from CEP in the preliminary determination.

Comment 3 Purchase of Insurance from an Affiliate: Petitioner posits that the information collected at verification supports its conclusion that the insurance relationship between TKS and Yasuda Fire and Marine Insurance Ltd. ("Yasuda)", is not at arm's length. Petitioner points to the fact that the loss/premium ratio for covering TKS Ltd., even before the Spokane Spokesman Review accidents, had been significantly higher than the ratio which Yasuda normally establishes in creating a policy. These accidents, petitioner states, increased the loss premium ratio even more. Accordingly, the petitioner advocates that the Department increase TKS's reported insurance costs by the factor resulting from the division of the actual loss/premium ratio by the expected loss/premium ratio. The petitioner also asks the Department to re-examine whether any costs related to trucking accidents in the U.S. not covered by insurance should be considered as part of the constructed value of the Spokane Spokesman Review sale.

TKS rejects the petitioner's argument that the Yasuda premiums are not at arm's length and offers the following in support of its position. According to TKS, it requested Yasuda to provide documentation with which the Department could compare TKS premiums to those paid by unaffiliated insurance customers but that Yasuda refused. Since the interest ownership is by Yasuda in TKS, and not vice versa, TKS explains that it had no means of compelling Yasuda to provide the information. TKS cites Article 16 of the Japanese law concerning the Regulation of Insurance offerings which "* * * generally prohibits extension of preferential treatment for specific clients," to support the contention that, legally, Yasuda must set premiums at arm's-length levels.

With respect to the petitioner's request that the Department increase reported insurance costs based on a comparison of Yasuda's preferred premium/loss ratio to that arising out of its actual experience with TKS, the respondent offers several challenges. First, TKS maintains that Yasuda has only identified a "preferred" ratio for return on its business efforts, and that there is no evidence on the record that the ratio is anything other than that. According to TKS, absent any information showing how often this ratio is actually achieved in actual business practice, the petitioner cannot draw conclusions about what occurs among unaffiliated customers of Yasuda. Second, TKS argues that the ratio is only a snapshot in time, immediately after a major loss and before the next premium renewal period. Third, TKS argues that petitioner's allegation that the loss premium ratio excludes the Spokane Spokesman Review loss is not supported by evidence, as Yasuda's letter clearly states that the reported loss/premium ratio covers TKS's exported cargos for the period from April 1990 through January 1996. TKS states that petitioner has not provided evidence that the loss amounts factored in the loss/premium ratio are based on claims rather than on insurance-adjuster estimated loss amounts.

Lastly, TKS maintains that, although it believes that the issue of the extent to which TKS's insurance actually covered the costs resulting from transit accidents is moot by virtue of the extraordinary nature of the costs, it must point out that petitioner is factually incorrect in arguing that the actual insurance settlement received in March 1996 did not fully cover the costs incurred in producing and transporting the replacement equipment.

DOC Position: We agree with the petitioner, in part. We agree that TKS was unable to provide sufficient evidence that the Yasuda insurance expenses reported were at arm's length. We disagree with petitioner regarding the relationship between insurance coverage and the treatment of any extraordinary expenses incurred due to in-transit accidents for the Spokane Spokesman Review sale; whether or not such expenses were covered by Yasuda is not germane.

We disagree with TKS's contention that the existence of article 16 of Japanese law automatically means that Yasuda has complied with it. The only

benchmark which TKS and Yasuda provided was Yasuda's statement of its expected loss/premium ratio, which was significantly less than that which Yasuda experienced with TKS. This benchmark shows that the historical experience of Yasuda with TKS in terms of the relationship between the losses claimed by, and premiums paid by, TKS, has been significantly different from the loss/premium guidelines Yasuda claims to adhere to in its normal business practices. We also disagree with TKS that the policy ratio in Yasuda's letter reflects the claims paid on the Spokane accidents; our examination of the values involved show this to be arithmetically unsupportable, as detailed in the TKS July 15, 1996, calculation memorandum. Nevertheless, we have not increased that ratio to include the petitioner's adjustment which imputes an additional claim amount for the Spokane accidents, as the potential effect of those accidents may (and to the degree there is any even partial objective nature to the Yasuda-TKS relationship *should*) increase future premiums. Since the expenses we are using in our calculations are those for the historical premiums paid during the POI, the ratio we used is based on loss/premium ratio for the period covering TKS sales as noted in the documentation reviewed at verification. We have therefore increased TKS's reported insurance costs by the factor resulting from the division of the actual loss/premium ratio by the expected loss/premium ratio as shown in the Yasuda documentation. With respect to question of how the insurance coverage of expenses incurred due to accidents which befell the trucking of LNPP components for the Spokane Spokesman Review sale should or should not affect the final production expenses, see TKS Comment 8.

Comment 4 TKS's Request for Exclusion of a Dallas Morning News Sale: TKS argues that the Department should exclude one of the sales made to the Dallas Morning News ("DMN)" from its margin calculations. TKS argues that, while the Department is correct to state that the statutory reference to the exclusions of sales outside the ordinary course of trade from the dumping margin calculation does not, *per se*, pertain to U.S. sales, the Department may exercise its discretion to do so if the exclusion of a particular U.S. sale would prevent "unfair results." TKS then reviews the history of the manufacturing of the sale in question, which was comprised of parts sourced from model LNPP units exhibited in 1989, 1990, 1991 and 1993. TKS maintains that it offered a greatly reduced price for this unit due to its belief that the machine had significantly lost its value from the repeated cannibalization of parts and frequent trade show presentations.

TKS argues that the Department should exercise its discretion to exclude sales from the dumping analysis if the sales are not representative of the foreign producer's selling practices in the U.S. market. TKS cites the *Final Results of Administrative Review: Fresh Cut Roses from Columbia*, (60 FR 6980, 7004, February 6, 1995) ("*Roses from Colombia*") to support its contention that the Department can and has excluded U.S. sales when they "are clearly atypical and not part of the respondent's ordinary business practices, *e.g.*, sample sales." TKS then cites to *IPSCO, Inc. et al.* v. *United States*, 687 F. Supp. 633,642 (CIT 1988) where the court asked the Department to clarify the circumstances under which it would consider exclusion of U.S. sales. According to TKS, on remand, the Department stated that it could exclude certain U.S. sales from the margin analysis where such sales (1) are not representative of the seller's behavior, and (2) are so small that they would have an insignificant effect on the margin. TKS maintains the DMN sale in question is unlike any of the other sales reported, as no other product was produced from trade show models over an eight-year period of intermittent production processes and multiple episodes of intercontinental transportation. TKS buttresses its argument based on the percentage, by value, of total U.S. sales which this particular DMN sale represents (which number is proprietary). TKS states that this value is so small that exclusion of the sale from the dumping margin analysis would not impede the Department's calculations. TKS cites to *American Permac, Inc.* v. *United States*, 783 F. Supp. 1421 1424 (1992) wherein the CIT stated that "whether sales are in or out of the ordinary course of trade is not the determinative factor on the U.S. sales side of the equation. Fairness, distortion, representativeness are the issues to be examined." Finally, TKS disagrees with the Department's preliminary conclusion that the pricing of this DMN sale represented a concessionary price set as an inducement for other sales to the same customer, since TKS had one sale to the DMN prior to the transaction in question.

The petitioner maintains that the Department fully reviewed this issue at the preliminary determination and that TKS has presented no new factual information or argument since the preliminary determination which would change the Department's conclusion. The petitioner maintains that TKS is incorrect in characterizing the DMN sale in question as being the only sale involving a press which was displayed at a trade show, as a later DMN sale also involved a press shown at such an event. The petitioner also maintains that TKS routinely uses parts from inventory in the construction of presses, so that the fact that TKS used inventoried parts for this sale is not indicative of its alleged "special" nature. The petitioner characterizes this sale as a loss leader sale, stating that this DMN sale "was at a very low price because TKS knew that the DMN would soon be in the market for more press additions."

DOC Position: We disagree with TKS. While the Department has the discretion to exclude some types of U.S. sales when made in insignificant quantities, we do not believe that it would be appropriate to exclude this particular sale. In cases such as *Roses from Colombia* we excluded sample sales and in the *Final Determination of Sales at LTFV: Coated Groundwood Paper from Finland*, 56 FR 56363 (November 4, 1991), ("*Groundwood Paper*") we excluded U.S. trial sales and sales of damaged merchandise, where such sales were made in small quantities. In those cases, the transactions involved stood by themselves; that is, they were of commodity products which were not directly related to other sales. For example, in the case of *Groundwood Paper*, a printer would never be bound to a paper supplier just because it tried a free roll of normal quality paper, nor would a producer gain any leverage because it found a buyer with a unique application for damaged rolls of paper. Sales of LNPP, however, are of expensive, customized capital equipment which actually change the nature of the printer's operations. In this specific case, in light of the duration of relations between TKS and the DMN, one can reasonably interpret this sale as part of an over-arching marketing strategy vis-a-vis a long-term business relationship with the DMN, i.e., as a loss leader sale.

In this investigation we are reviewing a very small number of large-value contracts whose fulfilment as transactions spans several years. The Department's discretion to exclude sales must take into account the fact that there is such a small pool of sales which are available for analysis. Because the Department is not convinced that the DMN sale in question was so unusual that it should be disregarded, we are including this sale in our final analysis,

and are using the actual costs which were reported in the CV exhibits of TKS's January 18, 1996, supplemental submission, inclusive of any modifications arising from verification. The parts which were sourced from units existing in TKS's inventory were not used parts and should be included in those actual costs.

Comment 5 U.S. Direct Expenses for the Dow Jones Sale: TKS maintains that the terms of sale for the Dow Jones sale were such that the customer, and not TKS, was responsible for transporting the merchandise from the U.S. port to the customer sites, and that the customer independently arranged for the installation of the press additions. TKS objects to the Department's preliminary determination that the number of hours spent on testing and training by TKS personnel warranted the classification of these expenses as further manufacturing costs. TKS maintains that the quantity of time spent on testing and training is not the proper measure to determine such a classification, and instead proposes that the terms of sale and nature of the work performed by TKS should govern. TKS states that at the initial stages of the investigation, both the petitioner and the Department appeared to consider installation and testing and training as selling or movement expenses. TKS states that it "does not necessarily agree" with the Department's preliminary analysis that the size of the machinery and complexity of the work compel a classification of installation as further manufacturing. Nevertheless, even assuming that this conclusion was valid, TKS argues that the Department's reasoning does not apply to the specific services performed by TKS for the Dow Jones sale because all manufacturing covered under the contract was completed prior to the importation of the merchandise. Accordingly, TKS describes the services as being the type of work which fits the definition of post-production technical services expenses. TKS points to its accounting records, whose nomenclature assigns the title "warranty jobs" in order to support its contention that any technical modifications required during installation do not represent further manufacturing and assembly. While TKS does not deny that the testing operations were complicated since LNPP equipment is itself complex, it does not believe this is sufficient grounds for characterizing the testing and training expenses reported as further-manufacturing costs. TKS states that such activity clearly did not involve an extension of factory work, but only the routine post-delivery technical service required by high-priced, highly-engineered machinery.

The petitioner maintains that TKS's argument is incorrect because the issue of when title transfers is not relevant to the expense classification issue. According to the petitioner, all those expenses which are correctly treated as further manufacturing—installation supervision as well as testing and training, occur after title is transferred. The petitioner also maintains that since TKS classified the Dow Jones sale as a further-manufactured transaction, all of the expenses, (including testing and training if treated as direct selling expenses), and the associated CEP profit would be deducted from the U.S. price.

DOC Position: We disagree with TKS. TKS's argument is incorrect because the issue of when title transfers is not relevant to the expense classification issue. The Department must examine whether or not a party incurs costs and the nature of those costs. Whether a manufacturer delivers goods CIF duty paid U.S. port, delivered, FOB factory gate, or any other delivery designation only designates which movement charges the manufacturer is responsible for. As noted in the Department's general comment section, LNPP installation is not being treated as a movement expense. All those expenses incurred by TKS which we have treated as further manufacturing, *i.e.*, installation supervision as well as the combined testing and training expenses, occur after title transferred. The Department does not have, as TKS implies, a policy whereby direct selling expenses are defined as being incurred after title passes. For example in *Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom*, 60 FR 22045 (May 4, 1995), we treated pre-sale warehousing expenses as direct selling expenses because the producer had a general agreement with its U.S. customer to store subject merchandise; in that case we treated the warehousing as a direct selling expense even though the expenses was incurred before title passed to the customer. .We note here that we would not have treated training as part of total installation activities, but since TKS could not report testing separately from training expenses, we treated the combined value of the two as part of total further-manufacturing.

Comment 6 Exchange Rate for the Spokesman Review Sale: TKS maintains that the Department incorrectly utilized the daily rate as published by the Federal Reserve Board in converting values from yen to dollar amounts for the Spokesman Review sale. According to TKS, the daily rate fluctuated from the benchmark rate by more than 2.25 percent, so that, in accordance with section 773A(a) of the Act, the benchmark rate should be used for this transaction.

DOC Position: We agree with TKS. At the preliminary determination, the Department inadvertently utilized the daily exchange rate for the Spokesman Review sale, whereas, due to the degree of fluctuation experienced on that day, the benchmark rate is the correct exchange rate. We have utilized the benchmark rate for purposes of the final determination.

Comment 7 TKS's May 31, 1996, Submission of Corrected Sales, CV and FM data: The petitioner maintains that there are a series of corrections which TKS failed to include in its May 31, 1996, submission of revised sales, CV, and FM databases. According to the petitioner, TKS failed to make numerous corrections based on the Department's preliminary determination. Further, petitioner disagrees with the argument filed by TKS on May 31, 1996, that if the Department uses a five-year average TKS USA indirect selling expenses ratio, then the Department cannot allocate G&A expenses based on the cost of sales without overstating indirect selling expenses.

TKS contends that its May 31, 1996, submission was filed in direct response to the Department's May 22, 1996, letter instructing it to "incorporate all corrections of factual information which result from the verification procedure, both those which TKS identified prior to the commencement of verification and those noted during verification." TKS maintains that it was not instructed to make the changes which the Department made at the preliminary determination, as these involve methodological issues which TKS has not conceded for purposes of the final determination. As to the calculation of TKS USA indirect selling expenses, TKS argues that its submission was timely and that the arguments rested on data provided in verification exhibit 27 to the U.S. sales verification report.

DOC Position: We agree with petitioner that not all methodological corrections necessary for the final margin calculation are reflected in the data submitted on May 31, 1996, by TKS. We have made, therefore, all necessary corrections and methodological adjustments to the data reported on May 31, 1996, to reflect the policies set forth in this final determination of sales at less than fair value. With respect to the issue

concerning TKS USA indirect selling expenses and G&A allocation, we have modified the calculation of the G&A allocation to further manufacturing thereby eliminating any possible double-counting with respect to the calculation of TKS USA indirect selling expenses. Accordingly, we are applying the corrected ratio established in the TKS USA verification report.

Cost Issues

Comment 8 Treatment of Costs Due to Delivery Accidents: The petitioner maintains that the Department was incorrect in not including in the CV of the Spokane Spokesman Review sale the additional incidental expenses which were incurred because of accidents damaging portions of LNPP towers en route to the customer site, if those costs were not covered by insurance. The petitioner does not agree with the Department's application of the provision of the SAA which supports the exclusion of costs incurred due to unforeseen events. In its preliminary determination, the Department concluded that TKS had general knowledge of the possibility of accidents, but that any specific accident was an unforeseen event. The petitioner argues that a respondent, in its decisions on how to pack and ship LNPPs, its selection of vendors, routes, timetables and insurers, knowingly increases or decreases risks for the particular transactions affected. According to petitioner's reasoning, if certain costs are incurred which are not covered by insurance, this situation arises from multiple factors which resulted from the respondent's business practices. Thus, petitioner argues, the resulting costs are not truly "unforseen" and should be included in CV. Petitioner presents several hypothetical situations in which costs increase due to events for which a producer cannot have perfect foreknowledge, but which traditionally have been included as CV.

TKS maintains that petitioner is wrong to claim that specific accidents, one of which resulted in a truck driver's death, were foreseeable and ordinary in nature. According to TKS, the Department's preliminary determination was correct in that it followed a two-part test for determining if costs are sufficiently extraordinary to merit exclusion from the margin calculations. TKS states that under the test used in the remand following the CIT's decision in *Floral Trade Council of Davis California* v. *U.S.*, Slip Op. 92–213, 16 C.I.T. 1014 (December 1, 1992), an extraordinary expense must be: (1) Infrequent in occurrence and (2) unusual in nature. According to TKS, the Department applied this test in the *Final Determination of Sales at LTFV: Fresh Cut Roses from Ecuador,* 60 FR 7019, (February 6, 1995), where the Department rejected a petitioner's arguments that certain losses due to windstorms were foreseeable. After reviewing all incidents of accidents in TKS's history of trucking presses, wherein less than one in three hundred U.S. shipments involved an accident, TKS maintains that the accidents which befell delivery of the Spokane Spokesman Review press additions were similar to phenomena like windstorms, and other events which the Department has previously classified as unforeseeable, infrequent, and hence extraordinary events.

DOC Position: As in the preliminary determination, the Department maintains that the additional expenses stemming from the accidents constitute, in the words of the SAA at page 162 "an unforeseen disruption in production that occurs which is beyond the management's control." See Memorandum from the Team regarding Exclusion of Two Sales, February 23, 1996. As such, when an unforeseen disruption in production occurs which is beyond the management's control, the Department will continue its current practice of using the original costs incurred for production prior to the unforeseen event. Therefore, for purposes of the final determination, we did not include any of the additional expenses incurred as a result of the accidents, irrespective of insurance coverage, in the CV for this sale.

Comment 9 COMAR/Front Page Installation's Reported Costs: The petitioner alleges that TKS understated the costs incurred by its affiliate COMAR/Front Page Installations ("COMAR)". The petitioner maintains that TKS reported costs for the installation of one of the DMN sales using an indirect overhead rate, inclusive of G&A, which was significantly lower than that contained in COMAR's financial statements. The petitioner objects to TKS's failure to reconcile the reported indirect overhead expenses with those recorded in COMAR's financial statements, despite instructions from the Department to do so. Furthermore, the petitioner questions COMAR's offset to actual production costs for interest revenue, which the petitioner claims is contrary to the Department's long-standing practice. For purposes of the final determination, the petitioner maintains that the Department should revise COMAR's submitted indirect overhead costs based on the rate reflected in its financial statements, and that the Department should disregard COMAR's negative interest expenses.

TKS argues that the reported indirect overhead costs are based on the overhead expenses incurred in the months in which production took place and that documentation reviewed at verification both supports TKS's allocation methodology and reconciles to the company's financial statements. TKS concludes that petitioner's argument is without basis, and that it is unnecessary and unwarranted to adjust the reported costs, particularly given the relative insignificance of the costs to the total price.

TKS also rejects the petitioner's argument to exclude the reported adjustment for interest income from the reported COMAR costs. TKS maintains that the petitioner not only failed to cite any basis for its position, but also ignored the facts in this case warranting the adjustment. TKS argues that while it is true that COMAR does not incur any interest expense, it is not true that there are no interest expenses added to the further-manufacturing costs. According to TKS, the reported further manufacturing costs include interest expense computed as the sum of the TKS consolidated interest rate factor and the total further manufacturing costs, which include those incurred by COMAR.

DOC Position: We agree with TKS in part. Contrary to petitioner's assertions, the Department was able to verify that TKS's submitted indirect overhead costs reconcile to those reported in COMAR's financial statements. COMAR does not ordinarily assign indirect overhead costs to each of its jobs. In order to submit a fully absorbed cost of production to the Department, TKS developed what it characterized as an indirect overhead allocation rate. TKS allocated indirect overhead costs to each job on the basis of the ratio of indirect costs to direct costs during those months production occurred. The Department considers TKS's method of allocating indirect costs as a percentage of direct cost reasonable. Accordingly, no adjustment is deemed necessary.

We disagree, however, that COMAR should be allowed to reduce production costs by the excess of interest income over interest expense. The Department allows interest expense to be offset by short term interest income, but only to the extent the company has interest expense. Not tying interest income in this manner would allow companies to arbitrarily subsidize a product by realizing financial activities not necessarily related to the production of the merchandise in question. Accordingly, we disallowed COMAR's

reported reduction in production costs for the excess of short-term interest income over interest expense.

Comment 10 TKS Indirect Overhead Cost Allocations: The petitioner argues that the Department should reject TKS's indirect overhead cost allocations. According to the petitioner, TKS employed an allocation methodology which was far more general than either the other Japanese respondent or the respondent in the companion investigation of LNPPs from Germany. These other respondents generally calculated separate overhead rates for each major manufacturing process and applied the rates only to those products which undergo the specific processing. According to the petitioner, TKS failed to provide any source documents, or additional detail, for its overhead allocation methodology, or to otherwise support the factory overhead amounts provided in its responses. The petitioner objects to TKS's pooling of LNPP R&D expenses into company-wide overhead costs which were then allocated over total production, thus understating costs. The petitioner objects that TKS's cost system charges much more engineering cost to overhead accounts, as opposed to specific orders. Thus, petitioner reasons, TKS's treatment of a large portion of engineering costs as a part of common overhead results in a shifting of costs from engineering-intensive press additions to press systems, and thus from U.S. market sales to home market sales. Finally, the petitioner maintains that the fact that TKS's normal cost accounting system goes no further to accurately assign costs to particular sales does not absolve TKS from reporting reliable, actual costs to produce the subject merchandise. Petitioner cites precedents where the Department required respondents to report data in a more specific format than that created in the normal course of business. The petitioner thus requests that the Department utilize Rockwell's information as facts available for the final determination.

TKS maintains that its indirect overhead allocation methodology is used in the normal course of business, is in accordance with Japanese GAAP and was thoroughly verified by the Department. Respondent notes that it complied fully with all requests for information made by the Department. TKS argues that a comparison of its allocation method to other companies is not the measure applied by the Department in determining the acceptability of an individual respondent's allocation methodology. Therefore, TKS maintains that the Department should accept its methodology as submitted and ignore petitioner's request to apply as facts available petitioner's own unverified overhead rates.

TKS argues that the information provided to the Department during verification indicates that its allocation method is not distortive. TKS notes that during verification it demonstrated to the Department that both subject and non-subject products are treated identically within its system. Additionally, TKS notes that there is no indication in the verification report that the Department believes the methodology distorts costs.

TKS disagrees with petitioner's contention that its allocation method fails to identify R&D costs incurred to specific LNPP projects. TKS maintains that it is unnecessary for the company to keep product-specific R&D data and gives several reasons why LNPP's are charged with the correct proportion of R&D expenses.

DOC Position: We believe that, in the instant proceeding, TKS's method of allocating indirect overhead costs is reasonable and have relied on it for the final determination. The legislative history of section 773(b) of the Act states that "in determining whether merchandise has been sold at less than cost [the Department] will employ accounting principles generally accepted in the home market of the country of exportation if [the Department] is satisfied that such principles *reasonably reflect* the variable and fixed costs of producing the merchandise." H.R. Rep. No. 571, 93d Cong., 1st Sess. 71 (1973) (emphasis added). The CIT has upheld the Department's use of expenses recorded in a company's financial statements, when those statements are prepared in accordance with the home country's GAAP and do not significantly distort the company's actual costs. See, *e.g.*, Laclede Steel Co. v. *United States*, Slip Op. 94-160 at 22 (CIT 1994).

Accordingly, our practice is to adhere to an individual firm's recording of costs, if we are satisfied that such principles reasonably reflect the costs of producing the subject merchandise, and are in accordance with the GAAP of its home country. See, *e.g.*, *Canned Pineapple Fruit from Thailand; Final Determination of Sales at Less Than Fair Value ("Canned Pineapple from Thailand)*, 60 FR 29553, 29559 (June 5, 1995); *Certain Stainless Steel Welded Pipe from the Republic of Korea; Final Determination of Sales at Less Than Fair Value*, 57 FR 53693, 53705 (November 12, 1992). See also *Furfuryl Alcohol from South Africa: Final Determination of Sales at Less Than Fair Value*, 60 FR 22550, 22556 (May 8, 1995) ("The Department normally relies on the respondent's books and records prepared in accordance with the home country GAAP unless these accounting principles do not reasonably reflect the COP of the merchandise"). Normal accounting practices provide an objective standard by which to measure costs, while allowing respondents a predictable basis on which to compute those costs. However, in those instances where it is determined that a company's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or may use alternative methodologies that more accurately capture the costs incurred. See, *e.g.*, *New Minivans from Japan; Final Determination of Sales at Less Than Fair Value*, 57 FR 21937, 21952 (May 26, 1992).

In the instant proceeding, therefore, the Department examined whether the respondent's indirect overhead allocation methodology results in costs of producing the *subject merchandise* that reasonably reflect its cost of production. At verification, the Department requested and analyzed in detail source documents related to the allocation of the three indirect cost items making up a significant portion of the total indirect overhead costs. *See* TKS verification exhibits 26, 27 and 28. On a sample basis, we analyzed the significance of LNPP-specific indirect overhead costs versus non-LNPP specific indirect overhead costs. *See* TKS verification exhibit 31. We noted that the respective product line-specific amounts were comparable, supporting the conclusion that TKS's method for allocating indirect overhead costs was reasonable. As a result, we have determined that TKS's method of accounting for indirect overhead is used in the normal course of business, in accordance with Japanese GAAP and reasonably reflects the cost of producing LNPPs.

We also disagree with petitioner that by pooling R&D expenses into company-wide overhead costs, TKS shifted costs away from U.S. press sales to home market sales. Petitioner's assumption that TKS incurs higher R&D costs on press additions compared to that of systems is purely speculative. It should also be clarified that the R&D costs pooled and allocated by TKS in its ordinary course of business do not include engineering costs which relate to specific projects as petitioner implies. These engineering costs are assigned to the projects to which they relate.

Lastly, we agree with petitioner that the Department has in past cases

required respondents to report cost data in a more specific format than that created in the normal course of business. We disagree, however, that in this particular instance TKS needed to allocate its indirect overhead cost data in a more specific manner. TKS's primary business activity is the production and sale of LNPPs. Additionally, TKS's non-LNPP production activities utilize production shops and sections that are also used by its LNPP operations. Since production of non-subject merchandise is relatively insignificant and the results of our testing at verification revealed that costs are reasonably allocated, a more detailed cost allocation method is not deemed necessary.

Comment 11 The Reclassification of TKS USA's Rent, Employee Insurance, and Workman's Compensation Expenses: TKS objects to the Department's preliminary determination to disregard TKS USA's reclassification of rent, employee insurance, and workman's compensation expenses from SG&A to indirect overhead. TKS maintains that its total SG&A expenses, as reported on its audited financial statements, encompass three categories: (1) Indirect overhead expenses associated with the different divisions of the company; (2) selling expenses which are incurred in the selling of presses; and (3) office administration expenses which benefit the entire company. TKS explains that in order to be consistent with its current accounting treatment, it reclassified rent, employment insurance, and workman's compensation from office administration to indirect overhead for two fiscal years of the POI.

The petitioner objects to TKS's request and states that the Department appropriately based its preliminary calculations on the expenses as reported in TKS's financial statements. The petitioner states that TKS has not submitted overwhelming evidence which petitioner believes necessary to change classifications of items in audited financial statements. The petitioner disagrees with TKS's contention that the 1995 classification of such expenses requires a change to the prior years' classifications of expenses. The petitioner states that, regardless of whether or not the prior years' results were reclassified, the expenses in question may appropriately be classified differently depending upon the year incurred. According to the petitioner, internal re-organizations to accommodate an expanding product line may change the nature of some expense from being reasonably applicable to the entire company to being more product-line specific.

