INTERNAL COMBUSTION ENGINE FORKLIFT TRUCKS FROM JAPAN

Determination of the Commission in Investigation No. 731-TA-377 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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Note.--Information which would reveal the confidential operations of individual concerns may not be published and, therefore, has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. 731-TA-377 (Final)

INTERNAL COMBUSTION ENGINE FORKLIFT TRUCKS
FROM JAPAN

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports from Japan of internal combustion engine forklift trucks with lifting capacity of 2,000 to 15,000 pounds, 2/ provided for in item 692.40 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission also determines, pursuant to section 735(b)(4)(a), that there is not material injury by reason of massive imports of the subject LTFV merchandise from Nissan Motor Co., LTD (Nissan) and Toyo Umpanki Co., LTD over a short period of time to the extent that it is necessary to impose the duty retroactively. 3/

Background

The Commission instituted this investigation effective November 24, 1987, following a preliminary determination by the Department of Commerce that

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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/ Such trucks are operator-riding forklift trucks, powered by gasoline, propane, or diesel fuel, of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. This determination also includes imports of less-than-complete forklift trucks defined as imports which include a frame by itself or a frame assembled with one or more component parts.

3/ Commissioner Eckes dissented with respect to critical circumstances on imports from Nissan.

imports of certain internal combustion engine forklift trucks 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 December 23, 1987 (52 FR 48582). The hearing was held in Washington, DC, on April 13, 1988, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

We determine that an industry in the United States is materially injured by reason of imports of certain internal-combustion ("IC") industrial forklift trucks from Japan that were sold at less than fair value ("LTFV").[1/]

We also make a negative determination as to critical circumstances with respect to the two companies--Nissan Industrial Equipment Co. ("Nissan") and Toyo Umpanki Forklift Trucks ("TCM")--as to which the Department of Commerce made its finding of critical circumstances.[2/]

Like product/domestic industry

In order to assess material injury by reason of unfair imports, the Commission is required to determine the relevant domestic industry. The term "industry" is defined as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that

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1/ For a discussion of whether material injury is by reason of the subject imports, see the "Views," respectively, of Chairman Liebeler, Vice Chairman Brunsdale, Commissioners Eckes, Lodwick and Rohr, and Commissioner Cass, infra.

2/ Commissioner Eckes dissents from the Commission's negative determination of critical circumstances as to Nissan. For a discussion of critical circumstances, see the "Views" of Chairman Liebeler, Vice Chairman Brunsdale and Commissioners Lodwick, Rohr and Cass, and the "Dissenting Views" of Commissioner Eckes, infra.

product . . . ." [3/] "Like product," in turn, is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ." [4/]

In considering the like product question in the context of a Title VII investigation, the Commission examines the characteristics and uses of the articles under investigation, typically including the following factors: (1) physical appearance, (2) end uses, (3) customer perceptions, (4) common manufacturing facilities and employees, (5) production processes, (6) channels of distribution and (7) interchangeability of the product. [5/]

The imported products subject to this final investigation are certain industrial operator-riding internal combustion engine forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds (inclusive) ("standard-lift IC's") from Japan. [6/]

3/ 19 U.S.C. § 1677(4)(A).

4/ 19 U.S.C. § 1677(10).

5/ See, e.g., Color Picture Tubes From Canada, Japan, the Republic of Korea and Singapore, Inv. Nos. 731-TA-367-370 (F), USITC Pub. No. 2046 at 3-4 (Dec. 1987); and Certain Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 & 135 (F), USITC Pub. No. 1514 at 3-6 (April 1984).

6/ The "article subject to an investigation" is defined by the scope of the investigation established by the Department of Commerce ("Commerce"). Commerce has defined the scope of this investigation to include "certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds which are provided for in the Tariff Schedules of the United States, Annotated (TSUSA) items 692.4025, 692.4030 and 692.4070. . . assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks . . . . The corresponding Harmonized System (HS) numbers are 8427.20.00.0;

(Footnote continued on next page)

In this final investigation, we considered two principal questions relating to the definition of the like product: whether IC forklift trucks with a weight-lift capacity of greater than 15,000 pounds should be included within the definition of the like product; [7/] and, whether trucks powered by other than an internal-combustion engine--in particular, trucks in Class 1 (electric motor rider trucks) and Class 2 (electric motor narrow-aisle trucks) as established by the Industrial Truck Association (the "ITA")--should be included. We also considered whether a domestically produced forklift truck should be defined as one that contains a U.S.-produced frame (as petitioners urged) or a certain minimum level of U.S. value added or domestic content (as respondents proposed) or whether some combination of these two approaches was most appropriate.

IC forklifts with weight-lift capacity of greater than 15,000 pounds

With respect to the first question, we determine not to include forklift trucks with a weight-lift capacity of greater than 15,000 pounds, because the

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8427.90.00.0, and 8431.20.00.0. 'Less than complete' forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts." 52 Fed. Reg. 12552 (April 15, 1988).

7/ In its preliminary determination, the Commission did not include trucks with a weight-lift capacity of less than 2,000 pounds because, as both petitioners and respondents agreed, such trucks have not been manufactured in the United States in at least 20 years. Internal Combustion Engine Fork-Lift Trucks from Japan, Inv. No. 731-TA-377 (P), USITC Pub. No. 1985 at 5 n.10 (June 1987). Information obtained in this final investigation is consistent with that obtained in the preliminary investigation. Therefore, we again exclude from the definition of the like product IC forklift trucks with a weight-lift capacity of less than 2,000 pounds.

end uses and applications of such trucks and the manufacturing processes by which they are produced are different from those of standard-lift IC's. 8/ In general, standard-lift IC's are manufactured on an assembly line and composed of component parts sourced from the automobile and light truck product lines of suppliers. 9/ In contrast, heavier capacity trucks are most often "bay-built" (a process in which a team of workers assembles the product in a circular area rather than on a production line) and use componentry designed for heavy-duty, over-the-road trucks. 10/

Standard-lift IC's also have different applications and end uses from heavier lift-capacity trucks. For example, standard-lift IC's are used in a wide variety of indoor and outdoor applications. Trucks with a lift capacity of greater than 15,000 pounds are more difficult to operate in compact areas and are used most frequently out-of-doors in the steel, timber and stevedoring industries. 11/

8/ We note that neither petitioners nor respondents have argued that IC forklift trucks with a weight-lift capacity of greater than 15,000 pounds should be included within the scope of the like product definition. See, e.g., Petitioners' Pre-Hearing Brief at 5-13; Respondents' Pre-Hearing Brief at 1-7.

9/ See Internal Combustion Engine Fork-Lift Trucks from Japan, Inv. No. 731-TA-377 (P), USITC Pub. No. 1985 at 7 (June 1987).

10/ Id. See also Petitioners' Pre-Hearing Brief at 7. Similarly, the larger trucks use double-reduction (or planetary) drive-axles compared with single-reduction drive axles for standard-lift IC's.

11/ Report of the Commission (Report) at A-9. See also Internal Combustion Engine Fork-Lift Trucks from Japan, Inv. No. 731-TA-377 (P), USITC Pub. No. 1985 at A-10-A-11 (June 1987).

Electric forklifts

With respect to the second like product question, we determine that neither Class 1 nor Class 2 electric forklift trucks should be included in the definition of the like product. 12/ The physical characteristics of Class 1 and Class 2 electric forklifts are distinct from those of IC forklifts. For example, the engine in an IC truck requires a separate fuel, exhaust and cooling system, as well as a separate electrical system to operate the ignition and to recharge the starting battery. 13/

In addition, the frame for a Class 1 electric truck weighs approximately 1,200 pounds and must accommodate a battery weighing 2,000 to 4,000 pounds. 14/ The battery serves as "a significant part of the counterweight system" in such an electric forklift. 15/ On an IC truck, by contrast, the frame weighs approximately 900 pounds and must accommodate an engine and transmission weighing approximately 1,600 pounds. 16/ A full counterweight separate from the engine must be used. 17/

Internal combustion and electric forklifts are not produced on the same

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12/ Respondents do not contest petitioners' proposed exclusion of electric trucks from the definition of the like product. Tr. at 230 (Messrs. Macrory and Litan).

13/ Petitioners' Pre-Hearing Brief at 5 and 6.

14/ Report at A-8. The frame for a Class 2 (narrow-aisle) electric forklift is distinct from both a Class 1 truck and Class 4 or 5 (IC) trucks. Class 2 trucks do not operate using a counterweight system.

15/ Id. at A-3.

16/ Id. at A-8.

17/ Petitioners' Pre-Hearing Brief at 6.

assembly line by any of the major U.S. or Japanese producers. 18/ Production workers assigned to an electric truck assembly line require different skills and undergo separate training from that received by production workers assigned to an IC line. 19/ In addition, the engineering and design concepts for electric trucks are developed separately from those used for IC trucks.

Electric forklift trucks also have end-user applications distinct and separate from those of IC forklift trucks. 20/ Class 1 electric forklift trucks are used primarily in warehouses and in other totally enclosed areas--e.g., in refrigerated areas in food processing or meat packing operations and in public showrooms such as carpet sales stores--where it would

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18/ Report at A-6; see also Tr. at 126-127 (Mr. Neuhauser).

19/ Report at A-8; Tr. at 126-127 (Mr. Neuhauser). See also Petitioners' Post-Hearing Brief at 36 and appendix 11.

20/ See Report at A-4; Petitioners' Pre-Hearing Brief at 7-8 and 12; Tr. at 122 (Mr. Rosenthal) and 230 (Mr. Litan). See also Summary of Trade and Tariff Information: Forklift Trucks and Similar Industrial Vehicles and Parts Thereof, TSUS Item No. 692.40, USITC Pub. No. 841 at 1 (June 1983). Both petitioners and respondents agree that there is a limited interchangeability of use between IC and electric trucks and a low domestic cross-price-elasticity of demand. For example, petitioners noted that one domestic manufacturer of electric trucks observed that less than 10 percent of its customers consider purchasing either an IC truck or an electric truck for the same application. Tr. at 122 (Mr. Rosenthal). See also Petitioners' Pre-Hearing Brief at 8-9 & 12. In addition, petitioners commented that while list prices for electric and IC trucks have moved "more or less in tandem," there has been "markedly deeper" discounting on IC prices. Tr. at 125 (Mr. Neuhauser). Similarly, respondents' economic expert concluded that, based on his research and analysis, Class 1 electric trucks and IC trucks "are not substitutes in an economic sense." Tr. at 230 (Mr. Litan).

be impractical to use IC-powered vehicles. [21/] IC forklift trucks, on the other hand, are used most frequently in outdoor or indoor-outdoor applications. [22/] Further, electric trucks generally are used in lower-volume and lighter-weight applications than are IC trucks, which are better suited for continuous use or uses involving traveling up steep grades or long distances. [23/]

In this investigation, the evidence gathered by the Commission and submitted by the parties suggests that in the three key respects described above--physical characteristics, applications and end uses, and production processes--there are more than "minor differences" between Class 1 and Class 2 electric forklifts, and Class 4 and Class 5 IC forklifts. [24/] Therefore, we have determined not to include electric forklift trucks in the definition of the like product.

Frame approach versus value-added approach to defining "U.S. production"

A final issue concerning the definition of the like product and the domestic industry is whether to adopt a frame-based or a value-added definition of a U.S.-produced forklift truck. The question addressed is which specific truck models are to be considered part of a firm's "domestic

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21/ Petitioners' Pre-Hearing Brief at 7-8.

22/ Report at A-3.

23/ Petitioners' Pre-Hearing Brief at 7-8.

24/ See S. Rep. No. 249, 96th Cong., 1st Sess. at 90-91 (1979). See also Color Television Receivers for the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 and 135 (F), USITC Pub. No. 1514 at 3-6 (May 1984).

production" [25/] and, thus, included in the Commission's data for purposes of examining production and shipments, employment, profits, pricing and other indicia of material injury and causation.

To determine the appropriate production to examine, the Commission must define as part of its like product definition, what constitutes a U.S.-produced IC forklift truck. Put another way, the Commission must decide what component(s) of any given model of IC forklift must be manufactured in the United States, or what the nature and extent of the domestic manufacturing activities related to that model must be, for that model to be considered a U.S.-produced IC forklift.

The Commission has never been called upon to make a like product-domestic industry determination in this manner: that is, to use either a pure value-added approach or a pure component-based (i.e., frame) approach to determine which specific models of a product (in this case, IC forklifts) should be considered "domestically produced." [26/] The effect of applying either the value added approach or the frame-based approach will be to exclude

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25/ See 19 U.S.C. § 1677(4)(A).

26/ Indeed respondents at the Commission hearing admitted that this was a question "of first impression" for the Commission. Tr. at 236 (Mr. Litan). A closely related issue was explored in Certain Radio Paging and Alerting Receiving Devices from Japan, Inv. No. 731-TA-102 (F), USITC Pub. No. 1410 (Aug. 1983). In that investigation, the Commission considered whether a domestic firm's production of two product models "should be considered part of the domestic industry" in light of the fact that both models were assembled abroad and incorporated both U.S.- and foreign-sourced components. Id. "Views of Chairman Alfred Eckes and Commissioner Veronica A. Haggart," at 9-11. The Commission determined that the "level of . . . production-related activity which takes place in the United States with respect to the [two] models is sufficient to include [them] as part of domestic production." Id. at 11.

data relating to certain IC forklifts models not because these models are dissimilar in characteristics and uses to other models, but because they are not "U.S.-produced."

The parties' positions.-- Petitioners make four principal arguments in support of their assertion that the Commission should determine whether a particular model of IC forklift is "U.S.-produced" on the basis of whether the frame is fabricated in the United States: (1) the frame is the "essence of the truck;" [27] (2) design, construction and assembly of frames account for a substantial amount of U.S. producers' costs and investment in plant and equipment; [28] (3) construction and assembly of frames account for a substantial amount of labor employed by U.S. producers; [29] and (4) the frame-based definition would most effectively prevent circumvention of an antidumping duty order.

Respondents assert that the Commission should use a minimum level of U.S. value added or domestic content to define what constitutes a U.S.-produced forklift truck for several reasons: [30] (1) the value-added approach would

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27/ See Post-Hearing Brief Petitioners' at 3; Tr. at 18-21 (Mr. Neuhauser).

28/ Tr. at 20 and 139 (Mr. Neuhauser).

29/ Petitioners' Post-Hearing Brief at 37 & 44. C.f. Respondents' Post-Hearing Economic Analysis of Injury Allegations at 5.

30/ Respondents' Pre-Hearing Brief at 9-14; Respondents' Pre-Hearing Economic Analysis of Injury Allegations at 12-13; Respondents' Post-Hearing Brief, Appendix A at A-2.
We note that respondents did not challenge petitioners' frame-based definition in the preliminary phase of the Commission's investigation.

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capture more fully than the frame approach all U.S.-related forklift truck production activity; (2) the value added approach is simple to use; (3) value added has been used by the Commission in Title VII cases on several occasions in the past; and (4) value added is a defining factor for determining country-of-origin in a number of trade statutes. 31/

Respondents note and petitioners concede, that the frame accounts for only 10 to 15 percent of the cost of a forklift truck. 32/ Thus, respondents argue that the frame approach to classification may ignore as much

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See, e.g., Postconference Statement of Certain Respondents, Inv. No. 731-TA-377 (P) (May 18, 1987) at 1-6; Postconference Statement on Behalf of Toyota Motor Corporation and Toyota Motor Sales, USA, Inc., Inv. No. 731-TA-377 (P) (May 18, 1987). Nor did respondents challenge that definition (as it applied to the imported product) during the proceedings before Commerce. Tr. at 156 (Mr. Rosenthal) & 228 (Mr. Macrory).

Rather, the respondents in this investigation raised their challenge for the first time during Commission Investigation TA-603-10. See Pre-Hearing Brief of Certain Respondents, Inv. 731-TA-377 (F) at 9. See also Tr. at 228 (Mr. Macrory). The scope of the section 603 investigation was to determine whether certain U.S. producers were "representative of an industry" within the meaning of section 201 of the Trade Act of 1974. Respondents asserted that it would be appropriate to use a value-added definition of U.S. production in making that determination.

31/ Respondents refer to the Generalized System of Preferences ("GSP") and the Caribbean Basin Initiative ("CBI") provisions of U.S. law and the U.S.-Israel Free Trade Agreement ("FTA"). Respondents' Post-Hearing Brief, Appendix A at A-1-A-2. See also Respondents' Pre-Hearing Brief at 11. Respondents are correct in their description of the GSP and CBI provisions and the U.S.-Israel FTA, but in each of those instances, the minimum threshold was established to make available certain beneficial treatment to many different products imported from the relevant country(ies). The purpose of the value-added threshold applied in those instances is quite different from the proposed use of such a threshold in this instance.

32/ Id. See also Tr. at 138 (Mr. Rosenthal) & 183 (Mr. Litan).

as 90 percent of the U.S. labor and materials that are added to IC forklifts with imported frames. [33/] However, petitioners assert and respondents apparently do not dispute that no U.S. producer currently manufactures a truck with a U.S. frame and less than 35 percent U.S. value added. [34/]

The Commission's approach in this investigation.-- The Commission has used U.S. value added or domestic content as a factor in evaluating a number of issues in connection with earlier Title VII investigations. Those issues include: (1) whether a domestic producer should be considered a member of the "domestic industry" within the meaning of section 771(4)(A) of the Tariff Act of 1930, 19 U.S.C. § 1677(4)(A); [35/] (2) whether data relating to a domestic producer should be excluded under the "related party" provision of the statute, section 771(4)(B) of the 1930 Act, 19 U.S.C. § 1677(4)(B); [36/] and

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33/ Tr. at 183 (Mr. Litan).

34/ Petitioners' Post-Hearing Brief at 4; Tr. at 113 (Mr. Neuhauser) & 243 (Mr. Litan). See also Report at A-9 n. 2.

35/ See, e.g., Erasable Programmable Read Only Memories (EPROM's) from Japan, Inv. No. 731-TA-288 (F), USITC Pub. No. 1927 (Dec. 1986); 64K Dynamic Random Access Memory Components (64K DRAM's) from Japan, Inv. No. 731-TA-270 (F), USITC Pub. No. 1862 at 12-13 (June 1986); 64K DRAM's from Japan, Inv. No. 731-TA-270 (P), USITC Pub. No. 1735 at 5-6 (Aug. 1985); Low-Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-247 (F), USITC Pub. No. 1790 at 4 n. 6 (Jan. 1986); Cellular Mobile Telephones and Subassemblies Thereof from Japan, Inv. No. 731-TA-207 (F), USITC Pub. No. 1786 at 8-9 (Dec. 1985); Color Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 & 135 (F), USITC Pub. No. 1514 (May 1984).

36/ See, e.g., Certain Copier Toner from Japan, Inv. No. 731-TA-373 (P), USITC Pub. No. 1960 at 9 n. 22 (Mar. 1987); Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan, Inv. Nos. 701-TA-267 - 268 & 731-TA-304 - 305, USITC Pub. No. 1936 (Jan. 1987).

(3) whether certain domestic producers that perform finishing operations to a product should be considered members of the domestic industry. 37/

The Commission has considered value added, among other practical indicia of U.S. production, in determining whether a particular domestic producer performed sufficient production-related activity in the United States to be considered a member of the domestic industry under section 771(4)(A) of the 1930 Act. In specific, the Commission has examined U.S. value added along with such factors as (1) the extent and source of a firm's capital investment, (2) the technical expertise involved in U.S. production activity, (3) research and development of all aspects of the product's technology, (4) the sophistication of the technology employed in the United States, (5) the amount of U.S. employment and (6) whether production involves actual fabrication or merely assembly. 38/

37/ See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-376 (P), USITC Pub. No. 1978 (May 1987); Butt-Weld Pipe Fittings from Brazil and Taiwan, Inv. Nos. 731-308 & 310 (F), USITC Pub. No. 1918 (Dec. 1986); Low-Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-247 (F), USITC Pub. No. 1790; Low-Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (F), USITC Pub. No. 1779 (Nov. 1985).

38/ See, e.g., EPROM's from Japan, Inv. No. 731-TA-288 (F), USITC Pub. No. 1927 (Dec. 1986); Low-Fuming Brazing Copper Wire and Rod from South Africa, Inv. No. 731-TA-247 (F), USITC Pub. No. 1790 at 4, n. 6 (Jan. 1986); Cellular Mobile Telephones and Subassemblies Thereof from Japan, Inv. No. 731-TA-207 (F), USITC Pub. No. 1786 at 8-9 (Dec. 1985); Color Television Receivers from the Republic of Korea and Taiwan, Inv. No. 731-TA-134 & 135 (F), USITC Pub. No. 1514 at 7-8 (May 1984); 64K DRAM's from Japan, Inv. No. 731-TA-270 (F), USITC Pub. No. 1862 at 12-13 (June 1986). See also 64K DRAM's from Japan (P), USITC Pub. No. 1735 at 5-6 (Aug. 1985); Cellular Mobile Telephones, Inv. No. 731-TA-207 (F), USITC Pub. No. 1786 at 9 (Dec. 1985); Certain Radio Paging and Alerting

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The Commission has emphasized that no single factor--including value added--is determinative and that value added information becomes more meaningful when other production activity indicia are taken into account. 39/ As we have noted, the specific like product-domestic industry issue presented in the current investigation differs from those considered by the Commission in the past.

There is a threshold problem with applying a value-added approach--whether alone or in conjunction with the frame-based approach--in the manner suggested by respondents. Value-added calculations necessarily involve the allocation of both U.S. and foreign costs. As the Commission has noted, performing such calculations is a difficult process in any context and one that can result in the derivation of less reliable data. 40/ Moreover, if such an approach were to be adopted, steps would have to be taken to ensure that cost computations (e.g., for the purpose of selecting product models to be used for price comparisons) are done in a manner that is consistent with the definition of value added selected by the Commission.

Thus, the Commission has decided to adopt the frame approach: i.e., to define domestic production of the like product as an IC forklift with a

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Receiving Devices from Japan, Inv. No. 732-TA-102 (F), USITC Pub. No. 1410 at 10 (Aug. 1983).

39/ See, e.g., Color Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 & 135 (F), USITC Pub. No. 1514 at 7-8 (May 1984).

40/ See, e.g., Color Television Receivers from the Republic of Korea and
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U.S.-produced frame. The frame approach most fully incorporates consideration of such practical indicia of U.S. production activity as the level of research and development expenses (including design and engineering expenses), capital investment in plant and equipment, and labor activity related to the production of standard-lift IC's. 41/

For example, frame design accounts for a significant share of both total engineering R & D expense and labor costs related to production of forklift trucks and designing the frame requires technical sophistication. 42/ Moreover, frame fabrication accounts for as much as 80 to 90 percent of the investment in plant and equipment used in connection with a forklift truck assembly line and requires the use of a wide array of manufacturing and machining equipment. 43/

In addition, we found that no standard-lift IC with a U.S.-produced frame contains less than 35 percent U.S. value added, the minimum threshold proposed by respondents for their pure value-added approach. Indeed, several of the

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Taiwan, Inv. Nos. 731-TA-134 & 135 (F), USITC Pub. No. 1514 (May 1984); 64K DRAM's from Japan, Inv. No. 731-TA-270 (P), USITC Pub. No. 1735 (Aug. 1985).

41/ Tr. at 19-21 (Mr. Neuhauser).

42/ Petitioners' Post-Hearing Brief at 37; Tr. at 19-21 & 140 (Mr. Neuhauser.) See also Industrial Fork-Lift Trucks, Inv. No. TA-603-10, Hearing Tr. at 45-47.

43/ Tr. at 20 & 139 (Mr. Neuhauser).

largest U.S. producers reported that the share of U.S. value added [44/] for standard-lift IC's with a U.S.-produced frame was significantly greater than 50 percent. [45/] Thus, apart from providing information on the indicia noted above, the frame approach also ensures that a significant portion of the total manufacturing operations on any single truck are performed in the United States.

Due to the globalized nature of production in the standard-lift IC forklift industry, neither the frame approach nor the value-added approach is likely to provide a perfect description of U.S. production. However, in light of the factors discussed above, the frame approach in this investigation provides the better picture.

Based upon the above analysis, we determine for purposes of this final investigation, that there is a single like product--industrial, operator-riding internal combustion engine forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds (inclusive), with a U.S.-produced frame--that is "like" the imported product. We also conclude that there is one domestic industry consisting of the U.S. producers of this like product.

Related parties

Under the statute, the Commission may in appropriate circumstances exclude from the domestic industry any U.S. producers that are also "related to the exporters or importers, or are themselves importers of the

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44/ U.S. value added by firm was calculated on a net sales less cost of imported materials basis.

45/ Report at B-44, table C-4.

allegedly . . . dumped merchandise." 46/

There are currently eight U.S. producers of operator-riding internal combustion, industrial forklift trucks with weight-lift capacity of between 2,000 and 15,000 pounds. 47/ In this investigation, three of those companies--A.C. Materials Handling Corp. ("ACMH"), Taylor Machine Works ("Taylor") and Yale Materials Handling Corp. ("Yale")--also either import such trucks from Japan or are related to Japanese exporters or importers of the trucks. 48/

The Commission must determine whether "appropriate circumstances" exist to exclude from the domestic industry any of these three related producers. The central question is whether a related party is primarily in the position of a domestic producer or an importer. 49/ In reaching this determination,

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46/ See 19 U.S.C. § 1677(4)(B). Section 1677(4)(B) provides in relevant part:

> When 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 applied in appropriate circumstances by excluding such producers from those included in that industry.

See also S. Rep. No. 249, 96th Cong., 1st Sess. at 83 (1979).

47/ Report at A-9. Those companies are: Hyster Co. (petitioner); Clark Equipment Co.; Caterpillar Industrial, Co.; AC Materials Handling Corp.; Taylor Machine Works, Inc.; Yale Materials Handling Corp.; White Lift Truck and Parts Mfg., Co.; and Komatsu Forklift (U.S.A.) Inc.

48/ Report at A-9 & A-48. Three other U.S. producers--Caterpillar, Clark and Hyster--import the product from countries other than Japan and are, therefore, not relevant to the related parties discussion. See 19 U.S.C. § 1677(4)(B).

49/ See Empire Plow Co. Inc. v. United States, 675 F. Supp. 1348 (C.I.T. 1987). See also Butt-Weld Pipe Fittings from Brazil and Taiwan, Inv.

(Footnote continued on next page)

the Commission considered, among other factors, the amount of the U.S. producer's domestic output relative to the amount imported by the U.S. producer and the relationship between the products manufactured in the United States and those produced abroad. 50/

We note at the outset that exclusion from the domestic industry of any of the related parties in this investigation would not change in any significant respect any of the levels or trends in the data. 51/ With respect to ACMH and Taylor, there was no indication -- based on information received by the Commission -- that either company's status as an importer caused it to conduct its U.S. standard-lift IC operations in a manner different from other U.S.

(Footnote continued from previous page)
Nos. 731-TA-308-310 (F), USITC Pub. No. 1918 (Dec. 1986); Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. No. 1798 at 10-13 (Jan. 1986). In previous investigations, the Commission has focused upon the following factors among others in determining whether "appropriate circumstances" exist to exclude a related party: (1) the percentage of domestic production attributable to the related producers; (2) whether related producers chose to import the product under investigation in order to benefit from the unfair trade practice or in order simply to be able to compete in the domestic market; and (3) the competitive position of the related domestic producer vis-a-vis other domestic producers. Id. at 11.

50/ See Rock Salt from Canada, at 10-13.

51/ Report at A-17. The Commission has on occasion not made a finding on a related parties question where exclusion of one or more parties would not have affected its injury determination. See, e.g., Truck Trailer Axle-and-Brake Assemblies and Parts Thereof From Hungary, Inv. No. 731-TA-38 (P), USITC Pub. No. 1135 (March 1981); Iron Bars from Brazil, Inv. No. 701-TA-208 (P), USITC Pub. No. 1472 (Dec. 1983); Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 & 109 (P), USITC Pub. No. 1310 (Nov. 1982).

producers. 52/ Therefore, the Commission has determined not to exclude data from those two firms on the basis of the related parties provision.

In the case of Yale, the third related party, we note that for the period of the investigation Yale sold a substantially greater volume of imports than of domestically produced trucks. 53/ However, we find an insufficient basis in this record to conclude that Yale's status as an importer caused it to conduct its U.S. standard-lift IC operations in a different manner from other U.S. producers. Therefore, we conclude with respect also to Yale that the circumstances are not appropriate to exclude its data from the domestic industry.

Condition of the domestic industry

In determining the condition of the domestic industry, the Commission considers, among other factors: production, capacity, capacity utilization, shipments, inventories, employment and profitability. 54/ In each investigation the Commission must consider the particular nature of the relevant industry in making its determination. In this final investigation most of the data gathered by the Commission is confidential and can only be discussed in general terms.

52/ See Candles from the People's Republic of China, Inv. No. 731-TA-282 (F), USITC Pub. 1888 at 11 (1986).

53/ In this investigation, the Commission was able to obtain segregated data relating exclusively to production of standard-lift IC's with U.S.-produced frames. That segregated data has served as the basis for the Commission's discussion.

54/ 19 U.S.C. § 1677(7)(C)(iii).

The period of the Commission's investigation covers the years 1985 through 1987. The data collected and analyzed in the investigation show that most of the principal economic indicators for the domestic standard-lift IC industry deteriorated over the period of the investigation.

U.S. apparent consumption increased throughout the period, growing 2.5 percent (from 43,293 units to 44,376 units) from 1985 to 1986, then rising an additional 4.0 percent (to 46,152 units) between 1986 and 1987. [55/] Despite the overall increase in U.S. apparent consumption for the period, domestic production and shipments (in both unit terms and measured by value) of standard-lift IC forklifts fell slightly from 1985 to 1986, then dropped sharply in 1987. [56/]

Capacity to produce standard-lift IC's also fell from 1985 to 1986, then remained level in 1987. Capacity utilization increased from 47.9 percent in 1985 to 55.6 percent in 1986, then fell to 47.3 percent in 1987, reflecting the sharp drop in domestic production. [57/]

U.S. producers' year-end inventories declined both in unit terms and as a percentage of total shipments from 1985 to 1986. Between 1986 and 1987 inventories increased in both unit terms and as a share of total shipments. [58/]

Employment trends reflected the domestic industry's deteriorating economic condition. The average number of production and related workers

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55/ Internal Combustion Engine Forklift Trucks from Japan, Inv. No. 731-TA-377 (F), USITC Pub. No. 2082 (May 1988).

56/ Report at A-16, table 2, A-19, table 3 and A-20, table 4.

57/ Report at A-19, table 3.

58/ Report at A-24, table 8.

engaged in the production of standard-lift IC forklifts fell by 19 percent from 1985 to 1986, and fell again--but more sharply--in 1987. 59/

Hours worked by and total compensation paid to production and related workers followed the same trend as employment. Hours worked decreased over 19 percent between 1985 and 1986, and dropped even more in 1987. 60/ Total wages paid fell 21.8 percent between 1985 and 1986, and an additional 19.5 percent from 1986 to 1987.

Labor productivity rose strongly throughout the period, increasing 24.7 percent between 1985 and 1986, and rising an additional 15.8 percent in 1987, as employment decreased even more sharply than production during the period. Reflecting the strong increases in productivity, unit labor costs fell throughout the period of investigation, although hourly wages paid and hourly total compensation increased. 61/

Financial information gathered by the Commission indicates that the domestic industry producing standard-lift IC forklifts is in poor condition. Net sales of standard lift IC's fell throughout the period and U.S. producers reported increasing operating losses from 1985 to 1987. 62/

In this case, almost all of the principal indicators of the economic condition of the domestic industry deteriorated substantially during the period of the investigation. Therefore, we find that the domestic industry

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59/ Report at A-25, table 9.

60/ Id.

61/ Id.

62/ Report at A-33, table 14.

producing standard-lift IC's is suffering material injury. 63/

63/ Chairman Liebeler and Commissioner Cass believe that the description of the domestic industry is accurate and relevant to their decision on the existence of material of injury by reason of LTFV imports. They do not, however, believe a separate conclusion respecting the condition of the domestic industry is required. For reasons set forth below, they determine that the domestic industry has been materially injured by reason of the subject imports.

VIEWS OF COMMISSIONERS ALFRED E. ECKES, SEELEY G. LODWICK AND DAVID B. ROHR ON CAUSATION

In making final determinations in antidumping cases, the Commission must determine whether material injury being suffered by the domestic industry is "by reason of" the imports under investigation. 1/ The statute directs the Commission to consider, among other factors (1) the volume of imports of the merchandise that is the subject of the investigation (2) the effect of imports of that merchandise on prices in the United States for the like product, and (3) the impact of such imports on domestic producers of the like product. 2/

The volume of imports from Japan of standard-lift IC's increased in both value and unit terms, albeit modestly, during each year of the period of investigation. 3/ By unit, imports grew from 21,404 in 1985, to 22,716 in 1986, and 22,774 in 1987, an increase of six percent overall. Similarly, the unit value of imports from Japan of the subject forklifts increased 17 percent (from $8,757 to $10,209 per unit) between 1985 and 1986, growing an additional 3.5 percent (to $10,569) in 1987. 4/

The market share of imports from Japan of standard-lift IC's was clearly significant throughout and even increased slightly during the period of

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1/ 19 U.S.C. § 1671d(b) & 1673d(b).

2/ 19 U.S.C. § 1677(7)(B).

3/ Report at A-43-A-45 and table 23.

4/ Report at A-44-A-45, table 23.

investigation. Imports from Japan of the subject forklift trucks accounted for approximately one-half of U.S. apparent consumption during each year of the period of investigation. 5/ In specific, imports from Japan accounted for 51.3 percent of U.S. apparent consumption in 1985, dropping to 49.6 percent in 1986, then rising to 51.4 percent in 1987. 6/

In addition to significant levels of import volume and market penetration, the record reveals a consistent pattern of price undercutting by standard-lift IC's from Japan. 7/ The purchaser price data obtained by the Commission provided 20 price comparisons involving U.S.-produced IC forklifts rejected in favor of Japanese trucks. In 18 of the price comparisons, the price of the purchased Japanese truck was lower than the price of the rejected U.S. truck, with margins of undercutting ranging from 0.3 to 21.8 percent. 8/ In considering this data, we focused on information relating to IC forklifts with a 4,000 to 6,000 pound weight-lift capacity, where, according to the parties, competition between imported and domestic products was the most vigorous.

5/ Internal Combustion Engine Forklift Trucks from Japan, Inv. No. 731-TA-377 (F), USITC Pub. No. 2082 (May 1988) at A-48, table 25.

6/ Internal Combustion Engine Forklift Trucks from Japan, Inv. No. 731-TA-377 (F), USITC Pub. No. 2082 (May 1988) at A-48, table 25.

7/ Report at A-56-A-64. To collect accurate and meaningful price comparison data, the Commission requested (1) the largest national account customers (end users) of producers and importers to provide detailed price and product feature information about their recent forklift purchases and (2) dealers in five major market areas to provide sales prices to their end users.

8/ Id. at A-62 and tables 27 & 28.

In addition, 10 of the price comparisons involved IC forklifts of a comparable engine size range. Nine of those 10 comparisons revealed undercutting by the supplier of the Japanese truck, with margins ranging from 5.9 to 19.8 percent. 9/ Moreover, even in three of the five price comparisons provided in which the U.S.-produced truck was purchased, prices for the rejected Japanese truck were lower than prices for domestic trucks. 10/ Most purchasers gave as their reason for buying one IC forklift rather than another: price alone; price together with another quality (delivery or performance); or plant preference for a particular brand of truck. 11/

Information on unit value prices for U.S-produced standard-lift IC's (according to weight-lift capacity) is mixed, but suggests that the presence of the Japanese imports may have significantly suppressed prices for the U.S.-produced forklifts. Net unit values for four of the five U.S.-produced models declined by 1 to 15 percent. Net unit values for the remaining

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9/ Id. at A-62 and tables 27 & 28.

10/ Report at A-62 and table 28. The Commission obtained price comparison data on Japanese imports rejected in favor of U.S. producers' non-Japanese imports. In 11 of 17 price comparisons, the Japanese trucks undersold the U.S. producer imports. Margins of undercutting for this set of comparisons ranged from 3.5 to 21.5 percent. Report at A-63 and table 29. The Commission has not relied in its material injury or causation analysis on evidence that Japanese imports have undersold U.S.-producer imports. We note, however, that respondents repeatedly asserted that U.S.-producer imports were the price leaders in the U.S. market and were undercutting both U.S.-produced IC forklifts and imported Japanese trucks. Price comparison information obtained by the Commission does not show this to be the case.

11/ Id. at A-62 and tables 27 & 28.

model--the 5,000-pound cushion-tire truck--were generally level throughout the period. Net unit values for the Japanese trucks, while on the whole rising throughout the period, were still generally below prices for U.S.-produced standard-lift IC's. 12/

Finally, for the period of the investigation, the Commission was able to confirm lost sales valued collectively at more than one million dollars. 13/ A variety of reasons--including, lower price, greater reliability, availability of local service and product life cycle costs--were given by purchasers for selecting a Japanese rather than a U.S.-produced truck. 14/

Together, the significant number of confirmed instances of price undercutting of the U.S. product by the Japanese imports, the continuing and increasing operating losses of the domestic industry and the fact that domestic producer net unit value prices for the period of investigation either fell or remained level suggest that price suppression was occurring. Moreover, domestic producer prices were declining and operating losses increasing at a time when, as noted, U.S. apparent consumption was increasing.

We conclude that, in view of the significant and increasing volume of IC forklift trucks from Japan and the high import penetration throughout the period of the investigation, together with the pattern of price undercutting

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12/ Report at A-66-A-67.

13/ The Commission did not consider information supplied by two of the purchasers contacted because it was not possible to determine with certainty whether the trucks purchased were in fact Japanese imports.

14/ Report at A-68-A-72.

by those imports that may have contributed to price suppression, the domestic industry has been materially injured by reason of the LTFV imports from Japan of standard-lift IC forklifts.

ADDITIONAL VIEWS OF CHAIRMAN SUSAN LIEBELER
Internal Combustion Engine Forklift Trucks from Japan
Inv. No. 731-TA-377 (Final)
May 31, 1988

Introduction

The Commission has made a unanimous determination that an industry in the United States is materially injured by reason of imports of forklift trucks from Japan that have been sold at less than fair value (LTFV). The Commission has issued a joint opinion discussing the like product and the domestic industry. I provide these additional views on causation. In her Additional Views, Vice Chairman Brunsdale has raised certain issues concerning the definition of the domestic industry and I concur with her discussion.

Having defined the relevant domestic industries, the Commission must then determine whether those industries are experiencing or are threatened with material injury by reason of allegedly LTFV imports.1/ The statute directs the Commission to consider, among other relevant economic factors, sixteen enumerated factors in determining whether LTFV imports caused or threatened material injury to the domestic industry.2/ The factors specified in the statute indicate Congress' intent that the Commission assess the effect of LTFV imports on the economic vitality of the domestic

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1/ Material retardation is not an issue here.
2/ 19 U.S.C. Section 1677(7)(C)(ii),(iii).

industry and also suggest various factual inquiries that should facilitate that assessment.

The statute does not specify the exact way in which these factors are to be organized into a coherent analysis of the effect of LTFV imports on the condition of the domestic industry. Rather, this task is left to the Commission.

Recent Commission Practice

In recent opinions the Commission has separated its analysis of material injury and causation. First, the Commission examines the condition of the domestic industry and decides whether or not it has been materially injured. Then, it employs an approach to causation which focuses on a description of trends during the period of investigation for many of the sixteen factors enumerated in the statute.3/ This type of causation analysis frequently also includes discussion of a margin of underselling (or overselling) derived by comparing prices of the domestic and imported product reported in the Staff Report, and anecdotal evidence on sales lost by the domestic producers to LTFV imports.

I believe there are several problems with the "trend analysis" described in the preceding paragraph. First, a separate analysis of material injury ignores the fact that a thriving, healthy industry

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3/The Commission is not always able to gather information on all sixteen of these factors within the statutory time limit for its investigations. For example the Commission often does not have information on return on investment or ability to raise capital.

could do materially better if the LTFV sales had not taken place. Second, time trends do not distinguish coincidence from causation. Third, margins of underselling or overselling, while they may provide useful information about product substitutability, are frequently misused by the Commission. Fourth, largely anecdotal information on lost sales is far less informative than the relative market shares held by the domestic industry and by firms selling LTFV imports. I discuss these concerns below.

Separate analysis of injury and causation

The Commission discussion of the condition of the industry focuses on the overall financial health of the industry. If, as did three Commissioners in the recent Digital Readout Systems investigation,4/ the Commission finds rising performance trends indicating that the domestic industry is financially healthy, it will find that the domestic industry is not suffering or threatened with material injury and reach a negative determination. No attempt is made to assess the effects of the LTFV imports. There is nothing, however, in the antidumping and countervailing duty laws or legislative history to suggest that only ailing industries are entitled to avail themselves of the unfair trade laws.

If, for example, a healthy domestic industry exhibiting rising performance indicators over the period of investigation would have

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4/Digital Readout Systems and Subassemblies Thereof from Japan, USITC Inv. No. 731-TA-390 (Preliminary) USITC Pub. No. 2081 (May 1988) (Dissenting Views of Commissioners Eckes, Lodwick and Rohr).

significantly increased its output, prices, profits and employment in the absence of LTFV imports, then I believe the industry may have been materially injured by reason of the LTFV goods.

Trend Analysis

Time trends do not and cannot supply the required causal link between the state of the domestic industry and LTFV imports. This is because the movement in a trend due to LTFV imports cannot be distinguished from movements due to other influences.5/ The effect of the unfair act on the domestic industry must be isolated from other factors in order to assess whether there is material injury by reason of LTFV imports. Without this separation of effects, we cannot distinguish between cause and coincidence. By failing to separate out the effect of LTFV imports, there is a danger that import relief may be given to a domestic industry with declining performance indicators, even though the decline in these indicators is not due to LTFV imports.6/

Margins of Underselling and Overselling

The Commission has often referred to "margins of underselling" as evidence in deciding whether LTFV imports have caused injury to the

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5/Further, time trends in conjunction with lost sales anecdotes and underselling margins does not provide a causal nexus between the unfair act and the condition of the domestic industry.
6/Conversely, a healthy industry with rising performance indicators may be denied import relief, even though it would have been materially better off in there had been no LTFV imports.

domestic industry. Margins of underselling are generally based on a comparison of prices of domestic and LTFV products in the U.S. market as reported in the Commission Staff Report. Typically, the higher the price of the domestic like product relative to the price of the LTFV import, the greater the injury that is inferred. I believe that the differences in the price of these products provides useful information concerning product homogeneity and their economic substitutability, but practically no information concerning injury caused by dumping.

A difference between the price of the domestic like product and the LTFV import indicates that the products are not identical. Logic tells us that if the products were identical, no one would buy the more expensive product. (Assuming price information is readily available to market participants.) This is not to say that LTFV goods do not suppress the prices and volumes of the domestic product or lower the price of the imported good below what it would have been in the absence of dumping. Rather, it says that none of the information needed to measure such injury is found in the "margin of underselling."

There are many reasons individuals and firms are sometimes willing to pay more for the domestic like product than the unfairly traded import, or vice versa. A partial list of reasons include factors such as physical characteristics, quality differences, reliability, durability, reputation of the seller, service, marketing, warehousing costs, warranty coverage, order turn-around time,

financing and credit terms, rebates, transportation costs, and availability of product information.

Moreover, by focusing on the margin of underselling, the Commission fails to recognize the effects that higher price LTFV imports have on the domestic industry. When the Commission finds, as it did in Table Wines7/, that the LTFV imports sell for more than the domestic like product ("overselling"), the Commission reaches a negative determination. It assumes that higher priced goods cannot cause the material injury.

Lost Sales

The Commission has for some period of time collected information about "lost sales" based on scattered and unsystematically chosen instances in which a particular domestic firm claims to have lost sales to its foreign competitor. The lost sales information is ther relied on as one of the reasons for concluding that the domestic industry has been materially injured by reason of the subject imports. I believe that lost sales information is biased and not useful in assessing whether LTFV imports have caused or threatened material injury to a domestic industry.8/ The lost sales information gathered by the Commission is fundamentally flawed, both as a matter of theory and because it presents practical

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7/Certain Table Wine from the Federal Republic of Germany, France, and Italy, Inv. Nos. 731-TA-283-285 (Preliminary), USITC Pub. 1771 (October 1985).

8/In a memorandum written by its Director, the Commission's office of Economics has characterized the lost sales information now gathered by the Commission as "not just useless but seriously misleading." EC-J-010 (Jan. 3, 1986)

difficulties in application which render conclusions based on it extremely unreliable.

In principle, the method is flawed because the choice of specific instances is not made systematically. There is, consequently, no coherent way to draw valid conclusions about the domestic industry as a whole from this scattering of a very small portion of the total number of sales made in the American market. The sample is, moreover, not only inadequate, but inherently biased. It represents instances selected by the firms seeking relief.

The use of these scattered instances of claimed lost sales is fundamentally defective in a second respect. Even if a particular sale was made by a LTFV seller and not by a domestic firm, this does not establish the casual connection required under the formulation of the material injury issue. It may have been that even if the foreign firm had charged the same price in the American market as it did abroad, it would have made the sale anyway. Or it may have been that even if the foreign firm had been charging the same price in both markets, with the result that its price in the American market were higher, the sale would have been made by an importer of fairly traded goods from a third country. In either of these cases, the domestic firm has suffered no loss of sales by reason of LTFV sales.

Even beyond these fundamental difficulties, the lost sale methodology is flawed by insurmountable practical difficulties. The most important of these is the problem of multiple counting of the same "lost sale" which could result in a volume for lost sales which

exceeds total domestic consumption.9/ It is not possible to say with certainty which American firm would have made particular sales if the foreign firm had not. Several firms may then claim the sales in the honest belief that they would have made them.

In addition to multiple counting, the Commission's lost sales information does not take into account a particular firm's bidding strategy and available capacity. The problem of the capacity of the firm claiming to have lost the sale is a serious one. Assume that two domestic firms, Firm A and Firm B, each have the capacity to sell only 500,000 units per year. Assume that Firm A bids on 20 contracts for 50,000 units each, expecting to win only 50% of the sales, that it wins 10 of these contracts and loses the ten other bids to LTFV goods. The Commission would determine that Firm A had lost sales of 500,000 units to LTFV imports. On the other hand, if Firm B with a different bidding strategy, bids on only 10 contracts and is the successful bidder on each of them, Firm B would have no lost sales under the Commission's approach to lost sales. Yet both firms could only produce and sell 500,000 units each year; they just had different bidding strategies.

If the Commission believes that it is desirable to know if the domestic industry has "lost sales" to LTFV imports, it should look

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9/Let us assume that there are eight domestic firms in the domestic industry and one LTFV importer, and each are bidding for sales to a particular customer. Further assume that each domestic firm and the importing firm offered one hundred widgets for sale and that the customer in question purchased one hundred units from the LTFV importer. Under the Commission's methodology for collecting lost sales data, there would be eight lost sales, totalling eight hundred widgets, even though the total consumption of widgets was one hundred.

at changes during the period of investigation in the relative market shares of the domestic and LTFV industries. Market share data is unbiased and inherently more reliable.

Determining the Effect of the LTFV Imports

I believe it is preferable to combine the analysis of material injury and causation and focus on the effects of the LTFV imports on the domestic industry. This can be done by comparing the state of the domestic industry in the face of LTFV imports with what would have occurred if the LTFV sales had not been made.10/

In general the factors given by the statute and the order in which they are listed in the statute11/ suggest that our inquiry must focus on three areas when we consider the causation of material injury.12/ First, the Commission must examine volumes and prices for

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10/It may well be that a single analytical structure will not be appropriate to all cases. I chose the analytical structure used in these views because it best fits the facts at issue here.

11/ The statute describes the considerations that should guide the Commission's determination on the existence of material injury by reason of unfairly traded imports, directing the Commission to "consider, among other factors --

(i) the volume of imports of the merchandise which is the subject of the investigation,

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

(iii) the impact of imports of such merchandise on domestic producers of like products." 19 U.S.C. Section 1677(B).

12/ The aggregation of the sixteen enumerated factors into three areas does not suggest that three are more important; rather, it is simply a means of organizing the factors to facilitate analysis. At the same time, it must be confessed that the Commission is not always able within the statutory time limits on its investigations

(continued...)

the subject imports in the U.S. market. Second, the Commission must evaluate the manner in which the sale of the subject imports (compared to what would have obtained in the absence of LTFV imports) affects domestic prices and domestic production of the like product. Third, the Commission must explore how LTFV sales have affected the domestic industry and assess the significance of such effects.13/

In each of these inquiries, the Commission must compare the actual state of the domestic industry to the state of the domestic industry absent dumping. If the difference between the two states constitutes material injury, an affirmative decision must be rendered. Restated, the effects of the LTFV imports must be separated from all other factors affecting the domestic industry.14/ Only then can one make a rational assessment of the effects of the LTFV imports on the domestic industry and decide whether the effects are large enough to constitute material injury.

12/(...continued)
to gather information on all of the enumerated factors and, therefore, cannot always rely on the full panoply of considerations specified in the statute. For example, the Commission's reports rarely contain significant information on investment in the domestic industry, return on investment, or ability to raise capital.
13/ Whether the injury to the domestic industry caused by the LTFV imports rises to the level of materiality requisite under Title VII can be addressed as a fourth question. Insofar as that is done, however, the fourth inquiry becomes a process of applying the statutory test for materiality to the information developed in the prior three inquiries; that is, this last inquiry would reach a legal conclusion but would not extend the factual analysis of the other inquiries.
14/This should in no way be construed as weighing the different effects for that is prohibited by the statute. In fact, the opposite occurs: we are removing the other causes from consideration so they do not interfere with the mandate of the law.

The data contained in the record, including the Staff Report and various staff memos, in the transcript of the prehearing conference, and in submissions from the parties respecting the state of the domestic industries over the period of investigation provide information from which we can draw appropriate inferences for analyzing the effects of LTFV imports.

The Volume and Prices of LTFV Imports

We begin the analysis by examining the price and volume of the LTFV imports.15/ In particular, we examine the extent to which the LTFV goods lowered the price and increased the volume of LTFV imports entering the United States. This examination requires us to compare the prices and volumes of the subject imports observed during the period of the investigation with the prices and volumes that would have been obtained in the absence of the unfair act.

This step is the first link between the unfair act and injury to the domestic industry. It is the fact that (1) the import prices were lower and import volume higher than they would have been in the absence of dumping that causes injury to the domestic industry. If the prices and volume of the subject imports would be the same in the absence of dumping as they were in the presence of dumping, then the domestic market would be unaffected by the LTFV imports.

Our first inquiry seeks to evaluate the amount by which prices for imported forklift trucks were lower because of dumping. I believe

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15/19 U.S.C. Section 1677 (7) (B),(C)

that while one cannot be certain about the exact price that the Japanese imports would have sold for absent dumping, the dumping margin determined by the Department of Commerce (Commerce) is useful in assessing the maximum increase in the U.S. price of the subject imports had they been sold in the United States and Japan at the same price. In many cases prices of the subject imports would have increased less than the amount of the dumping margin had the imports not been sold at LTFV. In cases where the products are sold in both the exporter's home market and the United States, the difference in the prices usually will be lower than the dumping margin.16/

Many of the facts collected during the course of an investigation permit us to make a reasonable approximation of this price. In this case, the dumping margins reported by Commerce varied between 13.65 percent and 56.81 percent.17/ The dumping margins from Commerce were based on home market comparisons for Toyota and Komatsu, and constructed values for Nissan and Sanki. Commerce assigned margins to TCM and Sumitomo equal to those of Nissan.18/ Information concerning the relative shares of Japanese fork lift trucks sold in Japan and the United States is found in the Staff Report.19/

Information in the record leads me to conclude that if the exporting firms had not been able to charge different prices in the United States and Japan (as would have been the case if the imports

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16/See Office of Economics Memo EC-L-149.
17/53 Fed. Reg. 12,552 (1988).
18/In cases where the exporters home market price is constructed, I assume that the U.S. price of the import in the absence of dumping would have risen by the full dumping margin.
19/Rep. at A-41-42.

had been fairly traded), the prices of Japanese forklifts sold in the United States would have been higher and their volume would have been substantially below the levels actually observed. The effect of this change is discussed further below.

Effects on Prices and Sales of Domestic Like Products

The next area of inquiry focuses on the impact of prices and volumes of the LTFV imports on the market for the domestic like product. The statute specifically directs the Commission to consider the effect of LTFV imports on the prices for domestic like products,20/ and the extent to which the LTFV imports have depressed prices for the domestic like products.21/ The statute further directs the Commission to look at the market share for the domestic product and the subject imports, and at domestic sales, domestic output, and domestic inventories, among other factors. These factors are useful in assessing changes in the sales of domestic products and relating those changes to the sales of subject imports.

The impact of prices and volumes of the LTFV imports on the market for the domestic like product depends on three factors:

1) The economic substitutability of the LTFV imports for the domestic like product and for the fairly traded like products from third countries;

2) The LTFV market share;

20/ 19 U.S.C.§1677(7)(B).
21/ 19 U.S.C.§1677(7)(C).

3) The availability of fairly traded imports of the like product.

The first point, economic substitutability, requires clarification. Economic substitutability is one factor that tells us how the demand for the domestic product responds to the price of the LTFV imports. An increase in the price of the LTFV import encourages substitution towards both the domestic like product and fairly traded imports. The increase in demand for the domestic good relative to the fairly traded import depends upon its relative economic substitutability with the LTFV import. Consequently, the economic substitutability of the LTFV import with the domestic like product implicitly depends upon other available substitutes. It will be shown later that the relative supply of the fairly traded and domestic products also affect the demand for the domestic like product.

Petitioner argued, in their posthearing brief, that the differences between forklifts imported from Japan and domestic forklifts are inconsequential.22/ Respondent argued that the LTFV imports and domestic forklift trucks do not compete.23/ However, evidence collected by the staff and testimony by the Petitioner

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22/ Petitioner, Clark Equipment Co. Post Hearing Brief at 8-9.
23/Respondents' "Economic Analysis Report", at 32.

suggest the products are in fact differentiated and moderately substitutable.24/

Although most purchasers agreed that there were no significant physical or performance differences between comparable U.S. and Japanese forklifts, quality and the ability to supply particular truck specifications, not price, were the most commonly cited reasons for preferring a particular vendor. Further, the desirability of maintaining a standardized forklift fleet reduces the substitutability of domestic and Japanese forklifts. In addition, the lack of significant changes in market share in response to relative price changes for the domestic and LTFV import suggest only moderate substitutability. Finally, the evidence does not support the market segment argument offered by Respondent.25/ In sum, the record suggests that LTFV imported and domestically produced forklift trucks are moderately substitutable.26/

The second point, LTFV import market share, is also important. The greater the market share of the subject imports, the greater their effect on the prices and volumes of the domestic like product. This can be clarified by an example. Let us assume that the price of a hypothetical LTFV import would have increased by fifty percent, had it not been sold at LTFV. The effect of this price increase on the demand for the domestic like product will vary depending on the market share held by the subject imports. A LTFV import market

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24/Tr. of Hearing at p. 163 Mr. Neuhauser, Director of Business Planning and Market Research at Hyster, describes several attributes that differentiate the domestic and LTFV imported forklift.
25/Rep. at A-55. In fact domestic and Japanese forklifts do compete.
26/See Economic Memorandum, EC-L-143, May 6,1988, pp. 11-18

share of ninety percent would, ceteris paribus, impact demand for the domestic product to a significantly greater extent than a LTFV import market share of one percent. Thus, the LTFV import with a ninety percent market share would have decreased the price and quantity of the domestic like product to a greater extent.27/

In the instant case, the U.S. market share for LTFV Japanese forklifts was 51.3 percent in 1985, 49.6 percent in 1986 and rose to 51.4 percent in 1987.28/ The large market share of the LTFV imports coupled with the moderate substitutability of the domestic and LTFV imports suggest that the demand for domestic forklift trucks would respond, at a minimum, nearly proportionately to changes in the price of the LTFV import.29/ Since, as discussed above, the price increase in the LTFV import in the absence of dumping would likely have been near the margins calculated by Commerce, the effect on the demand for the domestic like product would have been very substantial.

The third factor, the availability of fairly traded imports, can increase the magnitude of the shift in demand for the domestic like product. The less elastic the supply of fairly traded imports, the greater is the harm from the dumped import to the domestic like product.

27/See Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388, USITC Pub. No. 2071 (Preliminary) (March 1988) (Additional Views of Chairman Liebeler and Vice Chairman Brunsdale at 31-34.
28/Report at A-48.
29/ The relationship between the demand for the domestic like product and the price of the LTFV import is captured by the cross-price elasticity. This measure, by definition, is the percentage change in the quantity demanded of the domestic like product given a one percent change in the price of the LTFV import.

Our analysis, thus far, has assumed that all other prices (ie. the prices for the domestic and third country fairly traded like products) have remained constant.30/ We know, however, that the elimination of sales at LTFV in this case would increase the demand for both the domestic like product and the fairly traded import. Only if the import supply curve is horizontal or infinitely elastic will the price of the fairly traded product remain unchanged. If import supply is less than infinitely elastic, the demand shift for the domestic like product will be greater than in the previous analysis because the price of third country fairly traded like products would increase with the elimination of LTFV sales.

In the instant case, fairly traded fork lift trucks from third countries have comprised an increasing share of the U.S. market rising steadily from [percent] in 1985 to [percent] in 1987.31/ This increase in market share reflects the ability of third countries to supply forklifts to the U.S. market. It, therefore, seems likely that the decrease in demand for U.S. forklifts caused by LTFV sales would not have been exacerbated by the inability of third countries to respond to increases in demand for their product.32/

30/In fact, the previous analysis represents a lower bound for the affects of dumping.
31/Report at A-48.
32/The existence of an infinitely elastic import supply curve for fairly traded imports can never mitigate the changes in demand for the domestic like product as a consequence of market share and substitutability. A less than infinitely elastic supply, however, will increase the demand shift. Restated, the presence of an infinitely elastic import supply of fairly traded goods creates a lower bound for the effect on demand for the domestic like product.

The facts of this case strongly suggest that if not for the LTFV sales, the demand for the domestic like product would have increase substantially. Given the size of the dumping margins, the substitutability of the domestic and LTFV import goods, and the substantial market share of the LTFV imports, it is clear that the LTFV sales replaced purchases of domestic products in substantial measure and also depressed the price of the domestic products that actually were sold.

In addition to the factors addressed above, the statute also commands attention to three other factors that might support or contradict an inference regarding the effects of LTFV imports on domestic price and production. Information on inventories, capaci utilization, and productivity can suggest reasons the subject imports would have more or less effect than might at first appear. For example, low capacity utilization in the domestic industry may suggest significant ability to increase production if the absence LTFV imports increased demand for the domestic like product. Concomitantly, if domestic capacity is (virtually) fully utilized, the presence of LTFV imports may not exert significant influence over domestic production, although the imports would then affect price more significantly.

With respect to these three factors, the evidence in the rec indicates that sales of LTFV imports had a depressing effect on t both prices and sales of domestic products during the period of investigation, with domestic sales and production bearing the bru of the negative effects. The domestic industry appears to be

operating well below its capacity 33/ indicating an ability to increase production in response to increased demand. Further, the domestic industry's exports of forklifts remained relatively constant over the period of the investigation.34/ This also indicates a capacity to have supplied the domestic market for the products at issue. Domestic producers' inventories declined over this period,35/ a factor that reduces the level of domestic production but also probably reduces costs. The magnitude of this change was small and does not appear to have much effect on their operation. This information strongly suggests that but for the LTFV sales, domestic producers would have increased production and sales of forklift trucks without incurring substantially increased marginal costs. The elasticity estimates of petitioners and the Commission staff support this conclusion.36/

Impact on the Domestic Industry

The domestic industry is experiencing material injury by reason of the LTFV imports. Had Japanese fork lift trucks not been sold at

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33/ Reported capacity utilization remained between 47 percent and 56 percent throughout the period of the investigation. Report at A-29.
34/ Report at A-20.

35/ Report at A-24.
36/The staff estimates a domestic supply elasticity of ten. EC-L-143. The petitioner estimated the same elasticity at 70 to 80. Both estimates can be qualified as "very high", meaning that a small price change will bring about a large response in the quantity supplied. Both elasticity estimates suggest that changes in demand for the domestic product will bring about greater changes in domestic sales than in domestic prices.

