

12-VOLT MOTORCYCLE BATTERIES FROM TAIWAN

Determination of the Commission in
Investigation No. 731-TA-238
(Final) Under the Tariff Act
of 1930, Together With
the Information Obtained
in the Investigation

USITC PUBLICATION 2213

AUGUST 1989

**United States International Trade Commission
Washington, DC 20436**

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Michael Hagey, Office of Industries
Elizabeth Henning, Office of Economics
James Stewart, Office of Investigations
Craig McKee, Office of the General Counsel
George Thompson, Office of the General Counsel
George Deyman, Supervisory Investigator

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

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Note.--Information that would reveal business proprietary operations of individual concerns may not be published and, therefore, has been deleted from this report.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

Investigation No. 731-TA-238 (Final)

12-VOLT MOTORCYCLE BATTERIES FROM TAIWAN

Determination

On the basis of the record ¹ developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Taiwan of 12-volt motorcycle batteries, provided for in subheading 8507.10.00 of the Harmonized Tariff Schedule of the United States (previously reported under items 683.01 and 683.05 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).

Background

The Commission instituted this investigation effective April 18, 1989, following a preliminary determination by the Department of Commerce that imports of 12-volt motorcycle batteries from Taiwan were being sold at LTFV within the meaning of section 735 of the act (19 U.S.C. § 1673d(a)). 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

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

in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 4, 1989 (54 F.R. 19253). The hearing was held in Washington, DC, on July 6, 1989, 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 not materially injured or threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of less-than-fair value imports from Taiwan of 12-volt motorcycle batteries.

I. Like Product and Domestic Industry

As a threshold matter, we must define the relevant domestic industry in determining whether a U.S. industry is materially injured or is threatened with material injury by reason of the subject imports. The Tariff Act of 1930 defines the domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product," 1/ and it defines "like product" as "[a] product that is like, or in the absence of like, most similar in characteristics and uses with the articles subject to investigation." 2/

The articles subject to this investigation are lead-acid storage motorcycle batteries having a nominal output of 12 volts and rated from 2 to 32 ampere hours. 3/ These batteries are used mainly in motorcycles, and to a very limited degree in riding lawnmowers, garden tractors, and other

1/ 19 U.S.C. § 1677(4)(A).

2/ 19 U.S.C. § 1677(10)

3/ The Commerce Department's Notice of Initiation states that the scope of the investigation "covers 12-volt motorcycle batteries. Motorcycle batteries are lead-acid storage batteries which are rated from 2 to 32 ampere hours (10 hour rate) with voltage levels of either 6 or 12 volts. This investigation is limited to 12-volt motorcycle batteries." 54 Fed. Reg. 27192 (June 28, 1989).

applications. Commerce has not included 12-volt utility batteries ("U-1s") within the scope of products covered by this investigation. 4/

A. Like Product

Our decision regarding the appropriate like product(s) in an investigation is essentially a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. 5/

In analyzing like product issues, we generally examine such factors as: (1) physical characteristics, (2) end uses, (3) interchangeability of the products, (4) channels of distribution, (5) production processes, (6) customer or producer perceptions, (7) common manufacturing facilities and production employees, and (8) price. 6/ No single factor is dispositive, and we may consider other relevant factors based upon the facts of a given investigation.

As noted by Congress, the like product requirement is not to be "interpreted in such a narrow fashion as to permit minor differences in physical characteristics and uses to lead to the conclusion that the products are not like each other." 7/ Accordingly, we have found minor product variations to be an insufficient basis for a separate like product

4/ See 54 Fed. Reg. 27192 (June 28, 1989).

5/ Asociacion Colombiana de Exportadores de Flores, et. al. v. United States ("ASOCOFLORES") CIT, Slip. Op. 88-91 at 9 (July 14, 1988).

6/ Certain Small Business Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan, Inv. Nos. 731-TA-426-428 (Preliminary), USITC Pub. No. 2156 (February 1989) at 4; Light-Duty Integrated Hydrostatic Transmissions and Subassemblies Thereof, With or Without Attached Axles, from Japan, Inv. No. 731-TA-425 (Preliminary), USITC Pub. No. 2149 (January 1989); Certain Forged Steel Crankshafts from the Federal Republic of Germany and the United Kingdom, Invs. Nos. 731-TA-351 and 353 (Final), USITC Pub. 2014 (September 1987); ASOCOFLORES at 12, n.8.

7/ S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

analysis, and instead, have looked for clear dividing lines among products. 8/

Both domestic and imported storage batteries convert chemical energy into electrical energy through a chemical reaction. This chemical reaction, however, can be reversed, so that the battery can be recharged by passing an electrical current in the opposite direction of the recharge current. Thus, storage batteries differ from primary batteries because storage batteries can be recharged.

All recent model street motorcycles use 12-volt batteries in their ignition systems. Occasionally, some older motorcycles use 6-volt batteries to power their horn and lights. Generally, as the size of the motorcycle increases so does the ampere rating of its battery. The ampere rating in motorcycle batteries, however, is well below that of automotive storage batteries. 9/ By comparison, automobiles normally require a battery rated at a minimum of 35 ampere hours. Automotive batteries clearly have weight, size, and operational characteristics that preclude their use in motorcycles.

Petitioner Yuasa-Exide Battery Corporation ("Yuasa-Exide") argues that the appropriate like product is 12-volt motorcycle batteries. 10/ It

8/ See, e.g., Certain Small Business Telephone Systems and Subassemblies, supra, at 4; Operators for Jalousie and Awning Windows from El Salvador, Invs. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. 1934 (January 1987) at 4, n.4; Sony Corporation of America v. United States, Slip op. 89-55 (CIT, April 26, 1989) at 6.

9/ See fn. 3, supra.

10/ In previous investigations involving 12-volt motorcycle batteries, the Commission found one like product, consisting of 12-volt motorcycle batteries. Motorcycle Batteries from Taiwan, Inv. No. 731-TA-42 (Final), USITC Pub. 1228 (March 1982); 12-Volt Motorcycle Batteries from the Republic of Korea, Inv. No. 731-TA-434 (Preliminary), USITC Pub. 2203 (July 1989).

distinguishes 12-volt motorcycle batteries from other batteries by arguing, initially, that motorcycle batteries have a different end use. 11/ Motorcycle batteries, according to Yuasa-Exide, are specifically designed for incorporation into particular motorcycles or other recreation equipment, and therefore are not interchangeable with other batteries. 12/

Yuasa-Exide also argues that motorcycle batteries are smaller than utility, marine, and automotive batteries, and have different physical characteristics. 13/ Moreover, 12-volt motorcycle batteries are produced on separate production lines and use separate production employees, according to petitioner. 14/ Finally, Yuasa-Exide asserts that 12-volt motorcycle batteries have different distribution channels and are perceived differently by purchasers. 15/

Although maintaining that some of petitioner's like product representations are factually incorrect, 16/ respondents do not argue for a like product definition broader than 12-volt motorcycle batteries.

11/ See e.g., Hearing Transcript (Tr.) at 25-26.

12/ Yuasa-Exide's prehearing brief at 4; Tr. at 25-26.

13/ Id. Petitioner's representations in this regard are inconsistent. For instance, in its prehearing brief, petitioner claims that the motorcycle batteries it produces are manifold vented, while its utility batteries are all sealed. Id. At the hearing, however, Yuasa-Exide's Vice-President, Mr. Retter, stated that the petitioner produces some sealed gas recombination motorcycle batteries. Tr. at 73; Cf. Respondents' posthearing brief at 8. Furthermore, at the hearing, petitioner stated that its U-1 battery is vented through vent caps. Tr. at 26.

14/ Yuasa-Exide's prehearing brief at 5-6.

