

# **CELLULAR MOBILE TELEPHONES AND SUBASSEMBLIES THEREOF FROM JAPAN**

**Determination of the Commission in  
Investigation No. 731-TA-207  
(Final) Under the Tariff Act  
of 1930, Together With the  
Information Obtained in the  
Investigation**

**USITC PUBLICATION 1786**

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# UNITED STATES INTERNATIONAL TRADE COMMISSION

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**Paula Stern, Chairwoman**  
**Susan W. Liebeler, Vice Chairman**  
**Alfred E. Eckes**  
**Seeley G. Lodwick**  
**David B. Rohr**

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Larry Reavis, Office of Investigations  
Eric Nelson, Office of Industries  
Terry Planton, Office of Economics  
Chand Mehta, Office of Investigations  
Catherine Field, Office of the General Counsel  
Lynn Featherstone, Supervisory Investigator

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**Address all communications to**  
**Kenneth R. Mason, Secretary to the Commission**  
**United States International Trade Commission**  
**Washington, DC 20436**

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Note.--Information which would reveal the confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

Investigation No. 731-TA-207 (Final)

CELLULAR MOBILE TELEPHONES AND SUBASSEMBLIES THEREOF FROM JAPAN

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, 2/ pursuant to section 735(b)(1) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)(1)), that industries in the United States are materially injured by reason of imports from Japan of cellular mobile telephones and subassemblies thereof, provided for in items 685.28 and 685.32 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). 3/

Background

The Commission instituted this investigation effective June 11, 1985, following a preliminary determination by the Department of Commerce that imports of the subject articles from Japan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. § 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of July 3, 1985 (50 FR 27496). A notice revising the Commission's schedule for the conduct of the investigation was published in the Federal Register of July 31, 1985 (50 FR 31050). The hearing was held in Washington, DC, on October 30, 1985, 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(i) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(i)).

2/ Vice Chairman Liebelier dissenting.

3/ Commissioner Lodwick determines that an industry, rather than industries, is the subject of material injury.



IEWS OF CHAIRWOMAN STERN, COMMISSIONER ECKES, COMMISSIONER LODWICK,  
AND COMMISSIONER ROHR

We determine that industries in the United States are materially injured by reason of imports of cellular mobile telephones (CMTs) and subassemblies for CMTs from Japan which are being sold at less than fair value (LTFV). 1/

We recognize that there are many complexities in this investigation, including the relatively recent commencement of production of CMTs for the U.S. market, the rapid expansion of the U.S. market, the entry of new domestic producers throughout the period of investigation, and the assessment of the impact of imports on these particular industries. Although many of the indicators relevant to the condition of the domestic industries are positive and show improving trends, the domestic industries producing CMTs and subassemblies are showing financial losses and firms in the domestic industry have experienced declining employment or have chosen to cease production of CMTs and subassemblies. We have concluded that the LTFV sales of Japanese CMTs and subassemblies have had a negative impact on the performance of the domestic industry sufficient to find material injury by reason of such imports.

The like products

The domestic industry in a title VII investigation consists of the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." 2/ Section 771(10) defines like product as "a product which is like or, in the absence of like, most similar

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1/ Commissioner Lodwick determines that an industry in the United States is materially injured by reason of LTFV imports of cellular mobile telephones and subassemblies from Japan.

2/ 19 U.S.C. § 1677(4)(A).

in characteristics and uses with, the article subject to an investigation . . . ." 3/

The imported merchandise which is the subject of this investigation are CMTs and subassemblies of CMTs. 4/ The imported CMTs include vehicular models, transportable CMTs, and CMTs that are smaller and lighter than traditionally designed transportable CMTs. 5/

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3/ 19 U.S.C. § 1677(10). Furthermore, the legislative history provides that: The requirement that a product be 'like' the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and the article are not 'like' each other, nor should the definition of 'like product' be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under investigation.

S. Rep. No. 249, 96th Cong., 1st Sess. 90 (1979).

4/ For the purposes of its investigation the Department of Commerce (Commerce) has defined subassemblies as "any completed or partially completed circuit module[s], the value of which is equal to or greater than five dollars, and which are dedicated exclusively for use in CMT transceivers or control units. The term 'dedicated exclusively for use' only encompasses those subassemblies that are specifically designed for use in CMTs, and could not be used, absent alteration, in a non-CMT device." Commerce Final Determination on less-than-fair-value (LTFV) Sales, 50 Fed. Reg. 45448. Commerce, however, refined this definition, stating that replacement subassemblies are not within the scope of this investigation. 50 Fed. Reg. 45457.

5/ The Commerce notice explicitly excludes cellular portable telephones, which are defined as pocket-sized, self-contained units, from the scope of this investigation. 50 Fed. Reg. 45447.

CMT products are wireless two-way electronic communications devices consisting of a transceiver and a control unit. 6/ Although all CMT products are used for communication between CMT users and traditional wireline telephones, the specific products differ in terms of their size, mobility, and power. 7/ These differences, however, are not such that they should be considered separate like products. We also determine that domestically produced transportable CMTs and vehicular CMTs are a single like product. 8/

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6/ The transceiver is a collection of subassemblies which perform the functions of receiving and transmitting calls. The control unit resembles a traditional telephone and the CMT user uses the control unit to dial, speak, and hear a call.

In the preliminary investigation, Chairwoman Stern and Commissioner Rohr found control units and subassemblies to be separate like products. Based on the information gathered in this final investigation, we do not believe that they should be considered as separate like products. Transceivers and control units must be used together to form an operating CMT. Different manufacturers' transceivers and control units are not completely compatible and certain features, such as call timers or electronic locks, may not be operable when a transceiver is used with a different manufacturer's control unit. There are no independent uses for either part of a CMT. Transceivers and control units are frequently produced in the same facility by the same workers. Moreover, both the cellular service provider and the CMT user perceive a CMT as a unit.

7/ Vehicular CMTs are designed for use exclusively in motor vehicles and derive their power from the vehicle. Transportable CMTs may be removed from the motor vehicle and carried on foot. These CMTs are smaller than the vehicular version and include a plug-in battery and brief-case type carrying case. These CMTs weigh approximately 25 pounds, and their power capabilities are relatively equivalent to the vehicular models. Nippon Electric Co. (NEC) prehearing brief at Appendix, Table 10. CMT manufacturers have recently developed CMT models that are smaller, lighter, and less powerful than the vehicular CMT. Motorola's "portable" CMT was the first such product to enter the U.S. market. Subsequently, several imported CMTs that are smaller and lighter than the vehicular CMT, including a NEC model, have entered the U.S. market.

8/ Transportable CMTs are similar to vehicular CMTs in terms of power and capacity and the ability to use vehicular power sources. Moreover, transportable CMTs are like a vehicular CMT in terms of function. NEC's CMT is currently being sold with adaptor kits for use in a vehicle. Although it is priced higher than a vehicular CMT, the NEC CMT is still priced significantly below Motorola's portable model. In addition, we note that the larger battery in the NEC model permits its CMT to transmit on a level comparable to vehicular CMTs. Report of the Commission (Report) at A-8-A-9.

Motorola's portable CMT is significantly less powerful than any of the other types of CMTs at issue in this investigation. The Motorola portable is also smaller than these other CMTs including the NEC CMT. Although the Motorola portable can be used in a vehicle and can be recharged with a motor-vehicle power source, the battery provides the only source of power. 9/ Thus, we find that only vehicular and transportable CMTs produced in the United States are like the imported CMTs including NEC's CMT.

In this investigation there are also imports of CMT subassemblies. These subassemblies "compartmentalize" certain functions common to every CMT. The basic functions incorporated into one or more of the major subassemblies include: audio processing, signal processing (logic), frequency transmitting, frequency receiving, frequency comparing (synthesizing), duplexing (enabling sending and receiving at the same time), and power amplifying. 10/

We determine that subassemblies dedicated to the performance of each of the essential functions of a complete CMT constitute a separate like

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9/ Id. at A-5-6.

10/ Id. at A-7-A-8. All of the various subassemblies at issue are produced in the United States.

product. 11/ 12/ In addition to the obvious differences in terms of physical characteristics, various subassemblies are not substitutable or interchangeable because each has a specific function in the transceiver or control unit and each firm's allocation of function between various subassemblies varies. Each of the subassemblies at issue is necessary to the function of the complete unit. These subassemblies, however, represent a

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11/ Commissioner Lodwick determines that there is one like product consisting of complete CMTs and subassemblies for CMTs. All of the subassemblies within the scope of this investigation are dedicated for use in new CMTs, and thus are consumed by producers of complete CMTs. Once assembled, domestically produced subassemblies perform the function of a complete CMT.

He notes that his analysis in this investigation is consistent with that in Certain Valves, Nozzles, and Connectors of Brass from Italy for Use in Fire Protection Systems (Valves), Inv. No. 731-TA-165 (Final), USITC Pub. No. 1649 (1985), in which he found that there were seven like products. Important differences exist between the facts in these two investigations. At present, the subassemblies in the instant investigation are uniquely configured for the particular CMT model in which they are used. The staff report notes that various transceiver models have from 5 to 10 major subassemblies. There is no independent market for the subassemblies, and no potential for mixing of subassemblies from different CMT producers by consumers in finished CMTs. The producers of finished CMTs either produce the subassemblies themselves or contract to have subassemblies produced to their specifications.

Conversely, in the Valves case the seven products included standardized items conforming to general requirements. There are independent markets for each of the items, and consumers do mix parts from different producers in the same fire protection system. In the Valves case the majority of producers made or contracted for only some of the products and more significantly, none sold a complete fire protection system which would be analogous to a complete CMT.

12/ Commissioner Rohr determines that there are two like products, one like product consisting of complete CMTs and a second like product consisting of all subassemblies for CMTs. There are obvious differences between the capabilities of CMTs and subassemblies. The subassemblies at issue in this investigation represent a similar stage of production and are frequently produced at the same facility. Although all subassemblies are dedicated for use in a CMT, they do not function as a CMT until assembled. Commissioner Rohr agrees with Commissioner Lodwick's description of the differences between the like product analysis in this case and in Certain Valves, Nozzles, and Connectors of Brass from Italy for Use in Fire Protection Systems, Inv. No. 731-TA-165 (Final), USITC Pub. No. 1649 (1985).

prior stage of production, and thus the amount of further processing is extensive. 13/ 14/

Domestic producers

In making the factual determination regarding whether a particular firm is a domestic producer, we have examined the overall nature of production-related activities in the United States, including the extent and source of a firm's capital investment, the technical expertise involved in production activity in the United States, the value added to the product in the United States, employment levels, the quantity and type of parts sourced in the United States, and any other costs and activities in the United States directly leading to production of the like product. No single factor is

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13/ Chairwoman Stern notes that her analysis of like product is consistent with the Commission's analysis in Erasable Programmable Read Only Memories from Japan, Inv. No. 731-TA-288 (Preliminary), USITC Pub. No. 1778 at 6-9 (1985), in which the Commission found that there was one like product EPROM's, that includes processed wafers, dice, and assembled EPROM's. In EPROM's, the essential use of the assembled EPROM developed in the fabrication of the wafer. Id. at 8. By contrast, in this investigation there are eight essential functions, each present in a separate subassembly. Chairwoman Stern applied a similar analysis in Certain Valves, Nozzles, and Connectors of Brass from Italy for Use in Fire Protection Systems, Inv. No. 731-TA-165 (Final), USITC Pub. No. 1649 at 4-6 (1985), in which she found seven like products, and examined the effect of imports on each of the seven domestic industries. Similarly, in Forged Undercarriage Components from Italy, Inv. No. 701-TA-201 (Final), USITC Pub. No. 1465 at 26-34 (1983), she found that semi-finished and finished undercarriage components were separate like products and examined the effect of imports on two industries.

14/ Commissioner Eckes notes that his analysis in this investigation is consistent with that in Certain Valves, Nozzles, and Connectors of Brass from Italy for Use in Fire Protection Systems, Inv. No. 731-TA-165 (Final), USITC Pub. No. 1649 (1985), in which he found that there were seven like products, but applied section 771(4)(D) in assessing the effect of imports on these seven products as if there were a single industry. Commissioner Eckes Views at 25-26. His analysis is also consistent with his determination in Forged Undercarriage Components from Italy, Inv. No. 701-TA-201 (Final), USITC Pub. No. 1465 (1983), in which he found that the various components of undercarriages were separate like products.

determinative. <sup>15/</sup> Almost all of the Commission's information regarding various firms' production-related activities in the United States is business confidential information. Thus, we must address this issue in general terms.

Based upon our analysis of the factors set forth above, we determine that those firms producing transceivers or control units in the United States are domestic producers within the meaning of section 771(4)(A). In addition, we determine that certain Japanese firms that have commenced significant production-related activity in the United States are also domestic producers as of the time when a specific firm commenced those activities in the United States. We note, however, that based on our discussion of related parties that follows, these firms have been excluded from our analysis regarding injury to the domestic industry over the entire period of the investigation.

#### Related parties

Section 771(4)(B) provides that:

[w]hen some producers are related to the exporters or importers, or are themselves importers of the allegedly subsidized or dumped merchandise, the term industry may be

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<sup>15/</sup> See Color Television Receivers from the Republic of Korea and Taiwan, Invs. Nos. 731-TA-134-135 (Final), USITC Pub. No. 1514 at 8 (1984); Certain Radio Paging and Alerting Receiving Devices from Japan, Inv. No. 731-TA-102 (Final), USITC Pub. No. 1410 at 8 (1983). Although petitioner Motorola contends that a firm must be engaged in research and development in the United States in order to qualify as a domestic producer in this industry, we find that this factor is not dispositive. Research and development does represent a significant factor in a "high technology" industry. The relative importance of that factor, however, declines as an industry matures. We recognize that CMTs are evolving in the area of miniaturization and new product features. There are, however, other relevant production-related considerations.

applied in appropriate circumstances by excluding such producers from those included in the domestic industry. 16/

Two firms have engaged in production in the United States of either the transceiver or control unit portions of a complete CMT and the relevant subassemblies and have also imported the other portion of a complete CMT during the entire period of this investigation. These firms represent a significant portion of domestic production during the period of this investigation. 17/ Excluding these from the domestic industries would skew the Commission's analysis of the condition of the domestic industries. Thus, we have determined not to exclude these firms from the domestic industry.

With regard to the Japanese-owned firms that we found to be domestic producers, these firms achieved this status only recently. Thus, these firms have benefited from importation of either subassemblies or complete CMTs during the vast majority of the period of investigation. Although these firms represent a sizeable portion of domestic production during the brief time that they have been domestic producers, exclusion of these firms under the related parties provision does not adversely affect the Commission's analysis of the condition of the domestic industries for the entire period of the investigation. Thus, we have determined to exclude from the domestic

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16/ 19 U.S.C. § 1677(4)(B). Among the factors that we have considered in previous investigations in determining whether appropriate circumstances for the exclusion of related parties exist are:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reasons that 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 producers 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.

17/ Report at A-12.

industries Japanese firms that have only recently commenced domestic production in the United States. 18/

Domestic industries

Based on the foregoing analysis, we conclude that there are eight domestic industries. 19/ 20/ One domestic industry consists of firms that manufacture complete CMTs or transceivers or control units. The other seven domestic industries consist of producers of the specified subassemblies for CMTs. 21/

Available data on the condition of these domestic industries exist only at the level of complete CMTs. 22/ Thus, we have applied section 771(4)(D)

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18/ Chairwoman Stern notes that should these industries come before the Commission at a later date, when Japanese-owned U.S. facilities have been established for a longer period of time, the related party question would have to be examined de novo.

19/ Commissioner Lodwick finds that there is one domestic industry consisting of those firms that manufacture complete CMTs (or transceivers or control units) and the subassemblies for this product, but excluding those Japanese-owned firms that only recently commenced production in the United States.

20/ Commissioner Rohr finds that there are two domestic industries. One domestic industry consists of those firms that manufacture complete CMTs (or transceivers or control units). The second domestic industry consists of those firms that manufacture subassemblies. These industries would exclude those Japanese-owned firms that only recently commenced production in the United States.

21/ Although the identity of the firms in each of the domestic industries is confidential, we note that the members of the various subassembly industries differ.

22/ The Commission's data on the condition of the domestic industries reflect the disparity between the production of CMTs and their use and marketing. Thus, we will discuss production-related data in terms of transceivers and control units, and financial and sales data in terms of complete CMTs.

and assessed the condition of these industries in terms of data on complete CMTs. 23/

Condition of the domestic industries

Although cellular mobile telephone technology was developed in the late 1970's, CMTs were first produced commercially in the United States in 1982. 24/ Since that time, production of transceivers and control units has increased dramatically reflecting the production necessary to supply a new market.

Although the domestic industries' average capacity increased during the period of the investigation, this reflects the initial start-up of production facilities. In early 1985, Motorola was forced to close its Puerto Rican facility producing CMTs. Moreover, in 1985, E.F. Johnson closed two U.S. facilities engaged in the production of CMTs. 25/

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23/ Section 771(4)(D) provides that:

The effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the like product has no separate identity in terms of such criteria, then the effect of the subsidized or dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes a like product, for which the necessary information can be provided.

19 U.S.C. § 1677(4)(D).

24/ Cellular mobile telephone system operators are subject to Federal Communications Commission (FCC) regulation. The FCC must approve and license systems before construction. This process has taken significantly longer than expected, and because of these delays the first non-experimental cellular systems did not begin operation until late 1983. Currently, licensing is progressing rapidly with 76 cellular systems in service as of Sept. 30, 1985. The FCC is expected to license at least 30 additional systems before the end of 1985. Report at A-3.

25/ Letter to the Commission from Jann L. Olsten, counsel for E.F. Johnson dated Oct. 24, 1985. These facilities are located in Twin Falls, Idaho and Garner, Iowa.

Capacity utilization for production of transceivers increased during the period of the investigation to 47.4 percent in 1984. A comparison of data for the period of January-June 1984 with the corresponding period of 1985, show a continued increase in capacity utilization for the production of transceivers. Capacity utilization for the production of control units reflects a slightly different pattern with capacity utilization declining slightly based on a comparison of the period of January-June 1984 with the corresponding period of 1985. 26/ The trends for total U.S. producers' shipments and exports both reflect a pattern of consistent increases. 27/

Inventories of transceivers and control units have increased substantially. From June 30, 1984 to June 30, 1985, inventories of transceivers more than tripled as a percentage of annualized shipments. Inventories of control units more than doubled as a percent of annualized shipments for the same period. 28/

Although average employment in the domestic industries increased from the start-up period in 1982, average employment has declined from 1,468 workers in 1984 to 1,118 workers in January-June 1985. This decline is the result of plant closings for some members of the domestic industries, and other production cutbacks. 29/ Both Motorola and E.F. Johnson report that some of the employees being laid off include technicians and engineers. 30/ Thus, these declines in employment are not the result of increasing productivity.

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26/ Report at A-11.

27/ Id. Motorola is a major exporter of CMTs.

28/ Id. at A-14.

29/ Id. The total decline in employment is less than the total of all workers affected at plants that have shut down operations because there have been partially offsetting increases in employment at other plants. Id.

30/ Letter to the Commission from Jann L. Olsten, counsel for E.F. Johnson dated Oct. 24, 1985; Transcript of Commission Hearing (Tr.) at 79.

The trends for the number of hours worked and total compensation paid to production and related workers reflect the same trends as average employment. Worker output has increased substantially over the period of the investigation and unit labor costs have declined from \$593 per unit in January-June 1984 to \$339 in January-June 1985. 31/

The financial condition of the domestic industries does not fully reflect the expected benefit from increased production and lower unit costs. Although the financial data presented in the Commission report are confidential, the data basically confirm the representations made at the Commission's hearing in connection with this investigation. Motorola's CMT business has incurred a negative cash flow and has failed to generate profits. Indeed, Motorola has experienced direct operating losses throughout the period of the investigation. 32/ Although these conditions could be expected to exist to some extent in this particular industry, the levels of the industries' performance and trends in the financial indicators considered in their full context indicate the existence of material injury. 33/ 34/

Material injury by reason of imports

Section 771(4)(B) of the Tariff Act of 1930 directs the Commission to consider, among other factors, (1) the volume of imports of merchandise under

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31/ Report at A-14.

32/ Tr. at 20-21.

33/ Chairwoman Stern believes it neither necessary nor desirable to make a determination on the question of material injury or threat thereof separate from the consideration of causation. See Additional Views of Chairwoman Stern at 18.

34/ Commissioner Eckes believes that the Commission is to make a separate finding regarding the question of material injury in each investigation. See Additional Views of Commissioner Eckes at 20.

investigation, (2) the effect of such imports on domestic prices, and (3) the impact of such imports on the domestic industry. 35/

Imports of transceivers and control units 36/ increased dramatically over the period of this investigation. In 1984, Japanese imports of transceivers reached 137,214 units. Comparisons of the volume of imports of transceivers for the period of January-June 1984 with the corresponding period of 1985 show that imports of transceivers nearly tripled. Imports of control units show similar trends with a comparison of the interim period of 1984-85 showing that the volume of imports nearly doubled. 37/

As a percentage of domestic consumption, imports of transceivers increased from 1982 levels to over 69 percent of domestic consumption in 1984. A comparison of the interim period of 1984 with the interim period of 1985 shows that this trend is increasing with imports of transceivers accounting for 63.5 percent of domestic consumption in January-June 1984 and 75.9 percent in 1985. Again, imports of control units followed the same

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35/ Chairwoman Stern notes that this investigation requires the Commission to assess the question of material injury by reason of imports for industries that have only recently embarked on a product life cycle. The parties to this investigation disagree on the location of the CMT industries in their product life cycles, and thus whether the current condition of those industries differ from what should be expected at this point in the life of these products. Production, capacity, capacity utilization, pricing, costs, and profits are all affected by the relative youth of the CMT industry and the rapidly changing competitive picture. She has considered all of these factors in reaching her determination.

36/ The available data regarding the volume of imports are in terms of imports of transceivers and control units. The data regarding sales are in terms of complete CMTs. Commerce made a negative determination with regard to imports manufactured by Toshiba, and thus Toshiba's imports are not LTFV imports. Because of the potential for discerning Toshiba's confidential business information if it were excluded from the data that we discuss in this opinion, we have cited figures that include Toshiba's imports. In making our determination we excluded Toshiba's imports and note that such exclusion does not alter the trends in this case.

37/ Report at A-21.

annual trends, with imports of control units accounting for 75.5 percent of domestic consumption in 1984. 38/ Imports of control units also increased over the interim period. Japanese control units represented 70.5 percent of domestic consumption in January-June 1984 and 77.0 percent of domestic consumption in 1985. 39/ 40/ 41/

CMTs are currently sold after intense price negotiations. When the market first developed in the beginning of 1983, sales were made on the basis of formal bids. Purchasers would only negotiate with the three or four manufacturers which offered the lowest bids. 42/ This, of course, led to a decline in prices. Today, as the market has matured further, the formal bid process has evolved into verbal quotes over the telephone and the process of price erosion has accelerated. 43/

Each manufacturer's various CMT models differ from other manufacturers' CMTs. For example, a standard feature on one model may be optional or nonexistent on another. Because of the unique characteristics of each model,

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38/ Id. at A-22 and Table 11, A-23.

39/ Id. at Table 11, A-23-A-24.

40/ Commissioner Eckes and Commissioner Lodwick further note that LTFV imports have grown significantly relative to U.S. producers' domestic shipments over the period January-June 1984 to January-June 1985.

41/ Chairwoman Stern notes the significant growth of import penetration over the period January-June 1984 to January-June 1985. Because in any new industry import penetration could be expected to change rather drastically over short periods of time, she does not ascribe great weight to this factor in the present investigation.

42/ Report at A-24.

43/ Id. There are many non-price considerations in the purchase of a CMT including delivery schedules, ability to service the merchandise, packaging, availability of optional equipment, extended financing terms, and advertising allowances. A low failure rate and extended warranty were the most important non-price considerations mentioned by CMT purchasers. All of these non-price considerations play a role in the purchasing decision. Nonetheless, the information in this investigation indicates that price is an important factor.

traditional pricing comparisons are inconclusive, 44/ and thus we have not considered margins of underselling as significant a factor in this investigation. 45/ Consequently, we have focused the pricing analysis on lost sales and price suppression. The Commission contacted 15 firms and investigated 30 allegations of lost sales which we received from two domestic producers. The information which we received was based on head-to-head competition between models which were basically comparable. Although the exact numbers and models are confidential, we found that there were a significant number of instances of sales lost to the LTFV imports from Japan because of price. 46/ Further, the information on price trends shows that prices dropped significantly from July 1983 through the present. We believe that the presence of imports in the U.S. market has exacerbated this situation. 47/ Significantly, prices fell to the extent that gross margins began to decline before profitability was attained. 48/

We find that because of increasing imports, intense price competition, and confirmed lost sales based on price, LTFV imports from Japan have caused material injury to the domestic industries.