DOC Position: We agree with TKS that its classification of these costs as indirect overhead is reasonable. We verified that the method TKS used to allocate the prior year workman's compensation, employee insurance and rent costs is in accordance with its current accounting treatment of these costs and we consider it reasonable for these costs to relate to manufacturing operations. Additionally, we noted that each overhead cost item is allocated based on the factor that drives the cost (*e.g.*, square footage for rent). We therefore relied on TKS's submitted reclassification of these indirect overhead costs for the final determination.

Comment 12 Inclusion of General and Administrative Expenses in Imputed Credit: TKS maintains that the Department's preliminary inclusion of general expenses in the imputed credit calculation is contrary to the accounting principle governing the capitalization of interest, is inconsistent with the Department's past practice, and at a minimum results in a double-counting of the expense items that were included in the general expense factor.

TKS cites Financial Accounting Standards Board ("FASB") rule 34 as the accounting principle which the Department has relied upon in past cases as the rationale for capitalizing interest in cases involving merchandise with extended production periods. TKS interprets this principle as applying only to interest expenses, not to movement, selling or general expenses, because general expenses are period costs which are not part of the capital expenditures involved in the calculation of the capitalized interest. TKS concludes that by including general expenses in the calculation of imputed credit, and by calculating the net credit expense as the difference between the sum of production costs plus general expenses and various progress payments, the Department contradicts FASB 34, which explicitly provides that the capitalized interest shall be determined as the net of the actual costs and the actual progress payments.

At a minimum, TKS contends that the Department must adjust its calculation methodology to avoid the double-counting of the expenses that are included in the general expense ratio. Specifically, TKS claims that the allocation of movement expenses and direct and indirect selling expenses to U.S. credit without a proportionate reduction of adjustments to CEP made for the same expenses under section 772 of the Act results in a double-counting of the expenses. TKS cites *MTPs Final Determination (1990)* where capitalized interest was categorized as a manufacturing cost instead of a credit expense, and where the Department explicitly allowed the offset of capitalized interest expense against the company's overall interest expense in the calculations. TKS maintains that likewise, the allocated movement, selling, and general expenses included in the credit calculation should be used to offset the amounts reported as a price adjustment or as a general expense for CV purposes.

The petitioner contends that the Department correctly calculated imputed credit expenses using the net balance of costs incurred and progress payments made during the construction period. The petitioner alleges that TKS's characterization of the Department's calculation of imputed credit as a "capitalized interest" methodology is incorrect, and that TKS's references to FASB 34 are not relevant. The petitioner maintains that credit expenses are calculated using the sales price of the merchandise sold, which includes not only the manufacturing costs, but also amounts to cover general expenses. Accordingly, petitioner supports the Department's inclusion of general expenses in the costs incurred, stating that this methodology was necessary to keep the calculations internally consistent, (*i.e.*, so that the credit income and offsetting expense would be calculated on a reasonably consistent basis). The petitioner claims that G&A expenses have always been factored into the Department's normal credit expense calculation.

DOC Position: We agree with petitioner that SG&A expenses should be charged with imputed credit costs. As petitioner noted, it is the full cost of production rather than manufacturing costs that should be assessed with imputed credit. Because SG&A, by definition, are included in COP, and because the purpose of the imputed credit adjustment is to reflect the interest cost associated with the production costs incurred and the progress payments received during the production phase of the LNPP, it is appropriate to include SG&A expenses in the imputed credit calculations. Further, as also stated by petitioner, because the revenue side of our calculation captures the entire LNPP price, the cost side of the calculation should capture all production costs.

We disagree with TKS that the Department double counted general expenses through its application of the imputed credit adjustment. We increased the base to which imputed

credit expense was computed in order to include all general expenses related to each press sale. We did not, as TKS contends, increase the imputed credit expense by the actual general expense amounts incurred.

Comment 13 Transportation and Installation Charges and the Calculation of CEP Profit: TKS maintains that the home market cost of production used in the preliminary determination did not include the reported transportation and installation costs ("PTI)", thereby understating the total costs and overstating the CEP profit ratio. TKS requests that the Department adjust its calculations to properly account for all costs associated with home market sales by summing the manufacturing costs and the transportation and installation expenses.

DOC Position: We agree with respondent that the Department mistakenly excluded PTI costs in computing CEP profit for the preliminary determination. For the final determination, we recalculated CEP profit to include the PTI costs.

Comment 14 Direct Selling Expenses and COM for U.S. Sales: According to TKS, if the Department continues to allocate the general expenses of TKS USA based on COM inclusive of inputs acquired from TKS in Japan, then it should exclude home market direct selling expenses from COM. Following TKS's logic, the inclusion of the home market direct selling expenses overstates the cost of producing the merchandise sold to the U.S., and therefore overstates the amount of the allocated general expenses associated with each U.S. sale. According to TKS, home market direct selling expenses have no relevance to sales of U.S. merchandise, and, since all direct selling expenses incurred on U.S. sales have already been assigned a proportionate share of the TKS USA general expenses, it is thus unnecessary and improper to include any home market direct selling expenses when allocating TKS USA general expenses to further manufacturing operations.

The petitioner maintains that TKS's argument that home market direct selling expenses should not be included in the COP is based on a presumption that the Department intended to allocate the expenses to the cost of presses as imported (rather than the COP of the press sold in the home market). Assuming *arguendo* that TKS is correct, it agrees that the direct selling expenses should not be included in the calculation of the cost of the press as imported. However, the petitioner states that TKS neglected to mention that the Department would have to replace the direct selling expenses with the movement cost incurred to ship the presses from Japan to the U.S. port. Thus, if the Department decides to apply the U.S. G&A expense to the cost of presses as imported, the Department should deduct direct selling expenses from the COP of the Japanese press, replace the home market indirect selling expenses with the export indirect selling expenses and add movement costs from Japan to the U.S. port.

DOC Position: Since we recalculated TKS USA's further manufacturing G&A expense rate exclusive of the inputs acquired from TKS, this point is moot.

MHI-Specific Comments

Sales Issues

Comment 1 Removing Certain Sales from the Denominator of MLP's Indirect Selling Expense Calculation: The petitioner argues that the U.S. indirect selling expense factor calculated for MLP is incorrect because of the inclusion in its denominator of certain sales which were negotiated and concluded prior to MLP's existence. Thus, it concludes, MLP could not have incurred indirect selling expenses associated with such sales, and they should be removed from the denominator of the calculation. The parallel is drawn with MHI's treatment of the Guard sale in its calculation of MLP's indirect selling expense ratio.

MHI argues that MLP properly included all LNPP sales recognized during the POI in the denominator of its indirect selling expense calculation, because of the activities required beyond the direct expenses incurred for installation and warranty work. Furthermore, MHI argues that for large, custom-built products, such as LNPPs, the end of the negotiation process does not signal the end of the sales process. Therefore, MHI explains that MLP performed sales-related activities during the POI. Moreover, if only sales negotiated during the POI are included, then the amount involved in the Washington Post contract should be included in the denominator for indirect selling expenses. MHI explains that if the petitioner's logic is followed, then the MLP indirect selling expense factor would actually decrease. According to MHI, indirect selling expenses for the Guard were not included in the MLP indirect selling expense allocation because MLP did not recognize the revenue; MLP did recognize the revenue associated with the sales it did make that were negotiated outside of the POI.

DOC Position: We disagree with the petitioner. It is proper to include all sales recognized during the POI in the denominator whether the sale was made before or after the start of the POI since the expenses in the numerator apply to pre-POI sales as well. Even though the pre-POI sales were negotiated and concluded before MLP was founded, the Department calculates indirect selling expenses based on expenses and revenue recorded during the POI. Thus the numerator of the factor calculated utilizes the expenses recognized by MLP in the normal course of business for the period in question and the denominator of that factor utilizes the sales recognized by MLP in the normal course of business for the same period. The Department uncovered no manipulation or distortion which would cause us to reject MLP's normal recording of revenue based on sales recognition. At the preliminary determination the Department made an adjustment to the numerator of the indirect selling expense calculation, basing the allocation of general sales office expenses on sales revenue instead of the head-count methodology submitted by MHI. We have therefore employed an MLP indirect selling expense factor for purposes of this final determination which is exclusive of common G&A expenses. *See* also Japan "Common Issues" Comment 9.

Comment 2 Commission Paid to a Possibly Affiliated Trading Company for the Piedmont *Sale:* The petitioner maintains that, in the preliminary determination, the Department incorrectly treated the trading company involved in the sale to the Piedmont Publishing Company as an unaffiliated entity. The petitioner cites many joint ventures by MHI and this trading company as evidence that these are affiliated entities. The petitioner further maintains that the relationships inherent in the membership of MHI and the trading company in the Mitsubishi company group ("Keiretsu)", including the use of a common corporate name and logo, a tradition of company cooperation, cross-ownership of stock, cross-lending and cross-borrowing, are indicators of affiliation.

According to the petitioner, the affiliation status of the trading company raises a critical issue regarding the commission it received from MHI in connection with the Piedmont sale—namely whether that transaction was at arm's length. The transaction is characterized as not at arm's length by the petitioner, based on the relative size of the commission earned on the Piedmont sale as opposed to that earned by Sumitomo Corporation ("SC") for the Guard sale. Because MHI did not provide the actual costs incurred by the trading company involved in the

Piedmont sale, the petitioner proposes that the Department apply the effective rate of the SC commission (*i.e.*, the reported SC commission as a percentage of the Guard sales value) to the value of the Piedmont sale.

MHI maintains that its sale to Piedmont is through a company which is not affiliated under the objective statutory criteria. MHI argues that the Department should reject the petitioner's request to adjust upward the reported commission paid by MHI for the Piedmont sale. MHI argues that investments between companies are not covered under the statute, specifically joint ownership of subsidiaries. MHI argues that the antidumping law concentrates on the actual *control* of parties, and that mere joint ownership does not rise to the level of control required to find affiliation because the trading company involved does not exert direct control through its stock holdings. MHI argues that the relationships among "Mitsubishi companies" are insufficient to allow MHI to control the trading company in the Piedmont sale, or to allow the trading company to control MHI.

MHI argues that petitioner's assertions that MHI and the trading company are affiliated through: membership in a Keiretsu, common name and a logo, traditional business relationships, significant cross-ownership of stock, and cross lending and borrowing, fail to satisfy the "control" test for affiliation. MHI argues that the SAA does not presume that members of family groupings are affiliated and that this is only one factor for consideration. MHI also argues that nowhere does the antidumping law or the SAA suggest that common name, logo, and traditional business relationships establishes control. MHI also argues that affiliation through stock ownership is measured by a five-percent-or-greater threshold and the antidumping law does not deem shareholders as affiliated based on comparative (*i.e.*, cumulative company group) share holdings. Furthermore, MHI argues that MHI and the trading company in the Piedmont sale have no financing arrangements.

MHI further argues that the commission paid for the Piedmont sale is an arm's length transaction requiring no adjustments. MHI explains that the commission for the Guard sale was much greater because the role played by SC was more substantial than played by the other trading company in the Piedmont sale. Enumerating some of the additional functions performed by SC, MHI noted that it prospected for U.S. customers, provided U.S. sales strategy, and negotiated the sale.

DOC Position: The Department disagrees with the petitioner's argument that the sale through the trading company to Piedmont should be treated as an affiliated party transaction for purposes of this final determination. Although MLP is owned jointly by MHI and the trading company, the Department does not view the joint ownership, in this particular situation, as a sufficient indication that MHI's relationship with the trading company is such that either is "operationally in a position to exercise restraint or direction" over each other, as opposed to over MLP. We agree that cross-ownership of stock, cross-lending and cross-borrowing, a tradition of company cooperation, and particularly, combinations of significant degrees of such relationships, are possible indicators of affiliation. However, the Department stated in its February 23, 1996, Concurrence Memorandum that the extent of stock ownership in subsidiary organizations greater than five percent between the companies (*i.e.*, their joint ownership of numerous enterprises, particularly LNPP enterprises) is, by itself, an insufficient indication of affiliation. We also maintain that the degree of cross-ownership and the level of joint-financing between MHI and the trading company are not significant enough to be indicators of affiliation.

In its March 8, 1996, submission, MHI provided the proportion of sales made by MHI through the trading company to the number of total sales made by the trading company as well as the proportion of sales made by MHI through the trading company to the total sales made by MHI (*i.e.*, comparative dependence data), basing the trading company's figures on publicly available trade data. MHI also provided additional information on stock ownership in a third party, which was zero. The Department requested MHI to provide the Department with commissions received by the trading company from other parties not affiliated with it, to use in case the Department determined MHI and the trading company to be affiliated and rejected MHI's claim that the commission for the trading company was at arm's length. We also recommended that MHI request the trading company to provide the trading company's selling expenses and G&A for the services provided to MHI in making this transaction. However, MHI stated that it asked the trading company to provide the relevant sales information and that the trading company refused by explaining that it was not affiliated in any way to MHI, and therefore under no obligation to cooperate on MHI's behalf.

The MLP joint venture between MHI and the trading company does not in and of itself constitute control between MHI and the trading company. Moreover, MHI has cooperated and attempted to provide information requested by the Department for its sale through the trading company. Whether the trading's companies lack of full cooperation vis-a-vis reporting its expenses, as an unaffiliated party, should impute any lack of cooperation to MHI is moot in this instance because MHI was able to obtain the comparative dependence data from its own and public sources which was an important factor in our analysis of potential affiliation. Because the information currently on the record allows us to determine that for purposes of this investigation, the trading company is not affiliated with MHI, the data which the trading company did not submit is not required as part of our margin calculations.

For purposes of this final determination, we have decided to treat the Piedmont sale as a sale through an unaffiliated trading company and have used the commission as reported in our final calculation. We note, however, that the Department will continue to develop an analytic framework to take into account all factors which, by themselves, or in combination, may indicate affiliation, such as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other. In future investigations and administrative reviews, the Department may need to re-analyze the different aspects of the Mitsubishi group first examined here, based on policy developments.

Comment 3 Proposing a Discount on the Guard Sale: The petitioner proposes that the Department treat an unpaid payment reported by MHI as a direct deduction from the gross Guard contract price, in effect labeling the unpaid payment a discount. The payment was not made because of a dispute between Guard and MHI, the nature of which is proprietary, and discussed in greater detail in the July 15, 1996, calculation memorandum.

MHI argues that the unpaid amount reported by MHI should not be treated as a discount. MHI explains that from a purely commercial perspective, it would make no sense to grant a discount because the unpaid amount is significantly greater than the cost of the item in dispute.

DOC Position: We agree with petitioner that the adjustment to the gross price of the Guard sale should be made by treating the unpaid amount as a discount. In the *Final Results of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware From Mexico,* 58 FR 43327 (August 16, 1993), the Department applied BIA (now facts available) to those instances "where three U.S. customers refused to pay the full amount of [respondent] ITCO's invoice" even though "ITCO continued to carry the unpaid amounts as outstanding balances on their accounts and continues to demand payment." We drew an adverse inference and reduced reported prices for these "unauthorized discounts" because there was "no indication of reasonable expectation of payment." In the instant investigation of the Guard sale, there is again no indication of reasonable expectation of payment. Further proprietary details have been discussed on the record in the Department's July 15, 1996, calculation memorandum.

Comment 4 The Nature of the Guard Sale, Including the Date of Sale: The petitioner maintains that the transaction which the Department classified as a sale by MHI through SC to the Guard Publishing Company should instead by treated as a sale from MHI to the SC, and that this price should be the basis for U.S. price. The petitioner disagrees with MHI's characterization of SC's role as that of a mere commission agent, primarily because MHI was not a signatory party to the contract which established the sale to Guard. Because the only sales contract to which MHI was a party is the purchase contract issued by SC to MHI, the petitioner believes that the Department's trading company rule requires the Department to treat the sale as made between MHI and SC. Citing the *Final Determination: Certain Forged Steel Crankshafts from Japan,* (52 FR 36984, October 2, 1987) ("*Forged Crankshafts*") and the court ruling *Peer Bearing Co.* v. *United States,* 800 F. Supp. 959, 964 (CIT 1992) ("*Peer Bearing*"), the petitioner states that the trading company rule provides that a sale to a trading company in a foreign market is a sale to the United States if the manufacturer knows that the merchandise is destined for the United States at the time the sale is made.

First, the petitioner maintains that the evidence examined by the Department establishes that MHI sold the Guard LNPP system to SC. The petitioner stresses that the contract for sale from SC to Guard establishes this as fact. Petitioner criticizes the Department's acceptance of several subsidiary documents as evidence of MHI's involvement in the transaction between SC and Guard. According to the petitioner's analysis of relevant documents, SC could not have acted as MHI's sales agent because MHI obviously confirmed that SC was not authorized to bind MHI to the sales agreement between SC and Guard. The petitioner maintains that there is no documentary evidence that MHI participated in the SC/Guard negotiations, especially with respect to the paramount issue of contract price. While recognizing the necessity that SC consult with MHI on technical matters such as press configuration and installation planning, the petitioner emphasizes that there is no evidence on the record indicating MHI's involvement in establishing the price to Guard and the payment schedule from Guard to SC.

Second, the petitioner maintains that SC's actions throughout the course of the Guard transaction establish that it was an independent trading company and not a commission agent of MHI. According to the petitioner, SC acted in the capacity of an independent trading company: it negotiated, established, and subsequently modified, on its own authority and behalf, the terms of sale of the LNPP system to Guard. The petitioner provides its interpretation of the basic documentation underlying the commission paid by MHI to SC, concluding that SC was not merely a commission agent.

The petitioner states that the Department should consider the date of sale to be that for the purchase order placed between SC and MHI and that the Department was incorrect in its preliminary analysis, which concluded that MHI's role was tantamount to that of a seller in the original transaction between SC and Guard, based on (1) MHI's offer to be responsible for SCs obligations to Guard if there were to be a failure of performance by SC, and (2) MHI's commencement of the design and construction of the press prior to a written agreement between MHI and SC. According to petitioner's interpretation, the unilateral offer by MHI to guarantee SC's obligation to provide a conforming press system does not alter the fact that SC sold the subject merchandise to the Guard, but should be interpreted as a warranty by the press manufacturer that it would ultimately produce the goods sold by the independent trading company. The objection is raised that the Department misreads the U.C.C. provision on performance in connection with MHI's initial design and production activities. While the petitioner does not dispute that in certain circumstances partial performance may ratify an unexecuted contract, it maintains that the Department ignores the fact that the only contract to which MHI was a party, and which could thus be ratified, was the purchase order fully consummated later between MHI and SC, and which incorporated in it the terms of the earlier contract between SC and Guard. Because the material terms of sale, particularly price and quantity, were established between MHI and SC at a date later than the contract between SC and Guard, the petitioner maintains that the later date should be used in the antidumping analysis as the correct date of sale. Accordingly, it was only at this point in time that the essential terms were firm so that the parties could no longer unilaterally alter them.

MHI argues that the Department properly analyzed the sale to Guard as a sale between MHI and Guard. MHI disagrees with the petitioner's argument that MHI never had a contractual relationship with Guard. First, MHI argues it played an integral part in making the sale, such as developing cost estimates used to set the price, signing the contract as a witness, and issuing a letter to Guard guaranteeing performance. Second, MHI argues the law of agency provides that when a party holds itself as an agent, it has the ability to bind the principle. Third, MHI asserts that the petitioner's argument that MHI must have produced this LNPP system as a "subcontractor" is presented without evidence.

MHI further argues that SC was a commissioned sales agent of MHI, as evidenced by the documentation submitted by it, and agrees with the petitioner when it says the commission agreement did not create a sales contract. MHI maintains that it is a document which establishes the basis for a commission arrangement between a manufacturer and a sales agent and that the amount of SC's commission never involved post-sale negotiation.

MHI also argues that the Department's "trading company" rule is not applicable to this sale. More specifically, MHI maintains the petitioner's contention that the Department should treat the purchase orders between MHI and SC as constituting the actual sale is wrong. First, MHI contends that the Department recognized that MHI did not sell a press to SC. Second, MHI contends that the trading company rule allows the Department to capture a respondent's sales which are delivered to the United States, where the respondent knows at the time of sale that the merchandise is destined to the United States. MHI

argues that the essential function of the rule is to determine which of a respondent's sales should be included in the dumping calculation, and contends that the trading company rule has been used to establish the proper U.S. price when the trading company acts as an independent reseller of subject merchandise. Accordingly, a different interpretation is given to *Peer Bearing* whereby MHI holds that the ruling does not require the Department to use the price contained on the purchase order, but stands for the proposition that the trading company rule is discretionary, based on the facts of the case. MHI also maintains that the *Forged Crankshafts* does not apply because in that case the trading company was responsible for setting the price and MHI was responsible for establishing the final price in this investigation. Thus, application of the trading company rule under these circumstances would be inappropriate.

With respect to the date of sale debate, MHI argues that the Department correctly determined the proper date of sale. MHI cites *MTPs Final Determination (1990)* which states that, for sales of custom-built merchandise, the Department should establish a date at the earliest date when terms are fixed. MHI explains that there was confusion regarding MHI's sales process in the home market for certain sales because the essential terms of the sale were not fixed until the purchase order to the trading company was issued. MHI maintains that the Guard sale is quite different, because MHI signed the sales contract.

DOC Position: The Department agrees with MHI that the preliminary determination properly treated the sale to Guard as a sale between MHI and Guard. In the Department's February 23, 1996, decision memorandum, we stated that one of the main issues was whether the sales price between MHI and SC or the sale price between SC and Guard is the appropriate price for our dumping analysis. Because MHI originally only reported the price from MHI to Guard, we requested that MHI submit the price of its sale to SC, as well as provide all basic documentation relating to the roles of Guard, SC, and MHI in this transaction. In our preliminary determination, we explained that the sales documentation provided by MHI demonstrated its integral involvement in the Guard transaction. No information placed on the record since that time, nor any information reviewed during verification, contradicts that conclusion. Following the commission agreement between MHI and SC, MHI was kept fully apprised of the negotiations between SC and Guard. Moreover, MHI's role as signatory witness on the contract between SC and Guard is evidence of MHI's direct involvement with the sale of the product in the U.S. market. The nature of this product shows that each sale involves merchandise which must meet the unique specifications of the customer, and the record shows that MHI began to design and construct the merchandise shortly after witnessing the contract for sale arranged by SC on its behalf. Therefore, we determined that the appropriate transaction for use in our antidumping analysis is the price established in the sale of LNPP from MHI through SC to Guard.

The Department disagrees with the petitioner when it states that the date of sale should be that for the purchase order placed between SC and MHI. As stated in the preliminary determination, section 773(a) of the Act mandates the Department to compare the appropriate transaction to the "normal value" of the subject merchandise. Neither the statute nor the regulations determine the precise "date of sale." Our proposed regulations provide that the Department will "normally" rely on the date of a company's invoice date as the date of sale. Our practice must also allow for specific instances where commercial realities dictate the use of some other instrument to set the date of sale. Our proposed regulation recognized that the invoice date "may not be appropriate in some circumstances." In this instant investigation, where the long-term sales negotiations, design, production, shipment and installation of LNPPs require contractual documentation, the date of sale of the subject merchandise is best established by the date a contract is signed. Consistent with case precedents involving complex merchandise, such as LNPP, which is custom-made, the Department exercised a greater degree of flexibility in finding the existence of a firm agreement. See *MTPs Final Determination (1990)*. The Department's determination of the date of sale was supported by its examination of the sales documentation submitted by MHI. We also looked to contract law (see, *e.g., Gray Portland Cement and Clinker from Mexico,* 55 FR 29,249 (1990)) to identify the point in time when the essential elements of the sale are firm, thus demonstrating an intent to be legally bound.

While the date set by the contract signed by SC and Guard clearly identifies the seller (SC) and buyer (Guard) and sets the quantity and price for this transaction, MHI witnessed the sales agreement between SC and Guard and accepted responsibility for providing the merchandise which fulfilled SC's obligations to Guard. Moreover, after MHI signed the contract between SC and Guard as a witness, it began to design an LNPP system to Guard's unique specifications. Thus, it demonstrated its intent to be legally bound to the agreement through written instruments and its own performance on the contract. *See* U.C.C. § 2-201(3)(a). At verification, the Department examined the written evidence and confirmed the actual company performance to support its conclusion for date of sale. Based on this evidence, the Department determined that, by virtue of MHI's participation in the sales process and its performance to fulfill the terms of the contract, MHI was a party to the sales agreement with Guard.

Comment 5 Treatment of Technical Service Expenses: MHI maintains that the Department erred in its treatment of technical service expenses for the following reasons. First, MHI posits that, even assuming arguendo that installation is treated as further manufacturing activity, the technical services MHI provided had nothing to do with further manufacturing as they were incurred after installation and should not be treated as a part of installation. Second, MHI argues that the Department has usually treated technical service expenses as circumstance of sale adjustments, and should do so again.

The petitioner argues that in the Department's preliminary determination it appropriately treated MHI's "technical service" expenses as an installation expense, because when the addendum to the contract covering how such expenses are to be incurred is read in conjunction with the original terms of the contract, it is clear that these technical service expenses relate directly to an alternative method of ensuring the customer that MHI would provide trouble-shooting and other services associated with installation.

DOC Position: We disagree with the respondent. The Department correctly included technical service expenses as a part of total installation expenses. The sale of an LNPP involves the sale of a functional large newspaper printing press. The processes involved in installing the LNPP equipment include all those steps necessary to bring the equipment to a functional stage. This perspective also underlies our classification of the total installation costs as part of further manufacturing. All expenses, including component assembly, integration of newly sourced auxiliary components, site preparation, installation supervision, technical servicing, equipment testing, which

make the LNPP physically functional, are part of an installation process which creates the actual LNPPs which "are capable of printing or otherwise manipulating a roll of paper more than two pages across" in the production of newspapers. The Department is treating training expenses, where possible, as a separate category of direct selling expenses, since training involves the development of customers' personnel's operation skills, not the physical preparation and necessary modification of the actual merchandise which produces newspapers.

Comment 6 Inclusion of Indirect Selling Expenses Allocable to Spare Parts: MHI maintains that it reported MLP indirect selling expenses for U.S. sales based on the total contract price of each U.S. sale, inclusive of the value of spare parts. Accordingly, MHI maintains that its calculation of those indirect selling expenses pertained to both LNPP systems and spare parts covered by the contract. Because the sales contracts for MHI's U.S. sales separately identified the value of spare parts, in its preliminary determination, the Department deducted the value of spare parts from the starting price. MHI argues that because it allocated its indirect selling expenses based on the total contract price of the LNPP and spare parts, the Department should exclude an allocable amount for indirect selling expenses incurred on behalf of these spare parts.

The petitioner argues that MHI's argument that the indirect selling rate should be multiplied by the price of an LNPP less spare parts is methodologically inconsistent, since in any rate-based allocation, the transaction-specific value to which the rate is applied should be calculated in the same manner as the denominator used in the rate calculation itself. The petitioner asserts that the denominator used in the calculation of the indirect selling rate includes the value of spare parts. Therefore, the petitioner states that it would be inconsistent to apply the rate to the price of LNPP less spare parts. Furthermore, the petitioner argues that spare parts are not sold but are included free-of-charge in the LNPP sale and are thus a selling expense themselves, and should not carry the burden of an additional selling expense. Accordingly, the Department should continue to allocate total LNPP indirect selling expenses to the total LNPP sales.

DOC Position: The Department disagrees with the respondent's argument that the Department should exclude an allocable amount of indirect selling expenses incurred on behalf of spare parts. We agree with the petitioner that it would be methodologically inconsistent for the Department to multiply the price of LNPP less spare parts when the indirect selling expense ratio includes indirect selling expenses for spare parts in the numerator and spare parts revenue in the denominator.