LTFV, the domestic industry would have increased substantially the prices and volumes of its forklift truck sales. The statute specifies a number of factors for the Commission to consider that reflect the impact of the subject imports on the domestic industry: actual and potential negative effects on employment and wages, and actual and potential negative effects on profits, return on investment, cash flow, ability to raise capital, and level of investment.37/

These factors can serve as a basis for inference about the accuracy of the estimates of the adverse effect of LTFV imports on the domestic industry. Directly observable changes in the factors measuring returns to the domestic industries rarely will be simply and readily correlated with LTFV imports, in part because information on these factors seldom is kept on bases coextensive with the scope of our investigations. Reference to observed data on employment, compensation, profits, cash flow, and similar factors can, however, provide inferential support for the estimates derived from our earlier analysis or, if inconsistent, can provide a basis for reexamining them. Here, the information currently available on these factors supports an inference of significant losses to the domestic forklift truck industry by reason of competition from LTFV imports from Japan.

Conclusion

37/ 19 U.S.C.§1677(7)(C).

For the reasons given above, I determine that the domestic forklift truck industry is experiencing material injury by reason of the LTFV imports from Japan.

ADDITIONAL VIEWS OF VICE CHAIRMAN ANNE E. BRUNSDALE

Internal Combustion Engine Fork-Lift Trucks from Japan
Inv. No. 731-TA-377 (Final)

May 31, 1988

I concur with the Commission's affirmative determination that the domestic industry is suffering material injury by reason of dumped imports of forklifts from Japan.1/ I join in the Commission's definition of the "like product" and the "domestic industry," and I also join in the Commission's discussion of the condition of the domestic industry. I offer these additional views to further discuss the difficulties entailed in defining the bounds of the domestic forklift industry and to explain my approach to the question of causation in this investigation.

Of Global Products and Domestic Industries

I join my colleagues in using the frame approach to define the like product and domestic industry in this investigation. It seems to me that the frame approach is one of the acceptable alternatives that can be used to solve the practical problems entailed in defining the scope of the Commission's inquiry. But I do not see the frame approach as the only acceptable alternative, and I have some question whether we have adequately explained how

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1/ Unless I otherwise specify, throughout these views I use the terms "forklifts" and "trucks" to refer to industrial, operator-riding internal combustion engine forklift trucks with a weight-lift capacity of between 2,000 and 15,000 pounds.

it is consistent with the drift of previous Commission decisions. While we have not used Respondents' proposed value-added approach because of the practical problems it poses in this investigation, Respondents' suggestion deserves careful consideration for use in future cases.

The different approaches to the definition of the domestic industry proposed by Respondents and Petitioners seek to address the same problem -- how the domestic industry should be defined when the business at issue is characterized by substantial international integration. Both the frame and the value-added approaches raise serious questions about the goals of the U.S. antidumping law as it relates to globalized businesses. These questions are increasingly arising in Commission cases involving industries that engage in substantial off-shore sourcing. This is particularly true in cases where the petition initiating the investigation defines the article under investigation to include one or more component parts.2/

I am concerned that the difficulties faced by the Commission in such investigations will not receive the attention that they need from our trade policy makers unless the Commission candidly addresses the limitations of the current statutory framework. Accordingly, for that reason and because I believe that a value-added approach may have some merit in future investigations, I

2/ It is my understanding that this step is usually taken by Petitioners in an effort to avoid circumvention of an antidumping order involving only finished products.

offer these additional views on the like product and domestic industry issues presented in this case.

The Background Facts: Forklift Production Is a Global Industry. To appreciate the genesis of Respondents' suggestion that we use U.S. value added as the exclusive tool to define the domestic industry in this case, it is important to keep in mind the story Respondents tell of the globalized nature of the forklift business. Respondents tell a tale -- one that Petitioners do not seriously deny -- of "domestic" production characterized by extensive importation of finished and nearly finished products and major component parts.3/ As Respondents describe it, this case does not involve the struggle of made-in-the-USA products against low-priced imports; rather, it involves the struggle of some imports against other imports.

Respondents contend that the real story begins in the mid-1960s when Japanese exporters recognized an unsatisfied demand in the U.S. market for forklifts that were standardized, lower-priced, smaller, lighter-weight, and more fuel efficient.4/ U.S. forklift producers were slow to respond, continuing to produce more expensive models with customized features, and, as a

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3/ The essential facts relating to the globalized nature of forklift production are not much in dispute. Unfortunately, for the purpose of this discussion I must rely primarily on Respondents' rendition of the facts because almost all of the facts gathered by the Commission in this area have been treated as confidential in the Staff Report.

4/ "An Economic Analysis of Injury Allegations, etc...," Submitted on Behalf of Certain Respondents, dated April 8, 1988 at 4-5 [hereinafter cited as Respondents' Economic Analysis].

consequence, through the 1970s the Japanese models experienced enormous success.5/

As Respondents tell it, U.S. producers did not take the proper responsive action until the late 1970s when they began to source off-shore for standardized models that were comparable to the Japanese products. Petitioner Hyster began to search for an off-shore facility in 1979 and was shipping forklifts to the United States from a plant in the United Kingdom (Northern Ireland) by 1981. Yale began importing standardized trucks from Japan in 1983, the same year that Baker began importing forklifts from Germany. At about that time Caterpillar entered into an arrangement to import forklifts from Korea.6/ Clark followed with a deal to import forklifts from Korea in 1986.7/

As Respondents tell their story, when forklift customers came back to the market in earnest following the recessions in the early 1980s, they flocked to the standardized models that the Japanese had long specialized in making. The same customer preference for lower-priced, standardized models benefited the major U.S. producers who had moved to source standardized models off-shore. In fact, Respondents argue, imports from the U.K. and Korea have soared in the last few years, while Japanese imports have fallen as a share of total U.S. consumption.8/

5/ Id.
6/ Id. at 7.
7/ Id.
8/ Id. at 10.

In addition, Respondents point out that off-shore sourcing has not been restricted to finished trucks: it also has extended to major forklift components. Respondents emphasize that the frame typically accounts for only about 10 percent of the value of a finished truck, much less than the value added by the engine and transmission.9/ Referring to published census data, Respondents show that imports from Korea had 58 percent U.S. value added in October 1987. Respondents also remind the Commission that, during the recent Commission investigation of the forklift industry under Section 603 of the Trade Act of 1974, Yale testified that it has added value of 40 to 50 percent to forklifts it imports from Japan.10/

Indeed, in that Section 603 investigation the Commission was advised that almost every motor in a "domestic" truck is foreign,11/ and that components making up at least 55 percent of the value of a lift truck "are manufactured in many places around the world...[and] are commonly purchased from the supplier, foreign or domestic, that affords the best terms."12/ We know from the data (unfortunately all confidential), gathered by Commission staff in this investigation that forklifts manufactured in the United States with either foreign or U.S.-produced frames

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9/ Id. at 10-11.
10/ Id. at 11 (citing the testimony of Mark Sandstrom on behalf of Yale Materials Handling Corp. at the 603 hearing).
11/ Transcript of Hearing on Investigation Under Section 603 of the Trade Act of 1974 at 45-46.
12/ Id. at 139.

contain both significant foreign and significant U.S. value added.13/

Faced with these facts, both Petitioners and Respondents urged that the Commission do something to focus its analysis on domestic U.S. production activity. Petitioners suggested the frame approach -- that we define the domestic industry in terms of where the frame was produced. As they explained their rationale, "it is the frame that forms the foundation for the whole truck and so is the key to the identity of the forklift."14/ Respondents argued for a value-added approach on the grounds that "U.S. value added by any company engaged in producing forklift components would be considered in measuring the performance of the domestic industry...no firm would be excluded...no matter how insignificant the percentage of U.S. value added in its operation."15/ Perhaps realizing that this approach would be somewhat ambitious, Respondents suggested "a reasonable threshold of thirty-five percent U.S. value added could be established to qualify a company as part of the domestic industry."16/ As the Commission opinion recognizes in this case, neither approach is entirely satisfactory, but the Commission concluded that some approach should be used.

13/ Report at B-44, Tables C-4, C-5, C-6. Although we also know that forklifts manufactured with U.S. frames have significantly greater U.S. value added than their counterparts produced from foreign frames. Id.
14/ Prehearing Brief of Petitioners at 14.
15/ Post-Hearing Brief of Certain Respondents at A-2-3 [hereinafter cited as Respondents' Post-Hearing Brief].
16/ Id. at A-3.

The Non-Controlling Precedent

In every investigation the Commission must assess the effects of LTFV imports on the industry in the United States comprised of "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major portion of the total domestic production of that product."17/ The term like product is in turn defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."18/

The purpose of the Commission's inquiry regarding the appropriate like product and domestic industry in every investigation is to identify the U.S. producers whose goods are most clearly competitive with, and therefore most likely to be adversely affected by, the dumped imports.19/ As a consequence, we must take care to ensure that the Commission's determinations regarding the definition of like product and domestic industry focus on distinctions between products and producers that have real economic consequences.20/ The goal is to identify within the

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17/ 19 U.S.C. 1677(4).
18/ 19 U.S.C. 1677(10).
19/ Digital Readout Systems and Subassemblies from Japan, Inv. No. 731-TA-390 (Preliminary), USITC Pub. 2081, at 5 (May 1988) (Views of Chairman Susan Liebeler, Vice Chairman Anne E. Brunsdale, and Commissioner Ronald A. Cass).
20/ In my view physical differences between products should matter only to the extent that they have an impact on customers' decisions to purchase and producers' decisions to produce the product in question.

meaning of the controlling statutes the relevant "target" for assessing the impact of dumped imports.

The Commission begins its task with the Department of Commerce's definition of the imports subject to investigation21/ and then examines the domestically produced products that arguably are "like" the imports.22/ In most cases, having defined the "like product" it is a relatively simple matter to then define the domestic industry as the U.S. firms that produce the like product. The "target" for assessing the impact of dumped imports is the people, activities, and invested resources of these firms related to the production of the "like" product.23/

The statutes tell us essentially nothing about what activities qualify as "production" of the "like product" and hence what qualifies a firm for inclusion in the domestic industry. Respondents suggest in their posthearing brief in this investigation that "the focus of the statute is on U.S. production

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21/ The scope of the imports subject to the investigation is determined by the Department of Commerce. 19 U.S.C. 1673a.
22/ In making this "like product" determination, the Commission historically has considered evidence falling in five general areas: (1) physical characteristics and uses, (2) interchangeability, (3) channels of distribution, (4) customer perceptions of the articles, and (5) common manufacturing equipment, facilities, and production employees. In addition, although not explicitly incorporated into the Commission's five-part formula, Commission decisions sometimes have considered the similarity (or dissimilarity) of prices for imports and potential like domestic products. Digital Readout Systems, supra note 19, at 4-5.
23/ We are directed to assess the performance of this target group of people, activities, and resources in terms of the factors specified in 19 U.S.C. 1677(7)(C)(iii), including production, inventories, employment, wages, growth, ability to raise capital, investment, and sales.

facilities" (emphasis added).24/ They cite no statutory support for this proposition,25/ and even if they are correct, we would still need to determine what type of "production" facilities are within this focus.

For example, I see nothing in the plain language of the controlling statutes that suggests that Congress intended that producer-owned facilities where producers attach parts to a forklift chassis should be treated as "production facilities" while rented office space housing indirect manufacturing support activities provided by independent suppliers should not. At the same time, given the plain meaning of the words "producers," "produce," and "production" appearing in the definitions that control our inquiry, it is not immediately obvious that the resources devoted to post-manufacturing marketing activities, standing alone, would fall within the relevant target for assessing injury by reason of dumped imports. None of the parties in this investigation has pointed to a provision in the statutes or the legislative history that gives us any real guidance regarding the meaning of U.S. production.

24/ Respondents' Post-Hearing Brief, supra note 15, at A-3.
25/ However, the notion that the dumping law is aimed at protecting U.S. "producer facilities" is supported by certain passing references in the legislative history. See, e.g., Trade Agreements Act of 1979, Report of the Committee on Finance on H.R. 4357, S. Rep. No. 249, 96th Cong. 1st Sess. (1979) at 82 ("the phrase 'an industry in the United States'... has been interpreted ...as referring to all the domestic producer facilities engaged in the production of articles like the...dumped imported articles ...") [hereinafter cited as 1979 Senate Report].

While the statutes give us essentially no guidance, this is not the first case where the Commission has been faced with the question of how the relevant "target" should be drawn when domestic producers of the like product are importers of major component parts. Sometimes the issue has been posed as a matter of definition of the like product, sometimes it has been posed as a question of which producers are members of the domestic industry, and sometimes it has been posed as a matter of excluding an allegedly related party. But so far as I can tell, it has not been regular Commission practice to do what it did in this case. A brief review of some of the Commission's most noteworthy recent cases may illustrate my point.

Only last month in 3.5-inch Microdisks and Media Therefor from Japan,26/ the Commission was faced with a situation in which the major U.S. producers of microdisks were also importers of one of the principal microdisk component parts ("media"). Without giving the matter any unusual attention, the Commission defined the domestic industry to include all firms that assembled microdisks in the United States regardless of whether they acquired their media from a foreign or domestic source.27/ On its own initiative the Commission considered whether any of the domestic producers should be excluded from the domestic industry under the related parties provision because they imported media,

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26/ Inv. No. 731-TA-389 (Preliminary), USITC Pub. 2076 (April 1988).
27/ Id. at 17.

and concluded that none should be excluded because almost every domestic firm imported either media or finished microdisks.28/

The result in Microdisks is fully in accord with the results reached earlier in 64K DRAMs and EPROMs.29/ Those cases raised the issue of whether firms that performed some, but not all, of their manufacturing of the finished product in the United States should be included in the domestic industry. In both cases a majority of the Commission included in the domestic industry firms that assembled finished semiconductor devices from essential components -- wafers and dice -- imported from Japan. All activities occurring in the United States related to production of the like product were included within the bounds of the domestic industry regardless of the origin of the component parts used to make the finished product and regardless of the site (U.S. or foreign) of final assembly.30/ In EPROMs one firm, Fujitsu, which assembled finished products in the United States using components imported from Japan, was excluded under the related parties provision.31/ In DRAMs the Commission considered the question but

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28/ Id. at 19-20.
29/ 64K Dynamic Random Access Memory Components from Japan, Inv. No. 731-TA-270 (Final), USITC Pub. 1862 (June 1986) [hereinafter cited as DRAMs]; Erasable Programmable Read Only Memories from Japan, Inv. No. 731-TA-288 (Final), USITC Pub. 1927 (December 1986) [hereinafter cited as EPROMs].
30/ DRAMs, supra note 29, at 12; EPROMs, supra note 29, at 11.
31/ EPROMs, supra note 29, at 12. The Commission similarly used the related parties provision to exclude a firm from the domestic industry in Certain Copier Toner from Japan, Inv. 731-TA-373 (Final), USITC Pub 1960 at 8-9 (March 1987).

declined to exclude any of the domestic producer/importers under the related parties provision.32/

Years ago similar reasoning was applied in Color Television Receivers from Korea and Taiwan.33/ The domestic industry was defined to include all U.S. color-television producers even though "all firms, whether U.S.-owned or foreign-owned...,use imported subassemblies or components."34/ The Commission also considered the related parties issue and concluded that no firm should be excluded.35/

Just looking at the results reached in these investigations, some might question why the Commission reached its conclusion regarding industry definition in this case. On their surface, one could read Microdisks, DRAMs, EPROMs, and Color Television Receivers to suggest that the use of a foreign-manufactured frame should not disqualify a U.S. firm from membership in the domestic industry. Indeed some might argue that the results in these cases suggest that the foreign sourcing of frames should not matter unless off-shore sourcing gives rise to exclusion under the related parties provision.36/

While the results in these previous investigations do not immediately point to a frame-defined industry definition, they

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32/ DRAMs, supra note 29, at 13-14.
33/ Color Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 and 135 (Final), USITC Pub. 1514 (April 1984).
34/ Id. at 7.
35/ Id. at 9-10.
36/ Of course, the related parties provision would extend only to frames produced in Japan.

equally do not immediately point to the strictly value-added approach suggested by Respondents. U.S. value added was indeed mentioned by the Commission in each of the cases discussed above. But it has never been the only criterion for defining the domestic industry, and indeed, except in Television Receivers, it has never played a significant role. Based on my review of the Commission's precedent I think it safe to say that the Commission has very little practical experience with the application of a value-added methodology to industry definition in the context of Title VII investigations.

So far as I can tell, the Commission has never used value-added methodology, or any other approach, to do what Respondents and Petitioners both suggested in this investigation -- to define the domestic industry as encompassing the production resources devoted to only some of the like products manufactured by member firms. If the Commission followed here the approach it followed in the cases discussed above, the decision to include or exclude a particular forklift manufacturer would be made on an "all or nothing" basis -- that is, a particular firm would be in the domestic industry with respect to all of its like-product-related production or it would be out of the industry entirely. A firm would not be "in" the industry for purposes of IC forklift trucks made with U.S. frames (or a certain U.S. value added) and out of the industry for purposes of forklifts made with foreign-sourced

frames (or a certain foreign value added).37/ Nonetheless, neither Respondents nor Petitioners suggested that we should follow an all-or-nothing approach in this case.

Given the lack of statutory guidance or solid precedent, it should not be surprising that the Commission chose an approach that draws clean lines. As was explained in the Commission opinion, we chose the frame approach for very practical reasons. Moreover the value-added data that we gathered showed that the frame approach focused on domestic products which had very high U.S. value added,38/ and also showed that our conclusions regarding the financial performance of the domestic industry would not have been significantly different had the value-added approach been used.39/

Nonetheless, I am persuaded that an approach to the definition of domestic industry that places strong reliance on U.S. value added has much to commend it for future Commission practice. The value-added approach is analytically sound, and it need not pose insurmountable difficulties if the ground rules for

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37/ My quick search revealed only one major investigation where the Commission considered as a matter of industry definition the possible exclusion of some of the like products manufactured by members of the domestic industry. In Certain Radio Paging and Alerting Devices from Japan, Inv. 731-TA-102 (Final), USITC Pub. 1410 (August 1983), the Commission considered in some detail whether Motorola's domestic production activities with respect to two of its pager models in particular were sufficient to include those activities within the scope of the domestic industry. All Commissioners considering the issue concluded that these products, and hence all of Motorola's domestic pager production activity, should be included in the domestic industry. Id. at 10-11.
38/ Report at B-44 (Table C-4).
39/ Id. at A-35 (Table 15).

its use are established at the outset of a case.40/ Given the limited guidance from the statutes, a value-added methodology may be the best way to ensure that none of the U.S. resources devoted to the production of the like product escape our scrutiny in future cases involving global production. While I do not believe its use was required in this investigation, the Commission should carefully consider using a value-added approach in future investigations involving internationally integrated industries.

Economics, Elasticities, and Causation Analysis 41/

To decide in the affirmative in a dumping case, the Commission must find that the domestic industry has been "materially

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40/ Of course, a number of difficult legal issues remain to be resolved. For example I am not yet convinced that including in the domestic industry all firms contributing some U.S. value to the finished product (as Respondents suggest) is consistent with the distinction historically drawn by the Commission between producers of finished products and suppliers of component parts. Compare EPROMs, supra note 29, at 11 and DRAMs, supra note 29, at 11 with Conference Report on the Trade and Tariff Act of 1984, H.R. Rep. No. 1156, 98th Cong., 1st Sess. at 188 (1984):

> The term 'industry' for purposes of CVD and AD investigations means the domestic producers of a 'like product'....[P]roducers of products being incorporated into a processed or manufactured article (i.e., intermediate goods or component parts) are generally not included in the scope of the domestic industry that the ITC analyzes for the purposes of determining injury.

41/ Some of the views expressed in this opinion were discussed recently in my opinions in Cold-Rolled Carbon Steel Plates and Sheets from Argentina, Inv. No. 731-TA-175 (Final) (Second Remand), USITC Pub. not yet available (May 2, 1988) [hereinafter cited as Argentine Steel], and Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046 (December 1987) [hereinafter cited as Color Picture Tubes]. To the extent that I repeat myself here, I do so for the convenience of the parties, the public, and our reviewing Courts.

injured...by reason of" dumped imports.42/ The controlling statutes are clear on the need for the causal link between the fact of dumping and "material" adverse effects to the domestic industry. They also give us a long list of factors to examine when we undertake this task.43/ But they do not tell us how these factors are to be "considered" or "evaluated."44/

For example, with respect to import volume, Section 771(7)(B) simply tells us that when we "evaluat[e]" import volume in our

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42/ 19 U.S.C. 1671(a), 1671b(a), 1671d(b), 1673, 1673b(a), 1673d(b). See also Trade Agreements Act of 1979, Report of the Committee on Ways and Means to Accompany H.R. 4537, H.R. Rep. No. 317, 96th Cong., 1st Sess. (1979) [hereinafter cited as 1979 House Report]. The 1979 House Report stated that "the bill contains the same causation elements as present law, i.e., material injury must be 'by reason of' the subsidized or less than fair value imports." Id. at 46-47. See also 1979 Senate Report, supra note 25, at 38, 87.

43/ See Section 771(7) of the Trade Agreements Act of 1979. The specified factors are: domestic prices, output, sales, profits, productivity, return on investment, market share, capacity utilization, cash flow, inventories, employment, wages, growth, ability to raise capital, investment in the business, import volume, and import prices. 19 U.S.C. 1677(7)(B),(C). The statutes repeatedly advise us to "consider" and "evaluate" any other factors that we find appropriate for analyzing causation in any particular case. See, e.g., the introductory language of Section 1677(7)(B), which indicates that the listed factors are to be considered "among other factors," and Section 1677(7)(C)(iii), which more broadly mandates that the Commission "evaluate all relevant economic factors which have a bearing on the state of the industry, including but not limited to [the listed factors]." Subsection II of that same section broadly tells us that the Commission should evaluate the "factors affecting domestic prices."

44/ See 19 U.S.C. 1671, 1671b, 1671d, 1673, 1673b, 1673d (the Commission is to "determine" whether material injury, the threat of material injury, or material retardation has occurred). See also 19 U.S.C. 1677(7) (the Commission shall "consider" certain factors and "evaluate" them when "determining" whether material injury, the threat of material injury, or material retardation has occurred). The statute offers no methodology for examining the factors the Commission must analyze in its "consideration" and "evaluation."

analysis, we must "consider" whether the absolute or relative volume or increases in volume are "significant."45/ With respect to prices, Section 771(7)(C) tells us that when we analyze the effects on domestic prices, we should "consider" whether there has been price undercutting by the dumped imports and whether "the effect of [those imports]" has been to depress prices or prevent price increases to a "significant degree."46/ We are also told that we should "evaluate" generally the "factors affecting domestic prices."47/ But, to repeat, nowhere in the statute or in the legislative history are we told how we are supposed to "evaluate" or "consider," or determine the "significance" or "the effects" of, import and domestic product volumes and prices. On the contrary, Congress expressly left the selection of the best method of analysis to the discretion of the Commission: "The determination of the ITC with respect to causation is...complex and difficult, and is a matter for the judgment of the ITC."48/

Many of the factors listed in the statutes are traditionally used by the Commission simply as criteria for measuring the condition of the domestic industry. Thirteen of these factors (output, sales, profits, productivity, return on investment, capacity utilization, cash flow, inventories, employment, wages, growth, ability to raise capital, and investment in the business)

45/ 19 U.S.C. 1677(7)(B), (C)(i). See also 1979 Senate Report, supra note 25, at 86-87.
46/ 19 U.S.C. 1677(7)(B), (C)(ii). See also 1979 Senate Report, supra note 25, at 87.
47/ 19 U.S.C. 16777(7)(C)(iii)(II).
48/ 1979 Senate Report, supra note 25, at 75.

are almost always used by the Commission solely for determining whether the domestic industry is in a distressed state, referred to as "material injury." Rarely are they central to the Commission's causation analysis.49/ The Commission generally considers or evaluates these factors by treating them as historical facts caused by other factors, potentially including dumped imports. In recent years the Commission's consideration of these factors has been collected in the Commission's opinions (as in this investigation) under a separate heading, "Condition of the Domestic Industry."

Like my colleagues I have generally assessed the condition of the industry by looking at the reported trends in the factors that measure the industry's performance. One can look at the behavior of a particular factor over time and tell at a glance whether the

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49/ The other factors identified in Section 771(7) of the Trade Agreements Act of 1979 play a central role in the Commission's determination of whether the requisite link exists between material injury and dumped imports -- import volume (in both absolute and relative terms (e.g., market share)), import prices, and domestic prices. I am certainly not the only Commissioner who focuses most heavily on these three factors when analyzing causation. See, e.g., Certain Line Pipes & Tubes from Canada, Inv. No. 731-TA-375 (Preliminary), USITC Pub. 1965, at 13-23 (March 1987) (Views of Commissioners Lodwick and Rohr); Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands, Inv. Nos. 701-TA-275 through 278, 731-TA-327 through 331 (Final), USITC Pub. 1956 at 22-50 (March 1987) (Views of Commissioners Eckes, Lodwick, and Rohr); Stainless Steel Pipes and Tubes from Sweden, Inv. No. 701-TA-281 (Final), USITC Pub. 1966, at 33-43 (Additional Views of Commissioner Rohr); Certain Stainless Steel Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-376 (Preliminary), USITC Pub. 1978, at 12-15 (May 1987) (Views of Commissioners Eckes, Lodwick, and Rohr).

industry is doing better or worse with respect to that factor than it did in previous periods.

I do not, however, generally use trend analysis to resolve the issue of causation. Many factors besides dumped imports affect the performance of domestic producers. The operating and financial performance of any industry depends on a great many factors within the broad areas of costs of production, the level and characteristics of domestic demand, the level and characteristics of domestic supply, and the volume and prices of both fairly traded and unfairly traded imports from many different countries. We can never determine with total precision the exact impact of any one of the many factors within these broad areas. Nevertheless, our responsibility in a dumping case is to isolate the relevant impact of the dumped imports and then to assess whether <u>that</u> impact is material. That does not mean that we should <u>weigh</u> the impact of the dumped imports against the impact of other factors. It simply means that we should satisfy ourselves that the relevant adverse impact of the dumped imports is itself sufficiently large to be material within the bounds of Section 771(7)(A) of the Tariff Act of 1930.<u>50/</u>

<u>50/</u> It should be noted that the question asked by me and other members of the Commission in the Condition of the Industry section of our opinions -- i.e., whether the industry is in the state of distress we refer to as material injury -- is not the same as the question we should be asking when we analyze causation under the controlling statutes. When we first separately assess the condition of the domestic industry as a whole, without narrowing our focus to those aspects of the industry's condition caused by the dumped imports, we are to some extent engaging in an overly inclusive exercise. Nonetheless, I am satisfied that a two-step

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In my view, trend analysis is a difficult tool to use for identifying the effects of dumped imports, for separating those effects from the effects of other factors operating in the marketplace, and for then making a judgment about whether the effects of dumped imports are material. Although I sometimes join in Commission opinions using trend analysis,51/ I think it is risky to try to evaluate the extent to which movements in one factor have caused movements in other factors simply by observing the size of those movements and whether they occurred at about the same time.52/ It is for this very reason that I generally resolve

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50/(...continued)
approach is authorized by controlling precedent. See, e.g., American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1276 (CIT 1984) aff'd sub nom. Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985)); although I do not believe that a two-step approach is required by the controlling statutes. See Digital Readout Systems from Japan, supra note 19, at 17 ff. Commissioner Cass has pointed to a number of conceptual difficulties posed by the two-step approach and questioned whether it is fully faithful to our statutory mandate. 3.5-inch Microdisks and Media Therefor from Japan, supra note 26, at 60 (Views of Commissioner Cass). I believe Commissioner Cass has raised legitimate questions that should be carefully considered by the Commission.

51/ See, e.g., Argentine Steel, supra note 41, where I joined in the views of Commissioners Rohr and Lodwick; see also Nitrile Rubber from Japan, Inv. No. 731-TA-384 (Preliminary), USITC Pub. 2027 (October 1987).

52/ It appears to me that it is in large part the difficulties of traditional trend analysis that have led to the remand of the Commission's causation analysis in cases such as Argentine Steel. The original Commission opinion in that investigation cited the small size and stable trend of import market share and then leapt to the conclusion that dumped imports did not cause material injury. Cold-Rolled Carbon Steel Plates and Sheets from Argentina, Inv. No. 731-TA-175 (Final), USITC Pub. 1637 at 5-6 (January 1985). The Court of International Trade remanded the Commission's negative determination last year in USX Corp. v. United States, 655 F.Supp. 487 (CIT 1987) [hereinafter cited as USX 1]. The Court concluded: "ITC has failed to articulate any
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the issue of causation by applying the time-tested tools of elementary economics -- including explicit consideration of relevant elasticities -- to the facts gathered by the staff and reported in the investigation.53/

Much attention has been devoted in this and other recent investigations to the role of so-called elasticity analysis (a term I did not create) in Commission cases. To me, elasticity analysis means nothing more than the explicit use of sound economics in analyzing the facts at issue in a case. As explained by the Director of the Commission's Office of Economics:

52/(...continued)
rational connection between low levels of market penetration by Argentine imports and its final negative determination." USX 1, supra at 490. The Court rejected the Commission's consideration of the trend in import market share because it "consisted solely of the statement that levels of market penetration remained low and stable...[w]ithout discussing the significance of this trend or its relationship to other facts uncovered in the investigation...." Id.

As I explain below, the most effective way to evaluate the significance of a given volume of imports as it relates to prices, revenues, and other factors relating to industry performance is to use elasticities.

53/ The explicit use of standard tools of economics has the advantage of increasing the transparency and predictability of the results of our investigations. It is true that the facts differ in every investigation, and necessarily must be considered on a case-by-case basis. But it is nonetheless possible to make our decisions more predictable and transparent by placing heavy and explicit reliance on the tools provided by economics and statistics. It seems obvious to me that if the Commission administers the dumping and countervailing duty provisions in such a way that the results of cases are difficult to predict and equally difficult to understand, it will lead to a belief on the part of U.S. producers and importers that our decisions are arbitrary and irrational. In my view, sound economic and statistical analysis, and less reliance on isolated snippets of anecdotal evidence, will lead to more predictable application of our trade laws, which in turn will lead to greater confidence in the integrity of our proceedings.

"Elasticity analysis is simply microeconomic analysis, involving a systematic study of the responsiveness of quantities demanded and supplied to price changes resulting from particular actions."54/

As I noted earlier, there is nothing in the statutes or the legislative history to tell us how we must analyze the factors pertaining to the issue of causation in a case. I use standard tools of economics because they help me focus my analysis on the effects of the dumped imports. Domestic output, prices, and revenues are always determined by a host of factors in addition to the imports under investigation. The concept of elasticity is particularly useful for evaluating whether the reported facts relating to the volume and prices of imports have a sufficiently strong causal relationship to the facts relating to domestic prices, production, and financial performance.

While they may be troubling or mysterious to some, elasticities are just simple tools of standard economics. "Elasticity" is nothing more than a fancy term economists use to refer to the extent to which one particular factor responds to a second factor, and an "elasticity estimate" is nothing more than a quantitative judgment about the degree of that responsiveness. Whether or not the Commission ever expressly uses the terms in this investigation, at least three elasticity estimates that characterize the aggregate forces of demand, supply, and product

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54/ Memorandum from the Director, Office of Economics, Memorandum EC-K-470 (December 11, 1987), at 1. A copy of this memorandum was attached to my views in Color Picture Tubes, supra note 41, as Appendix "A".

substitutability at work in the U.S. forklift marketplace are nonetheless present in this investigation.

(1) The Substitutability of Domestic and Imported Japanese Forklifts. In this investigation, as in nearly every dumping case, the parties have extensively debated the degree to which the domestic and imported products under investigation are substitutes. This debate focuses on an essential element in the attempt to discover whether lower import prices will actually result in lower sales and prices for domestic products. If the imported and domestic products are not reasonable substitutes, lower prices of the imports will not persuade many customers to buy the imports in lieu of the domestic alternative -- unless, of course, consumer tastes change. The higher the degree of substitutability, the greater the likelihood that a given decline in the price of the imports will directly translate into lost domestic sales.

It is relatively easy to see that every Commissioner had to make a judgment about the degree of substitutability between domestic and imported Japanese forklifts. The higher the substitutability, the more likely increases in the quantity of one would cause declines in the price of the other, and the more likely sales of one would have displaced sales of the other. Without making this judgment it would have been impossible to consider the extent to which dumped Japanese imports had any effect on the prices of the domestic alternative, or the extent to which they captured sales that otherwise would have gone to

domestic producers. The aggregate degree of substitutability between the domestic and imported Japanese forklifts can be measured by their elasticity of substitution. The term refers to the relationship between the prices of the imported and domestic products on the one hand and the quantities consumed of the two products on the other.55/ When we ask, "How substitutable are domestic and imported Japanese forklifts?", it is akin to asking, "How high is the elasticity of substitution?".

(2) The Responsiveness of Aggregate U.S. Demand for Forklifts. The total revenue received by suppliers in the U.S. market depends on both the price and the volume of the goods that they sell. It is axiomatic for most goods that, as price rises, the quantity demanded in the market falls, other things being equal. In other words, because customers do not have unlimited resources, they will seek out substitutes as price increases. It is equally true that the opposite also generally occurs. As price falls, the quantity demanded generally increases. That is,

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55/ Note that the elasticity of substitution is closely related to another elasticity concept, the cross-elasticity of demand. This latter elasticity is defined as the percentage change in the quantity demanded of one product divided by the percentage change in the price of a second product. Alternatively, the cross-elasticity equals the product of the elasticity of substitution and the relative size of the subject imports in the U.S. market (i.e., their market penetration). See P.R.G. Layard and A.A. Walters, Microeconomic Theory, 1978, pp. 142 and 269.

Since the cross-elasticity of demand between the domestic like product and the subject imports measures the impact on the demand for the domestic product caused by a price change of imports, this particular cross-elasticity necessarily plays an important role in causation analysis. Indeed, both the elasticity of substitution and the cross-elasticity of demand measure the same basic factor -- the substitutability of two products.

customers will find the cheaper product more attractive in light of the prices of available alternatives. The "elasticity of demand" simply states in quantitative terms the relationship between aggregate change in the price of a product offered in the U.S. market and aggregate change in the quantity of that product that will be purchased by U.S. customers.56/ When we ask a witness, "How sensitive to changes in price is domestic demand for forklifts?", we might equally ask, "How elastic is U.S. demand for forklifts?". Both questions mean the same thing.

The Commission had to make a judgment about the elasticity of demand in this case, because we needed to know the extent to which lower U.S. market prices encouraged consumers to buy more forklifts. Looking at the question of lost revenues, unless total demand for forklifts is completely insensitive to changes in price, lower prices will cause consumers to purchase more forklifts (which will, in turn, reduce the revenue loss caused by the lower per/unit prices). And looking at the issue of price suppression, in order to assess the extent to which a given quantity of dumped imports caused lower domestic market prices, we needed to know how far downward domestic prices must have had to move in the aggregate for consumers to have been induced to purchase the total additional forklifts (imported and domestic) available in the marketplace. Unless we made this judgment about the demand for the imported and domestic products at issue in the

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56/ To be precise, the elasticity of demand is the ratio of the percent change in quantity demanded to the percent change in price.

investigation, we would not be able to assess the impact of the dumped imports from the perspective of how they were treated by forklift customers in the U.S. market.

(3) The Responsiveness of Domestic Forklift Supply. It is not unusual to measure in the aggregate how domestic producers collectively respond to rising or falling prices through reference to the elasticity of domestic supply. As prices rise, producers are generally willing to produce more of the product and, as prices fall, they generally produce less of the product, other things being equal. The degree to which producers are able and willing to expand or contract production varies from industry to industry. When we ask, "How responsive in the aggregate is domestic forklift output to changes in forklift prices?", we are asking the same question as "What is the elasticity of domestic forklift supply?".57/ The elasticity of domestic supply is simply a quantitative statement of the relationship between prices in the market and unit volumes that producers are willing to supply.

In this investigation we needed to make a judgment about the elasticity of domestic supply because we needed to know the extent to which domestic producers contracted or expanded their production in response to movements in domestic forklift prices. Stated in the alternative strictly from the perspective of domestic supply, we needed to make a judgment about the extent to which domestic firms could have charged higher prices if they had

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57/ To be precise, the elasticity of domestic supply is simply the ratio of the percent change in quantity supplied to the percent change in price.

sold larger quantities of forklifts. We needed to make this judgment about the responsiveness of domestic supply in order to assess both the revenue and the price effects of the absolute and relative volume of dumped Japanese imports.

It is plain to me that the use of these three concepts is not only allowed by the statutes and legislative history, but underlies the judgments we are obliged to make when we assess whether dumped imports have caused material injury to the domestic industry. We necessarily must rigorously "consider" the relationship of movements in prices and volumes of domestic and imported forklifts in order to evaluate the magnitude of the effect that one product has on the other. The strength of the relationships between these factors -- whether expressed explicitly or implicitly -- is not just "theoretical"; it is, rather, the factual reality that lies at the heart of every Title VII case.

It should be apparent from the above discussion that I prefer to make my judgments about the essential elasticities at issue in a case in both specific terms (i.e., stated as a number or a range) and explicit terms. By actually stating the relationship of volumes and prices in terms of estimated numerical elasticities or ranges of elasticities, the parties and the Commission thereby make explicit judgments about key factors that otherwise are at best merely implicit in the analysis of causation. In this regard I agree with the Commission's Director of the Office of Economics who observed in the Picture Tubes investigation: "Both the

Petitioner and the Respondent acknowledge that anyone systematically examining market relationships implicitly uses elasticity estimates; I feel it is preferable to make one's estimates explicit."58/ I believe that by making explicit judgments about the assumed elasticities that underlie our conclusions, we will produce far more transparent decisions for the parties, the public, and our reviewing courts.59/

A Word about the Sources of the Elasticity Estimates Used in Commission Investigations

Much attention has been given in this investigation to whether the Commission can gather reliable elasticity data during the course of its investigations and, if so, how it should go about that task. I submit that, to a very great extent, the concerns about how the Commission should gather elasticity data are misplaced.

58/ Memorandum EC-K-470, supra note 54, at 3.

59/ The use of explicit elasticity estimates may accomplish another goal as well. As I noted above, when we ask a witness, "How sensitive is aggregate U.S. forklift demand to changes in price?", we might equally ask "How elastic is domestic demand?". While the questions are essentially the same, in many cases the answer to the question posed in terms of elasticity will provide far more helpful evidence. Elasticity is a much more precise concept than other expressions of "sensitivity." An elasticity estimate computed for two factors literally reflects the observed quantitative relationship between the percent change in one factor and the percent change in the other factor. The higher the computed elasticity, the more responsive one factor is to the other. We can thus compare elasticities from investigation to investigation, using them to help us gauge the relative significance of the factors under consideration. This use of elasticities is like asking in our cases: "On a scale of one to one hundred (or compared to some other known industry), how sensitive is domestic demand to changes in price?" While the facts are different in every case, the use of explicit elasticity estimates nonetheless will help us produce greater predictability in Commission decisions.

As I have already emphasized, every Commissioner must make judgments in every investigation about the essential elasticities of substitution, demand, and supply that characterize the aggregate forces at work in the industry at issue. When a Commissioner states the elasticity estimates underlying a decision on the ultimate issue of causation of material injury, that Commissioner is simply expressly stating conclusions of fact that otherwise would be implicit. When seen in their proper light, as conclusions of fact, elasticity estimates, whether express or implied, should be subjected to no more (or less) scrutiny regarding their reliability and support in the record than other important conclusions of fact reached by Commissioners in the course of investigations. I submit that the most important issue regarding elasticities is not how elasticity data should be gathered, but rather whether Commissioners would better serve the parties, the public, and our reviewing courts by making their judgments about relevant elasticities explicit.

When we do gather evidence on the explicit numerical values of relevant elasticities, we are gathering opinion evidence not unlike the opinion evidence gathered in many other adjudicative proceedings. Elasticity estimates offered by the parties, their experts, or the Commission staff are like other expert opinion evidence or statistical surveys. While their precision will obviously depend on the skill and judgment of the expert computing them and the reliability of the data on which they are based, they are no more theoretical than estimates of reject rates on a

production line or expert opinion testimony from a coroner about the cause of a crime victim's death. The reliability and relevance of elasticities can be questioned on the same basis that lawyers and other scholars question other surveys and opinion testimony. But just like other statistical evidence and opinion testimony, elasticity estimates are conclusions of fact; they are not "guesses," "theories," or "theoretical models."

In each investigation, as in this one, the Commission's Office of Economics now routinely prepares and delivers to the Commission and the parties prior to the hearing a detailed analysis and estimation (in numbers or ranges) of the relevant elasticities that characterize the aggregate forces at work in the industry under investigation. This analysis is based on the Staff's thoughtful consideration of the information then available in the record, including producer, importer, and purchaser questionnaire responses, telephone interviews, field work, and secondary research. The parties then are given an opportunity at the hearing and in their posthearing submissions to reply to Staff's analysis and provide their own estimates for consideration by the Commission. In this investigation, the parties' submissions before, during, and after the hearing were of great help to me in making judgments about the aggregate forces of substitution, demand, and supply at work in the U.S. forklift marketplace.60/

60/ I found the critique of Staff's elasticity estimates contained in Petitioners' Post-Hearing Brief to be particularly helpful.

The parties and members of the Commission have given considerable attention in this investigation to the recent decisions of the Court of International Trade in Alberta Pork Producers v. United States 61/ ("Alberta Pork") and USX Corp. v. United States 62/ ("USX 2"). Commissioner Rohr requested at the hearing in this investigation that the parties answer a number of important questions regarding the bearing of these cases on the Commission's use of elasticity estimates in causation analysis in Title VII cases. Because I found Commissioner Rohr's questions and Respondents' answers so helpful in appreciating the implications of Alberta Pork and USX 2 on the Commission's gathering and use of elasticity data, I attach them as an appendix to this opinion63/.

Causation Analysis in This Case: Why I Find That There Was Material Injury By Reason of Dumped Imports

The volume and market penetration of forklifts from Japan were substantial throughout the period of the investigation. Japanese

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61/ 669 F.Supp. 445 (CIT 1987).
62/ 12 CIT ____, Court No. 85-03-00325, Slip Op. 88-30 (March 15, 1988).
63/ The parties should not surmise (because I did not attach them) that I disapprove of the answers submitted by Petitioners to the same questions. To the contrary, although Petitioners' answers reflected somewhat greater caution about the use of explicit elasticity estimates, they were similar in many respects to Respondents' answers. Petitioners expressed the view that elasticity estimates provided a useful "frame of reference" for causation analysis, but they cautioned that elasticity estimates should not be used to supplant the data otherwise gathered in an investigation. Petitioners' Post-hearing Brief at 29-32. I do not disagree. As far as I am concerned, the role of explicit elasticity estimates is to ensure that our conclusions make sense in light of the evidence gathered in our investigations.

forklifts accounted for roughly half of total apparent U.S. consumption on a unit basis, and well over 40 percent on a value basis.64/ Import volume ranged from just over 21,400 units in 1985 to almost 22,800 units in 1987.65/ While this is not a case where the market share held by dumped imports is so large that their role in the market is nearly unmistakable,66/ it is equally not a case where the market share is so tiny that a great deal of explaining would be required before a casual observer would believe that dumped imports have played a significant role in the marketplace.67/

The dumping margins in this case are also rather substantial. The Department of Commerce determined that the dumping margins for individual Japanese producers ranged from 13.65 percent to 56.81 percent, with the margins for most of the Japanese producers falling at the higher end of that range.68/ By my calculation, on an aggregate basis the weighted average dumping margin was roughly 40 percent.

64/ Report at A-48 (Table 25).
65/ Report at A-44 (Table 23). On a value basis, Japanese imports rose from almost $187 million in 1985 to almost $241 million in 1987. Id.
66/ See, e.g., "The Parable of the Elephant and the Mouse" in Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Preliminary), USITC Pub. 2071, at 31-34 (March 1988) (Views of Chairman Susan Liebeler and Vice Chairman Anne E. Brunsdale).
67/ For example, a small import penetration can have a very large affect on domestic prices if aggregate domestic demand and domestic supply are both highly inelastic.
68/ See Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks from Japan, 53 Fed. Reg. 12,552 (ITA April 15, 1988); see also Memorandum from the Director, Office of Economics, EC-L-143 (May 6, 1988) at 2-3.

As I recently observed in Certain Bimetallic Cylinders from Japan,69/ I treat the margins computed by the Department of Commerce as an indicator of the maximum difference between the actual prices of the subject imports and the prices that would have been charged in the absence of dumping during the period of the investigation.70/ In the absence of convincing evidence to the contrary, I generally assume that the weighted average dumping margin directly translates into a price advantage for dumped imports relative to what their prices would have been if they had been fairly traded. After carefully considering Respondents' arguments and the evidence in the record regarding this issue,71/ I have not been persuaded that the weighted average dumping margin in this case does not mostly reflect U.S. prices for Japanese imports that were lower than they would have been in the absence of dumping.

The Impact on Domestic Sales

Unless there is some good explanation to the contrary,72/ the evidence of a large market share held by dumped Japanese imports and a substantial dumping margin point toward the conclusion that significant sales (well within the range of material) were lost by

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69/ Inv. No. 731-TA-383 (Final), USITC Pub. 2080, at 28 (May 1988).
70/ Id. See also Digital Readout Systems from Japan, supra note 19, at 24-25.
71/ Respondents' Economic Analysis, supra note 4, at 44-45; Memorandum EC-L-143, supra note 68, at 10.
72/ As I discuss further below, one "good explanation to the contrary" could be that the dumped imports and their domestic counterparts are not sufficiently close substitutes.

the domestic forklift industry by reason of dumped imports. Respondents offer two related arguments why such a conclusion would be in error. First, they contend that the degree of substitutability between domestic and Japanese forklifts is low. Second, they contend that any sales lost "by reason of dumped imports" were not sales of domestically manufactured forklifts, but rather were sales of forklifts imported by U.S. producers from other countries, particularly Korea and Ireland. These two arguments are facets of the same issue -- the substitutes available for the dumped imports. Since Respondents stated them separately, I will discuss them separately.

Respondents are entirely correct in focusing on the degree of price-motivated substitutability between domestic and imported Japanese forklifts. A reasonable degree of substitutability is necessary or the potential price advantage enjoyed by reason of dumping would not have persuaded many customers to buy imports in lieu of the domestic alternative. The closer the domestic and imported alternatives are as substitutes, the greater the impact lower prices for imports could have had on domestic producers.

I am not persuaded that the evidence supports Respondents' argument that "Japanese imports have virtually no U.S.-produced competition in the standardized, smaller engine size segment of the domestic market in which the Japanese models compete."73/ The

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73/ Respondents' Economic Analysis, supra note 4, at 32.

evidence in the record suggests that there is no such isolated "segment" of the market.74/

In this case there is substantial evidence in the record, including the results of Staff's purchaser survey, on the degree of substitutability between domestic and imported Japanese forklifts. A number of facts revealed in Staff's purchaser survey suggest a high degree of substitutability between the Japanese and domestic products. For example, Staff reports:

> most purchasers agree that there are no significant physical or performance differences between comparable Japanese IC forklifts and domestic IC forklifts, that leadtimes for Japanese IC forklifts were equal to or less than those for U.S. trucks, and that transportation costs do not play a major role in purchasing decisions.75/

On the other hand, some purchasers expressed loyalty to particular brands and models, and some purchasers noted differences between the domestic and imported products in marketing practices, dealer support, and national accounts programs76/ -- all factors that suggest less-than-perfect substitutability. Consistent with this conclusion, Staff found that while price was important, it did not appear to be the most important determinant affecting purchasing decisions:

74/ It looks to me that there is a single U.S. IC forklift market. See, e.g., Report at A-55 ("many of the price comparisons received by the Commission involved instances in which purchasers were, in fact, deciding between IC forklift models with different standard engine sizes on the basis of price. Some of these involved minor engine differences -- large engines compared to medium engines, or medium engines compared to small engines; others involved decisions between large engines and small engines."); See also Post-Hearing Brief of Clark Equipment Company at 8-9.
75/ Report at A-51; Memorandum EC-L-143, supra note 68, at 12.
76/ Report at A-51-A-52; Memorandum EC-L-143, supra note 68, at 14.

> Only 4 of 32 purchasers listed price as their major determinant and more than half reported selecting, on one or more occasions during the period of investigation, a supplier that was not the lowest-priced supplier, suggesting that purchasers perceive price differences roughly equivalent to product differences. The two factors most commonly cited as the primary determinant in particular purchasing decisions were quality and the ability of a vendor to supply the particular specifications desired.77/

After considering this and other evidence, Commission Staff concluded that imported Japanese and domestic forklifts were moderately close substitutes.78/ Having considered this evidence, Staff's analysis and arguments offered on this issue by Respondents and Petitioners, I have concluded that, on balance, imported Japanese and domestic forklifts are at least moderately substitutable. I do not agree with Respondents' argument that the degree of substitutability between dumped imports and their domestic counterparts is low.

I have also rejected as unsupported Respondents' argument that Japanese imports did not displace domestic forklifts, but rather only displaced other imports. Respondents contend that if there had been no dumped imports, U.S. forklift producers simply would have sold more forklifts imported from other countries,

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77/ Report at A-52; Memorandum EC-L-143, supra note 68, at 14.

78/ Memorandum EC-L-143, supra note 68, at 14-16. Commission Staff concluded that the elasticity of substitution for imported and domestic IC forklifts was moderate, and believed to be in the range of 1 to 2. Id. at 15.

Petitioners argued in their Post-Hearing Brief that Staff's estimate of the degree of price-motivated substitutability was too low, contending that the elasticity of substitution was "above 20 and probably in the area of 25 to 30." Petitioners' Post-Hearing Brief at 21. Petitioners offered good arguments why the results in Staff's purchaser survey may have understated the importance of price as a purchasing determinant for many small-volume customers.

particularly Korea and Ireland.79/ While the evidence suggests that Respondents may be correct in part -- at least some of the sales displaced by dumped Japanese forklifts would have been sales of imports from other countries -- I am not persuaded that the bulk of the impact of dumped imports did not fall on domestic production. I reach this conclusion for two principal reasons.

First, as noted above, domestic forklifts are at least moderately close substitutes for Japanese imports. Given the consistently low domestic capacity utilization during the period of the investigation,80/ U.S. producers would have been able to supply many more forklifts without increasing their costs and unit prices. They would have had to be motivated by much larger cost incentives than shown in the evidence of this case before they would have shifted all production offshore. The fact is that they did not entirely shift their production offshore even under the pressure of dumped Japanese imports. As a consequence it is highly likely that a fair number of the forklifts displaced by Japanese imports would have been made in domestic plants.

Second, there is insufficient evidence that the availability of supply from Ireland and Korea during the period of the investigation was as great as Respondents contend. It must be remembered that the question for purposes of analyzing causation of material injury in this investigation is not what supply conditions exist in the world today, but what conditions of supply

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79/ Respondents' Economic Analysis, supra note 4, at 33, 45.
80/ Report at A-19 (Table 3).

existed during the period of the investigation. Imports from Japan were well over twice as great as imports from all other sources during the 1985-1987 period.81/ The evidence is not convincing that additional imports from Ireland and Korea would have made a serious dent in the Japanese market share during that time. Respondents' speculation regarding significant unused capacity in Hyster's U.K. facilities82/ appears to be misplaced.83/ And what little evidence we have regarding Korean production operations calls into question whether significant, stable, untapped supply capacity existed in Korea during the period of the investigation.84/ The evidence suggests that the availability of supply from Ireland and Korea would have had some impact in the U.S. market but that the impact would not have been nearly as great as Respondents suggest.

In summary, while Respondents have correctly pointed to factors that reduced the impact of Japanese imports on domestic production, these factors did not reduce that impact below significant levels. I am persuaded by the moderate (at least) degree of substitutability between Japanese and domestic forklifts, the large absolute and relative volume of dumped Japanese imports, the substantial dumping margin, and the lack of

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81/ Id. at A-48 (Table 25).
82/ Respondents' Economic Analysis, supra note 4, at 33.
83/ See Petitioners' Post-hearing Brief at 41 and 45.
84/ See Petitioners' Post-hearing Brief at 9; See also Report at A-10. We have no evidence that substantial increases in fairly traded imports would not have come only at higher prices, which in turn would have increased demand for domestically produced forklifts.

proven ample alternative import supply that the domestic industry lost significant sales (well within the bounds of material) by reason of dumped imports in the U.S. market.

The Impact on Domestic Prices

The extent of the impact of dumped imports on the prices received by domestic producers is much less clear. Nonetheless, on balance, I conclude that dumped imports had a material impact on the prices received by U.S. forklift producers.85/

I am persuaded that during the period of the investigation domestic supply of forklifts was highly responsive to changes in price -- that is, the elasticity of supply was high -- over at

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85/ The data regarding transaction prices reported in the Staff Report (Report at A-53 through 68, Tables 27 through 34) was of limited help in assessing the extent to which dumped imports caused price depression or price suppression in the U.S. market. The many differences between product models rendered the Commission's traditional approach of gathering producer and importer prices unworkable. Moreover, as noted above, Staff's purchaser survey revealed that "only 4 of 32 purchasers listed price as their major determinant and more than half reported having selected, on one or more occasions during the period of the investigation, a supplier that was not the lowest-priced supplier, suggesting that purchasers perceive price differences roughly equivalent to product differences." (Staff Report at A-76.) The data themselves, gathered from purchasers accounting for roughly 1 percent of U.S. consumption, show many instances when Japanese forklifts had lower nominal transaction prices; but they also show many instances when customers purchased higher-priced non-Japanese import or domestic models. These facts suggest that directly comparing nominal transaction prices to assess the existence of "overselling" or "underselling" is a very risky exercise in this investigation.

The price trend data reported in Tables 30 through 34 (which were gathered from the great majority of domestic producers and Japanese importers) show a mixed picture of domestic prices moving generally downward for most classes of forklifts, but not for the important class of 5,000 pound cushion tire trucks (the largest single class) which had steady and rising prices.

least part of the production range at issue here. First, there is evidence that domestic producers could have shifted to production of IC forklifts from other products, including electric forklifts, without major technical difficulties.86/ Second, it appears that the ratio of variable to fixed costs is high -- which also indicates elastic supply.87/

But most important, domestic capacity utilization was very low throughout the period of the investigation. It reached its high of only 55.6 percent in 1986, before it fell to a period low of 47.3 percent in 1987.88/ That means that, particularly over the short run, the domestic industry could easily expand production to include a large portion of the volumes at issue in this investigation without materially raising marginal unit costs.89/ Assuming that this is a competitive industry -- a fact that the parties in this investigation do not seem to dispute -- the significant unused capacity means that market prices for forklifts would not have risen dramatically as domestic producers increased their output. This is the same thing as saying that the

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86/ Memorandum EC-L-143, supra note 68, at 5-6.
87/ Id. at 6-7.
88/ Report at A-19 (Table 3).
89/ We must consider the relevant elasticity of domestic supply over the proper range. Since at bottom we are asking how the domestic industry was affected by the Japanese imports under investigation, the outside boundaries of the correct range for determining the elasticity of domestic supply are established by the volume of Japanese imports and time periods implicated in the investigation. I am not persuaded in this investigation that domestic supply is consistently elastic over the whole relevant range.

domestic supply is highly elastic in at least part of the relevant range.90/

These factors led Staff to conclude that the elasticity of supply was very high, most likely greater than 10. Petitioners agree that supply is highly elastic (at least upward) and suggest that it might be as great as 70 to 80.91/ I agree with the conclusion that supply was highly elastic in the relevant range for the investigation.

Standing alone, the high responsiveness of domestic supply to changes in price -- the high elasticity of domestic supply -- would suggest that dumped Japanese imports would have had a much smaller impact on prices than on quantities of domestic forklifts sold during the period of the investigation. If we forget the large Japanese import penetration for a moment, it seems clear that the aggregate conditions of domestic supply were such that had there been fewer Japanese imports in the absence of dumping, domestic firms would have increased their output to meet the aggregate domestic demand without securing significantly higher prices. Stated in the alternative (and again leaving aside the

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90/ Stepping back from the economic jargon for a moment, it simply means that if domestic producers expanded their production by the amount of at least some of the Japanese imports, the prices they could demand in the market would not be a great deal higher.
91/ Petitioners' Post-hearing Brief at 18-19. Petitioners argue, however, that supply is inelastic ("sticky") downward. If Petitioners' argument is correct, we could expect to see strong price effects as domestic producers ultimately caved to the pressure of declining demand for domestic forklifts and reduced output. Without deciding the question, it seems to me that Petitioners' scenario better describes what might have been true during the period of time several years ago when Japanese imports were first gaining their sizable share of the U.S. market.

relative volume of Japanese imports), by virtue of their "unfair" prices, dumped Japanese imports would have taken substantial unit sales away from domestic producers, but domestic producers would not have significantly reduced their prices as a consequence.

But we cannot forget the large market share held by Japanese imports. While the elasticity of domestic supply was high, I am not convinced that it was so high over the relevant range that the large share of dumped Japanese imports (priced lower to the extent of a substantial dumping margin) was absorbed into the market without having a material impact on domestic prices. In short, I conclude that the impact of dumped imports on domestic prices was substantially muted by the responsiveness of domestic supply to changes in prices; but the relative volume of dumped imports was so great that even this muted impact sounded a significantly discordant note for domestic producers.92/

92/ My conclusion that dumped Japanese imports had a material affect on prices received by domestic forklift producers is supported by my conclusions regarding the price-responsiveness of U.S. forklift demand. The evidence regarding this issue is mixed. Staff and Petitioners each offer sound arguments in support of their estimates of the elasticity of aggregate domestic demand. See Memorandum EC-L-143, supra note 68, at 18-23, and Petitioners' Post-Hearing Brief at 22-23. On balance I am persuaded that the elasticity of aggregate U.S. forklift demand is not extremely high. As a consequence I do not believe that reduced U.S. market prices resulting from the sales of dumped imports encouraged consumers to buy so many more forklifts that domestic producers were not materially injured. Looking at the issue of price suppression, the relatively low elasticity of domestic demand meant that there was significant pressure in the U.S. market to move prices downward to induce customers to purchase the total additional forklifts (dumped imports and domestic) available in the marketplace.

Conclusion

The evidence in this investigation convinces me that the domestic industry has suffered material injury caused by lost sales and lower prices that would not have occurred had there been no dumping of Japanese imports in the U.S. market.93/ For the foregoing reasons, I conclude that the domestic forklift industry has sustained material injury by reason of dumped imports from Japan.

93/ I am persuaded that the lost sales and lower prices suffered by the domestic industry directly translated into material injury as measured by the factors discussed in the Condition of the Industry section of the Commission opinion in this investigation.

APPENDIX TO ADDITIONAL VIEWS
OF VICE CHAIRMAN BRUNSDALE

Commissioner David B. Rohr

Questions Regarding the Use of Elasticities

Internal Combustion Engine Forklifts from Japan
731-TA-377(F)

The Court of International Trade has recently issued a number of rulings relating to the Commission's use of elasticity estimates in its analyses of title VII cases. In particular, I note the Court's 2 decisions relating to the Commission's decisions in the case of Live Swine and Pork from Canada (the Alberta Pork decisions) and in its decision in the recent USX remand.

1. In the first Alberta Pork decision, the Commission's causation analysis was remanded to the Commission because of flaws that the Court found in its use of elasticity estimates. What conclusions about the general use of elasticity estimates and, more specifically, also about the source of the elasticity estimates it uses, should the Commission draw from that case?

2. In her second remand decision in the USX case, Judge Restani of the CIT also discusses the use of elasticity estimates. In terms of principles which the Commission may draw from Judge Restani's discussion about the use of elasticity estimates generally, what may we conclude from the judge's opinion? Does that case tell us anything more about elasticity estimates than the fact that they are more reliable if the parties have the opportunity to comment on them? If so, what?

3. Most recently, the CIT affirmed the Commission's remand decision in Alberta Pork. This decision, it seems to me, focussed specifically on elasticity estimates. What conclusions might we draw from the Court's decision in this case?

4. In its initial decision in Live Swine and Pork from Canada, the Commission used elasticity estimates derived from both live swine and pork to support its conclusion that live swine imports from Canada were a cause of injury. Is it correct to conclude that the CIT's initial remand was due to the fact that the court found it inappropriate to use elasticity estimates for both swine and pork to reach conclusions relating solely to swine?

5. Does this establish the principle that elasticity estimates derived from products other than the specific like product under investigation are improper?

6. In our remand decision in the Live Swine case, the Commission made two arguments relating to its use of elasticity estimates. First, we argued that it was more sound economically to use the

broader estimate of both swine and pork in looking at the elasticity for swine. Looking at the decision of the court, do you find anything which indicates that the Court accepted this rationale?