15/ Id. at 4.

16/ Respondents' posthearing brief at 7-8. First, respondents note that Yuasa-Exide produces one motorcycle battery which is larger than a U-1 battery. Second, according to respondents, petitioner has equivocated as to whether motorcycle batteries and U-1 batteries are always produced on the same production lines. Third, respondents assert that the channel of distribution for U-1 batteries and motorcycle batteries is often the same. Finally, respondents emphasize that, contrary to the representations in its prehearing brief, petitioner does produce a sealed 12-volt motorcycle battery.

We find that 12-volt motorcycle batteries have distinct end uses and are generally not interchangeable with other types of batteries. Moreover, it is generally true that 12-volt motorcycle batteries are smaller than other types of batteries and have different physical characteristics. 17/

Similarly, 12-volt motorcycle batteries most often are produced on separate production lines, using different employees, although given some expenditure of time and cost a motorcycle battery line may be switched to a U-1 battery. 18/ Consequently, it does not appear that other batteries, including U-1 batteries, are like the subject imports. Indeed, none of the parties assert that they are.

Based upon the foregoing, we find one like product composed of 12-volt motorcycle batteries. 19/

B. Domestic Industry

Based upon our like product determination, we find a single domestic industry, consisting of the producers of 12-volt motorcycle batteries. 20/

17/ The emergence of sealed motorcycle batteries represents a new technology, which is not widespread.

18/ Compare Petitioner's prehearing brief at 5 with respondents' posthearing brief at 7; see also, Tr. at 74.

19/ Chairman Brunsdale joins in this conclusion on the basis of her like-product analysis as set forth in Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, United Kingdom, and West Germany, Inv. Nos. 701-TA-293 and 731-TA-412-419 (Final), USITC Pub. 2194 (May 1989) at 51-55 (Views of Chairman Anne E. Brunsdale) and Generic Cephalixin from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989) at 29 (Additional Views of Chairman Anne E. Brunsdale).

20/ Throughout this investigation, the parties have represented that petitioner, Yuasa-Exide, is the sole domestic producer of 12-volt motorcycle batteries. See, e.g., Tr. at 9, 87. Nevertheless, the Commission investigative staff learned from a telephone call on July 14, 1989 to Johnson Controls, Inc., which is an automotive battery producer, that it also produces some sealed 12-volt motorcycle batteries annually. We note, however, that sealed 12-volt motorcycle batteries are not very important in the market at present. Tr. at 103. Furthermore, Johnson Control's production represents only a very small portion of domestic 12-

(continued...)

We note that petitioner Yuasa-Exide is both an importer of 12-volt motorcycle batteries from Taiwan and is related to a Taiwanese producer. Indeed, Yuasa-Exide imports the subject merchandise only from its related producer, Yuasa Battery Taiwan Co., Ltd. ("Yuasa-Taiwan"). 21/ We do not find appropriate circumstances for excluding Yuasa-Exide as a related party from the domestic industry because, in essence, it constitutes the entire domestic industry, so that it would effectively dispose of the investigation.

II. Condition of the Domestic Industry

We find that the domestic industry is not materially injured. 22/ 23/ 24/ In assessing the condition of the domestic industry, we considered, among other factors, U.S. consumption, production, shipments, capacity, capacity utilization, inventories, employment, wages,

20/(...continued)

volt motorcycle battery production. Thus, the Commission still has virtually complete coverage of the domestic industry, absent Johnson Control's data. In this regard, we note that petitioner referred specifically to Johnson Controls at the hearing, and it stated that Johnson Controls does not produce 12-volt motorcycle batteries. Tr. at 22, 74.

21/ Tr. at 42.

22/ Chairman Brunsdale does not join in this conclusion.

23/ Vice Chairman Cass does not join this statement, but does join the discussion of the industry's condition. He believes that the statute under which the Commission conducts title VII investigations does not contemplate any decision based solely on the condition of the domestic industry. While he believes the condition of the domestic industry is relevant to assessing whether the effect of the allegedly LTFV imports has been "material," that information has relevance only in assessing material injury by reason of the allegedly LTFV imports. See Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (January 1989) at 95-113 (Concurring and Dissenting Views of Commissioner Cass); Generic Cephalixin Capsules from Canada, 731-TA-423 (Final), USITC Pub. 2211 (August 1989) at 47 (Additional Views of Vice Chairman Cass). See Additional Views of Vice Chairman Cass, infra.

24/ Commissioners Eckes and Rohr refer to their note 69 in Generic Cephalixin Capsules from Canada, 731-TA-423 (Final), USITC Pub. 2211 (August 1989) at 20, on the appropriateness of separate findings on the condition of the domestic industry.

financial performance, capital investment, and research and development expenditures. 25/ No single factor is dispositive, and in each investigation we consider the particular nature of the industry involved and the relevant economic factors which have a bearing on the state of the industry. 26/

A. Conditions of Competition and the Business Cycle

We note that there is one predominant producer of 12-volt motorcycle batteries in the domestic industry, petitioner Yuasa-Exide Battery Corporation ("Yuasa-Exide"). Yuasa-Exide is a joint venture between Yuasa Battery Company (America), Inc., which is a wholly-owned subsidiary of Yuasa Battery Company, Ltd. of Japan and Exide Battery Corporation ("Exide"). 27/ Exide had produced 12-volt motorcycle batteries independently until April 1987, when it ceased production. Shortly

25/ See 19 U.S.C. § 1677(7)(C)(iii).

26/ See 19 U.S.C. § 1677(7)(C)(iii). Section 1328 of the Omnibus Trade and Competitiveness Act of 1988 ("the 1988 Act") amended 19 U.S.C. § 1677(7)(C)(iii) by requiring us to consider the condition of the industry in the context of the business cycle and conditions of competition that are distinctive to the domestic industry. We note that the 1988 Act does not expressly govern this final investigation, but that we have always considered the conditions of trade in the domestic industry under investigation. See 19 U.S.C. § 1677(7)(B). Indeed, the legislative history to the Trade Agreements Act of 1979 states "[i]t is expected that in its investigation the ITC will continue to focus on the conditions of trade and development within the industry concerned." H.R. Rep. 317, 96th Cong., 1st Sess. at 46; see also S. Rep. 249, 96th Cong., 1st Sess. at 88.

27/ We note that respondents offered an affidavit suggesting that Yuasa-Exide's principal purpose in pursuing the antidumping petition was as a marketing strategy, by causing disruption in the marketplace and diverting competitors' resources to defense of the petition. Respondents' prehearing brief at exhibit 7, paragraph 9. We recognize both the seriousness of this allegation and its hearsay nature, and accordingly do not, in any way, base our determination in this investigation upon it.

We note our concern, however, for the potential for abuse of Commission process in cases such as this, where the domestic producer is virtually the only producer in the United States and has affiliates throughout the world under the control of a single parent corporation.

thereafter, in May 1987, Exide purchased General Battery Corporation, and thereby gained General Battery's interest in the Yuasa-General joint venture, now Yuasa-Exide. 28/

The subject imports compete primarily in the replacement market. 29/ Sales of 12-volt motorcycle batteries are strongest during the first half of the year, and are sold throughout the United States through two major distribution channels: original equipment manufacturers (OEMs) and aftermarket (or replacement) dealers. 30/ In 1988, aftermarket sales represented a majority of Yuasa-Exide's total shipments. 31/ Thus, the modest business cycle which characterizes 12-volt motorcycle battery sales is concentrated in the aftermarket and occurs annually, with sales heavily loaded in the first two quarters of the year.