Comment 7 Interest Rate Used for Calculation of Imputed Credit Expenses: MHI argues that the Department's practice of matching the denomination of the interest rate used in calculating imputed credit to the currency in which the sales are denominated is not applicable in this case. MHI explains that it is inconsistent with the requirement articulated in *LMI-La Metalli Industriale, S.p.A.* v. *United States* 912 F.2d 455, 460 (Fed. Cir. 1990) ("*LMI*") and interpreted by the CIT in *United Engineering & Forging* v. *United States,* 779 F. Supp. 1375 (CIT 1991), aff'd, 996 F.2d 1236 (Fed. Cir. 1992) that the interest rate used for imputed credit accord with "commercial reality" and must be "on the basis of usual and reasonable commercial behavior." MHI argues that the Department's approach used in the preliminary determination is inconsistent with the principles of determining credit expenses based on the lowest available interest rate, and on the lowest rate of the country of manufacture when foreign borrowing is not available to the respondent.

Moreover, MHI contends that the Department ignores the commercial reality for MHI, which is that all of its short-term debt was denominated in yen, so that MHI financed its working capital and accounts receivable for both domestic and export sales with yen-denominated financial instruments. MHI maintains that it would have been irrational, in view of the lower interest rates available in Japan, for it to borrow in dollars. MHI maintains that the use of different interest rates for U.S. and Japanese sales is unreasonable since production costs for LNPPs sold in both markets were incurred in the same factory. MHI explains the circumstance of sale adjustment for differences in credit terms between the U.S. market and comparison market is designed to separate true price discrimination from differences in prices that arise from differences in commercial credit terms in each market.

The petitioner argues that the Department correctly applied a U.S. dollar-denominated interest rate to compute MHI's imputed credit expenses on U.S. sales. The petitioner contends that the Department followed its established policy of basing imputed credit expenses on the interest rate of the currency in which the sales are denominated to correctly reflect the time value of U.S. dollars, the currency of transaction. The petitioner cites the *Final Results of Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Sweden,* 61 FR 15772, 80 (April 9, 1996) and the *Final Results of Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia,* 61 FR 14049, 54 (March 29, 1996) to support its argument that sales are matched to the currency in which the sale is denominated. Furthermore, the petitioner argues that the Department's approach is consistent with *LMI* where the court stated that "the imputation of credit cost itself is a reflection of the time value of money. * * * "

DOC Position: We disagree with MHI's argument that the Department's practice of matching the denomination of the interest rate used in calculating imputed credit to the currency in which the sales are denominated is not applicable in this case. As cited in our February 23, 1996, Concurrence Memorandum for the preliminary determination, the Department explained its policy in selecting the interest rate applicable in calculating imputed credit expenses in the *Final Determination of Sales at LTFV: Oil Country Tubular Goods from Austria,* 60 FR 33551, 33555 (June 28, 1995) ("*OCTG from Austria*"):

> A company selling in a given currency (such as sales denominated in dollars) is effectively lending to its purchasers in the currency in which its receivables are denominated (in this case, in dollars) for the period from shipment of its goods until the date it receives payment from its purchaser. Thus, when sales are made in, and future payments are expected in, a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated. Only then does establishing a measure of imputed credit recognize both the time value of money and the effect of currency fluctuations on repatriating revenue.

The Department disagrees with MHI's statement that the interest rate used by the Department is not in accord with "commercial reality." The "commercial reality" should be evaluated on the basis of recognizing imputed credit on the time value of money and the effect of currency fluctuations on repatriating revenue. Furthermore, at verification the Department noted that MHI had U.S. short-term borrowing from an affiliated company. Thus, while the Department would not use the actual interest rate of the borrowing from an affiliated institution (as it is of questionable arm's-length nature), its existence indicates the ability and readiness of MLP, in general, to support its LNPP

activities which result in U.S. dollar-denominated revenues by borrowing in U.S. dollars. Thus, the Department's approach is consistent both with its practice in *OCTG from Austria* in that the first priority is to match the denomination of the interest factor to the denomination of the receivables in question and with *LMI* in that credit costs are imputed "on the basis of usual and reasonable commercial behavior."

Comment 8 U.S. Dollar Short-Term Borrowing from Unaffiliated Lenders: MHI notes that as observed in the MLP sales verification report, MLP had a small amount of U.S. dollar-denominated borrowing from an affiliated company but also maintains that this fact does not warrant any revision to MHI's reported data. Stating that it had no borrowing in U.S. dollar-denominated instruments from any unaffiliated lenders, and that since the Department's normal practice is to exclude borrowings from affiliated lenders in the computation of short-term interest rates for imputed credit, MHI claims that the affiliated borrowing is technically irrelevant to the margin calculations.

DOC Position: The Department agrees with MHI that it is the Department's practice to apply only short-term borrowing which is from unaffiliated parties. Therefore, the Department will not make any adjustments to imputed credit using the short-term interest rate from MHI's affiliated company.

Comment 9 Guard Commission: MHI maintains that the amounts it reported for its commission payments on the Guard sale were verified and contends that the values it reported are correct and accurately reflect the structure of this complicated transaction. If the Department were to modify the amount of commission reported, then MHI argues that the Department should ensure that it makes a comparable adjustment in the imputed credit earned by MHI on the sale.

The petitioner argues that verification confirmed that MHI misreported the total "commission" earned by SC on the Guard sale and argues that SC retained a payment and mark-up, plus an additional amount not factored into the commission calculation. In order to argue that the additional amount was interest earned on payments from the Guard to SC which was "kept by SC in agreement with MHI," the petitioner cites directly to the Department's verification report. The petitioner asserts that even though the additional income was used to cover U.S. duties and brokerage, it should be included as commission expense.

DOC Position: We disagree with the petitioner, in part. The direct payment portion of the commission, together with the amount of "mark-up" between the contract value at which Guard purchased the LNPP and the invoice price which was owed by SC to MHI, have both been treated as the total commission amount on the sale. As noted in MHI comment 4, above, the Department has determined that the correct sale is from MHI to Guard, and that the correct starting price is the price paid by Guard. We must therefore deduct from the starting price whatever actual *sales* revenue was not received by MHI, that is, the mark-up between the purchase price between MHI and SC and the amount paid by Guard to SC. We disagree, however, with the petitioner's suggestion that the additional amount of *interest* income earned on payments from the Guard to SC and kept by SC in agreement with MHI, be deducted from the reported gross price. The majority of the interest earned on the payments from the Guard to SC was retained by SC. Only a small portion of the interest earned was transferred to MLP and included by MHI as a U.S. price increase. The amount of interest income retained by SC represents the time value of SC holding payments from Guard. Our imputed interest calculations begin measuring credit income/expense from the time payments begin to be made from SC to MHI. Because we verified payments as received and recorded by MHI (SC being an unaffiliated party not subject to verification), we should not use Guard's payment structure to SC as the framework for our imputed interest calculation. Thus we should not include the measure of the time value of holding payments during that same time frame, *i.e.*, as payments flowed from Guard to SC, in determining the extent of the commission. However, as a corollary, we should not, and do not, include the additional payments from SC to MHI which resulted from interest income earned but *not kept* by SC for that same time frame—such amounts, because they exceeded the limits on actual interest income agreed to with MHI, were turned over to MHI by SC.

Comment 10 Cost of Services and Materials Provided to MHI's Customers: MHI disagrees with the conclusion stated in the MHI sales verification report that the net value of free services and materials provided on the Guard sale were not reported in MHI's response. MHI contends that all costs associated with both parts and services were reported to the Department.

DOC Position: The Department agrees that MHI reported the costs associated with the free parts and free services, but would modify its conclusion to state that MHI did not report the net value of the free parts and services as an adjustment to the gross price; this is important because MHI did provide the value of other free materials both in the form of a deduction from gross price and, alternatively, as an addition to total contract costs. Since the Department, in its preliminary determination, deducted similar free options from the total contract price wherever possible, instead of increasing CV by the associated costs, our verification report note was intended to reflect that MHI had not used the same identifiable format for the materials and services in question. Because the costs of free services were subsumed in the total expenses reported to the Department, and used in the current format of the calculations, no modification to the U.S. price for the free services is required. However, because the production cost of free parts is not being included in CV, the total value of free materials reported to the Department for the Guard contract has been increased by the value for the additional free parts observed at verification. The proprietary details are contained in the July 15, 1996, MHI Calculation Memorandum.

Cost Issues

Comment 11 Allocation of Further Manufacturing G&A: The petitioner agrees that the investigation period for MHI provides an adequate time frame to sufficiently alleviate annual fluctuations and provide a representative U.S. G&A rate for MLP. However, the petitioner objects to the methodology employed at the preliminary determination in applying this rate to individual U.S. sales. According to the petitioner, MHI calculated the U.S. G&A rate by dividing MLP's total LNPP G&A expenses by total LNPP sales revenue. Petitioner protests that the Department incorrectly allocated U.S. G&A expenses back to individual U.S. sales in the preliminary determination by multiplying this U.S. G&A rate by the costs associated with U.S. further manufacturing only. According to petitioner, the Department has two remedies available: (1) If the Department continues to accept a U.S. G&A expense ratio based on total LNPP sales revenue, then it must apply that rate to the entire value of each sale, or (2) the Department may recalculate a U.S. G&A rate based on MLP's LNPP cost of sales for the relevant period and multiply this revised rate by the total cost of sales (*i.e.*, the foreign COP plus U.S. further-manufacturing costs) of each transaction.

While the petitioner asserts that the Department under-allocated U.S. G&A expenses, MHI maintains that U.S. G&A expenses were over-allocated. MHI argues that the rate computed was based on an allocation of both G&A and indirect selling expenses over MLP's cost of goods sold and not over sales value, as petitioner claims. MHI asks that the Department utilize the allocation formula presented in its case brief for purposes of the final determination.

DOC Position: We agree with petitioner that in the preliminary determination, a G&A rate which was based on MLP's total LNPP sales was applied to only the costs associated with further manufacturing. For the final determination, we recalculated a G&A rate based on MLP production costs incurred in the U.S. and applied the rate to MLP's further manufacturing costs. This method effectively allocates G&A expenses to the individual U.S. sales on the same basis used to calculate the rate. In our computation of the G&A rate, we excluded the indirect selling expenses that were erroneously included in the submitted MLP G&A rate used in the preliminary determination.

Comment 12 The Application of the Major Inputs Rule: MHI argues the Department misapplied the major inputs rule and maintains that the rule is appropriate only in the context of diversionary dumping. MHI argues that the Department's application of the major input rule cannot be reconciled with the purpose of the rule. MHI states that major input prices can be adjusted only when the Department has received a specific allegation of below-cost sales of major inputs. In this investigation, the Department has not received any request from the petitioner to investigate below-cost sales of major inputs. MHI claims the Department requested COP information from MHI suppliers it deemed affiliated without the "reasonable grounds" necessary for such a request.

Furthermore, MHI argues that, if the Department were to argue that its application of the major inputs rule in this case was an application of the "transactions disregarded" rule, then such an approach would still be contrary to the Department's administrative practice for investigating and adjusting the input prices for affiliated parties. MHI contends that the methodology employed at the preliminary determination differs radically from that used in other proceedings initiated since enactment of the URAA insofar as the Department has normally defined a "major" input as an essential component of the finished merchandise which accounts for a significant percentage of the total cost of materials, the total labor costs, or the overhead costs to produce one unit of the merchandise under review. MHI refers to antidumping questionnaires issued by the Department in recent proceedings to support this definition of a major input. MHI argues that the Department's thresholds of two percent for components and five percent for the system are not representative and that a range of ten to twenty percent is more representative.

Petitioner asserts that MHI has misconstrued the statute. Petitioner states that the statute does not require the Department to have "reasonable grounds" to believe or suspect that an input was sold at less than cost of production in order to allow it to investigate affiliated supplier transactions. Petitioner indicates that the statute's requirement is that the Department have such "reasonable grounds" in order to permit determination of the value of the major input on the basis of information available regarding such cost of production, citing section 773(f) of the Act.

Petitioner disputes MHI's contention that the Department's thresholds for major inputs of two percent for components and five percent for the system are arbitrarily low. Petitioner claims MHI's position is based on considering only the relative value of an input compared to the total production costs of an LNPP, failing to consider the value of the input in absolute terms, which may be significant even when the relative percentage is not.

DOC Position: We disagree with MHI that the Department inappropriately obtained cost information from MHI suppliers deemed affiliated. MHI incorrectly interprets section 773(f)(3) of the Act to mean that the Department must have reasonable grounds to believe or suspect that a transaction between two affiliated parties occurred at below-cost prices in order to request cost information from the respondent's affiliated suppliers. In *NSK Ltd. et. al.* v. *United States,* Slip Op. 95–178 at 14–45 (CIT November 14, 1995) the CIT ruled that the purpose of section 773(f)(3) of the Act is to permit Commerce to use best evidence available (*i.e.*, the cost of producing the input) when it has reasonable grounds to believe or suspect that below-cost sales occurred. The Court stated that there is no support in the legislative history of section 773(f)(3) of the Act for the claim that the Department must have reasonable grounds to believe or suspect that below-cost sales occurred in order to request COP data from an affiliated supplier.

We disagree with MHI that the Department failed to apply its normal "significance" test in determining that an input which represents at least two percent of the total cost of materials, labor, and overhead for any one of the five press components represents a major input in accordance with section 773(f)(3) of the Act. In a typical case in which the subject merchandise only requires a few inputs, we agree that a threshold of two percent for defining a major input appears low. However, in this case, LNPPs require thousands of inputs, with no single input representing a large share of the total LNPP cost. MHI obtained from affiliated suppliers numerous inputs representing over two percent of the total cost of a component (none of which represent more than five percent of the LNPP total production cost), the sum of which represents a significant portion of the total LNPP cost of production. Accordingly, since the inputs we tested represent the most significant inputs used to produce the subject LNPPs, we consider it appropriate in this instance to categorize inputs meeting the two percent threshold as major inputs. Our point is best highlighted by the following hypothetical situation. Suppose 100 percent of the inputs to a press were obtained from affiliated suppliers, with no one supplier providing more than two percent of the total. Under MHI's interpretation, the Department would have no authority to test whether affiliated supplier purchases occurred at above cost prices even though 100 percent of the LNPP inputs were obtained from affiliated suppliers. Even MHI recognizes the unique nature of this case in determining what constitutes a major input. In an August 24, 1995 letter from MHI's counsel, MHI stated that:

> [W]ith respect to suppliers of parts, materials or services incorporated into large newspaper presses, the Department should request "affiliated party" information only from suppliers of "major inputs" of parts, materials or services * * *. For example, if a major input were defined as any input accounting for one percent of total purchase price * * * 90 percent of the * * * suppliers could be ignored because their sales fall below this figure.

Comment 13 Definition of An Affiliated Supplier: MHI argues that the Department failed to provide an explanation of its selection of affiliated suppliers, thereby acting unreasonably. MHI argues that a statement of reason (*e.g.*, that a party is "legally or operationally in a position to exercise restraint or direction over {an}other

person)" is required, citing *A. Hirsch* v. *United States,* 729 F. Supp. 1360, 1363 CIT. Instead, the Department's section D questionnaire suggests that the Department defines "control" in terms of sales dependence, insofar as the questionnaire requested that MHI "list the major inputs received from all affiliated suppliers as well as from suppliers that furnish more than 50 percent of their total annual sales to {MHI}." MHI claims the Department erred in using what it believes to be a 50 percent threshold of total annual sales to determine affiliation because such a delineation is excessively low, lacks predictive value, and is inconsistent with the stringent statutory criteria for determining affiliation. MHI states that the Department should apply the criteria listed in the statute including formal criteria that indicate an actual, legal ability to exert control: membership in a corporate family; common officers and directors; partnership; employer-employee relationships; and direct or indirect ownership or five percent or more of the outstanding stock of an organization. MHI contends that the Department's greater-than-fifty-percent sales dependence test is clearly inconsistent with these other criteria. Because sales dependence is not an actual, legal means for exerting direction or control, its predictive value is potentially less than that of the other statutory affiliation criteria. MHI suggests that a very high sales-dependence threshold, such as a weighted-average of 80 percent over four years, would make the Department's affiliation test predictive.

Petitioner contends that determination of affiliation may be based on a close supplier relationship. Petitioner quotes the SAA, which states "A company may be in a position to exercise restraint or direction, for example through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other". Petitioner asserts that a company that purchases over 50% of a supplier's sales could extract price and other concessions from the supplier by threatening to purchase the products from another vendor. Because such an action would severely impact the business of the supplier, the purchasing company is in a position to control the related supplier by exerting restraint or direction over the supplier. Thus, petitioner argues that the Department's definition of affiliated suppliers is in accordance with the statute.

DOC Position: The Department agrees with petitioner that determination of affiliation may be based on a close supplier relationship. Section 771(33)(G) of the Act, in addressing affiliated persons, defines such affiliation by the following: "any person who controls any other person and that other person will be considered affiliated persons." Section 771(33) of the Act makes clear that control exists if one person is "*legally or operationally* in a position to exercise restraint or direction over the other person." Further, the SAA, at 168, cites a close supplier relationship as an example of such a situation. The SAA explains that "the traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm operationally in a position to exercise restraint or direction over another" and that "a company may be in a position to exercise restraint or direction, for example through corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other." These SAA quotations refute MHI's assertion that we should determine affiliation based solely on a person's *legal* ability to exert control over another person.

Early in this investigation, we requested information regarding each supplier identified as providing MHI with a production input representing greater than two percent of the total cost of manufacturing ("COM") for any one component of an LNPP. From this information, we selected a sample of MHI suppliers based on either a combination of supplier reliance and employee relationships, or on significant supplier relationships over an extended period of time. We requested and were provided with cost information for these suppliers (except that, for one supplier, MHI informed the Department that the supplier could not segregate costs on a product-specific basis, and for two others MHI did not submit cost data because it maintained that the suppliers were not affiliated). Although we requested MHI to list inputs obtained from suppliers that furnished more than 50 percent of their total annual sales to MHI, we never indicated that this constitutes affiliation.

Our treatment of close supplier relationships in this case is not necessarily an indication of our future practice. Since this part of the law is new to the Department, we need to refine our interpretation and application of the close supplier provision over time. We note that the Department will continue to develop an analytic framework to take into account all factors which, by themselves, or in combination, may indicate affiliation, such as corporate or family groupings, franchises or joint venture agreements, debt financing, or close supplier relationships in which the supplier or buyer becomes reliant upon the other. In future investigations and administrative reviews, the Department may need to reanalyze the different aspects of the Mitsubishi group first examined here, based on these developments.

Comment 14 Facts Available for Affiliated Suppliers: MHI argues that, by failing to apply a reasonable affiliated parties methodology, the Department incorrectly relied upon the use of "facts available" and thus overstated MHI's estimated preliminary dumping margin. MHI maintains that the Department was incorrect in penalizing MHI for those suppliers that did not report their production costs to the Department. MHI argues that the Department did not give due consideration to the constraints contained in section 782(c)(1) of the Act, which provide that if an interested party promptly notifies the Department that it is unable to submit the requested information, the Department "shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party." MHI argues that two of its suppliers were unable to submit the requested information and that it promptly notified the Department. MHI claims that it is affiliated to neither of these suppliers. One supplier stated that it is not in any way affiliated with MHI or subject to MHI's direction or restraint. The other supplier explained that it was a small company and does not maintain cost records by product line. MHI argues that because the company is not affiliated to either of the two suppliers, the Department should not assume that MHI purchased the inputs from these suppliers at below-cost prices. Therefore, MHI claims that the Department should not have adjusted the prices to MHI from these suppliers.

Petitioner claims that MHI's assertion that the Department misapplied facts available is entirely without foundation. Petitioner asserts that by applying a weighted-average affiliated supplier adjustment to the prices of the non-reporting affiliated suppliers, the Department adjusted the non-reporting affiliated suppliers' prices to reflect the differences between the transfer prices and the costs of production for the reporting affiliated suppliers. Petitioner argues that the application of such an

actual weighted-average cost-of-production adjustment is a reasonable and accurate method of adjusting the transfer prices for the affiliated suppliers that did not report their cost of production. Further, petitioner asserts that the Department would have been justified in applying adverse facts available by applying the highest cost of production adjustment available on the record.

DOC Position: We disagree with MHI that the Department's affiliated supplier input cost adjustment constituted use of facts available. The Department computed weighted-average loss percentages for inputs acquired from a sample of affiliated suppliers based on the transfer prices and cost of production data submitted by MHI. The use of this sample, we believe, reduced the burden on MHI. We applied the weighted-average loss percentages resulting from our sample to the total of affiliated supplier transfer prices as reported by MHI. MHI submitted no evidence to support their assertion that the amounts reported to the Department as "Affiliated Purchases" (which represents the base to which our affiliated party adjustment was applied) includes the company's purchases from either of the two suppliers in question.

Comment 15 Calculation of CV Profit: MHI states that the Department failed to include freight costs in the total costs deducted from contract prices in its home market profit calculation. MHI maintains that by failing to subtract freight costs from home market prices to measure CV profit, the Department overstated the CV profit rate.

MHI also claims that the Department failed to reduce home market prices by the costs incurred to pack the merchandise. MHI contends that under the approach taken by the Department, CEP profit calculations should include a deduction from gross contract prices of the total expenses incurred in selling the foreign like product in Japan, including packing expenses.

The petitioner argues that the Department did subtract packing costs in determining the CEP profit. The petitioner argues that the packing was included in the cost of production. The petitioner suggests that if the Department decides to deduct packing from home market prices, then it should recalculate home market production costs to exclude packing.

DOC Position: We agree with MHI. We recalculated the home market profit rate applied in our CV calculation to reflect the deduction of freight costs from home market sales prices. We also recalculated the CEP profit rate to reflect the deduction of home market packing costs. Although petitioner argues that we included packing costs in the cost of production ("COP)" in our CEP profit rate calculation, the support petitioner offers in its argument documents our inclusion of packing costs in COP in our home market profit calculation rather than our CEP profit calculation. Petitioner is incorrect in its assertion that we included packing costs in the COP in our preliminary CEP profit rate calculation.

Comment 16 SG&A as Applied to Further Manufacturing for Guard: MHI argues that the Department erroneously included selling expenses in its G&A expense ratio for the sale to Guard. MHI states that MLP did not participate in the sale to Guard and that, since the Department's stated intention was to allocate only MLP's G&A expenses to the cost of auxiliary parts and installation activities, the Department's inclusion of selling expenses is incorrect.

DOC Position: We agree with MHI that the Department inadvertently included selling expenses in its allocation of MLP's G&A expenses to the costs of auxiliary parts and installation activities. In one of MHI's submissions it reported an MLP "G&A Rate" which the Department assumed was based solely on G&A expenses and included no selling expenses. At verification, we learned that this rate included indirect selling expenses. For the final determination, we adjusted the MLP G&A rate to exclude those indirect selling expenses.

Comment 17 SG&A as Applied to Further Manufacturing for Piedmont: For the sale to Piedmont, MHI states that the Department double-counted a portion of MLP's SG&A expenses. MHI maintains that since the Department deducted from U.S. price indirect selling expenses which included an allocated amount for common G&A expenses based on sales value, all SG&A expenses attributable to the sale were fully allocated and deducted. Thus, MHI argues, the Department should not allocate MLP SG&A expenses to auxiliary parts and installation, effectively allocating the same portion of MLP's indirect expenses to the Piedmont sale twice.

DOC Position: We agree with MHI that the Department inadvertently included indirect selling expenses in its allocation of MLP's G&A expenses to the costs of auxiliary parts and installation activities. The explanation for the inclusion of the selling expenses in the G&A allocation is addressed in the immediately preceding comment regarding the same issue applied to the Guard sale. MHI is also correct in their assertion that the indirect selling expenses which were deducted from U.S. price included an allocated amount for common G&A expenses. For the final determination, we adjusted the MLP G&A rate to exclude those indirect selling expenses and we excluded G&A expenses from the indirect selling expenses that were deducted from U.S. price.

Comment 18 G&A Expenses as a Portion of Total Further-Manufacturing Costs: According to MHI, the Act states that the starting price used to establish CEP shall be reduced by the amount of any expenses and profit associated with economic activity in the United States. MHI claims that the Department should not include G&A expenses incurred by MHI in Japan in the CEP, as these expenses are not U.S. economic activity, but instead pertain solely to activities of MHI's corporate administrative staff.

The petitioner maintains that section 772(d)(2) of the Act does not state that only costs physically incurred in the United States are deductible from the CEP. The petitioner states that the statute says the Department shall reduce CEP by the cost of any further manufacturing or assembly including additional material and labor. The petitioner contends that "the Department allocates a proportion of total corporate overhead, including G&A and interest expenses, to U.S. further manufacturing because U.S. activities derive significant benefit from parent corporate operations and oversight." Petitioner also observes that MHI's G&A rate was computed based on its consolidated financial statements, which include the further manufacturing costs. Therefore, petitioner concludes that the MHI G&A rate should be applied to the further manufacturing costs.

DOC Position: The Department agrees with petitioner that the MHI G&A rate should be applied to the further manufacturing costs. As indicated by petitioner, MHI's G&A rate was calculated based upon consolidated CGS , which included further manufacturing costs. Therefore, in order to be mathematically consistent, MHI's consolidated G&A rate should be applied to the further manufacturing costs.

Comment 19 U.S. Credit Expenses: MHI argues that the Department double-counted a portion of MHI's interest expenses associated with further-manufacturing activities. MHI maintains that the Department allocated actual interest expense to MHI's further manufacturing expenses and then imputed interest on not only the same further manufacturing expenses but also

on the actual interest expense. MHI maintains that if the Department continues to consider installation a further-manufacturing activity and to calculate an imputed credit associated with such further-manufacturing activity, then it should not also allocate an amount for MHI's actual interest expense to these same activities.

The petitioner argues that MHI confuses the actual corporate financing costs associated with LNPP operations with imputed credit costs. The petitioner asserts that imputed credit expenses should be included with the actual financing expenses in the unadjusted CV because any potential double counting is eliminated in the circumstance of sale adjustment for the imputed credit. Further, the petitioner argues that because the Department constructs a value for the product as imported into the U.S., rather than the further manufactured product, the Department correctly deducted all further-manufacturing costs (including financing expenses) in determining the CEP in order to ensure an apples-to-apples comparison.

DOC Position: The Department stresses once again that the regular interest expense allocation and the imputed interest adjustments have different purposes and require independent analyses. *See* Japan "Common Issues" comment 8. MHI is incorrect in its assertion that by deducting both interest and imputed credit in our CEP calculation we have double counted the further manufacturing interest expense. The regular interest expense charged to further manufacturing represents a legitimate LNPP production cost. The imputed credit adjustment should be applied to the full production cost of the LNPP, including the regular interest expense. *See* MHI comment number 20. It is appropriate to impute interest on all production costs expected to be recovered upon sale of the LNPP. Therefore, the Department imputed interest on all the further manufacturing costs, including the actual interest expense.

Comment 20 SG&A Applied and U.S. Credit Expenses: MHI claims that the Department should not have allocated SG&A expenses to MHI's U.S. credit expense adjustment. According to MHI, the Department's preliminary determination stated that its intention was to compute credit on MHI's production activity alone, not on SG&A activities. Furthermore, MHI maintains that the Department did not calculate MHI's Japan market credit expense adjustment based on production plus SG&A. According to MHI, SG&A expenses should be excluded because they are not production costs and are recognized in the year in which they were incurred. MHI also argues that since the Department's decision to compute credit expenses based on production costs was based on the requirement in this industry for substantial capital expenditures over an extended period of time, SG&A expenses should not be included, as they are not capital expenditures and are expensed in the year in which they were incurred.

The petitioner argues that the Department should include SG&A in its imputed credit calculation and maintains that the Department applied the same methodology to both U.S. and home market imputed credit costs. The petitioner alleges that MHI is confusing manufacturing costs with production costs. The petitioner concludes that the Department's statement in the preliminary determination that it has calculated imputed credit on production costs is in fact reflected in the methodology evident in the calculations themselves, since the antidumping term "cost of production" includes selling, general, and administrative costs. The petitioner maintains that the Department's inclusion of these costs reflects the fact that, just like material, labor, and factory overhead, SG&A expenses are incurred and must be paid over the lengthy period between the receipt of the first installment payments and the receipt of final payment. Accordingly, the petitioner states that, since, on the revenue side of the equation, the imputed credit formula captures the whole price of the press (*i.e.*, total production costs plus profit), the methodology should include all production costs on the expense side of the equation.