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44/ Id. at A-26.

45/ See 19 U.S.C. § 1677(E)(ii).

46/ Report at A-29-A-32.

47/ Commissioner Eckes and Commissioner Lodwick note that the anecdotal evidence of lost sales and price suppression is consistent with the substantial increase in LTFV imports relative to U.S. producers' domestic shipments.

48/ Report at A-18, Table 18; A-24.

## ADDITIONAL VIEWS OF CHAIRWOMAN STERN

Chairwoman Stern notes that the entire statutory purpose of title VII is directed toward a unitary determination as to whether dumped or subsidized imports have caused material injury to the domestic industry. The framework for analysis is quite distinct from the several pronged approach of section 201 which requires the demonstration of serious injury and a separate weighing of causes. It would be even further afield to draw on section 337 for guidance on this point. The findings on the existence of a domestic industry and its efficient and economic operation are separate from the finding of substantial injury caused by the unfair nature of the imports. In title VII, section 201, and section 337, the definition of the domestic industry is a consideration separate from the analysis of the impact of the imports. What is at contention here is only the appropriate framework for judging the imports' impact.

The present investigation is an excellent example of a case where a conclusion of "material injury" divorced from causation is a potentially misleading exercise. Any industry early in its product life cycle would be expected to experience difficulties and financial losses even if moving toward a profitable position far more rapidly than predicted. Thus, the presence or absence of material injury requires a judgment, based on the full context of the industry's circumstances, that is both relative and qualitative. The appropriate context for judging the situation requires an assessment of the impact of the LTFV or subsidized imports on the industry's performance.

There are other possible circumstances where an unduly mechanistic separation of material injury and causation findings could establish a

framework prejudicial to a domestic industry's case. If it should be experiencing above-normal returns due to innovation, one might conclude the first step of the two-step test by finding that the domestic industry is healthy, and proceed no further. But it is conceptually possible for LTFV sales to inhibit necessary returns to innovation beyond "normal" profits. Such an inhibition could constitute material injury remediable under title VII. But the majority's bifurcated approach might deny such an industry access to title VII relief by concluding that there was no material injury and that any examination of causation was "superfluous."

Therefore, Chairwoman Stern believes it neither necessary nor desirable to make a determination on the question of material injury or threat thereof separate from the consideration of causation. She joins her colleagues by concluding that the domestic CMT industries are experiencing economic problems. See Carbon Steel Wire Rod from Poland, Portugal, and Venezuela, Invs. Nos. 701-TA-243-244 and 731-TA-256-258 (Preliminary), USITC Pub. No. 1701 at n.23 (1985); see also Photo Albums and Photo Album Filler Pages from Hong Kong and the Republic of Korea, Invs. Nos. 731-TA-240-241 (Final), USITC Pub. No. \_\_\_\_ at 7 n.19 (1985).

## ADDITIONAL VIEWS OF COMMISSIONER ECKES

Commissioner Eckes shares the Chairwoman's concern for proper administration of the trade laws which provide the framework for the determinations made by this agency. As the Chairwoman aptly noted in a recent 337 investigation (Certain Aramid Fiber, Inv. No. 337-TA-194 at 8 n.15), "Although every case before the Commission presents each Commissioner with the opportunity to exercise judgment on the questions of fact and proper statutory interpretation, the clear intent of the statute cannot be changed by rhetoric" (emphasis added).

More to the point, it is my understanding that the Chairwoman was promoting her view in that footnote that section 337 investigations "required" (emphasis in original) findings regarding both the existence of an economic and efficiently operated domestic industry and the existence of substantial injury to such an industry.

I find it difficult to reconcile the Chairwoman's "unitary" approach advocated in title VII investigations with her furcated interpretation of section 337. Title VII directs the Commission to determine the existence of material injury. Speculation or personal predilections cannot supplant or override the plain language of the statute. Nor should it be allowed to thwart the application of the law as envisaged by Congress.

In my view, the Commission should follow the interpretation of this agency's highest reviewing court. The Commission is to make a finding regarding the question of material injury in each investigation. The Court of International Trade recently held that:

The Commission must make an affirmative finding only when it finds both (1) present material injury (or threat to or

retardation of the establishment of an industry) and (2) that the material injury is 'by reason of' the subject imports. Relief may not be granted when the domestic industry is suffering material injury but not by reason of unfairly traded imports. Nor may relief be granted when there is no material injury, regardless of the presence of dumped or subsidized imports of the product under investigation. In the latter circumstance, the presence of dumped or subsidized imports is irrelevant, because only one of the two necessary criteria has been met, and any analysis of causation of injury would thus be superfluous.

**American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1276 (Ct. Int'l Trade 1984) (emphasis supplied), aff'd sub nom., Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985).**

VIEWS OF VICE CHAIRMAN LIEBELER

On the basis of the record in Investigation No. 731-TA-207 (Final), Cellular Mobile Telephones and Subassemblies Thereof from Japan, I determine that an industry in the United States is not materially injured or threatened with material injury, and that the development of an industry in the United States is not materially retarded, by reason of imports of cellular mobile telephones and subassemblies thereof from Japan.<sup>1</sup>

Like Product and Industry

Section 771(10) of the Tariff Act of 1930<sup>2</sup> defines like product as a "product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to

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<sup>1</sup>The record has not changed significantly since the preliminary phase of this investigation. Thus, the analysis set forth below is substantially the same as that found in Cellular Mobile Telephones and Subassemblies Thereof From Japan, Inv. No. 731-TA-207 (Preliminary), USITC Pub. No. 1629 (Dec. 1984) (Views of Vice Chairman Liebeler).

<sup>2</sup>19 U.S.C. § 1677 (1980).

an investigation under this title." I determine that there are two like products: (1) control units and subassemblies thereof and (2) transceivers and subassemblies thereof.

Transceivers and control units are dissimilar in characteristics and uses. Although a purchaser of a control unit might purchase the subassemblies which comprise the control unit, there is very little chance that someone in search of a transceiver would be satisfied with owning a control unit.

Transceivers and control units are complements, not substitutes.

The Commission has been directed not to unduly restrict the definition of like products.<sup>3</sup>

Subassemblies for transceivers and control units are all necessary to the proper functioning of the complete unit.<sup>4</sup> All of the subassemblies are dedicated for use in either a control unit or transceiver. I thus find that subassemblies are like the final product to which they are dedicated.

Section 771(4)(A) defines domestic industry as "the domestic producers as a whole of a like product,

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<sup>3</sup>S. Rep. No. 249, 96th Cong., 1st Sess. 90 (1979).

<sup>4</sup>Major subassemblies consist of smaller subassemblies and components such as resistors, capacitors, and integrated circuits.

or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product.<sup>5</sup> I determine that there are two industries: (1) control units and subassemblies and (2) transceivers and subassemblies.<sup>6</sup>

#### Material Injury

The legislative history of the Act indicates that the Commission should consider the developmental stage of the industry when evaluating claims of material injury.<sup>7</sup> The cellular mobile telephone (CMT) industry<sup>8</sup> is relatively new. Virtually all sales occurred in 1984. Start-up costs and research

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<sup>5</sup>19 U.S.C. § 1677(4)(A) (1980).

<sup>6</sup>A strong argument has been made by Respondents that subassemblies should constitute one or more like products and industries. My determination would not have changed had I concurred. Moreover, I note that because information is apparently unavailable on production of individual subassemblies, section 771(4) of the Tariff Act of 1930 requires that the impact on the industry be analyzed at the next higher level of aggregation for which data are available, leading to the same result in this case.

With respect to the related parties issues, I concur with the majority.

<sup>7</sup>S. Rep. No. 249, 96th Cong., 1st Sess. 88 (1979).

<sup>8</sup>All references to the CMT industry are to be understood to reflect my determination that the data must be analyzed in terms of two industries.

and development expenditures, however, have been accruing for the past several years. A substantial foundation has been laid and the domestic industry is rapidly expanding. Both domestic and foreign producers stand ready to serve a dynamic market. Thus, there is no evidence of material retardation.

The CMT industry is an extremely young, technologically advanced industry for which many of the traditional injury criteria must fail.<sup>9</sup> Large amounts of money have been spent in R&D and in general start-up costs. In any economically meaningful sense, these expenditures will continue to

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<sup>9</sup>In *Certain Red Raspberries from Canada*, Inv. No. 731-TA-196 (Final), USITC Pub. 1680, at 11-19 (1985) (Additional Views of Vice Chairman Liebler), I set forth a framework for examining causation in Title VII investigations:

The stronger the evidence of the following . . . the more likely that an affirmative determination will be made: (1) large and increasing market share, (2) high dumping margins, (3) homogeneous products, (4) declining prices and (5) barriers to entry to other foreign producers (low elasticity of supply of other imports).

Id. at 16. These factors, when viewed together, serve as proxies for the inquiry that Congress has directed the Commission to undertake: whether foreign firms are engaging in unfair price discrimination practices that cause or threaten to cause material injury to a domestic industry. Trade Reform Act of 1974, S. Rep. 1298, 93th Cong., 2d Sess. 179. For the reasons given in the text, this analysis is inappropriate in this investigation.

have value for years. From a tax and accounting standpoint, however, it is both permissible and expected that these expenditures will be "written off" long before their economic value has been dissipated. Thus, the CMT industry can be expected to do poorly early in its development. Profit and loss statements for a young industry such as this are therefore even less indicative of the condition of the domestic industry than normal.

Price trends are an equally misleading indicator of injury. As recently witnessed in the calculator industry, and even more recently witnessed in the personal computer industry, prices drop rapidly in technologically advanced sectors.<sup>10</sup> Similarly, a precipitous fall in price, one which in an older industry might signal disaster, is not indicative of material injury in an industry such as CMT.<sup>11</sup>

In its report on the Trade Agreements Act of 1979, the Senate Finance Committee stated

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<sup>10</sup>See generally Quick, Finan & Assoc., ITC Determination of Injury in a New-Product Market: Cellular Mobile Telephones, 28 (figure 5) (Oct. 25, 1985).

<sup>11</sup>See Quick, Finan & Assoc., Post-Hearing Brief on Behalf of Oki Electric Industry Co. & Responses to the Questions by the Commission, Response to question 3 (Nov. 6, 1985).

Neither the presence nor the absence of any factor listed in the bill can necessarily give decisive guidance with respect to whether an industry is materially injured, and the significance to be assigned to a particular factor is for the ITC to decide.

Financial indicators are inherently unreliable in a young industry. As for "real" numbers, such as output, capacity, shipments and employment, they too possess some innate biases. One would expect these numbers to trend upward over time as the industry matures. However, over the past year, output has done more than trend upward, it has exploded. Capacity has increased even more than production.<sup>12</sup> The trend in exports and domestic shipments is equally promising.<sup>13</sup> Employment, after rising sharply through 1984, appears to have declined slightly. The decline is not surprising given the tremendous increase in output per worker.<sup>14</sup> In a mature industry, these figures would be cause for joy. Even in the domestic CMT industry, the reaction to the growth by its major producer has been one of extreme pride.<sup>15</sup>

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<sup>12</sup>Report at Table 3.

<sup>13</sup>Id. at Table 4.

<sup>14</sup>Id. at Table 6.

<sup>15</sup>See Motorola's SEC 10-Q for the third quarter of 1984.

In Certain Amplifier Assemblies and Parts Thereof from Japan,<sup>16</sup> the Commission considered the plight of another relatively young, technologically advanced industry. Acknowledging that the standard injury analysis would be defective, the Commission focused its attention on three related factors: (1) the industry's ability to gain experience, (2) its ability to generate capital for R&D and (3) its ability to remain in the forefront of technological advancement.

The domestic industry passes these three tests with flying colors.<sup>17</sup> There is no indication that the domestic industry has fallen behind its foreign competitors in technology.<sup>18</sup>

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<sup>16</sup>Inv. No. 731-TA-48 (Final), USITC Pub. No. 1266 (1982).

<sup>17</sup>The confidentiality of the information collected by the Commission precludes disclosure of the actual numbers underlying this conclusion.

<sup>18</sup>Further evidence of both the role of technological advance of the industry in general and Motorola in particular is the introduction of the cellular portable telephone. Report at A-5-6. This phone can fit within an inside coat pocket, weighs less than 2 pounds and incorporates the transceiver and control unit into a single housing. Its battery may be recharged with motor-vehicle power sources. No imports of this item had occurred as of November 1, 1985. This item is excluded from the scope of this investigation. The recent development of this phone by Motorola, however, indicates that the development of this industry is far from over.

According to Motorola's petition, it has not achieved the same level of market share in the CMT industry that it had captured in the pre-cellular mobile phone industry.<sup>19</sup> Nor have Motorola's sales reached the "expected" level or prices been as high as Motorola would like. Motorola offers no reason as to why we should expect it to have the same market share in CMTs. I do not find the failure to meet expectations to constitute any credible evidence of material injury to a domestic injury.

I therefore determine that the domestic CMT industry is not materially injured.<sup>20</sup>

#### Threat of Material Injury

The Tariff and Trade Act of 1984 added a new subsection concerning threat of material injury basically codifying existing Commission practice. Section 612(a)(2)(B) provides that an affirmative threat determination must be "made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."<sup>21</sup>

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<sup>19</sup>Petition at 25.

<sup>20</sup>See Quick, supra note 10, at 47-58.

<sup>21</sup>19 U.S.C. § 1677(7)(F)(ii)(j)(Supp. 1985).

As indicated in the discussion of material injury, the domestic industry appears ready to tackle the challenge of imports in an expanding market. Moreover, it appears that an increasing number of foreign producers are investing in plant and equipment in the United States. Although this may not bode well for existing domestic producers, the threat to the domestic industry must be from imports, not foreign investment.

The new Act also asks about "the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise" under investigation. Any imports, whether "fairly" or "unfairly" priced, will have a depressing effect on prices unless demand is infinitely elastic. The statute must require more than this effect because otherwise the answer to the question would always be in the affirmative. In the case of CMT's, it has been demonstrated to my satisfaction that future imports will be sold at the price necessary to make them competitive in the U.S. market. At the most, this would be "technical dumping."<sup>22</sup>

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<sup>22</sup>S. Rep. No. 1298, 93th Cong., 2d Sess. 179 (1974).

### Causation

The domestic industry is confronted with some degree of excess capacity at present. Prices are indeed declining while imports are increasing. Even if these events constituted evidence of material injury, the Commission still must determine that such injury is caused "by reason of" LTFV imports. I again cannot concur with my colleagues that such causation exists.

The legislative history instructs the Commission to find a "sufficient causal link" between injury and the LTFV imports. Although the Commission is not permitted to weigh causes, it must "consider information which indicates that harm is caused by factors other than the less-than-fair-value imports."<sup>23</sup>

One such factor involves the relatively high failure rate reported by some purchasers of Motorola's CMTs.<sup>24</sup> Although better warranties or lower prices can make up for lower quality, the record indicates that Motorola apparently offers neither.

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<sup>23</sup>S. Rep. No. 249, 96th Cong., 1st Sess. 75 (1979).

<sup>24</sup>Report at A-29-32.

More importantly, Motorola bases much of its case on the fact that its expectations in this industry have not been met. Behind any set of expectations concerning the financial well-being of a company or industry lay assumptions about the relevant supply and demand curves. Overly optimistic estimates concerning either curve can result in "injury" to an industry. Such injuries are not to be addressed under the anti-dumping laws.

In this particular industry, it appears that Motorola's projections concerning demand may have been on the rosy side. The demand for CMT's is a derived demand: the demand for monthly phone "service" determines the quantity of CMT's demanded. Until the total monthly service charge drops below \$100, the demand for cellular mobile telephone service is both inelastic and small.<sup>25</sup> Correspondingly, the price of the CMT must be in the \$1,000 range before the quantity demanded reaches the level that Motorola expected.

Moreover, the demand for CMT service is directly related to the number of licenses granted to begin

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<sup>25</sup>See Testimony of John G. Reilly, ICF Inc. (December 3, 1984).

such service by the Federal Communications Commission (FCC). The rate at which the FCC issued licenses in 1984 was not as fast as many in the industry had expected. See Prehearing Brief on Behalf of the Cellular Telecommunications Industry Assoc. at 11-18 (Oct. 25, 1985).

Even if Motorola were a monopolist in this industry, it would be faced with a similar scenario. A supply curve indicates the quantity of a product that a supplier will put on the market at any given price. An aggregate or industry supply curve is the sum of all firms' individual supply curves. Motorola is "unwilling" to lower its price to the level necessary to sell the quantity it expected. Conversely, Motorola is also "unwilling" to sell a lower volume at higher prices and sustain excess capacity. Because Motorola in reality does have a large share of the market, it may be able to influence the ultimate price and quantity of CMTs on the market. However, it cannot alter the characteristics of the demand curve and should adjust to its overestimate of demand. In the meantime, the CMT market operates like all others.

In conclusion, I determine that a domestic industry is not materially injured or threatened with

**material injury, and that the development of a domestic industry is not materially retarded, by reason of imports of cellular mobile telephones and subassemblies thereof from Japan.**

## INFORMATION OBTAINED IN THE INVESTIGATION

## Introduction

On November 5, 1984, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce on behalf of Motorola Inc., Schaumburg, IL, alleging that imports of cellular mobile telephones and subassemblies thereof from Japan are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury, and the establishment of an industry in the United States is materially retarded, by reason of such imports. 1/

Accordingly, effective November 5, 1984, the Commission instituted antidumping investigation No. 731-TA-207 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there was a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry is materially retarded, by reason of imports of the alleged LTFV merchandise, classified under items 685.28 and 685.32 of the Tariff Schedules of the United States (TSUS). 2/

On December 17, 1984, the Commission determined that there was a reasonable indication that an industry in the United States is materially injured by reason of alleged LTFV imports of cellular mobile telephones and subassemblies thereof from Japan. Commerce, therefore, continued its investigation into the question of alleged LTFV imports and published its preliminary determination in the Federal Register of June 11, 1985 (50 F.R. 24554). Commerce preliminarily determined that cellular mobile telephones and subassemblies thereof from Japan are being sold, or are likely to be sold, in the United States at LTFV. 3/ On the basis of Commerce's preliminary determination, the Commission instituted a final antidumping investigation on June 11, 1985.

Notice of the institution of the Commission's investigation and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on July 3, 1985 (50 F.R. 27496). On July 22, 1985, Commerce published a notice in the Federal Register (50 F.R. 29713) postponing its final antidumping determination. Accordingly, the Commission published a notice in the Federal Register of July 31, 1985 (50 F.R. 31050) revising its schedule for the conduct of the investigation. 4/ Commerce published an affirmative final LTFV

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1/ The petition is supported by E.F. Johnson Co., Waseca, MN.

2/ These tariff items were enacted in the Trade and Tariff Act of 1984, Pub. L. 98-573, effective Jan. 1, 1985; item 685.29, referenced in investigation No. 731-TA-207 (Preliminary), was eliminated from the TSUS.

3/ A copy of Commerce's notice of its preliminary determination is presented in app. A.

4/ Copies of the Commission's notices of institution of final investigation and revision of schedule are shown in app. A.

determination in the Federal Register of October 31, 1985 (50 F.R. 45447). 1/ The Commission's public hearing was held on October 30, 1985, 2/ and the vote was held November 26, 1985. The applicable statute directs the Commission to notify Commerce of its final determination within 45 days of Commerce's final LTFV determination, or by December 9, 1985.

Cellular mobile telephones and subassemblies thereof have not been the subject of any other investigation conducted by the Commission; however, on December 3, 1984, the Commission made a final affirmative determination in an antidumping investigation on cell-site transceivers (731-TA-163 (Final), Cell-Site Transceivers and Subassemblies Thereof from Japan), which are necessary for the operation of the subject product. The relationship between cellular mobile telephones and cell-site transceivers is explained in later sections.

#### Nature and Extent of Sales at LTFV

In addition to complete cellular mobile telephones, Commerce's investigation includes cellular mobile telephone transceivers, control units, and subassemblies. Subassemblies, for purposes of Commerce's investigation, are any packaged assemblage of electronic components equal to or greater than \$5.00 in value and used exclusively in cellular mobile telephone transceivers or control units. These products are more fully described in the following section.

The Department of Commerce's final LTFV determination was based on an examination of complete cellular mobile telephones and/or cellular mobile telephone transceivers, control units, or subassemblies exported to the United States by 6 Japanese firms during June 1-November 30, 1984. The firms, which include Hitachi, Ltd. (Hitachi); Matsushita Electric Industrial Co., Ltd. (Matsushita); Mitsubishi Electric Corp. (Mitsubishi); Nippon Electric Co., Ltd. (NEC); OKI Electric Industry Co. (OKI); and Toshiba Corp. (Toshiba), accounted for more than 60 percent of Japan's exports of cellular mobile telephones to the United States during this period.

For the purpose of determining whether these exports were, or were likely to be, sold at LTFV, Commerce compared the U.S. purchase price (if sold to an unrelated customer) or the exporter's sales price (if sold to a related customer) with a fair market price based in some instances on home-market and third-country sales and in other instances on production/selling costs in Japan. Using these criteria, Commerce found final dumping margins on the sales of all of the firms examined except Toshiba. The weighted-average margins are as follows (in percent):

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1/ A copy of Commerce's notice of its final determination is presented in app. A.

2/ A list of witnesses at the Commission's hearing is shown in app. B.

	<u>Margin</u>
Toshiba-----	0.00
OKI-----	9.72
Hitachi-----	2.99
Mitsubishi-----	87.83
NEC-----	95.57 <u>1/</u>
Matsushita-----	106.60 <u>1/</u>

1/ In the absence of adequate questionnaire responses, Commerce calculated NEC's and Matsushita's dumping margins on the basis of information Motorola submitted in its petition. The weighted-average margin on all sales compared, applicable to all other manufacturers or exporters in Japan, is 57.81 percent.

### The Product

#### Description and uses

Cellular mobile telephones are wireless two-way electronic communication devices which are designed to be installed in motor vehicles and use motor-vehicle power sources. 1/ They connect the motor-vehicle driver or passenger with traditional wireline telephones, other cellular mobile telephones, and certain services activated by phone by means of a cellular transceiving system, i.e., a system of small transceiving (transmitting and receiving) base stations regularly distributed throughout a geographical area. Cellular transceiving systems and cellular mobile telephones are complementary: cellular mobile telephones will not function without cellular transceiving systems, and cellular transceiving systems are constructed exclusively for cellular mobile telephones.

The use of cellular transceiving systems primarily distinguishes cellular mobile telephones from conventional mobile telephones, which connect motor-vehicle drivers or passengers with wireline telephones by means of a single large transceiving base station. A technological improvement over the single base station, cellular transceiving systems allow more calls to be transmitted within a geographical area. Because more calls can be transmitted, more telephones can operate. Cellular transceiving systems can serve over 300 times the number of customers conventional mobile telephone systems can serve. As of September 30, 1985, 76 cellular transceiving systems were in service in 65 major metropolitan areas, with several others under construction. It is expected that the Federal Communications Commission (FCC) will award construction permits for at least another 30 systems by the end of 1985. In conformance with FCC regulations, all cellular mobile telephones sold in the United States are built to many of the same functional specifications, such as operating voltage, transmitting power, receiving sensitivity, and frequency range. This prevents cellular mobile telephones

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1/ Some cellular mobile telephones are designed so that they may be easily removed from the motor vehicle and transported on foot. These versions, commonly referred to as cellular transportable telephones, are somewhat smaller than the standard version and are provided with a plug-in battery and carrying case for transportable use.

from interfering with other communication systems and insures the compatibility of any cellular mobile telephone with any cellular transceiving system. The operation of a cellular mobile telephone is not confined to any particular system. 1/

The ability to connect the motor-vehicle driver or passenger with wireline telephones primarily distinguishes cellular mobile telephones from citizens band (CB) radios and other wireless two-way communication devices designed to be installed in motor vehicles. Unlike cellular or conventional mobile telephones, moreover, these radios can neither transmit calls selectively to individual receivers nor transmit and receive calls simultaneously.

Cellular mobile telephones consist primarily of (1) a transceiver, a dictionary-sized box of electronic subassemblies, usually mounted in an automobile trunk or under the seat, which permits a call to be received and transmitted; and (2) a control unit, a handset and cradle resembling a modern telephone, which permits the motor-vehicle driver or passenger to dial, speak, and hear the call. A special antenna is connected to the transceiver, and the transceiver and control unit are connected by a multiwire cable. The transceiver alone accounts for 75-85 percent of the cost of a cellular mobile telephone. Transceivers and control units are produced, imported, and often inventoried separately. In general, however, they are not sold to U.S. purchasers separately, except as replacement parts in large-volume sales. Large buyers will sometimes specify that extra transceivers and/or control units be included in the sale as a precautionary measure against defective units. Neither the transceiver nor the control unit has any commercial value apart from cellular telephone systems. There are no other uses for which they might be sold.