B. Period of Investigation

The Commission has wide discretion to choose the period it will investigate to ascertain the present condition of the domestic industry. 32/ We examine a period that most reasonably allows us to determine whether a domestic industry is currently being injured by the

28/ Yuasa Battery Company (America), Inc. owns 51 percent of Yuasa-Exide and Exide owns the remaining 49 percent.

29/ Report at A-25; As the predominant supplier of OEM batteries, Yuasa-Exide may enjoy competitive advantages in the production of aftermarket batteries. see respondents' prehearing brief at 18.

30/ Report at A-25.

31/ Id.

32/ Wieland Werke A.G. v. United States, 13 CIT ___, Slip op. 898-96 (July 12, 1989) at 12; Hercules, Inc. v. U.S., 673 F. Supp. 454, 479 (CIT 1987); see also American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1279 (CIT 1984) ("[T]he ITC is not required by statute to use any particular time frame for its analysis, although it generally focuses on annual time periods."); British Steel Corp. v. United States, 593 F. Supp. 405, 411 (CIT 1984); Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany, Inv. Nos. 701-TA-293 and 731-TA-412-419 (Final), USITC Pub. 2194 (May 1989) at 11.

LTFV imports. 33/ Petitioner Yuasa-Exide urges us to base our material injury determination on an examination of information outside of the Commission's normal three-year time period. Indeed, because this investigation was "interrupted by protracted litigation," Yuasa-Exide asserts that the standard three-year period of investigation would be inadequate in this case. 34/ Yuasa-Exide argues simply that it chose to seek import relief based upon its condition at the time it filed the petition, in 1985. 35/ Consequently, absent the intervening, "protracted" litigation, the Commission's final injury determination would have been based upon 1982-1984, plus interim 1985. 36/ Thus, according to Yuasa-Exide, "use of a period of investigation that would not encompass the period in which the petition was filed would not permit the Commission to reasonably determine whether the domestic industry was injured by imports from Taiwan as alleged in the petition." 37/

We note that the time period for which we collect data--three years in most cases--merely serves as a historical frame of reference for an analysis of the current condition of the domestic industry at the time of the Commission's determination. 38/ Petitioner fundamentally misconstrues

33/ Kenda Rubber Industrial Company Co., Ltd. v. United States, 630 F. Supp. 354, 359 (CIT 1986) (The Court directed Commerce, on remand, to reexamine the period of the original investigation. Consequently, the Commission decided to examine the period of the original investigation, as well as the period following the remand, in reaching its material injury determination. The Court upheld the Commission's decision to examine the earlier period, in light of its order directing Commerce to examine that period.)

34/ Petitioner's posthearing brief at 16.

35/ Petitioner's posthearing brief at 19.

36/ Id.

37/ Id. at 20.

38/ This is consistent with the principle underlying antidumping remedies, which operate prospectively to eliminate the unfair trade practice. These duties are not compensation for past injury.

the Commission's task when it urges the Commission to include data from 1982-1985 in its material injury analysis so as to "permit the Commission to reasonably determine whether the domestic industry was injured by imports from Taiwan as alleged in the petition." 39/ The relevant inquiry is not whether the domestic industry was injured when the petition was filed, but instead whether the industry is injured at the time of the Commission's determination.

The Commission's traditional three-year time period is generally a sufficient frame of reference to analyze the industry's present condition and to account for performance patterns that may be due solely to the business cycle within the industry. We find that the three-year period is appropriate in this investigation as well. If we were persuaded that a period of investigation reaching back before 1986 were warranted by the conditions of trade in the 12-volt motorcycle battery industry or by some other market conditions peculiar to this industry, for instance its business cycle, we would consider altering the three-year analysis of the data to assess the domestic industry's current condition. However, after evaluating the conditions of competition and business cycle characterizing the 12-volt motorcycle battery we see no reason to employ other than a three-year period of investigation here.

First, the business cycle in 12-volt motorcycle batteries is annual. Thus, there is no long-term business cycle that would suggest that we extend our period of investigation in order to capture data for a single completed business cycle. Second, under Yuasa-Exide's own characterization of the conditions of competition in the market, we would expect to see the

39/ Petitioner's posthearing brief at 20.

impact of the imports most severely concentrated within the period 1986-1989. This follows from Yuasa-Exide's claims that: (1) increases in the volume or market share of dumped imports necessarily come at the expense of the domestic industry because the market for 12-volt motorcycle batteries is declining, 40/ and (2) the decline in motorcycle registrations has accelerated in the most recent years. 41/ Third, and finally, Exide's exit from the domestic industry is included within the 1986-1989 period of investigation.

In short, the period we examine is framed by our mandate to determine the current condition of the domestic industry and does not mechanistically track the period over which the petition is extant. Accordingly, the conditions of competition in the 12-volt motorcycle industry do not provide a basis for reaching back beyond our traditional three-year investigative period to determine whether the domestic 12-volt motorcycle battery industry is materially injured or is threatened with material injury. 42/ 43/

40/ Tr. at 21.

41/ "Motorcycle registrations have declined by approximately 18 percent since 1980; with the decline accelerating in the most recent years." Tr. at 21.

42/ We note that petitioner has not argued that the Commission should expand the period of investigation based upon conditions of trade or business cycle factors.

43/ Chairman Brunsdale notes that in the "protracted" litigation to which the petitioner refers, the Commission determined that there was no reasonable indication of material injury to a domestic industry by reason of the subject imports and the Court of International Trade affirmed that view. *Yuasa-General Battery Corp. v. United States*, 661 F. Supp. 1214, 1218 (1987). Petitioner's only chance of success on material injury grounds, therefore, is to concentrate on the subsequent years. On this basis, Chairman Brunsdale joins the Commission's focus on the most recent three-year period, though she does not find that such a procedure is necessarily compelled in all cases.

In describing the condition of the domestic industry, we note that much of the information on which we base our decision is business proprietary information, and therefore we are able to discuss this information in only general terms.

C. Industry Indicia

Total U.S. 12-volt motorcycle battery production increased significantly from 1986 to 1988, although capacity decreased. 44/ Consequently, capacity utilization rose markedly over the same period. Over the interim period of 1989, both production and capacity utilization rose significantly above interim 1988 levels. 45/ Over the period 1986 to 1988, domestic shipments rose slightly, with 1987 showing a substantial increase. 46/ Furthermore, shipments in interim 1989 far exceeded those in interim 1988. 47/ Inventories rose slightly over the 1986-1988 period, although this trend was interrupted by an inventory reduction in 1987. 48/ Inventories in the interim period 1989 fell compared with inventories in the same period in 1988. 49/

The number of workers employed in the production of 12-volt motorcycle batteries decreased over the period 1986-1988, with an intervening increase in 1987. 50/ Hours worked, however, increased over the 1986 to 1988 period, showing the greatest increase in 1987. 51/ Both the number of production employees and the number of hours worked increased in interim

44/ Report at A-10.

45/ Id.

46/ Report at A-11, Table 2.

47/ Id.

48/ Report at A-12.

49/ Id.

50/ Report at A-13, Table 5.

51/ Id.

1989 from interim 1988 levels. 52/ Total compensation paid to production workers, moreover, increased steadily throughout the 1986 to 1988 period, as did their average hourly compensation and their output per hour worked. 53/

Similarly, the financial condition of the domestic industry showed significant gains for the period 1986-1988. Although net sales in 1988 were slightly below the 1986 level, gross profit, operating income, and net income before tax levels were all significantly positive and increased from 1986 to 1988. 54/ Indeed, they increased further from interim 1988 to interim 1989. 55/ Similarly, gross profit as a percent of net sales, operating income as a percent of net sales, and net income before taxes as a percent of net sales were all positive throughout the period of investigation and increased from 1986 to 1988, and then increased again in interim 1989. 56/ The significant levels of gross profit, operating income, and net income before taxes, both absolutely and as a share of net sales, become more impressive when compared with the financial performance of petitioner's overall operations; 57/ moreover, there is no evidence on the record to suggest that the industry's financial returns fail to adequately compensate its producers for the risks associated with 12-volt motorcycle battery production. 58/

52/ Id.