DOC Position: We agree with petitioner that SG&A expenses should be charged with imputed credit costs. As petitioner states, it is the total cost of production rather than manufacturing costs that should be assessed with imputed credit. Because SG&A expenses, by definition, are included in COP, and because the purpose of the imputed credit adjustment is to reflect the interest cost associated with the production costs incurred and the progress payments received during the production phase of the LNPP, it is appropriate to include SG&A expenses in the imputed credit calculations. Further, as also stated by petitioner, because the revenue side of our calculation captures the entire LNPP price, the cost side of the calculation should capture all production costs.

MHI is mistaken in its contention that we excluded SG&A expenses from our home market credit calculations. Appendix Q of the proprietary version of our preliminary determination memo of February 23, 1996 clearly indicates that in our imputed interest calculations we adjusted production costs to reflect an adjusted "total cost" (which includes SG&A).

Comment 21 Research & Development Costs: MHI argues that no adjustment for its reported research and development ("R&D") expenses is warranted. MHI maintains that it reported these costs in the same manner in which they are normally calculated in its job cost system. MHI maintains that since its normal business practice is to calculate R&D costs on a product-specific basis and to allocate such costs to specific sales based on sales value, it was correct for MHI to report the costs to the Department as calculated on that same basis.

DOC Position: Although MHI allocated R&D costs using its normal sales-value accounting methodology, the Department considers such an allocation inappropriate in an antidumping proceeding. Where there is an allegation that a product is being exported and sold at unfair prices (as compared to prices in the exporter's home market), we generally consider it inappropriate to allocate costs incurred for manufacturing operations based upon those same prices. Therefore, we reallocated MHI's R&D costs to all LNPP contracts based on the relative manufacturing costs incurred for each contract.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of LNPPs from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after March 1, 1996, the date of publication of our preliminary determination in the Federal Register.

Furthermore, we are also directing the U.S. Customs Service to continue to suspend liquidation of all entries of elements (parts or subcomponents) of components imported to fulfill a contract for a LNPP system, addition or component, from Japan, that are entered, or withdrawn from warehouse on or after March 1, 1996. Such suspension of liquidation will remain in effect provided that the sum of such entries represent at least 50 percent of the value, measured in terms of the cost

of manufacture, of the subject component of which they are part. This determination will be made by the Department only after all entries of the elements imported pursuant to a LNPP contract are made and the finished product pursuant to the LNPP contract is produced.

For this determination, all foreign producers/exporters and U.S. importers in the LNPP industry be required to provide clearly the following information on the documentation accompanying each entry from Japan of elements pursuant to a LNPP contract: (1) The identification of each of the elements included in the entry, (2) a description of each of the elements, (3) the name of the LNPP component of which each of the elements are part, and (4) the LNPP contract number pursuant to which the elements are imported. The suspension of liquidation will remain in effect until such time as all of the requisite information is presented to U.S. Customs and the Department is able to make a determination as to whether the imported elements are at least 50 percent of the cost of manufacture of the LNPP component of which they are part.

With respect to entries of LNPP spare and replacement parts, and used presses, from Japan, which are expressly excluded from the scope of the investigation, we will instruct the Customs Service to continue not to suspend liquidation of these entries if they are separately identified and valued in the LNPP contract pursuant to which they are imported.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers in the LNPP industry shall continue to be required to provide certification that the imported merchandise would not be used to fulfill a LNPP contract. As indicated above, we will also continue to request that these parties register with the Customs Service the LNPP contract numbers pursuant to which subject merchandise is imported.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price, as shown below.

The weighted-average dumping margin is as follows:

Exporter/ manufacturer	Weighted-average margin percentage
Mitsubishi Heavy Industries, Ltd	62.96
Tokyo Kikai Seisakusho, Ltd	56.28
All Others	58.97

The all others rate applies to all entries of subject merchandise except for entries of merchandise produced by the respondents listed above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: July 15, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18541 Filed 7–22–96; 8:45 am]

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[A–428–821]

Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 23, 1996.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or William Crow, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; Telephone: (202) 482–6320 or (202) 482–0116, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Rounds Agreements Act ("URAA").

Final Determination

We determine that large newspaper printing presses and components thereof ("LNPPs") from Germany are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act.

Case History

Since the publication of the preliminary determination of sales at LTFV (60 FR 8035, March 1, 1996), the following events have occurred:

On February 27, 1996, the Department disclosed to the petitioner (Rockwell Graphics, Inc.) and the respondents (MAN Roland Druckmaschinen AG ("MRD") and Koenig Bauer-Albert AG ("KBA")) the calculation methodologies used in the preliminary determination. On March 4 and 5, 1996, the petitioner and MRD, respectively, alleged that the Department made certain ministerial errors in its preliminary calculations. On March 15, 1996, the Department determined that none of the allegations constituted ministerial errors. See March 15, 1996, Memorandum from the Team to Richard W. Moreland Re: Alleged Ministerial Errors in the Calculation of the Preliminary Antidumping Duty Margin for MAN Roland Druckmaschinen AG.

On March 4 and 6, 1996, the Department issued supplemental cost and sales questionnaires to MRD and its U.S. subsidiary MAN Roland Inc. ("MRU"). MRD submitted responses to these questionnaires on March 13, 1996.

On March 7, 1996, we met with members of the German Ministry of Economics to discuss the status of the proceeding.

On March 14, 1996, the Department returned the updated cost information submitted by MRD in its March 13, 1996, submission which was determined to be untimely.

In March and April 1996, we conducted verification of the cost and sales questionnaire responses of MRD in Germany and the United States. On April 3 and 25, 1996, MRD submitted the corrections to its response that were presented at verification. On May 14 and 16, 1996, the Department issued its reports on verification findings.

On May 8, 1996, the Department received comments it solicited from interested parties in its preliminary determination regarding scope issues. KBA refiled its scope comments on May

17, 1996, pursuant to the Department's request to exclude new information determined to be filed untimely.

The petitioner and the respondents submitted case briefs on June 3, 1996, and rebuttal briefs on June 10, 1996. On June 11, 1996, the Department requested that MRD revise its case brief to exclude untimely new factual information. MRD submitted revised briefs on June 13, 1996. The Department held a public hearing for this investigation on June 17, 1996.

Facts Available

KBA failed to respond to the Department's questionnaire. Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form or manner requested, (3) significantly impedes a determination under the antidumping statute, or (4) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination. Because KBA failed to respond to the Department's questionnaire, we must use facts otherwise available with regard to KBA.

Section 776(b) provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action ("SAA"), at 870. KBA's failure to reply to the Department's questionnaire demonstrates that KBA has failed to cooperate to the best of its ability in this investigation. Thus, the Department has determined that, in selecting among the facts otherwise available to KBA, an adverse inference is warranted. As facts otherwise available, we are assigning to KBA the margin stated in the notice of initiation, 46.40 percent.

Section 776(c) provides that when the Department relies on secondary information (such as the petition) in using the facts otherwise available it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. When analyzing the petition, the Department reviewed all of the data the petitioner relied upon in calculating the estimated dumping margin. This estimated dumping margin was based on a comparison of the bid price for a sale of a LNPP system made by MRD to an unrelated U.S. customer and the constructed value ("CV") of that LNPP system. As a result of that analysis, the Department modified the CV methodology that the petitioner relied upon in calculating the estimated margin. On the basis of those modifications, the Department recalculated the estimated dumping margin and found it to be 46.40 percent. The Department corroborated all of the secondary information from which the margin was calculated during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose at that time. For purposes of the preliminary determination, the Department re-examined the price information provided in the petition in light of information developed during the investigation, and found that it continued to be of probative value. For purposes of the final determination, we compared the petition price information against verified data, and again found that it continued to be of probative value. *See Comment 1* of the "Company-Specific" subsection of the "Interested Party Comments" section of this notice.

Scope of Investigation

Note: The following scope language reflects certain modifications from the notice of the preliminary determination. As specified below, we have clarified the scope to include incomplete LNPP systems, additions and components. We have also clarified the scope to include "elements" (otherwise referred to as "parts" or "subcomponents") of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of the LNPP component of which they are a part. We have also excluded from the definition of the five subject LNPP components any reference to specific subcomponents (i.e., the reference to a printing-unit cylinder in the definition of a LNPP printing unit). In addition, we have excluded the following Harmonized Tariff System of the United States ("HTSUS") subheadings from the scope: 8524.51.30, 8524.52.20, 8524.53.20, 8524.91.00, and 8524.99.00. *See* "Scope Comments" section of this notice and the July 15, 1996 Decision Memorandum to Barbara Stafford from The Team Re: Scope Issues in the Final Determinations.

Scope: The products covered by these investigations are largenewspaper printing presses, including press systems, press additions and press components, whether assembled or unassembled, whether complete or incomplete, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. A page is defined as a newspaper broadsheet page in which the lines of type are printed perpendicular to the running of the direction of the paper or a newspaper tabloid page with lines of type parallel to the running of the direction of the paper. In addition to press systems, the scope of these investigations includes the five press system components. They are:

(1) a printing unit, which is any component that prints in monocolor, spot color and/or process (full) color;

(2) a reel tension paster ("RTP"), which is any component that feeds a roll of paper more than two newspaper broadsheet pages in width into a subject printing unit;

(3) a folder, which is a module or combination of modules capable of cutting, folding, and/or delivering the paper from a roll or rolls of newspaper broadsheet paper more than two pages in width into a newspaper format;

(4) conveyance and access apparatus capable of manipulating a roll of paper more than two newspaper broadsheet pages across through the production process and which provides structural support and access; and

(5) a computerized control system, which is any computer equipment and/or software *designed specifically* to control, monitor, adjust, and coordinate the functions and operations of large newspaper printing presses or press components.

A press addition is comprised of a union of one or more of the press components defined above and the equipment necessary to integrate such components into an existing press system.

Because of their size, large newspaper printing press systems, press additions, and press components are typically shipped either partially assembled or unassembled, complete or incomplete, and are assembled and/or completed prior to and/or during the installation process in the United States. Any of the five components, or collection of components, the use of which is to fulfill a contract for large newspaper printing press systems, press additions, or press components, regardless of degree of assembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of this investigation. Also included in the scope are elements of a LNPP system, addition or component, which taken altogether, constitute at least 50 percent of the cost of manufacture of any of the five major LNPP components of which they are a part.

For purposes of this investigation, the following definitions apply irrespective of any different definition that may be found in Customs rulings, U.S. Customs law or the HTSUS: the term "unassembled" means fully or partially unassembled or disassembled; and (2) the term "incomplete" means lacking one or more elements with which the LNPP is intended to be equipped in

order to fulfill a contract for a LNPP system, addition or component.

This scope does not cover spare or replacement parts. Spare or replacement parts imported pursuant to a LNPP contract, which are not integral to the original start-up and operation of the LNPP, and are separately identified and valued in a LNPP contract, whether or not shipped in combination with covered merchandise, are excluded from the scope of this investigation. Used presses are also not subject to this scope. Used presses are those that have been previously sold in an arm's length transaction to a purchaser that used them to produce newspapers in the ordinary course of business.

Further, this investigation covers all current and future printing technologies capable of printing newspapers, including, but not limited to, lithographic (offset or direct), flexographic, and letterpress systems. The products covered by this investigation are imported into the United States under subheadings 8443.11.10, 8443.11.50, 8443.30.00, 8443.59.50, 8443.60.00, and 8443.90.50 of the HTSUS. Large newspaper printing presses may also enter under HTSUS subheadings 8443.21.00 and 8443.40.00. Large newspaper printing press computerized control systems may enter under HTSUS subheadings 8471.49.10, 8471.49.21, 8471.49.26, 8471.50.40, 8471.50.80, and 8537.10.90. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Scope Comments

The petitioner and the respondents in this investigation and the concurrent investigation of LNPPs from Japan submitted comments in their case and rebuttal briefs on several scope-related issues. These scope issues pertain to: (1) the treatment of elements (parts or subcomponents) of LNPPs; (2) the use of the "to fulfill a contract" language; (3) the inclusion of HTSUS subheading 8524 which encompasses magnetic tapes; and (4) the treatment of imported merchandise of U.S. origin. Although certain issues were raised by the parties within the context of either the German or Japanese investigation, we have consolidated them for purposes of the final determinations because the resolution of these issues impacts the scope of both investigations. Each of these issues, the interested parties' comments and the Department's position are summarized below. For the complete discussion and analysis, see the July 15, 1996 Memorandum to Barbara Stafford from The Team Re: Scope Issues in the Final Determinations.

1. Elements of LNPPs

As stated in the "Scope of Investigation" section above, the scope of the LNPPs investigations covers LNPP systems, additions and the five major press system components, whether assembled or unassembled, that are capable of printing or otherwise manipulating a roll of paper more than two pages across. Because of their large size, LNPPs are typically imported into the United States in either partially assembled or disassembled form, in multiple shipments over an extended period of time, and may require the addition and integration of non-subject elements prior to or during the installation process in the United States. Consequently, we stated in our notice of initiation that "any of the five components, or collection of components, the use of which is to fulfill a contract for an LNPP system, addition, or component, regardless of degree of disassembly and/or degree of combination with non-subject elements before or after importation, is included in the scope of [these] investigation[s]." The interpretation of the intent of this language in the scope resulted in significant controversy among the interested parties in these investigations. Generally, the petitioner has interpreted it to mean that incomplete components and their constituent elements from a subject country are covered within the scope. The respondents have generally interpreted our initiation scope language to include only complete components, arguing that the inclusion of incomplete merchandise in the scope would necessarily precipitate the inclusion of elements which would conflict with the Department's industry support determination.

To clarify the issue, in our preliminary determinations, we stated that we interpreted the current scope to "include those elements or collection of elements imported from a subject country insofar as they constitute any one of the five covered components which are, in turn, used to fulfill a contract for a LNPP press system, press addition or press component." We also stated that "individual parts *per se* are not covered by the scope of these investigations unless taken as a whole they constitute a subject component used to fulfill an LNPP contract." This interpretation, however, raised the question: at what point do the elements imported from a subject country rise to the level of a LNPP component, addition or system subject to the scope of these investigations? This question was particularly difficult to answer in light of the complex nature of the importation of LNPPs—*i.e.*, the high degree of disassembly and/or incompleteness and the multiple shipments of parts and subcomponents in various combinations over an extended period of time. Therefore, we had to decide on a reasonable and practical approach in determining what constitutes a subject LNPP component, addition or system, and in so doing, establish the basis on which we will include elements in the scope.

We considered primarily two alternative approaches for analyzing what governs the inclusion of parts or subcomponents within the scope of these investigations (other than spare or replacement parts which are expressly excluded from the scope if they are separately identified and valued in a LNPP contract), and solicited comments from interested parties on the merits of these approaches. One approach considers, on a case-by-case basis, whether the imported parts or subcomponents when taken together are essentially a LNPP system, addition or component. This so-called "essence" approach focuses on the question of which parts are most critical to the operation of the subject merchandise so that when taken together they constitute an essentially complete LNPP component, addition or system. A second approach considers the value of the imported parts or subcomponents relative to the total value of the finished LNPP component, addition or system in the United States. That is, we would determine that the imported parts or subcomponents would be within the scope if they comprised a certain minimum percentage of the value of the parts or subcomponents of a finished LNPP system, addition or component. This value would be measured in terms of the cost of manufacture, rather than price, because (1) we are primarily concerned with where the actual manufacturing is occurring and not the market value, and (2) the imported elements are not normally priced separately from the LNPP which they comprise in the ordinary course of business.

In general, the interested party comments received on this issue reflect widely diverging views. The basis of the controversy among the parties centers on the interpretation of the following excerpts from the current scope language: (1) "regardless of degree of disassembly and/or degree of combination with non-subject elements before or after importation;" and (2) "individual elements when taken as a

whole constitute a subject component." The petitioner views this language as necessarily referring to both complete and incomplete components given the nature of the imported merchandise, and proposes that the Department clarify the scope to include incomplete merchandise from a subject country insofar as it includes any one of 16 key elements, which it defines to be critical to the functioning of a LNPP. KBA and the respondents in the Japan investigation, Mitsubishi Heavy Industries, Ltd. ("MHI") and Tokyo Kikai Seisakusho, Ltd. ("TKS"), view the scope language as referring to complete merchandise. Alternatively, KBA argues for a value test whereby imported elements would be covered if their value exceeded at least 60 percent of the value (or 50 percent of the cost) of the finished system (or at least 90 percent of the value of any individual LNPP component), while MHI advances arguments for an essence approach that would be predicated upon the importation of all elements which it defines to be critical to the functioning of a LNPP. MRD generally supports an essence approach assessed on a case-by-case basis but favors maintaining flexibility on the issue, while TKS offers no option, arguing that both approaches would result in the unlawful expansion of the scope to include parts and subcomponents.

We agree with the petitioner that incomplete merchandise by necessity must be included in the scope of these investigations. Given the very large size of LNPPs and the complex importation process, complicated by the further manufacturing and/or installation activities performed in the United States by the respondents, it was the Department's intent to use the language at issue to avoid creating loopholes for circumvention, including those arising from differing degrees of completeness of the imported merchandise. The Department is concerned that, because of the great number of parts involved, there is the potential that a party may attempt to exclude its merchandise from the scope of these investigations on the basis of a lack of completion. From the Department's standpoint, it is not (and never has been) the individual elements per se that are the issue, but the combination of these elements that would rise to the level of covered merchandise whether by essence or by value (*i.e.*, the sum of importations pursuant to a LNPP contract, not the individual importations or parts themselves). Given the significant controversy that has been generated over the scope of these investigations, we believe that clarification of the scope is warranted in this case. We note that the Department has the authority to clarify the scope language at any time during an investigation. See *Final Determination of Sales at Less Than Fair Value: Small Diameter Seamless Carbon and Alloy Standard, Line and Pressure Pipe from Italy*, 60 FR 31981, 31984, 31987 (June 19, 1995); *Minebea Co., Ltd.* v. *United States*, 782 F. Supp. 117, 120 (CIT 1992); and *Kern-Liebers USA* v. *United States*, 881 F. Supp. 618 (CIT 1995).

The parties' diverging views on the approach the Department should pursue in resolving the issue attests to the fact that there is no perfect solution to the problem. The selection of one or the other approach for purposes of the final determinations, however, is unavoidable if our scope is to have reasonable clarity and administrability, given the complexity of the importation of the subject merchandise and the potential for circumvention. The pursuit of either approach necessitates clarification of the scope to include explicitly incomplete Japanese- or German-origin LNPPs. Given that the minimum level of scope coverage is any of the five LNPP components, both the essence and value approaches must be examined on a component-specific basis.

The essence approach has superficial appeal because it seeks, in principle, to capture what a particular subject LNPP component actually is—*i.e.*, the "heart" of it. However, the information obtained from the interested parties and other sources make it difficult, if not impossible, to state that a particular element is the "essence" of a LNPP component. In past cases in which the number of parts and subcomponents comprising the subject merchandise was limited, we have identified specific elements, or groups of elements, as constituting the "whole" or "essence" of the subject merchandise. See e.g., *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996); *Final Determination of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools from Japan*, 58 FR 30144 (May 26, 1993); and *Final Determination of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof, from the United Kingdom*, 56 FR 32172 (July 15, 1991). In this case, however, given the large number of parts and subcomponents which are combined to produce a subject LNPP component, we believe that it is impossible to conclude, for example, that a side frame or a blanket cylinder is the "essence" of a printing unit, as suggested by the petitioner.

Added to the difficulty of accepting the petitioner's "essence" proposition in general is the fact that many of the critical elements identified by the petitioner individually represent an insignificant portion of the total value of the LNPP component of which they are part, and the identification of named elements may require modification over time due to technological advances. Furthermore, there is the unresolved question of whether a critical element would constitute the "essence" of a subject component if it itself were incomplete in some minor way. In other words, the problem faced in this case is qualitatively unlike the problems faced in the other cases, cited above, where it was possible to reduce the "essence" definition to a single, non-contradictory definition.

Therefore, if no single element can be identified as the "essence" of a particular LNPP component, and if requiring that all of the "essential" elements listed by the petitioner or other parties be of subject country origin would unacceptably limit the intended scope of these investigations, then the "essence" approach is unworkable.

We believe that the value approach is consistent, predictable, and administrable. According to this approach, imported elements are covered if they constitute a certain minimum percentage of the value, *based on the cost of manufacture*, of the particular component of which they are a part. We acknowledge, however, that in order to perform the value test, we will have to wait until after all of the elements comprising the LNPP component are imported and the LNPP component is produced, and that we will suspend liquidation on all imported elements in the meantime. In addition, the argument has been made that the value approach is more uncertain with respect to duty assessment, as all shipments would need to be completed before the value test on a finished product basis would be assessed. However, we note that this would also be true if we took the "essence" approach, in that the identification of critical elements could only take place after all importations have been made.

Furthermore, we have instituted the concept of a value test in the past where the nature of the merchandise and its importation lent itself to circumvention. *See Final Determination at Sales at Less Than Fair Value: Cellular Mobile Telephones and Subassemblies from Japan*, 50 FR 45447, 45448 (October 31,

1985); and *Mitsubishi Elec. Corp.* v. *United States,* 898 F.2d. 1577, 1582 (Fed. Cir. 1990).

In this case, exercising our discretion to develop an administrable scope, we determine that if the sum of the value of elements imported to fulfill a LNPP contract is at least 50 percent of the value, measured in terms of the cost of manufacture, of any of the five named components covered by the scope into which they are incorporated, then the imported elements are covered by the scope. An individual component is covered by the scope if the imported elements comprising it represent at least 50 percent of the value of the component, even if the contract pursuant to which the elements are imported is for an entire LNPP system and the remaining components are not within the scope.

We believe that this 50 percent threshold is a workable standard and is sufficiently significant to capture certain critical elements as well. We also believe that pursuing the value test on the basis of cost of manufacture, rather than price, is less susceptible to manipulation and more readily traceable to company records because the imported elements are normally not priced separately from the LNPP which they comprise in the ordinary course of business.

In addition, given our rejection of the essence approach for the purpose of the scope, we believe that including any references to specific subcomponents of covered components (*i.e.*, printing-unit cylinder) in the definition of the five covered components would be improper. Therefore, we have excluded them from the scope.

Based on the foregoing analysis, we have clarified the scope to include incomplete LNPP systems, additions or components. For the reasons explained above, we note that this does not constitute an "expansion" of the scope, as the respondents allege, but merely a necessary clarification.

For purposes of these investigations, incomplete LNPPs will be defined as any element or group of elements of a LNPP system, addition or component that are imported from a subject country lacking one or more elements needed to fulfill a contract for a LNPP system, addition or component. Such elements would be covered by the scope of these investigations if they represent at least 50 percent of the value, measured in terms of the cost of manufacture, of the finished component of which they are a part. Therefore, as stipulated in the "Continuation of Suspension of Liquidation" section of this notice, we are instructing the Customs Service to suspend liquidation on all entries of elements of LNPP components imported to fulfill a contract for a LNPP system, addition or component, in order to assess the cost of manufacture of these imports relative to the cost of manufacture of the finished component of which they are part. The 50 percent value test will be administered by the Department after all entries of such merchandise have been made and the component of which they are part is produced.

To facilitate the Department's performance of the value test, all foreign producers/exporters and U.S. importers in the LNPP industry shall be required to provide clearly the following information on the documentation accompanying each entry from Germany and Japan of elements pursuant to a LNPP contract: (1) the identification of each of the elements included in the entry, (2) a description of each of the elements, (3) the name of the LNPP component of which each of the elements are part, (4) the LNPP contract number pursuant to which the elements are imported. The suspension of liquidation will remain in effect until such time as all of the requisite information is presented to U.S. Customs and the Department is able to make a determination as to whether the imported elements are at least 50 percent of cost of manufacture of the LNPP component of which they are part.

2. "To Fulfill A Contract" Language in the Scope

The current scope of these investigations ties subject merchandise to a contract for the sale of a LNPP system, addition or component, and the issue has been raised by one respondent as to whether such provision is lawful. Specifically, MHI argues that the "to fulfill a contract" provision in the scope definition incorrectly applies the antidumping law and the assessment of antidumping duties to contracts instead of products, creates an unacceptable uncertainty as to the scope of products covered by these investigations, and risks being overinclusive. The petitioner argues that the Department has not applied the antidumping law to contracts. It asserts that the language at issue does not mean that the contract itself is the subject of the investigation, although it is an indispensable consideration in the investigation because it determines the price.

We disagree with the respondent. A contract is neither the object of our investigations, nor the object of the assessment of tariffs. Instead, a contract is a documentary instrument for facilitating the identification of the subject merchandise for the assessment of duties arising from an antidumping order. As such, a contract is similar to customs entry forms and company invoices commonly used in the process of liquidating foreign products entering the customs territory of the United States. Therefore, we disagree with MHI's contention that the Department would be replacing products with contracts as the object of the investigation.

Given the complex nature of the importation of the product (*i.e.*, a high degree of disassembly/incompleteness, and multiple shipments of innumerable parts and subcomponents over an extended period of time), the reference to a LNPP contract in this context is the only administrable means of identifying the subject merchandise. Therefore, we have continued using the "to fulfill a contract" language in the scope and in our continuation of suspension of liquidation instructions to the Customs Service.

3. HTSUS Subheading 8524

MHI maintains that the Department should amend the scope of these investigations to exclude those tariff categories that encompass magnetic tape—*i.e.*, HTSUS numbers 8524.51.30, 8524.52.20. 8524.53.20, 8524.91.00 and 8524.99.00—because the subject merchandise does not include magnetic tape. According to MHI, the only component covered by the scope that could possibly include such a product, the computerized control system, instead includes hard and floppy disks. MHI contends that if the Department includes the HTSUS classifications for either magnetic tape or other generic computer components, it will inappropriately interfere with the liquidation of a multitude of computer-related products that are not relevant to the LNPP investigations.

HTSUS 8524 covers "records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and meters for the production of records," but excluding photographic or cinematographic goods. The above-specified HTSUS numbers currently included in the scope refer to "other magnetic tapes," "other video tape recordings" and "other recorded media for reproducing phenomena other than sound or image." HTSUS 8524 was included in the scope at the initiation stage of these investigations, pursuant to a conversation with the National Import Specialist who, at that time, advised the Department that the LNPP computerized control system may enter the U.S. Customs territory under the HTSUS

subheading 8524. *See* July 20, 1995, Memorandum to the File Re: Scope Definition-Discussion with National Import Specialist; and the February 15, 1996, Memorandum to the File Re: HTSUS Subheadings.

Pursuant to further conversations with the National Import Specialist for the merchandise at issue, we learned that imported software or media regardless of application is separately identified in the HTSUS for Customs valuation purposes, and that records, tapes and other recorded media of heading 8524 remain classified under that heading, whether or not they are entered with the apparatus for which they are intended. Therefore, theoretically, computer subcomponents such as the software destined for use in a LNPP could be classified as "other recorded media" under HTSUS 8524. However, in practice, this classification may not necessarily apply to LNPPs. We note that there is no evidence on the record of these proceedings at the present time indicating that the software of computerized control systems imported to fulfill LNPP contracts is entered under the HTSUS subheading at issue.

Our practice in crafting the scope of any investigation is to include language that states that "[a]lthough the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope . . . is dispositive." This language means that it is the description of the merchandise, and not its Customs classification, that is controlling for the assessment of antidumping duties. Therefore, notwithstanding the HTSUS numbers under which the software of a LNPP computerized control system is imported from Germany or Japan, it would be covered if it met the criteria set forth in Scope Comment 1 above.