7. Second, the Commission specifically adjusted the elasticity estimates based on the relative volumes of swine and pork in order to develop an elasticity specifically relating to swine. Does this mean that whenever the Commission uses elasticity it must specifically provide the mechanism it used to develop the elasticity number it used? Does it also mean that we must adjust such elasticity estimate, and provide the Court with the basis of the adjustment, to account just for the like product under investigation? Is it sufficient to fulfill the court's requirement for the Commission to indicate that it used particular information to come up with an estimate or must it provide the mechanism it used to convert the information into the particular number which it used?

8. Is the decision and the rationale used by the Court in the second Alberta Pork decision consistent with the decision of Judge Restani in the USX remand?

9. What general proposition can we draw from these cses about the proper basis from which elasticity estimates used in Commission investigations should be calculated?

10. In Alberta Pork, it seems to me that the Court also addressed the proper place of elasticity estimates within the broader framework of Commission causation analysis. What conclusions is it appropriate to draw about how elasticity estimates fit within this framework?

11. Taking these three decisions together, along with any other court decisions you feel are relevant, including, specifically, the Maine Potato case, summarize the court-enunciated principles that should guide the Commission's use of elasticity estimates.

12. Please comment on whether the calculation of the elasticity estimates made by you, opposing counsel and the staff have been made on a basis consistent with the principles enunciated by the Court. Can you suggest any method for adjusting them to make them consistent? How reliable would any such calculation be? How good, that is reliable, is the data upon which such adjustments would have to be based?

13. Can you fit the elasticity analysis which has been suggested within the broader framework of causation analysis mandated by the statutory consideration of volume and price that we have in this case? Please pay particular attention to the Commission's preliminary decision in this case and indicate whether an elasticity analysis is consistent with or inconsistent with such

analysis. How much weight do you suggest we give to elasticity estimates in an investigation involving a non-commodity product such as forklift trucks? If there is a conflict between the conclusions which we might draw from our examination of price comparisons and volume analyses and from an elasticity analysis, which do you feel it would be more appropriate for the Commission to rely on? Why?

Thank you very much.

APPENDIX C

Answers to Questions of Commissioner Rohr

1. The first Alberta Pork decision (CIT Slip Op. 87-94) approves the use of elasticity estimates to assist the Commission in its analysis of injury. (Slip op. at 46). But the Court questioned whether the elasticity estimates used by the Commission in that proceeding were applicable to the product under investigation. In particular, the Court was concerned that elasticities of demand used to analyze the impact of live swine imports upon domestic swine prices had been generated from econometric models that combined data on live swine and pork to estimate a single elasticity for both products, rather than treating live swine and pork as distinct products. If so, the Court was concerned that the resulting elasticity might be misleading for purposes of estimating the impact of swine imports alone on domestic swine prices, and remanded the case for a reassessment of the elasticity evidence.

Thus, the decision confirms that elasticity estimates are potentially useful to the work of the Commission. But it also suggests that the Commission should not rely uncritically upon elasticities that, for whatever reason, are potentially misleading as to

conditions in the industry under investigation. Instead, it should evaluate elasticity estimates carefully to ascertain any possible biases in the estimates and assess the significance of those biases.

2. The second remand decision in the USX case (CIT Slip Op. 88-30) also approves the use of elasticity estimates to aid the Commission in its analysis, but questions the reliability of the estimates used in that proceeding. Among other things, the Court suggests that reliance upon particular elasticity estimates is more likely to be reasonable if parties to the proceeding have had an opportunity to comment upon them and raise any pertinent criticisms. The Court further observed that the estimate relied upon by one Commissioner was derived from a model that was estimated with data that were potentially out of date, and that included products not under investigation in that proceeding. The Court then held that the Commissioner should have considered whether those possible shortcomings made the elasticity estimate unreliable and, if they did not, should have explained why.

Thus, as a general principle, the Court apparently accepts the fact that elasticity estimates used by the Commission will not always be derived from econometric models that are ideal as to the data that they employ,

and holds that the Commission must consider whether any imperfections in the underlying data might make the elasticity estimates unreliable. If the Commission concludes that imperfections in the underlying data do not destroy the reliability of the elasticity estimates, it should explain why if it relies upon the estimates in its determination.

3. In the most recent Alberta Pork decision (CIT Slip Op. 88-40), the Court affirmed the Commission's determination on remand, which was based in part upon elasticity estimates that had been adjusted for a possible bias due to the aggregation of data on live swine and pork in the econometric models that were used to generate the estimates. The Court concluded that the adjustments were done in a reasonable manner, and noted that the adjustments did little to alter the Commission's original assessment of the quantitative impact of swine imports upon domestic swine prices. The Commission was therefore reasonable in concluding on remand precisely what it had concluded in the original proceeding -- that imports of live swine had caused material injury to the U.S. swine-producing industry. The Commission was also reasonable in relying upon the adjusted elasticities rather than developing entirely new elasticity estimates, as the adjusted estimates

constituted the best information available under the circumstances. Like the USX decision, therefore, this decision suggests that the Commission may utilize estimates derived from data that are less than ideal if the estimates constitute the best information available.

4. It would be incorrect to suggest that the remand in the Live Swine and Pork investigation was due to the fact that the Court found it absolutely impermissible to use elasticity estimates for both swine and pork to reach conclusions relating solely to swine. Rather, the Court was concerned that the use of estimates based upon the combined data might be misleading as to the impact of swine imports alone, and that the Commission had not properly considered this possibility. The Court's subsequent affirmance of the Commission's determination on remand indicates that the Commission may indeed rely upon elasticity estimates derived from data that include products not under investigation, as long as the need for adjustments to the resulting estimates has been duly considered and any appropriate adjustments have been made.

5. No it does not -- see answer to question 4 above. If elasticity estimates are derived from products other than the specific like product under

investigation, the Commission must consider whether those estimates are nonetheless reliable, and make any appropriate adjustments for ascertainable biases.

6. The Court does not accept this argument by the Commission explicitly, nor does it reject it. But the Court perhaps implies an acceptance of the Commission's position in the following passage: "In light of the limited time the Commission was given to conduct its remand, and the reasons for adjusting the existing econometric estimates rather than seeking new estimates derived from data on only live swine, the Court finds the Commission's determination that the econometric estimates on record are the best information of such nature available is reasonable." Slip Op. at 13.

7. The Court does not specify precisely what the Commission must provide in the record to justify its reliance on particular elasticity estimates, or what adjustments might be required under particular circumstances. Plainly, if an elasticity estimate is derived from data that include products not under investigation, the Commission must consider whether the estimate might be misleading, and whether adjustments are thereby warranted. If the Commission reasonably concludes that no adjustments are necessary, or can

reasonably identify the direction of any possible bias in the estimate and thereafter treat the estimate as an upper or lower bound (as the case may be) on the actual elasticity, then presumably no adjustments to the estimate would be necessary. If adjustments are made, however, it is probably necessary for the Commission to include in the record information (such as a memorandum from the staff economist) indicating why and how the adjustments were performed. It is also probably necessary for the Commission to include in the record information about the source of any elasticity estimates that are relied upon and the sample period for the data used to generate them.

8. The Alberta Pork and USX decisions are not inconsistent. Both caution the Commission against reliance upon misleading elasticity estimates, yet both recognize the practical limitations of data and econometric techniques, and allow the Commission to rely reasonably upon the best information available.

9. The most fundamental principle that emerges from these cases is that, as in any phase of the Commission's injury analysis, the Commission should seek to obtain the best information available when utilizing elasticity estimates. The Commission should always consider

whether inadequacies of the data or statistical techniques used to generate elasticity estimates render those estimates unreliable or necessitate some further adjustments.

10. As noted, the Alberta Pork decision clearly indicates that analysis of causation on the basis of elasticity estimates is reasonable and permissible. The Court does not indicate how heavily the Commission may rely upon elasticity estimates in reaching its conclusions, or how much the Commission must supplement elasticity analysis with other information concerning the causal impact of imports on the domestic industry.

11. The Court of International Trade had thus far placed relatively few constraints upon the Commission's use of elasticity estimates. Analysis based upon such estimates, in principle, is reasonable and permissible. But the Commission should be alert to the possibility that a given estimate may for one reason or another be misleading as to conditions in the industry under investigation. An estimate might be misleading if the data upon which it is based are old and conditions in the industry have changed. Alternatively, it might be misleading because the data upon which it is based include products other than the "like product" under

investigation. The Commission should carefully consider these possibilities, as well as any other possible source of bias in elasticity estimates. Where a source of possible bias in a given estimate has been identified, the Commission should consider its significance including, among other things, whether the bias is serious enough to render the estimate totally unreliable or to require an adjustment to the estimate. The Commission should also explain its reasoning in this regard. After due consideration of these matters, the Commission is free to utilize elasticity estimates in its injury analysis. Furthermore, the elasticity estimates relied upon by the Commission need not be derived from data or statistical techniques that are ideal in every respect, as long as the Commission's reliance upon them is reasonable and makes use of the best information available.

12. We have no additional suggestions regarding the specific elasticity estimates provided in the Staff Elasticities Memo. They should be regarded as what the Staff purports them to be -- estimates, based either on specific regression equation estimates (as in the case of the demand elasticity) or on the informed judgment of the Staff of the responsiveness of particular quantities (i.e. domestic or foreign production, and U.S. sales) to

changes in forklift prices. Unless the Staff has many more observations on prices, production, and sales of domestic and foreign trucks than it has collected (only three individual years' data), it is highly doubtful, in our view, whether the Staff will be in a position in this case to improve upon the estimates it has already provided.

13. We believe the elasticity analysis can be fit into the causation framework used by the Commission, consistent with the directions of the dumping statute. As indicated in earlier responses, any elasticity estimates should be considered as part of the information base developed by the Commission in conducting its investigation, and thus should be factored into the Commission's final decision. The view is reflected in the USX remand opinion.

In addition, there is nothing wrong in principle with using elasticity estimates in a case involving a "non-commodity" product. Because products are not fungible, they are imperfect substitutes rather than perfect substitutes, and thus the focus will be in large part on cross-elasticities of demand in the U.S. market rather than own-price elasticities. But the exercise is conceptually much the same. And on the supply side, the elasticity of supply from alternative foreign producers

has the same potential bearing upon a "non-commodity case" as on a "commodity" case, although again the impact on domestic producers of alternative foreign supplies may be computed via cross-elasticites rather than own-price elasticities.

ADDITIONAL VIEWS OF COMMISSIONER RONALD A. CASS

Certain Internal Combustion, Industrial
Forklift Trucks from Japan
Investigation No. 731-TA-377 (Final)

I concur with the Commission's affirmative determination in this investigation, finding that the domestic industry is suffering material injury by reason of less than fair value ("LTFV") imports of IC forklifts from Japan. I join the Commission's definition of the like product and the domestic industry,1/ the Commission's discussion of the condition of the industry, and the Commission's discussion and disposition of the related parties and critical circumstances issues. I also join the Commission's opinion insofar as it concludes that returns to the domestic industry have declined materially relative to what they would have been absent the LTFV sales subject to investigation. I reach this conclusion, however, by a different route than that taken in the Commission's opinion.

1/ I also concur with the observations respecting like product and industry definitions contained in the Additional Views of Vice Chairman Anne E. Brunsdale. I note that the choice between the frame approach and the value-added approach to product definition does not appear to have decisional significance in this investigation.

I. Assessing Injury By Reason of LTFV Imports

A. Basis for a Unified Comparative Analysis

There are two principal reasons why I believe that the analytic framework generally used by the Commission in recent years is not the framework best suited to carry out the requirements of Title VII of the Tariff Act of 1930 which governs this investigation.

First, in my view, the Commission should not ask separately whether the domestic industry has been injured, and then, if injury has been found, inquire whether the imports under investigation caused or contributed to that injury. I think that the more sensible approach -- and one that comports more faithfully with the language and intent of Title VII of the Tariff Act -- is a unified analysis of the relationship between LTFV imports and effects on the domestic industry that compares the domestic industry's actual performance with what the domestic industry's performance would have been if there had been no LTFV imports.2/ Failure to follow a unified

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2/ The distinction between the two approaches and the legal basis for preferring the unitary approach are explained at greater length in 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Preliminary), USITC Pub. 2076 (April 1988) (Additional Views of Commissioner Cass).

approach can create a requirement that the domestic industry be unhealthy as well as injured by reason of LTFV imports.3/

Second, I believe that the Commissioners have a duty to explain clearly how they have assessed the impact of LTFV imports on the domestic industry. This duty is common to all significant administrative decisions.4/ It includes the responsibility to articulate the major factual inferences and factual assumptions that support that assessment. I do not believe that our duty is fully discharged if we simply examine in a general way the present condition of the domestic industry and recent trends in the industry and, after intuitive assessment of their relationship, offer our conclusions as to whether the industry has been injured by

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3/ See, e.g., Digital Readout Systems and Subassemblies thereof from Japan, Inv. No. 731-TA-390 (Preliminary), USITC Pub. 2081 (May 1988) (Views of Chairman Liebeler, Vice Chairman Brunsdale and Commissioner Cass) at 20-21. The argument that a healthy industry cannot be injured is at odds with suggestions in the pertinent legislative history and in judicial decisions. See S. Rep. No. 1385, 90th Cong., 2d Sess. pt. 2, at 11 (1968), reprinted in 1968 U.S. Code Cong. & Admin. News 4548-49; S. Rep. No. 249, 96th Cong., 1st Sess. 87 (1979); Republic Steel Corp. v. United States, 591 F. Supp. 640, 649 (CIT 1984), reh'g denied, 9 CIT 100 (1985), dismissed (Order of August 13, 1985). It also is not the most natural reading of the statutory instruction that antidumping duties be imposed if the Department of Commerce finds that sales have taken place at LTFV and "the Commission determines that an industry in the United States is materially injured... by reason of imports of . . . [that] merchandise...." 19 U.S.C. § 1673d(b)(1).

4/ See SEC v. Chenery Corp., 318 U.S. 80 (1943); Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941).

LTFV imports. The statute requires us to determine whether LTFV imports have materially affected the domestic industry; we cannot adequately inform parties of the basis for our decisions unless we reveal how that effect is determined.5/ The Commission's approach, which does not usually identify many of the predicates necessary to assess the effects of LTFV imports on the domestic industry, seems to pay inadequate attention to this task.6/

The approach I have developed for addressing antidumping investigations under Title VII no doubt is not the only way of addressing these two concerns. It may not be the best way of addressing them. But it squarely faces up to the real

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5/ Indeed, Congress has implicitly recognized that this is the case. The Omnibus Trade and Competitiveness Act of 1988 that was recently passed by Congress contained a provision that would require the Commission to "consider and explain" its analysis of each factor that it takes into account in deciding a Title VII case. See H. Rep. No. 100-576, 100th Cong., 2d Sess. at 616-17 (1988).

6/ I am aware that one judge on the Court of International Trade has indicated that the mode of analysis generally used by the Commission in recent years, if never fully explained, has become at least generally understood by those who work in this area. USX Corp. v. United States, 12 CIT ____, Court No. 75-03-00325, slip op. 86-30 (March 15, 1988). The judge, thus, suggested that the need for explanation of the traditional approach is not so great as for the alternative approaches. Id. Because the unified comparative approach that I have developed explicitly identifies the predicates necessary to assess the effects of LTFV imports on the domestic industry (see discussion, infra, text at notes 19-23), and therefore more closely conforms to the requirements traditionally imposed upon administrative agencies, it should be better able to withstand such an examination.

problems that underlie my departure from the analysis that has been used by the Commission in recent years. As set forth below, I believe my approach both is fully in accord with our statutory mandate and conforms to ordinary expectations of parties to administrative proceedings as to explication of the basis for decision.

B. Analytic Framework: A Comparative Approach

Title VII of the Tariff Act indicates with reasonable clarity the nature of the general inquiry, and also the nature and sequence of subsidiary inquiries, that the Commission should undertake. The factors given by the statute and the order in which they are listed in the statute7/ suggest a three-part inquiry into the causation of material injury.8/

7/ Title VII first describes the determination that the Department of Commerce must make regarding the existence of the unfair trade practice. Then Title VII describes the considerations that should guide the Commission's determination respecting the existence of material injury from unfairly traded imports, directing the Commission to "consider, among other factors --

(i) the volume of imports of the merchandise which is the subject of the investigation,

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

(iii) the impact of imports of such merchandise on domestic producers of like products." 19 U.S.C. § 1677(7)(B). The statute goes on to spell out these three factors with greater particularity. 19 U.S.C. § 1677(7)(C).

8/ The aggregation of the sixteen statutory factors into three types of inquiry does not suggest that only three of the factors have real importance. The three inquiries comprehend

(continued...)

First, the Commission must examine the prices and volumes of the subject imports. In particular, the Commission must assess how sales at LTFV changed the prices of subject imports and the volume of those imports' sales in the U.S. Second, the Commission must evaluate the effect of LTFV imports on domestic prices and sales of the like product. Third, the Commission must explore the manner in which the changes in the demand for the like product affected employment and investment in the domestic industry and must assess the significance of such changes.9/

8/(...continued)
all of the statutory factors. Aggregation of the factors into three groups is not intended to suggest that some factors are especially important and others unimportant. The separation of the factors into groups instead is simply a means of organizing the factors to facilitate analysis. At the same time, it must be confessed that the Commission has not always been able within the statutory time limits on its investigations to gather information on all of the statutorily listed factors and, therefore, cannot always rely on the full panoply of considerations dictated by statute. For example, the Commission's reports rarely contain significant information on investment in the domestic industry, return on investment, or ability to raise capital. By showing the relationships among the statutory factors, the analytical structure followed here allows us to assess the effects of imports with greater confidence even when less than comprehensive information pertinent to related factors is before the Commission.

9/ Whether the injury to the domestic industry caused by the LTFV imports rises to the level of materiality requisite under Title VII can be addressed as a fourth question. Insofar as that is done, however, the fourth inquiry becomes a process of applying the statutory test for materiality to the information developed in the prior three inquiries; that is, this last inquiry would reach a legal conclusion but would not extend the factual analysis of the other inquiries.

It is important to note that these statutory inquiries respecting the effects of LTFV imports are not absolute but instead are comparative. The analysis of causation that has been used by the Commission in recent years, once it moves beyond assessment of the economic health of the complaining industry, also must be comparative. It must ask how the domestic industry's fortunes differ from what they would have been under some other set of facts. That is the essence of any causation analysis,10/ and it certainly is required under any approach to the statutory question respecting the effect of LTFV imports on the domestic industry. One can answer such questions only if the effect of imports is directly visible independent of all other factors (as might be the case in a simple personal injury case in which there was a neutral witness to the act that plainly inflicted the injury) or if one compares the observed facts respecting an industry's economic fortunes with some other situation (as with more complicated cases of injury from remote exposure to chemical

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10/ See, e.g., W. Keeton, R. Keeton & D. Owen, Prosser & Keeton on the Law of Torts 265 (1984). Indeed, it is widely recognized that this causation test, if the essential predicate of any causation analysis, generally provides only the first analytic step. See, e.g., H.L.A. Hart & A. Honore, Causation in the Law (1959); Calabresi, Concerning Cause and the Law of Torts: An Essay for Harry Kalven, 43 U. Chi. L. Rev. 69 (1975); Malone, Ruminations on Cause-in-Fact, 9 Stan. L. Rev. 60 (1956).

toxins).11/ Plainly, what is called for in antidumping investigations is a comparison of the facts respecting current industry performance with the nature of that performance in the absence of LTFV imports.

This comparative question is a factual one: what was the effect of the LTFV imports on the domestic industry? Resolution of this question, however, depends on more than readily observed facts. It also depends on inferences drawn from the facts about what happened because of LTFV imports that affected the domestic industry. Of course, it should not need stating that asking what happened "because of" or "by reason of" LTFV imports is the same as asking what would and would not have happened without the LTFV imports.

In addressing that question, we must acknowledge that clear answers generally will not be apparent no matter what method of analysis is used. The effect can never be assessed with absolute confidence because imports never affect the domestic industry in a manner that is plainly observable. Industry fortunes may rise or fall coincidentally with observed changes in imports; but many factors affect the

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11/ See, e.g., Robinson, Multiple Causation in Tort Law: Reflections on the DES Cases, 68 Va. L. Rev. 713 (1982); Rosenberg, The Causal Connection in Mass Exposure Cases: A "Public Law" Vision of the Tort System, 97 Harv. L. Rev. 851 (1984); Schwartz, Products Liability, Corporate Structure, and Bankruptcy: Toxic Substances and the Remote Risk Relationship, 14 J. Legal Stud. 689 (1985).

industry simultaneously, and the effects of LTFV imports cannot be seen separately.12/

The complicated reasons behind industry performance are not themselves the focus of our inquiry. The Commission does not need separately to evaluate the many factors affecting the domestic industry: the statute does not instruct us to compare the relative magnitudes of the various causes of observed changes in the domestic industry in cases under Title VII.13/ Indeed, the Commission need not even identify all such causes.

This does not mean, however, that the Commission can determine the effect that LTFV imports actually have had on the domestic industry without careful analysis. And it does not mean that, because such analysis is difficult and its conclusions always arguable, the Commission should not attempt such analysis. Admission that careful comparative analysis does not produce unarguable, self-evident conclusions does not condemn such analysis or in any way suggest that its conclusions are especially suspect. All conclusions about the effects of LTFV imports can be questioned; none is self-

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12/ See Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Preliminary), USITC Pub. 2081 (May 1988) (Views of Chairman Liebeler, Vice Chairman Brunsdale and Commissioner Cass) at 21.

13/ S. Rep. No. 249, 96th Cong., 1st Sess. at 74 (1979); see Cold-Rolled Steel Plates and Sheets from Argentina, Inv. No. 731-TV-175 (Final) (Second Remand) (Views of Vice Chairman Brunsdale) at 36.

evident. That in large measure is why the Congress delegated this function to a multi-member Commission and accorded us substantial discretion in making this assessment.14/ We are not free to choose some other question to answer simply because it is easier, such as whether LTFV imports were a contributing factor in any way to whatever changes a domestic industry has experienced. The statute directs the Commission to assess whether a domestic industry was materially injured by reason of LTFV imports. We must do that as carefully and directly as we can. Although with the benefit of additional experience or further consideration I may find a different approach preferable, I believe that the explicitly comparative approach I use here best performs this task.

C. The Comparative Approach to Assessment of Injury From LTFV Imports: Clearing the Cobwebs

Before discussing how the comparative approach leads me to the conclusion that I have reached in this case, I should address some misconceptions about this approach. The comparative approach that I have adopted does not, as has been suggested,15/ turn on an assessment of the nature of "barriers

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14/ See H. Rep. No. 1156, 98th Cong., 1st Sess. at 75 (1984).

15/ Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Preliminary), USITC Pub. 2081 (May 1988) (Additional Views of Commissioners Eckes and Rohr) at 51.

to competition in foreign markets" and it is in no way an "injury to competition test". The analytic approach that I have adopted seeks to determine the effects of LTFV imports on the domestic industry -- nothing more, nothing less. It does not attempt to assess "injury to competition" in any form, although the domestic industry at issue inevitably will be in competition with the LTFV imports. My analysis does not make relief dependent on the degree of concentration in the domestic market, on changes in concentration, or on evidence of any anti-competitive act (unless one wishes to apply, or more often misapply, that label to sales at less than fair value). It does not make relief dependent on the presence or absence of barriers to new competitive entry in the relevant U.S. markets. Accordingly, it is difficult to understand how my approach could be confused with one designed to assess injury to competition.

I have elsewhere explained how competitive conditions in foreign markets -- including impediments barring reimportation to the exporting country of goods exported to the United States -- facilitate dumping.16/ Under any reasonable interpretation, these comments can not be construed as indicating that I believe that the Commission's task is to

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16/ See 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Preliminary), USITC Pub. 2076 (April 1988) (Additional Views of Commissioner Cass) at 35-36.

assess "injury to competition". Moreover, that reimportation impediments are an essential corollary of dumping does not suggest a requirement that the Commission expend considerable effort to evaluate in detail the exact scope of such impediments before a finding of dumping or of injury from dumped imports may be made.17/ The question whether dumping has occurred is, of course, the responsibility of the U.S. Department of Commerce; it is not our job, and I have not suggested otherwise. My analysis of injury from LTFV imports has not depended and does not depend on evidence of any particular level or kind of reexport impediment.

It also seems odd to me that my approach would be characterized as "remedy-oriented."18/ I do not at any point suppose that the question to be addressed by the Commission in Title VII investigations is what remedy should be imposed if injury from LTFV imports is found. I do not at any point, except when considering whether LTFV imports pose a threat to domestic industry, suppose that the question to be addressed is what will happen in the future. The comparative approach does not ask how the fortunes of the domestic industry will be different if the industry no longer must compete against LTFV

17/ But see Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Preliminary), USITC Pub. 2081 (May 1988) (Additional Views of Commissioners Eckes and Rohr) at 53.

18/ Id. at 51.

imports. Instead, the comparative approach asks how the fortunes of the domestic industry would have been different if the industry had not had to compete against LTFV imports. It is difficult, therefore, to understand how it could be said that this is a remedy-oriented approach.

Moreover, it should be noted that although the comparative approach to dumping investigations that I have adopted has been characterized as "novel,"19/ in reality the comparative approach is quite similar to approaches followed by other present and former commissioners20/ and differs from such approaches principally in the degree to which it makes explicit the factual inferences and assumptions that must be made in any analysis of the effect LTFV imports actually had on the domestic industry. For example, if one is going to draw any inference regarding the effect of LTFV imports on the domestic industry from information about industry performance at any point in our three-year period of investigation other than the six-month period examined by Commerce, one simply

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19/ Id. at 50.

20/ See, e.g., Certain Ethyl Alcohol from Brazil, Inv. No. 701-TA-239 (Final), USITC Pub. 1818 (March 1986) (Views of Chairwoman Paula Stern, Vice-Chairman Susan Liebeler, Commissioner David Rohr, and Commissioner Anne Brunsdale); Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 2081 (February 1986); Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 (February 1986) (Views of Chairwoman Stern, Vice Chairman Liebeler and Commissioner Brunsdale).

must make some judgment about whether in fact the industry faced LTFV imports at that point. This judgment could be based on an inference from facts in the record, on a rebuttable presumption, or on an unexamined assumption. It is, however, disingenuous to suggest that other analyses that rely on inferences from performance trends do not make any judgment about this matter.21/

In comparing the approach that I have adopted to approaches used in recent years by other members of the Commission, the primary difference, then, is between implicit and explicit attention, with the comparative approach choosing greater explicitness. There is no reason to believe that this feature of the comparative approach makes it any less faithful to the command of Title VII or any more vulnerable to challenge in the courts;22/ indeed, there is, if anything, reason to believe that precisely the opposite is true, as courts generally have sought to protect parties to

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21/ But see Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Preliminary), USITC Pub. 2081 (May 1988) (Additional Views of Commissioners Eckes and Rohr) at 55-56. In fact, the comparative approach I have used is less affected by this particular judgment than is the analysis that has been used by the Commission in recent years. My approach depends more on inferences from the factual record about the operation of domestic markets for the imports and the like product and less on comparison of trends in the domestic industry and the imports.

22/ But see id. at 49-50. See note 5, supra.

administrative decisions against the sort of inconsistencies that dependence on inarticulate assumptions can produce.23/

II. Analysis of Material Injury By Reason of LTFV Imports

A. LTFV Imports

(1) The Inquiry and Its Statutory Basis

The first inquiry I believe the statutory framework suggests concerns the LTFV imports subject to investigation. The effort is to compare the volumes and prices of the subject imports over the period of investigation with the volumes and prices that would have obtained had the imports been fairly traded.24/ Although I have made aspects of this inquiry explicit that apparently have not previously been addressed specifically by the Commission, I believe that this inquiry is consistent with judgments implicit in prior Commission decisions25/ and also believe that this inquiry is faithful to our statutory mandate.

Such an inquiry comports with both the language and structure of the Tariff Act. Under the statute, the

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23/ See Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941). See also Saginaw Broadcasting Co. v. FCC, 96 F.2d 554 (D.C. Cir.), cert. denied, 305 U.S. 613 (1938).

24/ See 19 U.S.C. § 1677(7)(B)(i), (C)(i), (C)(ii)(I).

25/ See, e.g., Certain Ethyl Alcohol from Brazil, Inv. No. 701-TA-239 (Final), USITC Pub. 1818 (March 1986).

Commission is directed to determine not "what was the effect of imports from the subject countries?"; instead, the Commission is asked "did the domestic industry suffer material injury (or threat or retardation) 'by reason of' foreign merchandise sold in the United States at less than its fair value?"26/ This question cannot be answered best simply by comparing the observed data with a hypothetical situation in which the foreign producers made no sales in the U.S. market. In order to answer this question, it is necessary, in the first instance, to attempt to analyze and assess the most realistic alternative to sales of imports at LTFV; that alternative will usually be sales of some volume of imports at fair value (that is, at prices not less than those charged in the foreign home market or foreign third market).

The structure of antidumping law also suggests the need to focus first on the effect of the difference between sales at less than fair value and the different volumes and prices of sales that would have been made if the exporter had not charged a lower price in the U.S.27/ The law imposes duties on LTFV imports if an antidumping order is entered; the statute does not prescribe exclusion of all LTFV goods. The

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26/ 19 U.S.C. § 1673d(b) (paraphrased).

27/ This statement at least holds true in investigations such as the present one in which the allegation of dumping is premised principally on the difference in prices between sales to the U.S. and sales to a foreign market.

statute defines LTFV sales in terms of the difference between the price of the foreign product in the United States and a foreign market, and the duties calculated by the Department of Commerce in such cases are intended only to equalize the prices between the United States and the foreign market.28/

While our analysis of the injury from LTFV imports does not depend on the effect of the remedy provided in the statute, elementary principles of statutory construction dictate that we should read the statute we are applying as a consistent document and should attempt to implement the intent embodied in that document.29/ The statute as a whole makes plain the intent to eliminate differences in base sales prices

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28/ Although the statute does provide for a comparison of ex-factory prices of sales to the United States with constructed costs, the manifest intent of the statute is to equalize exporter's selling prices between countries. Thus, the statute provides first for comparison of prices of sales to the United States and to the exporter's home market, and only in the event that no such sales (or offers for sales) for home consumption are not made in commercial quantities does the statute provide for use of alternative (third country) foreign market prices or constructed prices. 19 U.S.C. § 1677b. Moreover, the price construction plainly appears designed to indicate probable prices, rather than costs, of the products subject to investigation. 19 U.S.C. § 1677b(e).

29/ This proposition finds support across an array of commentary suggesting different particular methods of interpretation. See, e.g., H. Hart & A. Sacks, The Legal Process (tent. ed. 1958); Eskridge, Dynamic Statutory Interpretation, 135 U. Pa. L. Rev. 1479 (1987); Farber & Frickey, Legislative Intent and Public Choice, 74 Va. L. Rev. 423 (1988); Posner, Legal Formalism, Legal Realism, and the Interpretation of Statutes and the Constitution, 37 Case W. Res. L. Rev. 179 (1986-87).

of products destined for different countries when such price differences materially injure the domestic industry. Our reading of the portion of the statute we apply should be sensitive to this intent. The proper comparison, then, with which to begin our analysis of injury by reason of LTFV imports is between the effects of the prices and volumes of subject imports actually sold and those that would have been sold had the imports not been offered at a lower price in the United States -- that is, had the exporters been required to charge a single price for the goods in the foreign market and the U.S. market.30/

(2) Precision and Permissible Inferences

In making this comparison, it is important to bear certain matters in mind. One is that precise quantification of the price and volume effects of LTFV imports is not required and generally cannot be done with confidence. This is not, of course, a problem peculiar to this particular part of our inquiry. It should be emphasized that the nature of the information available to us invariably precludes any strong statements of precise quantitative effects.31/ Nor

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30/ See 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Preliminary), USITC Pub. 2076 (April 1988) (Additional Views of Commissioner Cass) at 74-75.

31/ This is in part due to the insulation of our record from some of the means for testing factual accuracy that generally accompany legal or formal administrative proceedings. For (continued...)

does the statutory mandate we apply suggest the necessity for great precision. After all, we are asked only to determine whether the adverse effects of LTFV imports on the domestic industry are "material," not to determine the amount of those effects.

At the same time, the more often we can articulate at least rough estimates of the various factors that influence our judgments or of the inferences we draw from the record evidence, the more clearly parties can gauge the basis for our decisions and the better they can predict our decisions. While we should not pretend to levels of precision that are utterly unrealistic, we also should not shy away from more precise statements when those statements can be made at reasonable levels of generality. If the Commission's mandate is not to articulate precise quantitative assessments, it also is not directed to obfuscate those judgments it can and does derive from the facts before us.

31/(...continued)
example, much of the factual data that is collected by the Commission is subject to stringent confidentiality requirements. See 19 U.S.C. § 1677f. The Commission is unable to receive argument or comment on the accuracy or reliability of such data from the parties to an investigation and therefore does not have the benefit of the complete airing of views that would accompany a fully adversarial process. Congress has recognized that this is an important limitation and, in passing the Omnibus Trade and Competitiveness Act of 1988, attempted to reduce its potential impact on the Commission's decision-making process. See H. Rep. No. 100-576, 100th Cong., 2d Sess. at 622-24 (1988).

In estimating the changes in prices and volumes of LTFV imports, which generally is dependent on the margins calculated by the Department of Commerce, the caution to draw conclusions only at reasonable levels of generality must especially be born in mind. After all, the margins do not represent the differences in actual sales prices in the markets being compared and margins and are not calculated periodically throughout the period we investigate, but rather are calculated by the Department of Commerce only for one six-month period.32/

Nonetheless, it seems a fair inference from the facts adduced in many investigations that the sales prices of LTFV imports will not be lower by an amount equivalent to the full extent of the dumping margin by reason of the different prices in the foreign market and in the U.S. Where we can reasonably do so, I believe that we should, on the basis of the facts before us, evaluate the likelihood that LTFV sales lowered

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32/ At the same time, however, such imperfections are hardly unique to dumping margin data. The Commission often bases its determinations upon less-than-ideal data as, indeed, it must, given the statutory command that it "use the best information . . . available." See 19 U.S.C. § 1677e(b). Accordingly, there is no basis for the claim, made by some, that the comparative approach is somehow fatally flawed because it takes into account, inter alia, dumping margin information. See Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Preliminary), USITC Pub. 2081 (May 1988) (Additional Views Of Commissioners Eckes and Rohr) at 56-58. Compare Hyundai Pipe Co. v. United States International Trade Commission, __ CIT __, slip. op. 87-18 at 7 (February 23, 1987).

U.S. prices of the subject imports by some other amount. We often should be able to determine with as much confidence as can be attributed to other decisions necessary to our ultimate judgment whether a very large, moderate, or relatively small change in the imports' prices accompanied LTFV sales.

There may, of course, be investigations in which the nature of the markets or of the margin calculations makes this determination infeasible. There also doubtless will be many instances in which, given the other facts in the record, selection among these different levels of import price changes will have no impact on the outcome of our determination. The approach I have taken to disposition of antidumping investigations does not preclude decision in such instances on the basis of other information available to the Commission.

(3) Application to IC Forklift Trucks

In this investigation, the record supports an inference that a substantial change in the price of the subject imports accompanied sales of the imports at LTFV, but the record does not support,33/ and disposition of this investigation does not

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33/ The particular manner in which the various dumping margins were calculated in this case, see USITC Memorandum EC-L-143 (May 6, 1988) from Office of Economics at 2, complicate the calculation of price changes, and would require elaboration of a more sophisticated means of deriving an inference from the available facts than I have employed in prior investigations. I do not at this point address the issues that such an extension of my analysis would raise, as I do not believe the calculation critical to disposition of this investigation.

require, more exact calculation of that price change. The Department of Commerce has determined that the average prices charged for the subject products sold in the Japanese market (or the equivalent average prices of subject products)34/ ranged from 13.65 percent to 56.81 percent higher than the average prices charged for such products in the U.S. export market.35/ Commerce further determined that the dumping margin for the products of most of the Japanese producers of the LTFV goods was closer to the higher end of this range than to the lower end.36/ If the dumping margins of the Japanese

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34/ This comparison was actually used by the Department of Commerce for only two of the exporters whose products are under investigation. Other bases for estimating the dumping margins were used for other exporters either because the exporters did not have sufficient home market sales, did not respond to Commerce's inquiries, or did not respond in a manner that allowed calculation of the dumping margin from the home market prices.

35/ The lowest dumping margin calculated for any of the respondents was 13.65 percent for Respondent Sakki Industrial Co. and the highest margin was 56.81 percent for Respondent Kasagi Forklift, Inc. Report at A-8.

36/ The dumping margins calculated by Commerce for the other Japanese producers were as follows:

Toyota Motor Corp.	17.29%
Nissan Motor Corp., Ltd.	51.33%
Komatsu Forklift Co.	47.73%
Sumitomo-Yale	51.33%
Toyo Umpanki Co.	51.33%
All Others	39.50

Report at A-8.

firms are weighted according to the percentage of all LTFV products sold by each such firm, the average dumping margin for the subject imports would be approximately 41 percent. These dumping margins, taken together with the fact that the Japanese exporters' sales volume in Japan was between sixty-three percent and sixty-five percent of the combined sales volume in Japan and the United States,37/ provide a reasonable basis for inferring that the prices at which Japanese forklifts were sold in the United States declined significantly by reason of LTFV sales (probably by a substantial percentage of the dumping margins of the Japanese producers).

The record in this investigation further supports an inference that the substantial volume of Japanese forklift sales in the United States is in significant measure attributable to the lower price that accompanied LTFV sales. Although the evidence was not entirely consistent on this point, credible testimony from several witnesses indicated that price was an important factor in the choice among

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37/ Report at A-42, Table 21; USITC Memorandum EC-L-143 (May 6, 1988) from Office of Economics at 10. The relative sales volumes in the U.S. and Japan generally influence the degree to which the Respondents lowered U.S. prices. The evidence in the present record does not include direct evidence of Japanese exporters' pricing decisions with respect to undercutting U.S. producers' forklift prices, although Petitioners did allege that Respondents set U.S. prices at levels designed to allow sales below U.S. producers' prices. Tr. at 11.

competing forklift trucks.38/ As discussed below, the expansion in sales of Japanese forklift trucks attributable to sales at LTFV bears directly on the effect of the LTFV imports on the domestic industry.

B. Domestic Prices and Sales

(1) Defining the Inquiry: Statutory Basis

The second inquiry suggested by the statute39/ asks, in light of the changes in the market for the imported products consequent to the LTFV imports, what changes have occurred in prices and sales of the domestic like product? Again, this does not depart from the traditional focus of our investigations. The information traditionally gathered by the Commission and the parties on trends in prices and production of the like product is plainly useful to this inquiry. As explained above, however, even if completely trustworthy data on such trends were available -- and information on these matters is often incomplete or of questionable accuracy40/

38/ See, e.g., Tr. 16, 39-40, 50, 82-83. This testimony is consistent with information developed by the Commission staff during the course of its investigation. USITC Memorandum EC-L-143 (May 6, 1988) from Office of Economics at 14-23.

39/ 19 U.S.C. § 1677(7)(B)(ii).

40/ These informative failures result in part from the peculiar circumscription of our investigation (focusing generally on market segments that are not congruent with producer's own divisions or with standard product like

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-- such trends, taken alone, can not, of course, answer the question posed by the statute respecting the effect of LTFV imports.41/ We not only want to know what has happened to prices and sales of domestic like products; we also want to know what role the LTFV imports played in changing domestic prices and sales.42/

Recognizing that this linkage between imports and changes in domestic products' prices and sales often will be difficult to establish directly, the Tariff Act directs our attention to a series of factors that might provide bases for inferences regarding this linkage. To that end, the Commission is told, for instance, to look at evidence that the LTFV imports competed in the domestic market at a lower price than the like

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40/(...continued)
categories), the time constraints under which our investigations must by law be conducted and the procedures used to collect and evaluate information.are suggested above. On the first of these points, see note 31, supra.

41/ See S. Rep. No. 1385, 90th Cong., 2d Sess. pt. 2 at 11 (1968), reprinted in 1969 U.S. Code Cong. & Admin. News 4548-49; S. Rep. No. 249, 9th Cong., 1st Sess. 87 (1979); Republic Steel Corp. v. United States, 591 F. Supp. 640, 649 (Ct. Int'l Trade 1984), reh'g denied, 9 CIT 100 (1985), dismissed (Order of August 13, 1985).

42/ Petitioners argued that if the imports in any way contributed to a decline in the economic health of the U.S. forklift truck industry that was more than de minimis, we should find in the affirmative. See Tr. 46-47; Petitioners' Prehearing Brief at 18-19. Respondents argued that the harm from the LTFV imports must in itself be material. See Tr. 189-90. I accept Respondents' standard for purposes of this investigation.

products (price undercutting) or that competition from the LTFV imports drove down (or kept down) prices for the like products (price depression or suppression).43/

The statute also commands attention to several other factors that might support or contradict an inference regarding the effects of LTFV imports on domestic price and production. Information on inventories, capacity utilization, and productivity can be relevant to this inquiry, as they can suggest reasons the subject imports would have more or less effect than might at first appear.44/ For example, if capacity utilization in the domestic industry is low, that might suggest significant ability to increase production if the absence of LTFV imports increased demand for the like product. Concomitantly, if domestic capacity were (virtually) fully utilized, the LTFV imports would not exert significant

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43/ 19 U.S.C. § 1677(7)(C)(ii). The references to price undercutting and price depression or suppression connote different market situations. The former refers to price differences between the LTFV imports and the like product in the U.S. market generally accounted for by some product differences perceived by consumers. Such perceived differences may be persistent, as in the case of quality differences, or temporary, as in the case of branded products sold at promotionally lower prices over a period of time while consumers become acquainted with the product. Price suppression or depression refers to the effect on the price of the like product caused by the presence of LTFV imports and occurs to some extent anytime dumping is taking place and the like product is a substitute for the LTFV imports.

44/ 19 U.S.C. § 1677(7)(C)(iii).

influence over domestic production, although the imports will then affect price more significantly.45/

(2) Application to IC Forklift Trucks

In the instant investigation, examination of the statutory factors respecting effects on prices and sales of the domestic like product suggests that LTFV imports had significant adverse effects on prices and sales of the domestic like product.

The trends in domestic prices and production portray an industry where domestic operations are in decline. Domestic production, measured both in terms of units shipped and the dollar value of such shipments, declined slightly from 1985 to 1986 and more significantly -- by approximately fifteen percent -- from 1986 to 1987.46/ The reported sales prices of most categories of U.S.-produced IC forklifts declined by similar percentages during the same period.47/

This information, standing alone, however, does not demonstrate that LTFV imports caused these downward trends; by itself it does not provide a very useful indication of the extent to which domestic prices and production were affected

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45/ It is, of course, possible that LTFV imports might inhibit an expansion of domestic capacity. Such inhibition might be considered in connection with an allegation that imports threaten material injury to the domestic industry.

46/ Report at A-18.

47/ Report at A-67.

by LTFV imports. When compared to data on Japanese forklift imports, this information certainly does not appear dispositive. Reported prices for Japanese trucks over the period of investigation generally were lower than reported prices for roughly comparable U.S.-produced IC forklift trucks.48/ That is consistent with an inference that the subject imports led to declining prices for (depressed prices of) U.S. produced trucks. But there is no clear basis for inferring this causal link from the trend information available to us. The correlation of the prices of U.S. and Japanese trucks is disputed by Respondents, and, as noted in the Commission's opinion, the price comparisons suffer from differences in the products being compared.49/ Further, the prices of Japanese trucks generally rose over the period of investigation while those of U.S. produced trucks declined.50/ Hence, the relation between them is unclear. Moreover, as Respondents have argued, given that the subject imports have held a fairly stable share of the U.S. IC forklift truck market throughout the period of investigation,51/ it is hard

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48/ Report at A-66-67, Tables 30-34.

49/ See Tr. 191; Respondents' Posthearing Brief at 7-8; Views of the Commission at 27, n.75.

50/ Report at A-66-67, Tables 30-34.

51/ Report at A-48, Table 25.

to trace declines in sales of U.S. trucks to any trend in sales of Japanese trucks.52/

Examining the issue in a framework that does not depend exclusively on trend data reveals much more clearly that the subject imports did, in fact, have a serious impact on the domestic industry's production and prices. Among the factors that determine the degree to which the Japanese trucks reduced prices for or sales of domestic IC forklifts are the pricing of the LTFV imports, the degree to which consumers view the LTFV imports and the domestic like product as good substitutes, the U.S. market share of the LTFV Japanese trucks, and the availability of other good substitutes for the Japanese and domestic trucks. The record of this investigation contains conflicting information about these matters. On balance, the factual inferences that appear most in keeping with the evidence before us support the conclusion that the LTFV sales of subject imports significantly decreased U.S. demand for domestically-produced IC forklifts. The LTFV sales substantially lowered the prices of the Japanese forklift trucks,53/ and the dumped products accounted for approximately half of apparent IC forklift truck

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52/ See Respondents' Posthearing Brief at 6-7.

53/ See discussion, supra, text at note 37.

consumption in the U.S. market.54/ Given the existence of substantial excess capacity in the U.S. and relatively low cost of its increased utilization,55/ it seems apparent that sales of LTFV imports were significantly at the expense of sales of U.S.-produced forklift trucks.

Two facts important to this conclusion, however, are in dispute and careful attention should be given to the parties' arguments on these points. First, Respondents argue that the excess capacity of the domestic U.S. forklift truck industry would not have been used but instead would have been allowed to remain dormant, regardless of competition from LTFV sales of Japanese forklift trucks, in favor of increased reliance on less costly off-shore production.56/ This argument is offered in support of the assertion that sales of subject imports did not significantly displace sales of the domestic like product. Petitioners take issue with this argument.57/ Second, Respondents contend that the Japanese imports and the domestically-produced forklift trucks are not good

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54/ Report at A-68, Table 25.

55/ See Report at A-18; USITC Memorandum EC-L-143 (May 6, 1988) from Office of Economics at 5-7.

56/ Respondents' Prehearing Brief at 7-8; Litan, An Economic Analysis of Injury Allegations in the ITC's Investigation of Internal-Combustion Forklift Trucks from Japan, at 27-29 (1988) ("Litan Report").

57/ Petitioners' Posthearing Brief at 9.

substitutes.58/ This contention is made in support of Respondents' argument that the subject imports neither reduced sales of the U.S.-produced forklift trucks nor significantly reduced prices of the U.S.-produced forklift trucks. Again, Petitioners demur to this assertion.59/

On the record before us, I can not accept the Respondents' contention respecting the relation of LTFV imports to utilization of domestic forklift producers' productive capacity. Domestic producers reported significant excess capacity during the period of investigation, ranging from forty-four percent to fifty-two percent.60/ At the same time, domestic producers took steps to reduce domestic capacity and increase domestic productivity.61/ Although, as Respondents urge, this adjustment in part reflects recognition that use of some off-shore production can reduce production costs,62/ the record does not reveal either an inexorable shift of production off-shore or evidence that the extent and timing of such shifts in domestic producers' sourcing of forklift trucks and components was not related to effects of

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58/ Respondents' Prehearing Brief at 25; Respondents' Posthearing Brief at 1-2; Litan Report at 4-6.

59/ Petitioners' Posthearing Brief at 5.

60/ Report at A-18.

61/ See Report at A-19, Table 3; A-25, Table 9.

62/ Litan Report at 27-29; Tr. 153-55.

competition from LTFV imports on demand for domestic producers' forklifts. Developments in the domestic industry over the past several years indicate that the industry has, indeed, adjusted domestic production in response to changes in market conditions. Recently, for example, as the costs of off-shore production rose relative to costs of U.S. production and as the price of Japanese imports increased, Yale shifted its IC rolling chassis manufacturing operations from Japan to the United States63/ and Clark reversed an earlier decision to close down its Georgetown, Kentucky manufacturing plant.64/ During the 1980s, Hyster and Caterpillar have continuously readjusted their IC trucklift operations in response to changes in demand by shifting production among their plants in the U.S. and overseas or by entering into arrangements with foreign firms to purchase IC forklifts for sale to their domestic customers.65/ Further, at no time have imports of forklift trucks from countries other than Japan accounted for more than [* * *] percent of U.S. forklift apparent consumption, even in the face of competition from LTFV imports.66/ If, during the period of investigation, overseas

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63/ Report at A-11.

64/ Id. at A-10.

65/ Id. at A-9-11.

66/ Report at A-15, Table 2.

production had so clear an advantage over domestic production as Respondents argue, the relatively slow, slight, and tentative response of U.S. producers to that potential source of cost savings would at least call for explanation. The more plausible explanation of the facts before us is that off-shore production has a cost advantage over domestic production at any given time only for some proportion of domestic demand for U.S. forklift producers' products.67/

Similarly, the present record can not sustain Respondents' claim that the LTFV imports under investigation do not compete with or significantly affect the price of U.S. produced forklift trucks but instead compete only with imports from other countries.68/ For one thing, the Respondents' argument is predicated on the assumption that a given type of forklift truck -- essentially standardized, small-engine, light-duty forklift trucks -- are not produced domestically and are excluded from the domestic like product, the impact on which we are investigating. The record does not support this assumption.69/ Respondents have accurately described the type

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67/ This conclusion also accords with estimates of the responsiveness of domestic supply to changes in consumer demand for forklift trucks. See USITC Memorandum EC-L-143 (May 6, 1988) from Office of Economics at 4-9.

68/ See Respondents' Prehearing Brief at 25; Respondents' Posthearing Brief at 1-2; Litan Report at 4-6.

69/ See Views of the Commission on the like product issue.

of forklift trucks imported from other countries by the domestic producers, but this same type of truck also is produced in the United States.70/

In addition, the evidence before us does not reveal significant market separation between these types of trucks, or more generally between Japanese and U.S. produced forklift trucks, such that we could conclude that the Japanese trucks neither substituted for nor affected the prices of U.S.-produced trucks. Most purchasers of IC forklifts agree that there are no significant physical or performance differences between comparable domestic and Japanese-produced IC forklifts; the leadtime in delivery for the two products is roughly the same; and transportation costs do not play a major role in purchasing decisions.71/ Even evidence introduced by the Respondents reveals a price correlation between the types of forklifts Respondents attempt to distinguish,72/ and the

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70/ See Respondents' Posthearing Brief at 3; Litan Report at 8; Petitioner's Posthearing Brief at 5-6; Tr. 6-7.

71/ Id. at 12; Report at A-51-52.

72/ Respondents suggested that small-engine forklift trucks sell at approximately a 15 percent less than larger-engine forklift trucks of any given lift capacity. Tr. at 183. The purchasers' responses compiled by the Commission's staff do not agree with this information, showing no clear price differences according to engine size. Report at A-81. Even if Respondents' views on this issue were accepted, however, there would be some basis for an inference that the prices of these distinct types of forklift are related.

evidence gathered by the Commission's staff suggests a much stronger correlation.73/

Thus, the evidence does not compel the conclusion that the LTFV imports and domestically produced forklift trucks are identical so far as consumers are concerned so that every sale of a lower-priced Japanese import could be assumed to have been at the expense of a sale by domestic producers. Several facts suggest, indeed, that consumers perceive significant differences between the Japanese and U.S. produced forklift trucks. For instance, although there was a moderate to large increase in the reported prices of the LTFV imports during the period under investigation, this increase was accompanied by a relatively small increase in the quantity-measured market share of the Japanese producers.74/ Further, some domestic purchasers apparently believe that the services provided in conjunction with the purchase of Japanese IC forklifts are not

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73/ Report at A-66-67, Tables 30-34. I am likewise unpersuaded by Respondents' argument that the recent trend in the pricing of Japanese and U.S. produced forklifts in the U.S. market -- i.e., the average unit value of the Japanese product has been rising while the average unit value of the U.S. product has been falling -- indicates that the two products are not substitutable. See Respondents' Prehearing Brief at 23-24; Respondents' Posthearing Brief at 7. This evidence, standing alone, does not demonstrate that the Japanese product has not substituted for the U.S. product; as Petitioners have pointed out, it is also consistent with other explanations. See Petitioners' Posthearing Brief at 7.

74/ Report at A-48, Table 25.

equal to those that U.S. IC forklift producers are able to provide.75/ In addition, certain IC forklift purchasing decisions by U.S. consumers are made primarily on the basis of the purchaser's desire to standardize its fleet or the vendor's ability to supply equipment meeting the purchaser's particular specifications, matters as to which U.S. and Japanese producers may be distinguished.76/

On balance, however, the record supports the conclusion that there is significant, though not perfect, substitutability between imports and domestic IC forklifts. Together with the substantial volume of sales at LTFV, the magnitude of the LTFV price differential, and the existence of additional U.S. capacity for forklift production, this evidence indicates that the LTFV sales caused a significant decline in the demand for domestically-produced forklifts, affecting both prices and sales of U.S.-produced forklifts.

C. Employment and Investment Effects

The final inquiry into the effects of LTFV imports on the domestic industry relates the inferences drawn in the prior inquiries to the information available regarding the returns realized by the domestic industry. The questions relevant to

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75/ Report at A-52.

76/ Id.

this inquiry are, given the conclusions reached respecting the nature of the market for the subject imports and the effect of the LTFV imports on prices and production in the domestic industry, to what extent has employment in the domestic industry declined or become less remunerative as a result of the LTFV imports, and to what extent have returns on investment in the domestic industry declined as a result of the LTFV imports?77/ Title VII specifies a number of factors that can assist the Commission in answering these questions -- actual and potential negative effects on employment and wages, and actual and potential negative effects on profits, return on investment, cash flow, ability to raise capital, and level of investment -- but the Commission usually must infer effects from very imperfect data.78/

In this investigation, as in most investigations, conclusions respecting the change in returns consequent to LTFV imports can be drawn in part from the factual inferences discussed above respecting price and sales effects. The inferences from this evidence suggest that LTFV imports have had a material adverse effect on returns to the domestic industry producing IC forklifts. For several reasons, the sales of LTFV imports probably had greater effect on the sales

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77/ 19 U.S.C. § 1677(B)(iii).

78/ See note 40, supra.

of U.S. producers than on the prices of U.S. forklifts. Two facts particularly suggest this effect: the principal demand for forklifts in the U.S. is to replace forklifts that are aging or have become inoperative79/ and, as discussed above, the U.S. produced and Japanese imports are only moderately substitutable one for the other.80/

This suggests that the effect of the imports on the U.S. industry would be seen most clearly by examining the available data relating to employment in the domestic industry. During the period covered by the investigation,81/ the number of persons employed in the domestic industry dropped by almost forty percent.82/ The total hours worked by production and related workers and the wages and total compensation paid to

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79/ Report at A-51; Tr. at 7, 82.

80/ See discussion, supra, text at notes 68-76.

81/ Respondents have asserted that Japanese-produced IC forklifts became a factor in the U.S. market long before the period of the investigation and have argued that this alleged fact means that the subject imports necessarily can not be found to have caused any injury that the domestic industry is now experiencing. See Respondents' Prehearing Brief at 25-26; Respondents' Posthearing Brief at 6-7. The Commission's task, however, is not so simple. We must determine whether the LTFV sales under investigation have caused material injury to the domestic industry. If they have, we are required to make an affirmative determination -- irrespective of whether earlier sales of the subject product, whether at LTFV or otherwise, also caused injury to the industry.

82/ Report at A-25, Table 9.

such employees decreased by similar percentages.83/ The available data also are consistent with an inference that returns to investors were materially impaired by LTFV imports.84/ The domestic industry's shipments of U.S.-produced IC forklifts, measured in terms of both unit and dollar value, declined substantially during the period covered by the investigation.85/ For its U.S.-produced IC forklift operations, the domestic industry as a whole incurred sizeable and increasing operating losses and substantial negative cash flows throughout that period86/ and the industry's gross profit margin -- i.e., net sales minus cost of goods sold -- was [* * *] in 1987.87/

Although there are reasons to doubt that the subject imports were the sole (or even the major) contributing cause of these patently unsatisfactory returns to investors in the domestic industry, such a finding is not required under Title VII. All that is necessary to an affirmative disposition of

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83/ Id.

84/ That inference is derived from, among other facts, the evidence that LTFV imports exerted significant downward pressure on prices of U.S.-produced forklift trucks. See discussion, supra, text at notes 47-77.

85/ Report at A-15, Table 2.

86/ Id. at A-33, Table 14.

87/ Id. Evidence on ability to raise capital is not clearly presented in the present record.

the petition is a finding that the LTFV imports materially injured the domestic industry.88/ The record before us supports that conclusion.

IV. Conclusion

For the reasons stated above, I conclude that the domestic IC forklift truck industry was materially injured by LTFV imports from Japan.

88/ Accordingly, even if one were to conclude, as Respondents suggest, that there were other major contributing factors in the decline in production and employment experienced by the domestic industry -- such as an effort by the industry to rationalize production, wholly divorced from the impact of LTFV imports (see Respondents' Prehearing Brief at 17-18; Respondents' Posthearing Brief at 5-6) -- this would not necessarily be relevant. Such evidence would become significant only insofar as it established that these other factors caused all or nearly all the adverse effects experienced by the domestic industry.

VIEWS OF CHAIRMAN LIEBELER, VICE CHAIRMAN BRUNSDALE COMMISSIONERS SEELEY G. LODWICK, DAVID B. ROHR AND RONALD A. CASS ON CRITICAL CIRCUMSTANCES

On April 15, 1988, the Department of Commerce determined that critical circumstances exist with regard to the subject imports from Japan of two companies: Nissan Industrial Equipment Co. ("Nissan") and Toyo Umpanki Forklift Trucks ("TCM") [1/] Given an affirmative finding in a final investigation, the Commission is required to determine whether "the material injury is by reason of massive imports to an extent that, in order to prevent such material injury from recurring, it is necessary to impose [antidumping duties] retroactively on these imports." [2/]

We apply the critical circumstances provision of the statute in the manner provided by the Court of International Trade (the "CIT") in ICC Industries, Inc. v. United States, 632 F. Supp 35 (CIT 1986), and subsequently

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1/ 52 Fed. Reg. 12552 (Apr. 15, 1988). Section 735(a)(3) requires Commerce to make a final determination with respect to critical circumstances if its final LTFV determination is affirmative. 19 U.S.C. § 1673d(a)(3). The statute requires Commerce to determine whether:

> (A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or
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> (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and
>
> (B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

2/ 19 U.S.C. § 1673d(b)(4)(A).

affirmed by the U.S. Court of Appeals for the Federal Circuit. 3/ The CIT stated that:

> Massive imports which arrive during the investigation and are found by the Commerce Department to have a history of dumping or to be knowingly bought at less than fair value do not have to be the subject of a separate injury analysis. Their injurious effect, coming on top of previous importations found to be injurious, may be easily and legitimately inferred. As to them, the requirement of additional findings is not meant to complicate the Commission's analysis of causation, but merely to require the Commission to determine whether the extent of massive imports will carry the injury already found to have occurred, beyond its normal duration unless retroactive duties are imposed. 4/

An affirmative critical circumstances determination is a finding that, in the absence of retroactive relief, the massive imports that occurred after the case was filed but before Commerce made its preliminary determination will prolong, or cause a recurrence of, material injury to the domestic industry. 5/ The purpose of the provision is to provide relief from massive

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3/ ICC Industries v. United States, 812 F.2d 694 (Fed. Cir. 1987).

4/ ICC Industries v. United States, 632 F. Supp. at 41. In affirming the Commission's critical circumstances determination, the CIT did not discuss the factors other than the volume of imports--e.g., margins of underselling--that the Commission might use to analyze whether retroactive dumping duties will prevent continuing or recurring material injury. The Court also did not discuss the other factors that were specifically addressed by the Commission's Opinion and Additional Views in Potassium Permanganate from The People's Republic of China, Inv. No. 731-TA-125 (F), USITC Pub. No. 2480 (Jan. 1984).

5/ ICC Industries v. United States, 632 F. Supp. at 40. In ICC Industries, the court said:

> In the opinion of the Court, where a finding has been made that imports priced at less than fair value are being knowingly entered in massive quantities during an investigation, the ITC is not required by law or considerations of fairness to isolate the massive

(Footnote continued on next page)

imports that occur immediately before the suspension of liquidation and to deter importers from attempting to circumvent the antidumping laws by making massive shipments immediately after an antidumping petition has been filed. 6/

Commerce made its affirmative critical circumstances determination with regard to two specific companies, Nissan and TCM. This raises the question as to whether the Commission should make a critical circumstances injury determination on each company's imports separately or on their combined imports. Although Commerce has made its determination on each importer separately, the statute regarding the Commission's determination speaks in terms of aggregate imports and total import volumes. 7/ The Commission's precedents regarding critical circumstances, though nonbinding, clearly support analyzing the combined imports as to which Commerce has made an affirmative determination. 8/ We therefore find that it is appropriate to

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(Footnote continued from previous page)
quantities and make them the separate subject of an injury determination. In those circumstances it is sufficient if the ITC concentrates on the capacity of these massive imports to render ineffectual the normal imposition of duties (prospective from the date of publication of the preliminary determination) and thereby bring about a recurrence of the material injury primarily caused by normal levels of importation.