53/ Id.

54/ Report at A-14, Table 6.

55/ Id.

56/ Id.

57/ Compare Report at A-14, Table 6 with Report at A-15, Table 8.

58/ The same raw material cost fluctuations, environmental regulation risks, and varying market demand that affect the production of 12-volt motorcycle batteries also affect automobile battery production. Accordingly, we might expect to see similar price movements and

(continued...)

Similarly, the domestic industry's operating return and net return on assets committed to 12-volt motorcycle battery production increased continuously over the period 1986-1988, from already significant levels. Capital expenditures in 1987 and 1988 also far exceeded such expenditures in 1986, with 1987 showing the largest investment. Finally, the domestic industry showed very little investment in research and development over the period of investigation. 59/

Accordingly, we find that the domestic industry is not materially injured. 60/ 61/ 62/ 63/

58/(...continued)

corresponding rates of return in these two industries. The record, however, suggests that motorcycle battery prices have increased relative to automotive battery prices, even though motorcycle batteries are subject to the same risks and costs associated with the production and sale of automotive batteries. Tr. at 90.

59/ Report at A-16, Table 11.

60/ As directed by statute, we have considered the condition of the domestic industry as a whole in reaching our determination. Compare 19 U.S.C. § 1673d(b) with 19 U.S.C. § 1677(4)(A); see also Copperweld v. United States, 682 F. Supp. 552, 569 (CIT 1988). We also considered Exide's exit as an independent producer from the industry as an "other factor". In this regard, we note that confidential evidence on the record suggests that one of Exide's most important customers was captured by Yuasa-General, not LTFV imports. See also Tr. at 87-88.

Clearly, the mere exit from the market of a producer is not, ipso facto, evidence of material injury. Indeed, in any market, including those with no imports, one would expect to observe periodic entry into and exit from the market. In this investigation, the condition of the domestic industry as a whole, which captures the effects of Exide's exit as an independent producer, does not establish material injury.

61/ Chairman Brunsdale does not join in this conclusion for the reasons set forth in Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, Inv. No. 701-TA-287 (Final), USITC Pub. 2008 (August 1987) (Views of Acting Chairman Brunsdale), and Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) (Views of Acting Chairman Brunsdale and Commissioner Cass) (see Acting Chairman Brunsdale's views on causation at 10-11). A determination that the domestic industry is materially injured is not, in my view, sufficient to fulfill the statutory mandate that the Commission investigate the domestic industry for "material injury by reason of" the subject imports. (Emphasis added).

(continued...)

IV. Threat of Material Injury

Section 771(7)(F) directs us to determine whether a U.S. industry is threatened with material injury "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." 64/ The statute further directs the Commission, in antidumping investigations, to consider:

- (1) 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; 65/
- (2) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level;
- (3) 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;
- (4) any substantial increase in inventories of the merchandise in the United States;

61/(...continued)

I note that in the original preliminary negative determination in this case, the Commission majority did reach the question of causation. 12-Volt Motorcycle Batteries from Taiwan, Inv. No. 731-TA-238 (Preliminary) USITC Pub. 1654 (Feb. 1985) at 9. The Commission found that the state of the industry was the result of unusual market conditions in 1983-1984 and internal factors in the industry, not dumped imports. Id. at 10. The Court of International Trade found this view to be "beyond the realm of arbitrary and capricious decisionmaking." Yuasa-General, supra, 661 F. Supp. at 1218. I find nothing in the record of this final investigation, including data regarding the motorcycle battery industry during the last three years, to alter this judicially approved conclusion reached under the very high preliminary standard in dumping investigations.

62/ Commissioners Eckes and Rohr refer to their note 69 in Generic Cephalixin Capsules from Canada, 731-TA-423 (Final), USITC Pub. 2211 (August 1989) at 20, on the appropriateness of separate findings on the condition of the domestic industry.

63/ Vice Chairman Cass does not join this statement. See Additional Views of Vice Chairman Cass, infra., and fn. 23, supra.

64/ 19 U.S.C. § 1677(7)(F)(ii).

65/ The Commission's regulations provide that it shall consider, in particular, "the availability of other export markets" in making its determination. 19 C.F.R. § 207.26(d)(3).

- (5) the presence of underutilized capacity for producing the merchandise in the exporting country;
- (6) any other demonstrable adverse trends that indicate the probability that importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of material injury;
- (7) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation. 66/

In evaluating these factors, the threat must be of imminent, real and actual injury, and our determination may not be made on the basis of mere conjecture or supposition. 67/

Initially, we note that Yuasa-Taiwan reportedly is opening a new facility which will significantly increase Taiwanese capacity to produce 12-volt motorcycle batteries. 68/ We find, however, that any new Yuasa-Taiwan capacity will not result in injurious imports of the subject merchandise to the United States for the following reasons. First, the evidence indicates that Yuasa-Taiwan's production is largely consumed in

66/ 19 U.S.C. § 1677(7)(F). The statute also sets forth a factor to be considered in investigations concerning subsidies. This factor is not applicable to this investigation. Furthermore, the 1988 Act added two new provisions, one addressing agricultural products and the other requiring us to consider the actual and potential negative effects on the existing development and production efforts of the domestic industry. 19 U.S.C. § 1677(7)(F)(i)(IX) and 1677(7)(i)(X), as amended, 1988 Act §§ 1326(b) and 1329. Although this investigation is not governed by the Act, we considered the relevant provision and determined that it did not support a finding of threat of material injury by reason of the subject imports.

67/ 19 U.S.C. § 1677(7)(F)(ii); see Citrosuco Paulista v. United States, Slip. op. 88-176 (CIT Dec. 30, 1988).

68/ Report at A-20.

Taiwan or exported to a country other than the United States. 69/ Thus, it does not appear likely to threaten the domestic industry.

Second, Yuasa-Exide imports from Yuasa-Taiwan in order to complete its product lines with battery models it does not produce domestically. 70/ Thus, Yuasa-Taiwan subject imports do not compete with Yuasa-Exide's domestic production.

Third, all of Yuasa-Exide's imports from Taiwan are manufactured by Yuasa-Taiwan, 71/ and all of Yuasa-Taiwan's exports to the United States were imported by Yuasa-Exide. 72/ Indeed, we find it reasonable to infer that Yuasa-Exide's and Yuasa-Taiwan's virtually exclusive commercial relationship in the U.S. market reflects their related ownership--that is, both Yuasa-America and Yuasa-Taiwan are subsidiaries of Yuasa-Japan. 73/ Accordingly, the degree to which Yuasa-Taiwan exports to Yuasa-Exide is ultimately within the control of corporate decision-makers at Yuasa-Japan. 74/ Simply put, we do not consider Yuasa-Taiwan's prospective increased capacity or its potential effect on prices to be a threat to the domestic

69/ Id.

70/ See Yuasa-Exide's prehearing brief at 9.

71/ Tr. at 42; Report at A-8.

72/ See Tr. at 81. We note that upon further examination of importers' and purchasers' questionnaires, one of the firms identified as an importer of record of 12-volt motorcycle batteries from Yuasa-Taiwan is not. Cf. Report at 20. This is established by a review of Customs' net import statistics, the addresses specified in the firm's purchaser questionnaire, and the data provided. As a consequence, the report overstates the amount of the subject imports from Taiwan by the amount declared in the firm's importer's questionnaire and incorrectly states that a firm other than Yuasa-Exide imported the subject merchandise from Yuasa-Taiwan during the period of investigation.