In this case, however, because we have no evidence on the record to indicate that computer control subcomponents are imported under the category at issue, we see no need to continue to include the above-specified HTSUS numbers in the scope of these investigations.

Therefore, we have excluded them from the scope of these investigations for purposes of the final determinations.

4. U.S.-Origin Goods Returned

KBA requests clarification that U.S.-origin elements and components would not be subject to antidumping duties if any are reimported, in accordance with the HTSUS which provides that such "U.S. goods returned" are not subject to any duties.

HTSUS 9801 generally provides that articles produced in and exported from the United States and subsequently returned to the United States, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad, are exempt from duties. HTSUS 9802 generally provides that articles returned to the United States, after having been exported to be advanced in value or improved in condition by any process of manufacture or other means, are dutiable on the value of the processing conducted outside of the United States. Articles returned to the United States that have not lost their physical identity and have not undergone such advancement in value or improvement in condition abroad, except assembly and operations incidental to that assembly, would be subject to duties on the value of the imported article less the cost or the value of the U.S. content.

Therefore, under HTSUS 9801, the respondent's proposition is valid if the U.S.-origin elements are returned to the United States in the same manner as they were exported from the United States. Under HTSUS 9802, the issue is less clear for antidumping purposes. While U.S. Customs law provides for a partial exemption of duty for U.S.-articles sent abroad for processing or assembly and returned to the United States, the Department has concluded in the past that the general rule applicable to ordinary customs duties is not controlling with respect to antidumping duties, and that the United States Customs Service American Goods Returned ("AGR") program, pursuant to HTSUS 9802, is subject to the collection of antidumping duties on the full value of the merchandise, including the U.S. portion. The Department has stated that any interpretation which sought to limit the application of antidumping duties on AGR goods to the foreign content would be inconsistent with the Department's statutory mandate to assess antidumping duties on the extent to which the normal value ("NV") (previously referred to as "foreign market value") exceeds the export price (previously referred to as "United States price"). Application of antidumping duties only on the foreign processing or content portion of the import might mean that the margin of dumping would not be fully offset. *See Final Determination of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Products from Canada* (58 FR 37099, July 9, 1993), as affirmed by the Binational Panel under the United States-Canada Free Trade Agreement (*In the Matter of: Certain Corrosion-Resistant Carbon Steel Products from Canada;* USA–93–1904–03 (October 31, 1994)).

In other words, if the U.S.-origin elements were combined with other elements prior to reimportation into the United States to produce a subject LNPP in accordance with the criteria set forth in Scope Comment 1 above, antidumping duties would be assessed on the full value of the import, inclusive of the U.S. content. Therefore, based on the foregoing analysis, we have not clarified the scope in the manner suggested by KBA.

Period of Investigation

The POI for MRD is July 1, 1993 through June 30, 1995. *See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany,* 61 FR 8035, March 1, 1996) ("*LNPPs Preliminary Determination*").

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based NV on CV because we determined that the particular market situation, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to-price comparisons. *See LNPPs Preliminary Determination.*

Fair Value Comparisons

To determine whether MRD's sales of LNPPs to the United States were made at LTFV, we compared Constructed Export Price ("CEP") to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(ii), we calculated transaction-specific CEPs (which in this case were synonymous with model-specific CEPs) for comparison to transaction-specific NVs. *See LNPPs Preliminary Determination.*

Constructed Export Price

MRD reported its sales as either CEP or EP. We classified all of MRD's sales as CEP sales because its affiliated U.S. sales agent acted as more than a processor of sales-related documentation and a communication link with the unaffiliated U.S. customers; and the U.S. affiliate engaged in a broad range of activities including installation support, which we have classified as further manufacturing. See *Comment 2* and *Comment 3* of the "Common Issues" subsection of the

"Interested Party Comments" section of this notice. We calculated CEP, in accordance with subsections 772 (b) and (d) of the Act, for those sales to the first unaffiliated purchaser by a seller affiliated with the producer/exporter that took place before importation and involved further manufacturing in the United States.

We excluded MRD's sale to The Charlotte Observer ("Charlotte") from our final analysis because it involved the importation of parts and subcomponents, the sum of the cost of manufacture of which was less than 50 percent of the cost of manufacture of the LNPP component of which they are a part. See "Scope of Investigation" and "Scope Comments" sections of this notice. See also *Comment 2* of the "Company-Specific Issues" subsection of the "Interested Party Comments" section of this notice.

We calculated CEP based on the same methodology used in the preliminary determination, with the following exceptions:

(1) Where appropriate, we revised/updated the respondent's data in accordance with verification findings. See May 14, 1996 Memoranda for David L. Binder from V. Irene Darzenta Re: the Verification of the Questionnaire Responses of MAN Roland Druckmaschinen AG and MAN Roland Inc. ("MRD and MRU Sales Verification Reports.").

(2) We excluded all post-POI price amendments. See *Comment 3* of the "Company-Specific Issues" subsection of the "Interested Party Comments" section of this notice.

(3) We deducted from CEP those indirect selling expenses that were associated with economic activity in the United States, whether incurred in the United States or in Germany, and irrespective of where recorded, after making certain adjustments. We recalculated those indirect selling expenses incurred by MRD in Germany in accordance with the methodology explained in the *DOC Position* to *Comment 1* of the "Common Issues" subsection of the "Interested Party Comments" section of this notice. We recalculated those indirect selling expenses incurred by MRU in the United States using the verified indirect selling expense rate for the POI based on sales revenues. See *Comment 5* of the "Company-Specific Issues" subsection of the "Interested Party Comments" section of this notice.

(4) For the Rochester and Wilkes Barre sales, we recalculated warranty expenses using the verified warranty expense factor applicable to MRD's historical experience in the home market for all LNPP products based on the respondent's representations at verification that MRD would be primarily responsible for any warranty servicing necessary for these two sales. For Fargo and Global, warranty expenses were recalculated based on the warranty expense factor reflecting MRU's historical experience, revised to reflect verification findings, given the respondent's representations that MRU is primarily responsible for any warranty servicing necessary for these two sales. See *Comment 6* of the "Company-Specific Issues" subsection of the "Interested Party Comments" section of this notice.

(5) We added warehousing income accrued on one sale.

Normal Value/Constructed Value

For the reasons outlined in the "Product Comparisons" section of this notice, we based NV on CV.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of the respondent's materials and fabrication costs, plus amounts for selling, general and administrative ("SG&A") expenses and U.S. packing costs. We based our CV calculation on the same methodology used in the preliminary determination, revised to reflect verification findings, where appropriate, with the following exceptions:

(1) As facts available, we calculated the cost of manufacturing for the sales to Rochester and Wilkes Barre based on the respondent's submitted cost estimates, adjusted for the variance between estimated and actual costs for a completed sale of a similar Geoman press. See *Comment 9* of the "Company-Specific Issues" subsection of the "Interested Party Comments" section of this notice.

(2) In calculating MRU's further manufacturing general and administrative ("G&A") rate, we divided POI G&A expenses by cost of sales recognized during the POI, excluding the cost for parts purchased from MRD. See *Comment 14* of the "Company-Specific Issues" subsection of the "Interested Party Comments" section of this notice.

Price to CV Comparisons

For CEP to CV comparisons, we deducted from CV the weighted-average home market direct selling expenses, pursuant to section 773(a)(8) of the Act.

Verification

As provided in section 782(i) of the Act, we attempted to verify the information submitted by the respondent. We used standard verification procedures, including examination of relevant accounting and sales records and original source documents provided by the respondent.

Currency Conversion

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement. In this case, although MRD reported that forward currency exchange contracts applied to certain U.S. sales, we could not verify that these contracts were directly linked to the particular sales in question. See May 14, 1996 MRD Sales Verification Report at 37. Therefore, for the purpose of the final determination, we made currency conversions into U.S. dollars based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." For this final determination, we have determined that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, see, *Policy Bulletin 96-1: Currency Conversions*, 61 FR 9434, March 8, 1996.). Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the deutschemark did not undergo a sustained movement, nor were there any currency fluctuations during the POI.

Interested Party Comments

Common Issues in the German and Japanese LNPP Investigations

The petitioner and the respondents in this investigation and the concurrent investigation of LNPPs from Japan raised certain common issues in their case and rebuttal briefs. Therefore, for purposes of these final determinations, we have consolidated the common issues in this notice in order to respond to them.

Comment 1 Deduction of U.S. Indirect Selling Expenses from CEP: The petitioner maintains that the Department failed to deduct most of the U.S. indirect selling expenses because they were recorded in the accounts of the foreign LNPP manufacturers. According to the petitioner, the Department should deduct all indirect selling expenses incurred on behalf of U.S. sales, irrespective of the location at which the expenses are actually incurred or the location of the company in whose books the expenses are recorded. The petitioner interprets section 351.402(b) of the proposed regulations (*Notice of Proposed Rulemaking and Request of Public Comments,* 61 FR 7308, 7381 (February 27, 1996)) which states that "the Secretary will make adjustments to CEP under section 772(d) of the Act for expenses associated with commercial activities in the United States, no matter where incurred" to mean that the actual physical location of those commercial activities is not a qualifying criterion. The petitioner maintains that much of the pre-contract sales activity is handled by the foreign manufacturer of LNPP and that the expenses incurred for such activity should be deducted from CEP. The petitioner states that if the Department deducts U.S. indirect selling expenses from CEP based on the geographic location in which they were incurred or booked, it would create an enormous loophole through which expenses directly associated with U.S. sales could simply disappear.

According to the petitioner, respondents in antidumping cases with CEP could increase net U.S. prices by merely shifting selling expenses from the books of their U.S. affiliates to those of the foreign parent companies.

The petitioner states further that, at a minimum, the Department should deduct from CEP all expenses included in the foreign manufacturer's accounts that relate to U.S. economic activity. These costs include: (1) All direct and indirect costs incurred for installation, warranty and technical servicing and training, regardless of where such expenses are originally incurred; (2) all indirect costs associated with pre-contract design, bid preparation, cost estimation, and negotiations for U.S. sales, regardless of where such expenses are originally incurred; and (3) all direct and indirect selling expenses which were originally incurred in the United States by either the U.S. affiliate or the foreign manufacturer, and have been recorded in the accounts of the foreign manufacturer. To the extent that a respondent has not specifically identified which portions of its U.S. indirect selling expenses booked by the foreign manufacturer are related to U.S. economic activity, the Department should deduct all such expenses from CEP.

MRD disagrees. MRD argues that neither the statute nor the proposed regulations support the petitioner's proposition. MRD states that in accordance with section 772(d) of the Act and the Department's proposed regulations, the deduction for indirect selling expenses is limited to expenses incurred in the United States for economic activities in the United States. MRD adds that its sales section in Germany responsible for U.S. sales activities performs these activities in Germany, and that the costs for these activities cannot be deducted from U.S. price under section 772(d).

MRD argues, however, that if the Department decides to deduct indirect selling expenses incurred outside the United States from U.S. price, then it should recalculate the amounts reported for U.S. sales. The respondent explains that to calculate the reported expenses, it first divided the actual MRD indirect selling expenses by the total value of sales recorded by MRD, and applied the resulting expense rate to the gross contract price for each U.S. sale. However, the MRD sales figures used to derive the expense rate include only the amounts for the sales from MRD to MRU and not the value added in the United States, whereas the gross contract price for each sale to which the expense rate was applied does reflects the total value of the presses delivered to the customer inclusive of the value added by MRU. Therefore, to make a consistent calculation, MRD argues that the Department should either recalculate the MRD indirect selling expense rate using figures that correspond to the gross contract prices, or it should use the existing rate but apply it only to the transfer price between MRD and MRU for each sale.

TKS maintains that the Department has adopted a new methodology for calculating indirect selling expenses pursuant to the enactment of the URAA which make petitioner's arguments moot. According to TKS, the Department has determined that the language of the SAA which refers to "economic activity occurring in the United States" is to be interpreted as activities of the respondent which physically occur in the United States. TKS cites to the *Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 30326 (June 14, 1996) (*"Pasta Final Determination"*) and the *Preliminary Results of Administrative Review: Certain Steel Wire Rod from France,* 61 FR 8915, 8917 (March 6, 1996) to support its contention that the petitioner's stance is inconsistent not only with the instructions of the SAA but with recent Department precedents.

MHI argues that the Department properly excluded from U.S. indirect selling expenses those costs incurred for non-U.S. economic activity. MHI argues that the methodology adopted by the Department was consistent with the SAA, section 772(d), and the Department's proposed regulations. Finally, MHI cites the *Pasta Final Determination* (at Comment 2), explaining that the Act requires the Department to make deductions to CEP only for those expenses associated with economic activity in the United States. MHI further argues that if the Department continues to treat MHI's U.S. sales as CEP sales, then it should continue to deduct only the indirect selling expenses incurred on behalf of economic activities occurring in the United States.

DOC Position: We agree with the petitioner in general. The SAA (at 823) states that: "[U]nder new section 772(d), constructed export price will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of expenses (and profit) associated with economic activities occurring in the United States," including, *inter alia,* "any 'indirect selling expenses' " (emphasis added). In the *Pasta Final Determination,* the Department determined that it was proper to deduct indirect selling expenses incurred in the home market in support of U.S. sales because such expenses were "specifically related to U.S. commercial activity." *See Pasta Final Determination* at 30352. The indirect selling expenses reported by the respondents in these investigations are of the same class and nature as those determined to be associated with U.S. economic activity in the *Pasta Final Determination, i.e.,* they are general selling expenses incurred and booked by the parent company in the home market to support export sales, including those for the

United States. This approach is in conformity with the SAA at page 824, which directs that section 772(d)(1)(D) provides for the deduction of indirect selling expenses from CEP where those expenses "* * * would be incurred by the seller regardless of whether the particular sales in question are made, but reasonably may be attributed (at least in part) to such sales." We have therefore deducted indirect selling expenses incurred in the home market on U.S. sales from CEP, after making certain necessary adjustments.

While we agree with the petitioner that all indirect selling expenses directly associated with U.S. economic activity, irrespective of the location where they were incurred, should be deducted from CEP, we do not believe that it is correct to use an indirect selling expense factor which is derived from a pool of expenses and sales revenue which covers both U.S. and non-U.S. sales. The indirect selling expense ratio reported by MHI for activities recorded at MHI's Japanese headquarters and factory sales offices consists of a numerator inclusive of common selling expenses as well as specific selling expenses supporting U.S. exports and other exports sales, divided by a denominator consisting of all export sales. Similarly, the indirect selling expense ratio reported by MRD for activities recorded at MRD's Augsburg facilities consists of data related to both the U.S. and other export markets. The indirect selling expense ratio reported by TKS for activities recorded at TKS's Tokyo headquarters consists of a numerator inclusive of common selling expenses as well as specific selling expenses supporting U.S. exports, other exports sales, and domestic sales, divided by a denominator consisting of world-wide sales. These allocations resulted in each company's reported indirect selling expense rate.

Each respondent's indirect selling expenses incurred in the home market were reported as including expenses generally associated with U.S. exports, although the respondents maintained that such expenses did not relate to "U.S. economic activity." At verification, we were able to confirm that certain of the indirect selling expenses were associated with U.S. economic activity. We were unable, however, to quantify the portion of the total indirect selling expenses which were associated with the U.S. sales. Therefore, for these final determinations, we have deducted, as non-adverse facts available, only a portion of the total indirect selling expenses recorded in the home market using the following methodology. First, we calculated total indirect selling expenses by multiplying the reported rate referred to above by each CEP price. We then subtracted that amount from each CEP price. Next, we calculated a factor which is the proportion of all those adjustments to CEP made under section 772(d) of the Act divided by the contract price net of the total indirect selling expenses calculated previously. The resulting factor was then applied to the indirect selling expense amount. We then deducted the resulting value from CEP. This methodology applies the indirect selling expenses only to the portion of CEP price which differentiates CEP from export price ("EP").

Comment 2 EP or CEP Sales—U.S. Subsidiaries' Activities: MHI contests the Department's preliminary conclusion that the U.S. LNPP transactions under investigation should be classified as CEP sales. MHI argues that MHI's U.S. sales should not have been treated as CEP sales because (1) the Department mischaracterized the extent of the U.S. economic activities of its U.S. subsidiary MLP (USA) Inc. ("MLP"), and (2) the Department should not have treated installation as further manufacturing.

MHI claims that MLP's sales activities were not as broad as characterized by the Department. According to MHI, MHI's sales clearly qualify as EP sales under Section 772(a) of the Act. MHI states that the Department generally has three criteria for determining if a sale is to be based on EP. MHI states that the third criterion, where an affiliated U.S. agent "acted as more than a processor of sales-related documentation and a communications link with the unaffiliated United States customers * * *." was applied to MLP and was the main reason for applying CEP to MHI's sales. MHI claims that MLP's sales-related activities were limited. According to MHI, subcontractors were responsible for installation, and MLP only sent engineers to supervise. According to MHI, the primary role of MLP is to act as an interface between the MHI sales team in Tokyo and MHI's U.S. customers. MHI argues that MLP did nothing more than implement purchasing instructions from MHI for a certain limited number of parts.

MHI cites the *Final Results of the Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Korea* (61 FR 18547, 18562, April 26, 1996) ("*Flat Products from Korea*") to support its contention that in setting up MLP's sales activities, MHI merely transferred these routine selling functions to its related selling agent in the United States and the substance of the transaction was unchanged. In *Flat Products from Korea*, the Department treated the respondent's sales as EP sales (formerly referred to as "purchase price") even though the U.S. affiliate had engaged in activity in the United States. The Department found that not all of the respondent's sales were delivered directly to the customer. However, the selling functions were normally undertaken by the exporter. According to MHI, the Department's analysis in *Flat Products from Korea* centered on what activities were conducted for the transaction as a whole and not on where the transaction took place. MHI explains that MLP's limited installation activities, limited sales activities, and limited parts procurement activities only represent a transfer of routine sales-related activities to the United States.

MRD maintains that the Department should analyze the Rochester and Wilkes-Barre sales as EP sales, rather than CEP transactions. This respondent states that the Department's preliminary decision to treat these sales as CEP sales was based on a misapplication of the standards used to distinguish EP from CEP sales. MRD maintains that the standard for such differentiation is whether the performance of functions by the U.S. subsidiary changes the substance of the transaction or the functions themselves. According to MRD, MRU's role in the Rochester and Wilkes-Barre sales does not transform the sales from EP to CEP sales, as it was not essential. MRD asserts that the functions performed by MRU for these sales—document processing, arranging for local sourcing of certain materials and services, communicating and coordinating with the customer—are the same functions that MRD routinely performs from Germany for third country sales. By contrast, the sales to Charlotte, Fargo and Global did require MRU's participation and are properly characterized as CEP sales, as they were either produced almost entirely at MRU's facilities in the United States or underwent substantial further processing there.

Furthermore, MRD argues that, because the Rochester and Wilkes-Barre sales were made prior to importation and were not sold from the U.S. affiliate's inventory or subject to further manufacturing in the United States, they must be treated as EP sales under the Department's established practice. Also, MRD contends that the minor warehousing required for these sales as a result of the logistical problems inherent in shipments of large capital equipment, and the addition of non-

German parts during the installation process, does not transform these sales into CEP sales. Additionally, MRD notes that the Department's reliance on *New Minivans from Japan* (57 FR 21937, May 26, 1992) ("*Minivans*") and *Certain Internal-Combustion Forklift Trucks from Japan* ("*Forklifts*") (53 FR 12552, April 15, 1988) in the preliminary determination to treat the sales at issue as CEP sales is misplaced. MRD states that, in *Minivans,* the Department concluded that the U.S. subsidiaries of the Japanese automobile manufacturers played such a significant role in the U.S. sales and distribution structure for their imported automobiles that the sales had to be classified as CEP sales. The types of efforts performed by these U.S. subsidiaries required a U.S. presence similar to that required for a sale from the U.S. subsidiary's own inventory. In contrast, none of the functions performed by MRU for the Rochester and Wilkes-Barre sales require a presence in the United States. MRD explains that, in *Forklifts,* the Department's reasoning for classifying sales made through an affiliated sales agent to an unaffiliated purchaser as EP sales hinged in part on the fact that the functions performed by the affiliated seller did not change the substance of the transaction, and in part on the fact that the sales were made prior to importation. Therefore, MRD asserts that, in accordance with the reasoning outlined in *Forklifts,* the sales to Rochester and Wilkes-Barre should be treated as EP sales.

The petitioner maintains that under the language of the statute, all U.S. sales made by all respondents in these investigations must be treated as CEP transactions. The petitioner argues that the export price definition contained in the statute does not apply to sales made by a U.S. selling affiliate of a foreign manufacturer or exporter. The petitioner states that, despite the apparent clarity of the statutory language, the Department's practice has been to consider a sale by an affiliate as an "indirect" export price transaction where the merchandise is shipped directly to the buyer without any inclusion in the selling affiliate's inventory, and where the U.S. sales affiliate acts only as a processor of documentation and as a communications link with the unaffiliated buyer. It maintains that the indirect export price definition in the respondents' case cannot be applied because the U.S. sales subsidiaries functioned as more than a mere processor of sales-related correspondence. The petitioner cites to the *Flat Products from Korea* and *Polyethylene Terephthalate Film, Sheet and Strip from Japan* (60 FR 32133, 32135, June 20, 1995) to support its contention that just as the lack of additional expenses such as technical services, advertising and warranties by an U.S. affiliate indicate the use of export price, so, conversely, where the U.S. affiliate performs additional functions such as technical support, training, and warranty servicing, the Department will treat the sale as a CEP transaction. The petitioner enumerates the various functions performed by the U.S. affiliates of MHI, TKS and MRD—marketing, sales promotion, training, warehousing and installation support, where applicable—and asserts that these activities constitute more than mere processing of sales documentation.

Furthermore, the petitioner notes that TKS recognized that the selling activities of its selling agent far exceeded the Department's minimal threshold for indirect export price sales and reported its U.S. sales as CEP and further-manufactured sales. The petitioner states that although MHI reported its sales as EP transactions, the Department correctly classified its U.S. sales as CEP-further-manufactured sales at the preliminary determination. According to the petitioner, this preliminary determination was confirmed during verification, where the Department reviewed the documentation of MLP's procurement of auxiliary parts and its sales servicing activities, both of which go well beyond the narrow confines established by the Department for indirect export sales.The petitioner disagrees with MRD's claim that the Department classifies a sale as EP unless the functions performed by the U.S. affiliate could not have been performed by the foreign producer/exporter without the U.S. affiliate. The petitioner asserts that it is the significance of the activities performed by the U.S. affiliate and not their transportability that counts in the CEP versus EP analysis. The petitioner also refutes MRD's analysis of the Department's decisions in *Minivans* and *Forklifts,* claiming that in both cases the Department focused on the functions performed by the U.S. sales affiliate. In addition, the petitioner states that the only exception to the rule that warehousing necessitates CEP treatment is when the producer provides warehousing at the customer's demand, which is not the case for the Rochester and Wilkes-Barre sales.

Finally, the petitioner maintains that CEP treatment is required because the installation activities of respondents' U.S. affiliates constitute further manufacturing, which by definition means that these affiliates were more than documentation processors and communication links. According to the petitioner, maintaining U.S. operations to oversee further manufacturing of LNPPs necessarily entails salaries for engineers and supervisors, and the general and administrative expenses to support them. Under such circumstances, the petitioner argues that characterization of a further manufactured sale as a standard export price transaction would ignore these substantial U.S. expenses related to the sale of subject merchandise, and would not result in a fair comparison. For all of these reasons, the petitioner argues that the substantial U.S. economic activities require the Department to treat the U.S. sales as CEP transactions.

DOC Position: We agree with the petitioner and have treated all of the respondents' U.S. sales as CEP sales. In past cases such as *Forklifts,* where the Department has ruled that sales such as those at issue (*i.e.,* sales made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation) are EP sales (formerly purchase price), it has examined several criteria, including: (1) Whether or not the sales were shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether or not the sales follow customary commercial channels between the parties involved; and (3) whether or not the function of the U.S. selling agent is beyond that of a "processor of sales-related documentation" and a "communications link" with the unrelated U.S. buyer. Where all three criteria are met (*i.e.,* sales are not inventoried, the commercial channel is customary and the function of the U.S. selling agent is not substantively more than a "processor of sales-related documentation" and a "communications link"), the Department has regarded the routine selling functions of the exporter as "merely having been relocated geographically from the country of exportation to the United States," and has determined the sales to be EP sales. In other words, where the functions are performed "does not change the substance of the transactions or the functions themselves." See *Forklifts* at 12553. There are numerous cases where the Department has relied on the above-specified criteria to characterize sales as EP (formerly purchase price) or CEP (formerly exporter's sales price), including: *Minivans; Flat Products from Korea;* and *Final Determination of Sales at Less Than Fair Value: Stainless Steel*

Wire Rod from France (58 FR 68865, 68868–9, December 29, 1993).

With respect to MHI, we believe that the various activities of MHI's subsidiary MLP were substantially more than "routine selling functions." Rather, MLP was significantly involved with the sale of LNPP in the following areas: selling agency, after-sales servicing, sourcing of non-subject parts, and supervision of installation. As MHI's principal sales agent in the United States, MLP was directly responsible for identification of Piedmont as a buyer, and cooperated with Sumitomo in the delegation of oversight for the Guard sale. With respect to after-sales servicing, MLP incurred warranty expenses for both sales. Also, for both sales, MLP supervised installation through the work of its engineers, and procured parts which were substantial in quantity, value and functional importance. For the Piedmont sale, MLP provided direct technical assistance, and for both the Guard and Piedmont sales MLP was responsible for direct oversight of installation performed by subcontractors, including payment of services rendered.

With respect to MRD, we also believe that the third EP criterion is not satisfied in the case of MRU. MRU's role with respect to the sales at issue is beyond that of a mere "processor of sales documentation" and "communications link." MRU played a major role in the negotiations between MRD and the U.S. customer for the Rochester and Wilkes-Barre sales, from the bidding stage through to the final contracts and subsequent amendments to the final contracts, and incurred significant SG&A expenses in the process. The contractual documentation and sales-related correspondence viewed at verification attests to this fact. Furthermore, we verified that MRU supports MRD's activities in the shipment and installation process relevant to these sales. This is evidenced by the fact that MRU is responsible for the post-sale warehousing of the merchandise shipped from Germany (which, while performed to meet the customer"s timing needs, was not considered by the respondent to be a routine service performed under the terms of the original sales contract), as well as the contracting of rigging companies and the sourcing of auxiliary parts essential to the installation process in the United States. Given its parts procurement role, it is possible that MRU may engage in warranty servicing support activities for the Rochester and Wilkes-Barre sales in the post-installation and start-up period.

Furthermore, this reasoning is consistent with our decision to treat installation expenses as part of further manufacturing under section 772(d). See *DOC Position* to *Comment 3*, below. Maintaining U.S. operations to oversee further manufacturing of LNPPs necessarily entails significant expenses including salaries for engineers and supervisors, and the general and administrative expenses to support them. Under such circumstances, the characterization of a further manufactured sale as an export price transaction would ignore these substantial U.S. expenses related to the sale of subject merchandise and would result in an unfair comparison in the dumping analysis. We believe that the presence of a subsidiary's participation in further-manufacturing activities particularly bolsters the use of CEP analysis. We note that the Department has always analyzed further manufacturing in the context of CEP (formerly exporter's sales price) methodology. In the *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18794 (April 20, 1994), the Department considered the possibility of performing EP (formerly purchase price) analysis on certain sales which involved further processing by an unaffiliated subcontractor. The Department excluded the sales in question from its analysis because the removal of value added by the unaffiliated purchaser from the purchase price would have resulted in further manufactured purchase price sales, and thus would have been completely inconsistent with section 772 of the Act.

TKS reported all of its sales as CEP sales, so that the general issue of CEP analysis is moot. TKS maintains, however, that its Dow Jones sale is CEP but not a further-manufactured sale. For discussion of this issue, see TKS *Comment 5* in the companion Federal Register notice for LNPPs from Japan.