6/ See H.R. Rep. No. 317, 96th Cong., 1st Sess. 63 (1979).

7/ 19 U.S.C. § 1673d(b)(4)(A). See also 19 U.S.C. § 1677(7)(C)(i).

8/ See, e.g., Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan, Inv. Nos. 731-TA-304 and 305, USITC Pub. No. 1936 at 15 (Jan. 1987); Tapered Roller Bearings and Parts Thereof and Certain Housings Incorporating Tapered Rollers from Italy and Yugoslavia, Inv. Nos. 731-TA-342 and 346, USITC Pub. No. 1999 (Aug. 1987).

examine the combined imports, inventory levels, and other information relating to the two companies as to which Commerce made its affirmative determination.

In order to determine whether an affirmative critical circumstances determination as to those companies is justified in this case, we examined the combined volume of imports entering the United States and the level of importers' inventories for two periods: May through September 1987 (the period from the initiation of the investigation to the originally-scheduled preliminary affirmative determination by Commerce); [9/] and May through November 1987 (the period from the initiation of the investigation to the preliminary affirmative determination by Commerce). The available data establish that combined imports for the two companies increased somewhat during both the May through September and May through November periods in 1987, over the comparable periods in 1986. Imports from the two companies increased somewhat during the May through September and May through November periods in 1987 also when compared with the immediately preceding five or seven month periods.

However, although import volume was slightly higher during the period, this increase was not completely inconsistent with historical levels and may be explained by an increase in domestic apparent consumption that occurred between 1986 and 1987. In addition, inventories for the two companies actually declined when compared with inventory levels during 1986.

Thus, in light of the available data, we find that the two companies' imports during the relevant period in 1987 will not prolong or cause a

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9/ Commerce delayed its preliminary determination twice at the request of petitioners. See 52 Fed. Reg. 34399 (Sept. 11, 1987); 52 Fed. Reg. 38113 (Oct. 14, 1987); 52 Fed. Reg. 45003-4 (Nov. 24, 1987).

recurrence of material injury to the domestic industry. Thus, we reach a negative determination as to critical circumstances with respect to Nissan and TCM.

DISSENTING VIEWS OF COMMISSIONER ECKES

ON CRITICAL CIRCUMSTANCES

I respectfully disagree with my colleagues' negative determination on the question of critical circumstances regarding imports of IC forklift trucks from Nissan Industrial Equipment Company. In my view there is clear evidence of action by Nissan to circumvent the trade laws of the United States and enter large quantities of imports in anticipation of the Department of Commerce's preliminary affirmative determination and suspension of liquidation.

The Department of Commerce's affirmative finding in this investigation indicates that Commerce has found "massive" imports of IC forklifts over a six-month period (May through October, 1987) when compared with the previous six-month period. Therefore the Commission is mandated by statute to make a finding as part of its final determination:

> ...as to whether the material injury is by reason of massive imports described in subsection (a)(3) of this section to an extent that, in order to prevent such material injury from recurring, it is necessary to impose the duty imposed by section (731) retroactively on those imports. 1/

The legislative history to this section of the statute states:

> The provision is designed to provide prompt relief to domestic industries from large volumes of, or a surge over a short period of, imports and to deter exporters (emphasis added) whose merchandise is subject to an investigation

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1/ 19 U.S.C. 1673d (b) (4) (A).

> from circumventing the intent of the law by increasing their imports to the United States during the period between initiation of an investigation and a preliminary determination by the Authority (Commerce). 2/

Thus a Commission's affirmative determination, resulting in the imposition of retroactive duties, is intended to have two functions: (1) preventing the prolongation or recurrence of material injury to the industry; and (2) deterring circumvention in similar cases in the future.

The Court of International Trade (in an opinion subsequently affirmed by the U.S. Court of Appeals for the Federal Circuit) further clarified that the Commission was not to make a separate injury determination for critical circumstances, but merely "...determine whether the extent of the massive imports will carry the injury already found to have occurred beyond its normal duration unless retroactive duties are imposed." 3/

In this investigation, Commerce found critical circumstances for the imports of only two Japanese companies, Nissan and TCM. Therefore the import levels that Commerce found to be "massive" were large in relation to previous levels for those two companies rather than in relation to previous total Japanese import levels.

The time periods Commerce selects for import volume comparisons differ from the periods normally focused on by this Commissioner. Because the demand for particular products may be seasonal, I emphasize comparisons of the import volume in

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2/ H.R. No. 317, 96th Cong., 1st Sess. 63 (1979)
3/ ICC Industries v. United States, 632 F. Supp. 35, 41 (C.I.T. 1986), aff'd 812 F.2d. 694 (Fed. Cir. 1987).

the months between the filing of a case and the Commerce preliminary decision with the volume during the corresponding time period in the previous year.

For this particular investigation, I examined monthly import volumes from May through September 1987 compared with the corresponding months in 1986. The petition was filed at the end of April, 1987, and the original date for the Commerce preliminary determination was September 29, 1987. The two subsequent extensions of this Commerce deadline were requested by the petitioner. Since the respondents had no reason to predict an extension, I would expect any shipment increases in anticipation of the Commerce decision to take place before October.

The shipment and inventory data for Nissan and TCM are confidential. Examination of these data, however, reveals a marked difference in the pattern of shipments for Nissan and TCM. Nissan's shipments rose very sharply during May - September 1987 compared to the corresponding period in 1986, whereas the same comparison for TCM indicates only a slight increase.

Respondents point to the rise in domestic consumption of standard IC forklift trucks during 1987 as the reason for increased shipments. However, the consumption increase for the year was only 4 percent, and imports from Nissan increased during the comparison period by many times that percentage. Nissan shipments in June, July, and August 1987 were very nearly double the total for those three months in 1986.

Nissan could not estimate precisely at the time the investigation was filed how large Commerce's dumping margins might be, but the firm must have been aware that the margins and probable duties could be substantial. Duties of 40 - 50 percent on relatively expensive items like forklift trucks would amount to millions of dollars for Nissan. Raising prices by anything approaching that level would make future sales in the United States very difficult. Nissan had every incentive to move merchandise into the U.S. market as quickly as possible before the Commerce preliminary decision.

Respondents point out that inventory levels at the end of 1987 were lower than at the end of the previous year. However, there are ways to prolong injury to the domestic industry other than creating bloated inventory levels. The surge in Nissan imports in the summer of 1987 helped to decrease the market share of the domestic industry for that year. And because of the nature of the product in this case, the surge also will act to decrease domestic sales in the near future. We know that the primary component of demand for IC forklifts is the replacement of old IC forklifts. As forklifts are durable and are expensive, "purchasers buy forklifts infrequently and are not likely to purchase different brands of the same type in a given year." 4/ Thus the large increase in 1987 Nissan imports will act to continue material injury to the domestic industry even after antidumping duties are imposed.

4/ Report at A-51.

Unfortunately, imposing duties retroactively on Nissan's imports entering 90 days before Commerce's preliminary determination would only partially redress this injury to the domestic industry. The import surge was most evident in the summer of 1987 and the postponed Commerce decision occurred in late November. However, as I have noted, there also is a punitive aspect to ruling affirmatively on critical circumstances.

The Commission rarely is required to make a critical circumstances determination. It is particularly unusual to be asked to rule on the actions of specific firms. However, if the provision for a critical circumstances determination in the trade statutes is to act as any deterrent to circumvention of antidumping law, the Commission must not hesitate to rule affirmatively when a pattern of imports indicates intention to circumvent. I find such a pattern in Nissan's imports during May - September 1987, and believe that the imposition of retroactive duties would help to deter circumvention by foreign producers in the future.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

Following a preliminary determination by the U.S. Department of Commerce that imports of certain internal combustion engine forklift trucks 1/ from Japan are likely to be sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective November 24, 1987, instituted investigation No. 731-TA-377 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. §1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury by reason of imports of such merchandise. Notice of the institution of the Commission's final investigation, and of the public hearing to be held in connection therewith, was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on December 23, 1987 (52 FR 48582). The hearing was held in Washington, DC, on April 13, 1988. 2/

Commerce's final LTFV determinations were published on April 15, 1988 (53 FR 12552). 3/ The Commission voted on this investigation on May 10, 1988, and is scheduled to notify Commerce of its determination on May 31, 1988.

Background

This investigation results from a petition filed by Hyster Co. (Hyster) of Portland, OR, a U.S. producer of internal combustion engine forklift trucks; the Independent Lift Truck Builders Union; the International Association of Machinists & Aerospace Workers; the International Union, Allied Industrial Workers of America (AFL-CIO); and the United Shop & Service Employees, on April 22, 1987, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain internal combustion engine forklift trucks from Japan. In response to that petition the Commission instituted investigation No. 731-TA-377 (Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C § 1673b(a)) and, on June 8, 1987, determined that there was a reasonable indication of such material injury (52 FR 23725, June 24, 1987).

1/ The products subject to Commerce's final ruling are internal combustion engine forklift trucks, with lifting capacity of 2,000 to 15,000 pounds, provided for in item 692.40 of the Tariff Schedules of the United States. For purposes of this investigation, "internal combustion engine forklift trucks" include both assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. "Less than complete" forklift trucks are defined as imports that include a frame by itself or a frame assembled with one or more component parts. All such trucks produced in Japan during a calendar year that is less than 3 years prior to the year of entry into the United States are covered by this ruling.

2/ Copies of cited Federal Register notices are presented in app. A; a list of witnesses appearing at the Commission's hearing is presented in app. B.

3/ Commerce extended the date for its final determination in response to a request by respondents, pursuant to section 735(a)(2)(A) of the act.

Commerce initially scheduled its preliminary LTFV determination for September 29, 1987. Commerce twice postponed this determination, acceding to requests for postponement by petitioners on August 21, 1987, and again on October 2, 1987.

Previous Commission Investigations

On June 5, 1987, Yale Materials Handling Corporation (Yale) filed a petition under section 201 of the Trade Act of 1974 seeking relief in the form of increased duties on imports of operator-riding, electric and internal combustion powered industrial forklift trucks with a lifting capacity between 2,000 and 15,000 pounds. On July 1, 1987, the Commission rejected the petition as not providing a sufficient basis for determining that petitioner and other U.S. producers supporting the petition were "representative of an industry" within the meaning of section 201(a)(1) of the Trade Act.

Following the consideration of Yale's 201 petition, on July 20, 1987, the Commission instituted a preliminary investigation under section 603(a) of the Trade Act for the purpose of gathering additional information relevant to the question of whether the firms supporting the petition are "representative" of an industry. On November 23, 1987, the Commission concluded that the supporting firms would have standing to file a petition for an investigation of the scope proposed in the petition that was filed on June 5, 1987 (52 FR 45390, Nov. 27, 1987). Yale has not refiled * * *. 1/

In June 1986, the Commission completed an escape clause investigation concerning a product related to and used on forklift trucks, steel fork arms (inv. No. TA-201-60). As a result of the investigation, the Commission unanimously determined that imports of steel fork arms were not causing serious injury, or the threat thereof, to the domestic steel fork arm industry.

The Product

The imported products from Japan that are the subject of this investigation are internal combustion engine forklift trucks, with lifting capacity of 2,000 to 15,000 pounds (hereafter referred to as standard-lift ICs) including assembled, not assembled, and less than complete trucks, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel internal combustion engines. Commerce defined less than complete forklift trucks as imports that include a frame or a frame assembled with one or more component parts. Commerce first stated in its notice of initiation appearing in the Federal Register on May 18, 1987 (52 FR 18588), the following:

> "...the frame by itself is the identifying feature and principal component part of the product, and is solely dedicated for the manufacture of a complete internal combustion, industrial forklift truck."

1/ * * *.

Commerce used this definition throughout its investigation and subsequently identified the unfairly traded imports from Japan by the frame in its preliminary and final LTFV determinations. Petitioners agreed and respondents never disputed Commerce's identification of the subject forklifts by the frame. 1/

Since the subject imports from Japan are identified by the frame, the Commission used the frame as the feature to identify country of origin for purposes of compiling information in its investigation. Using the frame to determine country of origin, as the Commerce Department did to identify the product from Japan under investigation, affords consistency in the Commission's examination of the effect the unfairly traded imports had on the U.S. industry. 2/

Description and uses

Forklift trucks and similar industrial vehicles are self-propelled work trucks with platforms that can be raised and lowered for insertion under a load to be lifted or transported. Forklift trucks are used for general material handling, stacking and retrieving, and for light-duty applications in such places as small warehouses.

Forklift trucks are typically powered by gasoline, diesel, or propane engines, or by an electric motor. The elevation of the platforms is provided by a hydraulic system. Internal combustion-engine trucks (ICs), which utilize gasoline, diesel fuel, or propane, are normally used in outdoor and/or well-ventilated indoor operations. Additionally, ICs are used when contiuous operation is important or when ramps or other heavy-duty applications come into play. Electrically powered forklifts are generally not suited for outdoor operations because of their lower material-handling efficiency; they are usually used indoors where internal combustion engines would not be used due to their emission of exhaust fumes. Electric forklifts are powered by batteries, which also serve as a significant part of the counterweight system for the unit.

1/ Telephone conversation with Gary Taverman, supervisor for Commerce's antidumping investigation, Apr. 12, 1988.

2/ Whereas the frame is not the most valuable component of a forklift truck, it is a component designed for and used exclusively in a forklift and it identifies the type of power to be used (IC or electric), the size, type (counterbalanced, reach, sitdown, standup, etc.), and approximate lift capacity of the forklift truck. Respondents have argued throughout this final investigation that the Commission should define U.S.-produced forklifts as only those trucks that have some level of value added in the United States (35 percent was suggested in respondent's prehearing submission). At the hearing, when respondents' economic witness was asked to comment on this debate concerning product definition he stated, "... I think as a matter of just economic logic, you ought to use the same approach to defining the American and Japanese trucks...It just seems anomalous to define the two trucks differently." See transcript at pp. 259 and 260.

Information was collected on four "classes" of forklifts as defined by the industry and its trade association (Industrial Truck Association). Descriptions of these four classes follow:

Class 1. Electric Motor Rider Trucks--This class includes electric-motor-driven trucks that have counterbalanced lifts. Power sources are from batteries or motor generator units. High and low lift platform trucks are included. Trucks in this class include three types--counterbalanced rider type, standup, and sitdown; and three-wheel electric, sitdown.

Class 2. Electric Motor Narrow Aisle Trucks--This class includes motor-driven rider-type trucks (usually standup) that are designed to have the load carried over the wheels, i.e. not counterbalanced. These trucks are designed to operate in aisles 5-10 feet wide and offer the same characteristics as other electrically operated trucks. This class contains many different types of trucks, including high-lift straddle, order pickers, reach-type outrigger, sideloaders, turret trucks, stock pickers, etc.

Class 4. IC Engine Trucks (cushion tires only)--This class includes rider (sitdown) trucks, of counterbalanced lift types. The engines are powered by gasoline, diesel, or LPG fuel. This is the only truck type included in this class.

Class 5. IC Engine Trucks (pneumatic tires only)--This class includes rider (sitdown) trucks of counterbalanced lift types. The engines are powered by gasoline, diesel, or LPG fuel. This is the only truck type included in this class.

According to industry sources and purchasers, the end use for which a truck is intended is a major consideration in whether an IC or electric forklift truck is selected. 1/ Among the reported considerations are the fact that the batteries in electric trucks must periodically be recharged, thus taking the unit out of service or necessitating the need for additional batteries and a certain amount of "down time" while the batteries are being changed. Hence, if heavy-duty usage is desired (i.e., 3 shifts a day, 6 to 7 days a week, or long traveling distances in warehouses and storage areas, or

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1/ On June 12, 1987, Clark Material Systems Technology Company requested that Commerce expand the scope of its LTFV investigation to include electric forklift trucks. On July 24, 1987, Commerce informed Clark that, on the basis of examination of physical differences and the expectations of the end users of electric forklifts, they find them to be a different class or kind than the internal combustion engine forklifts under investigation. In its posthearing brief, Clark maintains that the Commission's "like product" definition should include both counterbalanced electric forklifts and standard-lift ICs.

up numerous ramps), the IC forklift truck would be the more likely choice. Additionally, if electric trucks are used, OSHA rules require a separate area for charging and changing the batteries, as well as a washing station in case of accidents with the acid contained in the batteries. 1/

When the intended tasks for the lift truck permit the use of either IC or electric trucks, capital budgeting considerations could determine the ultimate choice. The initial cost of an electrically powered lift truck can be considerably higher than that of an IC truck with a similar lift capacity, once the cost of the extra batteries and recharger are included. In the long run the electric truck is, reportedly, more cost efficient due to its lower maintenance expenses. If an end user's budget for capital expenditures is restricted, the end user may opt for the IC truck and incur the added maintenance expenses. 2/

Operator-riding (rider) lift trucks are used to reduce operator fatigue in demanding, heavy-duty or high-volume applications involving a significant amount of stacking or relatively long travel distances. Basic types of rider trucks include counterbalanced, narrow aisle, sideloader, orderpicker, and turret. The counterbalanced rider truck is the most widely used model for general industrial duty. Narrow aisle trucks are used in warehouses that have been designed to use less floor space by stacking product vertically along aisles 5 to 10 feet wide. Sideloaders are four-wheeled vehicles used for transporting and stacking long, bulky, difficult-to-handle items. As the name implies, a sideloader truck loads and carries from the side. Orderpicking trucks are used for assembling small quantities of items for use in plant operations or for shipping orders. This truck is basically a narrow aisle truck with an operator's platform on the forks. The operator rides up with the forks, regulating speed and elevation with onboard controls. Turret trucks have high-lift capacity and some type of rotating fork that permits stacking at right angles to the forward direction of the truck.

Lift capacities for IC forklift trucks range from 2,000 through 120,000 pounds. Over 90 percent of IC forklift production in the United States consists of trucks with a lifting capacity of 2,000-15,000 pounds. Electric forklifts have a much more limited lift capacity range of 2,000 to 12,000 pounds. 3/

Manufacturing process 4/

There are two basic fabrication processes involved in the production of IC forklifts before assembly--the production of the frame and the production of the mast. A forklift truck frame is produced from steel plate that is cut to the desired shape, washed, dried, and cleaned further by passing it through a machine that cleans it of any residual slag from the cut. The piece of cut steel is then treated with a rustproofing solution and dried. The steel plate is generally three-eighths of an inch in thickness, though at some points on

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1/ * * *.
2/ * * *. Respondents agree with petitioner that electrically powered forklifts should not be included in the Commission's "like product" definition. See hearing transcript at p. 230, Messrs. Macrory and Litan.
3/ Information provided in Commission questionnaires.
4/ * * *.

the finished frame this thickness is either augmented or diminished. Individual pieces are then formed to shape by bending. These pieces are then welded to each other to form the frame. Finished frames are again cleaned by passing them through a machine to remove any excess welding bead. A primer coat of paint is then sprayed on.

The production process for the mast, or upright, of a forklift truck is similar to that of the body. Channel steel, as opposed to steel plate, is cut to length, washed, dried, and passed through a cleaning machine. Pieces, that have been cut from steel plate, are welded to this length, two channels are welded with cross-pieces, and the whole assembly is washed, dried, and cleaned. It is then treated with a rustproofing solution, and a primer coat of paint is sprayed on by hand. The finished piece represents the outer rails of the upright. Inner rails are produced by cutting channel steel to length, cleaning and painting them in a separate line. The inner and outer rails are then mated, with the number of inner rails determined by the desired extension range of the upright. There can be four kinds of uprights: standard, free-lift (where the forks can be raised to the maximum height of the upright without extending the upright), three-stage, and four-stage. Sprockets and chain are added as are hydraulic cylinders. These components are added to provide lifting capacity for the uprights. The finished upright is taken from the production line and stored until it is needed on the truck assembly line.

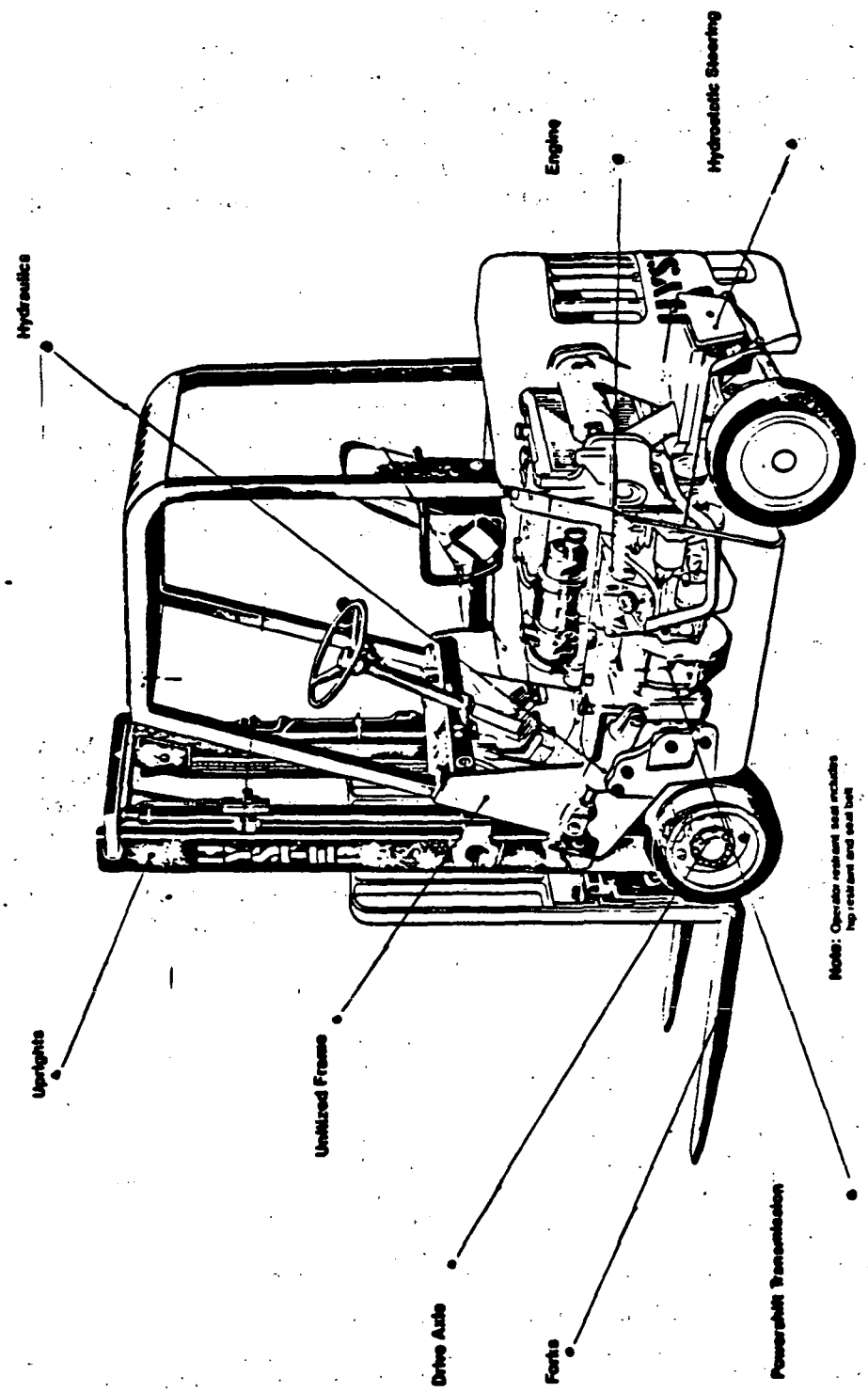
When the frame is completed, it is taken to a separate production line, where the truck's engine/transmission combination is mated to the frame. Drive and steering axles are then fitted. The hydraulic system (hoses, pump, reservoir, controls) is added, as are the engine and steering controls. When all of the truck's motive and control systems have been installed, the upright is added, along with the counterweight. Figure 1 illustrates an assembled IC fork-lift truck and the major components and nomenclature associated with the product.

The truck is then tested by running the engine and operating the hydraulic controls. This simple test is to check for fluid leaks. Next, the truck is tested for lift capacity and for the range of upright tilt. When the testing is completed, and no fault is detected, the truck is taken to an area for customer-specified options, such as side loader or extended reach capabilities. When all customer-specified options have been installed, the final coat of paint is sprayed on.

Standard-lift ICs (forklifts with a lift capacity of 2,000-15,000 pounds) are produced primarily on assembly lines and are designed for general industrial use. In contrast, IC forklifts with lift capacity over 15,000 pounds (heavy-lift ICs) are built to a customer's specifications and are sold to industries that require the truck to lift heavy loads, and often operate over uneven surfaces. The steel, timber, and stevedoring industries are purchasers of heavy-lift ICs. Due to the customized nature of these trucks, they are produced one truck at a time in separate areas, called "bays." Both electric and standard-lift ICs are at times bay built if the number needed does not justify use of the assembly line. Heavy-lift ICs use componentry designed for heavy-duty over-the-road trucks, whereas the standard-lift ICs use many automotive components.

While certain aspects of the production process for internal combustion engine and electrically powered forklift trucks are similar, they are not produced on the same assembly line by any of the major U.S. or Japanese

Figure 1.--Internal Combustion Engine Fork-lift Truck



Source: Hyster Co.

producers. Similarly, the production workers require different training and certain of their skills are different. U.S. producers find they enjoy higher labor productivity and fewer product defects when the workers become expert on IC or electric forklift production. 1/ The pieces cut for an internal combustion truck differ from those required for an electric truck due to the unique operational necessities of each. The electric truck's frame, when completed, weighs approximately 1,200 pounds and is designed to accommodate a battery weighing between 2,000 and 4,000 pounds. In contrast, the frame for the internal combustion engine truck weighs approximately 900 pounds, and supports an engine/transmission weight of approximately 1,600 pounds and a large counterweight, the weight of which depends on the lift capacity of the truck.

U.S. tariff treatment

Imports of internal combustion engine fork-lift trucks are classified in item 692.40 of the Tariff Schedules of the United States. Effective January 1, 1987, such imports (other than from enumerated Communist countries) enter the United States free of duty. During the period covered by this investigation, imports of these fork-lift trucks from most-favored-nation sources (including Japan) were subject to the following ad valorem rates of duty: 1.1 percent in 1985 and 0.6 percent in 1986.

Nature and Extent of Sales at LTFV

On April 15, 1988, the Department of Commerce published its final determination that the subject forklifts from Japan are being, or are likely to be, sold at less than fair value. The estimated weighted-average margins were calculated separately for each foreign producer by comparing the United States price with the foreign market value. Kasagi, a gray-market exporter, did not respond to Commerce's questionnaire and was therefore assigned the highest rate alleged in the petition. The period of investigation covered the 6 months from August 1, 1986, through January 31, 1987. The final LTFV margins are as follows:

Toyota Motor Corp.	17.29
Nissan Motor Co., Ltd.	51.33
Komatsu Forklift Co., Ltd.	47.73
Sumitomo-Yale	51.33
Toyo Umpanki Co., Ltd (TCM)	51.33
Sanki Industrial Co., Ltd 1/	13.65
Kasagi Forklift, Inc 1/	56.81
All others	39.50

1/ This firm resells Japanese forklifts to the United States.

1/ * * *. Hyster reported that all assembly line workers are classified as "SD Assemblers." During a layoff, those jobs that remain jobs would be filled by assembly line workers with the most senority, regardless of which type of truck they produced before the layoff. A worker filling a job on a different production line would need to undergo additional training. See Hyster's posthearing brief, p. 36.

Commerce has also determined that critical circumstances exist with respect to the subject imports from Nissan and Toyo Umpanki. In making this determination, Commerce found that there is a reasonable basis to believe that imports have been massive over a relatively short time period and, since these two companies sell in the United States through related companies, the related U.S. importers from Nissan and Toyo Umpanki knew that the forklifts were being sold at less than fair value. The affirmative critical circumstances ruling directs Customs to suspend liquidation of those affected imports for the period 90 days prior to the date of publication of Commerce's preliminary determination in the Federal Register. Commerce's preliminary notice was published on November 24, 1987; accordingly, those suppliers affected by the critical circumstances ruling are subject to the LTFV penalties retroactive to August 26, 1987.

U.S. Producers 1/

Currently, there are eight U.S. producers 2/ known to produce IC forklifts, with three (* * *) accounting for more than 95 percent of 1987 U.S. production in the 2,000-15,000 pound lift category. These three firms, as well as * * *, also produce IC forklifts with a lifting capacity over 15,000 pounds. Table 1 summarizes U.S. producers and their shares of U.S. production in 1984 and in 1987. Since 1983, a number of domestic producers have either ceased or downsized their domestic operations. Whereas some have gotten out of the business, most have begun sourcing offshore or have announced plans to do so in the near future. Seven of the current domestic producers responding to the Commission's questionnaires import IC forklifts. Only * * *, accounting for * * * percent of U.S. production in 1987, does not import. Three producers (AC Materials Handling, Taylor, and Yale) now import from Japan. Whereas most of these producers also produce electric forklifts, firms such as Crown Controls Corporation specialize in producing a wide range of electrically powered forklifts. A discussion of U.S. producers of IC forklifts and electric forklifts follows.

Table 1
IC forklifts with a lifting capacity of 2,000-15,000 pounds: U.S. producers' share of 1984 and 1987 U.S. production, and source of imports

* * * * * * *

Hyster Company (Hyster). The petitioner accounted for about *** percent of U.S. production of IC forklifts in the 2,000-15,000 lift category in 1987. Hyster currently produces frames and assembles standard-lift ICs at its Danville, IL, and Berea, KY, facilities from component parts, some of which

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1/ The following firms have not responded to the Commission's questionnaire: * * *. These firms produce only electrically powered trucks.
2/ All firms that design and produce frames also produce a complete forklift truck. Telephone conversations with representatives of * * *.

are manufactured by Hyster Co., in its Sulligent, AL, plant. Hyster also produces electric forklifts (counterbalanced and narrow aisle) on separate production lines at Danville and Berea. Heavy-lift ICs and other low-volume trucks are bay built.

Hyster closed its Portland, OR, plant in January 1984 and consolidated production in its Danville, Berea, Sulligent, and Crawfordsville, IN, plants. Hyster subsequently closed its Crawfordsville plant in May 1986. Hyster also has IC forklift truck production facilities in Northern Ireland, Scotland, Australia, Brazil, and the Netherlands. Since the early 1980s, Hyster has increased its imports from its facilities in Scotland and Northern Ireland, and it has rationalized its U.S. and U.K. production in the past two years. Hyster indicated its 1985 and 1986 decisions to shift the sourcing of a number of series of IC forklifts from its U.S. facilities to its plant in Scotland were "because of competition from imported Japanese forklifts." Production in Australia is for the Australian market only; and production in Brazil serves the Brazilian and other Latin American markets. Hyster reports that truck production at a plant formerly operated in Canada will now be at its U.S. and European facilities, and the recent closure of the Dublin, Ireland plant will shift its production of class 2 trucks to U.S. operations. According to Hyster, they have no plans to move any current U.S. production to offshore facilities.

Hyster imports only from its own facilities overseas. Hyster's U.S. physical plant is approximately equal in square feet to that which it maintains overseas. As a result of efficiencies gained through restructuring certain operations, Hyster projects a slight decline by 1988 in the size of its plants operating both here and overseas.

Clark Equipment Co. (Clark). Clark accounted for * * * percent of standard-lift IC production in 1987. Presently, Clark manufactures both IC and electric-powered forklifts having a lift capacity from 2,000 to 10,000 pounds in the Lexington, KY, area. Clark manufactures IC forklifts having a lift capacity of over 10,000 pounds at Asheville, NC, in a joint venture with AB Volvo of Sweden in which both companies merged their production operations. In February 1986, the company announced that it would close the Georgetown, KY, and Battle Creek, MI, plants over a two year period. The Battle Creek plant was closed during the last half of 1987; Clark no longer plans to close Georgetown. 1/ In August 1986, Clark formalized an agreement with Samsung Heavy Industries (SHI), a member of the Samsung Group of the Republic of Korea (Korea). SHI manufactures Clark-designed IC forklifts having a lift capacity of 2,000 to 10,000 pounds. Clark will pay Samsung $1 billion and market the trucks worldwide under the Clark brandname. * * *.

Caterpillar Industrial Co. (Caterpillar). Caterpillar accounted for * * * percent of standard-lift IC production in the United States during 1987, down from about * * * percent of production in 1984. Caterpillar ceased production of ICs at its Mentor, OH, facility, in December 1984, and closed the facility in February 1985. Caterpillar now only manufactures standard-lift ICs at Dallas, OR. This plant was scheduled to be closed in late 1987 or early 1988, but that closure has been postponed until late 1988 or early 1989.

1/ * * *.

Caterpillar receives IC forklifts from subsidiaries located at Leicester, United Kingdom (production began in 1971); and Inchon, Korea. The sourcing from Korea began in mid-1984 under a 10-year contract with Daewoo Heavy Industries, Ltd. to provide mid-range standard-lift ICs. Under the agreement, the trucks are designed by Caterpillar to meet Caterpillar product standards, and are sold worldwide under the Caterpillar trademark. Additionally, in 1984, Caterpiller signed a contract with Kaldnesmek Veskted A/S, Tonsberg and Vestfold, Norway, to manufacture large, heavy-lift ICs.

Yale Materials Handling Corp. (Yale).--Yale operates manufacturing/assembly facilities in Greenville, NC, assembles in Hayward, CA, and has its headquarters in Flemington, NJ. Yale manufactures all classes of electrically powered forklifts in one building at Greenville and assembles standard IC forklifts using the rolling chassis it imports from Sumitomo-Yale (Japan) at another building there. 1/ Standard-lift ICs are also assembled using the Japanese rolling chassis at its facility at Hayward, CA. * * *. During 1985-87, Yale produced * * * standard-lift ICs at its Greenville, NC, facility (about * * * percent of U.S. production). In 1987, Yale * * * importer of the subject IC forklifts from Japan. * * *. Yale imports under a 50/50 joint venture with Sumitomo Heavy Industries.

In 1983, Yale ceased production of IC forklifts at its Philadelphia, PA, plant and transferred production or sourcing of trucks formerly produced at that facility to Sumitomo. In 1985, Yale's Salem, VA, parts plant was closed down and some equipment was transferred to Greenville. A company official cited the reasons for these closures as being related to rationalization due to industry overcapacity.

On August 12, 1987, Yale's Board of Directors approved a proposal by management to move the manufacture of IC rolling chassis from Japan to the Greenville facility. Yale is expected to begin producing standard ICs with U.S.-made chassis starting in April 1988. 2/ If produced in the same quantities as in Japan, Yale could become the * * * largest producer of standard-lift ICs in the near future.

AC Materials Handling Corporation (ACMH). ACMH purchased Allis-Chalmers Corporation's Industrial Truck Division in August 1986 and currently has * * * standard-lift IC production at its plant in Columbus, OH. ACMH made its purchase from Allis-Chalmers during the latter's consolidation of its overall operations. ACMH officials stated that the Industrial Truck Division had accounted for approximately * * * percent of Allis-Chalmers' total operations. In 1987, ACMH announced it had signed an agreement for contract manufacturing with Komatsu Forklift Co., Ltd. to manufacture 3,000-15,000 pound lift capacity IC forklift chassis in Japan for ACMH. ACMH performs some fabrication, assembly, and testing at its Columbus plant.

1/ According to the definition of "domestically produced" adopted by Commerce and the Commission, Yale's IC production using the Japanese chassis is not considered U.S. produced.

2/ Telephone conversations with Daniel P. Gimmy, Vice President-Law and Secretary, Yale Materials Handling Corporation, Aug. 20, 1987, and Feb. 24, 1988.

White Lift Truck Parts & Manufacturing Co. Inc. (White). White was founded in October 1985 by purchasing certain assets of White Lift Truck Company, a division of White Farm Equipment. All operations take place at its facility in Osseo, MN. White produces IC forklifts and * * * class 1 electric trucks--all trucks are in the 2,000 to 15,000 lift capacity range. After the company changed hands in 1985 the new owners phased out much of the heavy machine and sheet metal work done in house, but the company prides itself in procuring over * * * percent of its components in the United States. This company accounted for * * * percent of U.S. production of standard-lift ICs during 1987.

Taylor Machine Works, Inc. (Taylor). Taylor manufactures IC forklifts with a lift capacity from 10,000 to 100,000 pounds at its plant in Louisville, MS. In 1984, Taylor closed two plants due to "overcapacity" in the U.S. market. In 1987, Taylor accounted for * * * percent of U.S. production of IC forklifts in the 2,000-15,000 pound lift category. Taylor * * * producer of heavy-lift ICs accounting for * * * percent of U.S. production in 1987. Taylor's heavy-lift ICs all have lift capacities over * * * pounds. Taylor imports standard-lift ICs from Japan (* * *) under a private branding agreement. These trucks are painted with Taylor's colors and decals and sold through its U.S. dealer network.

Pettibone Corp (Pettibone). Pettibone, of Chicago, IL, produced * * * IC forklifts. Pettibone Corp. ceased production of forklift trucks in March 1985 and filed a petition in January 1986 for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. Pettibone cited a lack of return on invested assets for its decision to try to sell its forklift truck operations under the bankruptcy proceedings.

Baker Material Handling Corp (Baker). Baker, of Summerville, SC, ceased production of IC forklifts in the United States in April 1983. Since that time, Baker has imported its trucks from its parent company, Linde AG, a West German producer of IC forklifts.

Komatsu Forklift (U.S.A.) Inc. (Komatsu). Komatsu began production of standard-lift ICs at La Mirada, CA, during the second half of 1987. Komatsu procures * * *. 1/ Komatsu produced about * * * standard-lift ICs during 1987 on temporary assembly lines and expects to reach a capacity of * * * units per month when the production facility is completed around June 1988. Komatsu operates a nonunion shop employing * * * production and related workers. Komatsu's decision to set up a production facility in the United States was influenced by the strong yen and was reached prior to the filing of the antidumping case.

The following three firms produce electric forklifts.

Big Joe Manufacturing Company (Big Joe). Big Joe produces narrow-aisle electric forklifts and electric-motor hand trucks at its sole U.S. facility in Chicago, IL. All of these trucks have lift capacities of 2,000 to 15,000 pounds. Big Joe manufactures the * * * and purchases * * * from U.S. suppliers. * * *. Big Joe, Australia, is a licensed manufacturer of Big Joe

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1/ * * *.

products for distribution in Australia. Big Joe (USA) has no direct ownership in this manufacturer and has no other agreements with or ownership of offshore producers. Big Joe accounted for * * * percent of U.S. narrow-aisle forklift production in 1987.

Crown Controls Corporation (Crown). Crown produces electrically powered counterbalanced, narrow aisle, and "walkie" forklift trucks, all of which fall within the 2,000 to 15,000 lift capacity range. Crown produces these three types of electrically powered trucks at its facility at New Bremen, OH, and the walkie pallet truck at its newly completed (June 1987) facility in North Carolina. Crown also owns production facilities in Ireland, Australia, Mexico (2 plants), and New Zealand. * * *. The foreign operations produce primarily for the host country. Crown does not import any of its foreign production into the United States. This company accounted for * * * percent of total U.S. production of electric counterbalanced forklifts and * * * percent of narrow-aisle forklifts in 1987.

Drexel Industries, Inc. (Drexel). Drexel is a specialty producer of electrically powered forklifts. Its class 1 trucks are explosion-proof, designed to contain all potential spark-producing surfaces. These trucks are often sold to the chemical and pharmaceutical industries or to any industry where explosive vapors are in the atmosphere. These specially designed, low-volume trucks are priced about * * * that of a standard class 1 truck. Drexel also manufactures a swing mast truck (class 2), another specially-designed truck that requires a great deal of customer contact during the production process. These customized trucks are * * * times the price of a standard class 2 truck. Drexel operates one plant at Horsham, PA, where all production operations occur, including fabrication, welding, assembly, and testing. Drexel estimates that only about * * * percent of its purchased materials are produced outside the United States. * * *.

U.S. Importers

During the period examined for this investigation, the major portion of imports of the subject IC forklifts from Japan were accounted for by the U.S. affiliates of the major Japanese producers. Komatsu Forklift (U.S.A.), Inc.; Mitsubishi Heavy Industries, Ltd. (through its subsidiary, Machinery Distribution, Inc.); Nissan Industrial Equipment Co.; Toyo Umpanki Forklift Trucks (through TCM America (MBK), Inc. and C. Itoh Industrial Machinery, Inc.); Toyota Industrial Equipment; and Yale Materials Handling Corp. (Sumitomo-Yale Co., Ltd.) were responsible for more than 90 percent of imports from Japan in 1987.

In addition to the major producers, some dealers in the United States import directly from Japan. Petitioners allege that many of these imports, which are not to "authorized" dealers, are of the so-called "gray market" variety 1/ and the trucks are sold as new, nearly new, low-hour, demonstrator quality, or reconditioned trucks. Dealers such as Equipment Company of Los Angeles, Santa Fe Springs, CA, and Mid-Continent Sales of Schiller Park, IL, indicated that a portion of their imports fell into these categories.

1/ * * *.

Additionally, some dealers import "used or reconditioned" trucks. 1/ These trucks are allegedly 5 to 10 years old. Imports in this latter category enter under the same TSUS item as new and "gray market" trucks. Imports in the "used or reconditioned" categories averaged * * * percent of total imports reported from Japan. 2/ Their average unit value was less than half that of the new trucks.

The Domestic Market

Major consumers of forklifts include the food products (such as bottling firms, distributors, etc.), machinery, building products, and paper industries. The Department of Defense is also a consumer of forklifts. Whereas large corporations operate fleets of industrial trucks and account for a majority of U.S. sales, small companies operating one to several trucks represent a sizable U.S. market. Purchases tend to be cyclical but are often postponed during periods of budget tightening. 3/

Channels of distribution

There are two methods of distribution for forklift trucks produced in the United States. Trucks are either sold directly to end users by the manufacturer, after it has successfully bid on delivery of a specified truck, or through a dealer network, which either orders trucks for inventory, or to a customer's specification. In 1987 approximately 90 percent of U.S. manufacturers' shipments were made to dealers. Direct sales to end users usually take place when a large, national or multinational customer is involved, while dealer sales account for territorial sales to smaller accounts. Similarly, authorized distribution of imported forklifts is made in two ways: either with the foreign company selling directly to domestic accounts, or with sales being generated entirely by independent sales agents. Importers of Japanese-produced forklifts sell primarily to dealers (over 90 percent), but also supply national accounts.

U.S. consumption

Forklift truck consumption had been at low levels during the 1981-82 recession before beginning to show some improvement in 1983. According to industry sources, the material-handling sector lagged behind the general economy, especially the automotive sector, in its recovery. By 1984, levels of consumption had begun to reflect the effects of economic recovery.

Apparent U.S. consumption of standard-lift ICs (table 2) increased in both 1986 and 1987. In contrast, U.S. consumption of the heavy-lift ICs trended downward during 1985-87. Electrically powered forklifts show

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1/ In its final determination, Commerce defined used forklifts to be trucks manufactured in a calendar year at least three years prior to the year of entry into the United States. Used forklifts from Japan are not subject to investigation.
2/ Estimate made from information supplied in Commission questionnaires.
3/ Report of the U.S. Department of Commerce, "A Competitive Assessment of the U.S. Materials Handling Equipment Industry," May 1987, p. 6; * * *.

Table 2
Forklift trucks: U.S. producers' shipments, U.S. shipments of imports from Japan and all other countries, and apparent consumption, 1985-87

Item	1985	1986	1987
	Quantity (units)		
IC 2,000-15,000:			
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
Japan	22,191	21,999	23,730
All other sources	***	***	***
Total	***	***	***
U.S. consumption:			
Quantity	43,293	44,376	46,152
Percentage change	1/	+2.5	+4.0
IC over 15,000:			
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
Japan	174	178	119
All other sources	***	***	***
Total	***	***	***
U.S. consumption:			
Quantity	1,679	1,539	1,362
Percentage change	1/	-8.3	-11.5
Electric class 1:			
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
Japan	2,568	2,507	2,523
All other sources	***	***	***
Total	***	***	***
U.S. consumption:			
Quantity	14,942	15,835	15,404
Percentage change	1/	+6.0	-2.7
Electric class 2:			
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
Japan	***	***	***
All other sources	***	***	***
Total	***	***	***
U.S. consumption:			
Quantity	5,369	4,558	5,820
Percentage change	1/	-15.1	+27.7

See footnotes at end of the table.

Table 2--Continued
Forklift trucks: U.S. producers' shipments, U.S. shipments of imports from Japan and all other countries, and apparent consumption, 1985-87

Item	1985	1986	1987
	Value (1,000 dollars)		
IC 2,000-15,000:			
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
Japan	248,465	255,938	291,442
All other sources	***	***	***
Total	***	***	***
U.S. consumption:			
Value	587,624	607,285	629,340
Percentage change	1/	+3.3	+3.6
IC over 15,000:			
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
Japan	5,922	7,347	4,104
All other sources	***	***	***
Total	***	***	***
U.S. consumption:			
Value	98,667	86,834	79,415
Percentage change	1/	-12.0	-8.5
Electric class 1:			
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
Japan	30,245	29,718	31,056
All other sources	***	***	***
Total	***	***	***
U.S. consumption:			
Value	217,735	229,540	216,828
Percentage change	1/	+5.4	-5.5
Electric class 2:			
U.S. producers' shipments	***	***	***
U.S. shipments of imports from--			
Japan	***	***	***
All other sources	***	***	***
Total	***	***	***
U.S. consumption:			
Value	90,502	82,611	97,789
Percentage change	1/	-8.7	+18.4

1/ Not available.

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

irregular patterns, but consumption of both class 1 and class 2 ultimately increased during the period under investigation. The consumption trends for these products are identical for consumption measured by quantity of units shipped and by value of units shipped.

Demand for standard-lift ICs is greatest in lift capacities under 6,000 pounds. 1/ During 1987, an estimated 77 percent of U.S. producers' standard-lift IC shipments were forklifts with lift capacities falling within a range of 2,000 to 6,000 pounds; 89 percent of U.S. importers' shipments of standard-lift ICs imported from Japan had lift capacities of 2,000 to 6,000 pounds. The tabulation that follows shows the estimated shipments in the United States of U.S. producers and U.S. importers of Japanese built standard-lift ICs during 1987 in each of the specified capacity ranges (in percent):

Capacity range	U.S. produced	Japanese produced
2,000 to 4,000 lbs.....	18	39
4,001 to 6,000 lbs.....	59	50
6,001 to 8,000 lbs.....	9	7
8,001 to 11,000 lbs....	10	3
11,001 to 15,000 lbs...	4	1

Consideration of Material Injury

The information presented in this section of the report was obtained from responses to questionnaires of the Commission in connection with the current investigation. U.S. produced and imported forklifts have been identified by the situs of the frame. 2/ Of the U.S. producers who have produced the subject IC forklifts during the period of investigation, three (AC Materials Handling Corp., Taylor, and Yale) have imported trucks from Japan. If data concerning these producers were excluded from information presented in this section, the overall trends would remain the same.

The data have been updated since the prehearing report to include revisions of previously supplied information and additional responses from U.S. importers. 3/ The trends discussed in this section reflect U.S. producers' experience with IC forklifts with lifting capacity of 2,000 to 15,000 pounds, i.e. the products from Japan subject to this antidumping investigation (standard-lift ICs). However the Commission also gathered

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1/ Respondents claim that Japanese producers created and supplied a market demand for lift capacities under 8,000 pounds. Petitioners and Clark contend that they and other producers (Pettibone, Allis-Chalmers, etc.) have always supplied this segment of the market. See hearing transcript at p. 179 and posthearing briefs by Clark at pp. 8-9 and Hyster at p. 10.

2/ If some value-added methodology were employed to identify firms that should be included as U.S. producers of standard-lift ICs, * * *, might be eliminated (see table C-6). Due to the small number of U.S.-produced forklifts reported by * * * its exclusion would have no measurable effect on the industry trends that are presented in the report.

3/ * * * companies (* * *) were visited for data verification (financials and shipments). Errors were identified and have been corrected for the final report.

information on IC forklifts with a lift capacity over 15,000 pounds, electrically powered class 1 (counterbalanced) trucks and electrically powered class 2 (narrow aisle) trucks. This information is included in tables in the report. Responding firms accounted for over 95 percent of U.S. standard-lift IC production during 1987. 1/

U.S. production, capacity, and capacity utilization

Data on U.S. producers' productive capacity are presented in table 3. U.S. capacity to produce standard-lift ICs declined by 15 percent from 1985 to 1986, due almost entirely to Hyster's closure of its Crawfordsville, IN facility. Capacity remained unchanged the following year. * * *. 2/

U.S. production of standard-lift ICs dropped slightly in 1986 from 1985, and 1987 production was off 15 percent from 1986. Production declines at * * * overshadowed gains made by smaller producers in 1987. As productive capacity declined more sharply than production during 1985-86, capacity utilization increased from 47.9 percent in 1985 to 55.6 percent in 1986. Capacity utilization fell to 47.3 percent in 1987, reflecting the sharp drop in production.

As noted earlier, four producers reported production of heavy-lift ICs (IC forklifts with lifting capacity over 15,000 pounds). Information gathered from U.S. producers during previous investigations showed that less than 10 percent of the heavy-lift ICs fall in the 15,000-16,000 pound capacity range, and around 80 percent have capacities of 20,000 pounds or more. 3/

U.S. producers' shipments

U.S. producers' domestic shipments (table 4) of standard-lift IC forklifts fell 10 percent from 1985 to 1986 and by 16 percent in 1987; the value of these domestic shipments fell more sharply. * * * led the decline in shipments.

Exports declined irregularly during 1985-87. Exports accounted for an increasing share of U.S. producers' total shipments during the period of investigation (* * * percent in 1985, * * * percent in 1986, and * * * percent in 1987). The primary export markets are Latin America and Canada. U.S. producers' shipments of heavy-lift ICs, class 1 electric forklifts, and class 2 narrow aisle forklifts are provided in tables 5-7.

1/ * * *.

2/ * * *.

3/ Data provided by U.S. producers during the preliminary stage of this investigation and during preliminary investigation No. TA-603-10 concerning industrial lift trucks.

Table 3
Forklift trucks: U.S. productive capacity, production, and capacity utilization, 1985-87

Item	1985	1986	1987
IC 2,000-15,000:			
Capacity:			
Quantity (units)	***	***	***
Percentage change	1/	-15.0	0.0
Production:			
Quantity (units)	***	***	***
Percentage change	1/	-1.4	-14.9
Capacity utilization: 2/			
Percent	47.9	55.6	47.3
IC over 15,000:			
Capacity:			
Quantity (units)	1,896	1,921	1,946
Percentage change	1/	+1.3	+1.3
Production:			
Quantity (units)	1,204	946	972
Percentage change	1/	-21.4	+2.7
Capacity utilization: 2/			
Percent	63.5	49.2	49.9
Electric class 1:			
Capacity:			
Quantity (units)	15,800	17,271	17,453
Percentage change	1/	+9.3	+1.1
Production:			
Quantity (units)	8,415	10,511	10,621
Percentage change	1/	+24.9	+1.0
Capacity utilization: 2/			
Percent	53.3	60.9	60.9
Electric class 2:			
Capacity:			
Quantity (units)	6,808	5,343	6,479
Percentage change	1/	-21.5	+21.3
Production:			
Quantity (units)	5,494	4,910	5,912
Percentage change	1/	-10.6	+20.4
Capacity utilization: 2/			
Percent	80.7	91.9	91.2

1/ Not available.
2/ Computed from data of firms providing data on both capacity and production. These data do not include * * * which has undergone substantial reduction in capacity and U.S. production. Production and capacity would show sharper declines if * * * data were included.

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

Table 4
IC forklifts with lifting capacity of 2,000-15,000 pounds: U.S. producers' shipments, 1985-87

Item	1985	1986	1987
	Quantity (units)		
Company transfers	***	***	***
Domestic shipments	14,440	12,984	10,938
U.S. shipments:			
Quantity	***	***	***
Percentage change	1/	-10.0	-16.5
Export shipments	***	***	***
Total shipments:			
Quantity	15,713	14,297	12,038
Percentage change	1/	-9.0	-15.8
	Value (1,000 dollars)		
Company transfers	***	***	***
Domestic shipments	248,116	214,763	163,680
U.S. shipments:			
Value	***	***	***
Percentage change	1/	-13.6	-24.6
Export shipments	***	***	***
Total shipments:			
Value	270,169	235,066	181,083
Percentage change	1/	-13.0	-23.0
	Unit value (dollars per unit) 2/		
Company transfers	***	***	***
Domestic shipments	17,183	16,541	14,964
U.S. shipments:			
Unit value	***	***	***
Percentage change 3/	1/	-4.0	-9.7
Export shipments	***	***	***
Total shipments:			
Unit value	17,194	16,442	15,043
Percentage change 3/	1/	-4.4	-8.5

1/ Not available.
2/ Unit values were calculated from data submitted by firms supplying both quantity and value information and may not be computed from the above data.
3/ Computed from the unrounded figures.

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

Table 5
IC forklifts with lifting capacity of over 15,000 pounds: U.S. producers' shipments, 1985-87

Item	1985	1986	1987
	Quantity (units)		
Company transfers	***	***	***
Domestic shipments	1,175	924	883
U.S. shipments:			
Quantity	***	***	***
Percentage change	1/	-21.7	-4.5
Export shipments	***	***	***
Total shipments:			
Quantity	1,265	970	936
Percentage change	1/	-23.3	-3.5
	Value (1,000 dollars)		
Company transfers	***	***	***
Domestic shipments	74,667	56,242	54,387
U.S. shipments:			
Value	***	***	***
Percentage change	1/	-25.1	-3.4
Export shipments	***	***	***
Total shipments:			
Value	80,370	59,121	57,961
Percentage change	1/	-26.4	-2.0
	Unit value (dollars per unit) 2/		
Company transfers	***	***	***
Domestic shipments	63,546	60,868	61,593
U.S. shipments:			
Unit value	***	***	***
Percentage change 3/	1/	-4.4	+1.2
Export shipments	***	***	***
Total shipments:			
Unit value	63,534	60,949	61,924
Percentage change 3/	1/	-4.1	+1.6

1/ Not available.
2/ Unit values were calculated from data submitted by firms supplying both quantity and value information and may not be computed from the above data.
3/ Computed from the unrounded figures.

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

Table 6
Class 1 electric forklifts: U.S. producers' shipments, 1985-87

Item	1985	1986	1987
	Quantity (units)		
Company transfers	***	***	***
Domestic shipments	8,392	10,027	9,867
U.S. shipments:			
Quantity	***	***	***
Percentage change	1/	+19.4	-1.9
Export shipments	***	***	***
Total shipments:			
Quantity	8,722	10,562	10,485
Percentage change	1/	+21.1	-0.7
	Value (1,000 dollars)		
Company transfers	***	***	***
Domestic shipments	134,019	156,205	147,473
U.S. shipments:			
Value	***	***	***
Percentage change	1/	+16.3	-5.9
Export shipments	***	***	***
Total shipments:			
Value	139,010	164,099	155,897
Percentage change	1/	+18.0	-5.0
	Unit value (dollars per unit) 2/		
Company transfers	***	***	***
Domestic shipments	15,970	15,578	14,946
U.S. shipments:			
Unit value	***	***	***
Percentage change 3/	1/	-2.4	-4.2
Export shipments	***	***	***
Total shipments:			
Unit value	15,945	15,566	14,883
Percentage change 3/	1/	-2.4	-4.4

1/ Not available.
2/ Unit values were calculated from data submitted by firms supplying both quantity and value information and may not be computed from the above data.
3/ Computed from the unrounded figures.

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

Table 7
Class 2 electric forklifts: U.S. producers' shipments, 1985-87

Item	1985	1986	1987
	Quantity (units)		
Company transfers	***	***	***
Domestic shipments	5,208	4,432	5,715
U.S. shipments:			
Quantity	***	***	***
Percentage change	1/	-14.6	+27.9
Export shipments	***	***	***
Total shipments:			
Quantity	5,561	4,733	6,107
Percentage change	1/	-14.9	+29.0
	Value (1,000 dollars)		
Company transfers	***	***	***
Domestic shipments	87,175	80,042	95,554
U.S. shipments:			
Value	***	***	***
Percentage change	1/	-8.1	+18.2
Export shipments	***	***	***
Total shipments:			
Value	92,790	84,963	101,355
Percentage change	1/	-8.4	+19.3
	Unit value (dollars per unit) 2/		
Company transfers	***	***	***
Domestic shipments	16,739	18,060	16,720
U.S. shipments:			
Unit value	***	***	***
Percentage change 3/	1/	+7.5	-7.3
Export shipments	***	***	***
Total shipments:			
Unit value	16,716	17,959	16,643
Percentage change 3/	1/	+7.4	-7.3

1/ Not available.
2/ Unit values were calculated from data submitted by firms supplying both quantity and value information and may not be computed from the above data.
3/ Computed from the unrounded figures.

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

U.S. producers' inventories

Data on U.S. producers' yearend inventories of forklift trucks are presented in table 8. Inventories of standard-lift ICs dropped from * * * percent of total shipments in 1985 to * * * percent in 1986 and then rose to * * * percent in 1987.

Table 8
Forklift trucks: U.S. producers' end-of-period inventories, 1985-87

Item	1985	1986	1987
	Quantity (units)		
End-of-period inventories:			
IC 2,000-15,000	***	***	***
IC over 15,000	58	34	78
Electric class 1	402	351	487
Electric class 2	***	***	***
	Share of total shipments (percent)		
Ratio of inventories to total shipments: 1/			
IC 2,000-15,000	***	***	***
IC over 15,000	4.6	3.5	8.3
Electric class 1	4.6	3.3	4.6
Electric class 2	***	***	***

1/ Ratios are based on data supplied by firms that reported both inventory and shipment information.

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

Employment and wages

The production and related workers in this industry are represented by a number of unions. Hyster's workers are represented by the United Shop and Service Employees in Portland, OR, and the Independent Lift Truck Builders in Danville, IL. The workers at Hyster's Berea, KY, and Sulligent, AL, facilities are nonunion. Caterpillar's workers are represented by the International Association of Machinists and Aerospace Workers and Clark's Battle Creek, MI, workers are represented by the Allied Industrial Workers. Clark's Georgetown, KY, plant is nonunion. All of the aforementioned unions are petitioners in this investigation. As noted earlier, workers tend to specialize in either internal combustion or electric type forklift production.

The average number of workers engaged in the production of standard-lift ICs dropped from * * * in 1985 to * * * in 1986, or by 19 percent (table 9; tables 10-12 present employment related data for the other products). The number of workers dropped by 25 percent in 1987. Reduced production levels at * * * led to these layoffs. * * *.

Table 9
IC forklifts with lifting capacity of 2,000-15,000 pounds: Average number of production and related workers, hours worked, 1/ wages and total compensation 2/ paid to such employees, and labor productivity, hourly compensation, and unit labor production costs, 1985-87 3/

Item	1985	1986	1987
Production and related workers (PRW):			
Number	***	***	***
Percentage change	4/	-19.2	-25.3
Hours worked by PRW:			
Number (1,000 hours)	***	***	***
Percentage change	4/	-19.1	-28.1
Wages paid to PRW:			
Value (1,000 dollars)	***	***	***
Percentage change	4/	-21.8	-19.5
Total compensation paid to PRW:			
Value (1,000 dollars)	***	***	***
Percentage change	4/	-17.6	-24.1
Labor productivity for PRW: 5/			
Quantity (units per 1,000 hours)	***	***	***
Percentage change 6/	4/	+24.7	+15.8
Hourly wages paid to PRW: 7/			
Value (dollars per hour)	***	***	***
Percentage change 6/	4/	-3.4	+11.9
Hourly total compensation paid to PRW: 8/			
Value (dollars per hour)	***	***	***
Percentage change 6/	4/	+1.8	+5.5
Unit labor costs: 9/			
Value (dollars per unit)	***	***	***
Percentage change 6/	4/	-18.3	-8.9

1/ Includes hours worked plus hours of paid leave time.
2/ Includes wages and contributions to Social Security and other employee benefits.
3/ Firms providing employment data accounted for 95 percent of reported total shipments in 1987.
4/ Not available.
5/ Calculated using data from firms that provided information on both production and hours worked.
6/ Calculated from the unrounded figures.
7/ Calculated using data from firms that provided information on both wages paid and hours worked.
8/ Calculated using data from firms that provided information on both total compensation paid and hours worked.
9/ On the basis of total compensation paid. Calculated using data from firms that provided information on both total compensation paid and production.