73/ Accord Tr. at 81-82.

74/ Because of these parent-affiliate relationships, we again note our concern that the potential for manipulating Commission proceedings is present when, by way of world-wide sourcing decisions, a parent corporation is able to influence the putative threat to the domestic industry, in which that parent also has a stake.

industry when, as here, the domestic industry is predominantly Yuasa-Exide and when it alone, or its parent Yuasa-Japan, has the discretion to ultimately decide whether this increased capacity will result in increased imports to the United States and, if so, the prices at which these imports will be offered for sale.

For the above reasons, we find that the volume of exports of the subject merchandise from Yuasa-Taiwan is less significant in light of the conditions of trade in the domestic industry, and accordingly, we will focus upon the threat posed by the remaining Taiwanese producers. 75/

The amount of unused capacity in Taiwan decreased over the period 1986-1988, as did the percentage of Taiwanese exports to the United States relative to Taiwanese total exports. 76/ Furthermore, the percentage increase in Taiwanese exports to other countries exceeded the percentage increase in Taiwanese exports to the United States over the 1986-1988 period. 77/ Aggregate capacity, moreover, is expected to decrease by 1990. 78/ Consequently, we find no likelihood of a significant increase in imports of the subject merchandise in the United States.

With respect to market penetration, we find that the subject imports steadily increased their market penetration over the period 1986-1988, but this was in part due to the domestic industry's increasing importation of the subject merchandise. 79/ Moreover, import penetration fell

75/ These producers are Cheng Kwang, Maan Shyang, Wei Long, Koyo, Ztong Yee, Lian Horng, and Pilot Battery.

76/ Report at A-21, Table 13.

77/ Report at A-21, Table 13; see also respondents' posthearing brief at 12.

78/ Report at A-20.

79/ Compare Report at A-24, Table 15 with Report at A-11, Table 3.

significantly in the first quarter of 1989 from first quarter 1988 levels. 80/ Based on the 1986 to 1988 trend, as well as interim 1989 decline, we find no rapid increase in imports from Taiwan, and we further find no likelihood that import penetration will increase to an injurious level. We base this conclusion upon the cited trends in imports, the recent appreciation of the NT dollar versus the U.S. dollar, the increasing cost of ocean freight between the U.S. and Taiwan, increasing Taiwanese labor and environmental costs, raw material supply problems in Taiwan, 81/ and the increasing demand for 12-volt motorcycle batteries in third countries leading to a rapid increase in the exportation of the subject merchandise to other countries. 82/

We further find it unlikely that the subject imports will enter the U.S. at a prices that will have a depressing or suppressing effect on domestic prices. In the OEM market, the subject imports consistently oversold the domestic like product throughout the period of investigation. 83/ In the replacement market, moreover, the price of the domestic like product generally increased over the 1986-1988 period. 84/ We find no evidence that price depression is likely to occur imminently. 85/

80/ Report at A-24, Table 15. In evaluating these interim trends we are cognizant of the possibility that the interim trends are affected by the initiation of this investigation.

81/ Respondents' posthearing brief at 23-27; Tr. at 83-84.

82/ Report at A-21, Table 13.

83/ Report at A-26, Table 16 and Report at A-27, Table 18.

84/ Report at A-26, Table 17 and Report at A-27, Table 19.

85/ Moreover, as Jerry Lawrie, Vice-President of Sales for GNB Incorporated, testified, the price of motorcycle batteries relative to automotive batteries also has risen:

Further, the relative price trends of motorcycle and automotive batteries indicate that motorcycle battery prices are not depressed. The automotive and motorcycle

(continued...)

Furthermore, although the Taiwanese imports undersold the domestic like product in the replacement market in most of the quarters investigated, we find no price suppression over the period 1986-1988, nor do we find it probable that such suppression or depression will occur. 86/ We base this determination on the following.

First, testimony on the record suggests that domestically produced Yuasa-Exide batteries do not compete with the subject imports for some sales. 87/ Second, investigation of Yuasa-Exide's five allegations of lost sales and four allegations of lost revenues to the subject imports reveals only one potential case of lost revenue, and in that case it is unclear whether all the Yuasa-Exide batteries purchased, resulting in lost revenues, were domestically produced. 88/ Furthermore, Exide was unable to identify a single specific allegation of a lost sale or lost revenue to the subject imports. 89/

85/(...continued)

battery markets are subject to the same basic fundamentals. They are mature markets, and the batteries are made from the same basic raw materials and production processes. Indeed, the major difference between the two markets would suggest that automotive battery prices should be rising relative to motorcycle battery prices. That is, demand for automotive batteries is rising relative to demand for motorcycle batteries.

In fact, over the past several years, to my knowledge, it appears that the price of motorcycle batteries has risen relative to the price of automotive batteries. Actually, the price of automotive batteries has been stable or decline [sic]. In contrast, 12-volt motorcycle battery prices have generally risen.

Tr. at 90.

86/ See Report at A-26, Table 17 and Report at A-27, Table 19.

87/ Tr. at 88.

88/ Report at A-28-30.

89/ Report at A-28.

Third, analysis of aftermarket quarterly pricing data for domestically produced 12-volt motorcycle batteries versus the subject imports, and the corresponding quantities of each sold, reveals no correlation between their relative prices and the corresponding amounts sold. 90/ As noted above, the 12-volt motorcycle battery market is characterized by an annual business cycle with the bulk of purchases occurring in the first half of the year. For the period 1986-1989, the record establishes that in the first two quarters of each year, when the vast majority of sales for the year were made, the margin of underselling, when it occurred, was minimal. 91/ Indeed, in six of these fourteen quarters the subject imports oversold the domestic like product. 92/

Moreover, frequently in the last two quarters of each year, when the prices for the subject imports fell most sharply, thereby causing the largest margins of underselling, the quantities of subject imports sold fell along with their price. 93/ Significantly, over the course of each annual business cycle, the pricing pattern for domestically produced 12-volt motorcycle batteries did not track or respond to the pattern observed in the subject imports, notwithstanding the presence of underselling, supporting our conclusion that the subject import prices did not suppress domestic prices to a significant degree. 94/

Fourth, the evidence obtained from U.S. purchasers suggests that Yuasa-Exide's sales of its Yuasa-Taiwan imported batteries has depressed the

90/ See Report at A-26, Table 17 and Report at A-27, Table 19.

91/ Report at A-26, Table 17 and Report at A-27, Table 19

92/ Id.

93/ Id. We note this may be consistent with importers liquidating their inventories at the end of each business cycle.

94/ Report at A-26, Table 17 and Report at A-27, Table 19.

weighted-average price of the subject merchandise. 95/ Thus, some of the record evidence of underselling, derived from purchaser responses, is attributable to Yuasa-Exide's sales of its Yuasa-Taiwan imports. Fifth, and finally, the most recent interim trends establish increasing prices for the subject imports, due in part to the NT dollar's appreciation. 96/

Based upon the absence of underselling in the OEM market, the absence of price depression in the replacement market, the absence of price suppression in the replacement market from 1986-1988, the rising prices for the subject imports in interim 1989, the appreciation of the NT dollar, the increasing labor and environmental costs in Taiwan, the increasing ocean freight rates to the U.S., and increasing raw material costs in Taiwan, we find that imports of the subject merchandise will not enter the United States at prices that will have a depressing or suppressing effect.

Inventories of the subject imports increased over the period 1986 to 1988, but then fell in interim 1989 from the interim 1988 level. 97/ Accordingly, we determine that there is no likelihood that these inventories will increase to a level that constitutes a threat of material injury to the domestic industry.