Transceivers and control units produced by different manufacturers are not identical. There are 22 makes and at least 35 models of cellular mobile telephones sold in the United States, with list prices ranging from less than \$1,000 to more than \$2,500. Transceivers in outward appearance and function are similar. Some are more compact than others, which allows for more flexibility in placement. Control units, however, are sold in a variety of configurations and incorporate a variety of features, both standard and optional. Some have all primary controls and indicators on the handset; others have them distributed between the handset and cradle. Common features include push-button, illuminated dialing; digital display of dialed numbers; memory dialing, which allows the user to store numbers and call them up at the touch of one or two buttons; status indicators, which alert the user that he/she is out of their home cellular system or out of any cellular system; last number recall, which allows the user, with the push of a button, to automatically dial the last number entered; and audio-volume controls. Common optional features include hands-free operation, which, through a microphone and speaker, allows the user to talk and listen without lifting the handset; extended memory capability; call timers, which measure and display the duration of calls; horn alerts, which activate the vehicle's horn if the user receives a call while away from the vehicle; electronic locks, which prevent

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1/ For a further discussion of cellular transceiving systems, see the Commission's report on inv. No. 731-TA-163 (Final), Cell-Site Transceivers and Subassemblies Thereof from Japan. A-4

unauthorized use of the phone; and color choice. The availability of features is not consistent. What is standard in one may be optional in another, or not available at all.

Because different features are incorporated into different control units and because the operation of these features must often be accessed by proprietary electronic codes through the transceiver, transceivers and control units of various manufacturers are not completely compatible. Certain features of one manufacturer's control unit may not be operable with another's transceiver. In general, however, transceivers and control units of different manufacturers can be connected with no adaptation and at least perform the basic function for which they are all designed, i.e., receiving and making a call.

Transceivers consist of several circuit modules, or major subassemblies, which compartmentalize certain functions common to every transceiver. Essentially integrated assemblages of smaller subassemblies and fungible components such as resistors, capacitors, and integrated circuits, they are easily screwed or snapped into or out of the transceiver case. "Kits" of major subassemblies for transceivers are sometimes sold to U.S. purchasers for replacement purposes. Although all transceivers incorporate the same functions, they differ as to how they organize these functions into major subassemblies. 1/ Depending on the manufacturer, a transceiver may consist of from 5 to 10 of these basic units. The configuration, arrangement, and components of the major subassemblies also differ. Thus, subassemblies for one manufacturer are rarely interchangeable with those of another.

At least two major subassemblies, one for audio processing and one for signal processing, are commonly incorporated into the control unit. Like those for the transceiver, those of different manufacturers are rarely interchangeable. Neither subassemblies for the transceiver nor those for the control unit are sold for use in products other than cellular mobile telephones. 2/

In 1984 Motorola introduced a type of telephone that utilizes cellular transceiving systems, called a cellular portable telephone, which is relatively small (it fits into an inside coat pocket), light-weight (about 2 pounds), and incorporates the transceiver and control unit into a single housing. A battery, which may be disconnected from the phone, provides its only source of power. (Although it is not made to use motor-vehicle power sources, it may be used in a motor vehicle and recharged with motor-vehicle

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1/ The basic functions incorporated into one or more major subassemblies include audio processing, signal processing (logic), frequency transmitting, frequency receiving, frequency comparing (synthesizing), duplexing (enabling sending and receiving at the same time), and power amplifying.

2/ The scope of Commerce's investigation includes any packaged assemblage of electronic components valued at \$5.00 or more and used exclusively in cellular mobile telephone transceivers or control units. This includes all of the major subassemblies and several smaller subassemblies incorporated into them. Because of the almost unlimited variety of smaller subassemblies, both actual and potential, this report will focus on the major subassemblies only.

power sources). With weight and dimensions similar to a modern walkie-talkie, it may be easily transported from place to place and held by one hand while in use. Because of its small size and power constraints, however, it lacks many of the features common to cellular mobile telephones, and its capacity to receive and transmit calls is limited. As of November 1, 1985, there had been no imports of this item into the United States for commercial sale. It is not included in the petitioner's complaint, and is specifically excluded from the scope of Commerce's investigation. (Commerce does not define cellular portable telephones as such. It simply excludes from its investigation "pocket-sized self-contained portable cellular telephones"). 1/

#### U.S. tariff treatment

Because cellular mobile telephones are wireless, i.e., because they transmit and receive signals through the atmosphere rather than through a wire or cable, they are technically radios, not telephones. Accordingly, cellular mobile telephone transceivers, control units, and subassemblies are classified under TSUS items 685.28 and 685.32, residual classifications for radiotelegraphic and radiotelephonic transmission and reception apparatus and parts thereof. 2/ The column 1 (most-favored-nation) rate of duty for these

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1/ Currently, only Motorola offers these types of telephones for sale in the United States. \* \* \*. NEC America, Inc., introduced a cellular mobile telephone into the United States in early 1985 which it advertises as a portable but is different from Motorola's portable in several respects: it is nearly 4 times heavier (about 7-1/2 pounds) and larger (about the size of a desk top calculator); its transceiver and control unit are not incorporated into a single housing (they snap together for transportable use); it is designed to use motor-vehicle power sources, or, alternatively, a portable power source (which snaps onto the transceiver); and it must be held by two hands while in use (the handset is linked to the cradle and transceiver by a cord). It is, however, lighter and more compact than other cellular transportable telephones, and, unlike Motorola's portable, its portable power source gives it transmission capabilities equivalent to cellular mobile phones. (Commerce deemed this article to be a cellular transportable telephone, and thus within the scope of its investigation, because it is designed to use either a motor-vehicle or portable power source and is therefore in conformance with Commerce's definition of a "transportable" phone. Commerce further determined that it was not a portable phone because it would not be possible to carry it in a pocket nor operate it with one hand).

2/ According to the U.S. Customs Service, transceivers are properly classified under item 685.28 and control units and subassemblies are properly classified under item 685.32. These items came into effect on January 1, 1985, as part of the provisions of the Trade and Tariff Act of 1984. Prior to this time, transceivers, control units, and subassemblies were classified together under item 685.29. The Trade and Tariff Act eliminated this item from the TSUS.

TSUS items, applicable to imports from Japan, is 6 percent ad valorem. 1/ No reductions are scheduled. Imports under TSUS items 685.28 and 685.32 are not eligible for duty-free entry under the Generalized System of Preferences.

#### U.S. Subassembly Producers

There are 5 firms in the United States that manufactured subassemblies for cellular mobile telephone transceivers and/or control units between January 1982 and June 1985: \* \* \*. \* \* \* with the exception of those sold as replacement parts, most subassemblies manufactured by these firms were used proprietarily in the manufacture of transceivers and control units. A negligible volume was sold to foreign and/or other U.S. manufacturers. All articles which may satisfy Commerce's definition of a cellular mobile telephone subassembly are produced in the United States. 2/

#### U.S. Transceiver Producers

There are 7 firms in the United States that assembled cellular mobile telephone transceivers from subassemblies between January 1982 and June 1985. The U.S. operations of \* \* \* are summarized in table 1.

#### U.S. Control Unit Producers

There are 5 firms in the United States that assembled control units from subassemblies between January 1982 and June 1985. \* \* \*.

#### U.S. Importers and Japanese Producers

There are 16 known firms in the United States which imported cellular mobile telephone transceivers, control units, and/or subassemblies from Japan between January 1982 and June 1985. Table 2 identifies each importer, the Japanese manufacturer(s) from which it purchased, and the type of item (transceiver, control unit, and/or subassemblies) it imported. \* \* \*. 3/ Several of the importers identified in table 2 are related to Japanese cellular mobile telephone producers.

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1/ The rates of duty in the column numbered 1 are most-favored-nation (MFN) rates and are applicable to imported products from all countries except those Communist countries and areas enumerated in general headnote 3(d) of the TSUS. The People's Republic of China, Hungary, Romania, and Yugoslavia are the only Communist countries eligible for MFN treatment. However, MFN rates would not apply if preferential tariff treatment is sought and granted to products of developing countries under the Generalized System of Preferences (GSP) or the Caribbean Basin Economic Recovery Act (CBERA), or to products of Israel or of least developed developing countries (LDDC's), as provided under the Special rates of duty column.

2/ Transcript of hearing, p. 122.

3/ Because they are not used exclusively in cellular mobile telephones, the duplexer and another relatively important subassembly, the variable control oscillator (VCO), may not fall within the scope of Commerce's investigation.

Table 1.--Selected data on the U.S. cellular mobile telephone operations of

Firm and item	Month and year assembling trans- ceivers and con- trol units from imported major subassemblies and parts began in U.S.	Month and year assembling major subassemblies from imported and/or U.S.-produced components began in U.S.	Annual capacity to assembly/pro- duce in U.S. as of June 30, 1985	Capital expenditures related to U.S. assembly/production thru June 1985	Average employment of production and related workers in U.S. establishments January-June 1985
1/ * * *	*	*	*	*	::
2/ * * *	*	*	*	*	::
3/ * * *	*	*	*	*	::
4/ * * *	*	*	*	*	::
5/ * * *	*	*	*	*	::
6/ * * *	*	*	*	*	::

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

Table 2.--Cellular mobile telephone transceivers, control units, and sub-assemblies: U.S. importers, Japanese manufacturer from which importer purchases, and types of items imported, January 1982-June 1985

Importers	:	Japanese manufacturer	:	Type of item imported
	: <td style="text-align: center;">from which importer</td> <td style="text-align: center;">: <td style="text-align: center;">for cellular mobile</td> </td>	from which importer	: <td style="text-align: center;">for cellular mobile</td>	for cellular mobile
	: <td style="text-align: center;">purchases</td> <td style="text-align: center;">: <td style="text-align: center;">telephones 1/</td> </td>	purchases	: <td style="text-align: center;">telephones 1/</td>	telephones 1/
	: <td></td> <td style="text-align: center;">: <td></td> </td>		: <td></td>	

\* \* \* \* \*

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1/ T=Transceiver; C=Control Unit; S=Subassemblies.  
 2/ Subsidiary of Japanese manufacturer from which it imports.  
 3/ \* \* \*

Source: Compiled from information developed by the U.S. International Trade Commission

In addition to the Japanese firms shown in table 2, at least four others--\* \* \*--manufacture cellular mobile telephone transceivers, control units, and/or subassemblies. None, however, has exported these items to the United States.

#### Channels of Distribution and Sales Practices

Most cellular mobile telephones that are sold in the United States by U.S. producers and importers are made to order and sold to operators of cellular transceiving systems, which in turn sell the phones wholesale to authorized agents and dealers. The agents and dealers sell to the consumer and provide installation, phone number, and equipment servicing. The operator provides the telephone service itself and bills the consumer accordingly. Some dealers, known as resellers, also purchase and sell the telephone service. The vast majority of subscribers are businesses and organizations. Very few phones have been sold for private use.

Operators award sales contracts to U.S. producers and importers on a competitive-bid basis after soliciting offers to supply a certain quantity of phones. The quantity contracted for may differ significantly from the quantity solicited for. The quantity and/or price of what is eventually shipped, moreover, may differ significantly from the quantity and/or price of what was contracted for. In general, sales contracts specify that a certain number of phones at a certain price (including transceiver, control unit, connector, and antenna) be delivered within a specified period of time. Payment is due at the time of delivery and only for the amount delivered. Depending on competitive prices for other available makes at the time of shipment, the buyer may renegotiate the sale. If the contract supplier refuses to reduce its prices accordingly, the buyer may cancel or take less of any remaining deliveries contracted for. For this reason the price offered by the winner of a contract is often of more concern to other suppliers than the awarding of the contract, since the price sets a reference point for future contracts and may become the basis for renegotiating others.

Because sales of cellular mobile telephones are proximate to the construction of cellular transceiving systems, potential contracts are known in the industry several months in advance. Four U.S. producers of cellular mobile telephones or subassemblies thereof (Motorola, GE, E.F. Johnson, and Harris), one Japanese producer (NEC), and one large U.S. purchaser (AT&T Consumer Products Division, Parsippany, NJ) also sell cellular transceiving systems. Contracts for cellular transceiving systems are awarded by FCC-approved licensees, which may or may not be the system operators. Despite their functional interrelationship, cellular mobile telephones and cellular transceiving systems have been sold separately.

#### Consideration of Alleged Material Injury

With the exception of U.S. producers' financial performance and employment, for which data are available only on complete cellular mobile

telephones, the following sections discuss transceivers and control units separately. Subassemblies are not discussed separately because producers do not regularly maintain separate data on these items: virtually all of these items are used proprietarily in the manufacture of transceivers and control units.

Only those firms in the United States which manufactured major subassemblies for transceivers and/or control units prior to June 1985 are included in this section, i.e., \* \* \*.

#### U.S. production, capacity, and capacity utilization

Since 1982, the first year in which cellular mobile telephones were produced in the United States, production has increased exponentially. From \* \* \* units in 1982, U.S. production of transceivers for cellular mobile telephones increased to 86,392 in 1984, and from 27,583 units in January-June 1984 to 46,366 units in January-June 1985 (table 3). Similarly, U.S. production of control units increased from \* \* \* units in 1982 to 65,792 units in 1984 and from 25,583 units in January-June 1984 to 44,629 units in January-June 1985. \* \* \*.

Average capacity for both transceivers and control units increased similarly despite the closing of \* \* \*. As of June 30, 1985, U.S. capacity was about 244,000 units annually for transceivers and about 221,000 units annually for control units. As a percentage of capacity, U.S. production of transceivers and control units increased from \* \* \* percent in 1983 to 47.4 and 49.8 percent, respectively, in 1984. From January-June 1984 to January-June 1985, capacity utilization increased somewhat for transceivers but declined slightly for control units. \* \* \*.

#### U.S. producers' shipments and exports

The trend for total U.S. producers' shipments parallels that for production (table 4). Shipments of U.S.-produced transceivers increased from \* \* \* units, valued at \* \* \*, in 1982 to \* \* \* units, valued at \* \* \*, in 1984. Concurrently, shipments of U.S.-produced control units increased from \* \* \* units, valued at \* \* \*, to \* \* \* units, valued at \* \* \*. From January-June 1984 to January-June 1985, shipments of both transceivers and control units increased by about 100 percent. Exports of transceivers and control units, which accounted for nearly \* \* \* of total U.S. producers' shipments in 1982-June 1985, increased similarly throughout the period, as shown in table 4.

Table 3.--Cellular mobile telephone transceivers and control units: U.S. production, average capacity, and capacity utilization, by firms, 1982-84, January-June 1984, and January-June 1985

Item	1982	1983	1984	January-June--	
				1984	1985
<b>Transceivers:</b>					
<b>Production:</b>					
* * *-----	***	***	***	***	***
<b>Total-----units--</b>	***	***	86,392	27,583	46,366
<b>Average capacity:</b>					
* * *-----	***	***	***	***	***
<b>Total-----units--</b>	***	***	182,090	98,100	134,400
<b>Ratio of production to capacity:</b>					
* * *-----	***	***	***	***	***
<b>Average---percent--</b>	***	***	47.4	28.1	34.5
<b>Control units:</b>					
<b>Production:</b>					
* * *-----	***	***	***	***	***
<b>Total-----units--</b>	***	***	65,792	25,583	44,629
<b>Average capacity:</b>					
* * *-----	***	***	***	***	***
<b>Total-----units--</b>	***	***	132,200	68,100	121,500
<b>Ratio of production to capacity:</b>					
* * *-----	***	***	***	***	***
<b>Average---percent--</b>	***	***	49.8	37.6	36.7

1/ \* \* \*

2/ \* \* \*

3/ \* \* \*

4/ \* \* \*

5/ \* \* \*

6/ \* \* \*

7/ \* \* \*

8/ \* \* \*

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

Table 4.--Cellular mobile telephone transceivers and control units: U.S. producers' domestic shipments and exports, by firms, 1982-84, January-June 1984, and January-June 1985

Item	1982	1983	1984	January-June--	
				1984	1985
Quantity (units)					
Transceivers:					
Domestic shipments:					
* * *-----	***	***	***	***	***
Total-----	***	***	61,428	19,819	31,534
Export shipments:					
* * *-----	***	***	***	***	***
Total-----	***	***	***	***	***
Total-----	***	***	***	***	***
Control units:					
Domestic shipments:					
* * *-----	***	***	***	***	***
Total-----	***	***	49,564	17,998	29,207
Export shipments:					
* * *-----	***	***	***	***	***
Total-----	***	***	***	***	***
Total-----	***	***	***	***	***
Value (1,000 dollars) <sup>1/</sup>					
Transceivers:					
* * *-----	***	***	***	***	***
Total-----	***	***	84,565	30,424	32,551
Export shipments:					
* * *-----	***	***	***	***	***
Total-----	***	***	***	***	***
Total-----	***	***	***	***	***
Control units:					
Domestic shipments:					
* * *-----	***	***	***	***	***
Total-----	***	***	17,696	7,091	7,576
Export shipments:					
* * *-----	***	***	***	***	***
Total-----	***	***	***	***	***
Total-----	***	***	***	***	***

<sup>1/</sup> Estimated.

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

Inventories

\*\*\* (table 5). As of December 31, 1984, U.S. producers held in inventory 16,442 transceivers, or \*\*\* percent of 1984 shipments, and 8,155 control units, or \*\*\* percent of 1984 shipments. From June 30, 1984, to June 30, 1985, inventories of transceivers more than tripled from \*\*\* percent of annualized shipments to \*\*\* percent. In the same period inventories of control units more than doubled and increased from \*\*\* percent of annualized shipments to \*\*\* percent.

Employment

The average number of production and related workers producing cellular mobile telephone transceivers and/or control units increased from \*\*\* in 1982 to 1,468 in 1984, but declined to 1,118 workers in January-June 1985 because of the closing of \*\*\* plant (\*\*\* workers) in \*\*\*, the cutback in \*\*\* operations (affecting \*\*\* employees) in \*\*\*, the closing of \*\*\* plant (\*\*\* workers) in \*\*\*, and other reductions of U.S. producers beginning in the fourth quarter of 1984 (table 6). (The total decline in employment is less than the sum of the workers affected at these plants because of partially offsetting increases at other plants). \*\*\*. The trend for hours worked by production and related workers is similar to that for average employment. Because of increased U.S. production, however, worker output rose from \*\*\* units per 1,000 hours in 1982 to 38.9 units per 1,000 hours in January-June 1985.

Total compensation paid to production and related workers increased from \*\*\* in 1982 to \$38.3 million in 1984, but fell from \$16.4 million in January-June 1984 to \$15.7 million in January-June 1985 (table 7). The average hourly compensation paid to those workers declined from \*\*\* in 1982, when much of workers' time was \*\*\*, to \$12.53 in 1984, but increased to \$13.18 in January-June 1985. Unit labor costs declined from over \*\*\* in 1982 to \$444 in 1984, and from \$593 in January-June 1984 to \$339 in January-June 1985.

Financial experience of U.S. producers

Income-and-loss data were received from two producers, Motorola and E.F. Johnson, on their U.S. cellular mobile telephone operations, including transceivers, control units, and subassemblies. Motorola began production of such products in the last quarter of 1982 and E.F. Johnson in the last quarter of 1983. Each firm's financial data are discussed separately.

Motorola.--Selected financial data on Motorola's operations are shown in table 8. \*\*\*.

\* \* \* \* \*

Table 5.--Cellular mobile telephone transceivers and control units: U.S. producers' end-of-period inventories, by firms, 1982-84, January-June 1984, and January-June 1985

Item	1982	1983	1984	January-June--	
				1984	1985
Transceivers:					
Inventories:					
***-----	***	***	***	***	***
Total-----units--	***	***	16,442	4,717	15,851
Ratio of inventories					
to total shipments:					
during the pre-					
ceding period:					
***-----	***	***	***	***	***
Average--percent--	***	***	***	***	***
Control units:					
Inventories:					
***-----	***	***	***	***	***
Total-----units--	***	***	8,155	4,680	9,817
Ratio of inventories					
to total shipments:					
during the pre-					
ceding period:					
***-----	***	***	***	***	***
Average--percent--	***	***	***	***	***

1/ Annualized.

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

Table 6.--Average number of production and related workers producing cellular mobile telephones in U.S. establishments, hours worked by such workers, and output, by firms, 1982-84, January-June 1984, and January-June 1985

Item	1982	1983	1984	January-June--	
				1984	1985
Average number of production and related workers producing cellular mobile telephones in U.S. establishments:					
***-----	***	***	***	***	***
Total-----number--	***	***	1,468	1,221	1,118
Hours worked by production and related workers producing cellular mobile telephones in U.S. establishments:					
***-----	***	***	***	***	***
Total 1,000 hours--	***	***	3,059	1,336	1,192
Output:					
***-----	***	***	***	***	***
Average cellular telephones per 1,000 hours-----	***	***	8/ 28.2	9/ 20.6	10/ 38.9

1/ \*\*\*.

2/ \*\*\*.

3/ \*\*\*.

4/ \*\*\*.

5/ \*\*\*.

6/ \*\*\*.

7/ \*\*\*.

8/ Includes \*\*\* transceivers without control units.

9/ Includes \*\*\* transceivers without control units.

10/ Includes \*\*\* transceivers without control units.

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

Table 7.--Total compensation paid to production and related workers producing cellular mobile telephones in U.S. establishments, hourly compensation, and unit labor costs, by firms, 1982-84, January-June 1984, and January-June 1985

Item	1982	1983	1984	January-June--	
				1984	1985
Total compensation paid :					
to production and re- :					
lated workers produc- :					
ing cellular mobile :					
telephones:					
* * *-----:	***	***	***	***	***
Total :					
1,000 dollars--:	***	***	38,340	16,355	15,714
Hourly compensation paid:					
to production and re- :					
lated workers produc- :					
ing cellular mobile :					
telephones:					
* * *-----:	***	***	***	***	***
Average---per hour:					
per worker-----:	***	***	\$12.53	\$12.24	\$13.18
Unit labor cost:					
* * *-----:	***	***	***	***	***
Average---per :					
cellular mobile :					
telephone-----:	***	***	8/ \$444	9/ \$593	10/ \$339

1/ \* \* \*

2/ \* \* \*

3/ \* \* \*

4/ \* \* \*

5/ \* \* \*

6/ \* \* \*

7/ \* \* \*

8/ Includes \* \* \* transceivers without control units.

9/ Includes \* \* \* transceivers without control units.

10/ Includes \* \* \* transceivers without control units.

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

Table 8.--Selected financial data for Motorola on its U.S. cellular mobile telephone operations, 1982-84, January-June 1984, and January-June 1985.

Item	1982	1983	1984	January-June--	
				1984	1985
Net sales-----1,000 dollars--:	***	***	***	***	***
Cost of goods sold-----do--:	***	***	***	***	***
Gross profit or (loss)----do--:	***	***	***	***	***
General, selling, and adminis-:					
trative expenses-----do--:	***	***	***	***	***
Operating income or (loss)					
do-----:	***	***	***	***	***
Interest income or (expense)					
net-----do--:	***	***	***	***	***
Other income or (expense),					
net <u>3</u> /-----do--:	***	***	***	***	***
Net income or (loss) before					
income taxes-----do--:	***	***	***	***	***
Depreciation and amortization					
expense-----do--:	***	***	***	***	***
Cash flow or (deficit) from					
operations-----do--:	***	***	***	***	***
As a share of net sales:					
Gross profit or (loss)					
percent--:	***	***	***	***	***
Operating income or (loss)					
do-----:	***	***	***	***	***
Net income or (loss) before					
income taxes-----do--:	***	***	***	***	***
Cost of goods sold-----do--:	***	***	***	***	***
General, selling and adminis-:					
trative expenses-----do--:	***	***	***	***	***
Research and development					
1,000 dollars--:	***	***	***	***	***
Capital expenditures-----do--:	***	***	***	***	***
Fixed assets at cost-----do--:	***	***	***	***	***

1/ \* \* \*.2/ \* \* \*.3/ \* \* \*.

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

E.F. Johnson.--Selected financial data on E.F. Johnson's operations are shown in table 9.