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

Table 10
IC forklifts with lifting capacity of over 15,000 pounds: Average number of production and related workers, hours worked, 1/ wages and total compensation 2/ paid to such employees, and labor productivity, hourly compensation, and unit labor production costs, 1985-87 3/

Item	1985	1986	1987
Production and related workers (PRW):			
Number	482	451	***
Percentage change	4/	-6.4	***
Hours worked by PRW:			
Number (1,000 hours)	756	635	***
Percentage change	4/	-16.0	***
Wages paid to PRW:			
Value (1,000 dollars)	10,227	9,024	***
Percentage change	4/	-11.8	***
Total compensation paid to PRW:			
Value (1,000 dollars)	11,548	10,378	***
Percentage change	4/	-10.1	***
Labor productivity for PRW: 5/			
Quantity (units per 1,000 hours)	1.173	1.367	***
Percentage change 6/	4/	+16.5	***
Hourly wages paid to PRW: 7/			
Value (dollars per hour)	13.53	14.21	***
Percentage change 6/	4/	+5.1	***
Hourly total compensation paid to PRW: 8/			
Value (dollars per hour)	15.28	16.34	***
Percentage change 6/	4/	+7.0	***
Unit labor costs: 9/			
Value (dollars per unit)	13,019	11,956	***
Percentage change 6/	4/	-8.2	***

1/ Includes hours worked plus hours of paid leave time.
2/ Includes wages and contributions to Social Security and other employee benefits.
3/ Firms providing employment data accounted for 100 percent of reported total shipments in 1987.
4/ Not available.
5/ Calculated using data from firms that provided information on both production and hours worked.
6/ Calculated from the unrounded figures.
7/ Calculated using data from firms that provided information on both wages paid and hours worked.
8/ Calculated using data from firms that provided information on both total compensation paid and hours worked.
9/ On the basis of total compensation paid. Calculated using data from firms that provided information on both total compensation paid and production.

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

Table 11
Class 1 electric forklifts: Average number of production and related workers, hours worked, 1/ wages and total compensation 2/ paid to such employees, and labor productivity, hourly compensation, and unit labor production costs, 1985-87 3/

Item	1985	1986	1987
Production and related workers (PRW):			
Number	609	596	569
Percentage change	4/	-2.1	-4.5
Hours worked by PRW:			
Number (1,000 hours)	1,361	1,299	1,208
Percentage change	4/	-4.6	-7.0
Wages paid to PRW:			
Value (1,000 dollars)	15,292	14,219	13,616
Percentage change	4/	-7.0	-4.2
Total compensation paid to PRW:			
Value (1,000 dollars)	18,813	18,165	17,004
Percentage change	4/	-3.4	-6.4
Labor productivity for PRW: 5/			
Quantity (units per 1,000 hours)	6.183	8.092	8.792
Percentage change 6/	4/	+30.9	+8.7
Hourly wages paid to PRW: 7/			
Value (dollars per hour)	11.24	10.95	11.27
Percentage change 6/	4/	-2.6	+3.0
Hourly total compensation paid to PRW: 8/			
Value (dollars per hour)	13.82	13.98	14.08
Percentage change 6/	4/	+1.2	+0.7
Unit labor costs: 9/			
Value (dollars per unit)	2,236	1,728	1,601
Percentage change 6/	4/	-22.7	-7.4

1/ Includes hours worked plus hours of paid leave time.
2/ Includes wages and contributions to Social Security and other employee benefits.
3/ Firms providing employment data accounted for 95 percent of reported total shipments in 1987.
4/ Not available.
5/ Calculated using data from firms that provided information on both production and hours worked.
6/ Calculated from the unrounded figures.
7/ Calculated using data from firms that provided information on both wages paid and hours worked.
8/ Calculated using data from firms that provided information on both total compensation paid and hours worked.
9/ On the basis of total compensation paid. Calculated using data from firms that provided information on both total compensation paid and production.

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

Table 12
Class 2 electric forklifts: Average number of production and related workers, hours worked, 1/ wages and total compensation 2/ paid to such employees, and labor productivity, hourly compensation, and unit labor production costs, 1985-87 3/

Item	1985	1986	1987
Production and related workers (PRW):			
Number	511	430	422
Percentage change	4/	-15.9	-1.9
Hours worked by PRW:			
Number (1,000 hours)	1,030	864	846
Percentage change	4/	-16.1	-2.1
Wages paid to PRW:			
Value (1,000 dollars)	9,006	8,295	8,628
Percentage change	4/	-7.9	+4.0
Total compensation paid to PRW:			
Value (1,000 dollars)	12,285	11,697	13,659
Percentage change	4/	-4.8	+16.8
Labor productivity for PRW: 5/			
Quantity (units per 1,000 hours)	4.738	5.630	6.908
Percentage change 6/	4/	+18.8	+22.7
Hourly wages paid to PRW: 7/			
Value (dollars per hour)	8.74	9.60	10.20
Percentage change 6/	4/	+9.8	+6.2
Hourly total compensation paid to PRW: 8/			
Value (dollars per hour)	11.93	13.54	16.15
Percentage change 6/	4/	+13.5	+19.3
Unit labor costs: 9/			
Value (dollars per unit)	2,517	2,405	2,337
Percentage change 6/	4/	-4.5	-2.8

1/ Includes hours worked plus hours of paid leave time.
2/ Includes wages and contributions to Social Security and other employee benefits.
3/ Firms providing employment data accounted for 99 percent of reported total shipments in 1987.
4/ Not available.
5/ Calculated using data from firms that provided information on both production and hours worked.
6/ Calculated from the unrounded figures.
7/ Calculated using data from firms that provided information on both wages paid and hours worked.
8/ Calculated using data from firms that provided information on both total compensation paid and hours worked.
9/ On the basis of total compensation paid. Calculated using data from firms that provided information on both total compensation paid and production.

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

Hours worked by production and related workers and wages and total compensation paid to such employees showed the same trend as numbers employed, dropping sharply in 1986 and 1987. The average hourly wage ranged from a low of * * * in 1986 to a high of * * * in 1987. * * *.

Labor productivity, as measured by output per worker hour, rose by 25 percent in 1986 and by 16 percent in 1987. The increased labor productivity led to lower unit labor costs in each of these years.

Financial experience of U.S. producers

Seven producers 1/ of forklift trucks provided the Commission with usable financial information on the requested products. Together these firms accounted for almost all production of the subject ICs. 2/

Overall establishment operations.--The income-and-loss data of seven U.S. producers on their overall operations of establishments within which IC and electric forklifts are produced are presented in table 13.

Net sales for establishment operations increased by 5.6 percent, from $874.2 million in 1985 to $923.0 million in 1987. Net sales of domestically produced 3/ IC forklifts with lifting capacity of 2,000-15,000 pounds accounted for 30.7 percent, * * * percent, and 19.7 percent of total establishment net sales in 1985, 1986, and 1987, respectively. Each company's share of aggregate net sales during 1985-87 are shown in the following tabulation (in percent):

Company	Share of total net sales		
	1985	1986	1987
* * *	*	*	*

Reporting producers sustained aggregate operating losses throughout 1985-87. The operating loss increased from $40.8 million, or 4.7 percent of net sales, in 1985 to $47.1 million, or 5.2 percent of net sales, in 1986 and then declined to $46.5 million, or 5.0 percent of net sales, in 1987. Pretax net losses followed a similar trend but were much higher than the operating losses due to the provision made by certain companies (a discussion of each company's provisions follows) for shutdown and restructuring costs, interest expenses, and other nonoperating expenses during 1985-87. The operating income or loss margins reported by each producer and each company's share of total establishment operating losses during 1985-87

1/ * * *. The largest producers, * * *, were visited for verification and the data for each one has been revised.
2/ Detailed information on income and loss for heavy-lift ICs and class 1 and 2 electric forklifts is presented in Appendix C.
3/ Only those trucks that contained a U.S.-produced frame were considered domestically produced.

Table 13
Forklift trucks: Income-and-loss experience of U.S. producers on the overall operations of their establishments within which forklift trucks are produced, accounting years 1985-87

Item	1985	1986	1987
	Value (1,000 dollars)		
Net sales	874,156	906,334	922,968
Cost of goods sold	762,398	794,643	797,708
Gross profit	111,758	111,691	125,260
General, selling, and administrative expenses	152,600	158,791	171,766
Operating (loss)	(40,842)	(47,100)	(46,506)
Startup or shutdown expense	***	***	***
Interest expense	***	***	***
Other expense, net	***	***	***
Net (loss) before income taxes	(120,411)	(71,398)	(73,508)
Depreciation and amortization included above	11,129	10,680	11,799
Cash flow 1/	(109,282)	(60,718)	(61,709)
	Share of net sales (percent)		
Cost of goods sold	87.2	87.7	86.4
Gross profit	12.8	12.3	13.6
General, selling, and administrative expenses	17.5	17.5	18.6
Operating (loss)	(4.7)	(5.2)	(5.0)
Net (loss) before income taxes	(13.8)	(7.9)	(8.0)
	Number of firms reporting		
Operating losses	3	3	3
Net losses	4	4	3
Data	7	7	7

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

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

are presented in the following tabulation (in percent):

* * * * * * *

The industry has undergone significant restructuring since 1982. In 1982, Clark Equipment accrued a special pretax provision of $214.5 million to cover program costs associated with the initial "Revitalization Program" for the company's core businesses--the production and sale of axles and transmissions and related components, and material-handling equipment and vehicles. The material-handling-equipment segment of Clark Equipment involves the production and sale of electric and gas-powered lift trucks and automated handling systems. Clark Equipment reported operating losses in each year for the period 1982-84 on its material-handling equipment segment. 1/ In 1985, in an effort to improve its ability to compete in a market that was becoming increasingly competitive, Clark accelerated its "Revitalization Plan" and made a provision for asset writedowns and restructuring costs amounting to $96.1 million for the entire company. Provisions for the closing of Battle Creek, MI, and Georgetown, KY, facilities were projected to be $51.4 million. Clark allocated $33.5 million for a "Revitalization" reserve and * * * for asset writedowns to its establishments that produce IC and electric forklifts. The company indicates that most of these reserves were used for the shutdown of the 75-year-old Battle Creek plant during the third quarter of 1987 and for phasing out the operations at Georgetown. However, Georgetown was reopened in February 1988 and production was resumed on a more limited scale. Production that had taken place at Battle Creek was transferred to Georgetown and overseas to Korea. * * *.

Hyster Company identified a provision of * * * in 1985 and * * * in 1986 for restructuring for plant closedown relating to IC and electric forklifts, out of a total provision of $7.5 million in 1985 and $5.1 million in 1986 for its total company operations. Hyster closed down the Crawfordsville, IN, plant in the first half of 1986, downsized the Danville, IL, plant, and transferred some of the production activities to overseas plants. In 1987, Hyster added back * * * to pretax income because that amount represented the excess provision made for shutdown expenses in prior years. * * *.

Caterpillar made a provision of approximately $8.0 million to close manufacturing facilities at Dallas, OR, in 1987. The Dallas plant will be phased out during the second half of 1988 and early 1989. * * *.

1/ Per 1984 annual report of Clark Equipment Company.

Crown Controls Corp. only produces electrically powered forklift trucks. * * *. * * *.

Yale * * *.

Standard-lift ICs.--* * * U.S. producers of forklift trucks supplied usable income-and-loss data on their operations for U.S.-produced IC forklift trucks (ICs that contain a domestic frame) with a lift capacity of 2,000 to 15,000 pounds (table 14)). 1/ These producers accounted for almost all reported production of standard-lift ICs in 1987.

Net sales of domestically produced standard-lift ICs declined by 32.5 percent during 1985-87. In 1987, net sales for each producer, except * * *, were lower than those in 1985. Each company's share of total sales during 1985-87 is presented in the following tabulation (in percent):

* * * * * * *

The industry's gross profit margins declined from 1.3 percent of net sales in 1985 to * * * percent of net sales in 1986 and turned into a negative gross loss margin of 1.8 percent of net sales in 1987. * * * .

Average unit net sales, cost of sales, and gross profit or loss of each producer during 1985-87 are shown in the following tabulation:

Item	1985	1986	1987
* * * *	*	*	*
Total:			
Weighted-average unit net sales value....	17,302	***	15,082
Weighted-average unit cost of sales.....	17,069	***	15,346
Weighted-average unit gross profit or (loss).....	233	***	(264)

From 1985 to 1987, the weighted-average unit net sales value of standard-lift ICs that contain a domestic frame, declined more rapidly (by 12.8 percent) than their cost of sales, which fell by 10.1 percent. Hence, the weighted-average unit gross profit of $233 in 1985 dropped to * * * in 1986, and then turned into a gross loss of $264 in 1987.

1/ * * *.

Table 14
Standard-lift ICs (with a domestic frame): Income-and-loss experience of U.S. producers sales of standard-lift ICs that contain a domestic frame, accounting years 1985-87

Item	1985	1986	1987
	Value (1,000 dollars)		
Net sales	268,670	***	181,374
Cost of goods sold	265,053	***	184,549
Gross profit	3,617	***	(3,175)
General, selling, and administrative expenses	42,557	***	***
Operating (loss)	(38,940)	***	***
Startup or shutdown expense	***	***	***
Interest expense	***	***	***
Other income, net	***	***	***
Net (loss) before income taxes	(74,177)	***	***
Depreciation and amortization included above	2,941	***	***
Cash flow 1/	(71,236)	***	***
	Share of net sales (percent)		
Cost of goods sold	98.7	***	101.8
Gross profit	1.3	***	(1.8)
General, selling, and administrative expenses	15.8	***	***
Operating (loss)	(14.5)	***	***
Net (loss) before income taxes	(27.6)	***	***
	Number of firms reporting		
Operating losses	***	***	***
Net losses	***	***	***
Data	***	***	***

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

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

* * * * * * *

The distribution of cost of goods sold into the major components of cost is shown in the following tabulation (in percent):

* * * * * * *

All * * * U.S. producers reported both operating and net losses throughout the period covered by the investigation. During 1985-87, operating losses increased in absolute dollars despite declining sales, thus the industry lost more money each year per each dollar of sale. As a share of net sales, the operating loss margin increased from 14.5 percent in 1985 to * * * percent in 1986 and to * * * percent in 1987. General, selling, and administrative (GS&A) expenses, as a share of net sales, increased from 15.8 percent in 1985 to * * * percent in 1987.

* * *. * * * major items of GS&A expenses are presented in the following tabulation (in thousands of dollars):

* * * * * * *

The operating loss margins reported by each producer during 1985-87 are shown in the following tabulation (in percent):

Company	1985	1986	1987
* * * * * * *			
Weighted-average.....	14.5	***	***

Compared with 1986 and 1987, the 1985 pretax net loss was much higher than the operating loss because of * * * associated with * * * restructuring and shutdown costs reported on its operations producing standard-lift ICs. * * *. Because of these nonrecurring expenses and increasing interest expenses, pretax net loss margins for the industry were higher than the operating loss margins during 1985-87.

The Commission also requested income-and-loss data from U.S. producers on their operations relating to the sale of all standard-lift ICs (i.e., including those forklifts that contain an imported frame). The same * * * U.S. producers supplied these data, which are presented in table 15.

Table 15
Standard-lift ICs (with a domestic or imported frame): Income-and-loss experience of U.S. producers on sales of all standard-lift ICs, including forklifts that contain an imported frame, accounting years 1985-87

Item	1985	1986	1987
	Value (1,000 dollars)		
Net sales	350,226	348,835	337,167
Cost of goods sold	332,510	340,303	329,550
Gross profit	17,716	8,532	7,617
General, selling, and administrative expenses	54,302	58,527	61,192
Operating (loss)	(36,586)	(49,995)	(53,575)
Startup or shutdown expense	***	***	***
Interest expense	***	***	***
Other income, net	***	***	***
Net (loss) before income taxes	(70,370)	(52,046)	(59,999)
Depreciation and amortization included above	3,578	3,675	3,905
Cash flow 1/	(66,792)	(48,371)	(56,094)
	Share of net sales (percent)		
Cost of goods sold	94.9	97.6	97.7
Gross profit	5.1	2.4	2.3
General, selling, and administrative expenses	15.5	16.8	18.1
Operating (loss)	(10.4)	(14.3)	(15.9)
Net (loss) before income taxes	(20.1)	(14.9)	(17.8)
	Number of firms reporting		
Operating losses	***	***	***
Net losses	***	***	***
Data	***	***	***

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

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

U.S. producers' net sales of all standard-lift ICs decreased by 3.7 percent, from $350.2 million in 1985 to $337.2 million in 1987. Operating losses on such operations, in absolute dollars, were lower in 1985 but higher in 1986-87 than losses reported for IC forklifts that contain a domestic frame. However, the operating loss margins were lower because the industry lost less money on each dollar of sales of those forklift trucks containing an imported frame. The operating loss margins increased from 10.4 percent in 1985 to 14.3 percent in 1986 and to 15.9 percent in 1987.

Selected income-and-loss data for standard-lift ICs that contain an imported frame only are presented in the following tabulation:

Item	1985	1986	1987
Net sales.....1,000 dollars..	81,556	***	155,793
Operating income (loss).do....	2,354	***	***
Pre-tax net income (loss).do..	3,807	***	***
Operating income (loss) margin.....percent..	2.9	***	***
Pre-tax net income (loss) margin.....percent..	4.7	***	***

Selected income-and-loss data for domestically produced IC forklift trucks with lifting capacity of 2,000-15,000 pounds, over 15,000 pounds, and electrically powered class 1 and class 2 forklifts are summarized in table 16.

Investment in property, plant, and equipment.--U.S. producers provided data concerning their investment in facilities employed in the production of all establishment products and for the specified forklift trucks. These data are presented in table 17.

To provide an additional measure of profitability, the ratios of operating income or loss to the book value of property, plant, and equipment (i.e. return on fixed assets) employed in the production of all establishment products and for the requested forklift trucks are also shown in table 17.

Table 16
Forklift trucks: Selected income-and-loss data, by types, accounting years 1985-87

Item	1985	1986	1987
IC forklifts 2,000-15,000 pounds:			
Net sales.....1,000 dollars..	268,670	***	181,374
Operating (loss).....do....	(38,940)	***	***
Operating (loss) margin.....percent..	(14.5)	***	***
Number of firms reporting.....	***	***	***
IC forklift over 15,000 pounds: 1/			
Net sales.....1,000 dollars..	46,541	32,248	***
Operating (loss).....do....	(4,373)	***	***
Operating (loss) margin.....percent..	(9.4)	***	***
Number of firms reporting.....	3	3	3
Class 1 electric forklift trucks: 1/			
Net sales.....1,000 dollars..	138,087	163,257	158,827
Operating (loss).....do....	(4,963)	(5,495)	(5,832)
Operating (loss) margin.....percent..	(3.6)	(3.4)	(3.7)
Number of firms reporting.....	6	6	2/ 6
Class 2 narrow aisle: 1/			
Net sales.....1,000 dollars..	99,022	102,196	113,272
Operating income or (loss).....do....	(783)	(1,573)	3,180
Operating income or (loss) margin percent..	(0.8)	(1.5)	2.8
Number of firms reporting.....	5	5	5

1/ Detailed income-and-loss data on these operations are presented in app. C.

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

Capital expenditures.--U.S. producers supplied data on their capital expenditures for land and land improvements, building and leasehold improvements, and, machinery, equipment, and fixtures used in the production of all establishment products and for the specified forklift trucks. These data are shown in table 18.

Research and development expenses.--U.S. producers' research and development expenses for the specified forklift trucks are presented in table 19.

Table 17
Forklift trucks: Value of property, plant, and equipment of U.S. producers, as of the end of accounting years 1985-87

(In thousands of dollars)

Item	1985	1986	1987
All products of establishments:			
Original cost	168,948	176,027	179,621
Book value	76,177	78,204	76,071
Return on fixed assets 1/	(53.6)	(60.2)	(61.1)
* * * * * * *			
* * * * * * *			
Electric class 1:			
Original cost	28,201	25,722	24,581
Book value	16,718	14,089	12,209
Return on fixed assets 1/	(29.7)	(39.0)	(47.8)
Electric class 2:			
Original cost	12,452	8,951	11,235
Book value	5,795	4,073	5,282
Return on fixed assets 1/	(13.5)	(38.6)	60.2

1/ Defined as operating income or loss divided by book value of fixed assets.

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

Table 18
Forklift trucks: Capital expenditures by U.S. producers, accounting years 1985-87

(In thousands of dollars)

Item	1985	1986	1987
All products of establishments:			
Land and land improvements	***	***	***
Building and leasehold improvements	***	***	***
Machinery, equipment, and fixtures	4,768	8,315	7,424
Total	6,467	13,845	9,512
* * * * * * *			

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

Table 19
Forklift trucks: Research and development expenses by U.S. producers, accounting years 1985-87

(In thousands of dollars)

Item	1985	1986	1987
All products of establishments	15,305	16,257	17,090
IC 2,000-15,000	6,003	7,484	***
IC over 15,000	***	***	***
Electric class 1	3,191	2,864	3,359
Electric class 2	3,069	3,764	3,352

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

Capital and investment.--The Commission requested U.S. producers to describe the actual and potential negative effects of imports from Japan of IC forklifts with lifting capacity of 2,000 to 15,000 pounds on their firm's growth, investment, and ability to raise capital. Their responses are presented in appendix C.

Consideration of the Threat of Material Injury

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

> In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors 1/--...
>
> (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
>
> (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

1/ Section 771(7)(F)(ii) of the act (19 U.S.C. § 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, and

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation.

U.S. consumption of the subject imports, as well as trends in imports and U.S. market penetration are discussed in the section entitled "Consideration of the Causal Relationship Between LTFV Imports and the Alleged Material Injury." Factor IV is discussed in the sections entitled "Prices," "Lost Sales," and "Lost Revenues." Information regarding importers' inventories and the capacity of Japan to generate exports follows.

Importers' inventories

Inventories held by importers of the subject IC forklifts from Japan are shown in table 20. During the period under investigation, U.S. inventories of imported Japanese standard-lift ICs declined irregularly, falling to their lowest point in 1987, both absolutely and as a share of importers' shipments. As a rule, importers keep higher levels of inventories than do home-market producers. In this case, importers' inventories were 7-10 times the number held by U.S. producers. Monthly inventory data for the 2 Japanese producers subject to Commerce's "critical circumstances" determination are presented in the section entitled "Monthly imports and inventories for Nissan and TCM."

Table 20
Inventories of imported IC forklift trucks with lift capacity of 2,000-15,000 pounds, 1985-87

Item	1985	1986	1987
End-of-period inventories of product imported from--			
Japan (units)	4,190	4,895	3,476
Other sources (units)	***	***	***
All sources (units)	***	***	***
Ratio of inventories to U.S. shipments for product imported from-- 1/			
Japan (percent)	19.1	22.3	14.7
Other sources (percent)	***	***	***
All sources (percent)	***	***	***

1/ Ratios are based on data supplied by firms that reported both inventory and shipments information.

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

The industry in Japan

The major producers of IC forklifts in Japan are, through their affiliates in the United States, the major importers of the product into the United States. Six of the producers were responsible for more than 80 percent of imports from Japan during the period examined for this investigation. These producers are: Komatsu Forklift Co., Ltd.; Mitsubishi Heavy Industries; Ltd., Nissan Motor Co.; Ltd., Sumitomo Heavy Industries Ltd.; Toyo Umpanki Forklift Trucks, and Toyota Motor Corp. (Toyota Automatic Loom Works). The operations of Komatsu, Mitsubishi, Nissan, and Toyota are related to larger, more diverse manufacturing operations, with the latter three having facilities dedicated to the production of automobiles and small trucks. Toyo Umpanki's principal product is forklift trucks and Sumitomo Heavy Industries, Ltd. produces forklift trucks through a joint venture with Yale Materials Handling Corp.

Japanese production, domestic shipments, and exports for 1984 through 1987 are shown in table 21. The data in this table are derived from statistics from the Ministry of International Trade and Industry (MITI), the Japanese Industrial Vehicles Association (JIVA), and the Customs Bureau, Ministry of Finance (Japan). Japanese production of standard-lift ICs increased irregularly during 1984-87, with production in 1987 about 4 percent higher than production in 1984. Japanese exports to the United States increased consistently throughout the period examined. Exports to the United States as a share of total exports reached a high of 48 percent in 1986, up from 40 percent in 1985. As part of a voluntary restraint arrangement affecting all forklift trucks, exports of Japanese-produced IC forklifts to the European Community are limited. The limit for 1987 is 14,000 trucks.

Table 21
Standard-lift ICs: Japanese production, domestic shipments (Japan), exports, and exports to the United States, 1984-87

Period	Production	Domestic shipments (Japan)	Total exports 1/	Exports to the U.S. 1/	Export share to U.S.
	Units				Percent
1984....	86,970	37,158	49,883	21,044	42.2
1985....	94,720	40,401	53,800	21,512	40.0
1986....	86,223	38,873	46,830	22,514	48.1
1987....	90,487	42,395	49,706	23,570	47.4

1/ Adjusted to exclude used trucks.

Source: State Department cablegram, derived from statistics from the Ministry of International Trade and Industry (MITI), the Japanese Industrial Vehicles Association, and the Customs Bureau, Ministry of Finance (Japan).

Other export markets include Australia, Canada, and Singapore. Japan imports very few forklifts. In 1987, imports of all types of forklift trucks totaled just 88 units, representing less than 0.2 percent of Japanese consumption. Sweden was the largest supplier to Japan (68 forklift trucks), followed by the United States (12) and West Germany (5). There are no tariffs on these imports. 1/

As reported by the six major producers, their capacity to produce standard-lift ICs averaged about 89,000 units from 1985 to 1987 (table 22). Capacity decreased slightly over the period, reflecting in part Sumitomo-Yale's movement of some chassis-building capacity back to the United States. Japanese producers were reportedly operating at near full capacity during this three-year period. 2/ * * * is the largest producer in Japan, followed by * * * and * * *. JIVA projects higher demand in the home market for standard-lift ICs due to the general expansion taking place in the home economy.

As discussed earlier, Sumitomo-Yale is moving its rolling chassis production back to Yale's North Carolina facility and Komatsu began producing forklifts during late 1987 at its facility in California. Mitsubishi and Nissan plan to open factories in Texas and Illinois during 1988. Other Japanese producers have indicated that they intend to open facilities in the United States pending the outcome of the instant investigation. 3/

1/ Information on Japanese imports provided by Japan Economic Institute, telephone conversation with Susan McKnight on April 18 and 26, 1988.
2/ * * * of these producers' reported capacity based upon 1 shift devoted to producing standard-lift ICs and * * * producers reported capacity based on 2 shifts. Other types of forklifts were reported to be produced at these facilities.
3/ See posthearing briefs for Mitsubishi and for Nissan, and "Japanese Forklift Makers Shifting to U.S.," Manufacturing Week, Apr. 18, 1988.

Table 22
Standard-lift ICs: Production capacity, production, capacity utilization, total shipments, inventories, and the ratio of inventories held in Japan to total shipments, as reported by 6 producers in Japan, 1985-87

Period	Capacity	Production	Capacity utilization	Inventories	Total shipments	Ratio of inv. to total shipments
	Units		Percent	Units		Percent
1985....	91,347	92,253	100.1	5,057	91,994	5.5
1986....	87,047	83,605	96.0	5,182	83,082	6.2
1987....	89,147	86,954	97.5	3,156	88,677	3.6

Source: Compiled from data submitted by counsel to Komatsu, Mitsubishi, Nissan, Toyota, Toyo-Umpanki, and Sumitomo-Yale.

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

U.S. imports

U.S. imports 1/ of standard-lift ICs increased from * * * units in 1985 to * * * units in 1986, or by nearly 16 percent (table 23). Imports increased slightly in 1987, up about 1 percent over 1986. Japan is the largest foreign supplier of standard-lift ICs to the United States, accounting for about 70 percent of total imports during 1985-87. The United Kingdom was the second largest supplier, accounting for an estimated 15 percent, followed by the Republic of Korea at about 10 percent. 2/

Imports from Japan rose from 21,000 units in 1985 to almost 23,000 units in 1987. Importers' shipments of Japanese standard-lift ICs numbered 22,000 in 1985 and 1986, and 24,000 in 1987 (table 24). These shipments of the subject imports accounted for approximately half of U.S. consumption of standard-lift ICs when measured in quantity, and a somewhat smaller but rising market share when measured by value (table 25).

Imports by domestic producers

Three domestic producers (* * *) imported standard-lift ICs from Japan during all or a portion of the period under investigation, with * * * accounting for the vast majority of the imports. During the period of investigation, these producers accounted for less than * * * percent of U.S. production of standard-lift ICs. 3/ Imports by all U.S. producers that imported during the period of investigation are shown in table 26.

1/ Data on imports were compiled from questionnaires sent to all known major importers, which accounted for at least 95 percent of estimated imports during 1987. Official statistics do not provide separate data for the imports under investigation. Official data also include imports of used forklifts which are not subject to this investigation.
2/ Estimated using official statistics.
3/ * * *.

Table 23
Forklift trucks: U.S. imports for consumption, by types and by sources, 1985-87

Item	1985	1986	1987
	Quantity (units)		
IC 2,000-15,000:			
Imports from--			
Japan	21,404	22,716	22,774
Other sources	***	***	***
Total	***	***	***
IC over 15,000:			
Imports from--			
Japan	164	151	105
Other sources	***	***	***
Total	***	***	***
Electric class 1:			
Imports from--			
Japan	2,973	2,417	2,252
Other sources	***	***	***
Total	***	***	***
Electric class 2:			
Imports from--			
Japan	***	***	***
Other sources	***	***	***
Total	***	***	***
	Value (1,000 dollars)		
IC 2,000-15,000:			
Imports from--			
Japan	187,429	231,897	240,702
Other sources	***	***	***
Total	***	***	***
IC over 15,000:			
Imports from--			
Japan	5,179	4,589	3,188
Other sources	***	***	***
Total	***	***	***
Electric class 1:			
Imports from--			
Japan	26,220	24,993	24,735
Other sources	***	***	***
Total	***	***	***
Electric class 2:			
Imports from--			
Japan	***	***	***
Other sources	***	***	***
Total	***	***	***

Continued on next page.

Table 23--Continued
Forklift trucks: U.S. imports for consumption, by types and by sources, 1985-87

Item	1985	1986	1987
	Unit value (dollars per unit) 1/		
IC 2,000-15,000:			
Imports from--			
Japan	8,757	10,209	10,569
Other sources	***	***	***
Average	***	***	***
IC over 15,000:			
Imports from--			
Japan	31,579	30,391	30,362
Other sources	***	***	***
Average	***	***	***
Electric class 1:			
Imports from--			
Japan	8,819	10,341	10,984
Other sources	***	***	***
Average	***	***	***
Electric class 2:			
Imports from--			
Japan	***	***	***
Other sources	***	***	***
Average	***	***	***

1/ Unit values were calculated from data submitted by firms supplying both quantity and value information and may not be computed from above data.

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

Table 24
Forklift trucks: U.S. shipments of imported merchandise, by types and by sources, 1985-87

Item	1985	1986	1987
	Quantity (units)		
IC 2,000-15,000:			
Imported from--			
Japan	22,191	21,999	23,730
Other sources	***	***	***
Total	***	***	***
IC over 15,000:			
Imported from--			
Japan	174	178	119
Other sources	***	***	***
Total	***	***	***
Electric class 1:			
Imported from--			
Japan	2,568	2,507	2,523
Other sources	***	***	***
Total	***	***	***
Electric class 2:			
Imported from--			
Japan	***	***	***
Other sources	***	***	***
Total	***	***	***
	Value (1,000 dollars)		
IC 2,000-15,000:			
Imported from--			
Japan	248,465	255,938	291,442
Other sources	***	***	***
Total	***	***	***
IC over 15,000:			
Imported from--			
Japan	5,922	7,347	4,104
Other sources	***	***	***
Total	***	***	***
Electric class 1:			
Imported from--			
Japan	30,245	29,718	31,056
Other sources	***	***	***
Total	***	***	***
Electric class 2:			
Imported from--			
Japan	***	***	***
Other sources	***	***	***
Total	***	***	***

Continued on next page.

Table 24--Continued
Forklift trucks: U.S. shipments of imported merchandise, by types and by sources, 1985-87

Item	1985	1986	1987
	Unit value (dollars per unit) 1/		
IC 2,000-15,000:			
Imported from--			
Japan	11,197	11,634	12,282
Other sources	***	***	***
Average	***	***	***
IC over 15,000:			
Imported from--			
Japan	34,034	41,275	34,487
Other sources	***	***	***
Average	***	***	***
Electric class 1:			
Imported from--			
Japan	11,778	11,854	12,309
Other sources	***	***	***
Average	***	***	***
Electric class 2:			
Imported from--			
Japan	***	***	***
Other sources	***	***	***
Average	***	***	***

1/ Unit values were calculated from data submitted by firms supplying both quantity and value information and may not be computed from above data.

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

Table 25
Market penetration of IC forklift trucks with lift capacity of 2,000-15,000 pounds, 1985-87

Item	1985	1986	1987
	Share of consumption quantity (percent)		
U.S. producers' shipments...	***	***	***
U.S. shipments of imports from--			
Japan.....	51.3	49.6	51.4
All other sources.....	***	***	***
Total.....	***	***	***
	Share of consumption value (percent)		
U.S. producers' shipments...	***	***	***
U.S. shipments of imports from--			
Japan.....	42.3	42.1	46.3
All other sources.....	***	***	***
Total.....	***	***	***

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

Table 26
IC forklifts with a 2,000-15,000 pound lift capacity: U.S. imports by domestic producers responding to the Commission's questionnaires, by companies and by sources, 1985-87

* * * * * * *

Imports by the * * * U.S. producers (* * *) came from countries other than Japan. * * * import primarily from Korea and Hyster imports from its operations in the United Kingdom. Imports by these * * * U.S. producers rose sharply during the period examined. * * * imported more standard-lift ICs than any other U.S. producer in every year.

Monthly imports and inventories for Nissan and TCM

For its critical circumstances determination, Commerce compared each Japanese producer's exports to the United States during the period November 1986-April 1987 with the period May-October 1987. Nissan's exports during the latter period were * * * percent greater than in the earlier period and TCM's were * * * percent greater. Consequently these two producers' exports were found to be massive during the period after the petition was filed.

Monthly imports and U.S. inventories of standard-lift ICs from the two Japanese producers (Nissan and TCM) subject to the critical circumstances ruling follow:

* * * * * * *

Imports rose by * * * percent for the 6-month period (May-October 1987) between the filing of Hyster's antidumping petition (Apr. 22, 1987) and Commerce's preliminary determination (Nov. 24, 1987) when compared with imports in the corresponding period in 1986, and when compared with the 6-month period (Nov. 1986-Apr. 1987) prior to the filing date. U.S. inventories of imports from these two producers during the May-October 1987 period were lower on average than during the comparable period in 1986, but higher when compared with those in the previous 6-month period.

Prices

Prices of forklift trucks vary with the basic product features of the lift truck--the power source (IC or electric), the tire type, the basic lift capacity, and, for IC forklifts, whether the engine is gasoline or diesel powered. Price data received by the Commission generally indicate that, within a given basic lift capacity, electric trucks are higher priced than IC forklifts, even before the cost of a battery is included. Prices generally increase with basic lift capacities; prices of forklift trucks with basic lift capacities over 6,000 pounds are considerably higher than those in the 2,000-6,000 pound range as a result of larger materials costs and the small volumes produced. Pneumatic-tire trucks require a bigger frame than cushion-tire trucks of a given basic lift capacity and are generally slightly higher priced. 1/

Prices can also vary considerably with certain options requested by a particular dealer or end user. Converting a gasoline engine to a liquid propane gas (LPG) system is a very popular option for cushion-tire IC forklifts that may add up to $600 to the price of a forklift. Other popular options for forklift trucks (all types) include nonstandard masts (approximately $500-$2,000) 2/ and special fork attachments such as sideshifters ($700-$900). 3/ In addition, purchasers have mentioned less popular options that can add several thousand dollars to the price of forklift trucks. For example, carton clamps, fork attachments that pinch the load, and "push-pulls," attachments that eliminate the need for pallets, cost approximately $7,000. 4/ Other options, such as non-standard backrests (approximately $50-$60), are not costly. 5/

1/ Pneumatic tires are bigger than cushion tires.

2/ The cost estimates for non-standard masts and sideshifters are from Yale's 11/24/87 price list for IC forklifts.

3/ Sideshifters, a popular option, allow the forks to move horizontally near the load and require additional hydraulic hosing.

4/ Field notes from meetings with * * *.

5/ This cost estimate is from * * *.

Sales practices.--Producers and importers sell the majority of their forklifts to dealers who, in turn, sell forklifts directly to end users. 1/ Most dealers purchase only one brand of standard-lift IC forklifts. 2/ Thus, dealers do not decide between U.S.-produced or Japanese forklifts to meet a particular order. Producers and importers also have some sales directly to the largest end users of forklifts. These customers, called national accounts, generally purchase forklifts centrally for several U.S. factory or warehouse operations.

Producers and importers publish price lists and offer dealers a standard discount from list price. In addition, cash and special discounts based on competitive conditions affect the net price paid. 3/ The dealer will typically negotiate its discount with its suppliers concurrent with its attempt to sell forklifts to the end user. In some cases, when the dealer is selling from its own stock and cannot meet the competition's price, the supplier may offer the dealer a rebate to facilitate the sale. Similar to automobile dealers, forklift truck dealers have a complex relationship with their suppliers involving advertising assistance, sales and service training programs, special sales terms for dealers' inventory or rental, and a myriad of other programs that are not fully represented in sales prices to dealers but may affect purchasing decisions at the end-user level.

Producers and importers generally sell forklift trucks to dealers on an f.o.b. shipping point basis. Data received by the Commission indicate that U.S.-inland freight costs do not represent a substantial portion of dealers' delivered acquisition costs. 4/

1/ Dealers also rent forklift trucks to end users. Reporting firms estimated that 3,353 of the U.S.-produced and imported Japanese IC forklifts they sold in 1987 were destined for their dealers' rental fleets. Two major producers and two major importers stated that terms were slightly better on sales for dealers' rental fleets, with the producers offering * * * and the importers offering longer credit terms (3 to 6 years).

2/ Although a limited number of dealers of Japanese forklifts are believed to purchase more than one brand of Japanese forklifts, dealers do not generally purchase both Japanese and U.S.-produced forklift brands. Dealers offering "U.S. brands" (* * *) have purchased trucks imported by their suppliers, but the source decision is made by the manufacturers. For example, Yale's dealers started purchasing imported Japanese IC forklifts as a result of Yale's 1983 decision to import certain trucks from Japan. In instances in which dealers purchase more than one forklift brand, it is believed that they are purchasing dissimilar trucks from these suppliers and would therefore not consider more than one brand for a purchase. For example, a dealer may purchase standard Hyster-brand IC forklifts and purchase specialized electric forklifts from Crown.

3/ There are also dealer sales incentive programs that are similar to discounts on total sales and would thus not appear on a particular invoice.

4/ The Commission asked producers and importers to report average U.S. inland shipping costs for 5,000-pound IC forklifts at 50 miles, 100 miles, and 1,000 miles. Even at 1,000 miles, the U.S. inland shipping costs reported by most firms would be less than 5 percent of a dealer's delivered purchase price.

Purchasing factors.--1/ IC forklift trucks are finished capital goods used in a broad range of economic sectors. 2/ Whereas some end users utilize forklifts in warehousing and distribution operations, others, including forklift manufacturers themselves, use forklifts in production operations. Regardless of a particular end use, forklift trucks are a "big ticket" capital goods item, ranging in price from $9,000 to more than $30,000. 3/ Although purchasers have some flexibility to expedite or postpone purchases based on general economic or firm-specific conditions, the primary component of demand for IC forklifts is replacement of old IC forklifts. 4/ Over a typical useful life of 5-15 years, service costs and depreciation are considered by users in determining when and how many forklifts to purchase. A few purchasers have commented that tax code changes can also affect purchasing decisions. As a result of the durable nature of forklift trucks, purchasers buy forklifts infrequently and are not likely to purchase different brands of the same type in a given year.

Most purchasers agree that there are no significant physical or performance differences between comparable Japanese IC forklifts and domestic IC forklifts, that leadtimes for Japanese IC forklifts were equal to or less than those for U.S. trucks, and that transportation costs do not play a major role in purchasing decisions. Leadtimes for U.S.-produced trucks generally ranged from 3 to 20 weeks; leadtimes for Japanese trucks generally ranged from 2 to 16 weeks. Whereas firms reporting that U.S. producers leadtimes were longer than those from Japan slightly outnumbered firms reporting equal leadtimes, no purchasers reported that leadtimes were the primary factor in purchasing decisions. 5/ Although some purchases of U.S.-produced and Japanese IC forklifts were reported on a delivered price basis, the majority of reporting purchasers stated that prices are usually quoted on an f.o.b. shipping point basis for both U.S.-brand and Japanese-brand standard-lift IC forklifts. In any case, U.S.-inland transportation costs generally represent less than 4 percent of the end users' final purchase price.

1/ Information in this section was compiled primarily from purchaser questionnaires received from 32 firms that, together, accounted for at least 3 percent of apparent U.S. consumption of standard lift IC forklifts in 1987. The purchases of these firms are understated to the extent that a few reporting firms could not report their total purchases for 1987. Despite the fact that these firms were identified as major national account purchasers by producers and importers, several firms reported that they generally purchase domestic and/or Japanese forklifts from dealers rather than directly from primary suppliers. Supplemental information was received in field meetings and in telephone conversations with purchasers.

2/ Large end-user groups include the food and beverage, paper products, general manufacturing, transportation, and national retail industries.

3/ The percentage of purchasers' total annual budgets devoted to forklift purchases may be small, however.

4/ See statement of Mr. Kilkenny, Hyster, transcript of the hearing, p. 7.

5/ In a meeting with Commission staff * * *, a representative of * * *, explained that because it purchases U.S.-produced IC forklifts primarily for their particular specifications, e.g., * * *, it is willing to wait for those specifications.

Those purchasers who noted any general difference between the marketing practices of suppliers of U.S.-brand and Japanese-brand forklifts most often cited "service" or the "lack of a strong dealer network" as the major disadvantage associated with purchases of Japanese IC forklifts. 1/ Purchasers having national manufacturing or distribution facilities have stated that some facilities prefer to purchase one brand of truck due to the proximity or quality of a particular dealer. 2/ Due to the need for many years of aftermarket support or service, differences in U.S. and Japanese dealers may affect price competition between U.S-produced and Japanese forklifts. 3/ One other difference noted was that, unlike U.S. producers, Japanese forklift brands generally do not have strong national accounts programs. Several purchasers reported generally negotiating directly with U.S. producers while having to negotiate with dealers to purchase Japanese trucks.

Other factors affecting particular purchase decisions have more to do with the extent of product differentiation in the industry in general. Only 4 of 32 purchasers listed price as their major determinant, and more than half reported having selected, on one or more occasions during the period of investigation, a supplier that was not the lowest priced supplier, suggesting that purchasers perceive price differences roughly equivalent to product differences. 4/ The two factors most commonly cited as the primary determinant in particular purchasing decisions were quality and the ability of a vendor to supply the particular specifications desired. 5/ Another consideration mentioned was the desire of some end-user facilities to standardize their fleet composition. A uniform fleet limits the spare parts inventory necessary and reduces the information costs of operating and maintaining trucks properly. 6/

1/ The question asked purchasers to describe any differences between U.S.-brand and Japanese-brand suppliers in several areas, including "financing terms," "service," "warranties," "sales techniques," and "other (please list)." No purchasers mentioned differences in marketing practices having to do with financing of U.S.-produced vis-a-vis Japanese standard lift IC forklifts.

2/ Field notes from meetings with * * * and * * *. Although purchasing agents for national companies often solicit price quotations on a national basis, several appear to give their various facilities the freedom to choose the particular forklift trucks purchased based on service or specification considerations. Thus, it is reasonable to assume that small non-national companies may also consider similar issues.

3/ Five purchasers reported in their questionnaire responses that they purchased U.S.-brand IC forklifts in 1987 even though Japanese IC forklifts of comparable physical quality were available at a lower delivered price, citing dealer support offered by U.S.-brand suppliers as the explanation.

4/ Price is still an important determinant, however, with the majority of purchasers listing it as their second or third consideration.

5/ Specifications desired appear to work to the advantage of either domestic or Japanese suppliers. For example, the heavy duty engines available on some U.S.-produced brands (also available as an option on the Hyster XL line, now) are preferred by some customers, and certain IC forklift trucks available from Japanese suppliers, e.g. 10,000 and 11,000 pound pneumatic-tire trucks, are not made in the United States.

6/ Some large industrial users perform regular maintenance themselves.

Price data.--As a result of extensive product differentiation and suppliers' design and sourcing changes over the period under investigation, it was difficult to collect price data from producers and importers that were directly comparable and consistent during the period and thus useful for both price trends and price comparisons.

To obtain price-trend data accounting for a major portion of industry shipments, the product categories did not specify highly-variable product features, such as mast type, fork length, and attachments that can affect the price. 1/ More important than product comparability, however, competition between U.S.-produced and imported Japanese forklift trucks occurs at the end-user level. As a result of these considerations, producers' and importers' price data collected in this final investigation are not easily used for the purposes of price comparisons, and such direct comparisons are not presented in this report.

Because the decision to purchase forklift trucks from a supplier of U.S.-produced or imported Japanese forklifts is made at the end-user level, meaningful price comparisons involve producers' and importers' direct sales to large end users and exclusive dealers' sales to end users. To collect price comparison data, the Commission requested the largest national-account customers (end users) of producers and importers to provide detailed price and product-feature information about their recent forklift purchases. 2/ The Commission also requested dealers in five major market areas for forklift trucks to provide sales prices to end users. Although both dealer and purchaser data measure prices at the end-user level, purchaser data received by the Commission minimize price variation caused by specification differences. Due to the importance of product-feature price variation, purchaser data are used for price comparisons in this report.

Purchase price comparisons.--The Commission asked purchasers to report net prices paid for their five largest IC forklift purchases (by quantity) in 1987 along with supplemental information on any competing suppliers considered and subsequently rejected in these purchase decisions. 3/ Because price

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1/ In the preliminary investigation, the specification of mast type and fork length appeared to limit the shipments reported in each product category because these product features are highly variable. Reporting firms could disaggregate sales by basic capacity, tire type, and engine type but had great difficulty selecting all sales that had the specified mast and fork length. Thus, in an attempt to improve coverage of data used for price trend analysis, the pricing products have changed considerably since the preliminary investigation. In addition to several new products, the product definitions no longer specify the type of mast and fork length.

2/ Although the majority of forklifts are sold one or two at a time through dealers, national account customers were believed to be the types of purchasers who could generally provide the Commission with price information on both U.S.-produced and Japanese IC forklifts.

3/ Purchasers who did not buy any IC forklift trucks in 1987 were asked to report price data for their major purchases in 1986.

quotes are generally made on an f.o.b shipping point basis for both U.S. and imported forklifts, purchasers' rejected price quotes are generally f.o.b. prices and most comparisons are on an f.o.b. basis. 1/

Unlike data collected from producers and importers, the price section of the purchaser questionnaire did not specify IC forklift product types. Instead, purchasers identified the trucks they purchased by lift capacity, tire type, engine type (gas, LPG, or diesel) and size, mast height, fork length, and any special features, as well as by supplier and model number. Rejected price quotes were identified by supplier, model number, and country-of-origin (if known). In many instances, purchasers were not sure of the origin of forklifts sold under U.S. producers' brands.

Because U.S. producers supply part of their product lines from imports, staff determined to the extent possible which models sold by U.S. producers in 1987 were produced in the United States with a U.S.-produced frame on the basis of information provided by Caterpillar, Clark, Hyster, and Yale. This information is summarized below:

*	*	*	*	*	*	*
*	*	*	*	*	*	*

1/ In a few instances as noted, the final delivered price of the purchased forklifts is compared to rejected f.o.b. price quotes. F.o.b. price comparisons and price comparisons on a dissimilar freight basis are considered appropriate in this investigation because U.S.-inland transportation costs represent a small proportion of the final delivered price of forklifts.

* * * * * * *

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In addition to country of origin, model numbers reported by purchasers also indicate the type of engine standard on a particular truck. An issue that has been raised in the context of price comparisons is the comparability of engine sizes. 1/ There are three basic engine size ranges--"small" four-cylinder engines of approximately 90-125 cubic inches displacement, "medium" four-cylinder engines of approximately 145-185 cubic inches, and "large" 4 or 6-cylinder engines of approximately 225-260 cubic inches. Within a given lift capacity, producers and importers may offer models with one or more engine sizes. 2/

Respondents have argued that it is inappropriate to compare prices of U.S. and imported IC forklifts that have different engines, alleging that U.S. producers sell more trucks with larger engines in the United States than do suppliers of Japanese models. However, many of the price comparisons received by the Commission involved instances in which purchasers were, in fact, deciding between IC forklift models with different standard engine sizes on the basis of price. 3/ Some of these involved minor engine differences--large engines compared with medium engines, or medium engines compared with small engines; others involved decisions between large engines and small engines. None of the purchasers who provided price comparisons explicitly mentioned engine size as a reason for rejecting a competing price quote. In addition, price comparisons do not appear to vary consistently with the comparability of engine sizes. Therefore, price comparisons involving models with standard engine differences are presented in this report with the caveat that engine differences may account for some variation in price levels of U.S.-produced vis-a-vis Japanese IC forklifts. This issue is further explored in the discussion of particular price comparisons.

1/ Another issue that should be mentioned briefly in the context of price comparisons involves lift capacities. Depending on a purchaser's lift requirements, it may be able to use either a 6,000-pound IC forklift from one supplier or a 5,000-pound lift capacity truck from another supplier with a different frame design or counterweight. Because there is some flexibility with respect to lift capacity, a few price comparisons presented involve slightly different lift capacities.

2/ * * *.

3/ Model information reported in producers' and importers' questionnaires, and in Pocket Specs, Lift trucks, vols. 1 (IC Cushion tire) and 2 (IC Pneumatic tire), 1987 editions, published by Dataquest, a division of Dun & Bradstreet, was used to determine the standard engine sizes of models used for price comparisons.

Besides rejected suppliers' net prices, the Commission requested purchasers to report the reasons they rejected each offer. These reasons are examined below. Alternatively, purchasers were asked to explain why other suppliers were not considered for a purchase. Several purchasers reported not considering a second supplier for one or more of their five reported IC purchases. Reasons cited for not soliciting price quotes from other suppliers included local dealer support, fleet standardization, quality, specifications, plant preference, and price.

Seventeen firms, whose total 1987 standard-lift IC forklift purchases accounted for approximately 1 percent of apparent U.S. consumption, provided complete price comparison data for this report. 1/ Some price comparisons provided by these firms had to be rejected because staff could not determine the country of origin of trucks involved in certain transactions.

The price data provided a variety of possible price comparisons to evaluate. For the purposes of this report, price comparisons of three types are presented. The first involves price comparisons in instances in which Japanese-produced IC forklifts were purchased in lieu of U.S.-produced forklifts. The second set consists of instances in which U.S. producers' domestic frame trucks were chosen over Japanese forklifts. Finally, there are price comparisons available for instances in which U.S. producers' imports from countries other than Japan were accepted, and U.S. or Japanese forklift trucks were rejected. This method resulted in 25 price comparisons between U.S.-produced and Japanese IC forklifts, 17 price comparisons between U.S. producers' non-Japanese imports and Japanese IC forklifts, and 9 price comparisons between U.S. producers' imports and U.S.-produced trucks. 2/ In tables 27-29, as well as in the discussion below, all percentage margins involving U.S.-produced vis-a-vis Japanese trucks are reported in relation to the U.S. model's price. 3/

Japanese IC forklifts purchased.--Purchaser price data provided 20 price comparisons involving U.S.-produced IC forklift trucks rejected in favor of Japanese trucks. These price comparisons involved a total of 49 Japanese IC forklift trucks purchased in 18 separate transactions (table 27). 4/ Eighteen

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1/ This number is understated to the extent that a few firms did not report their total 1987 purchases of IC forklifts in 1987. Thirty purchasers provided some price data to the Commission. Of these, 17 firms provided complete price comparison data, 5 firms did not provide price comparisons because they did not consider other suppliers for their reported purchases, 5 firms provided data that could not be verified for this report, and 3 firms considered only U.S.-produced or only Japanese suppliers for reported purchases.

2/ The only types of price comparisons not presented in this report are those involving purchases of Japanese trucks in lieu of U.S. producers' rejected price quotes for non-Japanese imports, and those price comparisons between various rejected price quotes. Price comparisons between rejected price quotes are considered less desirable because the purchaser's stated reason for rejecting each quote may not be relevant to competition between the two rejected models.

3/ Percentage margins for price comparisons between U.S. producers' imports and Japanese trucks are reported in relation to the Japanese models' price.

4/ Two purchases involve more than one rejected U.S. truck.

Table 27
Prices of Japanese standard-lift ICs purchased in 1987, price quotes received for competing U.S.-produced forklifts, margins (per unit) by which Japanese forklifts undersold or (oversold) the U.S. product, and reasons for rejecting the U.S.-produced forklifts, as reported by end-user purchasers

Purchaser	Basic lift capacity -pounds	Tire--type	Engine type	Japanese brand and model purchased	Rejected U.S. brand and model	U.S. price	Japan price	Price basis	Margins of under-selling or (over-selling) Absolute	Percent	Reason rejected
***	***	Cushion	LPG	***	***	***	***	***	***	7.0	Price and delivery.
***	***	Cushion	Gas	***	***	***	***	***	***	14.7	Higher capital cost, poor dealer service.
***	***	Cushion	LPG	***	***	***	***	***	***	5.7	Performance and price.
***	***	Cushion	LPG	***	***	***	***	***	***	12.7	Price.
***	***	Cushion	LPG	***	***	***	***	***	***	10.6	Price.
***	***	Cushion	LPG	***	***	***	***	***	***	7.8	Preference for *** components because they are all manufactured by ***.
***	***	Cushion	LPG	***	***	***	***	***	***	7.8	Preference for *** components because they are all manufactured by ***--*** truck has the older *** engine.
***	***	Cushion	LPG	***	***	***	***	***	***	(12.6)	Plant preference for ***.
***	***	Cushion	LPG	***	***	***	***	***	***	19.8	High price.
***	***	Cushion	LPG	***	***	***	***	***	***	(7.8)	Based on total evaluation of lift, parts availability, service, & price.
				***	***	***	***	***	***	5.9	
***	***	Cushion	LPG	***	***	***	***	***	***	7.5	Same as above for both models.
					***	***	***	***	***	17.5	

Table 27--Continued
Prices of Japanese standard-lift ICs purchased in 1987, price quotes received for competing U.S.-produced forklifts, margins (per unit) by which Japanese forklifts undersold or (oversold) the U.S. product, and reasons for rejecting the U.S.-produced forklifts, as reported by end-user purchasers

Purchaser	Basic lift capacity -pounds	Tire--type	Engine type	Japanese brand and model purchased	Rejected U.S. brand and model	U.S. price	Japan price	Price basis	Margins of under-selling or (over-selling) Absolute	Percent	Reason rejected
***	***	Cushion	LPG	*** ***	***	***	***	***	***	7.5	Quality & price considerations.
***	***	Cushion	LPG	*** ***	***	***	***	***	***	0.8	Price.
***	***	Cushion	LPG	***	***	***	***	***	***	18.5	Price & delivery.
***	***	Cushion	LPG	***	***	***	***	***	***	21.8	Price & delivery.
***	***	Cushion	Gas	***	*** ***	***	***	***	***	11.2	Higher capital cost.
***	***	Cushion	LPG	***	***	***	***	***	***	4.1	Plant preference for ***.
					***	***	***	***	***	0.3	Plant preference for ***.

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

Table 28
Prices of U.S. produced standard-lift ICs purchased in 1987, price quotes received for competing Japanese forklifts, margins (per unit) by which the Japanese forklifts undersold or (oversold) the U.S. product, and reasons for rejecting the Japanese forklifts, as reported by end-user purchasers

Purchaser	Basic lift capacity --pounds	Tire-type	Engine type	U.S. brand and model purchased	Rejected Japanese brand and model	U.S. price	Japan price	Price basis	Margins of underselling or (overselling) Absolute	Percent	Reason rejected
***	***	Cushion	LPG	*** ***	***	***	***	***	***	0.9	Poorer value compared to unit purchased.
***	***	Cushion	Gas	***	***	***	***	***	***	(11.1)	Price.
***	***	Cushion	Diesel	*** ***	*** ***	***	***	***	***	1.6	Plant preference, price.
***	***	Cushion	LPG	*** ***	***	***	***	***	***	23.6	Capacity of quad mast too low; other supplier had capacity.
***	***	Cushion	Gas	***	***	***	***	***	***	(0.7)	Price and performance during demo.

1/ This model number indicates a large engine.
2/ This price comparison is for a 1986 purchase of forklifts.
3/ This model number indicates a medium or mid-size engine.
4/ This model number indicates a small engine.

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

Table 29
Prices of U.S. producers' imported standard-lift ICs (from countries other than Japan) purchased in 1987, price quotes received for competing Japanese and U.S.-produced forklifts, margins (per unit) by which producer imports undersold or (oversold) the Japanese and U.S. products, and reasons for rejecting Japanese and U.S.-produced forklifts, as reported by end-user purchasers

Purchaser	Basic Lift Capacity -pounds-	Tire -type	Engine type	Producer import brand and model purchased	Rejected price quotes Brand and model number	Country	Rejected price quote	Producer import price	Price basis	Margins of under-selling or (over-selling) Absolute	Percent	Reason rejected
***	***	Pneumatic	Gas	***	***	Japan	***	***	***	***	1.0	Price.
					***	Japan	***	***	***	***	(18.8)	No local service.
					***							
***	***	Cushion	LPG	***	***	Japan	***	***	***	***	0.9	Price.
				***	***	Japan	***	***	***	***	(10.2)	No local service.
					***							
					***	Japan	***	***	***	***	(10.1)	No local service.
					***	U.S.	***	***	***	***	(4.0)	Maneuverability.
***	***	Cushion	LPG	***	***	Japan	***	***	***	***	(3.5)	Capacity.
					***	Japan	***	***	***	***	(3.6)	Capacity.
					***							
					***	Japan	***	***	***	***	(21.5)	Capacity.
***	***	Pneumatic	Gas	***	***	Japan	***	***	***	***	(16.3)	Poor operating experience.
					***							
					***	U.S.	***	***	***	***	(6.1)	Desire to standardize.
***	***	Cushion	LPG	***	***	Japan	***	***	***	***	(8.7)	Didn't have ***.
				***								didn't have gauges.
					***	U.S.	***	***	***	***	16.0	Price.
***	***	Cushion	LPG	***	***	Japan	***	***	***	***	0.8	Specifications.
				***	***	Japan	***	***	***	***	2.6	Specifications, price, and operator preference.
***	***	Cushion	LPG	***	***	Japan	***	***	***	***	0.3	Operator preference.
					***	Japan	***	***	***	***	(14.1)	Operator preference.
					***							
					***	U.S.	***	***	***	***	4.5	Price.

Table 29--Continued
Prices of U.S. producers' imported standard-lift ICs (from countries other than Japan) purchased in 1987, price quotes received for competing Japanese and U.S.-produced forklifts, margins (per unit) by which producer imports undersold or (oversold) the Japanese and U.S. products, and reasons for rejecting Japanese and U.S.-produced forklifts, as reported by end-user purchasers

Purchaser	Basic Lift Capacity -pounds-	Tire -type	Engine type	Producer import brand and model purchased	Rejected price quotes Brand and model number	Country	Rejected price quote	Producer import price	Price basis	Margins of under-selling or (over-selling) Absolute	Percent	Reason rejected
***	***	Cushion	LPG	*** ***	***	U.S.	***	***	***	***	0.3	Plant preference for ***.
					***	U.S.	***	***	***	***	2.9	Plant preference for ***.
***	***	Pneumatic	LPG	***	***	U.S.	***	***	***	***	3.2	Plant preference for ***
***	***	Cushion	LPG	***	***	Japan	***	***	***	***	(4.9)	Engineering preference.
					*** ***	Japan	***	***	***	***	(6.0)	Quality considerations; service concerns.
					***	Japan	***	***	***	***	0.8	Price.
					***	U.S.	***	***	***	***	(3.5)	Quality--purchased from this supplier in 1985 and had breakdown problems & high maintenance costs.
					***	U.S.	***	***	***	***	6.8	Price.