Similarly, Taiwanese capacity utilization increased over the period 1986-1988 and, given the burgeoning third country markets for Taiwanese 12-volt motorcycle batteries and increasing Taiwanese home market shipments, we find that the capacity utilization rate for 12-volt motorcycle battery production in Taiwan does not pose a threat of material injury to the

95/ See EC-M-286 at 4-5, Tables 1-2. Here, the margins of underselling reported by a very small set of purchasers are largely the result of Yuasa-Exide's sale price for its Yuasa-Taiwan subject imports.

96/ See Report at A-26, Table 17 and Report at A-27, Table 19.

97/ Report at A-19, Table 12.

domestic industry. 98/ Lastly, the threat factor having to do with product shifting is inapposite to this investigation.

Consequently, we conclude that there is no threat of material injury to the domestic industry by reason of imports from Taiwan of 12-volt motorcycle batteries.

Conclusion

For the reasons set forth above, we determine that an industry in the United States is not materially injured or threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of less-than-fair value imports from Taiwan of 12-volt motorcycle batteries.

98/ Report at A-21, Table 13; respondents' posthearing brief at 12; Tr. at 82.

ADDITIONAL VIEWS OF VICE CHAIRMAN RONALD A. CASS

12-Volt Motorcycle Batteries from Taiwan
Inv. No. 731-TA-238
(Final)

I concur with the Commission's determination in this investigation, finding that the domestic industry producing 12-volt motorcycle batteries is not suffering material injury by reason of alleged less than fair value ("LTFV") imports of 12-volt motorcycle batteries from Taiwan, nor is it threatened with such injury by reason of the subject imports. I join the Commission's discussion of the like product issue, of the definition of the domestic industry, of the possible threat of injury to a domestic industry from the subject imports, and of the condition of the domestic industry to the extent that it accurately summarizes information relevant to my disposition of this investigation. I offer these Additional Views because the analysis that I employ in assessing whether there is sufficient reason to believe that LTFV imports caused material injury to a domestic industry differs in certain respects from that reflected in the Views of the Commission.

I. MATERIAL INJURY BY REASON OF LTFV IMPORTSA. Preliminary Issues: Statutory Test

Title VII of the Tariff Act of 1930, as amended, the statute that governs antidumping and countervailing investigations, contemplates that, in

evaluating whether a domestic industry has suffered material injury by reason of LTFV imports, the Commission will not make a freestanding inquiry into the condition of the relevant domestic industry. There is no statement in the statutory text or in the history of Title VII that can fairly be read to create a threshold requirement that the domestic industry be in financial distress.^{1/} Certainly, the legislative history does suggest that the overall condition of the domestic industry shall affect our judgment on the degree of harm from LTFV imports necessary to be "material".^{2/} But nothing suggests that the standard for materiality becomes infinitely high once some level of health is passed. Had Congress so intended, it surely could have put such a requirement into the law. My colleagues read the unitary phrase "materially injured . . . by reason of" the imports allegedly sold at LTFV as if it created two entirely separate requirements. I cannot accept that reading.

In other opinions, I have spelled out at length my reasons for concluding that the bifurcated approach is not consistent with, and certainly

^{1/} See Digital Readout Systems and Subassemblies Thereof from Japan, USITC Pub. 2150, Inv. No. 731-TA-390 (Final) (Concurring and Dissenting Views of Commissioner Cass) 98-108 (Jan. 1989) ("Digital Readout Systems").

^{2/} In 1967, when Congress was considering changes in the international obligations of the United States that might conflict with U.S. antidumping law, the Senate Finance Committee issued a report that explicitly stated:

An industry which is prospering can be injured by dumped imports just as surely as one which is foundering although the same degree of dumping would have relatively different impacts depending upon the economic health of the industry.

S. Rep. No. 1835, 90th Cong., 2d Sess. pt. 2, at 11, reprinted in 1968 U.S. Code & Cong. & Admin. News 4548-49.

See Digital Readout Systems, supra, at 117-18.

is not the preferable interpretation of, Title VII.^{3/} In sum, there are five reasons to believe that statute does not permit, and surely does not command, the use of a threshold test for industry health. First, this test is inconsistent with the plain language of the statute. Second, the legislative history of Title VII does not support the creation of a freestanding test for industry health. Third, Commission practice contemporaneous with major legislation on this subject was generally inconsistent with imposition of a threshold requirement. Fourth, recent amendment to the law, far from codifying the governing law in ways that are clearly inconsistent with a separate industry health test. For example, denial of relief to industries based on the satisfactory level of industry performance at the present time or on positive industry trends over the period selected by the Commission (without statutory basis) for examination cannot easily be squared with the recently added statutory directive that the Commission take into account business cycles and other effects on industry performance.^{4/} Finally, the approach embraced by the Commission's majority here and in other recent cases, while not utterly without judicial support, is inconsistent with the logic of the judicial decision routinely relied on to demonstrate its acceptance by the courts and more recently in fact relied on by a judge on

^{3/} See Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (Mar. 1989) (Additional Views of Commissioner Cass); Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass) 98-108 ("Digital Readout Systems"); 3.5" Microdisks and Media Therefor from Japan, Inv. No. 731-TA-389 (Preliminary), USITC Pub. 2076 (April 1988) (Additional Views of Commissioner Ronald A. Cass).

^{4/} 19 U.S.C. § 1677(C) (iii).

one of our reviewing courts.^{5/} I will not repeat these arguments, but do think it useful to review briefly some of the arguments against the reading of the statute adopted by the majority here.

The simplest and most important argument is that the text of the statute cannot be made consistent with the threshold "health" test so long as the text is read in accordance with basic precepts of the English language. The statute instructs the Commission 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" determined by the Department of Commerce to have been sold at less than fair value.^{6/} The instruction is a single sentence asking us to determine if there was material injury by reason of the subject imports, not two sentences asking for separate determinations on the health of the industry and the effect of LTFV imports. The term "injury" is commonly understood to mean a change for the worse consequent to a specific causal event. Dictionaries define injury not as "ill health" but as "an act that damages, harms, or hurts; a violation of another's rights . . . compare TORT."^{7/} Title VII does not speak of injury as an abstract concept but asks us to assess injury in relation both to a causal subject (the imports found or alleged to have been sold at LTFV) and an object (an industry in the United States), further indicating that this term was used in accord with its plain meaning.

^{5/} See discussion of American Spring Wire in Digital Readout Systems at 112-117.

^{6/} 19 U.S.C. S 1673d(b) (1).

^{7/} Merriam-Webster's Third Unabridged Dictionary 1164 (1961).

It is an accepted rule of statutory interpretation that, at least in the absence of compelling evidence to the contrary, a statute should be interpreted in accord with its plain meaning when one can be derived from the text. Here, there is no compelling basis for doing otherwise. Indeed, far from qualifying the initial textual instruction in a manner that raises doubt about its meaning, other relevant provisions support the construction of Title VII as framing a unitary inquiry, not a threshold test of ill health and a secondary examination of cause. The definitions section of Title VII does not separately define meanings for "material injury" and "by reason of" the LTFV imports but instead, under the title of "Material Injury," details factors that might be relevant to determining the connection between industry performance and the imports subject to investigation. These provisions clearly evidence an understanding of the term "injury" as comprehending something other than an absolute decline in industry performance and also as necessarily the product of some particular source of injury. For example, the statute does not direct the Commission to consider absolute changes in prices but instead directs the Commission to consider "the effect of imports of such merchandise [the LTFV imports] on prices in the United States for like products."^{8/} More pointedly, the statute instructs the Commission to consider whether sale of LTFV imports "prevents price increases which otherwise would have occurred."^{9/} Such language is very difficult to square with a notion of injury as incorporating a freestanding requirement that industry profits be "unhealthy" or that industry financial trends decline in absolute terms. Instead, it appears fully to support a reading of the

^{8/} 19 U.S.C. § 1677(7)(B)(ii).