Table 9.--Selected financial data for E.F. Johnson on its U.S. cellular mobile telephone operations 1983-84, January-June 1984, and January-June 1985

Item	1983	1984	January-June--	
			1984	1985
Net sales-----1,000 dollars--:	***	***	***	***
Cost of goods sold-----do-----:	***	***	***	***
Gross profit or (loss)-----do-----:	***	***	***	***
General, selling, and administrative expenses-----do-----:	***	***	***	***
Operating income or (loss)-----do-----:	***	***	***	***
Interest income or (expense), net-----do-----:	***	***	***	***
Other income or (expense), net-----do-----:	***	***	***	***
Net income or (loss) before income taxes-----do-----:	***	***	***	***
Depreciation and amortization expense: do-----:	***	***	***	***
Cash flow or (deficit) from operations-----do-----:	***	***	***	***
As a share of net sales:				
Gross profit or (loss)----percent--:	***	***	***	***
Operating income or (loss)----do-----:	***	***	***	***
Net income or (loss) before income taxes-----do-----:	***	***	***	***
Cost of goods sold-----do-----:	***	***	***	***
General, selling and administrative expenses-----do-----:	***	***	***	***
Research and development 1,000 dollars--:	***	***	***	***
Capital expenditures-----do-----:	***	***	***	***
Fixed assets at cost-----do-----:	***	***	***	***

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

\* \* \* \* \*

Research and development expenditures.--Motorola's and E.F. Johnson's research and development expenditures related to operations on cellular mobile telephones are shown in the following tabulation (in thousands of dollars):

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>January-June--</u>	
				<u>1984</u>	<u>1985</u>
Motorola-----	***	***	***	***	***
E.F. Johnson----	***	***	***	***	***
Total-----	***	***	***	***	***

Total research and development expenditures increased by \* \* \* percent from \* \* \* in 1982 to \* \* \* in 1984. Such expenditures declined to \* \* \* in January-June 1985, compared with \* \* \* in the corresponding period of 1984, a drop of \* \* \* percent. \* \* \*.

Capital expenditures.--Motorola's and E.F. Johnson's data related to their expenditures for buildings, machinery, and equipment used in the manufacture of cellular mobile telephones are shown in the following tabulation (in thousands of dollars):

	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>January-June--</u>	
				<u>1984</u>	<u>1985</u>
Motorola-----	***	***	***	***	***
E.F. Johnson----	***	***	***	***	***
Total-----	***	***	***	***	***

Capital expenditures decreased from \* \* \* in 1982 to \* \* \* in 1983 and then increased to \* \* \* in 1984. Such expenditures fell to \* \* \* in January-June 1985, compared with \* \* \* in the corresponding period of 1984. \* \* \*.

#### Consideration of Alleged Threat of Material Injury

In the examination of the question of threat of material injury to an industry in the United States, the Commission may take into consideration such factors as the rate of increase of imports and market penetration, probable suppression and/or depression of U.S. producers' prices, the capacity of producers in the exporting country to generate exports, the availability of export markets other than the United States, and U.S. importers' inventories. Import and market penetration trends for cellular mobile telephone transceivers and control units are discussed in the following section. A discussion of importers' inventories and foreign capacity and exports, to the extent such information is available, is presented below.

Data received from U.S. importers, which account for nearly all imports from Japan, show that end-of-period inventories of Japanese-produced transceivers (including those assembled in the United States from Japanese-produced subassemblies) increased from \* \* \* units in 1983 to 33,068 units, or 24.1 percent of imports, in 1984. Inventories of imported transceivers more than tripled from 11,015 units as of June 30, 1984, to 36,765 units as of June 30, 1985. Inventories of control units were slightly higher. From \* \* \* units in 1983, inventories of these items increased to 38,066 units, or 25.0 percent of imports, in 1984, and from 15,015 units as of June 30, 1984, to 40,727 units as of June 30, 1985. <sup>1/</sup> As of October 1, 1985, the inventory levels of all major importers were down from June 30, 1985.

Cellular mobile telephone transceivers, control units, and/or subassemblies are produced by at least 17 firms in Japan, 13 of which export to the United States. The production, capacity, and total exports of these firms are unknown; however, \* \* \* of the largest \* \* \* exporters to the United States--\* \* \*--have subsidiaries in the United States \* \* \*. (Major subassemblies may easily be assembled into transceivers and control units: the operation requires little more than screwing or snapping these parts into the transceiver case. Assembling the major subassemblies from smaller subassemblies and components, however, requires more complex operations and significant provisions for capital and labor). Collectively, these firms accounted for 75 percent of Japan's exports of transceivers to the United States between January 1984 and June 1985. <sup>2/</sup> All of these firms have plans to \* \* \*. In addition to the United States and Japan, northern Europe is a relatively large market for cellular mobile telephones. Other markets include Korea, Hong Kong, Canada, Spain, Israel, Saudi Arabia, Bahrain, Qatar, and the United Arab Emirates.

#### Consideration of the Causal Relationship Between the LTFV Imports and the Alleged Material Injury

##### U.S. imports, consumption, and import penetration

Japan accounted for virtually all cellular mobile telephone transceivers and control units imported into the United States from 1982 through January-June 1985. Imports of transceivers from Japan increased from \* \* \* units, valued at \* \* \*, in 1982 to 137,214 units, valued at \$112 million, in 1984 (table 10). From January-June 1984 to January-June 1985, imports of these items nearly tripled. Imports of control units increased similarly. From \* \* \* units, valued at \* \* \* in 1982, imports of these items increased to 152,354 units, valued at \$30 million, in 1984. Imports of these items more than doubled from January-June 1984 to January-June 1985. (\* \* \*). Of the transceivers and control units imported from January 1984 through June 1985, \* \* \* percent and \* \* \* percent, respectively, were assembled in the United States. The exclusion of these items from the data does not affect the overall trend in imports.

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<sup>1/</sup> U.S. inventories of transceivers and control units produced by Toshiba, which Commerce found not to be selling at LTFV, were \* \* \*.

<sup>2/</sup> \* \* \*.

Toshiba, which Commerce found not to be selling at LTFV, accounted for \* \* \* percent of imports of transceivers and \* \* \* percent of imports of control units in \* \* \*. Total imports less those Toshiba manufactured are also shown in table 10.

Table 10.--Cellular mobile telephone transceivers and control units: U.S. imports for consumption from Japan, 1982-84, January-June 1984, and January-June 1985

Item	1982	1983	1984	January-June--	
				1984	1985
<b>Transceivers:</b>					
Quantity-----units--:	***	***	<u>1/</u> 137,214	<u>2/</u> 34,432	<u>3/</u> 99,406
Less Toshiba					
do-----:	***	***	<u>1/</u> ***	<u>2/</u> ***	<u>3/</u> ***
Value <u>4/</u>					
1,000 dollars--:	***	***	111,789	36,550	67,009
Less Toshiba--do---	***	***	***	***	***
<b>Control units:</b>					
Quantity-----units--:	***	***	<u>5/</u> 152,354	<u>6/</u> 42,974	<u>7/</u> 97,943
Less Toshiba--do---	***	***	<u>5/</u> ***	<u>6/</u> ***	<u>7/</u> ***
Value <u>4/</u>					
1,000 dollars--:	***	***	30,060	8,353	21,115
Less Toshiba--do---	***	***	***	***	***

1/ Includes \* \* \* transceivers assembled in the United States.

2/ Includes \* \* \* transceivers assembled in the United States.

3/ Includes \* \* \* transceivers assembled in the United States.

4/ Estimate.

5/ Includes \* \* \* control units assembled in the United States.

6/ Includes \* \* \* control units assembled in the United States.

7/ Includes \* \* \* control units assembled in the United States.

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

U.S. consumption of cellular mobile telephone transceivers and control units increased exponentially (table 11). From \* \* \* units in 1982, U.S. consumption of transceivers increased to 198,642 units in 1984 and from 54,251 units in January-June 1984 to 130,940 units in January-June 1985. Similarly, U.S. consumption of control units increased from \* \* \* units in 1982 to 201,918 units in 1984, and from 60,972 units in January-June 1984 to 127,150 units in January-June 1985. As a share of consumption, imports of transceivers increased from \* \* \* percent in 1982 to 69.1 percent in 1984 (or to \* \* \* percent if imports from Toshiba are excluded) and from 63.5 percent in January-June 1984 to 75.9 percent in January-June 1985 (or to \* \* \* percent if imports from Toshiba are excluded). Following the same trend, imports of control units increased from \* \* \* percent of consumption in 1982 to 75.5 percent of consumption in 1984 (or to \* \* \* percent if imports from Toshiba

Table 11.--Cellular mobile telephone transceivers and control units: U.S. producers' domestic shipments, imports for consumption, and apparent consumption, 1982-84, January-June 1984, and January-June 1985

Item and period	U.S. producers' domestic shipments		Imports		Apparent consumption		Ratio of imports to consumption		
	Total	Less Toshiba	Total	Less Toshiba	Total	Less Toshiba	Total	Less Toshiba	
	units								percent
Transceivers:									
1982	***	***	***	***	***	***	***	***	
1983	***	***	***	***	***	***	***	***	
1984	61,428	1/ 137,214	***	***	198,642	***	69.1	***	
Jan.-June--									
1984	19,819	2/ 34,432	***	***	54,251	***	63.5	***	
1985	31,534	3/ 99,406	***	***	130,940	***	75.9	***	
Control units:									
1982	***	***	***	***	***	***	***	***	
1983	***	***	***	***	***	***	***	***	
1984	49,564	4/ 152,354	***	***	201,918	***	75.5	***	
Jan.-June--									
1984	17,998	5/ 42,974	***	***	60,972	***	70.5	***	
1985	29,207	6/ 97,943	***	***	127,150	***	77.0	***	

- 1/ Includes \*\*\* transceivers assembled in the United States.
- 2/ Includes \*\*\* transceivers assembled in the United States.
- 3/ Includes \*\*\* transceivers assembled in the United States.
- 4/ Includes \*\*\* control units assembled in the United States.
- 5/ Includes \*\*\* control units assembled in the United States.
- 6/ Includes \*\*\* control units assembled in the United States.

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

are excluded), and changed from 70.5 percent of consumption in January-June 1984 to 77.0 percent of consumption in January-June 1985 (or down to \* \* \* percent if imports from Toshiba are excluded). 1/

### Prices

Market dynamics and nonprice considerations.--Cellular mobile telephones are generally sold after intense price negotiations between buyers and sellers, although other factors influence the purchasing decision. When the cellular telephone market was developing in early 1983, sales were made on a bid basis. Large purchasers typically requested price quotes from a number of U.S. and foreign suppliers. The purchaser's request for quotes in this period did not specify desired models or features from different manufacturers. At that time, most manufacturers offered quotes on their standard model and preferred to wait for the purchaser to award a contract before presenting more sophisticated, higher-priced units for sale. After the quotes were examined, the purchaser would begin negotiations with the three or four lowest bidders. At this point in the sales process, a number of nonprice considerations entered into the negotiations. According to industry sources, 2/ in the early development of the market, purchasers realized there would be an erosion of the price for cellular mobile telephones as sellers competed for the expanding market and costs of production declined. Before committing themselves to a large contract, purchasers insisted on reverse price protection, which ensured the purchasers access to lower prices in the event the supplier began reducing its price. 3/ Other considerations included delivery schedules, ability to service the merchandise, packaging, and the availability of optional equipment. After negotiations were complete, a binding contract was awarded to one or more suppliers with the quantities and delivery schedules specifically set.

As the market began to mature, price erosion accelerated. The formal bid process has now evolved into verbal quotes over the telephone, with smaller quantities ordered for immediate delivery. Nonprice considerations such as failure rate and warranty are now a much larger factor in the purchasing decision.

Failure rate could not adequately be measured during the first year that the product was available. However, as more and more authorized service and installation centers were established in areas serviced by cellular systems, an increasing amount of data on failure rates became available. \* \* \*, an authorized service center for \* \* \* in the \* \* \* area informed the Commission that on the basis of their regional experience the \* \* \* phone had a failure

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1/ If transceivers and control units assembled in the United States are excluded from total imports, the ratios of imports to consumption in 1984, January-June 1984, and January-June 1985 are \* \* \* percent, \* \* \* percent, and \* \* \* percent, respectively, for transceivers, and \* \* \* percent, \* \* \* percent, and \* \* \* percent, respectively, for control units.

2/ Telephone conversations with \* \* \*.

3/ Reverse price protection gave the buyer the right to void the agreed-upon price and exercise the remaining quantity commitment at the lowest price offered by the seller in that particular market.

rate of less than \* \* \* percent, lower than any other phone tested. The sample size on which the \* \* \* evaluation is based is unknown. 1/

\* \* \* collects detailed statistics on failure rates. Failure rates are based on actual experience in the \* \* \* market during June 1984 through August 1985. \* \* \* stated that their data indicate that the \* \* \* mobile phone has the lowest failure rate. \* \* \* phone had initial problems, but a low failure rate in January-June 1985. \* \* \* reported that as the quality of the \* \* \* phones improved \* \* \* purchases from \* \* \* increased. During 1984 \* \* \* purchased \* \* \* percent of their phones from \* \* \* and \* \* \* percent from \* \* \*. The shares shifted to \* \* \* percent and \* \* \* percent, respectively, in January-June 1985. Since June 1985, according to \* \* \*, \* \* \* percent of the \* \* \* phones it purchased failed within the first three months of use, a rate \* \* \* times higher than that experienced with the \* \* \* phone. Accordingly, \* \* \* has curtailed a \* \* \* procurement from \* \* \*. \* \* \* further stated that the \* \* \* mobile phone had the highest failure rate.

Warranties are also a significant nonprice consideration. Most companies offer a 1-year warranty on parts and labor, but in some cases there are restrictions. OKI Advanced Communications and Harris are offering a 2-year warranty and Panasonic is offering its customers a 3-year warranty. Motorola has a standard 1-year warranty, but will extend it to \* \* \* for an additional \* \* \* per unit.

Other nonprice considerations offered are extended financing terms, advertising allowances, and equipment that would ordinarily have to be purchased as options.

In most of the markets, the companies providing cellular service (operating companies) are the largest buyers of cellular telephone equipment. These companies purchase a full array of equipment from many different suppliers and then distribute the telephones through authorized dealers. The operating company normally charges the authorized dealers their purchase price plus a small mark-up for costs incurred for carrying inventory. There are three principle reasons for this practice. First, the rate-of return on providing cellular service is much higher than that on cellular telephone equipment sales. Cellular telephone service bills are presently averaging \* \* \* per month in the \* \* \* area. 2/ Thus, income from providing services to on-line customers is much more important to the financial success of cellular system operators than potential profits from equipment sales.

Second is the highly competitive atmosphere that presently exists in individual cellular markets. FCC guidelines established two operating companies in each market to promote competition; however, industry sources predict that in the long run very few markets will have sufficient demand to support two firms, especially in markets below the top 30. Therefore, initial competition for market share is intense.

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1/ Telephone conversations with \* \* \*, Dec. 4, 1984, and Dec. 6, 1984.

2/ Interview with \* \* \*, Aug. 22, 1985.

Finally, the operating companies pass on any discounts available to their dealers to make the dealers as competitive as possible at the retail level. The operating companies are able to offer lower prices to their authorized dealers because of large quantity purchases. The dealers provide the ultimate consumer with the equipment, installation, and also access to the service by providing a telephone number issued by the operating company.

Price trends.--The Commission requested f.o.b. point of shipment prices from U.S. producers and importers of cellular mobile telephones on the three largest sales in each period during January 1982-June 1985. Importers responded with prices for telephones produced by nine Japanese manufacturers. Motorola and E.F. Johnson were the only U.S. producers that provided price data. Direct comparisons of pricing are inconclusive, because each make has unique characteristics. What is a standard feature in one case may be optional or nonexistent in another. Small inexpensive options at the engineering level of the product's development can substantially alter the wholesale price. Respective sales quantities vary considerably, further complicating price comparisons. The prices collected, shown in table 12, are presented to illustrate the decline in the general price level. Some firms have removed costly features in response to low consumer demand. Other firms are offering deluxe versions of their popular models, for example Motorola's 2000 and 2000X. With these physical variations that continually occur on individual makes, even the analysis of price trends is tenuous.

As shown in table 12, Motorola's price for their AMPS model declined from \* \* \* per unit in July-September 1983 to \* \* \* per unit in April-June 1984, or by about \* \* \* percent. Panasonic's price dropped from \* \* \* per unit in October-December 1983 to \* \* \* per unit in April-June 1985, or by about \* \* \* percent. NEC's price declined from \* \* \* per unit in October-December 1983 to \* \* \* per unit in April-June 1985, or by about \* \* \* percent. OKI's price dropped from \* \* \* per unit in July-September 1983 to \* \* \* per unit in April-June 1985, or by about \* \* \* percent. The largest drop in price was for the \* \* \* telephone. The price for this phone dropped from \* \* \* per unit in October-December 1983 to \* \* \* per unit in April-June 1985, or by about \* \* \* percent. A number of firms reported large price declines during October-December 1984 and continuing into April-June 1985. Forty-six of the 78 operating firms went "on-line" during this period. The competition among these firms for market share may be one reason for the sharp drop in prices.

According to several purchasers, prices have stabilized since June 1985. 1/ A number of purchasers also report that \* \* \* have offered advertising funds as incentives; however, they retain some control over their use.

In addition to the above data, the Commission requested cellular system operators to provide prices for their largest purchases of U.S.-produced and imported cellular mobile telephones. Purchase prices were requested for an imported cellular telephone model that was most like the domestic model chosen.

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Telephone interviews with \* \* \*, October 24-25, 1985.

Table 12.--Cellular mobile telephones: Weighted-average selling prices for U.S. producers and importers, by makes and by quarters, January 1983-June 1985

(Per unit)

Period	Importers							
	***	***		***	***	***	***	***
		***	***					
1983:								
Jan.-Mar----	***	***	***	***	***	***	***	***
Apr.-June----	***	***	***	***	***	***	***	***
July-Sept----	***	***	***	***	***	***	***	***
Oct.-Dec----	***	***	***	***	***	***	***	***
1984:								
Jan.-Mar----	***	***	***	***	***	***	***	***
Apr.-June----	***	***	***	***	***	***	***	***
July-Sept----	***	***	***	***	***	***	***	***
Oct.-Dec----	***	***	***	***	***	***	***	***
1985:								
Jan.-Mar----	***	***	***	***	***	***	***	***
Apr.-June----	***	***	***	***	***	***	***	***

  

Period	Importers				Domestic producers			
	*** 5/		*** 6/		***			
	***	***	***	***	***	***	***	***
1983:								
Jan.-Mar----	***	***	***	***	***	***	***	***
Apr.-June----	***	***	***	***	***	***	***	***
July-Sept----	***	***	***	***	***	***	***	***
Oct.-Dec----	***	***	***	***	***	***	***	***
1984:								
Jan.-Mar----	***	***	***	***	***	***	***	***
Apr.-June----	***	***	***	***	***	***	***	***
July-Sept----	***	***	***	***	***	***	***	***
Oct.-Dec----	***	***	***	***	***	***	***	***
1985:								
Jan.-Mar----	***	***	***	***	***	***	***	***
Apr.-June----	***	***	***	***	***	***	***	***

1/ \*\*\*.  
2/ \*\*\*.  
3/ \*\*\*.  
4/ \*\*\*.  
5/ \*\*\*.  
6/ \*\*\*.

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

Most of the purchasers surveyed chose the Motorola Model 4000, General Electric's GE-Star, and OKI's model B2 as equivalent models in 1984. Purchasers also indicated that feature enhancements to the Motorola 2000 in October-December 1984, introduced as the 2000X, made it the model most comparable to the OKI-B2.

Five purchasers responded with usable pricing data regarding the Motorola 4000/2000X, the OKI B2, and the General Electric GE-Star. The results of their responses are shown in table 13.

Table 13.--Cellular mobile telephones: Weighted-average purchase prices for selected models, by quarters, January 1984-June 1985

(Per unit)				
Period	Motorola 4000/2000X	OKI B2	GE-Star	
1984:				
January-March-----	***	***	***	***
April-June-----	***	***	***	***
July-September-----	***	***	***	***
October-December-----	***	***	***	***
1985:				
January-March-----	***	***	***	***
April-June-----	***	***	***	***

1/ \* \* \*

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

Exchange rates.--The nominal value of the Japanese yen fluctuated irregularly from January-March 1983 to April-June 1984 before beginning a gradual decline. From April-June 1984 to April-June 1985 the nominal value of the Japanese yen has declined by approximately 8 percent.

Because of a much lower inflation rate in Japan, the real exchange rate has declined steadily from January-March 1983 to April-June 1985. The real exchange rate dropped nearly 10 percent during the period as shown in the following tabulation:

(January-March 1983=100) 1/

Period	U.S. dollars per	U.S. dollars per
	Japanese yen	Japanese yen
	:(nominal rate indexed)	:(real rate indexed)
1983:	:	:
January-March-----	100.0 :	100.0
April-June-----	99.2 :	98.0
July-September-----	97.2 :	95.2
October-December-----	100.6 :	97.5
1984:	:	:
January-March-----	102.0 :	97.9
April-June-----	102.7 :	97.9
July-September-----	96.8 :	93.1
October-December-----	95.8 :	92.2
1985:	:	:
January-March-----	91.5 :	88.5
April-June-----	94.0 :	90.2

1/ International Financial Statistics, International Monetary Fund, October 1985.

### Lost sales

The Commission received from 2 U.S. producers 34 allegations of sales lost to imports of cellular mobile telephones from Japan involving 17 firms. The staff contacted 15 of these firms and investigated 30 of the allegations; the responses are summarized below.

\* \* \* confirmed that his firm had purchased \* \* \* units from \* \* \* at approximately \* \* \* per unit during \* \* \* and an additional \* \* \* units in \* \* \* at \* \* \* per unit. However, \* \* \* stated that price was not of prime concern and that the second procurement was at a price equal to that offered by \* \* \*. \* \* \* had conducted a \* \* \* evaluation process for purchasing cellular mobile telephones. Some of the most important factors examined were quality, anticipated future product lines, manufacturing process and its ease in serviceability, and price. \* \* \* further stated that \* \* \* past experience with \* \* \* has been one of missed delivery schedules and poor quality performance, and \* \* \* added that they had not purchased the cheapest phone available. \* \* \* also confirmed a purchase of \* \* \* phones at a price of \* \* \* per unit, but denied an allegation involving \* \* \* mobile phones. \* \* \* said the quantities involved with the \* \* \* procurement were insignificant.

\* \* \* confirmed that his firm had purchased the \* \* \* cellular telephone in \* \* \* because of a lower price after rejecting a quote from \* \* \*. The quantity, however, was \* \* \* and not the \* \* \* unit sale alleged by \* \* \*. \* \* \* stated that the phones would be sold by \* \* \* company in \* \* \*. \* \* \* owns \* \* \* percent of the \* \* \* telephone company and \* \* \* percent of \* \* \*.

\* \* \* confirmed that his firm had purchased \* \* \* units from \* \* \* in \* \* \* for \* \* \* per unit after rejecting a quote from \* \* \* for \* \* \* per unit. However, \* \* \* informed the staff that a number of factors were involved in this purchase. The cellular mobile telephone \* \* \* had purchased

from \* \* \* for retail sale as well as for use in their company vehicles are experiencing a very high failure rate. The present procurement was made for use in \* \* \*. \* \* \* explained that in the \* \* \* market demand for mobile telephones is from business customers. \* \* \*. \* \* \* thus decided that in order to expand sales and achieve a high rate of customer retention, quality had to be of primary concern. \* \* \* stated that they decided on the \* \* \* model with a documented failure rate of less than \* \* \* percent, compared to a failure rate of \* \* \* percent for the \* \* \* model. 1/ According to \* \* \*, another drawback associated with purchasing the \* \* \* models is a lack of \* \* \*. \* \* \*. 2/

\* \* \* of \* \* \* confirmed that his firm had rejected a quote from \* \* \* for \* \* \* units in \* \* \* at a price of \* \* \* per unit in favor of the \* \* \* telephone. However, the price was not \* \* \* per unit as alleged, but rather \* \* \* per unit. In addition to the small price differential, \* \* \* provided an extended warranty, an allowance for insurance costs, and a financing package that included extended terms. \* \* \* declined to discuss the financing package over the telephone. An additional factor that led to the \* \* \* purchase was the poor quality performance that \* \* \* has experienced and the past sales practices of \* \* \*. \* \* \*. \* \* \* denied an allegation that his firm rejected a quote from \* \* \* in \* \* \* in favor of a Japanese supplier. He stated that the order in question ultimately went to \* \* \*.