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

of these price comparisons show prices of the purchased Japanese IC forklift trucks below those of U.S.-produced forklifts, with margins of underselling by Japanese suppliers ranging from 0.3 to 21.8 percent of U.S. models' prices. Although some of the highest margins of underselling, 18.5 and 21.8 percent, were observed in purchases in which large-engine U.S. models were rejected in favor of medium-engine Japanese trucks, 9 of 10 price comparisons involving comparable engine-size ranges also showed underselling. Margins of underselling by Japanese models in these instances ranged from 5.9 to 19.8 percent. The median margin of underselling for the price comparisons involving completely comparable engine sizes (11 percent) was similar to that for all 18 price comparisons in which purchased Japanese trucks were priced lower than the rejected U.S. model (8 percent).

Two price comparisons reported by * * * concerned a purchase of a large-engine Japanese truck from * * * in lieu of two medium-engine U.S.-produced trucks. These price comparisons also showed underselling by suppliers of the Japanese trucks, although the margins in these instances were small (0.3 to 4.1 percent of U.S. models' prices). These price comparisons, together with the similar median margins discussed above, suggest that engine size is not the sole determinant of price behavior of domestic and foreign suppliers, and that, in instances in which Japanese trucks are purchased, Japanese trucks are generally lower priced than domestically produced IC forklifts regardless of engine size.

Reasons cited by purchasers for rejecting U.S.-produced models in these purchases were roughly split between considerations of price alone, price together with another quality (delivery or performance), and plant preference. In one instance, * * * reported paying almost 13 percent more for Japanese forklift trucks to satisfy a plant preference for Toyota forklifts. 1/

U.S.-produced IC forklifts purchased.--In five instances, purchasers rejected Japanese IC forklifts in favor of U.S.-produced trucks (table 28). 2/ These 5 price comparisons, involving a total of 17 trucks, show prices of rejected Japanese IC forklifts lower than prices of domestic trucks in 3 of 5 purchases. Margins of underselling by Japanese suppliers on these three purchases ranged from 0.9 to 23.6 percent of U.S. model prices. The * * * and * * * purchases of 8,000-pound IC forklifts involve large-engine U.S.-produced forklifts purchased in lieu of comparable large-engine Japanese forklifts. In the * * * price comparison, the price of the rejected Japanese * * * IC forklifts was 0.9 percent lower than the price of the 2 U.S.-produced * * * units purchased. The * * * price comparison involves 9 Japanese * * * IC forklifts rejected * * * that were 11.1 percent higher priced than the comparable U.S.-produced * * * units purchased.

1/ As mentioned in the section on purchasing factors, plant preference may develop due to the quality or proximity of a particular forklift dealer.
2/ These instances are so few primarily because U.S. producers have ceased U.S. production (by the frame definition) of several models and now import these models from countries other than Japan.

The 3 remaining price comparisons on purchases of U.S.-produced trucks concern U.S. models with larger engines than those of the rejected Japanese models, either large-engine U.S. models compared to medium-engine Japanese models or medium-engine U.S. models compared to small-engine Japanese models. These price comparisons exhibit a variety of results ranging from small overselling by a Japanese model (0.7 percent above the U.S. model price) to substantial underselling by a Japanese model (23.6 percent below the U.S. model's price).

There are too few reported instances in which U.S.-produced models were purchased in lieu of Japanese trucks to generalize about the reasons for purchasing U.S.-produced forklifts. * * * reported rejecting a Japanese forklift truck priced 24 percent below the purchased domestic forklift truck because the Japanese truck could not satisfy * * * specifications.

Producers' non-Japanese imports purchased.--The largest number of price comparisons were provided for 10 reported purchases of U.S. producers' IC forklifts imported from countries other than Japan, in which purchasers rejected price quotes for Japanese or U.S. models. * * *. 1/ These price data resulted in 17 such comparisons involving a total of 21 units purchased for Japanese IC forklifts and 9 for U.S.-frame forklifts. These data suggest that whereas U.S. producers' imports are generally priced lower than U.S.-produced models, producer imports are not generally priced below competing Japanese IC forklifts.

In 11 of 17 price comparisons with Japanese IC forklifts, the U.S. producers' imports were purchased even though they were higher priced than (oversold) Japanese forklifts by margins ranging from 3.5 to 21.5 percent. 2/ In six of nine price comparisons with domestic forklifts, however, U.S. producers' non-Japanese imports undersold competing U.S.-frame models by 0.3 to 18.0 percent. Five price comparisons between producer imports and domestic IC forklifts involving completely comparable engine sizes resulted in three instances of U.S. producers' imports underselling U.S. frame models by 0.3 to 18.0 percent. The two instances of U.S. producers' imports overselling U.S.-frame models with comparable engines yielded margins of 3.5 and 4.0 percent.

A wide range of reasons were cited by purchasers for rejecting Japanese or U.S.-frame models in favor of producers' imports. 3/ Japanese trucks were rejected for such reasons as price, the unavailability of local service, operator preference for a particular forklift brand, and particular specification considerations. * * * reported purchasing comparable U.S.-brand imported trucks that were roughly 10 to 18 percent higher priced than Japanese trucks because the Japanese suppliers could not offer local service. The fact that purchasers generally bought the producer imports even though they were higher priced than Japanese models suggests that these

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1/ * * *.

2/ In only one of these instances was engine comparability an issue. In this instance, * * * reported purchasing a medium-engine imported * * * brand * * * truck that was 4.9 percent higher priced than the rejected large-engine Japanese * * * model.

3/ Many purchasers were unaware that the trucks they purchased were not manufactured in the United States.

nonprice factors may have played a role in these purchasers' decisions to purchase U.S. producers' imports. U.S.-frame trucks were rejected for such reasons as price, plant preference, and the desire to standardize a fleet.

Producer and importer price trends.--The Commission requested producers and importers to provide quarterly price and value data for sales of the forklift trucks listed below:

PRODUCT 1: Internal combustion engine forklift truck, cushion tires, 3,000 pound basic lift capacity, LPG system.

PRODUCT 2: Internal combustion engine forklift truck, cushion tires, 5,000 pound basic lift capacity, LPG system.

PRODUCT 3: Internal combustion engine forklift truck, pneumatic tires, 5,000 pound basic lift capacity, gasoline engine.

PRODUCT 4: Internal combustion engine forklift truck, pneumatic tires, 8,000 pound basic lift capacity, diesel engine.

PRODUCT 5: Internal combustion engine forklift truck, pneumatic tires, 11,000 pound basic lift capacity, diesel engine.

PRODUCT 6: Class 1 electric forklift truck, sit-down rider with four (4) wheels, cushion tires, 5,000 pound basic lift capacity, power and control system designed for either 36- or 48-volt batteries.

PRODUCT 7: Class 2 electric, narrow-aisle forklift truck, reach type outrigger (within lift code #3 of ITA class 2 trucks), stand-up rider, 3,000 pound basic lift capacity, power and control system designed for 24-volt battery.

For sales during January 1985-December 1987, the Commission requested (1) the net value and quantity of total shipments to dealers in each quarter and (2) f.o.b. point of shipment price data for the reporting firm's largest sale (by quantity) to dealers in each quarter. 1/ 2/

For the purposes of analyzing price trends of U.S.-produced and imported Japanese forklifts, quarterly net unit values, calculated from values and quantities for total quarterly shipments to dealers, were used instead of

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1/ To collect some price information on producers' and importers' direct sales to end users, the Commission also requested quarterly total shipment and largest sale information for producers' and importers' sales to national account customers of the highest volume, 5,000-pound cushion-tire IC forklift truck (product 2).

2/ Batteries for electric forklift trucks are generally added at the dealer level. Thus, prices requested for the electric forklift products 6 and 7 were "less battery" prices.

reported prices of the largest quarterly sale. 1/ Unit values presented for U.S.-produced forklifts include only those forklifts that have a U.S.-produced frame; forklifts assembled in the United States with a foreign frame were considered imports for the purposes of this investigation.

* * * U.S. producers, accounting for over 95 percent of total 1987 domestic shipments, and * * * importers of Japanese forklifts, accounting for over * * * percent of total 1987 Japanese imports, provided usable unit value data for standard-lift IC forklifts (2,000-15,000 pounds), although not necessarily for all products or periods requested. 2/ In particular, * * * discontinued U.S. production of several of the IC forklift products chosen for pricing analysis in favor of overseas production or U.S. assembly of forklifts with a foreign-produced frame, i.e. imports. 3/ 4/ As a result, * * *. In addition, full-period price trends are unavailable for the 11,000-pound IC forklift because this truck was not manufactured in the United States with a U.S.-produced frame during 1987. 1/ Reported quarterly shipments used to calculate unit values of the five specified IC forklifts covered approximately * * * percent of both total domestic shipments and Japanese import shipments of standard lift IC forklifts in 1987.

1/ Commission staff chose this approach for several reasons. Most important, even the largest quarterly sales to dealers of a particular product generally involved small quantities. Thus, price-trend analysis based on the largest quarterly sales would cover a small quantity of the total quarterly shipments of each product. Second, producers and importers reported several quarterly prices involving sales of a single truck. In these instances, the reporting firm would be able to choose the single truck transaction to report from many possible single-truck sales. Quarterly f.o.b. prices reported for multiple truck sales to dealers generally represented an average f.o.b. price of largely similar trucks with certain differences in options sold. Accordingly, the largest sale prices were also unit values but represented only a small portion of total quarterly shipments of each product. Finally, industry representatives have stated their belief that using unit values for price trends would minimize apparent price fluctuations due to option variation. A representative from Hyster explained that shipments with costly options would have less effect on the unit value for total shipments than on the price for that shipment.

2/ * * *.

3/ * * *.

4/ In the upper standard-lift capacity ranges included in this investigation, forklift trucks generally have pneumatic tires. In an attempt to collect price data representative of different capacity ranges, three of the IC forklift product categories involved pneumatic-tire trucks. * * *.

* * * U.S. producers provided some unit-value price data for Class 1 electric forklifts, and * * * U.S. producers provided price data for Class 2 narrow-aisle electric forklifts. These producers accounted for over 50 percent of total 1987 domestic shipments of these forklift truck classes. * * * importers provided unit-value data for Japanese Class 1 electric forklifts. * * * importers provided unit-value data for Japanese Class 2 electric forklifts, and * * * provided only partial-period data. These importers accounted for 100 percent of reported 1987 Japanese imports of the Class 1 and Class 2 narrow-aisle electric forklifts. 2/ Quarterly shipments of the specified Class 1 electric forklift product covered over 10 percent of total domestic shipments, and over 20 percent of total Japanese import shipments of Class 1 electric forklifts in 1987. Quarterly shipments of the specified Class 2 narrow-aisle product in 1987 covered over * * * percent of total domestic shipments, and * * * of Japanese import shipments of Class 2 electric forklifts.

Producers' and importers' unit values of standard-lift IC's sold to dealers are shown in tables 30-34. 3/ Because prices of forklifts often varied considerably by supplier and were not reported continuously for the period January-March 1985 to October-December 1987 for each product and firm, individual producer and importer net unit-value series are used for price trends. 4/ The best coverage of U.S. producers' and importers' sales was provided by the 5,000-pound cushion-tire IC forklift product category (table 31), followed by the 3,000-pound cushion-tire IC forklift product category (table 30).

Table 30
IC forklift trucks: Unit values of U.S.- and Japan-produced 3,000-pound basic lift capacity, cushion-tire IC forklifts with gasoline engines (LPG system) sold to dealers, by companies and by quarters, January 1985-December 1987

* * * * * * *

1/ * * *.
2/ All firms that reported imports of these products to the Commission provided price data.
3/ Producers' and importers' unit values of IC forklifts sold to national accounts and unit values of Class 1 and Class 2 narrow-aisle electric forklifts are presented in tables D-1-D-3 in app. D.
4/ For example, * * *. Thus, including * * * unit values in a weighted-average price series would distort domestic price trends for the period under investigation. A similar difficulty occurs with import price data because * * *.

Table 31
IC forklift trucks: Unit values of U.S.- and Japan-produced 5,000-pound basic lift capacity, cushion-tire IC forklifts with gasoline engines (LPG system) sold to dealers, by companies and by quarters, January 1985-December 1987

* * * * * * *

Table 32
IC forklift trucks: Unit values of U.S.- and Japan-produced 5,000-pound basic lift capacity, pneumatic-tire IC forklifts with gasoline engines sold to dealers, by companies and by quarters, January 1985-December 1987

* * * * * * *

Table 33
IC forklift trucks: Unit values of U.S.- and Japan-produced 8,000-pound basic lift capacity, pneumatic-tire IC forklifts with diesel engines sold to dealers, by companies and by quarters, January 1985-December 1987

* * * * * * *

Table 34
IC forklift trucks: Unit values of U.S.- and Japan-produced 11,000-pound basic lift capacity, pneumatic-tire IC forklifts with diesel engines sold to dealers, by companies and by quarters, January 1985-December 1987

* * * * * * *

U.S.-produced forklifts.--With the important exception of the 5,000-pound cushion-tire IC forklift truck, net unit values of U.S.-produced IC forklifts generally declined by 1 to 15 percent from January-March 1985 to October-December 1987. Unit values of U.S.-produced electric forklift trucks in Classes 1 and 2 also generally fell during the period under investigation, with decreases ranging from 5 to 20 percent. Individual producer price trends for two high volume products are discussed in more detail below. 1/

The 5,000-pound cushion-tire IC forklift product category (table 31) accounted for the largest quantity of U.S. producers' and importers' total quarterly shipments to dealers (in units) in 1987. In addition, it was the only IC forklift pricing category in which * * *.

1/ A more detailed discussion of U.S. producers' price trends for each product was presented in the prehearing staff report.

Unit values * * * for the 5,000-pound cushion-tire truck were relatively steady throughout the period of investigation and ended the period at 2 percent above unit values reported * * * in January-March 1985. 1/

The 3,000-pound cushion-tire IC forklift was the next most important price product for U.S. producers and importers by sales volume (table 30). * * * reported unit values that fell by * * * percent from January-March 1985 to October-December 1987, as a result of an apparent price decline starting in the second half of 1986. 2/

Imported Japanese forklifts.--Importers' individual unit values for shipments of Japanese IC forklifts generally increased during the period under investigation, with most of the apparent price increases occurring in 1987. 3/ 4/ For example, each of the * * * importers reporting full period data for the largest volume import price product, the 5,000-pound cushion-tire IC forklifts (table 31), showed increasing unit values during January 1985-December 1987. Unit value increases for this product ranged from 4 to 21 percent. Similarly, for the 3,000-pound cushion-tire IC forklift truck (table 30), unit values for each of * * * importers increased from January-March 1985 to October-December 1987. Unit value increases for this product ranged from 1 to 12 percent.

Exchange rates

Quarterly data reported by the International Monetary Fund indicate that during the period January 1985 through March 1988 the value of the Japanese yen advanced sharply, by 100.7 percent, against the U.S. dollar (table 35). 5/ Adjusted for relative movements in producer price indices in the United States and Japan, the real value of the Japanese currency registered an overall appreciation equivalent to 68.7 percent as of the first quarter of 1988 relative to January-March 1985 levels.

Lost sales

During the final investigation, the Commission received 143 separate allegations from three U.S. producers * * *, of sales of U.S.-produced IC forklifts lost to lower priced suppliers of Japanese IC forklift trucks. Lost sale allegations provided in this investigation are unusual in that * * *. 6/ * * * reported their dealers' lost sales because, outside of direct sales to large national account customers, U.S. producers sell the majority of their

---

1/ * * *.
2/ * * *.
3/ * * *.
4/ * * *.
5/ International Financial Statistics, April 1988.
6/ These producers identified the purchasers involved in dealer's lost sales. Thus, staff was able to contact the purchasers directly.

Table 35
U.S.-Japanese exchange rates: 1/ Nominal exchange-rate equivalents of the Japanese yen in U.S. dollars, real exchange-rate equivalents, and producer price indicators in the United States and Japan, 2/ indexed by quarters, January 1985-March 1988

Period	U.S. Producer Price Index	Japanese Producer Price Index	Nominal-exchange-rate index ----US dollars/yen----	Real-exchange-rate index 3/
1985:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	100.1	98.8	102.8	101.5
July-September....	99.4	97.5	108.0	106.0
October-December..	100.0	94.7	124.4	117.8
1986:				
January-March.....	98.5	92.8	137.2	129.2
April-June.....	96.6	89.4	151.5	140.1
July-September....	96.2	87.0	165.4	149.7
October-December..	96.5	86.1	160.8	143.5
1987:				
January-March.....	97.7	85.6	168.2	147.4
April-June.....	99.2	84.9	180.6	154.5
July-September....	100.3	86.0	175.4	150.2
October-December..	100.8	89.2	189.7	167.9
1988:				
January-March 4/..	101.1	85.0	200.7	168.7

1/ Exchange rates expressed in U.S. dollars per unit of yen.
2/ Producer price indicators--intended to measure final product prices-- are based on average quarterly indices presented in line 63 of the International Financial Statistics.
3/ The indexed real exchange rate represents the nominal exchange rate adjusted for relative movements in Producer Price Indices in the United States and Japan. Producer prices in the United States increased 1.1 percent between January 1985 and March 1988 compared to a 15.0-percent decrease in Japan during the same period.
4/ Data are derived from exchange rate and producer price indices reported for January-February only.

Note.--January-March 1985=100.

Source: International Monetary Fund, International Financial Statistics, April 1988.

forklifts through dealers who purchase exclusively from them. 1/ Thus, U.S. producers may not have information about price competition between U.S.-produced and Japanese IC forklift trucks. * * *. 2/

Producers' allegations of sales lost to Japanese IC forklift trucks totalled 765 trucks. 3/ All but a few of these allegations involved sales allegedly lost during 1986-87. * * *. The responses of 6 purchasers contacted regarding lost sales of a total of * * * trucks appear below. 4/

Purchaser 1.--* * * alleged that one of its dealers lost a leasing agreement for * * * forklift trucks to * * *. According to * * *, the deal was lost because a lower priced leasing option was offered for a competing Japanese truck by a * * * dealer. Specifically, * * * alleged that its monthly payment offer was * * * per truck under a * * * leasing program, compared with the Japanese truck offer of * * * per month. 5/ * * *, a spokesman for * * *, described his firm as * * *. * * * confirmed that in * * * he signed a * * * leasing agreement for * * * Japanese trucks produced by * * * because the lease price of the Japanese product was about * * * per month lower than that of the competing U.S. truck. Prior to this instance, * * *. * * * stated that it was too early for him to evaluate the service of the * * * trucks.

Purchaser 2.--* * * alleged that it lost a leasing agreement for * * * forklift trucks in * * *. * * * alleged that * * * entered into a leasing agreement with a dealer of * * * forklift trucks because this dealer could offer * * * a lower monthly charge per truck than the * * * dealer. The leasing agreement for the Japanese truck was * * * per month compared with the monthly payment per truck of * * * offered by the U.S. dealer. * * * indicated that * * *.

A spokesman for * * *, indicated that his firm is * * *. In reference to * * * allegation, * * * stated that * * * had entered into a leasing agreement for * * * trucks with a dealer of Japanese trucks produced by * * *. He said that price was the most important consideration in this instance. The monthly lease payment for the Japanese product was * * * per month lower than that for the U.S. truck.

He further explained that during the * * *, his firm had exclusively leased Japanese forklift trucks * * *. However, in * * * it switched to a * * * supplier of Japanese trucks.

1/ * * *.

2/ One dealer contacted in connection with these lost sale allegations confirmed the lost sale of 100 forklifts to suppliers of Japanese forklifts, but the cited purchaser could not be reached to confirm or deny this instance.

3/ * * *.

4/ For additional information on the reasons that purchasers have rejected price quotes of U.S. producers in favor of Japanese standard-lift IC forklifts, see the purchasers' price comparisons section of this report.

5/ * * *.

In general, * * * ranked determinants in choosing a forklift supplier in the following order of importance: price, service, and durability. However, he qualified this somewhat by stating that price and service weigh almost equally in purchasing decisions.

Purchaser 3.--* * * named * * *, in a lost sale allegation involving * * * forklift trucks totalling * * *, in * * *. * * * alleged that * * * purchased lower priced, Japanese forklift trucks produced by * * *. In reference to * * * allegation, * * *, stated that * * * purchased * * * imported Japanese forklift trucks from * * * dealer at that time. He recalled that there were * * * bidders for the sale and that the prices quoted per truck were very close. * * * stated that a dealer of domestically produced trucks offered the highest price and that this was about 8 to 9 percent higher than the price of the winning quote. However, he further stated that the Japanese-produced trucks that he ultimately purchased were not the lowest priced bid offered, and that other factors were considered. 1/ The reliability of the product, not price, is the most important factor in determining a supplier, he said. * * * explained that his goal is to get the best buy for the long term, which in addition to reliability, requires the consideration of price, past experience with the product, and service.

Within the past * * * years, * * * said that his firm has purchased domestic forklifts from * * * dealer and has also purchased imported trucks. He described the domestic * * * trucks as being of such poor quality that they were "unusable." In the past * * * years, * * * has purchased Japanese trucks from * * *, * * *, * * *, and * * * dealers. He commented that his firm has been purchasing Japanese forklift trucks since * * *.

Purchaser 4.--* * *, was cited by * * * in a lost sale allegation for * * *. * * * alleged that * * * purchased an imported Japanese truck from * * * dealer for approximately * * *. * * *, stated that his firm purchased * * * dealer. He believes that * * *. The * * * he purchased was approximately $2,000 to $3,000 less than the quote he received for the competing, domestically-produced * * *. He said that both performance and price were considered in determining his firm's * * * supplier.

* * *. The purchase of * * * described above was his firm's only * * * acquisition in the last * * * years. Prior to that, he believes that his firm possibly used a domestically produced truck manufactured by * * *.

Purchaser 5.--* * *, provided a lost sales allegation involving * * *. The * * * dealer alleged that * * * rejected its * * * price quote of * * * per truck for * * * in favor of lower-priced Japanese trucks (* * *). * * * believed that the imported Japanese trucks were * * * per truck.

1/ Staff asked this purchaser to name the producer or importer of the lowest priced trucks. The purchaser refused to name the firm specifically but said that it was a "U.S. firm quoting prices for trucks that are assembled in the United States with some foreign parts."

* * * has purchased both U.S. and Japanese IC forklifts in recent periods. A spokesman for the firm further explained that * * *. In the past * * * years, * * * has been purchasing approximately * * * IC forklift trucks per year to replace the old trucks in its fleet. The spokesman denied the lost sale allegation, stating that it ordered * * * U.S.-produced IC forklifts in * * *. These trucks were * * *. 1/ The * * * trucks were purchased because the specifications and service were superior to those of other suppliers. * * * received price quotes from * * * different suppliers for this purchase. Of these firms, the U.S. producer, * * *, quoted the lowest price, and the * * * trucks it purchased were the third lowest priced.

This firm's major purchasing determinant is service capability, but price is also a consideration. * * * uses * * * planned maintenance contracts that cost approximately * * * per lift truck per month. The firm prefers maintenance contracts to keeping a spare parts inventory and employing a full time mechanic. In addition, obtaining regularly scheduled maintenance through maintenance contracts has resulted in less downtime for his forklift trucks. Fleet standardization is another purchasing consideration because it eliminates the need for multiple maintenance contracts (and service relationships). Even if a dealer will provide maintenance for another brand of lift truck, getting parts for the other brand can be difficult.

Purchaser 6.--* * * named * * * in a lost sales allegation involving * * * IC forklifts allegedly purchased from lower priced suppliers of Japanese trucks * * *.

A spokesman for * * * stated that his firm purchases U.S.-produced and U.S.-brand imported forklifts and also purchases Japanese IC forklifts. * * * has purchased Japanese IC forklifts * * *. The spokesman could not recall details of his purchasing decisions in the * * *, but commented that it is difficult to generalize about price competition between domestic and imported Japanese IC forklifts due to important product differences and a market characterized by general price variation. 2/ Nevertheless, in his experience, prices of U.S.-produced and Japanese IC forklifts appear to be in the same, albeit wide, range.

The spokesman was not concerned about the outcome of this investigation because the primary factor in the firm's purchasing decisions is, and will continue to be, specifications. Models are chosen by the * * * based on their suitability to a particular task and their life-cycle costs (includes acquisition price and maintenance and fuel costs). 3/ Life-cycle cost comparisons between brands vary based on the particular models, sizes, and applications considered. Asked about a hypothetical purchasing decision involving Japanese IC forklifts priced at exactly the same level as U.S. * * *, or * * * models, the spokesman stated that considerations of life-cycle costs would typically favor purchase of the non-Japanese brands.

1/ * * *.

2/ In the spokesman's experience, IC forklift prices have varied considerably even between different dealers of the same brand quoting prices of identical models.

3/ The firm keeps detailed historical cost records of each truck calculated on a yearly basis.

Lost revenues

From * * *, the Commission received * * * allegations of revenues lost making price reductions to avoid losing sales of U.S.-produced IC forklifts. 1/ 2/ Similar to lost sales allegations, these lost revenue allegations are unusual because they involve price competition between dealers of U.S.-produced and Japanese forklift trucks. * * * alleged that it gave dealers special discounts in addition to the standard dealer discounts from list price to avoid losing sales of * * *. Staff cautions that dealers generally purchase a single brand for resale. Accordingly, dealers may be somewhat more biased towards their supplier's position in this investigation than would be the case in other Commission investigations. In addition, dealers have an incentive to ask for price reductions to increase their own profit margin on sales to end users.

* * * reported that it lost * * * making price reductions to dealers on sales of * * * IC cushion-tire forklifts. Staff were able to contact 4 dealers named in 11 allegations. Their responses appear below.

Dealer 1.--* * * was cited by * * * in * * * lost revenue allegations totalling * * * involving * * * forklift trucks. * * * stated that this revenue was lost in competition with lower-priced Japanese forklift trucks * * *. * * *, said that * * * is the * * * supplier of forklift trucks to his dealership. He could not confirm the * * * specific allegations of lost revenue made * * *, but stated that price competition between the U.S. and Japanese forklift trucks has been severe for the past seven to eight years. Specifically, he said that he has been competing with dealers of * * *, * * *, * * *, * * *, * * *, and * * * forklift trucks. During this period, dealers selling the Japanese products have been extremely successful in getting significant price discounts from their suppliers, he said. In general, the price per Japanese truck has been 25-30 percent lower than comparable U.S. trucks, for the period examined. * * * said that his dealership needs to quote a price per truck within approximately 2 percent of the price of the competing Japanese truck in order to secure a sale. He claims that there have been numerous instances in which * * * would not offer him the necessary price discount, and as a result he lost sales to lower-priced, competing Japanese products. * * * said that U.S. and Japanese forklift trucks are comparable in quality, although service is dependent on the dealer. * * * also stated that his firm is experiencing price competition from Korean-produced forklift trucks.

Dealer 2.--* * * cited * * * in a lost revenue allegation for * * * involving * * * forklift trucks. * * * identified * * * instances in the period of * * * in which it had to reduce its forklift truck price to * * *, so this dealer could compete with dealers of lower priced Japanese trucks. * * * described his firm as * * *. Although he could not confirm * * * specific allegation, he said it seemed reasonable because his firm requested discounts from * * * for * * * occurring in * * *. He named * * *, as the downward price leaders during this time.

* * * said that during 1985-87 he lost a number of major forklift truck customers to Japanese competition, including * * * which switched to a * * *.

1/ * * *.
2/ * * *.

In addition to * * * and * * *, * * * identified the following dealers of Japanese forklift trucks as particularly competitive with his firm: * * *, * * *, and * * *. In this period, "price got the deal" for the Japanese dealers, he said. He identified early 1987 as the period in which his firm requested the most discounts from * * * in order to compete with the Japanese products. His dealership asked * * * to reduce forklift truck prices to them by approximately 15 to 20 percent, for about 80 percent of his firm's transactions. * * * also said that the competing U.S. and Japanese trucks were comparable, but that the Japanese trucks were selling for about $3,000-4,000 less than the U.S. trucks. Korea was the other foreign competitor during this period and * * * did not compete with other dealers of U.S.-produced trucks at that time.

Dealer 3.--* * * alleged lost revenue of * * * from * * *, involving the sale of * * * forklift trucks. According to * * *, * * * supplies * * * with all of its forklift trucks. * * * could not confirm * * * allegation; he said that his dealership does not sell many * * * models, but that the allegation is "probably true." * * * said that his firm's major Japanese competitors are dealers of * * *, * * *, * * *, * * *, and * * * forklift trucks.

During the 1985-87 period, * * * said that * * * has had to reduce the price of its forklift trucks by about 15 to 18 percent on all but a few of its transactions in order to compete with the Japanese products. "We have lost a lot of business because of pricing," he said. When asked to compare the U.S. and Japanese trucks, * * * said that they are 80 percent comparable; he said that they have comparable engine performance but that the Japanese have light packages and other supplemental features that are attractive to customers. Although price is an important factor to customers in determining their forklift truck supplier, customers weigh availability more heavily than price, * * * said. He explained that the Japanese dealers have immediate availability because each of their dealerships is like a warehouse, with a large supply of trucks ready for sale, whereas the U.S. dealers have to wait 12-16 weeks for a delivery of trucks. During this period, * * * has also experienced foreign competition from dealers of trucks produced in * * *, he said.

Dealer 4.--* * * named * * * in a lost revenue allegation of * * * involving the sale of * * *. * * * stated that his dealership receives about * * * percent of its forklift trucks from * * *; the remaining * * * percent are supplied by other U.S. producers. He said that although he does not remember the specific incident cited by * * *, the alleged price reductions (* * *) seemed small compared with price reductions he has received from * * *. He stated that throughout the 1985-87 period, his firm has experienced "severe competition from the Japanese," requiring significant reductions in the price of its trucks in order to compete. * * * identified * * * and * * * dealers as his firm's strongest Japanese competitors, as well as dealers of * * *, * * *, and * * * trucks. For the 1985-87 period, * * * has reduced its prices on forklift trucks by * * * or by 8 to 12 percent, depending on the model, on approximately 95 percent of its transactions, in order to meet the price of the competing Japanese product, he said. * * * identified price as the most important determinant in a customer's choice of a forklift truck supplier. Dealer service is the second most important factor, he said. When asked about the comparability of the U.S. and Japanese trucks, * * * stated that the products are roughly equal, but that U.S. manufacturers have had to redesign their trucks in order to compete with the Japanese.

APPENDIX A

FEDERAL REGISTER NOTICES OF THE U.S. INTERNATIONAL TRADE COMMISSION AND THE U.S. DEPARTMENT OF COMMERCE

[Investigation No. 731-TA-377 (Final)]

Internal Combustion Engine Industrial Fork-Lift Trucks From Japan

AGENCY: International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-377 (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 internal combustion engine industrial fork-lift trucks provided for in item 692.40 of the Tariff Schedules of the United States (TSUS),[1] that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce will make its final LTFV determination not later than April 7, 1988 [2] and the Commission will make its final injury determination by May 23, 1988 (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).

EFFECTIVE DATE: November 24, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202-523-0300), 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. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain internal combustion engine fork-lift trucks 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 April 22, 1987, by Hyster Company of Portland, OR, a U.S. producer of internal combustion engine fork-lift trucks, the Independent Lift Truck Builders Union, the International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL-CIO), and the United Shop and Service Employees. 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 (52 FR 23725, June 24, 1987).

Participation in the Investigation

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

[1] The products covered by this investigation are certain internal combustion engine industrial fork-lift trucks, with lifting capacity of 2,000 to 15,000 pounds. For purposes of this investigation, "internal combustion engine industrial fork-lift trucks" include both assembled, not assembled, and less than complete, finished and not finished, operator-riding fork-lift trucks, powered by gasoline, propane, or diesel fuel internal combustion engines, of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete fork-lift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts.

[2] Commerce extended the date for its final determination in response to a request by respondents, pursuant to section 735(a)(2)(A) of the Act. Commerce's formal notice concerning the date for its final determination will be published in the **Federal Register**.

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 the investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on March 29, 1988, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 13, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 5, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 8, 1988, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 8, 1988.

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 anaylsis 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 procedure 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))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 20, 1988. In addition, any person who has not entered on appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 20, 1988.

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 § 201.6 of the Commission's rules (19 CFR 201.6).

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).

By order of the Commission.

Issued: December 15, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-29415 Filed 12-22-87; 8:45 am]

BILLING CODE 7020-02-M

1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) ılations of the Council on ...vironmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 12th day of April, 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–8348 Filed 4–14–88; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-703]

Final Determination of Sales at Less Than Fair Value; Certain Internal-Combustion, Industrial Forklift Trucks ɔm Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice

SUMMARY: We determine that certain internal-combustion, industrial forklift trucks (forklifts) from Japan are being, or are likely to be, sold in the United States at less than fair value. We also determine that critical circumstances exist with respect to certain imports of forklifts from Japan. We have notified the U.S. International Trade Commission (ITC) of our determinations and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of forklifts from Japan as described in the "Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the date of publication of this notice, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: April 15, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street nd Constitution Avenue N.W., Washington, DC 20230; telephone: (202) 377–0187 or 377–0161.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that forklifts from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average dumping margins are shown in the "Suspension of Liquidation" section of this notice. We also determine that critical circumstances exist with respect to certain imports of forklifts from Japan, as outlined in the "Critical Circumstances" section of this notice.

Case History

Since our notice of preliminary determination (52 FR 45003, November 24, 1987), the following events have occurred.

On November 24, 27, and 30, and December 1, 1987, Komatsu Forklift Co., Ltd. (Komatsu), Toyota Motor Corp. (Toyota), Nissan Motor Co., Ltd. (Nissan), and Sumitomo-Yale Co., Ltd. (Sumitomo), respectively, requested a postponement of the final determination until not later than 135 days after the date of publication of the preliminary determination, pursuant to section 735(a)(2)(A) of the Act. On December 4, 1987, we issued a notice postponing the final determination until April 7, 1988, and rescheduling the public hearing until March 2, 1988 (52 FR 46805, December 10, 1987).

Scope of Investigation

The products covered by this investigation are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 lbs., currently provided for under items 692.4025, 692.4030, and 692.4070 of the *Tariff Schedules of the United States Annotated* (TSUSA). The corresponding Harmonized System (HS) numbers are 8427.20.00–0, 8427.90.00–0, and 8431.20.00–0. The products covered by this investigation are further described as follows: assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. We understand that the frame by itself is the identifying feature and principal component part of the product, and is solely dedicated for the manufacture of a complete internal-combustion, industrial forklift truck.

Used Forklift Issue

Petitioners and several other interested parties have stated that genuinely "used" forklifts should not be included within the scope of this investigation and have submitted suggestions on how the Department can distinguish new and used forklifts. In our preliminary determination, we stated that we considered any forklift to be used if, at the time of entry into the United States, the importer could demonstrate to the satisfaction of the U.S. Customs Service that the forklift was manufactured at least three years prior to the date of entry. We will now consider as used forklifts exported from Japan to the United States if, at the time of entry into the United States, the importer can demonstrate to the satisfaction of the U.S. Customs Service that the forklift was manufactured in a calendar year at least three years prior to the year of entry into the United States. If the U.S. Customs Service accepts the importer's contention that the forklift is used, it will not be subject to the suspension of liquidation (*See* DOC Position to Comment 31).

Period of Investigation

Sales of forklifts often involve significant after-sale price adjustments. In order to capture all after-sale price adjustments on sales of forklifts from Japan to the United States, we chose as the period of investigation the six months from August 1, 1986, through January 31, 1987, as permitted by 19 CFR 353.38(a).

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established four categories of "such or similar" merchandise on the basis of load (lifting) capacity of the forklift (*i.e.*, 2,000–3,000 lbs; 3,001–5,999 lbs.; 6,000–9,999 lbs.; 10,000–15,000 lbs.). Within these categories, we based our product comparisons on 12 primary characteristics. These are load capacity, tire type, upright style, engine type, transmission type, maximum fork height, engine size, carriage type, fork arm type, hose reel, hydraulic control valve, and fork arm length. Where there was no identical product in the home market with which to compare a product imported into the United States, we selected the most similar product on the basis of the 12 characteristics listed above.

In order to determine whether there were sufficient sales of forklifts in the home market to serve as the basis for calculating foreign market value, we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or

similar category, in accordance with section 773(a)(1) of the Act. We determined that, for Toyota and Komatsu, there were sufficient home market sales to unrelated customers or arm's-length sales to related customers for each such or similar category to form an adequate basis for comparison to the forklifts imported into the United States. For Nissan, we determined that there were insufficient home market sales for one such or similar category. Therefore, we used constructed value as the basis for foreign market value for that such or similar category. For Sanki, there were no home market sales of new forklifts. Therefore, we used constructed value as the basis for foreign market value for comparison to all U.S. sales.

Fair Value Comparisons

To determine whether sales of forklifts from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below.

For the reasons cited below, we have determined, in accordance with section 776(b) of the Act, that use of best information available is appropriate for Kasagi, TCM, and Sumitomo. This statutory provision requires the Department to use best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner or in the form required, or otherwise significantly impedes an investigation."

Prior to the scheduled date of verification, TCM informed the Department of extensive errors in the data which it had submitted and which the Department had used for the preliminary determination. The Department determined that the necessary revisions to TCM's information were so substantial that such revisions would constitute a new response. While the Department allows minor revisions to questionnaire responses after the preliminary determination and during verification, it is well-established Department policy not to allow new responses to be filed after the preliminary determination. This is because at that point there is insufficient time for proper analysis and verification by the Department. Consequently, the Department informed TCM that it would not accept any new submissions correcting the deficiencies and errors and would not verify TCM's sales and cost of production responses. Nevertheless, TCM submitted a new response on January 8, 1988, more than four months after the original questionnaire response was due and almost two months after our preliminary determination which was on November 18, 1987. This information could not be analyzed, verified, or used in this determination.

Had we accepted this information for use in this determination, we would have been required to analyze, among other things, TCM's new product concordances, costs relating to difference in merchandise claims, and new U.S. value-added data. In addition, we would have had to review computer printouts containing data on a substantial number of sales transactions. Further, given the extensive deficiencies found in TCM's earlier submissions (four deficiency questionnaries were issued with regard to TCM's original questionnaire response), follow-up questionnaires for additional information would have been likely.

A new response submitted so late in this investigation would have precluded petitioners and other interested parties from commenting on the new responses. Moreover, verification of TCM would have been delayed by at least one month, allowing the Department insufficient time to conduct verification, prepare verification reports, hold the public hearing, provide an adequate opportunity for the parties to submit briefs, and to prepare the final notice. For these reasons, we have not accepted TCM's January 8, 1988 response for use in this determination. Accordingly, we have assigned TCM the highest company rate calculated in this investigation as best information available. (*See* also DOC Positions to Comments 5 and 6.)

With respect to Sumitomo, the Department found numerous discrepancies and errors in methodology and mathematical calculations at verification. In addition, Sumitomo was unable to support substantial portions of its sales and cost responses at verification. The deficiencies found during verification are outlined in detail in the public versions of our verification reports. During and after verification, Sumitomo presented new and revised information which we have determined constitutes a new response which was submitted too late in the investigatory process for proper analysis and verification. For these reasons, we have assigned Sumitomo the highest company rate calculated in this investigation as best information available. (*See* also DOC Position to Comment 8 below.)

Kasagi failed to respond to our questionnaire prior to the preliminary determination. It is Department policy not to accept initial questionnaire responses after the preliminary determination is issued. It is inappropriate for a respondent to base its decision to respond to our questionnaire on the rate it is assigned in the preliminary determination. Therefore, we have assigned Kasagi, as best information available, the highest margin supplied in the petition for any company. This is the same rate it was assigned in the preliminary determination.

United States Price

For sales made directly to unrelated parties prior to importation into the United States, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

For sales made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For these sales, the Department determined that purchase price was the most appropriate indicator of United States price based on the following elements:

1. The merchandise in question was shipped directly from the manufacturer to the unrelated buyer, without being introduced into the inventory of the related selling agent;
2. This was a customary commercial channel for sales of this merchandise between the parties involved; and
3. The related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer.

Where all of the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions are performed in the United States or abroad does not change the substance of the transactions or the functions themselves.

Where the sale to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act.

The calculation of United States pric for each respondent is detailed below.

A. *Toyota*: We calculated purchase price and ESP based on the packed, c&f, c.i.f., and delivered prices to unrelated customers in the United States. To arrive at the actual gross ESP, we deducted the value of unattached options invoiced with the forklift, where

appropriate. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, foreign inland insurance, export brokerage, ocean freight, marine insurance, import brokerage, U.S. duty, and U.S. inland freight, in accordance with section 772(d) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, advertising, service payments to dealers, and indirect selling expenses, pursuant to sections 772(e)(2) of the Act. For ESP transactions involving further manufacture prior to sale in the United States, we deducted all value added in the United States pursuant to section 772(e)(3) of the Act.

Toyota calculated its credit expense on ESP transactions not financed by Toyota based on the actual number of days between invoice and payment. We recalculated this credit expense to include an additional period of time from shipment to invoice. Toyota calculated its credit expense on ESP transactions financed by Toyota from the date the sale is posted in its books to the date that Toyota no longer absorbs credit costs on behalf of its dealers. We recalculated this credit expense to include an additional period of time from shipment to invoice based on the actual number of days from shipment to invoice, plus four days to account for the average number of days from invoice to the date the sale is posted in Toyota's books.

For inventory carrying costs, Toyota's parent company reported a greater number of days than its subsidiary for the period for which merchandise is held in inventory in Japan. Based on verified information, we recalculated inventory carrying costs to include an additional three days representing the greatest difference between the two reported time periods.

Toyota reported U.S. import duties on fork arms based on the cost of manufacture rather than the sales value. We increased the amount of reported duties based on the difference between the invoice value of the fork arm and its cost of manufacture.

Toyota claimed a deduction from ESP for a rebate to dealers for the installation of options at dealer locations. We treated these expenses as value added since this constitutes further manufacture or processing subcontracted to dealers.

Toyota did not claim, but did incur, expenses related to demonstration forklifts on ESP transactions. Based on documents gathered at verification, we calculated an expense for demonstration vehicles which was applied to sales of the same models as the demonstration vehicles. This was then deducted from the United States price as a direct advertising expense.

Toyota claimed a deduction for U.S. inland insurance. During verification, we discovered that this claim was for property insurance rather than inland insurance. As such, we are treating this as an indirect selling expense.

B. *Nissan*: We calculated ESP based on the packed, c.i.f. and delivered prices to unrelated customers in the United States. To arrive at the actual gross ESP, we added credit revenue earned on each transaction, and deducted the value of unattached options invoiced with the forklift, where appropriate. We made deductions from ESP, where appropriate, for foreign inland freight, foreign inland insurance, shipping charges, invoice preparation fees, ocean freight, marine insurance, U.S. duty, import brokerage, and U.S. drayage, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, technical services, warranties, advertising, service payments to dealers, incentive payments to dealers, and indirect selling expenses, pursuant to sections 772(e)(2) of the Act. For ESP transactions involving further manufacture prior to sale in the United States, we deducted all value added in the United States, pursuant to section 772(e)(3) of the Act.

Nissan did not report certain after-sale adjustments to prices and discounts. We amended the prices and discounts reported for after-sale adjustments discovered at verification.

Nissan reported foreign inland freight on U.S. sales based on rates charged by a related trucking company. At verification, we were unable to validate the freight rates claimed on export sales and found that these rates were generally lower than the rates charged by the same trucking company on sales destined for the home market over a comparable distance. Therefore, based on information obtained at verification, we used the rates charged by this trucking company on home market sales for the foreign inland freight deduction on U.S. sales.

Nissan claimed an average brokerage expense on U.S. sales. We recalculated the average to correct errors discovered at verification.

At verification, we found that Nissan based its credit expense and credit revenue calculations on incorrect payment terms. Because we were unable to verify specific payment terms for each sale, we recalculated credit expense and credit revenue based on the longest verified payment term. For sales to end-users, we recalculated the credit expense based on the verified payment terms.

Nissan included in its claimed technical service expenses certain indirect selling expenses and certain value-added expenses. In addition, Nissan underreported its direct travel expenses. We allowed the corrected travel expense figure as a technical service expense directly related to specific sales and treated the remainder, less the value-added expense, as an indirect selling expense.

Nissan underreported its advertising expenses on U.S. sales. We allowed the correct amount based on information reviewed at verification as a direct advertising expense.

Nissan claimed certain incentive payments to dealers' salesmen as an indirect selling expense. We treated these payments as a direct selling expense since they were directly related to particular sales.

We were unable to verify Nissan's total reported U.S. indirect selling expenses incurred in the home market. Since no information was provided by petitioners, we have deducted the full amount reported by Nissan from ESP, as best information available, for purposes of this determination.

Nissan reported inventory carrying costs from the date of export to the date of shipment to the U.S. customer. We added 15 days to account for the period from production to export based on petitioners' experience. We then recalculated inventory carrying costs based on the cost of manufacture of the product as imported and the home market and U.S. short-term borrowing rates.

We were unable to verify Nissan's reported product liability expense on U.S. sales. Therefore, we based the amount used for purposes of this determination on the U.S. industry's product liability experience.

C. *Komatsu*: We calculated purchase price and ESP based on the packed, f.o.b., c.i.f., and delivered prices to unrelated customers in the United States. To arrive at the actual purchase price or ESP, we added credit revenue earned on each transaction, where appropriate, and we deducted the value of unattached options invoiced with the forklift from the gross invoice price. We made deductions from purchase price and ESP, where appropriate, for foreign inland freight, foreign inland insurance, export brokerage, ocean freight, marine insurance, import brokerage, U.S. duty,

and U.S. inland freight, in accordance with section 772(d)(2) of the Act. We also made deductions, where appropriate, for discounts and rebates. We made further deductions from ESP, where appropriate, for credit expenses, warranties, advertising, service payments to dealers, and indirect selling expenses, pursuant to sections 772(e) (1) and (2) of the Act.

Komatsu reported certain advertising expenses incurred in the United States as indirect selling expenses. We have treated these expenses as direct selling expenses and reduced indirect selling expenses accordingly.

Komatsu reported inventory carrying costs on ESP sales based on average days in inventory and average inventory values. For this determination, we have recalculated inventory carrying costs for ESP sales from the date of entry into the United States to the date of shipment to the U.S. customer in order to more accurately determine these costs. We also added 45 days for the period from production to entry into the United States based on petitioners' U.S. experience. We then recalculated inventory carrying costs on ESP sales based on the cost of manufacture of the product as imported and the home market and U.S. short-term borrowing rates.

Komatsu reported the total credit expense from the date of shipment to the date of payment, net the amount of interest which Komatsu charged its customers. At verification, Komatsu was unable to substantiate its claim that interest charges levied on U.S. customers were in fact paid. Therefore, we have disallowed this claim and have recalculated credit expenses based on the full amount outstanding from shipment date to payment date. We have used the home market and U.S. short-term borrowing rates as appropriate.

D. *Sanki*: We calculated purchase price based on the c.i.f. prices to unrelated customers in the United States. We made deductions from purchase price, where appropriate, for foreign inland freight, export brokerage, ocean freight, and marine insurance, in accordance with section 772(d)(2) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales and, where appropriate, constructed values. The calculation of foreign market value for each respondent is detailed below.

A. *Toyota*: We calculated foreign market value based on the c&f and f.o.b. prices to unrelated and related dealers in the home market. We included sales to related dealers, pursuant to 19 CFR 353.22(b), since we were able to verify that prices paid by those dealers were comparable to prices paid by unrelated dealers for such or similar merchandise.

We made deductions from the home market price, where appropriate, for inland freight and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. No packing costs were claimed on home market sales.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, warranties, and advertising, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made further deductions from the home market price, where appropriate, for home market credit expenses, warranties, and advertising, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Toyota calculated its home market credit expense based on the actual number of days from invoice to payment. We recalculated this expense based on the actual number of days from shipment to payment.

Toyota claimed an adjustment for temporary exchange rate fluctuations. We disallowed this adjustment pursuant to 19 CFR 353.56(b), since the movement in the exchange rate is part of a sustained change in the rate and not a temporary fluctuation, and because Toyota did not provide evidence that its U.S. prices have been revised to account for the movement in the exchange rate.

Toyota claimed a deduction from the home market price for an advertising campaign for the 500,000th Production—30th Anniversary and for the 1985 International Materials Handling Exhibition. We disallowed these deductions since these expenses were incurred before the period of investigation.

At verification, we found that advertising expenses incurred on purchase price transactions had not been reported. Therefore, based on information obtained at verification, we calculated an amount for advertising and made the adjustment to the home market price.

Toyota claimed a deduction from the home market price for expenses incurred in introducing a new model series to its dealers. We allowed only the portion of the expenses claimed that was incurred during the period of investigation as an indirect selling expense.

Toyota claimed a deduction from the home market price for discounts on the sale of demonstration forklifts of a new model series. We trated these discounts as a direct advertising expense.

Toyota also claimed, as a direct selling expense, and adjustment to the home market price for a computerized customer management system. We disallowed this adjustment since we found that this program was not used for the promotion of sales of the merchandise under investigation.

B. *Nissan*: We calculated foreign market value based on delivered prices to unrelated and related dealers in the home market. We included sales to related dealers, pursuant to 19 CFR 353.22(b), because we were able to verify that prices paid by those dealers were comparable to prices paid by unrelated dealers for such or similar merchandise.

Petitioners alleged that Nissan's home market sales were made at less than the cost of production and that constructed value should be used to compute foreign market value. We compared the home market prices, net inland freight, discounts, and rebates, to the cost of production which included materials, fabrication costs, and general expense.

Cost of production was based on the respondent's information with the following adjustments. To determine actual costs from standard costs, we used the variance of the plant where forklifts are produced instead of the reported company-wide variance. Interest expense was included, based on the consolidated Ministry of Finance Report and supplemented with information from the non-consolidated financial statements when required, after adjusting for credit and inventory carrying costs. The adjusted interest expense was allocated over the actual cost of sales. Material costs from related suppliers were increased based on information gathered at verification for a selected sample of related suppliers with respect to sales of the same materials to unrelated parties. Actual research and development expenses were reallocated based on the actual cost of sales. For selling expenses, we used the data from the sales response (*see* adjustments discussed below). Although we were unable to verify certain items in Nissan's reported indirect selling expenses on home market sales, as best information available, we included the total amount

reported in determining general expenses.

Where there were no, or insufficient, sales of such or similar merchandise at prices above the cost of production, as defined in section 773(b) of the Act, we used constructed value as the basis for calculating foreign market value. Constructed value was based on the respondent's information, except for those changes made to the cost of production data described above. We calculated a weighted-average home market selling expense based on sales in the home market of all products in the appropriate such or similar product category. Since Nissan's general expenses exceeded the statutory minimum of ten percent of the cost of materials and fabrication, we used actual general expenses in calculating the constructed value, in accordance with section 773(e)(1)(B)(i) of the Act. Since Nissan's reported home market profit was less than eight percent of materials, fabrication, and general expenses, we used the statutory minimum of eight percent in calculating constructed value, in accordance with section 773(e)(1)(B)(ii) of the Act.

We added U.S. packing costs to constructed value and made deductions from constructed value for credit expenses, warranties, advertising, technical services, and certain incidental warranty-type expenses. We also made an adjustment to constructed value for indirect selling expenses, in accordance with 19 CFR 353.15(c). Since we were unable to fully verify Nissan's reported indirect selling expenses (*e.g.*, other expenses which accounted for approximately 25 percent of the total claim could not be documented) on home market sales, we allowed those items which were verified.

Where we found sufficient above-cost sales in the home market to form a basis for comparison, we calculated foreign market value based on delivered prices to unrelated and related dealers in the home market. We created a new concordance based on the above-cost home market sales and the products as imported, according to the procedure outlined in the original questionnaire. To determine the actual gross home market price, where appropriate, we added credit revenue. We made deductions from the home market price, where appropriate, for inland freight, discounts, and rebates. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. No packing costs were claimed on home market sales.

Because all of Nissan's U.S. sales were ESP, we made further deductions from the home market price, where appropriate, for credit expenses, warranties, advertising, technical services, certain incidental warranty-type expenses, and demonstration vehicle expenses, and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c). We made adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Nissan reduced its home market prices for certain account adjustments offered to its customers based on previous sales. We amended these prices to reflect actual selling prices, based on information reviewed at verification.

Nissan overreported several rebates paid. We allowed the corrected rebates. Nissan reported a certain rebate on two forklifts which did not qualify for the rebate according to the rebate agreement. We did not allow this rebate on these two sales. In addition, Nissan claimed a different type of rebate on home market sales which was never paid. We did not allow this rebate on any sales.

Nissan claimed a deduction from the home market price for certain payments made to dealers with respect to demonstration vehicles. We allowed this payment as a direct advertising expense on sales of the same models as the demonstration vehicles. Nissan also claimed deductions from the home market price for certain payments made to dealers with respect to service vans, facility improvements, and assistance for profit/loss ratios. We allocated these payments over average dealer revenue for sales of new forklifts, sales of parts, and servicing and treated these as indirect selling expenses.

Nissan reported credit expense on installment sales based on an average monthly payment and an average payment date. We recalculated credit expense based on the declining balance of both principal and interest.

Nissan claimed the cost of an exhibition held outside the period of investigation as a direct advertising expense. We did not allow this expense.

Nissan claimed expenses for certain service schools, service manuals, and other training as a direct technical service expense. We treated these as an indirect selling expense.

We were unable to verify certain items in Nissan's reported indirect selling expenses on home market sales. Therefore, we allowed only those items which were verified.

We were unable to verify the average number of days over which Nissan calculated its inventory carrying costs. Therefore, we used an average number of days based on shipment ledgers reviewed at verification. We then recalculated inventory carrying costs based on the cost of manufacture of the product sold and the home market short-term borrowing rate.

Nissan reported a commission paid to its employees on home market sales. We treated this as an indirect selling expense since, in its response, Nissan did not tie these commissions to specific sales.

Nissan claimed warranty expenses incurred outside the warranty period, but within the period of investigation, as a direct selling expense. We treated these expenses as indirect selling expenses since they were not anticipated at the time of the sale, and are not true warranty expenses but rather goodwill expenses.

C. *Komatsu:* Petitioners alleged that Komatsu's home market sales were made at less than the cost of production and that constructed value should be used to compute foreign market value. We compared the home market prices, net inland freight and inland insurance, to the cost of production which included materials, fabrication costs, and general expenses. We made adjustments to G&A to represent an allocation based on the cost of manufacturing rather than the selling price as reported in the response. We also adjusted G&A to include parts center expenses not reported in the response. Interest expense was recalculated to reflect only the interest expense incurred in the cost of manufacturing.

Following the methodology explained above in the "Foreign Market Value" section B for Nissan, we determined that there were sufficient numbers of sales in each such or similar category above the cost of production to base foreign market value on home market sales.

We calculated foreign market value based on delivered prices to unrelated customers in the home market. We created a new concordance based on the above-cost home market sales and the products as imported, according to the procedure outlined in the original questionnaire. To determine the actual gross home market price, we added credit revenue, where appropriate. We made deductions from the home market price, where appropriate, for inland freight and insurance. We added U.S. packing to the home market price, in accordance with section 773(a)(1) of the Act. No packing costs were claimed on home market sales. We made adjustments to the home market price to account for differences in the physical

characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

For comparisons involving purchase price sales, we made adjustments to the home market price, where appropriate, for differences in credit expenses, technical services, warranties, advertising, service payments to dealers, and commissions, pursuant to 19 CFR 353.15. For comparisons involving ESP transactions, we made further deductions from the home market price, where appropriate, for credit expenses, warranties, and technical services; and we made an adjustment to the home market price for indirect selling expenses, in accordance with 19 CFR 353.15(c).

For installment sales in the home market, the selling price was based on the total payments received, which included both principal and interest revenue. Credit expense was calculated based on the declining balance of both principal and interest. For installment sales with a payment period of 12 months or more, we used a compound interest rate in the credit expense calculation. For purchase price sales to a trading company on which Komatsu charged interest for late payment, we calculated credit expense from the date the forklift left the factory to the date payment was received. For purchase price sales on which no interest was charged, we calculated credit expense from the date of export at the f.o.b. point to the date payment was received.

Komatsu claimed home market expenses incurred in preparing forklifts prior to delivery as a direct selling expense. At verification, we learned that this expense included charges which relate to options and attachments costs. We requested that Komatsu report these expenses separately as options, rather than including them as pre-delivery expenses. In its revised response, Komatsu reported additional costs under options and attachments but did not provide an explanation of these adjustments, as requested at verification. Furthermore, we were unable to reconcile the reallocations in the revised response to the response which was used at verification. Therefore, we have disallowed this adjustment for purposes of this determination.

We added inventory carrying costs to the total indirect selling expenses on purchase price sales as an offset to home market commissions, pursuant to § 353.15(c). Komatsu reported inventory carrying costs on purchase price sales based on average days in inventory and average inventory values. For this determination, we recalculated these costs based on the cost of manufacture of the product as imported and the home market short-term borrowing rate. We used 15 days for the period from production to export, based on petitioners' experience.

In addition, Komatsu claimed a level of trade adjustment to compensate for alleged differences in levels of trade existing between the U.S. and home markets in sales of forklifts.

Pursuant to 19 CFR 353.19, we disallowed this adjustment because Komatsu did not establish that it experienced actual differences in selling costs associated with sales at different levels of trade in the home market. (*See* Comment 86 below.)

D. *Sanki:* We used constructed value as the basis for calculating foreign market value because we determined that there were no sales by Sanki of new forklifts in the home market. Constructed value was calculated in accordance with section 773(e) of the Act. Given that Sanki is a reseller of forklifts, we considered the cost of manufacturing to be equal to Sanki's acquisition cost of the forklift. Because Sanki did not report SG&A or profit, we used the statutory minima of ten and eight percent, respectively, in accordance with section 773(e)(1)(B)(i) of the Act.

Currency Conversion

For comparisons involving purchase price transactions, we made currency conversions in accordance with 10 CFR 353.56(a)(1). For comparisons involving ESP transactions, we used the official exchange rates in effect on the dates of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at the rates certified by the Federal Reserve Bank.

Critical Circumstances

Under section 635(a)(3) of the Act, critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

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

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

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

The purpose of a critical circumstances finding is to deter for[illegible] manufacturers from increasing level[illegible] imports sold at less than fair value prio[illegible] to the suspension of liquidation. Pursuant to section 737(a)(3)(B) of the Act, we generally consider the followin[illegible] factors in determining whether imports have been massive over a relatively short period of time: (1) The volume an[illegible] value of the imports; (2) seasonal trend[illegible] and (3) the share of domestic consumption accounted for by imports.

We have in the past determined whether imports have been massive by examining the Department's import data. However, because the Department's import data on forklifts includes within the same TSUSA categories products not covered by the scope of this investigation, we determined in this case that company-specific data on shipments of the products under investigation were the most appropriate on which to base our determinations of critical circumstance[illegible] Furthermore, we believe that company-specific critical circumstances determinations better fulfill the objective of the critical circumstances provisions of deterring specific companies that may try to massively increase imports prior to the suspensio[illegible] of liquidation. Based on our analysis of the verified shipment data of the individual respondent manufacturers, including Sumitomo and TCM, we have found that there is a reasonable basis t[illegible] believe or suspect that imports of forklifts from Nissan and TCM have been massive over a relatively short period. Therefore, we find that the requirements of section 735(a)(3)(B) are met with respect to imports of forklifts by these two companies.

Pursuant to section 735(a)(3)(A)(i) of the Act, we have examined recent antidumping duty cases and found that as of the date of filing of the petition in this investigation, there were no findin[illegible] in the United States or elsewhere involving the dumping of forklifts by Japanese manufacturers, producers, or exporters. In accordance with section 733(e)(1)(A)(ii) of the Act, it is our standard practice to impute knowledge of dumping when the estimated margin in our determination are of such a magnitude that the importer should realize that dumping exists with regard to the subject merchandise. Normally we consider estimated margins of 25 percent or greater to be sufficient (*See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished [illegible] Unfinished, From Italy* (52 FR 24198, June 29, 1987)). However, in cases whe

the foreign manfuacturer sells in the United States through a related company, we consider that lower margins may be sufficient. Since Nissan and TCM sell in the United States through related companies, we find that the requirements of section 733(e)(1)(A) are met for these companies. Therefore, we determine that critical circumstances exist with respect to imports of forklifts by Nissan and TCM.

We have based the determination of critical circumstances with respect to imports of forklifts by Sanki, Kasagi, and "all others" on the total verified shipment data of the respondent manufacturers. Because these manufacturers account for over 80 percent of all shipments of forklifts to the United States in 1987, we believe these to be the most accurate data available to the Department. Based on our analysis of total shipments of these five manufacturers, we have determined that imports have not been massive over a relatively short period of time; and, therefore, critical circumstances do not exist with respect to imports of forklifts by Sanki, Kasagi, and "all others".