Comment 3 The Treatment of Installation Expenses: MHI argues that the Department should not treat installation expenses as further manufacturing. MHI refers to U.S. law and case precedent to support its claim that installation does not constitute further manufacturing. The respondent cites to the Senate Committee On Finance, et al., *Uruguay Round Agreements Act*, S. Rep. No. 412, 103d Cong., 2d Sess. 66 (1994), to support its contention that an adjustment for further manufacturing is appropriate for an increase in value based on a process of manufacture or assembly of the imported merchandise after importation and before the sale to an unaffiliated purchaser. MHI believes that these criteria form a temporal restriction whereby value must be added at a point after importation but prior to the date of sale of the subject merchandise. MHI therefore contends that the installation MHI provides on its U.S. sales cannot qualify for a further-manufacturing adjustment because it was provided after, and not prior to, sale and delivery to the customer's specified destination sites.

MHI argues that the principles in *Forklifts* and *Certain Small Business Telephone Systems and Subassemblies Thereof from Korea* (54 FR 53141, December 27, 1989) ("*SBTS*") to which the Department referred at its preliminary determination, do not apply to LNPPs. According to MHI, in *SBTS*, the Department determined that the combination of subject and non-subject merchandise should be treated as further manufacturing activity. MHI contends that the bulk of its LNPP installation and installation supervision expenses do not relate to the combination of subject and non-subject merchandise, but to the reassembly of LNPP components.

MHI claims that in its operations, while auxiliary parts were shipped directly to the site of installation, they could have easily been shipped to Japan and then back to the site of installation. MHI contends that this scenario is substantively different from that in *Forklifts*, where Toyota's U.S. economic activities involved extensive relocation of its Japanese manufacturing activities to the United States. MHI claims that it does not normally "install" a LNPP at its Wadaoki assembly facility prior to exportation, nor does it complete final reassembly of the finished components anywhere but at the customer site after shipment and delivery. MHI maintains that it is purely accidental that the Department happened to use the term "installation" in discussing the respondent's U.S. economic activity in *Forklifts*.

MHI argues that LNPP installation should be treated as a movement expense, rather than as part of further manufacturing. MHI cites section 772(c)(2)(A) of the Act which states that EP (or CEP) for movement related activity should be reduced by "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses * * * which are incident to bringing the subject merchandise * * * to the place of delivery in the United States * * *." MHI maintains that the Department should follow its practice in the

investigation of *Mechanical Transfer Presses from Japan* (55 FR 335, January 4, 1990) ("*MTPs*"), where it determined that installation charges should be treated as movement expenses, because LNPP systems present virtually identical shipment reassembly requirements as MTPs.

MHI disagrees with the Department's preliminary determination that the items added to a LNPP during installation are "integral" to the function of the press, whereas those items added to MTPs during installation were not. MHI explains that the Department has not cited any support for determining that additions made to MTPs in the United States were not integral to MTPs. MHI maintains that, even assuming *arguendo*, that certain LNPP auxiliary parts were integral to press operation, the Department gave no reason why the addition of "integral" parts, as opposed to "non-integral" parts, is a legally meaningful distinction. MHI states its conclusion that such a distinction is irrelevant to a determination on the nature of installation costs.

MHI also disagrees with the Department's preliminary conclusion that LNPP installation is far more complex than the reassembly operations examined in the investigation of *MTPs*. MHI claims that its review of the public record of the *MTPs* investigation revealed no basis to determine that the reassembly and installation of LNPPs is more complex than that of MTPs, since there was no public discussion of any of the attributes of MTP installation which would indicate complexity, such as: the time involved in installation, the number of engineers required to complete installation, the length of time for installation, or the amount of expense (absolute or relative) incurred during installation.

MRD argues that the Department should classify the installation costs for the Rochester and Wilkes-Barre sales as movement costs, rather than installation costs, in accordance with its longstanding practice in cases involving large capital equipment. MRD asserts that the factual pattern in this case is similar to that in *MTPs* and *Large Power Transformers from Japan* (48 FR 26498, 26501, June 8, 1993) ("*LPTs*"), rather than in *SBTS* and *Forklifts*, the cases on which the Department incorrectly relied in the preliminary determination. MRD explains that the installation process in the instant case, similar to that in *MTPs*, is required because of the size of the merchandise involved, and the resultant need for disassembly of the merchandise for exportation and subsequent reassembly at the customer's site. According to MRD, the situations in *SBTS* and *Forklifts* involved the modification of the subject merchandise after importation at the option of the customer not the simple reassembly of the merchandise as a result of the shipment process. In addition, MRD asserts that the fact that LNPPs often are not fully assembled before shipment (otherwise known as "staging"), or that some additional non-German items are incorporated into the press system during installation, does not change the nature of the installation process.

The petitioner states that the Department properly classified installation charges in its preliminary determination as part of U.S. further manufacturing under section 772(d)(2) because the U.S. installation process involves extensive technical activities on the part of engineers and installation supervisors and the integration of subject and integral, non-subject merchandise necessary for the operation of LNPPs. The petitioner maintains that the Department has never applied a blanket rule on installation expenses, treating them as assembly, a circumstance of sale adjustment, or shipment expenses, depending on the particular circumstances involved. Where those circumstances include incorporation of integral, non-subject components during installation or complex installation operations that are more than mere reassembly, the precedent clearly supports treatment of installation expenses as further manufacturing. The petitioner contrasts the level of complexity in this investigation to that in *MTPs* to support its contention that, in addition to the integration of non-subject parts, the very complexity of the installation and the extent of entirely new assembly also affects the Department's treatment of the expenses. The petitioner asserts that in *MTPs*, installation costs were treated as shipment expenses because installation primarily involved simple "reassembly" of parts originally disassembled at the foreign producer's export facilities. The petitioner maintains that the Department's determination in *MTPs* is not applicable to LNPPs because none of the U.S. LNPP sales involved the mere reassembly of subject merchandise. Also, the petitioner contends that the subject merchandise in this investigation was never fully assembled and tested before shipment, but instead was fully constructed for the first time at the customer's site, involving many hours of engineering, installation and testing, and the integration and installation of the subject merchandise into the physical and electrical plant of each customer's facility. In addition, the petitioner disagrees with MRD's analysis of *Forklifts* and *SBTS*, stating that in both cases the Department treated the addition of integral components, or integration of subject and non-subject subassemblies, during installation as further manufacturing.

DOC Position: We agree with the petitioner. We believe that the Department correctly classified installation charges as part of further manufacturing because the U.S. installation process involves extensive technical activities on the part of engineers and installation supervisors and the integration of subject and non-subject merchandise necessary for the operation of LNPPs. As the parties have stated, the Department has not applied a blanket rule on the treatment of installation expenses, sometimes treating them as assembly costs, a circumstance of sale adjustment or shipment expenses, depending on the particular circumstances involved. See *Forklifts*, 53 FR 12552, 12565 (April 15, 1988); *SBTS*, 54 FR 53141, 53151 (December 27, 1989) and *MTPs*, 55 FR 335, 339 (January 4, 1990). Where those circumstances include the incorporation of integral, non-subject components during installation or complex installation operations that are more than mere reassembly, the precedent clearly supports treatment of installation expenses as further manufacturing. See *SBTS*. In this case, the respondents' U.S. subsidiaries' roles in the sale, installation and servicing of LNPPs, and their supervision of the incorporation of integral, non-subject components during installation, constitute a process that is more than mere reassembly.

The integration of integral non-subject merchandise and the technical complexity of LNPP installation distinguishes the instant processes from that of *MTPs*, which was a "mere reassembly of subject parts." Unlike the equipment covered in *MTPs*, the respondents' LNPPs were never fully assembled and fully tested in the country of production, since the integral parts incorporated at the plant sites in the U.S. were required for the press to actually run to print a newspaper. Finally, the installation of these LNPPs involves integration of the merchandise into the physical and electrical plant of the customer's installation site and often requires modification of LNPP components or the site itself for successful completion of the LNPP.

With respect to MHI, for both the Piedmont and Guard sales, the purchase of integral parts for installation was not limited, as suggested by the respondent,

but was significant. The role played by MLP in installation activities is evidenced by its purchasing of auxiliary parts, installation supervision and other oversight responsibilities. The Department's treatment of MLP's oversight, control and payment of third-party installation as further manufacturing is completely consistent with the *Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15476 (March 23, 1993), wherein the Department determined that fees paid for processing by an unaffiliated subcontractor were further manufacturing expenses. Contrary to MHI's characterizations, the Department believes that the extent of such activities performed on these sales was significant, as measured by the value of such services to the total contract price of the sales.

Further, with respect to MHI's arguments, we note also that there is no "temporal restriction" to the definition of further manufacturing. The Department stated in *SBTS* (at Comment 9):

> Because non-subject merchandise is added to the subject subassemblies, the portion of installation expenses attributable to the addition of the non-subject merchandise cannot reasonably be treated as a circumstance of sale adjustment. It is, rather, part of the value added in conjunction with the non-subject merchandise. *Whether this value is added before or after the sale is irrelevant because, for this product, EIS's customers expect the installed system to have the characteristics added by the non-subject merchandise.* (Emphasis added.)

This fundamental customer expectation of the characteristics of the final, installed and functional equipment holds true for LNPP as well.

Comment 4 Treatment of Sales With "Abnormally High Profits": If the Department continues to undertake a review of individual home market sales in its final calculation, MHI contends that the Department should also exclude sales with abnormally high profits. MHI argues that sales with abnormally high profit also fall within the definition of sales occurring outside the ordinary course of trade. MHI asserts that two of its home market sales have abnormally high profits and therefore should be excluded.

MRD argues that the Department should include profit on "after-sale" sales in calculating home market profit. However, since MRD's normal records do not segregate "after-sale" profits by market or product line, MRD asserts that the Department should use the overall average profit of its Web Press Division. If the Department calculates profit on a transaction-specific basis, MRD contends that home market sales with abnormally high profits should be excluded from the CV profit calculation.

The petitioner maintains that the Department should use the same CV profit methodology applied in the preliminary determination (*i.e.*, calculate profit on a model-specific basis). With respect to MHI, the petitioner asserts that there was nothing in the record which suggests that profits on any sales were "abnormally" high. The petitioner argues that the sales were at arm's length so the profit level should be normal. Moreover, the petitioner asserts that there are too few sales to establish a pattern of normal versus abnormal profit. In addition, the petitioner maintains that the profit rates suggested by MHI as being abnormally high do not distort the average profit.

With respect to MRD, the petitioner asserts that even the highest profit calculated on MRD's home market sales is not abnormal because it falls with the variability range for all home market sales and, thus, should not be excluded. With respect to "after-sale" sales, the petitioner argues that the profit on "after-sale" services is not part of the foreign like product. Moreover, the petitioner could not segregate these "after-sale" profits by product-line.

DOC Position: We disagree with respondents that simply because certain home market sales had profits higher than those of numerous other sales, the profits are automatically abnormally high and outside the ordinary course of trade for purposes of computing CV profit. In order to determine that profits are abnormally high, there must be certain unique or unusual characteristics related to the sales in question. However, the respondents have provided no credible information other than the numerical profit amounts to support their contention that certain home market sales had abnormally high profits. Accordingly, we excluded no home market sales from the CV profit calculation due to abnormally high profits.

We agree with the petitioner that "after-sale" sales are not part of the foreign like product. Thus, MRD's argument that the Department should include profits from these "after sale" sales is misplaced.

Company-Specific Issues in the German LNPP Investigation

Comment 1 KBA's Final Margin: KBA believes that its final margin should be based on the data relevant to the MRD sale in the petition, adjusted based on the verified information on the record. Alternatively, KBA believes that it should be assigned the "all others" rate.

For purposes of the final determination, KBA argues that the Department cannot legally assign KBA the 46.40 percent margin based on the adjusted petition rate in the notice of initiation, as it did in the preliminary determination, because the record evidence shows that the petition data are incorrect and cannot be corroborated. In addition to the pre-initiation modifications made to the data in the petition, KBA asserts that the Department must further corroborate that information based on the accurate, verified information on the record and assign the resultant revised amount to KBA. KBA states that the SAA cautions that secondary information, such as petition information, used as facts otherwise available, may not be reliable because it is based on unverified allegations. Therefore, to the extent practicable, it must be corroborated from independent sources that are reasonably available to the Department. KBA points out that the SAA (and the Department's proposed regulations) also states that independent sources include information obtained from interested parties during the investigation. Because the revised petition rate is based solely on data for one of MRD's sales and MRD has fully participated in the investigation, KBA argues that the verified information on the record with respect to this sale can and should be used to corroborate and, if necessary, to revise petitioner's information further.

Furthermore, KBA maintains that the Department's corroboration procedures for purposes of the preliminary determination were legally insufficient. KBA takes issue with the Department's claim that it re-examined the petition price data and found it continued to have probative value. According to KBA, the test is not to re-examine or determine whether the data have probative value, but to corroborate that data to the extent practicable. KBA does not view the 46.40 percent margin alleged in the notice of initiation, which is based on MRD's data, as evidence of the dumping margin on KBA imports of subject merchandise, because it is significantly higher than the 17.70 percent preliminary margin calculated for MRD. In light of this fact and the evidence on the record, KBA does not believe it is accurate or reasonable to claim that the petition price data has any probative value. In accordance with the statute and the practice set out in the preliminary determination of *Bicycles from the People's Republic of China* (60 FR 56567, November 9, 1995)

("*Bicycles*"), KBA asserts that wherever data collected from MRD is inconsistent with the data contained in the petition on the MRD sale, the Department should reject the petition data in favor of MRD's actual data for use as facts otherwise available. KBA also asserts that the decision in the preliminary determination of *Certain Pasta from Italy* (61 FR 1344, January 19, 1996) ("*Pasta Preliminary Determination*") on which the Department relied in making its facts available ruling for KBA in the preliminary determination was inconsistent with the statute to the extent that it did not go beyond its pre-initiation analysis in its efforts to corroborate petition information. In addition, unlike the *Pasta Preliminary Determination*, where the Department used as facts available the median of the range of estimated dumping margins from the notice of initiation, the Department in the instant investigation based KBA's margin on a sole sale of another company and the facts supporting the alleged margin have been proven incorrect during the course of this investigation.

Alternatively, KBA suggests that it be assigned the "all others" rate. KBA adds that it withdrew its participation from the investigation because the extensive cost of preparing a response was totally disproportionate to its role in the U.S. market where its past sales of German-made LNPPs were insignificant and no future sales of German-made LNPPs were expected. For this reason, KBA asserts that the Department should consider it a non-shipper in which case it would receive the "all others" rate. KBA maintains that the Department should not make adverse inferences against KBA, as KBA's decision not to respond to the Department's questionnaire was driven by financial reasons and not by any other perceived benefit from non-submission of information. At the time KBA made its decision, it had no way of knowing the margin MRD would receive, whether the Department would accept its data, whether the information would be verified and/or whether the Department would use facts available. Additionally, KBA asserts that prior to the 1995 amendment to the antidumping statute, the Department's practice was to issue questionnaires to exporters accounting for the first 60 percent of exports of subject merchandise. Had this rule still been applicable, KBA states that it probably would not have been deemed a mandatory respondent and received a questionnaire in this investigation. Thus, it would have received the "all others" rate which, in this case, would have been MRD's rate.

The petitioner maintains that the Department properly assigned KBA the margin contained in the notice of initiation as facts available in the preliminary determination, contending that KBA's refusal to cooperate justifies an adverse inference. According to the petitioner, KBA was properly identified as one of two exporters of subject merchandise to the United States and, therefore, the Department was fully justified in its decision to require it to respond to the antidumping questionnaire. The petitioner also dismisses KBA's claims that its small volume of exports somehow exempts it from responding to the Department's questionnaire. Under the URAA, the Department must establish a separate margin for each exporter, unless the number of transactions or exporters makes such a procedure impractical, which is not the situation in this case. In addition, the petitioner dismisses KBA's reasons for refusing to cooperate as irrelevant since the statute does not condition the use of an adverse inference on the motive of a non-cooperating party. According to the petitioner, applying an adverse inference in KBA's case ensures that a non-cooperating party does not benefit more by its failure to cooperate than to comply with the Department's requirements. Finally, in the petitioner's view, the Department did corroborate the secondary data used as facts otherwise available. According to the petitioner, the statute establishes that the Department satisfies the corroboration requirement if it finds that the information at issue has probative value. In this investigation, the petitioner asserts that the pre-initiation analysis of the petition satisfied this threshold.

DOC Position: We agree with the petitioner. In our preliminary determination, pursuant to section 776 of the Act, we assigned KBA the margin in the notice of initiation as facts otherwise available because it failed to respond to the Department's questionnaire. We stated at that time that, in accordance with section 776(b) of the Act, an adverse inference was warranted with respect to KBA because it failed to cooperate by not acting to the best of its ability to comply with the Department's request for information so that the Department could make a determination with respect to the extent of KBA's dumping or lack thereof. Consistent with our preliminary determination, we believe that an adverse inference is warranted with respect to KBA for purposes of the final determination. See "Facts Available" section of this notice.

We disagree with the respondent's claim that the Department should not use facts available or make adverse inferences in its case, but rather should apply the "all others" rate . According to section 776(a) of the Act, the Department shall use facts available if an interested party does not provide necessary information or significantly impedes an investigation. The SAA explains that the Department's potential use of facts available provides the "only incentive to foreign exporters and producers to respond to the Department's questionnaire" (SAA at 868). Applying an adverse inference to a non-cooperating party ensures that the non-responding party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. The facts available or adverse inference applied need not be proven to be the best alternative information, only that it is reasonable to use under the particular circumstances (SAA at 869). In this case, if KBA were to receive the "all others" margin instead of the adverse facts available margin, as KBA suggests, it would receive the exact same treatment as MRD, which responded to the Department's questionnaire. This result would not fulfill the objective of section 776 of the Act. Similarly, we note that it would be inappropriate to assign to KBA, as adverse facts available, the actual margin calculated for the MRD sale in the petition, because this rate is lower than the final overall margin for MRD which cooperated fully in this investigation.

With respect to the respondent's opposition to our corroboration procedures, we note that the SAA (at 870) defines corroboration of secondary information to mean that the Department will satisfy itself that the secondary information to be used as the basis for facts available has "probative value." The determination of "probative value" is assessed on a case-by-case basis. We stated in our preliminary notice that, in accordance with section 776(c) of the Act, we corroborated all of the secondary information on which the margin in the petition was based during our pre-initiation analysis of the petition to the extent appropriate information was available for that purpose at that time. For purposes of the preliminary determination, we re-examined the price information provided in the petition in light of information developed during the investigation, and found that it continued to be of probative value. For the final determination, we compared

the petition price information with verified data on the record and again found that it continued to be of probative value. Nothing in the statute or the SAA compel us to go beyond these procedures.

Contrary to the respondent's claims, our corroboration procedures in this case are not inconsistent with the preliminary determinations in *Pasta* or *Bicycles*. In *Bicycles*, the Department compared the data in the petition to secondary data which included, but was not limited to, the same type of data used as the basis for the petition and the audited financial reports of two of the largest Indian bicycle producers. These procedures did not seek to replace the secondary information with respondent-specific information, but rather to compare it against that information in order to determine if it had "probative value." In *Pasta*, unlike the instant investigation where KBA did not attempt at all to respond to the Department's questionnaire, the company to which facts available was applied at least attempted to respond to the Department's questionnaire, but the information it submitted was inadequate and unusable. Also, in the *Pasta Final Determination*, we concluded that the petition was the only appropriate information on the record to be used as facts available on the basis of having compared the sizes of the calculated margins for the other respondents to the estimated margins in the petition. In the *Pasta* case, as in the instant case, the other respondents' estimated margins were lower than the petition margins. In addition, in *Pasta* the Department did not go beyond its pre-initiation analysis in its corroboration procedures. See *Pasta Final Determination*, 61 FR 30326, 30329 (June 14, 1996).

Furthermore, KBA's references to the pre-1995 antidumping law with respect to the Department's determination of the appropriate recipients to the Department's questionnaire are irrelevant. Under the URAA, the Department is now required to investigate all known producers/exporters of subject merchandise unless the number of transactions or exporters is administratively burdensome (SAA at 814). Furthermore, despite the fact that there was no dumping allegation in the petition specifically against KBA, the Department is required to conduct its own research as to the universe of producers/exporters of subject merchandise and the appropriate recipients of its questionnaire. Thus, based on information received from the U.S. Embassy in Bonn, we named KBA as a respondent. See August 28, 1995, Memorandum to the File from Irene Darzenta, *et al.*, Re: Questionnaire Recipients. For whatever reason KBA decided to withdraw from the investigation as an active respondent, the Department must now make adverse inferences consistent with the principles outlined above. Therefore, for purposes of the final determination, we have assigned to KBA the amended petition margin in the notice of initiation of 46.40 percent.

Comment 2 Sales Exclusion Requests: MRD argues that the Department should exclude certain sales from its final calculations—namely, Charlotte, Fargo and Global—because they involve imports of parts and subcomponents that are not subject to the scope of the investigation. With respect to the Charlotte sale, the respondent argues that, in the initial phases of the investigation, both the petitioner and MRD agreed that it should be excluded from the Department's analysis because the substantial U.S. content would distort the Department's calculations. MRD states that, while the Department's preliminary determination did not dispute this reasoning, it questioned whether it had the authority to exclude this sale based solely on this fact. Because the Department had not reached a final decision on scope at that time, it decided to preliminarily include the Charlotte sale in its analysis. MRD continues to believe that this sale does not represent subject merchandise and therefore should be excluded. According to MRD, none of the imported parts and subcomponents (taken singly or together) constitutes a LNPP component whether defined by the Department in terms of essence or value.

Moreover, MRD asserts that the Charlotte sale involved an unusual situation and, if included in the Department's analysis, would distort the calculation of the antidumping margin. Specifically, MRD states that MRU experienced significant problems in the design and manufacturing of the press because of "mismanagement," which resulted in significant cost overruns and profit loss. The Department's preliminary determination deducted all of the costs incurred in the United States, including the unexpected cost overruns, from the total sales price to determine CEP, thereby resulting in a very high dumping margin for this sale. MRD points out that the Department has the authority to exclude unusual sales, such as Charlotte, from its analysis if inclusion of those sales would distort the results. Alternatively, if the Department does not exclude the sale to Charlotte, it should calculate CEP for that sale under the "Special Rule" of section 772(e) of the Act which provides that the Department may employ alternative methods to determine CEP when the U.S. value added exceeds the value of the imported merchandise. MRD asserts further that the first two alternative methodologies described in section 772(e) would be difficult to apply to the Charlotte sale because there were no sales of identical or other merchandise that could be compared to the NV for the Charlotte sale. Therefore, MRD maintains the Department should use "another reasonable method" permitted under the "Special Rule" of section 772(e) of the Act. At a minimum, MRD argues that the Department should assign a substantial portion of the loss on the sale to the U.S. operations that caused it.

Furthermore, MRD argues that the sales to Fargo and Global should also be excluded because they do not consist of subject components and therefore fall outside the scope. Also, as explained in its various responses, both sales involved unusual circumstances. In general, the Fargo sale involved the sale of a discontinued printing unit produced partially in Germany and partially in the United States. The Global sale involved a combination of used equipment from MRU's inventory and a new printing unit which was produced partially in Germany and partially in the United States, and sold to a reseller which was responsible for its installation. Even if the Department were to conclude that the parts and subcomponents imported from Germany for these sales were within the scope, MRD urges the Department to exercise its discretion to exclude these sales from its analysis based on the fact that they are small and atypical.

The petitioner states that the Department should include all three sales at issue in its analysis. With respect to Charlotte, the petitioner argues that the cost overruns as a result of "mismanagement" experienced by the respondent on this sale are not a valid reason to exclude the sale or apply special methodology within the context of the antidumping statute or the Department's practice. According to the petitioner, if a cost overrun by itself required exclusion of a sale, the cost calculation would become unfairly skewed in favor of low-cost sales. The petitioner also disputes respondent's claim that Rockwell agreed to exclude this sale from the investigation, stating that only in the context of its proposal for a four-year POI did it think that the Department could forego analysis of this sale given its complexity and the reporting burden. However, in the two-year POI adopted by the Department,

the petitioner believes it is too significant to omit and the respondent has already met the burden of reporting the data for this sale.

The petitioner argues that the Charlotte sale does not meet the criteria for exclusion of a U.S. sale from the dumping calculation because it is not "atypical" within the context of the LNPP industry or so small as to have an insignificant effect on the margin. In addition, the petitioner maintains that MRD's "alternative methods" approach is unsubstantiated. According to the petitioner, MRD's proposed alternative of attributing all or some of the loss on the Charlotte sale is unreasonable under section 772(e) of the Act which provides for the exclusion of losses in the adjustment for further manufacturing. Finally, the petitioner asserts that the merchandise sold to Charlotte is subject to the scope because it includes certain parts and subcomponents which are explicitly covered by the scope.

With respect to Fargo and Global, the petitioner contends that these sales also constitute subject merchandise and were not "atypical." The petitioner claims that the imported merchandise for both transactions contained all of the relevant mechanical parts of one of the five LNPP components which would have included certain parts explicitly specified in the scope. The petitioner also maintains that the fact that these sales involved discontinued equipment or were small in terms of value does not make them "atypical," given the limited number and uniqueness of each of the U.S. sales under investigation, and the nature of the LNPP industry where technological advances which result in the discontinuation of previous product lines are common.

DOC Position: We agree generally with the respondent with respect to the Charlotte sale, and with the petitioner with respect to the Fargo and Global sales. The Charlotte sale involved the importation from Germany of less than complete components destined to fulfill a contract for a LNPP system in the United States. Both the Fargo and Global sales involved the importation from Germany of less than complete components for the fulfillment of a contract for LNPP additions. As stated in the "Scope of Investigation" section of this notice, we have determined that elements (*i.e.*, parts and subcomponents) imported to fulfill a LNPP contract shall be included in the scope of the investigation if the sum of their cost of manufacture is at least 50 percent of the cost of manufacture of the finished LNPP component of which they are a part. In the case of Charlotte, our analysis of the sum of the manufacturing cost of the elements relative to the manufacturing cost of each of the components of which they are a part is less than 50 percent. Because the imported elements do not meet the 50 percent threshold on a component-specific basis and, therefore, do not constitute subject merchandise, we excluded the Charlotte sale from our final analysis.

Applying the above-specified value test to the imported elements relevant to the Fargo and Global sales yields the opposite result. That is, the cost of the imported elements is greater than 50 percent of the cost of the component of which they are a part. The Department may exclude U.S. sales from its analysis if these sales are: (1) Not representative of the seller's behavior, or (2) so small that they would have an insignificant impact in the margin. See *IPSCO, Inc.* v. *United States* (714 F. Supp. 1211, 1217 (CIT 1989). In the past, the Department excluded certain "atypical" or unrepresentative U.S. sales, where the total pool of U.S. sales was great. *See SBTS*, 54 FR 53141, 53148 (December 27, 1989). In the case of LNPPs, however, where the sales are few and unique, such exclusion would not be appropriate. Given the limited number of U.S. sales in this investigation and the fact that the sales at issue fall within the scope of the investigation, we have no basis on which to exclude these sales from our final analysis. Therefore, we included the sales to Fargo and Global in our final analysis.

Comment 3 Post-Petition Price Amendments: The petitioner contends that the Department should disregard all post-petition price amendments and use instead the contract price as of the date of the filing of the petition as the starting price. The petitioner asserts that such amendments applied to the Rochester, Wilkes-Barre and Charlotte sales. Citing the *Final Determination of Sales at Less Than Fair Value: Cell Site Transceivers from Japan*, 49 FR 43080, 43084 (October 26, 1984) ("*Cell Site Transceivers*"), among other cases, the petitioner states that the Department's practice calls for the rejection of alterations in the prices of subject merchandise after the filing of a petition in order to prevent manipulation of potential dumping margins. According to the petitioner, that rationale is applicable in this investigation, where MRD had every reason to negotiate a new price that would reduce the dumping margin. With respect to Rochester in particular, the petitioner finds suspect the significant profit gained by MRD in the amended portion of the transaction. Moreover, the number of reported amendments indicates that even the latest reported price adjustments might not be the last. Therefore, the petitioner asserts that the Department should rely on the sales prices in effect on the date of the filing of the petition and disregard the effects of any post-POI amendments on prices and cost.