\* \* \* confirmed that he had purchased \* \* \* and \* \* \* telephones between \* \* \* at a price of \* \* \* per unit, but in quantities much less than the \* \* \* units alleged by \* \* \*. \* \* \* is committed to only \* \* \* telephones over the next \* \* \* months. \* \* \* stated that quality, warranty, and inventory considerations were of prime concern. \* \* \* offers a \* \* \* warranty and has an \* \* \* with the \* \* \* unit; this eased \* \* \*. The \* \* \* telephone had a very good quality history, and since \* \* \* only \* \* \* of \* \* \* telephones purchased have failed. \* \* \*, commenting on the domestic manufacturers, noted that current price quotes indicated that \* \* \* is now the lowest priced vendor in the marketplace. \* \* \*, according to \* \* \*, is now offering to extend their \* \* \* warranty to \* \* \*; however, it will cost an additional \* \* \* per unit. \* \* \* addressed three additional allegations. One of the allegations involved a \* \* \* program being established by \* \* \*. \* \* \* denied ever receiving a quote from a domestic manufacturer regarding that purchase. He was able to confirm a purchase from \* \* \*, although he stated that \* \* \* allegation that they had purchased the \* \* \* model for \* \* \* per unit was too low. \* \* \* would not discuss actual prices over the telephone. Finally, \* \* \* was unable to confirm or deny an allegation made by \* \* \* because he was not involved in purchasing at that time.

\* \* \* denied an allegation that during \* \* \* he had rejected a quote of \* \* \* per unit from \* \* \* for \* \* \* units in favor of imports from Japan. \* \* \* stated that \* \* \* firm had purchased \* \* \* units from \* \* \* and \* \* \* at approximately \* \* \* per unit; however, he had not received a serious price quote from \* \* \* until late in the bidding process, and that quote was in direct competition with a distributor who was also selling the \* \* \* cellular mobile telephone.

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1/ \* \* \* advised the staff that \* \* \* information on failure rates was provided by \* \* \*, an independent service and installation firm, based in \* \* \*. \* \* \* confirmed this failure rate to the Commission's staff.

2/ \* \* \*.

During the preliminary investigation, \* \* \* denied an allegation that \* \* \* firm had purchased \* \* \* imported telephones in \* \* \* from \* \* \* after rejecting quotes from U.S. producers. \* \* \* stated that the quantities involved were very small and noted that \* \* \* had also purchased domestically-produced units. \* \* \* also stated that the purpose of these procurements was to evaluate available models. One of the primary selling points of the imports is warranty, which is \* \* \* for \* \* \*. The \* \* \* unit has a \* \* \* warranty available; however, it costs \* \* \* extra, payable on \* \* \*. In addition to price and warranty considerations, \* \* \* evaluated shipping practices by the importers before significant procurements were made. \* \* \* confirmed an allegation made during the final investigation that \* \* \* had chosen \* \* \* for a \* \* \* unit purchase. \* \* \* further stated that the allegation was correct that the \* \* \* phone was priced \* \* \* below the price offered by \* \* \*. However, the \* \* \* phone was chosen on the basis of a superior warranty, better customer support, and better quality.

\* \* \* denied an allegation during the preliminary investigation that his firm had purchased \* \* \* mobile units from \* \* \* after rejecting quotes from U.S. producers. \* \* \* stated that \* \* \* has not yet purchased any mobile units and negotiations are continuing with all parties. \* \* \* noted that \* \* \* is presently examining quality differences and availability of local servicing as well as prices before committing to a large purchase order. \* \* \* could not confirm or deny another recent allegation by \* \* \* but stated that of his total purchases to date \* \* \* percent had gone to \* \* \*. \* \* \*.

During the preliminary investigation \* \* \* officials confirmed that they were purchasing \* \* \* cellular telephones; however, they declined to discuss prices and quantities over the telephone. \* \* \* alleged that \* \* \* stopped ordering units under \* \* \* supply contracts. During the final investigation, \* \* \* confirmed an allegation made by \* \* \* that \* \* \* was purchasing from \* \* \*. Although \* \* \* would not discuss specifics of the purchase over the telephone, \* \* \* did state that \* \* \* was chosen because of an excellent quality record and customer support program. \* \* \* stated that \* \* \* was rejected because they had quality problems, no support program, and that \* \* \* created uncertainty.

\* \* \* alleged that \* \* \*, after negotiating with \* \* \*, contacted \* \* \* and suggested that existing supply contract volume would not be ordered or accepted unless \* \* \* lowered its prices from \* \* \* per unit to \* \* \* per unit to match the price offered by \* \* \*. \* \* \* denied the allegation and stated that \* \* \* purchased all of their \* \* \* phones in \* \* \* at \* \* \* per unit, the same price offered by \* \* \*.

\* \* \* of \* \* \* could not confirm or deny an allegation by \* \* \* that \* \* \* had rejected a price quote for \* \* \* units. He stated that \* \* \* purchases from \* \* \* and supplies distributors with \* \* \*. \* \* \* stated that \* \* \* phones have superior engineering and design and that makes them too expensive.

\* \* \* discussed two allegations of \* \* \* involving \* \* \* phones. Although \* \* \* could not recall the actual prices quoted by \* \* \*, \* \* \* was able to confirm that both purchases, in \* \* \*, had gone to \* \* \*. \* \* \* stated that the \* \* \* per unit price for the \* \* \* was definitely lower than \* \* \*, but the \* \* \* warranty offered by \* \* \* was the feature that closed the negotiations. \* \* \* further stated that \* \* \* is still their largest supplier

even though the \* \* \* product is experiencing a much lower failure rate. In the one year since purchasing the \* \* \* phone, the \* \* \* models have failed at a rate \* \* \* times greater.

\* \* \* confirmed that \* \* \* had purchased mobile telephones from \* \* \* in \* \* \*; however, not at \* \* \* per unit as alleged but rather \* \* \* per unit, the same price offered by \* \* \*. \* \* \* stated that \* \* \* were all competing for this sale. Prices were roughly equivalent but \* \* \* offered a customer service package that was unmatched by all the others. He further stated that regardless of this sale \* \* \* continues to support \* \* \* products and that \* \* \* phones are still the most widely used phones on their system.

\* \* \* addressed an allegation by \* \* \* that \* \* \* purchased \* \* \* phones after rejecting a \* \* \* per unit offer. \* \* \* elaborated that \* \* \* firm was trying to establish a \* \* \* and the \* \* \* phone was actually priced at \* \* \* per unit. The high price included a \* \* \* deposit \* \* \* would have to put forward in exchange for a \* \* \* financing arrangement. \* \* \* stated that the financing was the principal factor in the sales agreement. \* \* \* further explained that \* \* \* is \* \* \* predominate supplier now, but only since they have altered their \* \* \* policies. When \* \* \* began service in \* \* \* as the \* \* \* in \* \* \* the only \* \* \* repair facilities were operated by \* \* \*. Since \* \* \* did not wish to \* \* \*, \* \* \* declined to purchase from \* \* \*. It was not until \* \* \* that \* \* \* opened facilities not administered by \* \* \*. \* \* \* also complained of quality problems regarding the \* \* \* phones. In a recent purchase \* \* \* phones were found to be defective and were under repair at the time of the conversation with the Commission staff.

\* \* \* confirmed that \* \* \* purchased \* \* \* phones in \* \* \* after rejecting a quote from \* \* \*. He stated that the quantities were very small and not the \* \* \* alleged by \* \* \*. \* \* \* also confirmed that \* \* \* had purchased \* \* \*, but again the quantities were limited. This purchase was made to respond to a \* \* \* offered by \* \* \*. \* \* \* further stated that \* \* \* percent of their purchases were from \* \* \*, and \* \* \* percent from \* \* \*. Since June, the figures show \* \* \* with \* \* \* percent of their business and \* \* \* with \* \* \* percent. \* \* \* stated that in the last month \* \* \* firm had experienced significant quality problems with \* \* \* phones, and these problems were so extensive that \* \* \* canceled a large contract with \* \* \*.

APPENDIX A  
COMMERCE'S AND COMMISSION'S FEDERAL REGISTER NOTICES

subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by August 19, 1985.

**EFFECTIVE DATE:** June 11, 1985.

**FOR FURTHER INFORMATION CONTACT:** John R. Brinkmann Jr. or John Love, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1778.

**SUPPLEMENTARY INFORMATION:**

**Preliminary Determination**

We have preliminarily determined that cellular mobile telephones and subassemblies from Japan are being, or likely to be, sold in the United States at less than fair value, as provided in section 733(b)-(19 U.S.C. 1673(b)) of the Tariff Act of 1930, as amended (the Act). The margins preliminarily found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by August 19, 1985.

**Case History**

On November 5, 1984, we received a petition from counsel for Motorola, Inc. (Motorola) on behalf of the cellular mobile telephone and subassembly industry. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on November 28, 1984 (49 FR 47078). The ITC subsequently found, on December 29, 1984, that there is a reasonable indication that imports of cellular mobile telephones and subassemblies from Japan are materially injuring or threatening to materially injure a United States industry. The petitioner alleged that at least nine Japanese companies produce the subject merchandise for export to the United States. We identified six producers and exporters which account for at least 60 percent of the subject merchandise exported to the United States for Japan

during the period of investigation. These companies are: Hitachi, Ltd. of Japan (Hitachi); Mitsubishi Electric Corporation (MELCO); OKI Electric Industry Company, Ltd. (OKI); Toshiba Corporation (Toshiba); NEC Corporation (NEC); and Matsushita Communication Industrial Co., Ltd. (Matsushita). We presented a questionnaire to counsel for Hitachi, MELCO, OKI, Toshiba and Matsushita on February 1, 1985, and to counsel for NEC on February 13, 1985. We subsequently received responses from all companies except Matsushita, which on March 18 advised the Department of Commerce (the Department) that it had decided not to file a response to the February 1 questionnaire.

On March 14, 1985, counsel for the petitioner requested the Department to extend the preliminary determination until not later than June 4, 1985. On March 21, 1985, we granted the request (50 FR 12599).

**Scope of Investigation**

The products covered by this investigation are cellular mobile telephones (CMTs), CMT transceivers, CMT control units, and subassemblies dedicated for use in CMTs. CMTs are radio-telephone equipment designed to operate in a cellular radio-telephone system, i.e., a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, i.e., a box of electronic subassemblies which receives and transmits calls; and (2) a control unit, i.e., a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this investigation.

Subassemblies are any completed or partially completed circuit boards, circuit modules and/or any packaged assemblage of electronic components, the value of which is equal to or greater than five dollars, and which are dedicated for use in CMT transceivers or control units. Examples of such subassemblies are circuit boards and/or modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF,

[A-588-405]

**Cellular Mobile Telephones and Subassemblies From Japan; Preliminary Determination of Sales at Less Than Fair Value**

**AGENCY:** International Trade Administration/Import Administration/Commerce.

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation on all entries of the

IF, synthesizer, duplexer, power supply, power amplification, transmitter, and exciter.

The following merchandise has been excluded from this investigation: Pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

Cellular mobile telephones are currently classified under item number 685.29 of the *Tariff Schedules of the United States (TSUS)*. Subassemblies can be classified under item numbers 685.23, 685.24, and 685.29, as well as other possible tariff classifications.

We investigated sales of the cellular mobile telephones and subassemblies during the period June 1 through November 30, 1984.

#### Scope of Investigation Issues

We have defined the products covered by this investigation as CMTs, CMT transceivers, CMT control units and major subassemblies dedicated for use in CMTs. The determination to include subassemblies within the scope of the investigation was based on the need to prevent circumvention of any antidumping order on CMTs through the importation of major CMT subassemblies, and the Department's broader conclusion that the investigation properly should include subassemblies. In this regard, Motorola's petition requested that we include "kits of components and subassemblies" in the investigation.

Two of the companies investigated export CMT subassemblies to the United States to related companies which subsequently perform some form of further manufacture or assembly before selling the completed CMTs to unrelated parties. If the investigation were limited to completed CMTs alone, none of these importations would be subject to an antidumping order, even if all of the subassemblies were of Japanese origin and were being sold at less than fair value, and the complete CMT was "substantially" of Japanese origin.

A number of the respondents have argued that the Department has no authority to include discrete subassemblies (that is, subassemblies that are imported separately rather than in kits) within the scope of this investigation. The crux of their argument is (1) that discrete CMT subassemblies are not of the same "class or kind" as complete CMTs or CMT kits, (2) that Motorola's petition only included complete CMTs and CMT kits, defined as sets of CMT subassemblies, and (3)

that antidumping investigations may only encompass products that are the same "class or kind of merchandise" as those covered in the petition. We address each of respondents' arguments in turn.

First, the Department takes the position that CMT subassemblies are the same "class or kind" of merchandise as complete CMTs. This determination is based on a consideration of the following factors: (1) General physical characteristics, (2) the expectations of the ultimate purchaser, (3) the ultimate use of the merchandise in question, and (4) the channels of trade in which the merchandise moves. Since the scope of this investigation only includes those subassemblies that are "dedicated for use" in complete CMTs, both the ultimate use and the ultimate purchaser of the CMT subassemblies are the same as for the complete CMTs. Thus, the second and the third criteria outlined above are met. Similarly, based on the evidence in the record, the Department determines that CMT subassemblies, as defined in this investigation and complete CMTs move in the same channel of trade. Indeed, this is the very reason the Department feels it necessary to include CMT subassemblies within the scope of this investigation since otherwise any resulting order could easily be circumvented. With respect to the first criterion, the Department does not think that the fact that CMT subassemblies have, in some respect, different physical characteristics from complete CMTs should be controlling in this instance. As a result, the Department concludes that CMT subassemblies which are dedicated for use in CMTs are within the same "class or kind" of merchandise as complete CMTs. See, *Antidumping Order: Cell Site Transceivers from Japan*, 50 FR 307.

Second, the Department's view is that respondents are taking an unduly narrow reading of the petition and that the Department's definition of scope is simply a clarification of what was set forth in the petition. Petitioners' definition of kits referred to collections of "key" components, which we have taken to mean "major" subassemblies. The whole purpose of including subassemblies in this investigation is to prevent evasion of the antidumping law. It would be illogical to make a distinction between those subassemblies that are shipped discretely in separate containers and those that are shipped together in one box. Limitations as to packaging would simply be an invitation to evade the antidumping law through changes in packaging.

Third, whether or not Motorola's petition explicitly covers discrete subassemblies is not dispositive, since the Department has an inherent power to establish the parameters of the investigation so as to carry out its mandate to administer the law effectively and in accordance with its intent. See, 19 CFR 353.37(b). Nor do any of the legal decisions the respondents cite support their argument that the Department is bound by the petition in initially defining the scope of the investigation. The issue in *Royal Business Machines, Inc. v. United States*, 1 CIT 80, 507 F. Supp. 1007, 1014 (1980), *aff'd*, 689 F. 2d 692 (C.C.P.A. 1982), was whether the Department could modify the scope of the investigation after the final antidumping order had been issued. *Tapered Roller Bearings and Certain Components Thereof From Japan*, (46 FR 40550), is equally irrelevant since, in that case, the only reason the Department concluded "unfinished" tapered roller bearings were not the same "class or kind" of merchandise as "finished" roller bearings was that "[n]either the petition nor the fair value investigation was directed at transactions involving partially manufactured merchandise" (46 FR 40551). Here, by contrast, at the outset the Department has defined the investigation as including subassemblies.

Respondent's contention that the petition does not contain sufficient allegations or evidence of dumping with respect to subassemblies is equally without merit. Since complete CMTs and subassemblies are in the same "class or kind" of merchandise, there was no need for the petitioner to present evidence of dumping with respect to subassemblies. As the Department has previously recognized, there is no need to conduct price comparisons on all types of merchandise within the class that is subject to an investigation.

Furthermore, Motorola did provide sufficient evidence of dumping with respect to CMT subassemblies. Motorola's petition contains allegations of dumping by Japanese companies that export CMT subassemblies for further assembly and processing by related companies in the United States. Where a related company is the importer, the basis for determining U.S. sales price is the first sale to an unrelated customer, rather than any transfer prices between related parties (section 772(c) of the Act). This is true even where some final finishing or assembly steps are performed on the merchandise by the U.S. affiliate. Thus, since there were no sales of subassemblies to unrelated

parties, the best information regarding dumping of subassemblies is the price at which the complete CMTs were sold to unrelated purchasers. This is exactly the evidence Motorola provided.

Finally, the Department has considered respondents' (principally Matsushita's and OKI's) suggestion that the order be designed so as to exclude importations of subassemblies that are incorporated into CMTs by U.S. facilities that add more than a nominal value. It was proposed, for example, that each respondent be given an opportunity to make an affirmative showing that the value it adds in the United States to imported CMT subassemblies is so substantial that it ought to be removed from the scope of the order. The Department feels that this approach is not feasible from an administrative standpoint, and that it would result in a discriminatory application of the antidumping law.

Accordingly, the Department has included CMT subassemblies as defined above within the scope of the investigation.

#### Fair Value Comparison

To determine whether sales of the subject merchandise in the United States by OKI, Hitachi, Toshiba and MELCO were made at less than fair value, we compared the United States price with the foreign market value. To determine whether sales of the subject merchandise in the United States by Matsushita and NEC were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on the best information available. We used information in the petition as the best information available for Matsushita as required by section 776(b) of the Act because it did not submit a response to our antidumping duty questionnaire.

We also used the best information available for NEC because it did not provide a full and complete response to our antidumping duty questionnaire. While NEC did respond to selected sections of the questionnaire, it did not provide the home market sales data requested by the Department. NEC refused to provide the requested data on the grounds that these data were not relevant because its home market sales of CMTs were not "such or similar" merchandise to its U.S. sales as defined in section 771(16) of the Act. Thus, NEC argued that the Department must calculate foreign market value based on third country sales as provided for in section 773(a)(1)(B) of the Act.

During the course of this investigation, the Department repeatedly advised NEC

that if NEC failed to provide home market sales data and the Department determined that NEC's home market sales did constitute "such or similar merchandise" the Department would have to use best information available. Based on information presented by NEC and an analysis of the data submitted by a technical consultant retained by the Department, we have determined that the CMT sold by NEC in the home market is such or similar merchandise within the meaning of section 771(16) of the Act. As a result, the Department calculated both United States price and foreign market value using information in the petition as the best information available.

#### United States Price

As provided in section 772 of the Act, we used both the purchase price and exporter's sales price of the subject merchandise to represent the United States price for sales by the Japanese producers.

Purchase price was used for Toshiba, Hitachi and Mitsubishi since the merchandise was sold to unrelated purchasers prior to its importation into the United States or sold to a purchaser outside the United States when it was known at the time of sale that the merchandise was destined for the United States. We calculated the purchase price based on either the f.o.b. or c.i.f. duty paid, packed price to unrelated purchasers for sale in the United States. We made deductions, where appropriate, for foreign inland freight and handling charges, air or ocean freight, marine insurance, U.S. customs duties, and U.S. inland freight and brokerage.

For OKI, we used exporter's sales price (ESP) to represent the United States price because the merchandise was sold to unrelated purchasers after importation into the United States. For these sales, we made deductions, where appropriate, for foreign inland freight and handling charges, air or ocean freight, U.S. Customs duties, U.S. inland freight and brokerage, and other selling expenses incurred in the United States. In calculating the ESP for OKI, we also deducted the value added to the imported units through further manufacture prior to sale in the United States.

#### Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value for OKI, Hitachi and Toshiba as there were not sufficient home market or third country sales of such or similar merchandise for the purpose of

comparison. In determining constructed value, we calculated the cost of materials, fabrication, general expenses, profit, and the cost of packing. The amounts added for general expenses were calculated from data provided in the responses and in certain cases from data obtained through verification of the responses. In all instances the amounts used for general expenses were higher than the statutory minimum of 10 percent of the sum of material and fabrication costs. The amount added for profit was the statutory minimum of 8 percent of the sum of materials, fabrication costs, and general expenses, or the actual profit, whichever was higher. We are seeking additional information concerning the profit made by producers on home market sales of the same general class or kind as the merchandise under consideration.

As Mitsubishi had no reported sales or offers for sale of such or similar merchandise in the home market, we calculated foreign market value based on third country sales of such or similar merchandise, as provided for in section 773(a)(1)(B) of the Act. Comparisons were made using sales to the same level of trade as the U.S. sales. Calculations for Mitsubishi's foreign market value were based on delivered or ex-factory, unpacked prices to unrelated purchasers in Sweden. Deductions were made, as appropriate, for air and inland freight. We also made adjustments for differences in advertising expenses. U.S. export packing was added to the third country market prices used. We also adjusted for physical differences in the merchandise in accordance with § 353.16 of the Commerce Regulations.

In calculating foreign market value, we made currency conversions in accordance with § 353.56(a)(1) of our regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

#### Verification

We have verified a portion of the data used in reaching the preliminary determination in this investigation, by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents. In accordance with section 776(a) of the Act, we will verify all data used in reaching a final determination.

#### Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the United States Customs Service to suspend liquidation of the products covered by

this investigation from Japan which are entered or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or bond in an amount equal to the estimated amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price.

This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/exporters	Weighted-average margin percentage
OKI	18.51
Hitachi	20.90
Toshiba	4.77
MELCO	21.94
NEC	95.57
Mitsubishi	108.60
All other manufacturers/producers/exporters	32.77

The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by July 16, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least 10 copies.

Alan F. Holmer,

*Deputy Assistant Secretary for Import Administration.*

June 4, 1985.

[FR Doc. 85-15031 Filed 6-10-85; 8:45 am]

BILLING CODE 3510-05-01

#### ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final determination.

#### Public Comment

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 9:00 a.m. on July 23, 1985, at the U.S. Department of Commerce, Room 4827, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1)

[Investigation No. 731-TA-207 (Final)]

**Cellular Mobile Telephones and Subassemblies Thereof From Japan**

**AGENCY:** International Trade Commission.

**ACTION:** Institution of a final antidumping investigations and scheduling of a hearing to be held in connection with the investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-207 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of cellular mobile telephones and subassemblies thereof, classified under items 685.28 and 685.32 of the Tariff Schedules of the United States,<sup>1</sup> which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before August 19, 1985, and the Commission will make its final injury determination by October 9, 1985, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

**EFFECTIVE DATE:** June 11, 1985.

**FOR FURTHER INFORMATION CONTACT:** Larry Reavis (202-523-0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC, 20436.

**SUPPLEMENTARY INFORMATION:**

*Background.*—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of cellular mobile telephones from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on

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<sup>1</sup> These tariff items were enacted in the Trade and Tariff Act of 1964, Pub. L. 99-573, effective January 1, 1965; item 685.28, referenced in investigation No. 731-TA-207 (Preliminary) was stricken from the TSUS.

November 5, 1984 by Motorola Inc., Schaumburg, IL. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (49 FR 50316, Dec. 27, 1984).

**Participation in the investigation.**—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

**Service list.**—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

**Staff report.**—A public version of the prehearing staff report in this investigation will be placed in the public record on August 20, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

**Hearing.**—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on September 5, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on August 21, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on August 29, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is September 2, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.8(b)(2) of the Commission's rules (19 CFR 201.8(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

**Written submissions.**—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on September 12, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before September 12, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984).

**Authority:** This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.202).

Issued: June 24, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 15856 Filed 7-2-85; 8:45 am]

BILLING CODE 7020-02-M

**SUMMARY:** The Commission hereby announces the rescheduling of the hearing to be held in connection with the subject investigation from 10:00 a.m. on September 5, 1985 to 10:00 a.m. on October 30, 1985.

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 49 FR 32569, Aug. 15, 1984).

**EFFECTIVE DATE:** July 23, 1985.

**FOR FURTHER INFORMATION CONTACT:** Larry Reavis (202-523-0296), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 11, 1985 the Commission instituted the subject investigation and scheduled a hearing to be held in connection therewith for September 5, 1985 to (50 FR 27496, July 3, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from August 19, 1985 to October 24, 1985. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule. As provided in section 735(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)(2)(B)), the Commission must make its final determination in antidumping investigations within 45 days of Commerce's final determination, or in this case by December 9, 1985.

**Staff Report**

A public version of the prehearing staff report in this investigation will be placed in the public record on October 15, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

**Hearing**

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on October 30, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 15, 1985. All persons

[Investigation No. 731-TA-207 (Final)]

**Cellular Mobile Telephones and Subassemblies Thereof From Japan**

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

**ACTION:** Rescheduling of the hearing to be held in connection with the subject investigation.

desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on October 21, 1985 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 25, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2), as amended by 49 FR 32569, Aug. 15, 1984)).

#### Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearings should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 6, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 6, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 49 FR 32569, Aug. 15, 1984).

#### Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 49 FR 32569, Aug. 15, 1984).

By order of the Commission.

Issued: July 25, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-18150 Filed 7-30-85; 8:45 am]

BILLING CODE 7020-02-01

**SUMMARY:** We have determined that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. Those firms which are subject to the suspension of liquidation are indicated in the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** October 31, 1985.