Verification

Except where noted, we verified the information used in making our final determination in accordance with section 776(a) of the Act. Department officials spent approximately seven weeks both in Japan and the United States verifying the responses submitted. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in detail in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Interested Party Comments

Comment 1: Petitioners contend that the respondents in this investigation submitted revised information after verification which changes significantly the information previously submitted, and that it is inappropriate for the Department to accept such information because it was not verified. Petitioners state that the purpose of verification is for the Department to confirm the accuracy of the questionnaire response; it is not an opportunity for respondents to correct significant mistakes and revise methodologies used in their responses. Petitioners argue, therefore, that in the absence of verified information, the Department should use best information available.

Petitioners also contend that the reported difference in merchandise adjustments and cost of production information submitted by respondents does not reconcile with their sales information. Therefore, the Department should reject respondents' information or, at a minimum, use the information that is least beneficial to respondents in analyzing the difference in merchandise adjustments, cost of production data, and the selling expenses claimed.

DOC Position: Except where noted, the information used in this determination has been verified. Where there were minor errors found during verification on certain charges or adjustments, we verified the corrected information and instructed respondents to submit revised responses containing the verified information. For charges or adjustments which we were unable to verify, and where information in the cost response and in the sales response could not be reconciled, we used best information available. Where we were unable to verify substantial portions of the response, as in the case of Sumitomo, or where we made a determination not to verify a response due to its untimely submission, which prevented us from analyzing and verifying it in a mannner consistent with our statutory obligations, as in the cases of TCM and Kasagi, we disregarded the entire response and used best information available.

Comment 2: Petitioners contend that Toyota's responses have been untimely and have contained substantial revisions and discrepancies, and unexplained price variations on home market related-party sales. Toyota also failed to submit accurate information until after verification on the characteristics of the products as imported, and that the changes in this data resulted in changes in Toyota's difference in merchandise claims and in its U.S. value-added data. Because the changed data were not submitted until after verification, they could not have been verified by the Department. Petitioners further argue that, just as TCM's failure to submit proper information on a timely basis resulted in the Department's rejection of its data, the Department should also reject Toyota's response and rely on best information available for the final determination.

Toyota contends that all of the variable cost figures for its difference in merchandise adjustments have been properly reported and verified. Therefore, Toyota maintains that the Department should make its final determination based upon the verified data submitted and reject petitioners' request that best information be used.

DOC Position: We verified the information submitted by Toyota which was used in this determination, including the changes to the characteristics of the product as imported and the difference in merchandise and value-added information. Unlike TCM and Sumitomo, these changes affected only a small percentage of Toyota's U.S. sales, while the changes that would have been required of TCM and Sumitomo would have affected over 50 percent of their U.S. sales. As such, Toyota's changes were not so extensive as to constitute a new response submitted after the preliminary determination.

Comment 3: Petitioners contend that the Department should reject Nissans's response and use best information available for purposes of the final determination because (1) Nissan's responses have been untimely, replete with errors, and are unreliable; and (2) Nissan failed to provide home market matches for certain of its U.S. sales.

Nissan contends that errors are inevitable in a case of this magnitude and complexity, that it has corrected its data when necessary, and that there is no basis for rejecting its response. Nissan argues that it did not provide model comparisons for two categories of U.S. sales based upon approval from the Department.

DOC Position: Except in the instances noted above, all information submitted by Nissan and used in our final determination has been verified. For charges and adjustments which we were unable to verify, we used best information available, as explained in the "Foreign Market Value" and "United States Price" sections of this notice. In addition, in accordance with our instructions, Nissan was not required to provide home market product comparisons for certain U.S. sales because the number of such sales was insignificant. We did not include these sales in our price-to price calculations. For other U.S. sales for which Nissan did not provide cost of manufacture data, we used the cost of manufacture data provided by Nissan for similar models.

Comment 4: Petitioners contend that Komatsu's cost of manufacture data and its direct and indirect selling expenses as reported in the cost of production and constructed value responses are inconsistent with the data and expenses reported in its home market sales response. Petitioners also contend that the cost data in Komatsu's cost of production response do not reconcile

with the cost data in its product concordance. Therefore, the Department should reject all of Komatsu's data for purposes of the final determination and use as best information available the highest margin alleged in the petition or the highest margin found for another respondent, whichever is greater.

Komatsu contends that, as the verification reports show, its data have been verified in all material respects and constitute a reliable basis for the Department's final determination.

DOC Position: We used verified cost of manufacture data as reported in the cost of production response and verified selling expenses as reported in the sales response for purposes of this determination.

Comment 5: Petitioners contend that, because TCM failed to supply adequate information, for the final determination the Department should use as best information available the highest margin alleged in the petition of 56.81 percent or the highest margin found for another respondent, whichever is greater.

TCM contends that the revisions incorporated in its submission of January 8, 1988 are not so extensive as to constitute a "new response" or to justify the Department's refusal to verify its data. TCM argues that all other companies subject to this investigation apparently discovered, just prior to or during the course of verification, errors in their data that seem to be at least as substantial as the revisions contained in TCM's submission. TCM contends that the Department erred in refusing to verify the data submitted in response to the Department's questionnaires. TCM also argues that the only difference between the positions of the other companies and TCM is one of timing.

TCM further contends that the Department should not determine a dumping margin for TCM based on best information available but should apply the "all others" rate to TCM in the final determination because (1) the Department should have verified TCM's data and (2) TCM has cooperated with the Department in a complex investigation in which mistakes are inevitable. Citing recent antidumping determinations, TCM contends that, if the Department determines that it must apply a rate adverse to TCM, it should apply the average of the TCM rates alleged in the petition.

DOC Position: In accordance with section 776(b) of the Act, we have used the highest company rate calculated in this investigation as best information available for TCM.

We disagree with TCM's contention that the correction of the errors discovered in its response would not have required the submission of a "new" response. As stated in TCM's letter of December 8, 1987, the errors in the company's response affected over 50 percent of its reported U.S. sales. In a meeting with Department officials on December 17, 1987, TCM stated that to correct the errors in its submission would require the filing of "new" responses. Further, in that meeting and in a letter dated December 22, 1987, TCM informed the Department that these errors affected not only the characteristics of the imported products, but also: (1) The product matches in the home market; (2) the difference in merchandise claims; and (3) the amounts reported for U.S. value-added. On December 31, 1987, the Department issued a letter to TCM stating that a response correcting errors of this magnitude would constitute a new repsonse. Therefore, such a response would not be accepted because it would be received after the preliminary determination and would not allow the Department sufficient time to analyze the information. Consequently, verification was not conducted.

We also disagree with TCM's contention that it has been treated differently than other respondents in this investigation. Kasagi's response was submitted after the preliminary determination and was not verified or used for purposes of this determination. We found at verification that Sumitomo's response was also replete with errors of a magnitude similar to the errors in TCM's response. Accordingly, we disregarded Sumitomo's reponse. In both cases, we have used best information available for this determination.

In accordance with section 776(b) of the Act, the Department may determine on a case-by-case basis what is best information available. In this case, we believe it is inappropriate to assign a rate to TCM that is lower than the rate calculated for another company on the basis of a complete and verified response. Accordingly, we do not agree with TCM that the most appropriate rate is the average TCM rate alleged in the petition. For reasons already discussed, we have determind that the highest company rate calculated in this investigation, and not the highest rate alleged in the petition, is most appropriate for TCM. We note that the rate used as best information available in this determination is not significantly higher than TCM's preliminary margin which was based on TCM's own information.

Comment 6: TCM argues that the Department refused to verify its data because of revisions necessitated by the Department's position that, when there is further manufacture or assembly in the United States, the physical characteristics of the forklifts as imported should be reported. TCM contends that this methodology is contrary to law and that TCM's methodology of starting with the sale to the first unrelated party and then deducting, among other things, U.S. value-added is the methodology required by the statute. TCM argues that the Department cannot justify its decision not to verify TCM's data on the grounds that TCM failed to comply with a methodology that contravenes the antidumping law.

DOC Position: The Department used the characteristics of the merchandise *as imported* into the United States for comparison with home market transactions based on section 772(e)(3) of the Act, 19 CFR 353.30(e), and past case precedent *(see Color Picture Tubes from Japan; Final Determination of Sales at Less Than Fair Value,* (52 FR 44171, November 18, 1987), *Erasable Programmable Read Only Memories (EPROM's) from Japan; Final Determination of Sales at Less Than Fair Value,* (50 FR 39680, October 30, 1986), and *Cellular Mobile Telephones and Subassemblies from Japan; Final Determination of Sales at Less Than Fair Value,* (50 FR 45477, October 31, 1985)).

Our initial questionnaire stated that the product characteristics reported should be those of the merchandise as exported to the United States. Further, section 773(a)(1) of the Act concerns the foreign market value of the *imported merchandise.* The requirement to report the characteristics of the imported product was reiterated in several subsequent discussions with TCM until the date of our preliminary determination. Further, in a letter dated October 26, 1987, we notified TCM of our specific instructions as to how it should report value-added data in order to report the product as imported. TCM repeatedly assured the Department that is data had been reported in the manner requested. At no time prior to discovery of the reporting error did TCM express disagreement with the Department's stated methodology. TCM formally raised its objection for the first time in a letter of December 22, 1987, more than one month after the preliminary determination and less than three weeks prior to the scheduled beginning of verification. We consider TCM's objection to the basic premise of our methodology six months after issuance of our questionnaire to be untimely and without merit.

Comment 7: TCM contends that, unless the methodology it employed is contrary to law, the Department erred in its refusal to verify TCM's data. TCM argues that its methodology is reasonable, yields an accurate calculation of TCM's dumping margin, and should have been accepted by the Department.

DOC Position: We disagree. *See* DOC Positions to Comment 5 and Comment 6.

Comment 8: Petitioners contend that the information supplied by Sumitomo on home market sales, U.S. sales, cost of production, and U.S. value-added was erroneous and unsupported at verification. Specifically, petitioners argue that the Department should reject all of the information submitted by Sumitomo because: (1) Sumitomo's home market sales information contained numerous significant errors and, therefore, was not verified by the Department; (2) Sumitomo completely revised its response on purchase price sales due to the number of errors and discrepancies found on verification; (3) Sumitomo's ESP response was replete with significant errors and unsupported calculations and allocations of charges and adjustments; (4) the selling expenses claimed by Sumitomo in its constructed value response did not correlate with selling expenses reported in its home market sales response; (5) the total cost of manufacture provided in Sumitomo's cost of production reponse did not reconcile with the total cost of manufacture on which the difference in merchandise adjustment is based; (6) Sumitomo understated its manufacturing costs by applying fiscal year variances to adjust standard costs rather than applying the variances that occurred during the period of investigation; (7) Sumitomo omitted a number of costs from its constructed value data, such as the cost of services provided by parent companies; (8) Sumitomo failed to document that its purchases from related suppliers were at arm's-length prices or that these purchases were reported at a fully absorbed cost of production; and (9) Sumitomo understated its material costs and general expenses in its cost of production information. Furthermore, petitioners believe that the information submitted by Sumitomo after verification has not been verified by the Department. For these reasons, petitioners contend that the Department should use as best information available for Sumitomo the greater of the highest margin found for another respondent or the highest margin alleged in the petition.

Sumitomo contends that the Department should use the revised data submitted for the final determination because: (1) Sumitomo demonstrated good faith by voluntarily and thoroughly disclosing all changes to the Department; (2) many of the changes were insignificant, affected only a minority of data columns, or were driven by other changes; (3) the errors and omissions in the responses were both favorable and unfavorable to Sumitomo; (4) many of the revisions were the result of the extraordinary complexity of the investigation; (5) the Department will not be burdened by accepting the revised data; and (6) even if the Department chose to characterize the revised data as unverified, the revised data is the best information available.

With respect to petitioners' specific arguments that Sumitomo's cost of production response does not reconcile with its sales response, Sumitomo contends that: (1) it cannot determine how petitioners derived the figures cited in their examples of claimed discrepancies or how the comparisons were selected; (2) the variation between the cost and sales data is attributable to the permissible apportioning of direct and indirect selling expenses to the chassis and the completed forklift; (3) petitioners must apply the cost variance to the figures in their examples and take into account the fact that direct labor and factory overhead were not allocated back to each component part in the costs; and (4) where changes in the post-verification sales response affected the cost data, those changes must be taken into account in petitioners' calculations. Furthermore, Sumitomo disagrees with petitioners' contention that the cost variance during the period of investigation should be applied to standard costs to determine actual costs. Sumitomo maintains that the actual cost variance for the year should be used.

DOC Position: In accordance with section 776(b) of the Act, we have used the highest company rate calculated in this investigation as best information available for Sumitomo.

It is not uncommon to find minor methodological problems and mathematical errors during verification. However, during our attempted verification of Sumitomo's sales and cost of production responses, we found that the scope of the discrepancies, inconsistencies, unreported expenses and costs, methodological and mathematical errors, and information that could not be supported by the company's sales and accounting records was so extensive as to require completely new responses which at that stage of this complex proceeding could not be subjected to satisfactory analysis or verification. In addition, we discovered that for a substantial percentage of its U.S. sales, Sumitomo reported the characteristics of the product as ultimately sold in the United States instead of as imported.

Faced with responses containing numerous fundamental flaws, the Department could not properly base its determination on the information submitted by Sumitomo. Nor is it acceptable, in such situations, that the Department bear the responsibility of attempting to identify and perform numerous and substantial recalculations necessary for the development of accurate sales and cost of production data. Such a role would place too great a burden on the resources of the Department under the time constraints and procedural framework of this investigation. As stated in *Photo Albums and Filler Pages from Korea; Final Determination of Sales at Less Than Fair Value* (50 FR 43754, October 29, 1985): "[I]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to fully analyze the information and other parties are able to review and comment on it." A respondent cannot shift this burden to the Department by submitting incomplete and inaccurate information and expect the Department to correct its response during the course of verification. Verification is intended to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department or to perform the recalculations necessary to develop accurate information.

Similarly, the Department rejected TCM's responses and did not conduct verification of that company because TCM informed the Department after the preliminary determination that, for a substantial percentage of its U.S. sales, the characteristics reported were those of the product sold in the United States, rather than those of the product imported into the United States (*see* Comment 5 above). After careful consideration, the Department determined that the extent of the revisions required to correct TCM's responses were of such a magnitude as to constitute a completely new response submitted too late in the investigatory process. In addition to the fundamental errors in Sumitomo's sales and cost of production responses mentioned above,

we also found at verification that a substantial percentage of its U.S. sales reported the characteristics of the product ultimately sold in the United States, as opposed to the product imported.

Further, with respect to the cost data, the Department requested the actual cost of production of the forklifts sold during the period of investigation. However, during verification, we found that Sumitomo did not report actual costs. For the chassis, Sumitomo reported a "construct" based on 1987 costs. For the value added in the United States, Sumitomo reported standard costs and included the transfer prices of masts produced by a related supplier. In addition, the costs for certain services provided by Sumitomo Heavy Industries, a parent company of Sumitomo, and certain research and development costs were not included in the cost of the chassis. For the further manufacturing in the United States, Sumitomo failed to report shrinkage, scrap, obsolescence, losses on revaluation, and costs of counterweights (a significant forklift component) in the cost of production. Furthermore, Sumitomo used a favorable annual cost variance which resulted in lower costs instead of the appropriate six-month variance pertaining to the period of investigation which would have reflected higher costs.

For all of the reasons described above, we have determined that rejection of Sumitomo's responses and use of best information available is appropriate for this determination. Furthermore, because we have used best information available with respect to Sumitomo, petitioners' and respondent's comments pertaining to specific charges, adjustments, and other issues are moot. For reasons already discussed, we have determined that the highest company rate calculated in this investigation, and not the highest rate alleged in the petition, is most appropriate for Sumitomo.

Comment 9: Petitioners contend that demonstration forklifts sold in the home market are not similar to the merchandise under investigation, nor are they sold in the ordinary course of trade. Therefore, they should not be compared with new forklifts sold in the United States. Petitioners further contend that discounts or other expenses claimed on demonstration forklifts apply only to sales of demonstration forklifts and are not expenses incurred by respondents in selling new forklifts. Therefore, such home market expenses and discounts claimed by Toyota, Nissan, and Komatsu should be disallowed.

DOC Position: We agree that demonstration forklifts are not appropriate comparisons for sales of new forklifts. However, we believe that expenses incurred by respondents on the demonstration vehicles are a direct advertising expense and have treated them as such for Toyota and Nissan. We have disallowed such expenses for Komatsu since we have determined that Komatsu and its dealers are related and, as such, the expenses claimed by Komatsu are intracompany transfers of funds.

Comment 10: Petitioners contend that the demonstration or damaged forklifts imported into the United States by Toyota and Nissasn and sold to unrelated parties during the period of investigation should be included in the Department's calculation of dumping margins. Petitioners further argue that all sales that involved a transfer of title during the review period are subject to analysis and cite *Television Receiving Sets, Monochrome and Color, from Japan; Final Results of Administrative Review of Antidumping Finding* (46 FR 30163, June 5, 1981) and *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review* (53 FR 4050, February 11, 1988). They assert that the requirement that the Department determine the price of such or similar merchandise sold in the ordinary course of trade pertains only to sales used to establish foreign market value. There is no such requirement for determining U.S. sales subject to investigation.

With respect to Toyota, petitioners argue that it is unclear whether the forklifts listed by Toyota are actually damaged or demonstration units. Therefore, these U.S. sales should be used to calculate the extent to which Toyota is selling at less than fair value.

With respect to Nissan, petitioners contend that all of its sales of demonstration vehicles in the United States should be included in the Department's calculation of dumping margins, and that the amount of the discount for each of these forklifts should be changed from the amount originally reported to the actual verified amount.

Toyota contends that sales of demonstration forklifts are not similar to the products under investigation and should not be included in the U.S. sales transactions examined.

Nissan contends that the Department's determinations cited by petitioners with respect to the inclusion of demonstration models are not dispositive because they involve administrative reviews, not original antidumping duty investigations. Nissan argues that, while a margin must be calculated for every entry covered by an administrative review, the Department's regulations do not require calculation of a margin for every sale taking place during the period of investigation.

DOC Position: Since the damaged and demonstration vehicles sold in the United States are sold as used forklifts which are not subject to this investigation, we have not included these sales in our calculations.

Comment 11: Petitioners contend that, to the extent that any respondent has not provided specific rebate or discount information on a sale-by-sale basis and have not demonstrated that these rebates or discounts were actually provided during the period of investigation, discounts or rebates should not be allowed.

DOC Position: Discounts and rebates are by definition tied to specific sales. Where respondents have not been able to tie them to specific sales, we have disallowed them. Some rebate or inventive programs offered by respondents, such as a rebate provided to dealers that meet a monthly sales target, have been allowed since they have been tied to sales made within a particular month. Rebates do not have to be paid during the period of investigation, but they must be tied to sales made during that period.

Comment 12: Petitioners contend that the credit calculation on installment sales in the home market must take into account the gradual reduction of the outstanding balance and the amount of interest earned by the respondent. If respondents have not provided, and the Department has not verified, the amount and date of each payment by the purchaser and the interest rate charged on each installment sale, no deduction for credit expenses on any installment sale should be allowed. In addition, if a respondent failed to identify its installment sales during the period of investigation, no credit expense adjustment should be allowed.

DOC Position: The required information was verified and used to calculate credit expenses for installment sales in the home market for purposes this determintion. Credit expenses were calculated based on the outstanding balance plus interest revenue for each month. For installment sales of 12 months or more, we used a compound interest rate.

Comment 13: Petitioners contend that any home market warranty expense

claimed must be based on variable, rather than fixed, expenses. Petitioners also argue that any claim for expenses associated with warranty repair parts should be stated as the cost of such parts, rather than the sales or list price.

DOC Position: For Nissan and Toyota, warranty expense payments are made between unrelated parties. As such, we have deducted the full payment amount since this is a variable expense to the manufacturer. For Komatsu, since related dealers performed the warranty work, we have allowed only the variable warranty expenses as an appropriate deduction from the home market price.

Comment 14: Petitioners contend that the Department considers commissions paid to related parties to be intracompany transfers of funds which are not expenses to the corporate entity. Therefore, such payments should be disallowed as adjustments to foreign market value. In support of this argument, petitioners cite *Anhydrous Sodium Metasilicate from France; Final Results of Administrative Review of Antidumping Duty Order* (49 FR 43733, October 31, 1984).

With respect to Nissan, petitioners contend that certain commissions claimed by Nissan on home market sales were paid to related parties and, therefore, constitute intracompany transfers of funds. Petitioners also argue that other commissions claimed by Nissan were earned on sales made prior to the review period of investigation and, therefore, should be disallowed by the Department.

Nissan contends that home market sales commissions paid to employees were shown at verification to be directly related to specific sales and should be allowed as circumstance of sale adjustments. Nissan also argues that commissions on sales made prior to the period of investigation were not included in the database and were not claimed as a deduction from the home market price.

DOC Position: Nissan claimed payments to employees as commissions on the home market sales. Since these expenditures were made to individual employees, we do not consider them to be intracompany transfers of funds. However, Nissan did not tie these payments to individual sales. Therefore, we treated these payments as an indirect selling expense.

Comment 15: Petitioners contend that in the preliminary determination the Department failed to follow the two-step ESP cap procedure used in the *Preliminary Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from the Netherlands* (*Brass Sheet*) (53 FR 3612, February 8, 1988). They argue that the aggregate home market indirect selling expenses should first be capped at the level of aggregate U.S. indirect selling expenses and then, on an individual sale basis, home market indirect selling expenses should be capped at the level of the indirect selling expenses claimed on an individual U.S. sale. This two-step approach ensures that home market indirect selling expenses are equivalent to those claimed in the United States, regardless of whether there are significant differences in the number of sales in the U.S. and home markets. Petitioners maintain that the Federal Circuit's decision in *Consumer Products Division, SCM Corp.* v. *Silver Reed America, Inc.*, 753 F.2d 1033 (Fed. Cir. 1985) upholds the Department's regulations requiring that home market indirect selling expenses be capped at the amount of indirect selling expenses in the United States.

Petitioners further argue that the Department should disallow home market G&A expenses as part of the ESP offset and only allow indirect selling expenses claimed in the home market for sales made in the home market.

Nissan contends that it is difficult to comment on petitioners' proposed two-step cap on indirect selling expenses in the home market since the only discussion of this approach seems to have been in a private disclosure conference, but argues that the approach appears inconsistent with the statute and prior Department paractice.

Toyota contends that petitioners' request that the Department apply a two-step procedure in calculating the ESP cap is incorrect, unnecessary, and not required by the statute, nor is it consistent with prior Department practice.

DOC Position: Pursuant to 19 CFR 353.15(c), in making ESP comparisons, the Department is required to make "reasonable allowance . . . for all actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market." As petitioners recognized at the hearing in this investigation, the two-step ESP cap procedure used in the preliminary determination in *Brass Sheet* is not the method we have employed in the past. Furthermore, we do not regard it as the appropriate method to use since adjustments are made on a sale-by-sale basis.

Capping on an aggregate basis would not reflect the individual circumstances of each sale, and may lead to adjustments distorted by the comparative size of each market. Thus, we continue to use our standard policy of capping home market indirect selling expenses on a sale-by-sale basis, as described in the Department's 1985 Adjustments Study.

Accordingly, we have subtracted from the home market price the amount of any indirect selling expenses allocated to the home market sale up to the amount of indirect selling expenses allocated to the U.S. sale.

Comment 16: Petitioners contend that, because specific home market sales are being compared to specific U.S. sales, no sale that is below cost of production should be compared with a U.S. sale, even if the total number of sales below cost is less than ten percent.

DOC Position: This issue is moot. For both Nissan and Komatsu, below-cost sales were more than ten percent in each such or similar category. As such, no below-cost sales were used in our comparisons.

Comment 17: Petitioners contend that, absent proper explanation by Komatsu, Nissan, or Toyota, the Department should deduct the full amount of the cash or prompt payment discount on any U.S. sale where the payment period would entitle the purchaser to such a discount.

Toyota contends that all of Toyota's discounts and net selling expenses are verified and that there is no basis for imputing any additional discount on U.S. sales.

DOC Position: We have verified that all prompt payment discounts have been reported by respondents or have already been deducted from the sales prices reported in the responses.

Comment 18: Petitioners contend that respondents should have provided all information relating to freight allowances or freight equalization payments. This is a practice in the industry whereby, if a unit is not available for purchase at a particular distribution center, a respondent will bill its customer for the normal cost of freight despite additional freight costs that have been incurred in shipping the unit from an alternative distribution site. The Department should take this cost into account if it has not been reflected in respondents' freight claim. In the absence of information concerning the freight absorption or equalization, the Department should take the freight expense reported in the financial statements of the U.S. subsidiary, deduct the total U.S. freight expense incurred by the U.S. subsidiary as claimed in the response, deduct a portion of the freight expense allocable to sales of products other than those subject to investigation, and allocate the remaining portion of the freight expense

to individual sales as a proxy for these excess freight costs.

DOC Position: We have verified all freight expenses applicable to the subject merchandise and have deducted those expenses from the sales price.

Comment 19: Petitioners contend that any costs assumed by a parent company on behalf of its U.S. subsidiary for U.S. sales (*e.g.*, advertising brochures printed in Japan for promoting U.S. sales or product liability insurance premiums to cover claims in the United States) should be considered a direct selling expense and deducted from U.S. price in the final determination.

DOC Position: We disagree in part. Using our standard criteria, we consider product liability insurance premiums paid by a parent company to be indirect selling expenses. We agree that advertising expenses for brochures printed in Japan for promotion of U.S. sales are direct selling expenses.

Comment 20: Petitioners contend that the expenses incurred by parent companies on behalf of their U.S. subsidiaries for certain types of services (*e.g.*, setting up accounting systems, conducting internal audits, providing computer services, assisting in marketing programs, conducting time studies by industrial engineers, and incurring research and development cost) should be included as U.S. indirect selling expenses. In addition, any selling expenses incurred by the parent company on behalf of the U.S. subsidiary which are part of the parent company's G&A expenses should be part of the ESP cap. The Department's allocation of these expenses should be based on the cost of goods sold.

DOC Position: We disagree. The expenses identified above by petitioners are general expenses of the parent company incurred in Japan; they do not constitute U.S. indirect selling expenses.

Comment 21: Citing *Silver Reed America, Inc. et al.* v. *U.S.* (Slip Op. 88-5, January 12, 1988), Nissan, Toyota, and Komatsu contend that we should not deduct expenses incurred outside the United States with respect to ESP sales.

DOC Position: We disagree. The Court has reconsidered and reversed its position on this issue, holding that: "[A]n analysis of the entire statutory scheme for ESP adjustments in 1677a demonstrates that many preimportation expenses related to United States sales must be deducted from ESP." *Silver Reed America, Inc. et al.* v. *U.S.* (Slip Op. 88-37, March 18, 1988). The Court went on to note that, if the Department did not deduct preimportation expenses from ESP, "the essential price comparison to determine the margin of dumping, if any, becomes distorted and contrary to the purpose of the dumping law to achieve a fair price comparison." Accordingly, where expenses were incurred outside the United States on ESP sales, we have taken them into account in this determination.

Comment 22: Petitioners contend that, for those companies that did not segregate technical service expenses on U.S. sales, but claimed them as an indirect selling expense, the Department should treat all technical service expenses as directly related to the sales under investigation and make the appropriate deduction from U.S. price.

With respect to Toyota, petitioners argue that the Department should use the amount of Toyota's technical service expenses in the home market as a proxy for those expenses in the United States and treat them as a direct selling expense.

Toyota contends that its U.S. technical service expenses are not variable expenses separately traceable to individual transactions and, therefore, are properly included among indirect selling expenses.

DOC Position: For Toyota, we found that the technical services provided to U.S. dealers are of a routine nature and would have been incurred whether or not a particular sale had been made. Therefore, we have treated these expenses as indirect selling expenses. For Komatsu, we have determined that the only direct technical service expenses are travel expenses incurred in servicing specific sales. The other claimed technical service expenses have been treated as indirect selling expenses. For Nissan, we found that the company had underreported its expenses. We used the correct verified amounts in this final determination. We treated Nissan's travel expense as direct and all other expenses incurred in providing technical services as indirect since they are expenses of a routine nature that would have been incurred whether or not a particular sale had been made.

Comment 23: Petitioners contend that it is the Department's practice to allow technical service adjustments to home market price only for expenses that are incurred during the period of investigation and that are directly related to the sales made during the period of investigation. In support of their position, petitioners cite the *Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30700, August 17, 1987) and the *Final Determination of Sales at Less Than Fair Value: Certain Forged Steel Crankshafts from the Federal Republic of Germany* (52 FR 28170, July 28, 1987). Petitioners further argue that valid technical service expenses do not include salaries for technical engineers or other personnel which would have been paid regardless of the amount of work performed. In support of this contention, petitioners cite *Dry Cleaning Machinery from West Germany; Final Results of Administrative Review of Antidumping Finding* (50 FR 32154, August 8, 1985) and *Certain Welded Carbon Steel Standard Pipe and Tube from India; Final Determination of Sales at Less Than Fair Value* (51 FR 9089, March 17, 1986). Petitioners contend that, for the most part, the technical service expenses claimed by respondents in this investigation are incurred on routine visits to customers in an effort to maintain general corporate goodwill and, therefore, should not be allowed by the Department as a direct selling expense. At most, they should be treated as an indirect selling expense.

With respect to Nissan, petitioners contend that its technical service expenses include salaries, wages, and bonuses and, therefore, should be treated as indirect selling expenses for purposes of the final determination.

With respect to Komatsu, petitioners contend that its technical service expenses are comprised of fixed salary and transportation expenses incurred for routine inspection visits which do not constitute direct selling expenses and, therefore, should not be deducted from home market price.

Komatsu contends that its claimed adjustment for home market technical service visits are out-of-pocket expenses directly tied to the specific sales in question. Komatsu argues that while these calls are routine, petitioners have cited no support for their statement that technical service adjustments can be made only where it is shown that an engineer has visited a customer that is having a specific technical problem.

DOC Position: We have treated all of Toyota's claimed technical service expenses as indirect selling expenses because these are expenses of a routine nature that would have been incurred regardless of whether any particular sale had been made. For Nissan and Komatsu, we have also treated all of their technical expenses as indirect selling expenses, except for travel, for the same reason. We have determined that travel expenses borne by the two companies are appropriate technical service claims since the travel expenses are variable and are tied to specific sales made during the period of investigation.

Comment 24: Petitioners contend that the advertising expenses incurred on behalf of a particular model are direct expenses and should be deducted from home market price with respect to sales of that model. Expenses incurred for advertisements which feature products not subject to the investigation should not be considered as either a direct or an indirect selling expense. Separate expenses should have been submitted for the products under investigation and for the expenses incurred during the period of investigation.

DOC Position: Where advertising expenses could be segregated to particular models, this was done. Otherwise, they were allocated to the subject merchandise. During verification, we reviewed the allocation of advertising expenses to the subject merchandise. In those instances where advertising expenses could be segregated, we found they were properly allocated. We have disallowed advertising expenses related to non-forklift products and advertising expenses which were incurred outside the period of investigation.

Comment 25: Petitioners content that U.S. advertising expenses incurred by respondents under co-op advertising programs should be allocated on a customer-by-customer and model-by-model basis. Furthermore, petitioners argue that to the extent that other U.S. advertising expenses for products subject to this investigation have not been reported separately by the respondents on a model-by-model or series-by-series basis, the Department should treat all U.S. advertising expenses as direct selling expenses.

With respect to Toyota, petitioners contend that, in addition to the co-op advertising program, other advertising expenses were incurred which qualify as direct selling expenses on U.S. sales. In support of their contention, petitioners submitted sample advertisements published during the period of investigation which promote Toyota forklifts, are directed at end-users, and feature no particular Toyota dealer. Since Toyota failed to report fully its direct U.S. advertising expenses, the Department should treat the entire amont of these expenses as a direct selling expense on both ESP and purchase price sales.

In addition, petitioners contend that the Department should rectify the inconsistency in the preliminary determination of treating Toyota's advertisements directed at end-users in the home market as direct expenses while treating advertisements directed at end-users in the United States as indirect selling expenses.

With respect to Nissan, petitioners contend that the Department should use Nissan's actual advertising expenses incurred during the period of investigation. The Department should disregard Nissan's assertion that the advertising expenses associated with the introduction of new models were unusually high and that these expenses should be allocated over a five-year period. In addition, to the extent that such advertisements are directed at specific models, such advertising expenses should be allocated only to those specific models, not over all forklifts.

Nissan contends that, becaue its U.S. advertising expenses were unusually high during the period of investigation due to the recent introduction of two new models, the Department should use a five-year average for U.S. advertising expenses.

DOC Position: We found Toyota's allocation of co-op advertising to be reasonable. During verification, we found that certain advertising expenses were included in Toyota's claimed indirect selling expenses. A portion of those advertising expenses was directed to Toyota's dealers' customers. Therefore, we treated those expenses as direct selling expenses. At verification, we found that Komatsu also inappropriately reported certain advertising expenses as indirect. We have treated these expenses as direct selling expenses in this determination.

With respect to Nissan, we have examined the advertising expenses incurred during the period of investigation and in each of the four prior years. We saw no evidence that the period of investigation's expenses were unusually high when compared with fluctuations in previous years' expenses. As such, we have made an adjustment for actual advertising expenses incurred during the period of investigation.

Comment 26: Petitioners contend that none of the respondents have fully reported product liability expenses. Each company should have submitted not only the cost of insurance premiums but the amounts reserved for settlement costs and litigation fees. All liability expenses should be allocated only over forklift sales in the United States since liability claims arise primarily in the United States. To the extent that these costs have not been reported or verified, the Department should use the information in the petition as best information available for each respondent. The Department should also treat product liability expenses as a direct selling expense rather than an indirect selling expense because a company's expense increases with every forklift sold and claim made.

With respect to Nissan, petitioners contend that, since the Department was unable to verify Nissan's claimed product liability expense, the Department should use the information in the petition as best information otherwise available.

Toyota contends that all of its U.S. product liability expenses have been reported and verified, and that product liability insurance premiums are not variable expenses as petitioners claim. Toyota also argues that, because premiums paid during the period of investigation are paid to insure all Toyota forklifts presently in operation and not just those sold in the period of investigation, Toyota properly allocated ten years of premiums over sales for the same period.

DOC Position: We have treated product liability insurance premiums as indirect selling expenses since these expenses are fixed expenses and are not incurred with each sale made. We saw no evidence of reserves for settlements or litigation fees during the period of investigation for Toyota or Komatsu, and have verified all product liability insurance premiums for Toyota and Komatsu. We believe that Toyota properly allocated this expense over all North American sales since we verified that its product liability insurance covers all forklifts sold and in operation in the North American market.

For Nissan, we were unable to verify these expenses. Therefore, we based the amount used for purposes of this determination on the U.S. industry's product liability experience.

Comment 27: Petitioners contend that the Department should deduct from U.S. price all costs incurred in adding value to the forklifts, including labor and overhead, G&A expenses, and profit. Only by deducting all of the value added in the United States, including profit, will the Department be able to compare accurately the price of the "as imported" product with the price of the product with the same characteristics in the home market.

For options not attached, the Department should use the greater of the net selling price of the options or the acquisition cost plus profit to determine the value-added expense. With respect to installed options, the Department should use the greater of the net selling price or the acquisition cost plus labor, overhead, and profit to determine the value-added expense. With respect to options that have been added or removed, the Department should calculate U.S. value-added as the sum of

the acquisition cost of the parts added, plus labor, overhead, and profit on the parts added. The Department should calculate profit on sales in which items were removed or added based on the profit earned on the parts added, not on the difference between the cost of parts removed and added.

Nissan contends that the pre-sale activities performed by Nissan Industrial Equipment Corporation (NIEC) in the United Sates are not "a process of manufacture or assembly" within the meaning of section 772(e)(3) of the Act because they do not "significantly transform" the imported forklifts. Therefore, the Department should not deduct the profit associated with these activities from ESP. Nissan argues that the costs incurred in the United States for pre-sale activities should be treated as indirect selling expenses. Alternatively, Nissan contends that, if the Department determines that the operations performed by NIEC in the United States do constitute "manufacture or assembly" within the meaning of the statute, profit should be calculated based on the ratio of the cost of these operations to the total cost of the product. This ratio should then be applied to the difference between NIEC's selling price and the total cost of the forklift. In addition, Nissan argues that the Department should treat all options similarly, whether installed or not installed.

Toyota contends that the activities performed on imported forklifts at U.S. processing centers do not constitute manufacture or assembly within the meaning of section 772(e)(3) of the Act and 19 CFR 353.10(e)(3) and are incidental to the selling operations. Therefore, the Department should not deduct the value-added in the United States to arrive at ESP. Toyota argues that the manufacture and assembly process is concluded in Japan and that the following operations performed in the United States do not constitute manufacture or assembly: (1) Securing of certain options such as LPG tanks, sideshifters, and fork arms to the units for shipment to customers, (2) attachment of lights, alarms, and hydraulic valves, and (3) swapping of masts and forks.

DOC Position: We consider the pre-sale activities of Nissan and Toyota in the United States to constitute further manufacture or assembly within the meaning of section 772(e)(3) of the Act. We have calculated the value-added adjustment to the U.S. price as follows. For installed options, we have deducted the acquisition cost of the options, plus labor, overhead, and profit. With respect to options that have been switched, we have used the difference between the cost of manufacture of the parts switched, plus labor, overhead, and profit. For Nissan, we calculated profit for options installed and for parts switched based on the ratio of the cost of these operations to the total cost of the product. We then applied this ratio to the difference between the net selling price and the total cost of the forklift.

For Toyota, we calculated a net profit factor on forklift sales for Toyota Motor Sales (TMS), the U.S. subsidiary of Toyota, during the period of investigation. We then applied this factor to the transfer price between Toyota and TMS as best information available.

We do not consider unattached options to be value added. We deducted the sales price of the unattached options from U.S. price.

Comment 28: Petitioners contend that the cost of carrying inventories of parts and attachments should be included by the Department in each company's U.S. value-added expenses. The Department should calculate this expense based on the cost or price of the options or attachments that are added in the United States and the length of time the forklifts are held in inventory.

Petitioners also contend that all freight expenses associated with transporting the attachments and options to U.S. processing centers should be included by the Department as part of the U.S. value-added expense.

DOC Position: All expenses incurred by the U.S. subsidiary have been reported. Expenses such as the cost of carrying inventory and freight expenses related to transporting attachments and options have been reported either under inventory carrying costs or under indirect selling expenses. A portion of these expenses has been allocated to the value-added operations. Most of the items held in inventory, such as fork arms and masts, were imported attached to one forklift and then removed to be switched with items from another forklift. As such, the associated freight expenses were already included in the freight expense of the forklift as a direct selling expense.

Comment 29: Regarding critical circumstances, C. Itoh Industrial Machinery Inc. (CIM) and TCM America (MBK) Inc. (TAM), U.S. distributors related to TCM, contend that they would not have access to knowledge of less than fair value sales because their corporate relationship with the manufacturer, TCM, is insufficiently close. CIM and TAM argue that there is no evidence that they had access to information on TCM's pricing in the home market or to each other's pricing. CIM and TAM also argue that knowledge of less than fair value sales cannot be imputed to them because of the complexity and technical nature of the calculations necessary to make such a determination. They further argue that application of a 25 percent "rule" to impute knowledge of less than fair value sales constitutes informal rulemaking requiring notice and comment, and in support of their contention cite the Court of International Trade decision in *Carlisle Tire and Rubber Co. v. U.S.*, 7 ITRD 1512, 1515 (C.I.T., 1985) regarding an allegedly analogous Departmental guideline.

Machinery Distribution Inc. (MDI), an interested party, contends that overall imports have not been massive and that import levels in the months immediately preceding the filing of the petition are not the appropriate benchmark to use to evaluate post-filing import levels because (1) import levels are traditionally greater during the time of the year represented by the post-filing time period and (2) pre-filing time period import levels were unusually low.

DOC Position: While CIM and TAM contend that they had no knowledge of TCM's pricing policies, it is our longstanding practice to consider foreign manufacturers and their related U.S. importers to be a single entity. Given TCM's ownership interest in both CIM and TAM, we believe it is appropriate to apply our imputed knowledge methodology.

The Department is not required to follow formal rulemaking procedures in adopting every methodology it employs. Congress has afforded the Department wide latitude in its administration of the antidumping law. Furthermore, the courts have accorded deference to the Department in fulfilling its statutory duties and have recognized that the Department requires "methodological flexibility." *Ceramica Regiomontana v. United States*, (Slip Op. 86-58, May 29, 1986) at 12-13.

The position advocated by CIM and TAM would require the Department to promulgate every methodology that it proposed to follow in an administrative proceeding as a rule under the Administrative Procedure Act, 5 USC 551 *et seq.* Such an approach would require the Department to announce the methodology that it intends to apply in the Federal Register, request and evaluate comments, publish the final rule, and then wait 30 days for it to become effective. This approach could not be accomplished in the short time

Congress has mandated for the completion of an investigation and would permit no flexibility in subsequent administrative proceedings. If the rulemaking process were followed, the Department would be obligated to apply a "rule" once made. The agency could not consider other methodologies that might be more appropriate for the facts in that particular case unless it went through the rulemaking process again. Such a requirement would unduly restrict the ability of the Department to carry out the intent of Congress.

Having had the opportunity to comment on the Department's methodology, the parties have not provided any basis for the Department to alter its current practice.

The rationale behind a critical circumstances allegation is to prevent foreign manufacturers from increasing levels of imports of products sold at less than fair value prior to the suspension of liquidation. As such, contrary to MDI's contention, the most appropriate periods to measure import levels are those immediately preceding and following the filing of the petition, up to the time of the preliminary determination.

Finally, based on our analysis of import data, we have found no evidence of seasonality with respect to imports of forklifts from Japan.

Comment 30: Petitioners contend that, because Kasagi and Sanki failed to submit monthly import data, the Department should make a finding of critical circumstances with respect to these companies for purposes of the final determination.

DOC Position: We sought shipment data only from the manufacturers of forklifts, not from resellers. Because Sanki and Kasagi do not produce the subject merchandise, we believe it is appropriate that these companies receive the "all others" determination regarding critical circumstances (*see* "Critical Circumstances" section of this notice).

Comment 31: Petitioners contend that the Department should consider a forklift to be used if, at the time of entry into the United States, the importer can prove that the forklift was manufactured at least three years prior to the date of entry.

Mifran-Boman, an interested party, contends that any forklift older than one year should be considered to be used for purposes of this investigation and suggests using the serial numbers published by the manufacturers to make this determination.

Equipment Company of Los Angeles (ECOLA), an interested party, contends that the Department's presumption in the preliminary determination that only forklifts over three years old can be considered used is without support in the record, is illogical, and is not based on any industry standard, custom, or practice. ECOLA contends that there is no support in the record other than petitioners' assertions that new vehicles may remain in inventory for over a year or that new vehicles will be misclassified as used to avoid any potential dumping duties. ECOLA also argues that the Department has an obligation to investigate before making such a determination and may not rely on unsupported assertions in its determination of the age at which a forklift becomes used. As support, it cites *Cellular Mobile Telephones and Subassemblies from Japan; Final Determination of Sales at Less Than Fair Value* (50 FR 45447, October 31, 1985).

ECOLA also contends that the Department's three-year rule is harsh and unreasonable because it does not give importers the opportunity to demonstrate to U.S. Customs that individual entries under three years of age are used. ECOLA argues that the Department should establish a rebuttable presumption that any forklift manufactured at least one year prior to the date of entry should be considered used and, therefore, not subject to any duties imposed in this investigation.

DOC Position: Our investigation uncovered no evidence that Japanese producers and exporters of the subject merchandise have been involved in the practices alleged by petitioners of exporting essentially new forklifts to unauthorized dealers as used forklifts. In addition, verification of one reseller indicated that forklifts are being purchased through third parties without the direct knowledge of the manufacturers. We have found, however, that certain manufacturers' forklifts were imported as new more than one year after the forklifts' date of manufacture. While we recognize that high inventory carrying costs may be a disincentive to holding a forklift in inventory between one and three years in order to avoid the imposition of antidumping duties, we must be able to ensure that this determination can be enforced and that any potential order will not be circumvented.

As Mifran-Boman has suggested, in order to identify the age of a forklift, we will instruct the U.S. Customs Service to require documentation from industry publications containing information reconciling a forklift's serial number and date of manufacture. These industry publications, however, do not specify the exact date of manufacture, but only the year a forklift with a particular serial number was manufactured. As such, the U.S. Customs Service would not be able to determine the date a forklift was manufactured, but only the year it was manufactured.

To ensure that imports of new forklifts are covered by this determination, we have established the following cut-off for used forklifts. Given that the U.S. Customs Service can only determine the manufacture year of a forklift, we will instruct the U.S. Customs Service to consider as used any forklift produced in a calendar year at least three years prior to the year of entry into the United States. We have discussed this issue with the U.S. Customs Service and have concluded that our treatment of used forklifts is administratively feasible.

Comment 32: Petitioners contend that manufacturers and exporters of forklifts are planning to circumvent the imposition of antidumping duties on forklifts They state that the Department should clarify the scope of the investigation to include separately imported major component parts being shipped to the United States by Japanese forklift producers and exporters to be installed on Japanese-made frames or frames made principally from Japanese components.

Mitsubishi Heavy Industries (MHI), an interested party, contends that the petitioners have provided no basis for expanding the scope of the investigation. MHI also argues that the petitioners should not be permitted to amend the petition and expand the scope of this investigation because the request was not made until after verification. This request is unjustifiably late and deprives the Department of the opportunity to investigate whether such imported components are being or are likely to be sold at less than fair value. Finally, citing *Royal Business Machines, Inc. v. United States*, 507 F. Supp. 1007 (C.I.T., 1980) and section 735(a)(1) of the Act, MHI argues that the Department lacks the statutory authority and evidentiary basis to grant the petitioners' request for expansion of the scope of investigation.

Nissan contends that it would be improper to extend the scope of investigation beyond the limited clarification sought by petitioners.

DOC Position: We have denied petitioners' request to expand the scope of this investigation for the following reasons. First, prior to the initiation of this investigation, petitioners clearly excluded component parts from the scope of their petition. In a letter to the Department dated may 7, 1987, petitioners stated:

[T]he investigation would cover imports of a fabricated frame by itself or assembled with one or more component parts such as the transmission, drive axle or engine. The fabricated frame, by itself, would be included within the scope of the petition because once a frame is fabricated, it can only be used to produce an internal-combustion, industrial forklift truck and cannot be used to manufacture any other product. In contrast, other *individual* component parts, such as an engine or transmission, when sold as separate units prior to assembly, could be used to produce a product other than an internal-combustion, industrial forklift truck. Thus, these individual parts, separately imported, would not be in the scope of the petition.

On May 11, 1987, petitioners submitted another letter to the Department reiterating their intent to exclude component parts. They stated: "As indicated in our letter on May 7, 1987, we do not intend for this investigation to cover all forklift parts separately imported."

Second, petitioners only speculate as to the apparent intention of the Japanese producers and exporters of forklifts to circumvent antidumping duties. Petitioners do not allege that duties have been or currently are being avoided. In a Department memorandum regarding an administrative review of *Color Television Receivers from Korea*, cited by petitioners in support of their request, the Department had statistical evidence of a decrease in the volume of imported TVs subject to duty and an increase in the volume of separately imported components which were not dutiable. At this time, neither petitioners nor any other party has presented any evidence that major component parts of the forklifts under investigation are being separately imported in order to avoid the imposition of antidumping duties.

Third, petitioners' request to include component parts would encompass components for end-products other than the internal-combustion forklifts under investigation. As petitioners acknowledged in their May 7, 1987 letter, certain individual component parts, when sold separately, can be used in the manufacture of products other than internal-combustion forklifts. For example, some components might be destined for large forklifts outside the scope of this investigation, electric forklifts, or other non-forklift products not subject to investigation. We have insufficient evidence on the record to instruct properly U.S. Customs how to identify the components to which this determination and any eventual antidumping duty order would apply.

Finally, petitioners' February 22, 1988 request to expand the scope of the investigation was made too late in the investigatory process to obtain evidence, to receive comments from parties which may be affected by a revision of the scope of this investigation, and to allow the Department sufficient time to consider the issue.

Comment 33: Petitioners contend that a large number of Toyota's product comparisons are inappropriate because they involve substantial difference in merchandise adjustments. For such sales, the Department should select other home market sales for comparison for find some other basis for calculating foreign market value.

Petitioners further argue that, because Toyota provided difference in merchandise information only on those sales it deemed relevant and failed to provide sufficient cost data for the Department to calculate foreign market value on the basis of constructed value, the Department should use best information available to calculate dumping margins on Toyota's U.S. sales that have no suitable home market comparisons. As best information available, the Department should use the highest *ad valorem* margin found on any of Toyota's sales that have appropriate home market comparisons.

With respect to Komatsu, petitioners contend that, for those instances where Komatsu's product comparisons result in large difference in merchandise adjustments, the Department should either find new home market product comparisons or use constructed value.

DOC Position: It is the Department's practice to disregard home market sales as the basis for foreign market value when the difference in merchandise adjustments claimed are of such a magnitude as to lead us to question whether the home market sales reported can serve as an appropriate measure of foreign market value. There are two basic reasons for this practice: (1) In determining whether U.S. sales are being made at less than fair value, we do not want the difference in merchandise adjustment either to falsely create dumping margins or to mask them; and (2) large difference in merchandise adjustments may indicate that the home market sale is not similar to the U.S. sale, thus, warranting a new comparison.

Because of the wide array of products which we investigate, it would be inappropriate to set any one particular cut-off point, beyond which we would either select another home market comparison or use constructed value. In this investigation, we have followed a strict set of criteria in selecting our product comparisons. Respondents have followed these guidelines. Therefore, for each of our product comparisons, we used the most similar home market sale as our match to the U.S. sale.

During verification, we examined various home market sales which had large difference in merchandise claims. We found that the reason for many of the large difference in merchandise adjustments was that the product sold and special attachments which were not included in the product characteristics which we developed in defining our product comparisons. The costs of these attachments are included in the sales prices charged. These attachments are individually specified on the invoice, and the prices are uniformly set based on the list price. The difference in merchandise adjustment for these attachaments to the home market price does not distort the calculation of sales at less than fair value, because the cost of the attachment is reflected in the sales price of the forklift. By adjusting for this cost in the home market price, we have made the price comparable to a forklift sold without such an attachment.

Comment 34: Petitioners contend that the Department should reject Toyota's inland freight expenses on home market sales because: (1) Toyota claimed this deduction on sales of specific models to all dealers even though it only absorbs freight charges on sales to exclusive dealers; (2) Toyota used an inappropriate method of allocation which it did not correct until after verification; and (3) Toyota failed to segregate freight expenses on demonstration and defective vehicles, repair parts, and shipments to inventory holding areas from the freight expenses incurred on the subject merchandise.

Toyota contends that it properly allocated home market movement charges since records of such expenses are not maintained on a transaction-by-transaction basis and that the expenses do not include extraneous freight charges.

DOC Position: In this determination, we have used the actual, verified charges incurred by Toyota in delivering forklifts to its dealers.

Comment 35: Petitioners contend that Toyota's home market current model incentives were granted on models which were sold prior to the period of investigation on sales of forklifts that are not considered such or similar merchandise, and therefore, should be disallowed. In addition, Toyota's home market forklift replacement incentives were rebates not contingent on, or related to, sales of the subject merchandise, and did not affect the netback price of new forklifts.

Therefore, petitioners argue, these rebates should also be disallowed.

Toyota contends that the Department improperly disallowed its "current model" incentive as a home market indirect selling expense at the preliminary determination because the incentive related to sales outside the period of investigation. Toyota argues that this incentive was intended to recover market share and to assure the successful introduction of a new model which was properly allocated over a full year's sales. Toyota contends that the incentive served to clear dealer inventories of the superseded model in order to sell the maximum number of new models beginning in August 1986, the first month of the period of investigation, and, therefore, part of this expense is related to sales in the review period.

Toyota also argues that the forklift replacement incentive is directly related to and contingent upon the sale of a Toyota forklift by Toyota's dealers and should be deducted from the home market price.

DOC Position: We have disallowed the current model incentive which Toyota claimed as an indirect selling expense incurred on sales of the X300 series. The company claimed that this incentive was to promote sales of the old X200 series to make way for the introduction of the X300 series. We have disallowed this incentive because the purpose of the program was to encourage dealers to place orders of the old X200 series. As such, it was not related to sales of the new X300 series.

We have allowed the forklift replacement incentive because the provision of this rebate was contingent on a sale of a forklift under investigation and we were able to trace these rebates to individual sales made during the period of investigation.

Comment 36: Petitioners contend that the Department should reduce Toyota's home market credit expense for purposes of the final determination to take into account certain "prepayments" made by dealers.

Toyota contends that, contrary to petitioners' assertion, certain "prepayments" made by dealers to Toyota are not related to sales and, therefore, no adjustment to home market credit expense is required.

DOC Position: At verification, we found that no "prepayments" were provided to Toyota by its dealers on sales of forklifts. While certain "prepayments" are required, we verified that they are not used as a form of payment on the forklifts. Therefore, we have made no adjustment to Toyota's credit expense with respect to "prepayments".

Comment 37: Petitioners contend that Toyota's home market technical service expenses relate only to the repair of industrial vehicles, not to the sale of those vehicles. Therefore, the Department should reject this claim for purposes of the final determination because it does not constitute either a direct or an indirect selling expense.

DOC Position: The technical service expenses claimed by Toyota relate to periodic visits by field service representatives to their respective dealerships to train and test mechanics on the use and service of forklifts. These expenses are indirect selling expenses because they are tied to Toyota's sales operations. At verification, we found these expenses to be properly allocated to the subject merchandise.

Comment 38: Petitioners contend that, because Toyota has failed to clarify the expenses included in its home market direct and indirect advertising expense claims, the Department should reject all such claims for purposes of the final determination. However, if the Department allows these adjustments, Toyota's home market direct advertising expenses should be reduced by the amount of any disallowed advertising expenses and by the amount of any reimbursements received by Toyota from its dealers.

Petitioners also contend that Toyota's home market indirect selling expenses include indirect advertising expenses incurred outside the period of investigation on products and services unrelated to sales of the subject merchandise. Therefore, the Department should segregate Toyota's actual indirect advertising expenses incurred during the period of investigation and allow deductions only for those expenses that promote sales of internal-combustion forklifts.

Toyota contends that it properly used different bases for the allocation of domestic sales promotion expenses depending on whether the expenses were routine and aimed at current sales or were part of a promotional effort aimed directly at sales of a new model.

Toyota argues that all of its claimed home market advertising expenses are net of any reimbursements and, therefore, are not overstated as petitioners assert.

Toyota also contends that the Department improperly disallowed its institutional advertising as home market indirect selling expenses at the preliminary determination because the expenses were incurred outside the period of investigation. Toyota argues that it submitted the actual expenses incurred during the period of investigation, that it properly allocated all expenses over the period for which they were incurred, and that these expenses should be treated as indirect selling expenses for the final determination.

DOC Position: Toyota's advertising expenses have been segregated between direct advertising expenses (*i.e.*, advertising directed to Toyota's customer's customer) and indirect expenses. We have treated advertising directed to Toyota's customers, in this case to its dealers, as indirect selling expenses. These expenses have been verified. Toyota has also deducted from these claimed expenses the reimbursements from its dealers that cover the dealers' share of advertising expenses.

Toyota claimed advertising expenses incurred before the period of investigation which we have disallowed. These included advertising for the company's 500,000th Production-30th Anniversary and for the 1985 International Materials Handling Exhibition. A portion of the advertising expenses for the X300 In-House Introduction expenses were also disallowed because they were incurred before the period of investigation. Toyota claimed that the expenses for the 500,000th-30th Anniversary should be allowed because they are tied to the new X300 series of forklifts which were introduced during the period of investigation. During verification, we examined each of the claimed expenses for the 500,000th-30th Anniversary advertising campaign. We found no evidence that these expenses were for the X300 series. Our policy is to allow only advertising expenses which were incurred during the period of investigation. We do not believe that a deviation from that policy is warranted in this case.

Toyota also made a claim for institutional advertising which promotes Toyota's name in general without stressing any particular product. At the preliminary determination, we disallowed this claim because it appeared from the company's response that these expenses were incurred before the period of investigation. At verification, we reviewed these expenses and determined that they were incurred during the period of investigation. Therefore, we have allowed these expenses as an indirect selling expense.

Comment 39: Petitioners contend that expenses related to Toyota's F-80 management information system are G&A expenses, are not incurred to

promote sales of forklifts, nor do they directly affect the netback price of sales of new forklifts. Therefore, the Department should disallow this claim as an indirect home market selling expense.

Toyota contends that the Department improperly disallowed its F–80 Management Program expenses as a home market indirect selling expense at the preliminary determination because the program was not used for the promotion of sales on the merchandise under investigation. Toyota argues that because the objectives of this program are to increase the efficiency of sales and servicing, it directly promotes Toyota's sales to its dealers.

DOC Position: Because the basic purpose of the F–80 Management Program is to track the service history of forklifts sold, we do not consider the expenses related to this program to be selling expenses. Therefore, we have disallowed these expenses for purposes of this determination.

Comment 40: Petitioners contend that labor costs incurred by the Quality Assurance Department of Toyoda Automatic Loom Works, Ltd. (TAL) are manufacturing expenses, not indirect selling expenses and, therefore, should be included as part of the cost of production. Accordingly, the Department should not allow these expenses as an indirect selling expense.

Toyota contends that costs incurred through TAL's Quality Assurance Department in advising dealers' customers on the use and maintenance of forklifts are properly classified as home market indirect selling expenses.

DOC Position: These expenses are not related to the manufacturing of forklifts. They are incurred post-sale in providing technical assistance to Toyota's dealers. As such, we have treated them as indirect selling expenses.

Comment 41: Petitioners contend that an additional 45 days should be added to Toyota's U.S. inventory carrying cost to account for the inventory period after production and before importation into the United States.

Citing *Silver Reed America, Inc. et al. v. U.S.* (Slip Op. 88–5, 1988), *supra*, Toyota contends that the Department should not impute inventory carrying costs for the time prior to entry of the forklifts into the United States.

DOC Position: Toyota has included in its calculation of inventory carrying costs the length of time from the date of production to the date the forklift is shipped to the first unrelated customer in the United States. We made a minor adjustment to this calculation by including three additional days in Toyota's inventory carrying costs as explained under the "United States Price" section A of this notice. (*See* also DOC Position to Comment 21.)

Comment 42: Petitioners contend that, with the exception of its co-op advertising expense, deductions for interest expense, warranty claims, and inland insurance expense, Toyota claimed all of its U.S. operating expenses as indirect selling expenses. In making its final determination, the Department should review the types of expenses included by Toyota as part of its indirect selling expense claim. To the extent that direct selling expenses and value-added costs associated with coordinating and operating the U.S. processing centers are included in Toyota's indirect selling expense claim, they should be deducted from the total ESP cap.

DOC Position: All direct expenses have been properly reported by Toyota with the exception of certain advertising expenses incurred on U.S. sales. We have segregated those advertising expenses from the claimed indirect selling expenses and have treated them as direct expenses. Labor and overhead associated with the value-added operations at the company's processing centers are not included in the ESP cap.

Comment 43: Petitioners contend that Toyota's expenses related to the leasing and rental of forklifts should be disallowed as home market indirect selling expenses because such expenses do not relate to sales of the merchandise under investigation.

DOC Position: Toyota does not lease or rent forklifts in the home market and, thus, did not incur or claim such expenses. However, Toyota offers an incentive program to its dealers that lease or rent forklifts to end-users. Since these forklifts have been purchased by the dealer from Toyota, we consider this incentive program to be tied to sales made by Toyota during the period of investigation. As such, we allowed the expenses of the incentive program as indirect expenses.

Comment 44: Petitioners contend that Toyota's allocation of U.S. warranty expenses is inappropriate since actual warranty expense records for each model series are available. Therefore, the Department should reject Toyota's U.S. warranty expense claim and, instead, deduct the warranty expense claimed by Toyota on home market sales from U.S. price.

Toyota contends that its allocation of U.S. warranty expenses is necessary and proper.

DOC Position: We consider Toyota's allocation of warranty expenses to be reasonable.

Comment 45: Petitioners contend Toyota's value-added information is inaccurate and unreliable, the labor and overhead costs were based on estimate that were not supported by any records maintained by Toyota, and the methods used to allocate costs were inappropriate. If the Department does not reject Toyota's data, it should recalculate Toyota's U.S. value-added costs by including the general expenses incurred by Toyota in operating its processing centers, costs incurred in carrying an inventory of attachments and options, and the interest expenses associated with carrying such inventory.