^{9/} 19 U.S.C. § 1677(7)(C)(ii)(II).

statute as comprehending a single inquiry into the effect of the LTFV imports on the domestic industry.

Notwithstanding this statutory language, Commission members often assert that the healthy industry test has the support of judicial authority. The Court of International Trade recently accepted the Commission's argument that such a test is consistent with the statute,^{10/} relying on its earlier decision in American Spring Wire Corp. v. United States.^{11/} Although the recent decision is authority for the proposition that not all judges would find the test inconsistent with the dictates of Title VII, American Spring Wire itself is not such authority. The decision does contain language that has been read out of context often over the past several years.

In that decision, the Court stated that the "Commission must make an affirmative finding only when it finds both (1) present material injury...and (2) that the material injury is 'by reason of' the subject imports".^{12/} While, standing alone, this statement's meaning is open to differing interpretation, viewed in the particular factual and legal context in which American Spring Wire was decided, that statement hardly can be characterized as clear support for a healthy industry test.

In the determinations that were reviewed in that case, the Commission declared that "[e]ven assuming that [the posited] injury meets the standard of 'material injury', our analysis of the effects of [the subject] imports...from France during that six month period demonstrates that any such

^{10/} Nat'l Ass'n of Mirror Mfrs. v. United States, 696 F. Supp. 642 (CIT 1988).

^{11/} 590 F. Supp. 1273 (CIT 1984), aff'd sub nom., Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985).

^{12/} 590 F. Supp. at 1276.

injury is not by reason of the subject imports".^{13/} On appeal of these determinations to the Court of International Trade, petitioners argued that the Commission's decision was not supported by substantial evidence because the Commission had suggested that "material injury" had been shown on the record; petitioners therefore urged that an affirmative determination was required. Counsel for the Commission, on the other hand, argued that the statute required, in addition to a showing of "injury," evidence of a causal link between that injury and the unfairly traded imports. Counsel for the Commission also argued that the Commission implicitly determined that no material injury existed; accordingly, there was no need to consider causation other than in the alternative. Counsel further argued that, in any event, causation was, as the Commission plainly had found, lacking.

The court, affirming the Commission's decision, accepted the argument that both material injury and causation must be present to support an affirmative determination. The decision would have been more clear had the court stated that, as the Commission opinion found, where dumped imports cannot have had a material adverse effect on the industry at issue, no evidence respecting the industry's overall condition, however poor that condition was, would suffer as a basis for relief under Title VII. The court instead phrased the thought as a statutory requirement of two elements, injury and causation, but it did not suggest that these two elements need be considered in the disjunctive. The court's holding was that the statute requires a causal connection between the injury to the domestic industry and the subject imports; the court did not need to reach any other issue,

^{13/} Prestressed Concrete Steel Wire Strand from France, USITC Pub. 1325, Inv. No. 701-TA-153 (Final) at 6 (Dec. 1982) (footnote omitted).

although it found that the Commission had, as counsel for the Commission suggested, implicitly found that the domestic industry was not materially injured.^{14/}

A straightforward reading, thus, is that the American Spring Wire opinion stands most clearly for the proposition that the statutory requirement of injury by reason of less-than-fair value imports means something other than that an industry must be suffering some harm, such as might be claimed by any declining industry; the statute necessarily requires that there must be a showing that LTFV imports caused sufficient harm. Just as the commonplace notion of injury requires the infliction of harm to someone by something or someone, so the statutory injury requirement mandates something more than an independent evaluation of the condition of a domestic industry. Hence, affirmance of the Commission's determination is at odds with the notion that the law requires a determination, independent of the causal reasons, whether the industry's condition is too good to allow relief against LTFV imports or that the industry's condition had over a given period (not related to evidence of LTFV sales) changed for the worse.

Furthermore, it should be noted that, while the reading of American Spring Wire challenged here has been accepted by one judge of the Court of International Trade, another judge of the same court has taken a position strongly at odds with the requirement of a healthy industry test. In Republic Steel Corp. v. United States,^{15/} the Court stated that:

[T]he ITC should not be engaged in a determination of whether an industry is 'healthy'. A 'healthy' industry can be experiencing

^{14/} 590 F. Supp. at 277.

^{15/} 591 F. Supp. 640, 649 (Ct. Int'l Trade 1985), reh'g denied, 9 Ct. Int'l Trade 100 (1985), dismissed (Order of August 13, 1985).

injury from importations and an 'unhealthy' industry can be unaffected by importations. The purpose of the ITC's investigation is to determine whether imports are a cause of any effect on an industry which amount to "material injury."

The case was later voluntarily dismissed pursuant to a motion filed by petitioners, and certain aspects of the Court's decision in Republic Steel may properly be questioned in light of the Federal Circuit's subsequent opinion in American Lamb Co. v. United States.^{16/} However, to date, the Federal Circuit has not squarely addressed the particular issue discussed by the court in the portion of its opinion that is quoted above.^{17/}

Moreover, even if financial health above a given absolute level were a bar to imposition of antidumping duties, there surely is no reason to suppose that improving trends in industry performance over some arbitrarily selected period should constitute such a bar. Industry trends are, as Congress has plainly recognized, affected by many factors other than imports, and, in many cases, these other factors may be of considerably greater importance. Congress has expressly cautioned the Commission against predicated disposition of Title VII investigations on the basis of factors other than the effects of LTFV (or, in preliminary investigations, allegedly LTFV) imports.^{18/} In my view, an analysis that disposes of Title VII investigations because industry trends are positive is not consistent with that instruction.

^{16/} 785 F.2d 994 (Fed Cir. 1986).

^{17/} The fact that the decision in American Spring Wire was affirmed on the basis of the opinion filed by the Court of International Trade in that case does not, in my view, by any means constitute acceptance of a healthy industry test for the reasons given above.

^{18/} See S. Rep. No. 249, 96th Cong., 1st Sess. 57 (1979). See also Hercules, Inc. v. United States, 673 F. Supp. 454, 481 (Ct. Int'l Trade 1987).

It is important to note, furthermore, that such an analysis also is inconsistent with the express statutory direction that

"the Commission, in each case,

(i) shall consider --

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

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

(III) the impact of imports of such merchandise on domestic producers of like products . . . 19/

The Commission cannot credibly claim to have considered the effect of LTFV imports on the prices in the United States for like products when it disposes of a Petition after deciding simply that an industry's financial performance has improved sufficiently that it cannot be deemed "materially injured." And only by a considerable stretch of ordinary language can the Commission claim in cases such as this to have considered the impact of the LTFV imports on domestic producers of the like products.

The request of Petitioner in the instant investigation that the Commission reach a material injury determination using data from a period considerably outside the three-year period normally covered in Title VII investigations underscores the difficulties with the Commission's approach. Because Petitioner originally filed its petition in January, 1985, Petitioner claims that the Commission should examine a period beginning in calendar year ~~1985 and ending in 1987~~ There has been no finding in this investigation by the

19/ 19 U.S.C. § 1677(7) (B) (emphasis added). The emphasized phrase "in each case" was added by the 1988 Omnibus Trade and Competitiveness Act, Pub. L. 100-418 (Aug. 23, 1988). Though that phrase thus is not present in the pre-1988 law under which the Commission must here act, there is no indication that the Congress meant by inserting this phrase to alter the meaning of the law; rather, its intent appears to have been simply to clarify the meaning of the pre-existing law.

20/ Petitioner's Posthearing Brief at 16.