**FOR FURTHER INFORMATION CONTACT:** John R. Brinkmann, Jr., Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

Based upon our investigation we have determined that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) (19 U.S.C. 1673d(a)) of the Tariff Act of 1930, as amended (the Act). The margins found for all companies investigated are listed in the "Suspension of Liquidation" section of this notice.

**Case History**

On November 5, 1984, we received a petition from Motorola, Inc. (Motorola) on behalf of the United States cellular mobile telephone and subassembly industry. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that cellular mobile telephones and subassemblies from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping duty investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on November 28, 1984 (49 FR 47076). The ITC subsequently found, on December 20, 1984, that there is a reasonable indication that imports of cellular mobile telephones and subassemblies for Japan are materially injuring, or threatening material injury

to, a United States industry. The petitioner alleged that at least nine Japanese companies produce the subject merchandise for export to the United States. We identified six producers and exporters which account for at least 60 percent of the subject merchandise exported to the United States from Japan during the period of investigation. These companies are: Hitachi, Ltd. of Japan (Hitachi); Mitsubishi Electric Corporation (MELCO); OKI Electric Industry Company, Ltd. (OKI); Toshiba Corporation (Toshiba); NEC Corporation (NEC); and Matsushita Communication Industrial Co., Ltd. (Matsushita). We presented a questionnaire to counsel for Hitachi, MELCO, OKI, Toshiba and Matsushita on February 1, 1985, and to counsel for NEC on February 13, 1985. We subsequently received responses from all companies except Matsushita, which on March 18 advised the Department of Commerce (the Department) that it had decided not to file a response to the February 1 questionnaire.

On March 14, 1985, the petitioner requested the Department to extend the preliminary determination until not later than June 4, 1985. On March 21, 1985, we granted the request (50 FR 12599).

On June 4, 1985, we made an affirmative preliminary determination (50 FR 24554).

On June 19 and July 2, 1985, three of the six respondents in this investigation requested that we extend the period for the final determination until the 135th day after publication of our preliminary determination. On July 15, 1985, we granted these requests and extended our final determination to October 25, 1985 (50 FR 29713).

We verified the questionnaire responses in April, May and June.

A hearing was held on September 9, 1985.

**Scope of Investigation**

The products covered by this investigation are cellular mobile telephones (CMTs), CMT transceivers, CMT control units, and certain subassemblies thereof, which meet the tests set forth below. CMTs are radio-telephone equipment designed to operate in a cellular radio-telephone system, i.e., a system that permits mobile telephones to communicate with traditional land-line telephones via a base station, and that permits multiple simultaneous use of particular radio frequencies through the division of the system into independent cells, each of which has its own transceiving base station. Each CMT generally consists of (1) a transceiver, i.e., a box of electronic

International Trade Administration

[A-588-405]

Cellular Mobile Telephones and Subassemblies From Japan; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

subassemblies which receives and transmit calls; and (2) a control unit, i.e., a handset and cradle resembling a modern telephone, which permits a motor-vehicle driver or passenger to dial, speak, and hear a call. They are designed to use motor vehicle power sources. Cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this investigation.

Subassemblies are any completed or partially completed circuit modules, the value of which is equal to or greater than five dollars, and which are dedicated exclusively for use in CMT transceivers or control units. The term "dedicated exclusively for use" only encompasses those subassemblies that are specifically designed for use in CMTs, and could not used, absent alteration, in a non-CMT device. The Department selected the five dollar value for defining the scope since this is a value that it has determined is equivalent to a "major" subassembly. The Department feels that a dollar cut-off point is a more workable standard than a subjective determination such as whether a circuit module is "substantially complete." Examples of subassemblies which may fall within this definition are circuit modules containing any of the following circuitry or combinations thereof: audio processing, signal processing (logic), RF, IF, synthesizer, duplexer, power supply, power amplification, transmitter, and exciter. The presumption is that CMT subassemblies are covered by the order unless an importer can prove otherwise. An importer will have to file a declaration with the Customs Service to the effect that a particular CMT subassembly is not dedicated exclusively for use in CMTs or that the dollar value is less than \$5, if he wishes it to be excluded from the order.

The following merchandise has been excluded from this investigation: Pocket-size self-contained portable cellular telephones, cellular base stations or base station apparatus, cellular switches, and mobile telephones designed for operation on other, non-cellular, mobile telephone systems.

As noted in our notice of extension of the final determination, cellular mobile telephones and subassemblies are no longer classified under item numbers 685.23, 685.24 and 685.29 of the *Tariff Schedules of the United States (TSUS)*. They are currently classified under TSUS item numbers 685.28 and 685.32.

We investigated sales of the cellular mobile telephones and subassemblies during the period June 1 through November 30, 1984.

#### Scope of Investigation Issues

We have defined the products covered by this investigation as CMTs, CMT transceivers, CMT control units and major subassemblies dedicated exclusively for use in CMTs. The determination to include subassemblies within the scope of the investigation was based on the need to prevent circumvention of any antidumping order on CMTs through the importation of major CMT subassemblies, and the Department's broader conclusion that the investigation properly should include subassemblies. In this regard, Motorola's petition requested that we include "kits of components and subassemblies" in the investigation.

Two of the companies investigated export CMT subassemblies to the United States to related companies which subsequently perform some form of further manufacture or assembly before selling the completed CMTs to unrelated parties. If the investigation were limited to completed CMTs alone, none of these importations would be subject to an antidumping order, even if all of the subassemblies were of Japanese origin and were being sold at less than fair value, and the complete CMT was "substantially" of Japanese origin.

A number of the respondents have argued that the Department has no authority to include discrete subassemblies (that is, subassemblies that are imported separately rather than in kits) within the scope of this investigation. The crux of their argument is (1) that discrete CMT subassemblies are not the same "class or kind" of merchandise as complete CMTs or CMT kits, (2) that Motorola's petition only included complete CMTs and CMT kits, defined as sets of CMT subassemblies, and (3) that antidumping investigations may only encompass products that are the same "class or kind of merchandise" as those covered in the petition. We address each of respondents' arguments in turn.

I. The Department takes the position that CMT subassemblies that are "dedicated exclusively for use" in CMTs are the same "class or kind" of merchandise as complete CMTs. This determination is based on a consideration of the following factors: (1) General physical characteristics, (2) the expectations of the ultimate purchasers, (3) the channels of trade in which the product is sold, (4) the manner in which the product is advertised and displayed, and (5) the ultimate use of the merchandise in question. These factors have been recognized and utilized by the Court of International Trade as

appropriate criteria in determining whether a new product was within the "class or kind" of merchandise described in a prior antidumping finding, and they are likewise instructive where, as here, the question is the initial formulation of the scope of the order. See *Diversified Products Corp. v. U.S.*, 572 F. Supp. 883 (C.I.T. 1983), *Kyowa Gas Chemical Industry Co., Ltd., v. U.S.*, 5 ITRD 2131 (1984). Since the scope of this investigation only includes those subassemblies that are "dedicated exclusively for use" in complete CMTs, both the ultimate user and the ultimate purchaser of the CMT subassemblies are the same as for the complete CMTs, since by definition, the CMT subassemblies could not be used in any other device. Thus, the second and the fifth criteria outlined above are met.

Similarly, based on the evidence in the record, the Department determines that CMT subassemblies, as defined in this investigation, and complete CMTs move in the same channel of trade. Indeed, this is the very reason the Department feels it necessary to include CMT subassemblies within the scope of this investigation since otherwise any resulting order could easily be circumvented. Those subassemblies manufactured in-house by CMT producers move in the same channels of trade as the CMT of which they are a part because such subassemblies are not "traded" except to the extent they are sold after they have been used in CMT production. While some CMT components may be purchased by CMT manufacturers from unrelated parties, the Department has reason to believe that such separately traded items may not meet the "dedicated exclusively for use" criteria, and therefore would not be covered by the scope of any order.

Similarly, since there is no separate channel of trade for CMT subassemblies, the only respect in which they are advertised and displayed is in the form of complete CMT units. Thus, the fourth criterion is met.

Finally, with respect to the first criterion, the Department does not think that the fact that CMT subassemblies have, in some respect, different physical characteristics from complete CMTs should be controlling in this instance. The only difference between the two is that complete CMTs are, essentially, assembled CMT subassemblies. As a result, the Department concludes that CMT subassemblies which are dedicated exclusively for use in CMTs are within the same "class or kind" of merchandise as complete CMTs. See, *Antidumping Order; Cell Site*

*Transceivers from Japan*, 50 FR 307 (1985).

II. The Department's view is that respondents are taking an unduly narrow reading of the petition and that the Department's definition of scope is simply a clarification of what was set forth in the petition. Petitioner's definition of kits referred to collections of "key" components, which we have taken to mean "major" subassemblies. The primary purpose of including subassemblies in this investigation is to prevent evasion of the antidumping law. It would be illogical to make a distinction between those subassemblies that are shipped discretely in separate containers and those that are shipped together in one box. Limitations as to packaging would simply be an invitation to evade the antidumping law through changes in packaging.

III. Whether or not Motorola's petitions explicitly covers discrete subassemblies is not dispositive, since the Department has an inherent power to establish the parameters of the investigation so as to carry out its mandate to administer the law effectively and in accordance with its intent. The Court of International Trade has recognized that the ITA has the authority to define the scope of an antidumping duty investigation. *Diversified Products Corp. v. U.S.*, 572 F. Supp. 883, 887 (C.I.T. 1983), citing *Royal Business Machines v. United States*, 507 F. Supp. 1007 (1980), *aff'd* 663 F.2d 692 (C.C.P.A. 1982). Without this inherent authority, the Department would be tied to an initial scope definition that is based on whatever information the petitioner may have had available to it at the time of initiating the case, and which may not make sense in light of the information available to the Department or subsequently obtained in the investigation. Nor do any of the legal decisions the respondents cite support their argument that the Department is bound by the petition in initially defining the scope of the investigation. The issue in *Royal Business Machines, Inc. v. United States*, *supra* was whether the Department could modify the scope of the investigation in the order, after the final antidumping determination was issued. Contrary to respondents' assertions, the decision does not in any way limit the Department's discretion to define the scope of a petition. Indeed the court acknowledged that "[w]ithin the context of an antidumping proceeding the [Commerce Department], at the proper time, can define the class in its terms." 507 F. Supp., at 1014, note 18, (CIT 1980). *Tapered Roller Bearings and*

*Certain Components Thereof from Japan* (46 FR 40550), is equally irrelevant since, in the case, the only reason the Department concluded that "unfinished" tapered roller bearings were not the same "class or kind" of merchandise as "finished" roller bearings was that "[n]either the petition nor the fair value investigation was directed at transactions involving partially manufactured merchandise." (46 FR 40551). Here, by contrast, at the outset the Department has defined the investigation as including subassemblies.

Respondents' contention that the petition does not contain sufficient allegations or evidence of dumping with respect to subassemblies is equally without merit. Since complete CMTs and subassemblies are of the same "class or kind" of merchandise, there was no need for the petitioner to present evidence of dumping with respect to subassemblies. As the Department has previously recognized, there is no need to conduct price comparisons on all types of merchandise within the class that is subject to an investigation. See, e.g. *Large Power Transformers from France* (47 FR 10268).

Furthermore, Motorola did provide sufficient evidence of dumping with respect to CMT subassemblies. Motorola's petition contains allegations of dumping by Japanese companies that export CMT subassemblies for further assembly and processing by related companies in the United States. Where a related company is the importer, the basis for determining U.S. sales price is the first sale to an unrelated customer, rather than any transfer prices between related parties (section 772 of the Act). This is true even where some final finishing or assembly steps are performed on the merchandise by the U.S. affiliate. Thus, since there were no sales of subassemblies, as defined in this investigation, to unrelated parties, the best information regarding dumping of subassemblies is the price at which the complete CMTs were sold to unrelated purchasers. This is exactly the evidence Motorola provided.

Finally, the Department has considered respondents' (principally Matsushita's and OKI's) suggestion that the order be designed so as to exclude importations of subassemblies that are incorporated into CMTs by U.S. facilities that add more than a nominal value. It was proposed, for example, that each respondent be given an opportunity to make an affirmative showing that the value it adds in the United States to imported CMT subassemblies is so substantial that it

ought to be removed from the scope of the order. Based on the information currently available, we are not convinced that this proposal is sound as a matter of policy or that it is administratively feasible. However, we will reexamine this issue if it is raised in any subsequent administrative review.

Accordingly, the Department has included CMT subassemblies as defined above within the scope of the investigation.

#### Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

As required by section 776(b) of the Act, in making our fair value comparisons we used the best information available in calculating both United States price and foreign market value for Matsushita and NEC and foreign market value for MELCO. We used information in the petition as the best information available for Matsushita because it did not submit a response to our antidumping duty questionnaire.

We also used the best information available for NEC because it did not provide a full and complete response to our antidumping duty questionnaire. While NEC did respond to selected sections of the questionnaire, it did not provide the home market sales data requested by the Department. NEC refused to provide the requested data on the grounds that these data were not relevant because its CMTs sold in the home market were not "such or similar" merchandise to the CMTs it sold in the United States, as defined in section 771(16) of the Act. Thus, NEC argued, the Department must calculate foreign market value based on third country sales as provided for in section 773(a)(1)(B) of the Act.

During the course of this investigation, the Department repeatedly advised NEC that if NEC failed to provide home market sales data and the Department determined that NEC's home market sales were of "such or similar merchandise" the Department would have to use best information available. Based on information presented by NEC and an analysis of the data submitted by a technical consultant retained by the Department, we have determined that the CMT sold by NEC in the home market is such or similar merchandise within the meaning of section 771(16) of the Act. As a result, the Department calculated both United States price and foreign market value for NEC using

information in the petition as the best information available.

For MELCO, the Department based United States price on purchase price using MELCO's sales of complete CMTs to unrelated purchasers prior to their importation into the United States, and foreign market value on the best information available. Although the Department used MELCO's third country sales to calculate its foreign market value in the preliminary determination, the Department's subsequent verification revealed that MELCO did have a viable home market of such or similar merchandise (See DOC Position to Petitioner's—MELCO Comment 1). Accordingly, we are required by section 773 of the Act to use home market prices as the basis of foreign market value. Since MELCO did not provide a questionnaire response with respect to its home market sales, we used the best information available, as required by section 776(b) of the Act. The best information available for calculating foreign market value for MELCO's CMT was information obtained during verification. Since MELCO only sold CMT transceivers in the home market, we calculated foreign market value by adjusting MELCO's home market selling price for the CMT transceiver in accordance with § 353.16 of the Commerce regulations to account for the difference between the transceiver and the complete CMT unit (i.e., to account for the lack of a control unit). The adjustment was made by increasing MELCO's home market transceiver price by the ratio of MELCO's third country transceiver price to its third country control unit price.

#### United States Price

As provided in section 772 of the Act, we used both the purchase price and exporter's sales price of the subject merchandise to represent the United States price for sales by the Japanese producers.

Purchase price was used for Toshiba, Hitachi and MELCO since the merchandise was sold to unrelated purchasers prior to its importation into the United States or sold to a purchaser outside the United States when it was known at the time of sale that the merchandise was destined for the United States. We calculated the purchase price based on either the f.o.b. or c.i.f., duty paid, packed price to unrelated purchasers for sale in the United States. We made deductions, where appropriate, for foreign inland freight and handling charges, air or ocean freight, marine insurance, U.S. customs duties, and U.S. inland freight and brokerage.

For OKI, we used exporter's sales price (ESP) to represent the United States price because the merchandise was sold to unrelated purchasers after importation into the United States. For these sales, we made deductions, where appropriate, for foreign inland freight and handling charges, air or ocean freight, U.S. customs duties, U.S. inland freight and brokerage, indirect selling expenses incurred in the United States and other direct selling expenses incurred in the United States such as credit, advertising reserve, warranties and post-sale warehousing. In calculating the ESP for OKI, we also deducted the value added to the imported units through further manufacture prior to sale in the United States.

#### Foreign Market Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value for OKI, Hitachi and Toshiba as there were not sufficient home market or third country sales of such or similar merchandise for the purpose of comparison. In determining constructed value, we calculated the cost of materials, fabrication, general expenses, profit, and the cost of packing. The specific methodology used to calculate constructed value for each company is listed below:

1. *OKI Constructed Value.* For OKI, the cost of manufacturing was based on weighted-average costs for the months of April through November, 1984. These costs were based on standard costs adjusted to actual costs by the variances reflected in OKI's accounting system. The Department did not use special adjustments to the cost of manufacturing claimed by OKI because the adjustments were either theoretically inappropriate or not quantified and adequately verified. (See "Comment" section of the notice). Product-specified R&D expenses, which are necessary expenses incurred in manufacturing, were included as part of the "fabrication" expenses and were amortized over the market-life of the product. For the cellular R&D expenses, the Department used six years based on the foreseeable usefulness of the cellular technology and the estimated life of two generations of the product.

For the general expenses, the Department used the general administrative expenses and the general R&D as provided by OKI and verified by the Department. The interest expense was based on the approximated percentage of interest expense to "cost of goods" of the consolidated corporation. The interest expense and

interest income reflected on the financial statements were adjusted to include only those items which directly or indirectly benefited the production of CMTs. Direct and indirect selling expenses and profit based on verified expense and profit data reported by OKI for the same class or kind of merchandise. As the profit reported by OKI exceeded 8 percent of material, fabrication and general expenses, the Department used the actual profit experience of OKI.

2. *Hitachi Constructed Value.* For Hitachi, the cost of manufacturing was based on the weighted-average costs for the months of April through November, 1984. These costs were based on the actual costs for production completed during this period. The Department adjusted the transfer value of certain parts used in the manufacture of CMTs when it appeared such values did not fairly reflect the usual value for such "sales." The Department did not consider Hitachi's product-specific R&D to be adequately verified. Therefore, we used the corporate average R&D and deducted an amount claimed by Hitachi to be general R&D.

For the general expenses, the Department used a proportional amount of general and administrative expenses of Hitachi Denshi, the subsidiary which manufactures the CMT, and Hitachi, Ltd., the parent corporation. Hitachi, Ltd. performs R&D and other general and administrative functions for Hitachi Denshi.

The Department included interest expense based on the percentage of interest expense to the cost of goods of the consolidated corporation. The direct and indirect selling expenses and profit were based on verified expense and profit data reported by Hitachi for the same class or kind of merchandise. As the profit reported by Hitachi exceeded 8 percent of materials, fabrication and general expense, the Department used the actual profit experience of Hitachi.

3. *Toshiba Constructed Value.* For Toshiba the cost of manufacturing was based on the weighted-average of the actual costs of the production during the months of April through November, 1984. The Department adjusted the transfer value of certain parts when it appeared such values did not fairly reflect the usual value for such "sales".

The Department used the anticipated market-life for the product under investigation to amortize the start-up expense and product specific R&D, which was determined to be three years.

For general expenses, the general and administrative expenses, including general R&D expenses, which were

provided by the company and verified by the Department were used. The Department did not accept Toshiba's claim for "negative financing" and used the percentage of interest expense to cost of goods of the consolidated corporation. The direct and indirect selling expenses and profit were based on verified expense and profit data reported by Toshiba for the same class or kind of merchandise. Since the profit reported by Toshiba did not exceed 8 percent of materials, fabrication and general expenses, the Department used the statutory minimum of 8 percent.

*Adjustments.* We made adjustments under § 353.15 of the Commerce Regulations for differences in circumstances of sale between the two markets. For Hitachi these adjustments were for differences in credit and warranty expenses. For OKI these adjustments were for differences in credit, warranty and advertising expenses. In the case of Toshiba adjustments were made for differences in credit expenses, advertising and warranty expenses.

Since OKI's United States price was based on exporter's sales price, adjustments were made to foreign market value for OKI under § 353.15(c) to account for indirect selling expenses incurred in the home market sales of the "same class or kind of merchandise," up to the amount of indirect selling expenses incurred by OKI on its United States sales. OKI, however, was unable to demonstrate that the home market expenses which it claimed to be direct selling expenses were in actuality direct selling expenses or that they were directly related to home market sales of the same general class or kind of merchandise. Therefore, we have treated those expenses, as well as those identified as indirect selling expenses, as indirect.

#### Verification

In accordance with section 776(a) of the Act, we verified all information provided by the respondents by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents.

#### Respondent Comments

*MELCO Comment 1:* MELCO makes several arguments concerning adjustments to third country sales for purposes of determining foreign market value.

*DOC Position:* Since we did not use the third country sales in our comparisons, these issues are moot.

*MELCO Comment 2:* MELCO argues that, during the period of investigation, MELCO's home market sales were so small in relation to its third country sales as to be an inadequate basis for determining foreign market value, within the meaning of § 353.4(a) of the Department's regulations. In support of this assertion, MELCO states: 1. That MELCO's shipment of a small quantity of test samples to Nippon Telephone and Telegraph (NTT) were not sales made in the ordinary course of trade; 2. that the informal and unwritten agreement between MELCO and NTT could not constitute a sale; and 3. that NTT's written purchase orders did not constitute "sales" since MELCO did not "confirm" these purchase order, nor did title to the goods pass at that point, and therefore no sales occurred until MELCO actually delivered the CMTs. MELCO also argues that its home market sales of CMTs were not "such or similar" to its U.S. sales within the meaning of 771(16)(C) of the Act.

*DOC Position:* The Department has determined that, based on 3 NTT purchase orders, MELCO made sufficient commercial sales in the home market during the period of investigation so as to constitute a "viable" home market within the meaning of 19 CFR 353.4. In reaching this determination the Department did not have to determine whether the sale of test samples to NTT were sales made in the ordinary course of trade since its finding would be the same regardless. The Department has determined that the date purchase orders were issued by NTT is the appropriate date for determining date of sale. As the Department stated in its questionnaire in this case, "sales are dated from the point in the transaction where the basic terms of the contract are known and price to be paid is determined. . . . The date of sale is thus the date on which the agreed-upon price is confirmed." All of these conditions were met when NTT issued purchase orders to MELCO. Under the Department's definition, there is no requirement that title to the goods pass. Furthermore, the fact MELCO did not "confirm" the purchase orders is irrelevant since it does not appear that there was any requirement or understanding that it would do so. The fact that subsequent shipping and invoicing by MELCO (absent confirmation) was done in accordance with the terms of each purchase order is further indication that these orders were an accurate confirmation of the parties' understanding.

Furthermore, the Department has determined that MELCO's home market

sales of CMT transceivers were "such or similar" to its U.S. CMT sales. (See *DOC Position to Petitioner—MELCO Comment 1*.) Thus, under the Department's analysis, MELCO's home market CMT sales during the period of investigation were in excess of five percent of its third country sale and therefore its home market was "viable" within the meaning of 19 CFR 353.4.

*OKI Comment 1:* OKI argues that the rationale for the Department's inclusion of subassemblies in the scope of investigation does not apply to imports of duplexers and VCOs because these are bought from unrelated parties.

*DOC Position:* While some CMT subassemblies such as duplexers or VCOs may be purchased by CMT manufacturers from unrelated parties, the Department has reason to believe that such separately traded items may not meet the "dedicated exclusively for use" criterion, and therefore might not be covered by the scope of any order. See discussion in the "Scope of Investigation Issues" section of this notice.

*OKI Comment 2:* The Department improperly deducted intracorporate interest charges in calculating ESP. The Department included OKI's financing costs in its calculation of constructed value. Since interest costs are incurred by OKI and passed through to OKI America Inc. (OAI), these expenses were accounted for in the foreign market value side of the analysis. The deduction of intra-company interest charges from ESP double-counts OKI's interest expense.

*DOC Position:* The Department did not deduct intracorporate interest in calculating the ESP since the sales division of OKI America Corporation (OAC) did not incur intracorporate debt.

*OKI Comment 3:* The Department overstated the deduction from ESP for OKI's warranty expenses.

*DOC Position:* The Department used the warranty reserve established by OKI to account for its contingent liabilities for the CMT warranty. Since the CMTs were only marketed recently and the warranty guarantee is for two years, actual expenses as presented would not accurately reflect the costs that could occur for a two year warranty. Therefore, we used the warranty reserve for CMTs to represent warranty costs for OKI since this reserve reflected the anticipated costs, based on past experience which should have been considered by OKI in establishing its price for CMTs.

*OKI Comment 4:* OKI's questionnaire response (and the Department's preliminary determination) mistakenly

attributed all of OAC's SG&A expenses to products subject to the investigation. However, a portion of these expenses are borne by products that are sold separately from the CMTs and are not subject to this investigation. The deduction for OAC's expenses should be reduced accordingly.