DOC Position: Some of Toyota's allocation of labor and overhead to the value-added operations was based on estimates of the processing center's manager. The amount of labor time incurred in performing certain operations, such as attaching options or switching items, were estimates recorded in a report prepared by Toyota. We are using these estimates as best information available. We note that the amount of time reported by Toyota to switch masts, fork arms, and counterweights was stated in the verification report. Petitioners have provided no information indicating that the amount of time reported by Toyota was inaccurate. All actual expenses for labor and overhead were tied to Toyota's accounting records and financial reports. Toyota has also included all expenses associated with its processing centers and value-added operations in the labor and overhead expenses reported in the response.

Comment 46: Petitioners contend that rebates paid by Toyota to U.S. dealers for actual expenses incurred in the installation of optional equipment should be treated as U.S. value-added and deducted with an appropriate amount of profit in calculating net U.S. price.

Toyota contends that rebates paid to dealers for operations and services performed on forklifts after original invoicing are not U.S. value-added. Toyota argues that, since these payments reduce the net return to Toyota for particular sales and are treated by Toyota as rebates, they should be considered price reductions by the Department. Toyota argues that if the Department does treat these rebates as value-added, no additional profit should be included in the deduction since the profit on such services is already included in the rebates.

DOC Position: We have deducted the payments by Toyota to dealers that installed options on a forklift before

delivery to a National Account customer since this constitutes value-added. A National Account customer is an end-user that purchases forklifts directly from Toyota. However, we calculated no additional profit on these operations since payment for this service is between two unrelated parties, Toyota and its dealers, and any profit on these operations is included in that price and would be earned by the dealer.

Comment 47: Petitioners contend that Toyota has understated the credit period on a substantial number of U.S. sales by basing the reported date of sale on the date Toyota's dealer sells the forklift to its customer rather than the date Toyota ships the forklift to the dealer. Furthermore, the Department learned of the existence of Toyota Motor Credit Corporation (TMCC) only at verification and discovered the payment dates reported by Toyota were incorrect. Petitioners argue that the U.S. credit expense data were not verified and that, therefore, the Department should use as best information available the longest credit period found on any U.S. sale by another respondent.

Toyota contends that it has calculated the U.S. credit expense based on the actual interest-free period allowed its customers and that the expense is not understated as claimed by petitioners.

DOC Position: We verified Toyota's credit expenses and found them to be accurately reported except for minor adjustments which we incorporated in our calculations as detailed under the "United States Price" section A of this notice.

Comment 48: Citing *The Timken Company v. United States*, No. 82-6-00890, Slip Op. 87-118 (C.I.T., October 29, 1987), Toyota contends that the Department should adjust for all U.S. selling expenses by increasing the foreign market value instead of decreasing the U.S. price as was done at the preliminary determination.

DOC Position: There is no basis for the Department to change the methodology used in the preliminary determination because the methodology that we employ is consistent with section 772(e) of the Act which requires the Department to reduce ESP for "expenses generally incurred by and for the account of the exporter in selling identical or substantially identical merchandise * * *." Furthermore, the *Timken* opinion has been remanded to the Department and, therefore, is not final.

Comment 49: Petitioners contend that the Department should not use Nissan's difference in merchandise adjustment data because the information originally submitted was erroneous and could not be reconciled with Nissan's cost of production information. Petitioners further contend that, if the Department accepts Nissan's new information on difference in merchandise adjustments, the cost of options rather than the options price should be used. In addition, petitioners argue that it is unclear whether the cost of options added in Japan on U.S. forklifts has been accounted for in the difference in merchandise data. If the Department is unable to determine whether Nissan has provided this information, the Department should reject Nissan's data.

Nissan contends that although there were differences in the application of variances to the reported difference in merchandise and cost data, these differences were reconciled at verification and the data is accurate. In addition, Nissan states that the cost of options added in Japan has been included in the total amounts shown in the response for materials and direct labor.

DOC Position: The Department verified the difference in merchandise information. However, neither the component-specific variance nor the company-wide variance was used. The Department adjusted standard costs submitted by applying the variance of the plant where forklifts are produced.

As stated in the verification report, we requested that Nissan separately report the options price for purposes other than the difference in merchandise adjustment. We have used the cost of options in calculating the difference in merchandise adjustment. With respect to the cost of options added in Japan, we verified that this was included in Nissan's reported cost of production.

Comment 50: Nissan contends that the Department failed to take into account the cost of options on home market sales as difference in merchandise adjustments in the preliminary determination. The Department should adjust for the cost of these options in its final determination.

DOC Position: The Department was unable to adjust for the cost of these options in the preliminary determination. Nissan did not report the cost of options on home market sales on the computer tape submitted for use in the preliminary determination and admitted to this error after the preliminary disclosure conference was held. For purposes of this determination, we have based our difference in merchandise adjustment on the cost of manufacture data verified in Japan. This cost includes the cost of options on home market sales.

Comment 51: Petitioners contend that Nissan's actual costs should be calculated based on the variance of the plant that produces forklifts rather than on a company-wide variance.

Nissan contends that use of the cost variance for the Murayama plant as calculated in the cost verification report is inappropriate because (1) the monthly data used in the calculation are not as accurate as data for 6-month periods, and (2) calculation of the cost variance for the Murayama plant in isolation does not take into account expenses incurred elsewhere which benefit production at Murayama. Nissan argues that the cost variance for the company as a whole should be used instead.

DOC Position: The company-wide variance is an aggregation of the variances from all operations of the company, most of which are neither directly nor indirectly related to the manufacture of forklifts. To apply the company-wide variance to the specific standard costs for forklifts for the six months from August 1986 through January 1987 would distort actual costs. Therefore, the Department has applied the Murayama plant variance to the standard costs of the forklifts to obtain actual costs.

Comment 52: Petitioners contend that the Department was unable to verify Nissan's interest expense and, therefore, as best information available, it should attribute to Nissan's cost of production the largest interest expense that it finds for one of the other respondents.

Nissan contends that, if the Department bases its calculation of interest income and expenses on the consolidated financial statements, Nissan's short-term interest expense must be reduced by the portion attributable to account receivable and finished goods inventory based on the ratio of accounts receivable and finished goods inventory to net current assets after deduction of non-interest bearing current liabilities. In any event, the Department has sufficient information related to Nissan's consolidated and unconsolidated accounts to calculate a net home market interest expense for the company.

DOC Position: The Department obtained the major items included in Nissan's consolidated Ministry of Finance Report. From this, the Department calculated the adjusted amount of interest applicable to forklifts.

Comment 53: Petitioners contend that the Department should disallow several rebates claimed by Nissan on home market sales for the following reasons: (1) There were discrepancies between the information provided in the response and that found at verification; (2) some

of the rebates were improperly allocated; (3) some of the rebate programs were not in effect during the period of investigation or were not given on sales during the period of investigaton; (4) Nissan has grouped certain rebates together without a clear explanation of what was included; (5) certain rebates are directly related to sales which are not subject to this investigation; (6) certain rebates claimed by Nissan are G&A or goodwill expenses rather than selling expenses. In addition, petitioners maintain that Nissan itself claimed that sales on which a certain rebate was paid were not made in the ordinary course of trade. The Department, therefore, should not use the sales on which this rebate was paid as home market comparisons for U.S. sales.

Nissan contends that the Department's preliminary determination improperly disallowed certain deductions from the home market price for payments made to dealers. Nissan argues that these payments are indirect selling expenses because they are designed to assist dealers in their selling activities and to provide incentives to dealers to improve the efficiency of their operations. In addition, Nissan contends that petitioners' comments regarding home market rebates are based on incorrect information and misunderstandings, and that the Department has the necessary corrected data to account for these rebates in any manner it chooses.

DOC Position: Where minor errors were found during verification on certain rebates, we verified the corrected information and instructed Nissan to submit a revised response. Where we were unable to verify the corrected information, we have disallowed these rebates in our final determination. With respect to the rebates claimed by Nissan for assisting dealers in their selling activities, because they were provided to dealers to improve the efficiency of dealers' operations, we have allowed these payments as indirect selling expenses and allocated them over average dealer revenue for sales of new forklifts, sales of parts, and servicing.

Comment 54: Petitioners contend that Nissan did not provide a breakdown of its credit expense and interest revenue on its sales in the United States. Therefore, the Department should base Nissan's credit costs on Nissan's gross credit expense.

Nissan contends that the calculation of credit in the U.S. and home markets must take into account the amount of interest earned on each sale. The adjustment should be equal to the total amount of credit expense up to the time of payment, less the interest received from customers. The Department has verified that NIEC charges and collects interest.

DOC Position: We have taken into account the interest revenue from the customer, but not in the way Nissan suggests. Nissan's customers know at the time of sale that, if payment is made after a certain date, interest will be charged. As such, we consider the interest revenue to be an increase in price agreed to by the customer at the time of sale. We have added the credit revenue earned by Nissan on U.S. and home market sales to the U.S. and home market price, respectively, and have recalculated the credit expense based on that amount between shipment and pyament. Because Nissan misreported the terms of payment on its U.S. sales to dealers, we used the longest payment term as the basis for the interest revenue and credit expense calculations for all sales to dealers. We recalculated credit expense on home market installment sales based on the declining balance of principal and interest.

Comment 55: Petitioners contend that, because Nissan failed to provide home market warranty expenses separately for the F01/F02 and H01/H02 models, the Department should disallow the warranty expense claimed on these models.

Nissan contends that the home market warranty expenses for F01/F02 and H01/H02 series forklifts combined are a more accurate reflection of warranty expenses on the sales under investigation than the brief history of warranty claims for the latter series alone.

DOC Position: Given that we do not consider the F01/F02 series to be obsolete, we consider it appropriate to include all warranty expenses incurred during the period of investigation on both series.

Comment 56: Petitioners contend that the Department should disallow Nissan's claim for a deduction from home market price for expenses incurred for incidential warranty-type services (*e.g.*, loaner forklifts during repairs, services outside the warranty period, and reimbursement to dealers for installation of options) because Nissan did not report this information on a sale-by-sale basis. In addition, Nissan's claims should be rejected because Nissan has not shown that these expenses were incurred on sales made during the period of investigation, or that they were made in the normal course of business. In support of their argument, petitioners cite *Dry Cleaning Machinery from West Germany; Final Results of Antidumping Duty Administrative Review* (52 FR 11299, April 8, 1987) in which the Department disallowed warranty expenses paid outside the warranty period.

Nissan contends that home market expenses for loaner forklifts, incidental warranty-type expenses, and reimbursements to dealers for options installation are very small and appropriately allocated as expenses incurred during the period of investigation even if they are related to sales made prior to the period.

DOC Position: It is unlikely that the warranty expenses claimed during the period of investigation would be applicable to sales made during that period due to the terms of the warranty. We allowed Nissan's loaner forklifts and options installation expenses as direct selling expenses. However, both Nissan and Toyota claimed expenses incurred on servicing and repairing forklifts outside of the warranty period. We disallowed these expenses as warranty claims but have accepted them as indirect selling expenses. This decision is consistent with the above-cited case since we are not treating these claims as a circumstance of sale adjustment, but rather as an indirect selling expense.

Comment 57: Petitioners contend that expenses for a May 1987 exhibition should not be included in Nissan's home market advertising expenses because they were incurred outside the period of investigation. If these expenses are to be included at all, they must be reallocated because Nissan attributed the entire 1986 allocated portion to forklifts, even though the exhibition was for all products within the Industrial Machinery Division.

In addition, petitioners contend that Nissan's response pertaining to home market advertising expenses is incomplete and that the expenses should have been provided on a model-by-model basis for the period of investigation to ensure that the expenses reported relate directly to the sales under investigation. Therefore, the Department should disallow these expenses or, if they are allowed, they should be treated as indirect selling expenses.

Nissan contends that the points raised by petitioners are primarily issues which were examined in detail at verification and, since petitioners had ample opportunity to raise their concerns prior to verification, their concerns are untimely.

DOC Position: Because Nissan did not report advertising expenses on a model-by-model basis, we allocated total

advertising expenses over total home market sales. We disallowed Nissan's advertising expenses related to the May 1987 exhibition because the exhibition took place three months after the end of the period of investigation and, as such, bears no relationship to the forklifts sold during the period of investigation.

Comment 58: Petitioners contend that Nissan's home market remodeling expenses, which were reported both separately as a direct selling expense and included in indirect selling expenses, are fabrication costs which should be included as part of Nissan's cost of production. In addition, petitioners argue that, if the changes to this data which were submitted after verification benefit Nissan, the pre-verification data should be used.

Nissan contends that while a post-verification submission revised a number of figures on the home market remodeling expenses, the overall effect is miniscule and the revisions were verified.

DOC Position: We have included Nissan's verified remodeling expenses in the calculation of the cost of manufacture rather than allowing them as a direct selling expense, and have not included them in indirect selling expenses.

Comment 59: Petitioners contend that the Department should disallow Nissan's claim for "other" expenses as part of the home market indirect selling expenses because they could not be verified.

DOC Position: For the calculation of cost of production, we used the total amount of home market indirect selling expenses reported. For the calculation of foreign market value, we allowed only those items which were verified. For example, Nissan stated at verification that the documents supporting other expenses had been lost. These expenses comprised a large percentage of the total claim.

Comment 60: Nissan contends that the Department should not allocate a portion of the general expenses of the Japanese parent (*i.e.*, Nissan Motor Company (NMC)) to the U.S. sales of the related U.S. importer, NIEC, because (1) the operations performed in the U.S. are not subject to any material amount of supervision by NMC, and (2) the supervision that does occur is performed by the Industrial Machinery Division and is already being allocated to ESP sales in the form of indirect selling expense incurred in Japan.

DOC Position: The Department did not attribute G&A expenses of the operations in Japan to the value-added operations in the United States for Nissan. However, since Nissan did not report an amount for G&A for the U.S. operations, nor were these expenses reflected on the financial statements of the U.S. subsidiary, the Department used, as best information available, the G&A expenses reported in Nissan's response for the Japanese operations.

Comment 61: Petitioners contend that, because Nissan was able to calculate a sale-by-sale inventory carrying cost in its cost of production response, that cost should be used for the home market inventory carrying cost in the sales response. In addition, because Nissan did not report specific information on U.S. inventory carrying costs on a sale-by-sale basis, the information on the cost of production for U.S. forklifts should be used in conjunction with NIEC's short-term borrowing rate and the average number of days in inventory to recalculate a sale-specific inventory carrying cost. Petitioners further contend that, because Nissan did not provide information on the amount of time between production and shipment, the Department should add an additional 30 days to Nissan's inventory period.

DOC Position: We have recalculated the inventory carrying cost on U.S. and home market sales on a sale-by-sale basis, using the cost of production and Nissan's home market and U.S. short-term borrowing rates. For the home market expense, we have used as best information available an average period between production and shipment to home market dealers, based on documentation gathered at verification. For the U.S. expense, we have added 15 days for the period between production and export to the United States to the figures submitted by Nissan, based on petitioners' U.S. experience.

Comment 62: Petitioners contend that Nissan's methodology to determine whether it is selling below cost is inappropriate. Therefore, the Department should take Nissan's base price plus options, less all discounts and rebates and less freight costs and compare that to the total cost of manufacture, G&A expenses, remodeling costs, credit costs, plus all selling expenses reported in the sales response to determine sales below cost of production.

Nissan contends that it did not attempt to compare gross price with the cost of production, and that it is more appropriate to deduct rebates and discounts from gross price than to include them in the cost of production. Therefore, Nissan's cost of production was correctly calculated.

DOC Position: We have calculated the cost of production based on our standard methodology, as described in the "Foreign Market Value" section B of this notice.

Comment 63: Petitioners contend that the total amount of service payments reported in Nissan's response does not match the total amount reported on the sales listing. Therefore, the Department should reallocate the higher amount over sales of the subject merchandise based on the cost of goods sold.

Nissan contends that the amount of total U.S. service payments verified by the Department differs from an earlier response because the earlier response included payments on sales outside the period of investigation and on products outside the scope of the investigation. Nissan argues that the verified amount, and not the earlier amount, is the correct information to be used in the final determination.

DOC Position: In making the deduction for service payments, we used the verified amounts, as reported in Nissan's revised submission.

Comment 64: Petitioners contend that, because Nissan did not provide verifiable information pertaining to its U.S. indirect selling expenses incurred in the United States, the Department should use the percentage derived from NIEC's financial statements to determine those expenses.

Nissan contends that the verification report incorrectly states that Nissan was unable to provide an adequate explanation of the allocation methodologies for NIEC's indirect selling expenses and labor and overhead expenses of the forklift shop. They state that they had no indication that the verifiers did not understand the allocation methodologies used.

DOC Position: At verification, Nissan could not provide a clear explanation of the allocation methodology used in the response. We requested that Nissan revise its allocation of indirect selling expenses which we verified and have used in this determination.

Comment 65: Petitioners contend that Nissan incorrectly calcualted its U.S. warranty expense. Therefore, the Department should recalculate this expense using the ratio of the sales value of the products under investigation to the sales value of all forklifts during the period of investigation and applying this ratio to the highest total warranty expense amount reported by Nissan. The result should then be allocated to the products under investigation based on the cost of goods sold for each product.

Nissan contends that the exact amount of U.S. warranty expense related to each series of forklift has

been verified and no allocation of these expenses is necessary.

DOC Position: We made a deduction from U.S. price for the verified warranty expenses.

Comment 66: Petitioners contend that Nissan's home market indirect selling expenses and credit expenses reported in the sales response do not correlate with the information provided in the cost of production response. Therefore, for purposes of the final determination, the Department should rely on the information least favorable to Nissan.

Nissan contends that the differences in the credit expenses reported in the home market sales response and the cost of production response are attributable to the fact that the latter is based on the Department's methodology used at the preliminary determination. Nissan also argues that the different indirect selling expenses reported are attributable to the fact that a portion of them was broken out separately on the latest computer tape.

DOC Position: As stated above, we have recalculated home market indirect selling expenses and credit expenses in our final determination based on information obtained at verification.

Comment 67: Petitioners contend that the net home market prices reported by Nissan are incorrect and that the "negative options" should be added to the price to determine the actual selling price for the products under investigation.

Nissan contends that home market "negative options", which reflect post-sale adjustments to prices of earlier sales, have a minimal impact on foreign market value since similar adjustments were made with respect to sales during the period of investigation which were recorded as "negative options" after the period.

DOC Position: We have added the amount of these adjustments back into the reported sales prices since these account adjustments were not related to the sales under investigation.

Comment 68: Petitioners contend that Nissan's "Tokuso" sales in the home market are made in the ordinary course of trade and should be used as comparisons with U.S. sales.

Nissan contends that so-called Tokuso forklifts sold in the home market have non-standard features and require custom designing and, therefore, are not as similar to the products sold in the United States as base machines sold with regular options. They state that the Department has all the necessary information if it were to determine that particular Tokuso sales are the most comparable to U.S. sales.

DOC Position: We have determined that Nissan's Tokuso sales were made in the ordinary course of trade and that any physical differences in the Tokuso products could be accounted for by a difference in merchandise adjustment. Therefore, we have included these sales in our analysis.

Comment 69: Petitioners contend that Nissan's sales of "obsolete" models are not, in fact, obsolete as defined in the Department's policy paper on which Nissan bases its claim. The Department should include these sales in the calculation of ESP, particularly since Nissan has not argued that they be removed from the calculation of foreign market value.

Nissan contends that the Department should either not consider sales of obsolete models in its calculation of ESP or should make a circumstance of sale adjustment to foreign market value to take obsolescence into account.

DOC Position: We do not consider the models referred to by Nissan to be obsolete. The physical characteristics and functions of these models do not differ significantly from the models now being produced and sold under a new model number. As such, we have included these sales in the calculation of ESP and have not made an adjustment to foreign market value for obsolescence.

Comment 70: Petitioners contend that, since Nissan underreported the amount of time required to perform an LP conversion (*i.e.*, adapting a gasoline engine to use liquid propane fuel), the Department should increase the time for each value-added operation performed by NIEC.

DOC Position: The Department reviewed each function performed by NIEC and the time associated with each function. At verification, we found that the LP conversion time had been understated. Accordingly, we adjusted the labor cost on LP conversions based on verified information. We found that the time associated with other functions was accurately reported. Therefore, no additional time has been added to other value-added operations.

Comment 71: Petitioners contend that the information provided by Nissan on foreign inland insurance, foreign inland freight, foreign shipping charges, and the foreign invoice preparation fee on U.S. sales is inadequate because it is based on expenses in the six-month fiscal period April through September 1986, rather than expenses incurred during the period of investigation. Therefore, the Department should use the largest freight costs per model in its final determination.

Nissan argues that the freight expenses for April through Septemb[illegible] 1986 correspond most closely to the sales made by NIEC during the period of investigation.

DOC Position: At verification, we saw that ESP transactions during the period of investigation generally incurred charges in the home market between April and September. We reviewed these expenses at verification and have used them in this determination.

Comment 72: Petitioners contend that Nissan's prep fees should be deducted from U.S. price.

Nissan contends that its inadvertent omission of the U.S. prep fee in its original response should not be construed agaisnt it since the error was unfavorable to Nissan.

DOC Position: Given that Nissan reported prices net this prep fee, it has already been accounted for in our analysis.

Comment 73: Nissan contends that the Department's product comparison procedures followed in the preliminary determination produced "highly anomolous results", specifically, the comparison of a large number of U.S. models with a single sale in Japan. Nissan argues that we should look only to "major" product characteristics in selecting the home market forklifts to be used for comparison and that minor characteristics such as hose reels and fork arms should be treated as options.

Komatsu also argues that the Department's product comparison criteria give undue weight to mast type (upright style) over other characteristics which Komatsu considers to be more indicative of the basic forklift such as engine type, engine size, and transmission type.

DOC Position: Prior to the issuance of our original questionnaire, we consulted with petitioners to develop a hierarchy of product characteristics so as to compare products for each respondent on a consistent basis. While individual manufacturers may place more or less emphasis on a particular characteristic, all respondents agreed that the characteristics we selected were, for the most part, the most important ones. All physical characteristics other than the primary characteristics also have been accounted for in the difference in merchandise adjustment.

Comment 74: Petitioners contend that Nissan failed to lower its U.S. prices for certain price adjustments discovered at verification. Therefore, the Department should either reject Nissan's response or, at a minimum, make these adjustments to Nissan's U.S. prices.

DOC Position: We agree with petitioners and have made the appropriate adjustments to the U.S. prices reported.

Comment 75: Petitioners contend that, since Komatsu's cost of production information does not reconcile with the cost information in its product concordance, the Department should only make difference in merchandise adjustments that increase foreign market value.

DOC Position: We have used verified cost data to calculate home market costs of production and differences in merchandise adjustments.

Comment 76: Petitioners contend that Komatsu used an inappropriate method of calculating interest expense in its cost of production and constructed value information. Therefore, the Department should recalculate Komatsu's interest adjustment.

Komatsu contends that, if the Department intends to deduct interest income from investments not related to operations from the reported net interest income, then the Department should deduct interest costs incurred with respect to such investments from the cost of production.

DOC Position: Interest, which included income and expenses from installment sales, was recalculated to reflect only the interest expense incurred in producing the forklifts, offset for a proportional amount related to credit and inventory.

Comment 77: Petitioners contend that Komatsu failed to report all of its Parts Department's G&A expenses and, therefore, understated the cost of production it reported for the home market forklifts under investigation.

Komatsu contends that its Parts Department's G&A expenses should not be included in the cost of production because that department handles spare repair parts only and does not supply attachments to dealers.

DOC Position: We have included the Parts Department's expenses in G&A expenses as they were recorded in KFC's financial records. We consider the costs incurred to maintain an inventory of parts for future repairs to be a normal G&A expense of a forklift manufacturer and, therefore, we have allocated them as a G&A expense to the cost of manufacture of Komatsu's forklifts.

Comment 78: Petitioners contend that the actual selling prices reported by Komatsu on certain home market sales do not reconcile with the actual selling prices reported in its cost of production response. Therefore, the Department should adjust upward the actual selling prices in the sales database to correspond with the selling prices reported in the cost of production response.

DOC Position: The Department has used the verified actual selling prices reported in the sales response for purposes of this determination.

Comment 79: Petitioners contend that the Department should not allow home market freight charges incurred in moving goods to warehouses for storage prior to sale. Petitioners also argue that freight expenses incurred by Komatsu in transporting forklifts from the factory to related dealers constitute pre-sale related party payments and, therefore, should not be deducted from foreign market value. In support of these contentions, petitioners cite *Color Television Receivers; Except for Video Monitors, from Taiwan; Final Results of Antidumping Duty Administrative Review (Receivers from Taiwan)* (51 FR 46895, December 29, 1986) and *Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Duty Administrative Review (Receivers from Japan)* (53 FR 4050, February 11, 1988).

Komatsu contends that failure to adjust for factory-to-dealer inland freight expenses in the home market would prevent a fair "ex-factory price" comparison as required by the law. Furthermore, these are no more "pre-sale" expenses than are Japanese inland freight, ocean freight, and U.S. inland freight on ESP sales.

DOC Position: In *Receivers from Taiwan*, we treated a respondent's home market freight claim as a general expense because the transportation charge was incurred in shipping the goods to a facility used for general storage as well as distribution. In *Receivers from Japan*, we denied a respondent's claim for certain home market inland freight expenses because they were incurred prior to the sale of the merchandise. In the case of Komatsu, home market dealers do not store inventory prior to sale. Shipments are made from the factory subsequent to the consummation of the sale between the dealer and the end-user customer. Therefore, we have allowed Komatsu's claim for purposes of this determination.

Comment 80: Petitioners contend that Komatsu's home market inland freight expenses incurred in transporting forklifts from the dealer to the customer appear unreasonably high in relationship to the ocean freight expenses claimed on its ESP sales and, therefore, should be disallowed.

DOC Position: We verified that the inland freight charges reported in the response are the actual charges incurred by the dealer. As such, they are appropriate deductions from the home market price.

Comment 81: Petitioners contend that an adjustment to home market price for charges incurred by respondent manufacturers for services performed by related dealers must be based solely on the actual cost of providing the service. The adjustment should not include any profit earned by related dealers in the adjustment claimed. If profit for these expenses is not provided on an individual basis, the Department should use as best information available an average profit percentage earned by a related company to calculate a profit proxy.

DOC Position: Komatsu is the only respondent with related-dealer transactions which we are not treating as arm's-length for purposes of this determination. In calculating charges and adjustments in the home market, we did not take into account transfer payments between Komatsu and its related dealers. All charges and adjusiments were based on actual expenses incurred by either Komatsu or its dealers.

Comment 82: Petitioners contend that the Department should reject Komatsu's pre-verification and post-verification home market credit expense claims because neither has been verified adequately. Even if the new data were verified, the Department should not use it because it would overstate the credit expense. Petitioners further argue that the Department should not deduct credit expenses for Komatsu's sales for which shipment or payment dates were not reported.

Komatsu argues that, contrary to petitioners' assertion, home market credit expenses have been verified.

DOC Position: During verification, we found that there were actually multiple payment dates for many home market sales. The payment date reported was the date of the first payment received and was not reflective of the actual number of days outstanding for the entire balance of payment. At verification, we requested that Komatsu recalculate credit expense based on the actual number of days in which a portion of the balance was outstanding. These recalculations were verified for three of the company's dealers (two of which were Komatsu's largest dealers). The recalculation of credit for the other dealers is comparable to the credit recalculations of the three verified dealers. As such, we are using the expenses reported for each dealer as best information available.

Comment 83: Petitioners contend that the Department should disallow certain

sales commissions claimed by Komatsu on home market sales because Komatsu did not provide the Department with sufficient information on the commissions and because Komatsu was unable to substantiate at verification the amounts claimed.

Komatsu contends that adjustments should be made to home market sales for certain payments to third parties and employees which are contingent upon consummation of a sale because they are specific to a particular sale and represent actual out-of-pocket expenditures. Komatsu argues that certain of these payments to salesmen are properly allowable because the payments benefit the individual recipient and, therefore, are not mere internal transfers of corporate funds.

DOC Position: We verified that Komatsu paid bonuses to individuals and to its dealer's employees who introduced new customers. Since the payments are actual expenditures made by the company tied to specific sales and are not intracompany transfers, we are treating the expenditures as home market sales commissions.

Comment 84: Petitioners contend that, because Komatsu was unable to demonstrate that certain sales promotional items were actually provided to customers and because Komatsu made unsolicited changes in its data in its post-verification submission regarding these expenses, the Department should disallow this claim as either a direct or indirect selling expense on home market sales.

DOC Position: We verified the expenses claimed under this form of sales promotion and determined that these items are used to promote the sales of forklifts. We are treating these expenses as indirect selling expenses since Komatsu and its dealers are related and, thus, these expenses are directed as Komatsu's customers.

Comment 85: Petitioners contend that Komatsu's claim for certain home market advertising expenses directed at end-user customers should be rejected as an indirect selling expense because Komatsu used an inappropriate method of allocation to calculate these expenses and because Komatsu failed to show that these expenses were actually incurred during the period of investigation.

Komatsu contends that certain model-specific home market advertising expenses are designed to induce end-user customers to purchase forklifts for and are reasonably allocated expenses for which an adjustment should be made.

DOC Position: We verified that Komatsu's advertising claims were incurred during the period of investigation and that the company had properly allocated them to sales of forklifts. We are treating these expenses as indirect selling expenses since Komatsu and its dealers are related and, thus, these expenses are directed at Komatsu's customers.

Comment 86: Petitioners contend that Komatsu has not attempted to show that differing levels of trade affect price comparability. Rather, it has tried to prove that this adjustment is warranted based on quantification of the cost differentials of selling at differing levels of trade. Komatsu has simply aggregated its dealers' indirect selling expenses but has provided no other substantiation that these costs were incurred because the sales were made at a different level of trade.

Petitioners also argue that Komatsu has claimed a deduction from home market price for indirect selling expenses incurred by itself and related dealers. Therefore, to claim a level of trade adjustment equal to the indirect selling expenses incurred by related dealers would result in a double adjustment—one as part of the ESP offset provision and the other as part of the level of trade adjustment. For these reasons, the Department should reject Komatsu's level of trade adjustment.

Komatsu contends that the Department, in its preliminary determination, improperly compared home market retail transactions with U.S. wholesale transactions without adjusting for the difference in levels of trade being compared as required by 19 CFR 353.19. Komatsu argues that it has established that it experiences actual differences in selling costs associated with sales at the different levels of trade in the two markets, that the difference in costs is equal to the additional dealer overhead incurred in Japan but not in the United States, and that this difference has been fully quantified, documented, and verified. Since the dealers in each market perform exactly the same functions, the costs incurred by Komatsu's home market dealers in providing those services is an accurate measure of the additional cost associated with selling at the retail level in Japan as compared with selling at the wholesale level in the United States.

Komatsu further argues that the Department's circumstances of sale adjustments recognize that differences in costs incurred in selling in one market versus another market have a direct effect on price, and that the difference in merchandise adjustments recognize that a cost difference reflected in a physical difference likewise affects the price of products compared. Accordingly, the evidence of costs incurred by dealers in one market but not in the other market establishes the actual differences in selling costs due to selling at different levels of trade and fulfills the requirements for this adjustment as stated in *Fundicao Tupy v. United States*, Slip Op. 88-3 (C.I.T., January 12, 1988). Furthermore, to avoid a double adjustment of the indirect selling expenses, the level of trade adjustment should be made before adjusting for the ESP offset.

Komatsu also contends that, when presented with prima facie evidence that prices at different levels of trade are being compared, the Department has an affirmative duty to seek all data necessary to make the level of trade adjustment and that it has no discretion to refuse to do so. If the Department denies a level of trade adjustment, *Silver Reed America, Inc. et al. v. U.S.* (Slip Op. 88-5, 1988) requires that a detailed explanation must be given disclosing why a party has failed in its proof of the matter. Finally, Komatsu argues that if a level of trade adjustment is not granted in this case, the Department will have effectively read 19 CFR 353.19 out of the regulations which is impermissible without following the rulemaking procedures of the Administrative Procedure Act.

DOC Position: Section 353.19 of our regulations allows for an adjustment when comparing the prices of U.S. and home market sales made at different levels of trade. This section, like other provisions dealing with differences in circumstances of sale (either based upon differences in wholesale quantities or "other" circumstances of sale), is governed by 19 CFR 353.13 which provides that: "The person who alleges entitlement to any adjustment pursuant to §§ 353.14 through 353.19 must establish entitlement thereto to the satisfaction of the Secretary." In order to be entitled to an adjustment for differences in the levels of trade, the party claiming the adjustment must establish to the Department's satisfaction that the differences in the levels of trade affect price comparability. The Department has interpreted the regulation as requiring affirmative evidence that the differences in the prices are the result of selling at one level of trade as compared to the other in the home market. *See Final Determination of Sales at Less Than Fair Value: Industrial Nitrocellulose from France* (48 FR 21615, May 9, 1983) and *International Trade Administration Countertop Microwave Ovens from Japan; Final Determination of Sales at Less Than Fair Value, and Exclusions*

from Final Determination of Sales at Less Than Fair Value (45 FR 80157, December 3, 1980).

Komatsu has claimed a level of trade adjustment on the basis that virtually all of its U.S. sales are made to unrelated dealers, while in the home market Komatsu was required to report sales to its dealers' customers (*i.e.*, end-users) since nearly all of its home market dealers are related.

The Department requires that a company establish its claim for a level of trade adjustment by showing that within the home market, where all other facts are equal, there is consistent pricing between the different levels of trade. This establishes that the difference in price between the U.S. sale and the home market sale is attributable to a difference in the levels of trade rather than differences resulting from disparate market conditions in two distinct markets. An adjustment cannot be made for differences in level of trade just because costs are different when comparing sales to the United States and sales in the home market.

The Department cannot make the assumption that, because there are differences in costs between home market and U.S. sales, it should make a level of trade adjustment, because it "cannot [be] assume[d] that the market conditions and distribution network in the United States would be the same as in [the home market]." *Final Determination of Sales at Less Than Fair Value; Certain Carton Closing Staples and Staple Machines from Sweden* (48 FR 49323, October 25, 1983). *See also Low-Fuming Brazing Copper Rod and Wire from New Zealand; Preliminary Determination of Sales at Less Than Fair Value* (50 FR 31405, August 2, 1985).

Komatsu made its claim for a level of trade adjustment based on an examination of the selling expenses incurred on sales to dealers in the United States and sales to end-users in the home market. In order to qualify for a level of trade adjustment, as stated above, Komatsu would have to demonstrate that it incurs different selling expenses in selling to different levels of trade in the home market (*i.e.*, to both unrelated dealers and end-users). However, the number of sales to Komatsu's unrelated dealers in the home market were so insignificant that the Department could not make an appropriate comparison of different selling prices at the different levels.

Since there are many factors which affect the selling expenses in the two different markets, regardless of the level of trade, it is impossible for us to quantify the differences incurred in selling to different levels of trade by examining the expenses incurred in selling to two different markets. Our circumstance of sale adjustments do not measure the differences in selling expenses incurred in selling to different levels of trade, but measure the differences in selling expenses incurred in selling to two different markets. Komatsu's contention that evidence of differences in selling expenses to dealers in the United States and end-users in Japan warrants making an adjustment for level of trade is without merit and is illogical. If one were to accept Komatsu's argument, there should be no differences in selling expenses in selling to dealers in the United States and in selling to dealers in Japan.

Contrary to Komatsu's assertion, the Department has allowed a level of trade adjustment where the respondent has adequately supported the claim. *See Final Determination of Sales at Less Than Fair Value; Tapered Rolling Bearings and Parts Thereof, Finished and Unfinished, from Japan* (52 FR 30700, August 17, 1987). However, in this case, Komatsu has not demonstrated its entitlement to the level of trade adjustment. At no point in this investigation did we refuse to consider relevant information from Komatsu necessary to make a level of trade adjustment.

Comment 87: Petitioners contend that the sale of a new forklift by a Komatsu dealer in return for money and a trade-in should not be viewed as two distinct transactions. Rather, because the amount of money tendered by the purchaser and accepted by the dealer reflects the existence of the trade-in, the Department should make an adjustment for trade-ins in the final determination. According to petitioners, the trade-in adjustment should be added to foreign market value to reflect the actual amount the dealer obtained on the sale. This adjustment should be calculated by taking the resale price less any trade-in allowance and reconditioning expense. Petitioners further argue that, for those sales in which Komatsu did not resell a forklift accepted as a trade-in, the Department should disallow any reconditioning expenses claimed.

Petitioners also contend that Komatsu's claimed adjustment for the loss it incurs on scrapped trade-in forklifts should be rejected because Komatsu allocated this expense over all dealer sales although the claim cannot be tied directly to those sales, and because the residual value of scrap is an economic gain that should be added to, not subtracted from, foreign market value. Petitioners further argue that double-counting would result if the trade-in allowance is subtracted from foreign market value and the Department also grants the claim for trade-in scrap.

Komatsu argues that petitioners have presented no persuasive rationale or evidence to support its proposed methodology of valuing trade-ins and that the proposed methodology ignores a variety of other costs and imputed expenses absorbed by the dealer. Therefore, the Department has insufficient data to make such an adjustment should it decide to do so.

DOC Position: First, we are confused by petitioners' assertion that the sale of a new forklift and the receipt of a trade-in on that sale should not be viewed as two distinct transactions, while under Comment 35 petitioners argue that the acceptance of a trade-in is not related to the sale of a new forklift. Nevertheless, we agree that the acceptance of a trade-in is part of the same transaction as the sale of the forklift. That is the reason we allowed Toyota's truck replacement incentive rebate. Therefore, in calculating credit expenses, we deducted the trade-in allowance from the sales price to reflect the actual amount of credit assumed by respondents on the sale. The trade-in allowance is already included in the sales price of the new forklift, so no further adjustment to the home market price is warranted.

We disagree with both petitioners and Komatsu that a further adjustment to the home market price is needed to reflect the resale value of the trade-in and the reconditioning expense of the trade-in. Resale value and reconditioning expenses are related to the sale of the *trade-in.* This is a transaction distinct from Komatsu's sale of a *new* forklift.

Comment 88: Petitioners contend that the Department should disallow Komatsu's claim for home market indirect selling expenses because Komatsu included G&A expenses and used inappropriate methodologies to allocate these expenses.

DOC Position: We have not included G&A expenses in the indirect selling expenses for Komatsu.

Comment 89: Petitioners contend that the Department should use Komatsu's actual date of production for each sale to calculate home market inventory carrying costs.

DOC Position: We agree and have done so in this determination.

Comment 90: Petitioners contend that the Department should base Komatsu's U.S. inventory carrying cost calculation on the length of time from shipment in

Japan to shipment to the unrelated U.S. customer.

Citing *Silver Reed America, Inc. et al. v. U.S.* (Slip Op. 88-5, 1988), *supra*, and section 772(e)(2) of the Act, Komatsu contends that the cost of carrying inventory prior to entry into the United States is not an expense incurred in the United States and should not be deducted from ESP.

DOC Position: We have calculated inventory carrying cost from the date of production to the date of shipment to the first unrelated buyer. See also DOC Position to Comment 21 above.

Comment 91: Petitioners contend that Komatsu allocated its U.S. indirect selling expenses over total sales rather than ESP sales, thus understating the amount of the adjustment. Petitioners further argue that the Department should recalculate the allocation of these expenses over ESP sales based on the cost of goods sold for purposes of the final determination.

DOC Position: We consider the allocation to be reasonable given that both purchase price and ESP sales are handled by Komatsu's U.S. subsidiary. Furthermore, our normal allocation methodology is based on sales value rather than cost of goods sold.

Comment 92: Petitioners contend that, for Komatsu, the sales price of attachments and accessories added in the United States, as well as the portion of inland freight expense attributable to such attachments and accessories, should be deducted from the U.S. price for both ESP and purchase price transactions.

DOC Position: We agree with petitioners with respect to the sales prices of attachments and accessories on both ESP and purchase price sales. (*See* also DOC Position to Comment 27 above.)

With respect to inland freight, because the unrelated U.S. dealer is responsible for these charges, we did not deduct the expenses incurred for shipment of attachments and accessories.

Comment 93: Petitioners contend that, when lease transactions are sales-type leases, as in the case of Komatsu, they constitute sales subject to this investigation which should be used in the calculation of foreign market value. Where transactions are bona fide lease transactions, as in the case of Toyota, they should not be used as a basis for comparison to U.S. sales or for calculating foreign market value. In addition, where complete information on lease transactions was not provided, as in the case of Komatsu, the Department should use best information available in the final determination.

Toyota contends that, contrary to petitioners' assertion, home market transactions with certain payment terms are sales to dealers who buy forklifts in order to lease or rent to end-users. These transactions by Toyota are not leases and, therefore, are properly included as sales in the home market.

Komatsu contends that its home market leases do not constitute sales since there are no terms contemplating transfer of ownership, no bargain purchase options, and none of the transactions has a term of even 75 percent of the estimated useful life of a forklift using the estimated actual useful life of nine years. Komatsu also argues that there is no need to look to the relatively small number of home market leases since the number of home market sales reported provides an ample basis for determining fair market value.

DOC Position: Shortly before the preliminary determination, we discovered that certain respondents had lease transactions in the U.S. and home markets. Additional information on these transactions was requested and provided. While we have verified this information, we have not used lease transactions in making fair value comparisons.

This is the first instance in which the Department has had the opportunity to examine lease transactions to determine whether they should be treated as sales, pursuant to section 731 of the Act, as amended. Although interested parties have suggested several different methods to use in determining whether a lease transaction should be considered equivalent to a sale, we do not believe that the relevant factors have been sufficiently addressed in this case to warrant the selection of a standard that would apply in future cases. Moreover, the number of lease transactions that might be considered equivalent to sales is very small. Even without the lease transactions, we have been able to make fair value comparisons for every U.S. sale.

Comment 94: Petitioners contend that the Department should use the interest rate associated with the Komatsu's short-term U.S. borrowings during the period of investigation to calculate credit expenses on ESP sales. Petitioners further maintain that, even if there were no U.S. borrowing during the period of investigation, the Department has the authority to use the U.S. prime rate rather than an overseas rate. In support of this position, petitioners cite the *Final Determination of Sales at Less Than Fair Value: 64K Dynamics Random Access Memory Components from Japan* (51 FR 15943, April 29, 1986). Petitioners further argue that Komatsu's U.S. credit expenses should not be offset by overdue payment charges because Komatsu was unable to prove that such charges were paid.

Komatsu contends that, because Komatsu Forklift Inc. (KFI) ordinarily receives payment from its dealers well before it (KFI) is obligated to pay Komatsu Forklift Co., Ltd. (KFC), the Japanese parent company, credit expenses associated with U.S. sales are incurred by KFC in Japan. Therefore, the Department should use KFC's verified short-term borrowing rate in calculating the credit expense on U.S. sales. Komatsu cites *Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Determination of Sales at Less Than Fair Value* (51 FR 13044, April 17, 1986) in arguing that the use of U.S. interest rates on U.S. sales is appropriate only when the Department has verified that U.S. sales have been financed with borrowings in the United States. Komatsu also argues that KFI's borrowings in the United States were for short-term needs (*e.g.*, overnight loans) and cannot be construed as borrowings to finance sales.

DOC Position: For the period in which Komatsu had U.S. borrowings, we have used a U.S. interest rate to reflect the cost of borrowing in the United States. However, for the period in which Komatsu had no borrowings in the United States, we determined that the most appropriate interest rate was the rate incurred on KFC's short-term borrowings in Japan because the parent company in Japan, in effect, bore the expense of financing the sale.

Comment 95: Petitioners contend that the Department should reject Komatsu's claim for certain expenses on home market sales because they are comprised primarily of normal pre-sale services and are not requested by a customer in the ordinary course of business and because expenses related to U.S. sales were included in the amount reported. Petitioners further argue that these expenses should be included as part of the cost of production and should not be deducted from foreign market value as either a direct or an indirect selling expense. In addition, petitioners contend that Komatsu's revised data for these expenses should be disallowed because these expenses have not been verified, were not submitted properly, and have been increased without explanation from the pre-verification submission to the post-verification submission.

Komatsu contends that certain home market expenses for final preparation of a forklift prior to delivery to a customer, which Komatsu characterizes as

necessary to place the merchandise in a condition ready for delivery, should be treated as direct selling expenses. Komatsu argues that, at a minimum, amounts paid to outside contractors for these services should be deducted from the home market price.

DOC Position: These home market pre-sale expenses do not include expenses related to U.S. sales, as a misstatement in the verification report may have led petitioners to believe. Because of discrepancies in the reporting of these charges subsequent to verification, we have disallowed them as an adjustment in the home market. We have included the amounts paid to outside contractors for certain services in the calculation of the cost of production.

Comment 96: Petitioners contend that, because some of Komatsu's home market sales were made by a related dealer to a related sub-dealer, Komatsu should have reported the sales by the sub-dealer to the end-user.

DOC Position: We agree and have not used these sales as home market comparisons.

Comment 97: Petitioners contend that Komatsu has provided no substantive evidence to support its assertion that "direct shipment" sales are purchase price transactions. Therefore, the Department should treat such sales as ESP transactions in the final determination and impute all additional ESP selling and movement expenses to these sales.

DOC Position: We disagree. At verification, Komatsu was able to substantiate its claim that these sales were properly classified as purchase price transactions and we have treated them as such for purposes of this determination.

Comment 98: Petitioners contend that KFI has incurred a bad debt expense during the period of investigation. Therefore, the Department should determine the rate at which KFI is accruing balances in its allowances for doubtful accounts and apply this rate to sales during the period of investigation as an indirect selling expense on U.S. sales. Petitioners further argue that the Department should disallow Komatsu's home market claim for indirect selling expenses because Komatsu failed to explain the discrepancies between its bad debt claim and certain other accounts.

DOC Position: The Department considers bad debts related to sales of the subject merchandise to be a selling expense. However, in the case of Komatsu, we found at verification that even though the company set aside funds in a reserve for doubtful accounts, it did not incur any bad debt expense on sales of forklifts during the period of investigation.

Comment 99: Petitioners contend that the Department should include all of the repossessed forklifts reported in Komatsu's U.S. sales database because: (1) The forklifts repossessed from dealers had not reached an end-user and, therefore, cannot be considered used; and (2) Komatsu failed to demonstrate that the forklifts repossessed from end-users were truly used.

Komatsu contends that a small number of used forklifts which it resold in the United States should be excluded from the investigation because they cannot be sold as, or compete with, new forklifts.

DOC Position: We verified that the forklifts referred to by petitioners were reconditioned and resold as used forklifts. Furthermore, we have not included used, demonstration, or reconditioned forklifts in our calculation of sales at less than fair value.

Comment 100: Mifran-Boman, an interested party, contends that it is not reasonable to give Sanki a separate duty rate since it is not a manufacturer of the subject merchandise.

DOC Position: We examined the sales of Sanki because of petitioners' allegation that manufacturers in Japan might be selling new forklifts to resellers which, in turn, sell the forklifts as used to unauthorized U.S. dealers. In an antidumping duty investigation, the Department may select as respondents those companies that manufacture or export the subject merchandise to the United States. As an exporter, unrelated to any of the manufacturers under investigation, Sanki qualified as a respondent in this case. Therefore, we have assigned Sanki a separate duty rate in this determination.

Comment 101: Petitioners contend that certain export sales reported by Sanki also appear in the home market database of another respondent in this investigation. Therefore, the Department should eliminate these sales from that respondent's database and use new comparison sales or constructed value as the basis for foreign market value.

DOC Position: We have verified that the sales reported by the respondent manufacturer qualify as legitimate home market sales. The respondent manufacturer had no knowledge that the forklifts would eventually be exported to the United States. Even though the same forklifts were subsequently exported by Sanki, there is no evidence linking the respondent manufacturer's home market sales and Sanki's export sales. As such, we have not deleted these sales from the manufacturer's home market database.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of forklifts from Japan that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require on all entries a cash deposit or the posting of a bond equal to the estimated average amounts by which the foreign market value of forklifts from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin (percent)
Toyota Motor Corp.	17.29
Nissan Motor Co., Ltd.	51.33
Komatsu Forklift Co., Ltd.	47.73
Sumitomo-Yale Co., Ltd.	51.33
Toyo Umpanki Co., Ltd.	51.33
Sanki Industrial Co., Ltd.	13.65
Kasagi Forklift, Inc.	56.81
All others	39.50

As a result of our affirmative critical circumstances determination with respect to Nissan and TCM, the retroactive suspension of liquidation ordered on Nissan and TCM will remain in effect. However, because our final critical circumstances determination is negative for the other respondents and all other companies, the retroactive suspension of liquidation ordered at the time of the preliminary determination with respect to all companies other than Nissan and TCM is terminated. All cash deposits or bonds placed on entries made by all companies other than Nissan and TCM prior to November 24, 1987, shall be refunded.

This suspension of liquidation covers imports of forklifts meeting the definition outlined in the "Scope of Investigation" section of this noticed. If, at the time of entry into the United States, the importer can demonstrate to the satisfaction of the U.S. Customs Service that the forklift was used, as defined in the section of this notice entitled "Used Forklift Issue," that forklift will be exempt from the suspension of liquidation and any cash deposit or bonding requirements.

In our preliminary determination, we required a cash deposit or bond on all forklifts manufactured by other than those

years prior to the date of entry. Given that we have clarified the definition of a used forklift, all cash deposits or bonds placed on used forklifts manufactured in a calendar year at least three years prior to the year of entry into the United States shall be refunded if the importer establishes to the satisfaction of the U.S. Customs Service that the forklift is used as defined in the "Used Forklift Issue" section of this noticed.

ITC Notification

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

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, the Department will issue an antidumping duty order directing Customs officers to assess an antidumping duty on forklifts from Japan entered or withdrawn from warehouse, for consumption, after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

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

April 7, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-8215 Filed 4-14-88; 8:45 am]

BILLING CODE 3510-DS-M

Transportation and Related Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Equipment Technical Advisory Committee will be held May 3, 1988 at 9:30 a.m., Room 12138, the Federal Building, 450 Golden Gate Avenue, San Francisco, California. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Committee Charter Objectives, and Relationships with Other Government Working Groups.
5. 1987 Committee Accomplishments, and the 1988 Plan.
6. Discussion of Briefing Presented to Aerospace Industries Association.
7. Briefing on Relationships Between the Militarily Critical Technologies List (MCTL) and COCOM.
8. New Business.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 17, 1986, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC.

For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Date: April 8, 1988.

Betty Anne Ferrell,

Acting Director, Technical Support Staff Office of Technology and Policy Analysis.

[FR Doc. 88-8311 Filed 4-14-88; 8:45 am]

BILLING CODE 3510-DT-M

East Orange VA Medical Center, et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-057. Applicant: East Orange VA Medical Center, East Orange, NJ 07019. Instrument: Electron Microscope with Accessory, Model H-6010. Manufacturer: Nissei Sangyo America, Ltd., Japan. Intended Use: See notice at 53 FR 4866, February 18, 1988. Instrument Ordered: March 18, 1986.

Docket No.: 87-093. Applicant: VA Medical Center, Denver, CO 80220. Instrument: Electron Microscope. Manufacturer: N.W. Philips, The Netherlands. Intended Use: See notice at 53 FR 4866, February 18, 1988. Instrument Ordered: July 24, 1986.

Docket No.: 87-283R. Applicant: Naval Hospital San Diego, San Diego, CA 92134-5000. Instrument: Electron Microscope, Model EM 109T. Manufacturer: Carl Zeiss, West Germnay. Intended Use: See notice at 52 FR 1812, January 22, 1988. Instrument Ordered: August 15, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88-8341 Filed 4-14-88; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B
LIST OF WITNESSES APPEARING AT THE HEARING

CALENDAR OF PUBLIC HEARING

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

Subject : Internal Combustion Engine Industrial Fork-Lift Trucks from Japan

Inv. No. : 731-TA-377 (Final)

Date and time: April 13, 1988 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E Street, S.W., in Washington.

In support of the imposition of antidumping duties:

Collier, Shannon, Rill & Scott--Counsel
Washington, D.C.
on behalf of

Hyster Company, the Independent Lift Truck Builders Union, the International Association of Machinists and Aerospace Workers, the International Union - Allied Industrial Workers of America (AFL-CIO), the United Shop and Service Employees, and an Ad-Hoc Group of Workers from Hyster's Berea, Kentucky and Sulligent, Alabama facility.

William H. Kilkenny, Chief Executive Officer, Hyster Company

Daniel A. Neuhauser, Director of Business Planning and Market Research, Hyster Company

In support of the imposition of antidumping duties:

Gerald L. Greer, Business Representative, International Association of Machinists and Aerospace Workers, District Lodge 24 of Portland, Oregon

Patrick J. Magrath, Director, Georgetown Economic Services

Bergen I. Bull, Vice President-Corporate Administration, General Counsel and Secretary, for Hyster Company

Paul C. Rosenthal)
Mary T. Staley) --OF COUNSEL

In opposition to the imposition of antidumping duties:

PRESENTATION OF ECONOMISTS

Robert E. Litan, Economist, The Brookings Institution

Daniel Klett, Economist, Coopers & Lybrand

Dorsey & Whitney--Counsel
Washington, D.C.
on behalf of

Toyota Motor Corporation &
Toyota Motor Sales, U.S.A., Inc.

Kenji Sagawa, Assistant Manager, American Operations, Overseas Industrial Vehicle Department, Toyota Motor Corporation

William A. Plourde, Jr., Esq., General Counsel -- Business Law, Toyota Motor Sales, U.S.A., Inc.

Will E. Leonard)
Edward R. Easton) --OF COUNSEL
Philippe M. Bruno)

In opposition to the imposition of antidumping duties:

Arnold & Porter--Counsel
Washington, D.C.
on behalf of

Nissan Motor Co., Ltd. &
Nissan Industrial Equipment Co.

Ted Jackson, Vice President, Sales,
Nissan Industrial Equipment Corp.

George D. Rose, President, Maryland Industrial
Trucks, Inc.

Eddie Weinstein, President, Capital Forklift

Patrick F.J. Macrory--OF COUNSEL

Graham & James--Counsel
Washington, D.C.
on behalf of

Komatsu Forklift Co., Ltd. &
Komatsu Forklift (U.S.A.) Inc.

Lawrence R. Walders--OF COUNSEL

Morgan, Lewis, & Bockius--Counsel
Washington, D.C.
on behalf of

Machinery Distribution Inc.

Robert Skulzacek, Vice President,
Herc-u-Lift, Inc.

Richard Wagner, Vice President &
General Manager, Machinery Distribu-
tion, Inc.

Mark R. Joelson)
Kenneth G. Weigel)--OF COUNSEL
John Lindsey)

In opposition to the imposition of antidumping duties (continued)

Barnes, Richardson & Colburn--Counsel
Washington, D.C.
on behalf of

TCM America (MBK) &
Mitsui & Co. (U.S.A.) Inc.

Matthew T. McGrath--OF COUNSEL

Simpson, Thacher & Bartlett--Counsel
New York, New York
on behalf of

Mitsubishi Heavy Industries, Ltd.

Donald K. Stockdale--OF COUNSEL

APPENDIX C

ADDITIONAL INCOME-AND-LOSS TABLES, VALUE ADDED BY FIRM, AND CAPITAL AND INVESTMENT

Table C-1
Income-and-loss experience of U.S. producers on their operations producing IC forklift trucks with lifting capacity of over 15,000 pounds that contain a domestic frame, accounting years 1985-87

Item	1985	1986	1987
	Value (1,000 dollars)		
Net sales	46,541	32,248	***
Cost of goods sold	44,445	30,860	***
Gross profit or (loss)	2,096	1,388	***
General, selling, and administrative expenses	6,469	***	***
Operating (loss)	(4,373)	***	***
Startup or shutdown expense	***	***	***
Interest expense	***	***	***
Other income, net	***	***	***
Net (loss) before income taxes	(5,276)	***	***
Depreciation and amortization included above	***	***	***
Cash flow 1/	***	***	***
	Share of net sales (percent)		
Cost of goods sold	95.5	95.7	***
Gross profit or (loss)	4.5	4.3	***
General, selling, and administrative expenses	13.9	***	***
Operating (loss)	(9.4)	***	***
Net (loss) before income taxes	(11.3)	***	***
	Number of firms reporting		
Operating losses	3	3	2
Net losses	3	3	2
Data	3	3	2/ 3

1/ Cash flow is defined as net income or loss plus depreciation and amortization.
2/ * * *.

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

Table C-2
Income-and-loss experience of U.S. producers on their operations producing class 1 electric forklift trucks that contain a domestic frame, accounting years 1985-87

Item	1985	1986	1987
	Value (1,000 dollars)		
Net sales	138,087	163,257	158,827
Cost of goods sold	118,164	140,002	133,123
Gross profit	19,923	23,255	25,704
General, selling, and administrative expenses	24,886	28,750	31,536
Operating (loss)	(4,963)	(5,495)	(5,832)
Startup or shutdown expense	***	***	***
Interest expense	***	***	***
Other income or (expense), net	***	***	***
Net (loss) before income taxes	(14,961)	(7,641)	(8,439)
Depreciation and amortization included above	1,594	1,780	2,091
Cash flow 1/	(13,367)	(5,861)	(6,348)
	Share of net sales (percent)		
Cost of goods sold	85.6	85.8	83.8
Gross profit	14.4	14.2	16.2
General, selling, and administrative expenses	18.0	17.6	19.9
Operating (loss)	(3.6)	(3.4)	(3.7)
Net (loss) before income taxes	(10.8)	(4.7)	(5.3)
	Number of firms reporting		
Operating losses	3	1	2
Net losses	3	1	2
Data	6	6	2/ 6

1/ Cash flow is defined as net income or loss plus depreciation and amortization.
2/ * * *.

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

Table C-3
Income-and-loss experience of U.S. producers on their operations producing class 2 electric forklift trucks that contain a domestic frame, accounting years 1985-87

Item	1985	1986	1987
	Value (1,000 dollars)		
Net sales	99,022	102,196	113,272
Cost of goods sold	77,106	81,171	84,144
Gross profit	21,916	21,025	29,128
General, selling, and administrative expenses	22,699	22,598	25,948
Operating income or (loss)	(783)	(1,573)	3,180
Startup or shutdown expense	***	***	***
Interest expense	***	***	***
Other income or (expense), net	***	***	***
Net income or (loss) before income taxes	(7,917)	(3,564)	250
Depreciation and amortization included above	1,345	1,127	1,362
Cash flow 1/	(6,572)	(2,437)	1,612
	Share of net sales (percent)		
Cost of goods sold	77.9	79.4	74.3
Gross profit	22.1	20.6	25.7
General, selling, and administrative expenses	22.9	22.1	22.9
Operating income or (loss)	(0.8)	(1.5)	2.8
Net income or (loss) before income taxes	(8.0)	(3.5)	0.2
	Number of firms reporting		
Operating losses	3	3	3
Net losses	3	3	3
Data	5	5	5

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

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

Table C-4
Standard-lift ICs that contain a U.S. produced frame: Value added by U.S. producers, by firm, accounting years 1985-87

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Table C-5
Standard-lift ICs that contain an imported frame: Value added by U.S. producers, by firm, accounting years 1985-87

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Table C-6
Total standard-lift ICs (includes both U.S.-made and imported frames): Value added by U.S. producers, by firm, accounting years 1985-87

* * * * * * *

Capital and investment.--The Commission requested U.S. producers to describe the actual and potential negative effects of imports from Japan of IC forklifts with lifting capacity of 2,000 to 15,000 pounds on their firm's growth, investment, and ability to raise capital. Their responses are presented below.

* * * * * * *

APPENDIX D

ADDITIONAL UNIT VALUE DATA FOR U.S. AND JAPANESE FORKLIFTS

Table D-1
Class 1 electric forklift trucks: Unit values of U.S.- and Japan-produced 5,000-pound basic lift capacity, sit-down cushion-tire counterbalanced electric forklifts with power and control systems designed for 36- or 48-volt batteries, by companies and by quarters, January 1985-December 1987

* * * * * * *

Table D-2
Class 2 electric, narrow-aisle forklift trucks: Unit values of U.S- and Japan-produced 3,000-pound basic lift capacity, reach-type outrigger narrow-aisle (non-counterbalanced) forklifts sold to dealers, by companies and by quarters, January 1985-December 1987

* * * * * * *

Table D-3
IC forklift trucks: Unit values of U.S.- and Japan-produced 5,000-pound basic lift capacity, cushion-tire IC forklifts with gasoline engines (LPG system) sold to national accounts (end users), by companies and by quarters, January 1985-December 1987

* * * * * * *