MRD disagrees. First, it argues that it is common for specifications (and therefore price) for large capital equipment like LNPPs to be modified after the initial contract is signed, and the Department has recognized this in past cases. According to the respondent, such changes are not unusual and do not support the conclusion that the seller has manipulated its prices to avoid dumping. Second, with respect to the Rochester price amendment, the Department reviewed the correspondence which showed the amendment had been contemplated before the petition filing. Third, MRD finds the petitioner's analysis of its interests to be questionable, as it is always in MRD's interests to negotiate the highest possible price for its sales notwithstanding the filing of the antidumping case.

DOC Position: We agree with the petitioner. In past cases, the Department has stated that its standard practice is not to accept price adjustments instituted after the filing of a petition. Despite the nature of the merchandise under investigation, we have held that we are cautious in accepting price increases which occur after receipt of a petition so as to discourage potential manipulation of potential dumping margins, and have determined the original contract price which pre-dated the filing of the petition as the proper basis for U.S. price. The transactions and prices under investigation are those in effect as of the filing of the petition. *See Cell Site Transceivers; Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada*, 58 FR 37099, 37112 (July 9, 1993); *Final Results of Administrative Review: Stainless Steel Wire Rod from France*, 50 FR 9813, 9814 (March 12, 1995); and *Final Results of Administrative Review: 64K Dynamic Random Access Memory Components from Japan*, 51 FR 15943, 15953 (April 29, 1996). Similarly, at the preliminary determination in this investigation, we stated with respect to the Rochester price amendment that while we did not believe that the contract amendment per se altered the date of sale (given the industry involved

and the nature of the construction process for these large, customized machines under investigation, where minor specification changes are routine), we were "troubled by the fact that the sale price was modified officially after the filing of the petition in this investigation, and that the potential for the respondent to influence purposely the margin calculation may exist." *See* February 23, 1996, Memorandum to Richard W. Moreland from The Team Re: Sales Exclusion Issues at 8.

Therefore, based on the foregoing analysis, we have not considered any of the post-POI price amendments relevant to MRD's U.S. sales in our final analysis. In addition, we note that the petitioner's assertion that post-POI price amendments applied to three of MRD's sales is incorrect. While we verified that post-POI price amendments applied to MRD's Rochester and Wilkes Barre sales, we did not observe any such price amendment to apply to the Charlotte sale, as suggested by the petitioner. Notwithstanding this fact, the issue is moot with respect to the Charlotte sale given that we have excluded it from our final analysis. *See DOC Position* to *Comment 2* of the "Company-Specific Issues" subsection of the "Interested Party Comments" section of this notice.

We also note that our final calculation of CEP for the Rochester and Wilkes Barre sales, exclusive of post-POI price amendments, is consistent with our calculation of CV for these sales which is based on the respondent's submitted cost estimates and does not include the costs associated with the post-POI price amendments. *See DOC Position* to *Comment 9* of the "Company-Specific Issues" subsection of the "Interested Party Comments" section of this notice.

Comment 4 Date of Sale: MRD maintains that the Department should use the letter of intent as the date of sale for its U.S. sales, as this document is the first written evidence that an agreement has been reached on the basic terms of those sales. Citing *LPTs* (48 FR 26498, 26499, June 8, 1993) and *MTPs* (55 FR 335, 341, January 4, 1990), MRD asserts that the Department has consistently used the date of earliest written evidence of agreement as the date of sale in cases involving large made-to-order products and has consistently held that minor changes in technical specifications after the date of initial agreement do not alter the date of sale. MRD states that the basic terms in the final contracts were identical in all material respects to the terms outlined in the letters of intent, as supplemented by the additional terms set forth in the final proposals referenced in the letters of intent. In addition, the fact that MRD begins production after the signing of the letter of intent provides further justification for treating the letter of intent date as the sale date. According to MRD, general contract law (Section 2–201(3)(a) of the Uniform Commercial Code) provides that a valid contract exists when the seller starts production for custom order goods that are not suitable for sale to others in the ordinary course of trade. MRD argues further that the cancellation clauses in the letters of intent for Rochester and Wilkes Barre should not affect the date of sale analysis because the fact remains that at the time of the letter of intent, the parties had reached agreement on all of the basic terms of the sale.

The petitioner argues that in accordance with the Department's long-standing practice, the appropriate date of sale in this investigation is the date of contract. According to the petitioner, the essential terms of sale in the LNPP industry (*i.e.*, specifications, price, payment schedules, warranty terms and installation requirements) are established by the final contract, and not the letter of intent. The petitioner states that the Department verified that MRD's letters of intent for selected U.S. sales did not definitively establish the material terms of sale. Finally, the petitioner asserts that in the cases cited by the respondent to support its argument that the Department's precedent establishes the date of sale earlier in the transaction involving large customized equipment, the date of sale adopted was the contract date or, in the absence of a formal written confirmation of sale, the initial order date. In this case, the petitioner points out that the letters of intent required a formal written confirmation of sale.

DOC Position: We agree with the petitioner. The Department has a longstanding practice, which bases the date of sale on the date when all the essential terms (usually price and quantity) are firmly established and no longer within the control of the parties to alter without penalty. See, *e.g., Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan*, 61 FR 14064, 14067 (March 29, 1996).

In this case, we determined that the appropriate date of sale is the date of contract, and we solicited data from the respondent on this basis. As stated in *MTPs*, the Department's policy regarding the date of sale in the case of large, customized merchandise "has favored establishing the date of sale at an earlier point in the sale transaction process than at a later point, as it might be the case of fungible-type commodities which are offered for sale in the ordinary course of trade." *See MTPs* at 341. The appropriate "earlier point" in the sale transaction for date of sale purposes is determined on a case-by-case basis. In this case, we determined that the earliest point in the sale transaction, where the essential terms of sale for the LNPP industry (*i.e.*, specifications, price, payment schedules, warranty terms and installation requirements) would be established definitively, is the sale contract date, given the volume of sales correspondence generated in the sales process and the potential minor specification changes that may be made to the merchandise during the production process and after delivery. Furthermore, at verification, we observed that the terms of sale stipulated in the letters of intent did not definitively establish the material terms of sale, as they were subject to change and to a definitive agreement of sale (*i.e.*, a sale contract). See MRD Sales Verification Report at 11–12.

Therefore, for purposes of the final determination, we have determined the date of contract to be the appropriate date of sale. Our determination of the date of sale in this case is distinguishable from that in the case of MHI's Guard sale in the companion investigation of LNPPs from Japan. In MRD's case, the date of sale issue involves identifying the producer's earliest written documentation establishing the essential terms of sale, whereas in MHI's case the issue involves identifying the appropriate parties to the sale for date of sale purposes. See MHI *Comment 4* in the Federal Register notice of LNPPs from Japan.

Comment 5 U.S. Indirect Selling Expense Cap: The petitioner argues that the Department should not cap U.S. indirect selling expenses allocated to particular sales at the amount incurred during the POI because the allocation cap ignores the expenses incurred on sales of subject merchandise outside of the POI. According to the petitioner, the Department's allocation methodology employed in the preliminary determination rests on the assumption that POI sales could not have incurred selling expenses outside of the POI. But in cases such as the instant one, when sales efforts last for years and yield only a limited number of large sales at irregular intervals, it is logical to find that the amount spent to negotiate a given group of sales was greater than the total selling expenses incurred in the limited period in which the sales were made. Furthermore, the Department's cap is inconsistent with section

772(d)(1) of the Act which requires the deduction from CEP of any expenses generally incurred in selling the subject merchandise. According to the petitioner, whether the respondent incurred indirect selling expenses during the POI is irrelevant to this requirement. In addition, the Department's cap ignores the pattern of MRD's sales, where the POI sales are few but selling expenses are incurred on a regular basis before, during and after the POI to account for activities ranging from the development of bids to amendments to signed contracts. The petitioner argues further that the Department should reject MRD's proposals to cap U.S. indirect selling expenses up to the amount of total expenses incurred during the POI on newspaper sales, as this would amount to allocating POI indirect selling expenses over POI sales orders, which is contrary to the Department's normal calculation methodology.

If the Department is concerned about the magnitude of the verified POI selling expenses and their potential overstatement relative to total POI sales, the petitioner suggests that the Department follow past practice and use verified data relevant to a three-year period. The petitioner asserts that the Department should not use the respondent's four-year data because, among other reasons, they were not reconciled to audited financial statements and included expenses incurred in 1991–1992 by a facility which is no longer in operation and, therefore, are unrepresentative of current experience.

Furthermore, the petitioner argues that the Department should remove the data pertaining to Canadian transactions from the calculation of indirect selling expenses. According to the petitioner, section 772(d)(1) of the Act allows adjustments to CEP only to reflect costs of selling the subject merchandise. Since purchases by Canadian customers are not subject to this investigation, the petitioner maintains that they cannot be used in the allocation of indirect selling expenses. Furthermore, MRD provided no information illustrating that the selling expenses incurred on Canadian sales are representative of those incurred on U.S. sales.

MRD maintains that the Department should allocate U.S. indirect selling expenses incurred during the POI over the value of orders received during that period, which would avoid the need to apply a "cap" on such expenses as was done in the preliminary determination. Alternatively, the Department should revise the "cap" on U.S. indirect selling expenses to avoid assigning the selling expenses for commercial presses to newspaper presses.

Furthermore, MRD finds the petitioner's proposals unacceptable. The respondent believes the petitioner's arguments are based on the incorrect assumption that indirect selling expenses can be matched to specific sales. To the contrary, MRD explains indirect selling expenses are fixed expenses that do not vary with sales, and thus they should be allocated over the value of orders received during the POI. MRD reasons that in this case, because the Department is applying the indirect selling expense rate to sales made during the POI (*i.e.*, sales for which orders were received during the POI), it must calculate the rate on the basis of the total value of orders received. MRD attempts to refute the petitioner's assertions that a particular period or calculation would capture the expenses that properly relate to the sales under investigation, stating that the expenses can only relate generally to all of MRD's sales efforts. With respect to the three-year analysis advanced by the petitioner, MRD states that in the petition, Rockwell argued for a four-year POI because the three-year period from July 1992 to June 1995 was a period of sales depression that did not adequately capture the LNPP business cycle. If the Department were to accept the proposition that indirect selling expenses must be allocated over sales recognized for accounting purposes, then MRD maintains that it should use a period that encompasses the entire LNPP industry cycle, *i.e.*, a four-year period.

With respect to the petitioner's argument that the Department should remove the Canadian sales data from the calculation, MRD disagrees. It explains that MRU sales personnel who are responsible for sales in the United States are also responsible for sales in Canada and Latin America, and that the expenses for these salesmen cannot be tied to specific sales or markets. Accordingly, the only possible allocation method is to divide the total expenses of MRU's sales personnel by the total value of the sales generated by those personnel.

DOC Position: We agree in part with both the petitioner and MRD. The Department normally calculates indirect selling expenses as a percentage of POI cost of goods sold or POI sales revenue recognized. *See Final Determination of Sales at Less Than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Mexico,* 58 FR 37192, 37198 (July 9, 1993). In this case, the respondent has argued since the preliminary determination that the Department should calculate the POI selling expense rate based on sales orders, rather than sales recognized, so as not to overstate selling expenses on POI sales in years where sales revenue recognized is unusually low relative to actual selling expenses incurred. Conversely, the petitioner has maintained that such a calculation would grossly understate expenses for POI sales because it would disregard the substantial expenses incurred before and after the investigation period for POI sales.

In the preliminary determination, because application of the POI indirect selling expense rate reported by MRD to U.S. sales prices resulted in transaction-specific selling expenses which exceeded the total indirect selling expenses incurred by MRU during the POI, we capped the amount of indirect selling expenses deducted from CEP by the total indirect selling expenses actually incurred by MRU during the POI. While this is not our normal practice, we applied a "cap" on U.S. indirect selling expenses in the preliminary determination because the figures reported by the respondent appeared inaccurate and we did not have sufficient information to make any other adjustment. The petitioner claims that this "cap" ignores the fact that, in cases such as LNPPs when sales efforts last for years and yield only large sales at irregular intervals, the amount spent to negotiate a given group of sales may be greater than the total selling expenses incurred in the limited period in which the sales were made. Likewise, we note that significant sales efforts may be made and significant selling expenses may be incurred in a given period in the pursuit of a given sale without resulting in the consummation of that sale. Contrary to the petitioner's claim, indirect selling expenses are period expenses which cannot be associated directly with specific sales and, therefore, no direct correlation is possible despite the particular period chosen for analysis.

Since our preliminary determination, we verified that the actual POI indirect selling expense rate was significantly lower than that reported by the respondent, as a result of the correction of clerical errors. See MRU Sales Verification Report at 22–24. Our analysis of the verified actual indirect selling expenses incurred relative to the verified sales revenue recognized for the two fiscal years captured by the POI does not indicate that application of the verified POI rate would distort the calculation of CEP. Consequently, we see no need to cap these expenses for

purposes of the final determination. Therefore, we have applied the verified indirect selling expense percentage to U.S. sales contract prices (exclusive of post-POI price amendments) and have deducted the resulting expense amounts from CEP. Given the nature of these expenses, it is not possible to segregate the selling expenses that relate to foreign sales from those that relate to U.S. sales. Therefore, we did not remove the data pertaining to these sales from our calculation of the indirect selling expense rate, as suggested by the petitioner.

Comment 6 General Methodology for Calculating U.S. Warranty Expenses: The petitioner maintains that the two U.S. warranty expense calculations provided by MRD in its questionnaire responses are flawed. The first one (contained in Appendix SC–21–A of the February 1, 1996 submission), which the Department used in its preliminary determination, improperly included foreign sales data; and the second one (contained in Appendix 9 of the March 13, 1996 submission), which was examined by the Department at verification, improperly allocated four years of warranty expenses over more than seven years of sales, thereby understating U.S. warranty costs. The petitioner contends that the Department should recalculate the MRU warranty expense rate to be applied to CEP based on historical data for a four-year period exclusive of data pertaining to foreign sales and inclusive of sales revenues realized only during the period to which the warranty costs pertain. The petitioner explains that past Department decisions recognize that, especially on sales of large capital equipment such as LNPPs, the warranty expense calculation must estimate future expenses based on historical costs, rather than capture current warranty costs, for U.S. sales, because the long time for production and installation may lead to warranty expenses incurred long after the review period.

The petitioner maintains further that the inclusion of sales to foreign customers (*i.e.*, sales to Canadian customers) in the warranty expense rate calculation employed in the preliminary determination is improper. According to the petitioner, section 772(d)(1) of the Act allows adjustments to CEP only to reflect costs of selling the subject merchandise in the United States. Since purchases by Canadian customers are not subject to investigation, the petitioner maintains that they cannot be used in the calculation of warranty expenses. Moreover, MRD provided no evidence that the warranty expenses incurred on Canadian sales are representative of those incurred on U.S. sales.

The petitioner explains further that, at verification, the Department examined a warranty calculation provided by the respondent (in Appendix 9 of the March 13, 1996 submission) that properly segregated U.S. and foreign sales. However, that calculation allocated four years of warranty expenses over contract values that spanned a period of more than seven years, which in the petitioner's opinion results in an understatement of the actual cost. Therefore, the petitioner suggests that the Department subtract from that warranty expense calculation both Canadian sales, and sales revenues realized for the period prior to that for which warranty expenses were reported. The petitioner argues that, unlike MRD's proposed calculations, its proposed calculation is consistent with historical experience.

MRD argues that petitioner's proposition would result in a mismatching of warranty costs and sales, and would massively overstate the actual warranty expenses MRU will incur on sales during the POI. According to MRD, the purpose of the warranty calculation is to determine a reasonable estimate, based on an analysis of historical data, of the warranty costs that will be incurred in the future on the sales under investigation. As such, the petitioner's proposed calculations do not meet that purpose. With respect to the initial warranty expense calculation it reported based on historical experience, MRD contends that the removal of Canadian sales, as requested by the petitioner, would seriously distort the warranty calculations by leaving an unrepresentative sample that would not be sufficient to determine the historical ratio of warranty expenses to sales. MRD points out that in its March 13, 1996 submission, it provided a detailed analysis that shows the actual warranty expenses incurred on sales during the last four years. Based on this review of MRU's actual warranty expense experience on sales for which complete warranty expense information is available, the respondent argues that the U.S. warranty rate resulting from its initial calculation (February 1, 1996 submission) reasonably reflects MRU's actual experience on sales for which the warranty period has been completed. This analysis also demonstrates that petitioner's proposed calculation grossly overestimates MRU's actual warranty experience. MRD notes that throughout this proceeding the petitioner has insisted that, before estimates can be used in this case, they must be supported by "benchmarks" based on the actual costs for actual transactions. The respondent asserts that the petitioner's proposed calculation fails that test and accordingly must be rejected.

In addition, MRD argues that the Department should revise its U.S. warranty calculation with respect to the Rochester, Wilkes-Barre and Fargo sales, so as to avoid double counting. MRD asserts that the warranty calculation methodology employed in the preliminary determination for Rochester and Wilkes-Barre was incorrect and unreasonable because it assumed that warranty services would be performed more than once, *i.e.*, full warranty expenses were attributed to both MRD and MRU. According to MRD, whatever warranty services are needed for these presses will be performed only once—either by MRD, by MRU or a combination thereof. Therefore, the Department should either (1) apply only the MRD warranty expense rate to these sales; (2) apply only the MRU warranty expense rate to these sales; or (3) apply an average of the MRD and MRU rates to these sales. With respect to Fargo, MRD argues that the Department's preliminary calculations double-counted warranty expenses by adding the actual warranty expenses already incurred with the total expected warranty expenses. To estimate expected warranty expenses, MRD states that one should use either the actual warranty expenses to date (plus an estimate of the remaining warranty expenses that are expected) or the estimated total warranty expenses based on the value of the product.

DOC Position: We agree with both the petitioner and respondent, in part. The Department's normal practice in computing warranty expenses is to use historical data over a four- or five-year period preceding the filing of the petition to estimate the likely warranty expenses on POI sales. The underlying rationale for this practice is the recognition that, in many industries, warranty costs on sales made during the POI might not occur until long after the POI and, consequently, POI sales cannot be tied to their associated actual warranty expenses for reporting purposes. See *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19041 (April 30, 1996); *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18795 (April 20, 1994); and *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56379

(November 4, 1991). Historical costs are especially appropriate in the case of LNPPs because the long time for production and installation of the subject merchandise may lead to warranty expenses being incurred long after the POI. See *Final Results of Administrative Review: Mechanical Transfer Presses from Japan,* 57 FR 12798, 12799 (April 13, 1992).

Therefore, for purposes of the final determination, we have used the warranty expense rate reported by the respondent in its February 1, 1996 submission, revised to reflect the correction of certain clerical errors found at verification. We have applied this rate to the contract price of those U.S. POI sales for which MRU is primarily responsible for providing warranty servicing, and then deducted the resulting amount from CEP.

As for the petitioner's requested removal from the calculation of the data pertaining to non-subject sales, we agree in principle. While we have the information to segregate the warranty costs that relate to these sales from those that relate to U.S. sales in the calculation, we do not have sufficient information to segregate the corresponding sales values from the calculation for two out of the four fiscal years included in the calculation. Therefore, given this problem and the fact that the warranty expense rate inclusive of the foreign sales reasonably reflects MRU's actual experience on sales whose warranty period has been completed, we have not made the adjustment proposed by the petitioner.

With respect to the respondent's argument that the Department should revise its warranty expense calculation regarding Rochester, Wilkes-Barre and Fargo, we agree. In this case, both MRD and MRU provide warranty services. However, whether or not they incur warranty costs on a particular sale depends on their role in the production of the merchandise covered by the sale. In the preliminary determination, we incorrectly deducted from the CEP of the Rochester and Wilkes Barre sales warranty expenses reflecting the historical experience of MRU in addition to that of MRD, based on the assumption that both companies would be playing a role in warranty servicing. Since that time, however, we verified that MRD will be primarily responsible for the warranty servicing on these LNPP systems, given that they were almost entirely produced in Germany by MRD. See MRD Sales Verification Report at 28. Therefore, for the Rochester and Wilkes Barre sales, we have applied the verified warranty expense rate relevant to MRD's historical experience in Germany for all LNPP products. With respect to the Fargo and Global sales, MRD reported and the Department verified that MRU is primarily responsible for the servicing of any warranty claims on these sales. Therefore, for these sales it is more appropriate to use a warranty expense rate based on the historical experience of MRU as described above. Because we have excluded the Charlotte sale from our analysis for the reasons stated in the *DOC Position* to *Comment 2* of the "Company-Specific Issues" subsection of this notice, the issue is moot with respect to this sale.

Comment 7 Global Sale: MRD asserts that, if the Department includes the sale to Global in its analysis, it should analyze the total sale, including the used merchandise that was an integral part of the sale. The respondent asserts that this sale was unusual in that it involved both new and used equipment that was purchased by a reseller in the United States for ultimate sale to the end user. MRD argues that the new and used equipment was sold as a package and the customer did not have the option of buying only the used equipment or the new equipment at the respective price stipulated in the sales contract. MRD submits that in past cases, the Department has ruled that, where the contract sets a separate price for non-integral, non-subject equipment, it will rely on the contract price to determine the value to be assigned to that equipment. However, with respect to the Global sale, MRD argues that the used equipment in that sale was clearly integral to the sale. As such, the Department should make an adjustment for that used equipment based on its cost, and should allocate to it a portion of the total profit or loss on the sale.

The petitioner contends that MRD's failure to provide adequate information on the cost of the used equipment requires the exclusion of the used equipment from the Department's final calculations on the basis of the contract price. The petitioner asserts that the cost of this equipment reflected the inventory value which was, in turn, based on the acquisition price plus shipping costs less salvage value. This does not yield the market value which, according to the petitioner, is the correct measure of whether MRU received a reasonable profit on the used merchandise. The petitioner also claims that MRD did not present information at verification to allow the Department to confirm the reported cost.

DOC Position: We disagree with the respondent. For the reasons outlined in *DOC Position* to *Comment 2* of the "Company-Specific Issues" subsection of this notice, we have not excluded the Global sale from our final analysis. The Global sale involved the sale of both a used press and new equipment. Used presses are expressly excluded from the scope of our investigation. *See* "Scope of Investigation" section of this notice. We also note that the value of the used equipment was identified separately in the contractual documentation governing the sale. Given these facts, we have no basis upon which to include the used equipment portion of the sale in our final analysis as an integral part of the sale. As a result, we deducted from the calculation of CEP the contract price relevant to the used equipment. This is consistent with our treatment with respect to spare and replacement parts, which are also expressly excluded from the scope and therefore excluded from our analysis, where their value is separately outlined in the contractual documentation.

Comment 8 Spare Parts: MRD requests that the Department adjust its calculations to avoid double-counting of the cost of spare parts. MRD assert that if the spare parts price is deducted from the U.S. price, then the cost of the spare parts should be excluded from CV. On the other hand, if the spare parts cost is included in the CV then the spare parts price should not be deducted from U.S. price.

DOC Position: We agree. Consistent with our preliminary determination, where the value of the spare parts was separately identified in the contractual documentation governing the U.S. sale, we deducted the spare parts value from the contract price in the calculation of CEP. In this case, we also excluded the cost of the spare parts from the CV.

Comment 9 Costs for Rochester and Wilkes-Barre Sales: MRD argues that the Department should calculate CV for the Rochester and Wilkes-Barre sales based on costs calculated in accordance with the company's project-specific work plan. MRD contends that these costs are accurate and reliable, and that they are based on a system used by the company in its normal course of business. MRD states that it calculated the cost of each project-specific work plan based on a project-specific bill of materials and production instructions prepared before the initiation of this investigation.

MRD further asserts that it did not mislead the Department regarding the availability of actual cost data for completed press components. MRD states that it was able to compare project-specific work plan costs to the actual costs recorded in its cost accounting system for certain home market sales. MRD also notes that for Rochester and a few home market sales,

it was able to compare the project-specific work plan costs for individual parts to the actual costs recorded in its normal accounting system for the same parts.

MRD maintains that if the Department chooses to reject the costs calculated from the project-specific work plan for Rochester and Wilkes-Barre, it should rely on the cost estimates submitted by MRD as facts available rather than on the antidumping rate from the petition. According to MRD, the cost estimating system calculates costs based on an analysis of actual experience for previous projects of the same press model. MRD argues that the petition rate does not contain MRD's actual historical experience regarding materials, labor and production operations which was considered in developing the submitted cost estimates for the Rochester and Wilkes-Barre sales.

The petitioner maintains that the Department should reject the cost figures reported for the Rochester and Wilkes-Barre sales because the basis for these costs deviates from MRD's normal accounting practices and the reported amounts were derived after initiation of the investigation. The petitioner notes that verification revealed that MRD created the project-specific standard work plan costs for these sales solely for the purpose of responding to the Department's antidumping questionnaire. Thus, according to the petitioner, the cost reporting methodology employed by the respondent for the Rochester and Wilkes-Barre sales presents significant potential for manipulation. Even if MRD could not manipulate the actual parts listed in the work plan, the petitioner asserts that it is certainly possible for MRD to have manipulated the cost of those parts.

The petitioner contends that MRD misled the Department about its method of calculating production costs for these unfinished sales. According to the petitioner, in making its decision whether to review the Rochester and Wilkes-Barre sales as part of our investigation, the Department relied on MRD's claims that, as part of verification, project-specific standard costs could be compared to actual costs incurred to date on a component-by-component basis. The petitioner notes, however, that MRD was unable to identify which components had been completed and could not reconcile costs actually incurred to the project-specific work plan costs. In addition, during verification, the Department found that the projects were not completed to the extent claimed by MRD. The petitioner also disagrees with MRD's characterization of its project-specific work plan standard costing system as the type of system routinely accepted by the Department in past cases. The petitioner asserts that the Department only accepts such systems when an adjustment can be made to convert standard costs to actual costs. According to the petitioner, MRD's methodology does not allow any such adjustment.

For these reasons, the petitioner urges the Department to rely on facts available or exclude these sales altogether from its final analysis. As facts available, the petitioner suggests using the CV information in the petition which it argues contains the most probative facts on the record.

DOC Position: We agree with the petitioner that we cannot rely on MRD's projected costs calculated from its project-specific work plans as the basis for CV in our final determination. The Department normally requires respondents to report the actual cost of producing the subject product. Since the Rochester and Wilkes-Barre sales were not completed as of the date we issued the Section D questionnaire, MRD could not provide the actual cost of production. However, for these two sales, the respondent urged the Department to rely on its *projected* cost of production, which we normally do not accept, because there were so few sales and there was concern as to whether we would have any sales to investigate. MRD stated that its projected costs would be derived from the company's "standard costing performed in the normal course of business," that substantial actual costs would be incurred by verification, and that such actual costs could be reconciled to the costs of each project-specific work plan. Because MRD urged the Department to depart from its normal method of accepting only actual costs rather than projected costs, it was MRD's responsibility to provide the data necessary to justify the accuracy and reliability of its projected cost methodology.