**DOC Position:** For the preliminary determination the Department used the OKI response which represented that such costs were for the CMT. For the final determination, the Department has adjusted OKI's submission and used only those expenses attributable to CMTs.

**OKI Comment 5:** In calculating ESP, the Department made a deduction for certain warehousing expenses for post-sale storage relating to sales of CMTs to certain customers. Since OKI reported all warehousing costs as part of OAC's SG&A, the Department must either make an offsetting downward adjustment to overall warehousing expenses reported by OKI or eliminate the deduction from ESP.

**DOC Position:** We agree. The post-sale warehousing expense for certain CMTs sold in the United States has been accounted for only in OAC's SG&A and has not been deducted separately from ESP.

**OKI Comment 6:** Given the significant decline in production costs that occurred during the period and the significant weakening of the yen, the Department should take into account quarterly production data in calculating constructed value, or alternatively, for the entire period use a single constructed-value figure that is the weighted-average (based on production volume) of the quarterly figures.

**DOC Position:** The Department used the weighted-average cost of production, based on verified data for the period April through November, 1984. The costs of manufacturing (material and fabrication) were based on those expenses incurred for these months because these expenses represent costs incurred in the ordinary course of manufacturing which are identified with the CMT at a time preceding the date of exportation. General expenses were based on a pro rata portion of the annual expenses since these costs are considered "period" expenses. These period expenses may be incurred at any time during the year but provide benefits to the company throughout the year. From the facts and circumstances of the case, the Department considered the weighted-average costs of production to be the most appropriate basis for the constructed value to be compared with the United States sales during the period of investigation. The Department notes

that OKI's costs did not decline during the entire period of the investigation but reflected a significant upturn in the last two months of the period. Additionally, the exchange rate fluctuations during the period are accounted for by the Department since sales and the constructed value are converted as of one date, the date of sale.

**OKI Comment 7:** In the absence of home market sales of a like product, the antidumping duty law requires use of SG&A associated with home market sales of the "same general class or kind" of merchandise in determining constructed value. In doing so, the Department must make appropriate adjustments for differences in circumstances of sale. Since significant selling expenses have been treated as deductions from OKI's selling price of CMTs in the United States, the Department must deduct from the constructed value the direct and indirect selling expenses incurred in the home market sales of the "same class or kind of merchandise".

**DOC Position:** We agree in principle that circumstance of sale adjustments should be made to constructed value. (See DOC Position to Petitioner's General Comment 2.) In OKI's case, because United States price was based on exporter's sales price, this would mean deducting all direct selling expenses incurred on the same general class or kind of merchandise in the home market and indirect selling expenses for that same merchandise up to the amount of indirect selling expenses incurred by OKI's U.S. subsidiary. OKI, however, was unable to demonstrate that the expenses which it claimed to be direct selling expenses were in actuality direct selling expenses or that they were directly related to home market sales of the same general class or kind of merchandise. Therefore, we have treated those expenses, as well as those identified as indirect selling expenses, as indirect and deducted the capped amount from foreign market value.

**OKI Comment 8:** In its preliminary determination, the Department used the statutory 8 percent profit margin for every product group except OKI's briefcase model, in which case it used a higher profit margin. The final determination for all product groups should reflect either the statutory minimum 8 percent profit margin or the profit margin reported by OKI for the same general class or kind of merchandise.

**DOC Position:** The profit margin used by the Department in the final determination for all of OKI's product groups is the profit margin reported by

OKI for the same general class or kind of merchandise since this profit rate was higher than the 8 percent statutory minimum.

**OKI Comment 9:** The Department should use the verified profit and GS&A rates of the "same general class or kind of merchandise" in the home market, provided that the proper circumstances of sale adjustments are made. Motorola's suggestion that the Department use industry-wide profit data, such as the 15.64 percent profit figure used for the Japanese telecommunications industry in *Cell Site Transceivers from Japan* (49 FR 43080), is inappropriate because that was a case where profit was based on "best information available."

**DOC Position:** We agree. (See DOC Response to Petitioner's General Comment 1.)

**OKI Comment 10:** OKI claims that the Department should make adjustments for start-up capital and advertising costs incurred in the production of CMTs and that the Department should account for these start-up expenses by changing the depreciation method from an accelerated to a straight-line basis and by amortizing the advertising expenses over a period of time.

**DOC Position:** The Department did not accept these claims. The Department accounts for start-up expenses when such expenses are appropriately justified, supported and quantified. Such expenses which result from the start-up of production usually relate to "learning-curve" and other production flow expenses and are amortized over a reasonable amount of production. OKI did not provide or claim amortization for expenses resulting from start-up. OKI started production of the CMT during the fiscal year preceding the investigative period but did not attribute any of the start-up expenses incurred during this time to the production of the CMT during the period of investigation.

The depreciation method is a means of accounting for the economic value of the equipment over its useful life and is not a means of accounting for the differences in unit costs which may result from the maturity of the production cycle. Thus, a change of the depreciation method would not be considered an appropriate means of accounting for expenses which result from start-up.

For OAI, advertising costs are accounted for when paid. However, advertising expenses could not be identified with advertising placed prior, during, or subsequent to the period of investigation. Additionally, the company did not present a basis, acceptable to

the Department, on which to determine if such advertising expenses were unusual expenses because of start-up nor did it provide an adequate basis for allocating such expenses. Therefore, the Department did not take OAI's advertising expenses into account.

*OKI Comment 11:* OKI claims that the Department should use the R&D costs incurred during the period of investigation and not costs for developing the product which were incurred before the product was marketed. OKI argues that this approach is mandated by law and by generally accepted accounting principles.

*DOC Position:* We disagree. We have amortized all costs of developing the product incurred prior to its marketing over a period of three years, the period which we have determined to be the average life of the current product. For those R&D costs associated with cellular technology, the Department used six years, thus amortizing the basic technology over two generations of the product.

The Department notes that the constructed value of provisions of the Act (section 773(e)) specifies that the costs shall be those incurred "in producing such or similar merchandise at a time preceding the date of exportation." This definition does not preclude the inclusion of costs, like those for equipment and R&D, which were incurred prior to exportation, but which are allocated to and are necessary for the manufacture of the product under investigation.

The Department's position is in accord with International Generally Accepted Accounting Standard #9 which provides that R&D associated with specific marketable products and production processes shall be capitalized and amortized over a reasonable basis.

*OKI Comment 12:* The Department should normalize OKI's bond financing expense by amortizing it over the full term of the bond rather than treating it as a one-time expense as it did for the preliminary determination. OKI usually amortized such expenses over the full term of the bond but altered that policy in September, 1984, because of a change in the tax law.

*DOC Position:* The Department applied its policy of accounting for "extradordinary" expenses and accepted OKI's one-time write-off of the bond financing expense over the full term of the bond, which is the method recommended by "generally accepted accounting principles."

*OKI Comment 13:* The Department should include OKI's foreign exchange "gain" in its constructed value

calculation. The "gain" reflected the difference between the established yen/dollar rate and the actual rate during a specific period.

*DOC Position:* Since the Department is using the actual dollar-denominated value for sales as of a specific date and converting yen—denominated costs as of the same date, the entry in OKI's records which reflects the differences between the recorded yen/dollar rate and the actual value was not used in determining the constructed value.

*OKI Comment 14:* The respondent contends that all material costs were appropriately included in its material costs, including indirect materials, material spoilage and rework.

*DOC Position:* The Department verified the actual material costs associated with the production for the period April-November 1984 and used the costs of materials associated with production during this period of time.

*OKI Comment 15:* The respondent argues that material costs should not include: (1) Pre-April (i.e., pre-investigative period) material costs, and (2) costs associated with work-in-process at the end of the period.

*DOC Position:* We agree. During verification, the Department reviewed the work-in-process balances at the beginning and end of the investigative period to determine if appropriate accounting for costs was being observed and found the material costs to be accurately stated.

*OKI Comment 16:* OKI claims that the Department should accept certain substantial claimed adjustments to its materials costs due to the fact that certain components which were assigned to the cost center for CMTs were subsequently transferred to and used by another cost center.

*DOC Position:* The Department did not consider this adjustment to be verified or adequately quantified. OKI could not provide any official accounting records or other company documentation to support the claims. The Department notes that other materials transferred to the CMT cost center and materials transferred into and out of other cost centers were appropriately accounted for by the accounting system and were recorded. Although the company provided a statement from a company worker which indicated that certain materials may have been used by another cost center, there was no evidence what amount may have been used by the other cost center, if any.

*OKI Comment 17:* OKI contends that the Department should accept an adjustment to the labor and factory overhead expense based on a company

study of certain departments. This study indicated that the actual time for processes used in the manufacturing of the CMT was less than the standard time assigned to such processes.

*DOC Position:* The Department did not accept the study as indicative of actual labor time incurred in these departments for the CMTs during the period of investigation. The Department notes that the company did not revise its standard labor hours for the CMT processes in these departments to correspond to the results of the study. If the company had accepted such hours as representative of the actual hours without changing the standard time accounting system, the variances resulting from the accounting system pertaining to the CMT would be inaccurate. No revisions to these variances were made by the company on its books or in its submission.

*OKI Comment 18:* OKI argues that the Department should adjust the transfer prices of components from related suppliers by reducing or increasing these prices by the average profit margin of the corporation which manufactures these components. This, the respondent claims, is necessary to arrive at the cost of the components and to avoid the double counting of profit. Additionally, the respondent argues that the actual costs should be used for the TCXO and IF block, which costs were included in the verification.

*DOC Position:* The Department used the actual costs of the TCXO and the IF block. The Department did not accept the respondent's method of adjusting the transfer prices of the other components by deducting or adding the overall profit or loss margin of the corporation manufacturing the component.

The Department notes that the profit margin of the corporation is an aggregation of losses and profits from all products manufactured by the corporation and is not representative of individual components manufactured by the company.

When the Department uses the actual costs of production for the components, profit is not double counted. However, when transfer or market values are used, there is no basis to determine profit, if any, included in these amounts.

*OKI Comment 19:* The respondent states that the handling expenses of OAC should be allocated based on transfer prices.

*DOC Position:* The Department disagrees. These transfer prices are not necessarily arms-length prices nor do they necessarily reflect the actual cost of the products. Therefore, they should not be used as a basis for allocation.

*OKI Comment 20:* OKI contends that allocating the expenses of all indirect departments by the total number of employees from all indirect departments assigned to a specific cost center is a sensible method of allocation.

*DOC Position:* The Department does not agree. The method used by the company of allocating all expenses of the indirect departments by the aggregate number of employees assigned to a cost center could improperly distribute such cost among the cost centers. However, from an analysis of the information received during verification, it appears that any misallocation of costs was insignificant.

*OKI Comment 21:* OKI alleges that the preliminary margin was not justified because of errors in methodology and in the bases used to calculate the margin.

*DOC Position:* For the preliminary determination the Department used the respondent's submission as the basis for its calculations. The information had not been verified except to data pertaining to the U.S. operation.

Our analysis of OKI's response led us to question seriously the methodologies used to develop the data and the omission of certain specific costs. For example, there was little, if any, explanation of the methodologies used to develop the interest expenses, SG&A expenses and general R&D incurred in the operations in Japan. From the brief explanation, it appeared that interest expenses, SG&A and general R&D had been allocated among products on the basis of sales revenue and attributed to CMTs on the basis of units produced. This methodology is unacceptable to the Department. In other areas, the response lacked certain data. For example, there was no information on costs related to warranty expenses included in the response.

To correct for these apparent shortcomings in the unverified data, the Department used the most reasonable information presented in the response. The SG&A was calculated on the data represented in the response to be SG&A for CMTs and components. There was no indication in the response nor was the Department aware that OKI had included in this amount of SG&A for products which were outside the scope of the investigation. The calculations for the final determination reflect the additional information that the Department received in the course of this investigation. Based on additional information received from OKI, our calculations have been revised, where appropriate. See Department response to OKI Comment 4.

*NEC Comment 1:* NEC argues that the foreign market value of its CMTs sold in

the United States should be based on NEC's sales of CMTs in the United Kingdom, not on its sales of CMTs in Japan. NEC maintains that the CMTs sold in Japan are not "such or similar merchandise" to those sold in the U.S. within the meaning of section 771(18) (B) or (C) and consequently sales of these CMTs cannot be used as the basis for determining foreign market value. With regard to subsection B, NEC states that the home market CMT is not "like in component materials" and that it is not "approximately equal in commercial value". To support its position, NEC describes in detail differences between its home market and U.S. models with respect to size, reliability, economy of operation, and transmission output power and quality. With respect to subsection C, NEC argues that this subsection was not intended to eliminate the concept of similarity; rather, it allows the DOC to consider products with minor dissimilarities in component materials or commercial value. Further more, NEC believes that it would be unfair and administratively impractical to compare its U.S. and Japanese models, given the numerous differences in technical specifications and physical characteristics.

*DOC Position:* During the course of this investigation, the Department retained the services of a product expert to assist the Department in its deliberations on the issue of such or similar merchandise. Actual CMTs manufactured by NEC and sold in Japan, the U.K. and the U.S., as well as the technical specifications of these CMTs, were given to the product expert for his examination along with a list of questions prepared by the Department. The product expert prepared a report responding to these questions. Based in part on this report and on the statutory provisions as interpreted in past cases, we have determined that the home market CMT is "such or similar" within the meaning of section 771(18)(C). Because we have decided that NEC's U.S. and Japanese CMTs are similar under section 771(18)(C) there is no need to determine whether they are similar under section 771(18)(B). Although there are differences in the actual basic electronic components used and in the specifications of the two CMTs, we have determined that they are like in the purposes for which used and may be reasonably compared in the sense that it is both fair and administratively feasible to do so.

Consequently they are "such or similar" merchandise. Since we have determined that the home market CMT is such or similar to the U.S. CMT and that there is a viable home market, the

statute requires us to use the price of the home market merchandise as the basis for determining foreign market value regardless of the existence of third country sales of merchandise which may also be such or similar.

*NEC Comment 2:* NEC states that if the Department uses the home market sales of NEC's CMTs as the basis for foreign market value, then DOC is required to make adjustments for differences in physical characteristics as provided for in 19 CFR 353.16. NEC maintains that it has provided the Department with adequate, verifiable data upon which to base such adjustments.

*DOC Position:* The Department has taken the position that it could not consider the difference in merchandise adjustments presented by NEC. The bases for this decision were twofold. First, the information provided by NEC with respect to differences in physical characteristics was incomplete and unsubstantiated, and, as such, was not verifiable. The Department has repeatedly advised NEC of the numerous deficiencies in the home market section of its response. Second, we noted that the information proffered is only a portion of the information requested in our questionnaire. The adjustment is designed to provide a basis for an equitable comparison between prices reported in a response when there are significant differences in the products sold in the respective markets. As such, we would not use information relating to such a claim in an instance where a respondent has refused to give us sales data relating to a specific market.

*NEC Comment 3:* NEC takes the position that the inclusion of subassemblies in the scope of the investigation is unlawful and beyond the scope of the Department's discretionary authority to prevent evasion of an antidumping duty order. Furthermore NEC believes that the current definition of the term "subassembly" is contrary to sound public policy and would create administrative problems.

*DOC Position:* See discussion in the "Scope of Investigation Issues" section of this notice.

*NEC Comment 4:* NEC states that its current portable cellular telephone Model No: TR5E800-8A, is not within the scope of this investigation.

*DOC Position:* We disagree. Our scope of investigation section states, "cellular transportable telephones, which are designed to use either motor vehicle power sources or, alternatively, portable power sources, are included in this investigation." The NEC model

referred to above fits this classification. While the scope section also excludes pocket-size self-contained portable cellular telephones, the NEC model in question does not fall within this category. Pocket-size portable cellular telephones are relatively small units that can be carried in a normal size pocket. Typically the entire unit can be held by one hand while in use. The NEC model has three sections, a control unit, a transceiver, and a battery pack, that can be mechanically connected or disconnected. A large bracket is provided to carry the three sections as a unit. It would not be possible to operate this unit in one hand, nor would it be possible to carry it in a pocket. Accordingly, it is not deemed to be a pocket-size self-contained portable cellular telephone.

*Toshiba Comment 1:* Toshiba maintains that the Department should continue its practice of making adjustments for differences in circumstances of sale when foreign market value is based on constructed value. Toshiba requests adjustments for differences in credit terms, warranty terms and advertising expenses.

*DOC Position:* We agree. See DOC Position on Petitioner's General Comment 2. We have made the adjustments claimed by Toshiba where Toshiba was able to demonstrate that the selling expenses were directly related to home market sales of the same general class or kind or merchandise.

*Toshiba Comment 2:* Toshiba maintains that a level of trade adjustment under 19 CFR 353.19 should be made when comparing the U.S. price of its CMT to the constructed value of the CMT. Toshiba's sales of CMTs in the U.S. market are all to a single purchaser who resells the merchandise to distributors. Home market sales of multi-channel access radios (MCAs), used as the same general class or kind of merchandise as CMTs for the purpose of determining constructed value, are made directly to dealers. Toshiba argues that a level of trade adjustment is quantifiable because "the indirect selling expenses incurred by Toshiba on its sales to the United States were all incurred in Japan, and are therefore, precisely the same as those that would have been incurred by Toshiba on sales to original equipment manufacturers in Japan had it made such sales there."

*DOC Position:* Level of trade adjustments may be made under certain circumstances when comparing the United States price with actual sales prices in the home or third country markets. Toshiba has not supplied information on what the price of CMTs

sold in the home market to a single unrelated distributor would have been nor has it quantified what the selling expenses involved in such a transaction would have been. The Department can not assume that the selling expenses incurred in the U.S. would be the same as those incurred in a hypothetical sale in Japan of the same merchandise at the same level of trade.

*Toshiba Comment 3:* The Department improperly calculated financing expenses by failing to taken into account interest earned by the company in calculating financing expenses.

*DOC Position:* There was no interest income reported on Toshiba's consolidated financial statements.

*Toshiba Comment 4:* Toshiba argues that the cost of materials presented in the responses should be used to calculate the constructed value. These costs include the cost of producing parts in other divisions and the transfer prices from related companies, which were at or above arms-length prices.

*DOC Position:* The Department reviewed all relevant available information to determine if the transfer values of components obtained from related companies fairly reflected the amount usually reflected for these "sales". The Department used the actual costs of production for components which were manufactured by other divisions of the company.

While some of the CMT components from related companies are off-the-shelf items for which there are negotiated prices, many of the components were specifically designed for the CMT and, therefore, there were no market prices for identical merchandise. Therefore, the Department considered a number of transaction prices for the identical product or for a similar product to determine the fairness of the transfer value. In this case, the Department reviewed the sales prices during the period of investigation which were documented in the record for other components which could reasonably be considered "similar" components and used the "market" value for such parts when the transfer value was significantly different from such prices.

*Toshiba Comment 5:* Toshiba claims that the constructed value provisions require that start-up costs be amortized and that it using a conservative basis for doing so.

*DOC Position:* The Department recognizes that start-up costs are necessary costs for production of a product, and that such expenses, like those incurred for the purchase of capital equipment, should not be fully allocated to the initial production.

Therefore, to develop the full costs of the product under investigation, the Department amortized the expenses identified with start-up over a reasonable period. For the CMT, the Department used the anticipated market-life of the product under investigation, which it has determined to be three years.

*Toshiba Comment 6:* Toshiba argues that under its methodology, it allocated interest expenses to the sales of all products manufactured by the company and, therefore, the Department should use the negative "financial expenses" reflected in its submission.

*DOC Position:* The Department analyzed Toshiba's theoretical methodology for calculating the "interest expense" included in its submission. This theoretical construct attributed all short-and long-term debt to the accounts receivable outstanding. Toshiba then off-set the interest payable on the balance of such debt with the total interest receivable of the company. The Department did not accept this methodology because the assumptions made for this construct did not reflect the fungibility of the debt funds, account for the financing of all other assets, nor did it recognize the complexities of a corporation's permanent capital structure. Therefore, the Department allocated the interest expense on the basis of cost-of-goods of the consolidated financial statements.

*Toshiba Comment 7:* Toshiba argues that in the preliminary determination the Department's calculation of SG&A was incorrect since the method of deriving the G&A expenses from the total SG&A expenses reflected on the financial statements was not sound. Additionally, certain expenses, such as R&D, were double counted.

*DOC Position:* For the preliminary determination the Department used the respondent's submission as the basis for the calculation. The information had not been verified. An analysis of the submission revealed that the reported SG&A expenses were substantially below the company's average. The Department, therefore, adjusted these expenses on the basis of the most reasonable information available. For the final determination the Department used the G&A expenses as submitted by the respondent and verified by the Department.

*Toshiba Comment 8:* Toshiba claims that its costs of producing CMTs can not be compared to those of Hitachi and OKI because of different efficiencies and accounting methodologies.

*DOC Position:* The Department used the actual verified costs incurred by

each company to determine its constructed value. However, the Department notes that while there may be differences in efficiencies and accounting methodologies among companies producing the same product, there would still be a range of reasonable costs to produce the same product.

**Toshiba Comment 9:** Toshiba contends that, contrary to the petitioner's allegations, cost of accessories, all material costs, amortization of equipment and all R&D costs were included in the constructed value of the company's submission.

**DOC Position:** The Department verified Toshiba's constructed value data and concluded the above items were included as part of the costs reported in the submission.

**Hitachi Comment 1:** Hitachi contends that the Department erred in ignoring the date that Hitachi entered into a requirements contract with customer "A" and instead used the dates of purchase orders issued pursuant to that contract as the appropriate dates for determining United States price.

**DOC Position:** We have carefully examined the terms of Hitachi's requirements contract and have determined that the date was executed should be used as the appropriate date of sale for purposes of determining when a U.S. sale was made. This decision is based on three factors. First, the requirements contract was a binding agreement as of the date it was entered into (see, e.g., 1 Williston on Contracts, Third Edition, section 104A (1957); 67 Am Jur 2d, Sales and 138 (1973); 77 C.J.S., Sales and 20(b) (1952)). Second, by the terms of the contract, the price of the CMT was agreed to irrevocably. Third, while the number of CMTs to be sold was not precisely set at the date the contract was executed, the quantity was established at that time in the sense that the customer agreed to purchase all of the CMTs that it may "require" for a specified period of time. Thus, there is nothing more that the parties to the contract needed to agree to. The actual quantity purchased was to be determined by factors outside their control, such as market forces (See, *Voss International Corp. v. United States*, 628 F. 2d 1328 (CCPA, 1980)).

Since the requirements contract was entered into prior to our period of investigation, we have excluded all shipments that were made pursuant to this agreement from our calculation of United States price.

**Hitachi Comment 2:** Hitachi argues that circumstance of sale adjustments under 19 CFR 353.15 are improper when

value is based on constructed value and in the absence of home market sales or third country sales of such or similar merchandise.

**DOC Position:** We disagree. (See DOC Position to Petitioner's General Comment 2.)

**Hitachi Comment 3:** Assuming circumstance of sale adjustments will be made, Hitachi argues that there should be no warranty expense attributable to sales of CMTs in the U.S. because none of the units sold during the period of investigation have incurred actual warranty expenses.

**DOC Position:** In view of our position with respect to the sales under the requirements contract, the issue of warranty expenses is moot. Regarding sales to two other customers, warranty liability was limited to defects at time of delivery and no claims were made. For other customers, the one year warranty expense was estimated based upon warranty expenses experienced by Hitachi on CMTs in Calendar year 1984.

**Hitachi Comment 4:** Assuming circumstance of sale adjustments will be made, Hitachi argues that credit adjustments should be calculated on the basis of Japanese interest rates, not U.S. rates, in the situations where Hitachi has so indicated.

**DOC Position:** In view of the DOC position with respect to the sale under the requirements contract, the issue of the proper credit rate on these sales is moot. Regarding two other customers, the credit rate applied is the Japanese rate as indicated by Hitachi. Regarding another customer, the credit rate applied to all shipments is the U.S. rate since credit was extended by Hitachi America Ltd. and payment was received by Hitachi America Ltd. The inter-company credit extension and payments do not represent the actual credit expense of the sale to the corporate entity.

**Hitachi Comment 5:** Hitachi argues that the R&D, the SG&A, and the finance expenses presented in its submission to the Department should be used, not the average of such costs based on the consolidated financial statements:

**DOC Position:** The Department's review of Hitachi's submissions revealed that product-line and general research and development expenses had not been included and that the amounts reflected for the above mentioned costs were significantly below the consolidated corporate averages. Therefore, the Department used the averages of the consolidated corporation as best information available for the preliminary determination.

For the final determination, the Department has included the cost of

general research and development, general and administrative charges incurred by the Hitachi headquarters' operations which are relevant to the CMTs and financial expenses based on the interest expense of the consolidated corporation.

**Hitachi Comment 6:** Hitachi contends that the product-specific research and development expenses reflected in the submission should be used and that the company provided adequate time and personnel to verify these expenses.

**DOC Position:** The Department did not consider Hitachi's product specific research and development to be verified. The methodology used by the company did not provide adequate justification for its basis of allocation nor sufficient documentation for verification.

**Hitachi Comment 7:** The respondent argues that the expenses incurred by Hitachi Ltd. should not be included in the CMT costs because the CMT is manufactured by another corporation, Hitachi Denshi.

**DOC Position:** The Department disagrees. Hitachi Ltd. owns 65% of Hitachi Denshi. Although the production of the CMTs occurs at Hitachi Denshi, some selling, product-specific and general research and development and other overall administrative functions related to the ownership and operations of Hitachi Denshi are performed by Hitachi Ltd. Therefore, the Department has included a proportional share of the relevant expenses; general R&D and general and administrative expenses.

**Matsushita Comment 1:** Matsushita argues that to the extent that CMT subassemblies are subject to this investigation, only "major" subassemblies which when taken together constitute a substantially complete CMT from Japan may properly be encompassed herein.

**DOC Response:** See "Scope of Investigations Issues" section of this notice.

**Matsushita Comment 2:** Matsushita argues that CMI subassemblies from Japan that are dedicated for use in the after-sale repair of complete CMTs ("replacement subassemblies") are not within the scope of this investigation. Matsushita notes that the repair and service of its CMTs is performed by a separate division, MESCO, as well as independent authorized service shops, and that those subassemblies which are being imported by MESCO for replacement purposes are for a previous CMT model, and are physically different from the subassemblies of the new model. Matsushita also argues that replacement subassemblies are not

within the same "class or kind" of merchandise as CMTs.

**DOC Response:** We agree that replacement subassemblies are not within the scope of the investigation. Where an importer such as MESCO can establish to the satisfaction of the Customs officers that CMT subassemblies are being imported for replacement purposes only such "replacement subassemblies" should be excluded from the order.

**Other Respondents Comment 1:** Counsel for respondents who were not required to respond to the antidumping duty questionnaire oppose the Department's method of calculating the estimated dumping margin for "all other manufacturers" in this investigation. The Department included in its weighted-average calculation of the "all other manufacturer" rate those values which have been estimated for certain manufacturers based on the "best available information." First, they argue that section 776(b) of the Act restricts the use of "best available information" to a party which "refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation." Companies in the "all other manufacturer" category do not fall into this category since they were not asked by the Department to complete questionnaire responses. Second, they argue that it is contrary to the statutory intent of the antidumping duty law, which "stresses the need for intelligent approximations" (*Atlantic Sugar, Ltd. v. United States*, 744 F. 2d 1558 (Fed. Cir. 1984)) to use as "best available information" the data contained in the Motorola, petition. The preliminary margins for the four responding companies which responded to the questionnaire showed the petition data to be substantially excessive.

**DOC Response:** In accordance with § 353.38(a) of the Commerce Regulations, the Department requested questionnaire responses from the six Japanese producers who accounted for at least 60 percent of the dollar volume of exports of CMTs to the United States from Japan. Although Fujitsu Limited, Japan Radio Company, and Kokusai Electric Company were not served with questionnaires, none of the companies was prevented by the Department from submitting voluntary questionnaire responses. It has consistently been the practice of the Department that in an affirmative determination, producers/exporters for whom a separate weighted-average dumping margin has not been calculated will fall into the "all other manufacturers category." The "all

other manufacturer" dumping margin is the weighted-average margin of the companies investigated from whom margins were found to exist.

Although two of the companies investigated chose not to respond or did not file a proper response to the Department's questionnaire, section 776(b) of the Act provides the Department with a basis for making a sales at less than fair value determination through the use of the best information available, in this case petitioner's data. Absent responses by these companies, it is reasonable for the Department to assume that the best information available is an "intelligent approximation" of the respondents' actual dumping margins.

#### Petitioner's Comments

**Petitioner-MELCO Comment 1:** Petitioner argues that since the Department's verification confirmed that MELCO did have home market sales of CMT transceivers to Nippon Telephone and Telegraph (NTT) during the period of investigation, MELCO should not be allowed to "profit" from its repeated questionnaire responses that it shipped only a limited number of "test samples" to NTT during the period.

**DOC Position:** We agree. As noted in the "Foreign Market Value" section of this notice, the Department has determined that MELCO did have a viable home market of such or similar merchandise. This determination was based on the results of the verification of MELCO's questionnaire responses.

Prior to the verification, in its questionnaire responses pertaining to home market sales, MELCO consistently took the position that it had no sales of CMTs in the Japanese home market and that it had only supplied NTT with a small quantity of CMT transceivers for testing purposes. Thus, the Department was not required to determine whether the "sample units" (transceivers) constituted such or similar merchandise to MELCO's U.S. sales within section 771(16) of the Act because, based on the information supplied, the volume of "sample units" sold would not constitute a "viable" home market within the meaning of § 353.4 of the Commerce Regulations since such "sales" were less than five percent of the sales of CMTs to third countries. Accordingly, in its preliminary determination, the Department used MELCO's third country sales of CMTs to establish MELCO's foreign market value.

At the verification, the Department determined that during the period of investigation, MELCO had received three purchase orders for transceivers from an NTT subsidiary, in addition to

the aforementioned test samples. We carefully examined the purchase orders and determined that the date these orders were issued was the appropriate date for determining dates of sale. (See DOC Position to MELCO Comment 2.) Since the volume of the units sold (and subsequently shipped) pursuant to these three purchase orders exceeded five percent of MELCO's third country sales of CMTs during the period of investigation, MELCO has a viable home market.

The Department subsequently determined that the transceivers sold by MELCO in the home market were "such or similar" to the CMTs it sold in the United States within the meaning of section 771(16)(C) of the Act. In making this determination, the Department considered four factors. First, a product expert retained by the Department analyzed the technical specifications of the CMTs sold by MELCO in the United States and third countries as well as the transceiver sold in the home market and determined that although there were differences in the actual basic electronic components used and in the specifications of the CMT sold in the United States and the transceiver sold in the home market, they were like in the purposes for which used and could be reasonably compared. Second, the CMT transceivers comprise approximately 85 percent of the value of a completed CMT. Third, CMT transceivers have no purpose except to function as an integral part of the completed CMT. Fourth, no further processing is required other than the connection of a control unit in order for the CMT transceiver to function as a completed CMT. Since we have determined that the home market CMT is "such or similar" to the U.S. CMT and that there is a viable home market, the statute requires us to use the price of the home market merchandise as the basis for determining foreign market value.

**Petitioner-MELCO Comment 2:** Petitioner argues that based on the traditional NTT business practices in Japan (in which petitioner itself is a participant) MELCO reached an informal sales agreement with NTT for a large quantity of CMTs at an agreed-upon price. They further argue that in the event there is an insufficient number of home market sales to constitute an adequate basis for determining foreign market value, § 353.4 of Commerce Regulations requires that MELCO's offers to sell CMTs to NTT must be considered.

**DOC Position:** The Department has determined that MELCO "sold" CMT transceivers to an NTT subsidiary on the date that the subsidiary issued

purchase orders for these products. (See the DOC Position to MELCO Comment 2.)

*Petitioner-MELCO Comment 3:* In the event that the Department uses MELCO's third country sales as the basis for foreign market value, it should reject MELCO's claims for adjustments for differences in circumstances of sales as without statutory basis and differences in merchandise as improperly quantified.

*DOC Position:* Since we did not use the third country sales, these issues are moot.

*Petitioner-OKI Comment 1:* The petitioner argues that the Department should use the average costs of the CMT for the period of investigation because the quarterly information can not be matched to sales or to completion of the units.

*DOC Position:* The Department used the weighted average costs for the CMTs produced during the period April-November 1984. (See the DOC Position to OKI Comment 6.)

*Petitioner-OKI Comment 2:* The petitioner argues that SG&A expenses should not be allocated to the CMT based on production since during the relevant time period, substantial inventory had built-up and that SG&A expenses are on-going and should be expensed when incurred.

*DOC Position:* The Department agrees and has allocated the G&A of OAI and OAC based on the cost of the sales of the product during the period of investigation and has used the selling expenses of a comparable product in the home market.

*Petitioner-OKI Comment 3:* The petitioner argues that the financing expenses for a new product like a CMT are greater than the average financing expenses because of the substantial amount of R&D and new capital required for equipment.

*DOC Position:* The Department based OKI's financial expenses on the basis of financial expenses offset by financial income, which approximates the percentage of such expenses and income to the costs of goods of the consolidated corporation and which directly or indirectly benefited the production of CMTs. For a discussion on the reasons for this method see DOC Position to Toshiba Comment 3.

*Petitioner-OKI Comment 4:* Petitioner alleges that OKI's R&D is grossly understated because it does not include pre-investigatory period R&D.

*DOC Position:* The Department has capitalized and amortized all R&D costs associated with the CMT over the life of the CMT. (See DOC Position to OKI Comment 11.)

*Petitioner-OKI Comment 5:* The petitioner argues that the SG&A of the product selected by OKI as being in the same general class or kind of merchandise as the CMT does not reflect a rate which approximates the corporate average, and should not be used.

*DOC Position:* The Department has determined that the product selected by OKI is in the same general class or kind of merchandise as CMTs and has used the selling expenses of this product for determining constructed value.

*Petitioner-OKI Comment 6:* The petitioner strongly opposes OKI's arguments that R&D should be amortized over ten years and argues that the product currently on the market, after two years, is being replaced by a new model.

*DOC Position:* The Department amortized product specific R&D costs over 3 years and cellular technology costs over 6 years. (See DOC Position to OKI Comment 11.)

*Petitioner-OKI Comment 7:* Petitioner contends that OKI's argument that certain bond-related financing costs be amortized rather than expensed on the grounds they are extraordinary is unsupported since the financing costs for the CMT are higher than the average financing costs for the corporation.

*DOC Position:* The Department amortized these extraordinary charges over the remaining life of the bond and used the interest expense as a percentage of the cost of goods.

*Petitioner-OKI Comment 8:* Petitioner alleges that favorable exchange gains are not related to the CMT and should not be included.

*DOC Position:* See DOC Position to OKI Comment 13.

*Petitioner-OKI Comment 9:* Petitioner alleges that OKI's claimed downward adjustment to material costs for parts assigned to the cellular business unit but used by some other unit was unsubstantiated and unverified.

*DOC Position:* The Department did not accept this adjustment. (See DOC Position to OKI Comment 16.)

*Petitioner-OKI Comment 10:* Petitioner argues that if a "positive" (i.e. cost-lowering) variance occurred in the production of CMTs, this should be accounted for by the accounting system.

*DOC Position:* The Department agrees. (See DOC Position to OKI Comment 17.)

*Petitioner-OKI Comment 11:* Petitioner alleges that the Department should reject OKI's claim that the transfer prices of parts obtained from related-party suppliers should be reduced by the average profit margin of the corporation manufacturing such parts.

*DOC Position:* The Department used the actual verified costs for two to the major components and did not accept the profit adjustment for the transfer prices of the other components. (See DOC Position to OKI Comment 18.)

*Petitioner-OKI Comment 12:* If the Department continues to apply "circumstance of sale" adjustments to constructed value, it does not follow that an ESP offset should automatically be applied in constructed value calculations whenever there are deductions from the U.S. price for U.S. selling expense, such as is the case with OKI. The deductions from the U.S. sales price of OKI's CMTs for ocean transportation, duties, selling expenses in U.S. and other costs incurred after the product leaves the factory merely brings the U.S. price to a par with constructed value, i.e. the ex-factory return on U.S. sale. If it is lower than the ex-factory cost plus a profit, i.e., constructed value, there is dumping. The reduction of the constructed value ex-factory cost by an "ESP offset" is illogical and totally inappropriate in such circumstances.

*DOC Position:* We disagree. Constructed value includes direct and indirect selling expenses incurred in the home market. Therefore, it is appropriate to deduct direct and capped indirect selling expenses because such expenses have been deducted from ESP. (See DOC Position to OKI Comment 7.)

*Petitioner-NEC Comment 1:* The Department should continue to reject the arguments made by NEC that since its home market CMTs were built to higher reliability and performance specifications than its U.S. model CMT no "such or similar" merchandise comparison between the two was possible. As demonstrated in detail by Motorola, even if the component or specification differences between NEC's home market CMT and its U.S. CMT were as great or as significant as claimed, it would not prevent the Department from making a reasonable comparison as required by section 771(16) of the Act.

*DOC Position:* The Department has determined that NEC's home market CMT solid during the period of investigation is such or similar merchandise to the model sold during the same period in the U.S. Consequently, the foreign market value should be based on NEC's home market sales of CMTs. (See DOC Position to NEC Comment 1.)

*Petitioner-NEC Comment 2:* Since NEC refused to provide the home market sales data requested, the Department should reject NEC's belated claims for adjustments for physical differences in

merchandise with respect to its home market sales. In addition to not having provided the information requested by the Department, the information NEC did provide is sketchy, conclusory and not verifiable.

**DOC Position:** We agree. The Department has not made NEC's requested adjustments for differences in physical characteristics. ("See DOC Position to NEC Comment 2")

**Petitioner-Hitachi Comment 1:** The petitioner alleges that AHitachi's material costs are too low because appropriate amounts for indirect materials and spoilage and waste have not been included. Additionally, certain prices for components received from related suppliers did not reflect a fair market value.

**DOC Position:** During verification the Department reviewed specific charges included in indirect material and overhead and determined that these categories did include indirect materials. The Department reviewed all relevant information on the record pertaining to the "fair value" of parts received from related suppliers. Certain of the transfer prices were adjusted as a result of these considerations.

**Petitioner-Hitachi Comment 2:** The petitioner contends that the methodology used by the respondent, which did not include pre-April material, labor and overhead cost and which did not appropriately adjust for work-in-process, understated the costs.

**DOC Position:** During verification the Department reviewed Hitachi's method of accounting for work-in-process and inventory valuation and has used the material, labor and overhead costs which have been verified, except as noted for the price of materials.

**Petitioner-Hitachi Comment 3:** Petitioner alleges that only direct labor was included in the cost of production and indirect labor charges were not included.

**DOC Position:** The Department reviewed the costs included in the overhead expenses and verified that indirect labor was included in the cost of manufacturing.

**Petitioner-Hitachi Comment 4:** Petitioner alleges that Hitachi's research and development is understated because it did not include general research and development and because the allocation methods related to product-specific research and development were not appropriate.

**DOC Position:** The Department agrees that general R&D should be included. The Department did not consider the product specific research and development to be verified, and therefore, use the corporate average and

divided this amount between product-specific and general R&D.

**Petitioner-Hitachi Comment 5:** The petitioner argues that the Department should use the industry-wide general, selling and administrative expenses and not the selling expenses submitted by the respondent which were related to the modem.

**DOC Position:** The Department concluded that the modem is of the same general class or kind of merchandise as the CMT and therefore included general and administrative costs incurred by Hitachi Ltd. and Hitachi Denshi and direct and indirect selling expenses related to the modem for its final determination.

**Petitioner-Hitachi Comment 6:** Petitioner challenges the low financing charges which are reflected in Hitachi's cost of production for CMTs.

**DOC Position:** The Department did not accept the interest expenses reflected by Hitachi in its response for the cost of production. The interest expenses were based on only the interest incurred by the subsidiary and not by the corporation headquarters.

The consolidated financial statements were used to determine the interest expense attributable to CMTs. These statements reflect the borrowings required by the organization for all its activities. Therefore, since a subsidiary may benefit directly or indirectly by borrowing of the corporate group in the form of equity, advances, etc., the Department used a proportional share of the interest expense incurred by the consolidated corporation.

**Petitioner-Hitachi Comment 7:** The requirements contract entered into by Hitachi was not a contract, but was only the equivalent of distributing a price list to customers. Thus, only when a U.S. buyer placed an order for delivery of a specified quantity of CMTs at existing prices and terms, and that order was accepted by the Japanese supplier, did all of the elements of a final sales contract exist.

**DOC Position:** (See DOC Position to Hitachi Comment 1.)

**Petitioner-Toshiba Comment 1:** Petitioner argues that a pro rata share of the total R&D incurred in connection with a product should be included in the cost of manufacturing for each unit.

**DOC Position:** The Department included R&D expenses in accordance with its policies of accounting for such expenses. R&D expenses which are identified with a specific product are considered expenses incurred in order to manufacture a product and therefore are included in fabrication. Therefore, R&D expenses associated with the CMT were allocated to the product under

investigation over a period of time. For CMT specific R&D, the R&D was amortized over three years, the anticipated market-life of the product.

**Petitioner-Toshiba Comment 2:** Petitioner argues that all R&D was not captured because R&D for product improvement was not captured.

**DOC Position:** The Department used the R&D which Toshiba had specifically identified in its company's records for the CMT.

**Petitioner-Toshiba Comment 3:** Petitioner argues that Toshiba's financing expenses should be higher than the corporate average because of the higher investment in R&D and capital assets.

**DOC Position:** The Department calculated Toshiba's interest expenses for CMTs as a percentage of the cost of manufacturing based on Toshiba's consolidated financial statements.

The Department concluded that this methodology was appropriate given the facts and circumstances of the investigation, because

(1) The cost of manufacturing captures a pro rata share of the capital assets investment and the R&D expenses specifically associated with the product, and

(2) The methodology attributes financing expenses equally to all activities of the corporation.

**Petitioner-General Comment 1:** Petitioner argues that in computing constructed value, the Department should follow the example recently set in *Cell Site Transceivers from Japan* (49 FR 43080), and use the 15.64 percent profit figure which was the profit for such equipment for several Japanese firms engaged in the production and sale of communications equipment in Japan. This recent information on Japanese producers' profits for such equipment better meets the statutory standard than the limited-scope profit information presented by individual companies.

**DOC Position:** We disagree. The profit figure that was developed in the investigation of *Cell Site Transceivers from Japan* was used as best available information. In that investigation, the respondent did not provide adequate profit data, nor were we able to verify to our satisfaction a company-specific profit rate.

Moreover, section 773(e), in describing constructed value, refers jointly to general expenses and profit in subparagraph(B). Because we use company-specific general expenses, consistency requires that we also use company-specific profit, when that data can be verified.

We recognize that there is a potential problem where general expenses and profit are based on merchandise in the same general class or kind because responding companies may select a product with favorably low general expenses and/or profit. However, in this investigation we have determined that the products selected are the same general class or kind of merchandise as CMTs and we have verified the profit data. Based on the record of this investigation we have no reason to believe that the profit levels on these products are not representative of the profits that would be earned on home market sales of CMTs, if they existed.

*Petitioner-General Comment 2:*

Although the Department has recently begun to allow "circumstances of sales" adjustments to constructed value, such adjustments are contrary to the antidumping law. Thus, the Department should make no such adjustments for Toshiba, Hitachi, or OKI.

*DOC Position:* Section 773(a)(4)(B) of the Act provides that where it is established that the amount of any difference between the United States price and the foreign market value is due to differences in circumstances of sale, "due allowance shall be made." Section 773(a) of the Act does not distinguish constructed value from any other method of determining foreign market value. Thus, circumstances of sale adjustments are required where constructed value is used as the basis for foreign market value, just as they are required where home market or third country prices are used. See, *Certain Electric Motors from Japan*, 49 FR 32827, 32831 (1984); 48 FR 14719, 14721 (1983).

Circumstances of sale adjustments are necessary in constructed value cases because while general and administrative expense allocations will be the same in any market, selling expense allocations will differ by market. These circumstances of sale adjustments became necessary when the Department began using home market selling expenses instead of U.S. selling expenses in its constructed value calculation.

*Petitioner-General Comment 3:* The Department's use of margins based on the best information available in calculating the weight-average margin for all other producers is not punitive and is a fair basis for calculating a weighted-average margin.

*DOC Position:* We agree. See DOC Position to Other Respondents Comment 1.)

*Suspension of Liquidation.* In accordance with section 733(d)(2) of the Act, we are directing the United States Customs Service to continue to suspend

liquidation of the products covered by this investigation from Japan, with the exception of Toshiba, which are entered or withdrawn from warehouse, for consumption, on or after June 11, 1985. The Customs Service shall require a cash deposit or bond in an amount equal to the weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. In addition, the Custom Service shall require a declaration from importer of CMT subassemblies as to: (1) whether or not imported subassemblies are dedicated exclusively for use in CMTs, and (2) the dollar value. With respect to Toshiba, the suspension of liquidation ordered on or after June 18, 1985, is to be terminated and any cash deposit or bonds are to be released. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/sellers/exporters	Weighted-average margin percentage
OKI	8.22
Hitachi	2.88
Toshiba	0.00
MELCO	87.89
NEC	88.57
Matsushita	108.00
All other manufacturers/producers/exporters	57.81

<sup>1</sup> Excluded.

**ITC Notification**

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry within 45 days after we make our final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to

assess an antidumping duty on CMTs from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,  
Acting Assistant Secretary for Trade Administration.

October 24, 1985.

[FR Doc. 85-25894 Filed 30-30-85; 8:45 am]

BILLING CODE 3970-08-01



APPENDIX B

LIST OF WITNESSES AT THE COMMISSION'S HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : Cellular Mobile Telephones and  
Subassemblies Thereof from Japan

Inv. No. : 731-TA-207 (Final)

Date and time: October 30, 1985 - 10:00 a.m.

Sessions were held in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., in Washington.

IN SUPPORT OF THE IMPOSITION OF  
ANTIDUMPING DUTIES:

Covington & Burling--Counsel  
Washington, D.C.  
on behalf of

Motorola, Inc.

Edward F. Staiano, Senior Vice President, General  
Manager, General Systems Group

Robert Weisshappel, Vice President and Director of  
Cellular Subscriber Products, OPS

Lawrence Mishler, Senior Marketing Manager, Cellular  
Subscriber Products

Richard Haning, Controller, Domestic Radio-Telephone  
Business

David F. Hixson, Associate Staff Counsel

Economic Consulting Services, Inc.

Stanley Nehmer, President

Mark Love, Vice President

Kenneth Button, Chief Economist

Harvey M. Applebaum)  
Timothy A. Harr )--OF COUNSEL  
Paul Gaston )

IN OPPOSITION TO THE IMPOSITION OF  
ANTIDUMPING DUTIES:

\* \* \* \* \*

JOINT PRESENTATION

Quick, Finan & Associates

Dr. Perry Quick

The Partridge Group

George Billings

Baker & McKenzie--Counsel  
Washington, D.C.  
on behalf of

Mitsubishi Electric Corporation

Thomas P. Ondeck )  
B. Thomas Peele ) --OF COUNSEL

Metzer, Shadyac & Schwarz--Counsel  
Washington, D.C.  
on behalf of

Hitachi, Ltd. and Hitachi America Ltd.

Carl W. Schwarz )  
William H. Barrett ) --OF COUNSEL  
Wesley K. Caine )  
Paul J. Pantano, Jr.)

Paul, Weiss, Rifkind, Wharton & Garrison--Counsel  
Washington, D.C.  
on behalf of

NEC Corporation

Robert E. Montgomery, Jr.)  
Larry Zoglin ) --OF COUNSEL

Weil, Gotshal & Manges--Counsel  
New York, N.Y.  
on behalf of

Matusushita Communication Industrial Co., Ltd.,  
Matsushita Communication Company (MCC),  
Divisions of Matsushita Electric Corporation  
of America

A. Paul Victor )  
Jeffrey P. Bialos)--OF COUNSEL  
Charles H. Bayar )

Wilmer, Cutler & Pickering--Counsel  
Washington, D.C.  
on behalf of

OKI Electric Industry Company, Ltd.

Tokihiko Shimomura, Exec. Vice President -  
OKI Telecom.

Mal Gurian, President, CEO - OKI Advanced  
Communications

Wayne Nelson, Vice President, Sales - OKI  
Advanced Communications

John D. Greenwald--OF COUNSEL

\* \* \* \* \*

Heron, Burchette, Ruckert & Rothwell--Counsel  
Washington, D.C.  
on behalf of

Cellular Telecommunications Industry Association

Bob Maher, Executive Director

Robert Galdon, General Manager for Terminal Programs,  
Bell Atlantic Mobile Systems

Kevin Yeager, Manager of Product Sales for NYNEX  
Mobile Communications Company

Joseph A. Vicario, Jr.)  
Thomas A. Rothwell )--OF COUNSEL A-60

Finwick, Davis & West--Counsel  
Washington, D.C.  
on behalf of

Fijitsu America, Incorporated  
and Jijitsu Limited

Donald R. Davis )  
Ronald S. Poelman )--OF COUNSEL  
L. D. O'Neill )