As part of its CV submissions to the Department, MRD explained its reporting methodology for the Rochester and Wilkes-Barre sales. Specifically, MRD claimed that: "For those products for which production is not yet complete but for which detailed work-plans are available (such as Rochester and Wilkes-Barre), the actual costs have been used to determine the cost of manufacture to date, and the standard costs calculated from the project-specific work-plans have been used to determine the cost remaining for the project." See MRD's December 13, 1995 Section D response at 41. At verification, however, we learned that instead of including actual costs incurred to date for each project, MRD's submitted costs for the Rochester and Wilkes-Barre sales were based entirely on the total standard costs calculated from the project-specific work plans. Moreover, MRD's project-specific standard costing system, which was the basis for its submitted costs, could not be reconciled to MRD's audited financial statements. Absent the control of the respondent's normal audited accounting system, we are unable to determine whether MRD's projected cost data for the Rochester and Wilkes-Barre sales is reliable and accurate.

In addition to the difficulties noted above in reconciling MRD's project-specific standard work plan costs for the Rochester and Wilkes-Barre sales, we also found that the submitted costs for these projects had been derived after the initiation of this antidumping investigation and calculated specifically for the submission. MRD itself noted in its case brief that the company calculated the *detailed standard costing* of Rochester and Wilkes-Barre project-specific work plans after initiation of this antidumping investigation. *See* June 13, 1996 Revised Case Brief at 62. During verification, MRD officials also indicated that these same cost calculations had been prepared solely for the purpose of providing CV information in this case.

For these reasons, we have rejected MRD's cost projections for the Rochester and Wilkes-Barre sales in our final determination, and have relied on facts available to compute the cost of these sales. As facts available, we used MRD's submitted cost estimates for each of the two sales. We adjusted the estimated cost for a cost variance amount which we calculated as the difference between estimated and actual costs for sales of the same press model produced and completed during the POI.

We determined that the cost estimates could be relied upon for several reasons. First, unlike the project-specific standard work plan costs submitted by MRD for the Rochester and Wilkes-Barre sales, MRD prepares a cost estimate for every press in the normal course of business. Second, MRD completed the cost estimates for Rochester and Wilkes-Barre prior to the initiation of this case. Third, MRD relied on its actual production experience for the same model presses ("Geoman") to develop cost estimates for similar Geoman presses included in the Rochester and Wilkes-Barre contracts. Lastly, MRD provided estimated and actual cost data for the Geoman sales completed during the POI, thus enabling us to adjust

estimated costs for the Rochester and Wilkes-Barre sales based on MRD's past experience with the same press model.

Comment 10 Variances: MRD argues that the Department incorrectly used fiscal 1995 overhead variance rates to adjust overhead costs for the 1996 fiscal year. MRD contends that the Department should rely on the company's reported variance figures which were based on actual partial-year variance rates for the first six months of fiscal 1996 and full-year budgeted variance rates for the remainder of that year. MRD maintains that its use of a budgeted variance for fiscal year 1996 was actually conservative considering that the actual variance for the first half of that year was more favorable than the budgeted amount. Lastly, MRD argues that the Department cannot possibly apply the prior year's variance to the current period's costs as it did in the preliminary determination because the variance for each period reflects the utilization for that specific period.

The petitioner argues that the Department should continue to adjust MRD's costs to reflect the full year's actual variance for fiscal 1995. The petitioner asserts that MRD's budgeted variances do not accurately predict full-year results and rely on potentially unrealistic capacity utilization statistics. According to the petitioner, MRD's comparison of budgeted and actual variances do not confirm the reasonableness of either the actual or budgeted variances reported. Moreover, the petitioner maintains that the part-year variances may exclude year-end adjustments reflected in the annual budgeted variance calculation. The petitioner concludes that prior year's actual experience provides a more accurate projection of fiscal 1996 actual costs given the uncertainty about the conflicting plant capacity and utilization rates on the record.

DOC Position: We agree with the petitioner that MRD's budgeted variances do not accurately predict full-year operating results and rely on unrealistic capacity utilization levels. In addition, year-end adjustments or one-time annual costs may not be reflected in the part-year actual variance. Therefore, we rejected MRD's reported part-year actual variance and budgeted fiscal year variance calculation for fiscal 1996. As an alternative, we relied on the prior fiscal year actual variance which is consistent with the methodology applied in our the preliminary determination.

Comment 11 Imputed Credit: MRD contends that the Department's normal practice is to include only differences in selling expenses in the circumstance of sale adjustment. Therefore, MRD argues that the imputed cost of financing production should be excluded from the circumstance of sale credit calculation because the differences in the timing of production costs do not affect price comparability. Additionally, MRD asserts that negotiated payment terms are not affected by the lengthy production period for LNPPs. By linking the payment terms to the production cost schedules, as was done in the preliminary determination, the Department contradicts the basic principle that money is fungible. Thus, MRD argues that progress payments and production costs should not be matched on a customer-specific basis. Also, MRD maintains that imputed interest expenses should not be calculated for SG&A expenses. Moreover, the Department should only apply this circumstance of sale adjustment to NV if the normal imputed credit is included in the CV calculation.

The petitioner asserts that the Department correctly made a circumstance of sale adjustment for imputed credit expense by including both production costs and progress payments in the calculation. In addition, the petitioner argues that SG&A should be included in the imputed credit expense calculation because these costs are part of the total production costs compared to the total price of each press (*i.e.*, total production plus profit). Furthermore, the petitioner agrees with MRD that the Department should deduct home market imputed credit expenses as a circumstance of sale adjustment only if they include imputed credit in CV.

DOC Position: We believe that it is appropriate in this instance to recognize the comprehensive financing arrangement for each sale as a circumstance of sale adjustment. LNPPs require substantial capital expenditures over an extended time period because of their size and lengthy production process (*e.g.*, two to three years including the design phase). Moreover, the projects generally call for the purchaser to provide scheduled progress payments before completion of a project. Our normal imputed credit calculation (*i.e.*, cost of financing receivables between shipment dates and payment dates) does not measure the effect of progress payments made relative to production costs incurred. To adjust sales prices for the effect of the respondent incurring significant capital outlays at the beginning of a project (back loaded payments) or receiving large sums of money up front (front loaded payments), we calculated imputed credit for each home market and U.S. sale by recognizing both financing costs incurred and payments received.

We agree with the petitioner that SG&A should be included as production costs for calculating the imputed credit expense because the total contract price for each press (sum of payments) reflects the total production costs plus profit. We disagree with the petitioner, however, with regard to the issue of including imputed credit expense in CV. Section 773(e)(2)(A) of the Act, requires that the Department include in CV the actual amount of SG&A, including net interest expense, incurred by the exporter or producer. We agree with the respondent's position that imputed credit is not an actual expense. Therefore, we did not include imputed credit in the CV calculation for the final determination.

Comment 12 Imputed Capitalized Interest Costs: MRD claims that the statute and German Generally Accepted Accounting Principles (GAAP) do not allow imputed capitalized interest expenses in the cost of manufacture. Therefore, the Department should include only the actual interest costs incurred rather than both actual financing and imputed capitalized interest expenses. MRD further argues that the Department's normal interest expense calculation already includes all the actual costs of financing production. MRD further argues that the interest cost capitalized should not exceed the total interest cost incurred by the company and the Department should make an appropriate offset to the interest costs included in general expenses.

The petitioner contends that if the Department does not include the timing of production costs as a factor in its credit calculation, it should include capitalized interest expenses in CV to reflect MRD's financing of production incurred prior to payments received.

DOC Position: Since we are calculating imputed interest as a circumstance of sale adjustment and not as a capitalized cost in the cost of manufacture, this issue is moot.

Comment 13 Combining MAN Plamag and MRD Production Costs: In calculating cost of manufacturing, MRD argues that the Department should average the labor and overhead rates of both the MAN Plamag and MRD facilities because LNPPs are produced at both locations. Although MAN Plamag is a separate legal entity from MRD, MRD contends that MAN Plamag meets the five criteria for collapsing companies as used in *Iron Construction Castings from Canada*, 59 FR 25603–04 (May 17, 1994). Moreover, MRD maintains that the Department's policy

is to average costs where management has the capability to shift production between multiple facilities. Therefore, the Department should include respondent's "multiple facilities" adjustment which modifies the single facility costs to reflect the average of the two facilities.

The petitioner contends that, because the two facilities do not produce the same models, MRD has not met the criteria for cost averaging. Even if MRD had met the criteria for averaging costs, the petitioner argues that MRD's calculation is inconsistent with Department practice. MRD selectively averaged labor and overhead rates, but not SG&A expenses or research and development costs. The petitioner concludes that this selective form of weight averaging distorts costs and should be rejected.

DOC Position: We agree with the petitioner that we should not average costs for MRD and MAD Plamag. MAN Plamag is a separate corporate entity from MRD. Specifically, MAN Plamag is an affiliated party to MRD (not a division or factory within MRD) which supplies MRD with one of the major production inputs (RTPs). In determining the cost of manufacturing, the Department evaluates whether affiliated party transactions for major inputs occur at prices that are arm's-length in nature and above the supplier's cost of production. Contrary to MRD's assertion, the Department's normal practice is not to automatically collapse affiliated suppliers and the respondent company. In fact, the five criteria noted by MRD relate to collapsing companies for sales purposes rather than cost.

Comment 14 Further Manufacturing G&A: The petitioner maintains that the Department should calculate an average further manufacturing G&A expense over a multiple-year period based on actual historical data that reasonably represents the costs incurred, and those yet to be incurred, by MRD from its LNPP operations. The petitioner also urges the Department to ensure that the denominator in its further manufacturing G&A expense rate is consistent with the allocation base of each individual transaction to which the rate is applied. Lastly, the petitioner contends that because MRD did not reconcile its submitted fiscal year 1992 and 1993 G&A expenses to its audited financial statements, the Department should reject the G&A expenses reported by MRD for those two years.

MRD argues that the Department should allocate further manufacturing G&A expenses over the cost of sales orders during the POI rather than over the cost of sales actually recognized during that period. If the Department chooses to allocate G&A over sales recognized, then MRD asserts that the amount of G&A expenses should be capped. To calculate this cap, MRD contends that actual G&A expenses should be allocated between commercial and newspaper presses based on cost of goods sold during the POI.

DOC Position: For the final determination, we computed MRD's further manufacturing G&A expense rate based on the ratio of the reported G&A expenses to cost of sales (less the cost of imported German parts recognized during the POI). Consistent with the petitioner's arguments, we applied this G&A expense rate to the U.S. further manufacturing costs of each press. G&A expenses are period costs which relate to activities of the company during the period in which they are incurred. Accordingly, we allocated G&A expenses over costs incurred during the POI rather than the hypothetical cost of orders received during the period. Based on our approach, we concluded capping of G&A was not necessary because the total G&A assigned to all U.S. sales does not exceed the total amount of G&A being allocated.

Comment 15 Loss on Plant Closure and Disposal of Assets: MRD argues that the loss on the closure of the Middlesex and North Stonington facilities should be excluded from the cost calculation because these costs were extraordinary. In support of its position, MRD cites *Certain Welded Stainless Steel Pipe from the Republic of Korea* (57 FR 53693, 53704, November 12, 1992) in which the Department excluded the gain of the sale of a manufacturing plant because the transaction was considered extraordinary rather than a routine disposal of fixed assets.

The petitioner maintains that the costs incurred for the Middlesex plant closure should be included in MRD's further manufacturing G&A expense calculation because this facility was the location of the newspaper press division.

DOC Position: The plant closure costs at issue were incurred prior to the POI. Because we calculated G&A expenses based on POI data, this point is moot.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of LNPPs from Germany, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after March 1, 1996, the date of publication of our preliminary determination in the Federal Register.

Furthermore, we are also directing the U.S. Customs Service to continue to suspend liquidation of all entries of elements (parts or subcomponents) of components imported to fulfill a contract for a LNPP system, addition or component, from Germany, that are entered, or withdrawn from warehouse on or after March 1, 1996, with the exception of those entries of elements imported by MRU to fulfill the contract for the sale of a LNPP system to The Charlotte Observer ("Charlotte contract"). Such suspension of liquidation will remain in effect provided that the sum of such entries represent at least 50 percent of the value, measured in terms of the cost of manufacture, of the subject component of which they are part. This determination will be made by the Department only after all entries of the elements imported pursuant to a LNPP contract are made and the finished product pursuant to the LNPP contract is produced.

For this determination, all foreign producers/exporters and U.S. importers in the LNPP industry be required to provide clearly the following information on the documentation accompanying each entry from Germany of elements pursuant to a LNPP contract: (1) The identification of each of the elements included in the entry, (2) a description of each of the elements, (3) the name of the LNPP component of which each of the elements are part, and (4) the LNPP contract number pursuant to which the elements are imported. The suspension of liquidation will remain in effect until such time as all of the requisite information is presented to U.S. Customs and the Department is able to make a determination as to whether the imported elements are at least 50 percent of the cost of manufacture of the LNPP component of which they are part.

With respect to entries of LNPP spare and replacement parts, and used presses, from Germany, which are expressly excluded from the scope of the investigation, we will instruct the Customs Service to continue not to suspend liquidation of these entries if they are separately identified and valued in the LNPP contract pursuant to which they are imported.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers in the LNPP industry

shall continue to be required to provide certification that the imported merchandise would not be used to fulfill a LNPP contract. As indicated above, we will also continue to request that these parties register with the Customs Service the LNPP contract numbers pursuant to which subject merchandise is imported.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the export price, as shown below. Any securities posted since March 1, 1996, on entries of elements relevant to MRU's Charlotte contract shall be refunded or canceled.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
MAN Roland Druckmaschinen AG	30.80
Koenig Bauer-Albert AG	[1] 46.40
All Others	30.80

[1] Facts Available Rate.

The all others rate applies to all entries of subject merchandise except for entries of merchandise produced by the respondents listed above.

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: July 15, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–18542 Filed 7–22–96; 8:45 am]

BILLING CODE 3510–DS–P

APPENDIX B

LIST OF WITNESSES APPEARING AT HEARING

CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject:	:	Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan
Invs. Nos.	:	731-TA-736-737 (F)
Date and Time	:	July 17, 1996 - 9:30 a.m.

Sessions were held in connection with the investigations in the Main hearing room 101, 500 E Street, SW, Washington, D.C.

Congressional Appearance:

The Honorable Tom Harkin, United States Senator, State of Iowa

OPENING REMARKS

Petitioner (**Charles Owen Verrill, Jr.**, Wiley, Rein and Fielding)
Respondent (**Richard O. Cunningham**, Steptoe and Johnson)

In Support of the Imposition of Antidumping Duties:

Wiley, Rein and Fielding
Washington, D.C.
on behalf of

Rockwell Graphics Systems, Incorporated

Robert M. Kuhn, President

David F. Rodemeyer, Controller

In Support of the Imposition of Antidumping Duties cont'd:

Alan P. Sheng, Vice President of Engineering and Technology

Henry L. Cobb, National Sales Director

Andrew R. Wechsler, Principal and Managing Director, Law and Economic Consulting Group, Inc.

Pieter van Leeuwen, Senior Economist, Law and Economic Consulting Group, Inc.

Charles Owen Verrill, Jr.)
Alan H. Price)
Willis S. Martyn, III)--OF COUNSEL
Peter S. Jordan)
Carlos M. Nalda)

In Opposition to the Imposition of Antidumping Duties:

PANEL 1

Steptoe and Johnson
Washington, D.C.
on behalf of

Mitsubishi Heavy Industries, Ltd. (MHI)

John Witherspoon, President and Publisher, Piedmont Publishing Company

Edward Betts, Attorney, Christian and Barton, LLP

Bruce Malashevich, Economist, Economic Consulting Services

Richard O. Cunningham)
)--OF COUNSEL
Edward J. Krauland)

In Opposition to the Imposition of Antidumping Duties cont'd:

Wilmer, Cutler and Pickering
Washington, D.C.
on behalf of

The Washington Post

Donald E. Graham, Chairman of the Post's board and Chief Executive Officer

John D. Greenwald--OF COUNSEL

Graham and James
Washington, D.C.
on behalf of

Tokyo Kikai Seisakusho, Ltd. (TKS)

F. Thomas Kull, Vice President of Operations, Dow Jones and Company, Incorporated

Paul Schafer, Production Manager, The Spokesman-Review

John Wilhelm, Pressroom Superintendent, The Spokesman-Review

John E. Hall, Executive Vice President, TKS (U.S.A.), Incorporated

Michael Shafer, Sales Manager, TKS (U.S.A.), Incorporated

Yoshihiro Saito)
)--OF COUNSEL
Richard S. Toikka)

In Opposition to the Imposition of Antidumping Duties cont'd:

PANEL 2

Sherman and Sterling
Washington, D.C.
on behalf of
MAN Roland Incorporated
MAN Roland Druckmaschinen AG

> **Helgi Schmidt-Liermann, Chief Executive Officer, MAN Roland, Incorporated**
>
> **Vincent Lapinski, Director of National Newspaper Group Accounts, MAN Roland, Incorporated**
>
> **Gerd Finkbeiner, Member of the Board of Directors, MAN Roland Druckmaschinen AG**
>
> **Tom Norton, Project Manager, The Times Leader (Wilkes Barre)**
>
> **Mike Monscour, Vice President, Production of Gannett Rochester Newspapers**

Thomas B. Wilner--OF COUNSEL

Kirkland and Ellis
Washington, D.C.
on behalf of

Koenig & Bauer-Albert AG
KBA-Motter, Corporation

> **Scott Smith, President, KBA-Motter Corporation**
>
> **Daniel E. Baumann, President and Publisher, The Daily Herald, Paddock Publications**

In Opposition to the Imposition of Antidumping Duties cont'd:

Peter Baker, General Manager, Red Wing Publishing Company, formerly the General Manager of the South Bend Tribune

Kenneth G. Weigel)
)--OF COUNSEL
Nancy Kao)

PANEL 3

Cahill, Gordon and Reindel
New York, NY
on behalf of

The Newpaper Association of America ("NAA")

Allan Horton, a member of NAA's Board of Directors, and former member of its Technology Committee

Frank Balentine, Technical Advisory Service Engineer

Thomas Croteau, Training and Pre-Press Manager

Harshad Matalia, Post-Press Manager

Patricia Farren)--OF COUNSEL

APPENDIX C

SUMMARY TABLES

Table C-1
LNPPs: Summary data concerning the U.S. market, by delivered date, 1991-95, Jan.-Mar. 1995, and Jan.-Mar. 1996

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Table C-2
LNPPs: Summary data concerning Allen Bradley operations, 1991-95, Jan.-Mar. 1995, and Jan.-Mar. 1996

* * * * * * *

APPENDIX D

QUESTIONNAIRE COMMENTS ON SNPPs AND LNPP ELEMENTS

PURCHASER QUESTIONNAIRE COMMENTS ON SNPPs

The Commission's purchaser's questionnaires in these investigations requested comments regarding the substitutability of SNPPs for LNPPs and whether the prices of SNPPs relative to those of LNPPs were ab important factor in purchasing decisions. Five purchasers reported that SNPPs are substitutable for LNPPs, and their comments are as follows:

***

"We did not seriously consider small presses because we would require more units to reach same capacity and because there is a significant speed difference."

***

"In the abstract, smaller newspaper presses could be used in place of large newspaper presses, although doing so may be operational cost prohibitive. Since we bought components and not full presses, this was not a consideration in our purchase."

***

"Investigated smaller presses, but we felt they would not fill our needs. However, the possibility of using smaller presses could have worked, but size prohibitive so it was discounted quickly. Would not fit in building size considering number of units that would be required."

***

"Single-wide offset presses were briefly considered."

PRODUCER QUESTIONNAIRE COMMENTS ON ELEMENTS OF LNPPs

The Commission's producer's questionnaires in these investigations requested comments regarding LNPPs and elements of LNPPs. The following comments were received:

Question of Independent Uses

***

"The elements in the ITC's list are all dedicated not just to large newspaper presses, but often to the particular press for which they were designed. There is no separate market for these items other than for use in large newspaper presses."

***

"LNPP elements are used only to fulfill an LNPP contract or for spare parts sales."

***

"Some LNPP parts (e.g., gears, motors, tubing, bearings, fasteners) are standard commercial items that may be used in non-LNPP applications."

***

"Each component and element is of unique size and shape and fulfills its specifically intended purpose."

***

"All LNPP applications are made from customer prints and specifications. Since this is the case, when raw material is purchased, it becomes dedicated for LNPP applications" and "(t)here are no independent uses for LNPP elements other than to fulfill an LNPP contract."

***

"I have absolutely no idea or concern what the technical specifications or design of LNPP parts are. My company receives a blue print and we make the part in question and ship it..."

***

"All customized applications per blueprints supplied" and "(a)ll parts we manufacture are per customer supplied blueprints - many of which are designed per LNPP. We would have no other outlet for specific items."

***

"*** manufactures *** to the press manufacturer's prints and specifications. We do not have the ability to distinguish between LNPP and NON-LNPP applications, so the press manufacturers were contacted and provided us a list of applicable part numbers" and "(t)he *** we manufacture are designed by the press manufacturers and sold as an individual component. We are unable to determine their application and markets."

***

"Our *** will also work on business forms and commercial printing presses...(w)e designed, built, and patented a better *** than the press manufacturers were providing in their presses....(w)e and our competitors sell patented or formerly patented elements."

***

"The elements we manufacture *** are used for LNPP contracts. To date there is not separate market for this product. Subsystems of this product *** are common with our other *** and have separate markets. They are utilized in the *** which is a system used for commercial printing presses."

Significance and Extent of Transformation

***

"Almost all of the physical processing -- the various machining operations -- is devoted to making the elements. It is this processing that accounts for the large majority of the capital equipment used to make large newspaper presses. Once the elements on the Commission's list are made, transforming them into large newspaper press systems, additions, or components is primarily a matter of assembly.

This is not to say that the assembly process is simple. As noted above, the assemblers are skilled and often have extensive formal training and years of experience. The process requires precise work with rigorous quality testing. However, it accounts for a smaller part of total value added than either of the machining processes."

***

"Assembly of LNPP components requires large cranes and precision instruments and gauges. Once the assembly is complete, then the LNPP component is tested by running at certain speeds."

***

"The transformation of LNPP elements into LNPP components requires substantial skill, technology, capital and labor. Assembly and machining of individual elements into a press or press component accounts for a significant, perhaps a majority, of the cost of producing the press or component."

***

"First, even elements are, in most cases, heavy enough to require mechanical lifting. Hence, to transform elements into components, a machine shop with overhead cranes and hoists is required. Once a component is fully assembled, it is transported to a very large room called the press erection room -- measuring approximately 40 feet high, 40 feet wide and 125 feet long. Here, all of the components are brought together and assembled into a full LNPP and is tested... All of the preceding in the manufacturer's factory prior to shipping the factory assembly into an LNPP takes many weeks to do."

***

"The *** is not transformed into an LNPP or components thereof. It is an auxiliary product, one which provides additional functionality to the LNPP."

Characteristics and Uses

***

Characteristics.--The elements listed in the Commission's questionnaire "convey the most important functions of the large newspaper press. They must share the precision, robustness, and size that are the defining characteristics of the subject merchandise. For example, each hole or protrusion machined into the frame of a printing unit must be located in the precisely correct relation to the other holes and protrusions, or the press will not print correctly. That frame must be durable enough to last the life of the press because replacing it is so difficult. It also must be large enough to accommodate the double-width web. These are all defining features of a large newspaper press."

Uses.--"The functions of a large newspaper press are performed primarily by the elements included in the ITC's list. Thus, each of them is partially identical in function to the completed whole."

***

Characteristics.--"LNPP elements are usually different singular parts that make up LNPP components. Thus, the LNPP components are made up of many LNPP elements."

Uses.--"An LNPP component many times is a module of the LNPP which may, or may not, be sold with the LNPP."

Captive Consumption by LNPP producers

***

"*** makes all of the elements listed in the ITC's instruction booklet in-house, with four exceptions: *** pursuant to customer preferences."

***

"During the past 6 years, *** has produced all listed elements using purchased raw material except: ***."

APPENDIX E

EXAMPLES OF PURCHASER PRESS COMPARISONS

Purchaser questionnaire response of the Everett Herald, Everett, WA. The Herald provided the table shown on the following 2 pages that outlines weighting factors used by the firm to evaluate competing LNPPs. ***.

* * * * * * *

Purchaser questionnaire response of the South Bend Tribune, South Bend, IN. The Tribune provided the discussion shown on the following 3 pages that describes in detail their efforts in choosing an LNPP.

* * * * * * *

Purchaser questionnaire response of the Wilkes Barre Times Leader, Wilkes Barre, PA. The Leader provided the table shown on the following 2 pages that outlines the factors they considered in purchasing an LNPP. ***.

* * * * * * *

APPENDIX F

CONTRACT-SPECIFIC QUANTITY AND VALUE DATA

Table F-1
LNPPs: Total contract sales, by contract year, by sources, 1991-96

* * * * * * *

Table F-2
LNPPs: Contract-specific data relating to contract value, press type, and press capacity, for U.S.-produced products of RGS

* * * * * * *

Table F-3
LNPPs: Contract-specific data relating to contract value, press type, and press capacity, for U.S.-produced products of MAN Roland

* * * * * * *

Table F-4
LNPPs: Contract-specific data relating to contract value, press type, and press capacity, for imports by MAN Roland

* * * * * * *

Table F-5
LNPPs: Contract-specific data relating to contract value, press type, and press capacity, for U.S.-produced products of KBA-Motter

* * * * * * *

Table F-6
LNPPs: Contract-specific data relating to contract value, press type, and press capacity, for imports by KBA-Motter

* * * * * * *

Table F-7
LNPPs: Contract-specific data relating to contract value, press type, and press capacity, for imports by MLP

* * * * * * *

Table F-8
LNPPs: Contract-specific data relating to contract value, press type, and press capacity, for U.S.-produced products of TKS (USA)

*   *   *   *   *   *   *

Table F-9
LNPPs: Contract-specific data relating to contract value, press type, and press capacity, for imports by TKS (USA)

*   *   *   *   *   *   *

APPENDIX G

STATEMENTS BY RGS AND THE WASHINGTON POST

Producer questionnaire response of RGS concerning the negotiations with the Washington Post to sell this publication several printing presses.

*   *   *   *   *   *   *

The Washington Post's explanation of its negotiations in deciding on the purchase of several LNPPs. (Postconference brief of Wilmer, Cutler & Pickering, July 26, 1995; preliminary investigation No. 731-TA-737).

*   *   *   *   *   *   *

APPENDIX H

U. S. PRODUCTION OPERATIONS: COSTS AND SOURCES

BACKGROUND

The following tables contain data on the nature of each U.S. producer's production operations (commonly referred to as value added) and the sources of the parts used to produce LNPPs and components thereof. The data are the producers' costs (in dollars) of (1) each major component and (2) the processes involved in design and testing, assembling, selling, and installing each LNPP. The data are read as follows: the first column (total cost) is the sum of the next two columns (foreign content and total domestic content). Total domestic content is in turn the sum of the last two columns (domestic raw materials and domestic labor and factory overhead).

Total domestic value added is then computed by dividing the sum of domestic labor and factory overhead costs and domestic overall product costs by the total cost of each LNPP. The computation is done both with and without selling, general, and administrative (SG&A) expenses considered. The computations are consistent with previous investigations.

Producer: RGS

* * * * * * *

Producer: Heidelberg Harris

* * * * * * *

Producer: KBA-Motter

* * * * * * *

Producer: MAN Roland

* * * * * * *

Producer: TKS (USA)

* * * * * * *

APPENDIX I

PRODUCERS' COMMENTS ON THE EFFECTS OF IMPORTS

The Commission requested U.S. producers to describe any actual or anticipated negative effects of imports of LNPPs and their components, whether assembled or unassembled, from Germany and Japan on their return on investment or their growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or their scale of capital investments undertaken as a result such imports. The responses are as follows:

Actual Negative Effects

Heidelberg Harris

***.

KBA-Motter

***.

MAN Roland

***.

TKS (USA)

***.

RGS

***.

Anticipated Negative Effects

Heidelberg Harris

***.

KBA-Motter

***.

MAN Roland

***.

TKS (USA)

***.

RGS

***.