Department of Commerce that any unfair trade practices by Respondents occurred during this earlier period; consistent with its normal investigative practices, the Department of Commerce investigated the period between April 1, 1988, and September 30, 1988.^{21/} It is therefore dubious whether evidence from any earlier period has probative value on the question of whether the unfair trade practices in question caused material injury to the domestic industry, the very issue which this Commission must decide. Petitioner itself concedes that the Commission's choice of time period should be that which "reasonably allows it to determine whether a domestic industry is injured by unfairly traded imports."^{22/} Indeed, although industry trends over any period that extends beyond the Department of Commerce's period of investigation can provide useful information about the way in which the industry operates or about the factors affecting and defining the industry's business cycle, these trends cannot be the basis for resolving the issue that Title VII instructs us to resolve: simply put, the Commission cannot reach conclusions about the effects of LTFV sales in that period without knowledge as to whether such sales occurred.

Furthermore, it goes without saying that Petitioner seeks to alter the period that the Commission examines in order to bolster its case for an affirmative determination. Respondent for that reason opposes Petitioner's request to extend the Commission's normal period of investigation.^{23/} Yet the choice of any arbitrary time period necessarily raises the possibility that

^{21/} Final Determination of Sales at Less than Fair Value: 12-Volt Motorcycle Batteries From Taiwan, 54 Fed. Reg. 27191 (1989).

^{22/} Petitioner's Post-Hearing Br. at 16.

^{23/} Statement of Mr. Koenig (Tr. at 79-80).

an alternative time definition would lead the Commission to a different determination.^{24/} Indeed, though the Commission majority in part explains its own unwillingness to use earlier data on the grounds that "the business cycle in 12-volt motorcycle batteries is annual" and that therefore "there is no long term business cycle,"^{25/} an assertion the basis of which is certainly less than clear, it is nevertheless important to the outcome of the investigation which time period is chosen, under the Commission majority's method of analysis. Since the choice of any time definition is to an important extent arbitrary, the Commission is left in the position of making its determinations on the basis of arbitrarily chosen data. The resulting inconclusiveness of the Commission's determination is surely not consistent with Congress' intent. While we recognize that the courts have allowed the Commission a certain degree of discretion to choose the time period which it examines,^{26/} that choice of time period should not itself be dispositive of the investigation.

Indeed, the use of trend analysis is not even consistent with the Commission majority's intended goal of examining the present condition of the industry. Although the Commission declares that trend analysis is useful "to ascertain the present condition of the domestic industry,"^{27/} it can at most help determine the condition of the industry relative to some time in the past, and not its present absolute condition. For that reason, the

^{24/} See Nitrile Rubber from Japan, Inv. 731-TA-384 (Final), USITC Pub. 2090 (June 1988) (Additional Views of Commissioner Cass).

^{25/} Views of the Commission, supra, at 13.

^{26/} See Views of the Commission, supra, at 10 n. 28.

^{27/} Views of the Commission, supra, at 10.

controversy over the appropriate time period which has arisen in this investigation is entirely misdirected; no matter how it is resolved, we will know neither more nor less about the present condition of the industry.

B. Analysis of Injury by Reason of LTFV Imports

Instead of looking simply at industry trends, in assessing the effects of LTFV imports, we must compare the condition of the domestic industry to the conditions that would have existed had there not been LTFV imports.^{28/} After describing the three factors to which the Commission must direct its attention in the portion of the statute cited above, the statute then describes those factors with greater particularity.

Although the statutory text does not identify all of the factors relevant to an assessment of whether dumped imports have materially injured a domestic industry,^{29/} the factors that are listed in the statute and the order in which they are listed suggest the essential elements of the inquiry that we are to undertake. First, we are to examine the volumes of imports of the merchandise under investigation. The absolute volumes of imports, their magnitude relative to domestic sales of the competing "like product", and the extent to which import volumes changed as a result of dumping are all relevant to assessment of the effect of LTFV imports on the domestic industry. The change in import volumes brought about by dumping, in turn,

^{28/} See, e.g., 3.5" Microdisks and Media Therefor from Japan, USITC Pub. 2076, Inv. No. 731-TA-389 (Preliminary) (Additional Views of Commissioner Cass) (April 1988) ("Microdisks Preliminary"); Phone Systems, cited, *supra*, at note 3.

^{29/} Indeed, the statute explicitly directs the Commission to consider all economic factors relevant to determining whether a domestic industry has been materially injured by reason of unfairly traded imports. See 19 U.S.C. § 1677(7)(C).

will be closely related to, and in large part a function of, changes in the prices of the imports that occurred as a result of dumping. Second, we must determine how the LTFV imports affected prices, and concomitantly sales, of the domestic like product. Finally, we must evaluate the extent to which the changes in demand for the domestic like product that were caused by dumping affected the financial performance and condition of the domestic industry and the level and terms of employment in the domestic industry. Our ultimate decision is whether these effects are "material" within the meaning of the statute.^{30/} In considering these questions, we also must consider the particular dynamics of the relevant industries and markets.^{31/}

1. Volumes and Prices of the Subject Imports

Imports from Taiwan have been significant, but hardly dominant in the U.S. market for 12-volt motorcycle batteries. In 1988, which encompassed the six-month period during which Commerce has preliminarily determined that imports from Taiwan were sold at LTFV,^{32/} those imports totalled [* *].^{33/} [* * * * *]^{34/}; since imports from Taiwan accounted for [*]% of total U.S. consumption in early 1988,^{35/} we may infer that LTFV imports accounted for approximately [*]% of total U.S. consumption in that period. Imports in

^{30/} 19 U.S.C. § 1677(7)(B). See Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass), at 117-19.

^{31/} See new Section 771(C)(iii)(IV) of the statute (codified at 19 U.S.C. § 31/1677(C)(iii)). See also S. Rep. No. 71, 100th Cong., 1st Sess. 117 (1987).

^{32/} Id. at Appendix C.

^{33/} Id. at A-23, Table 14.

^{34/} Report at A-3-4.

^{35/} Report at A-24, Table 15.

1988 were approximately 4.9% lower than they were in 1987.^{36/} The volume of the Taiwanese imports fell again in the first quarter of 1989 relative to the comparable three-month period in 1988 — from 386 units to 294 units.^{37/} The value of the Taiwanese imports in 1988 were higher than they were during the preceding periods covered by our investigation — \$10.8 million compared with \$7.7 million in 1986.^{38/} However, the value of the Taiwanese imports was lower in the first three months of this year than it was during the comparable three-month period in 1988 — \$3.9 million in 1989 as compared to \$4.2 million in 1988.^{39/}

The volume of the subject imports is closely related to the prices at which those imports were sold. The record evidence in this investigation indicates that dumping had a small effect on Taiwanese import prices. In most cases where dumping margins are determined to exist, the actual decrease in the price of subject imports that occurs consequent to dumping will be less than the amount of the dumping margin.^{40/} In cases such as this one, where the alleged dumping margins reflect an assertion that the subject foreign producers/exporters have charged a lower price for their product in the United States than the price that they have charged in their home market (or another foreign market used as the surrogate for the home market), the actual decrease in the U.S. price of the subject imports that occurred consequent to dumping will normally be only a fractional percentage of the dumping

^{36/} Report at A-23, Table 14.

^{37/} Id.

^{38/} Id.

^{39/} Id.

^{40/} See Phone Systems, supra, at 75.

margin.^{41/} This percentage, in turn, will be in large measure a function of the proportion of the total sales of the subject foreign producer(s) in the U.S. market and the exporter's home market (or other surrogate foreign market) that is accounted for by sales in the home market.^{42/} The Taiwanese Respondents' sales of 12-volt motorcycle batteries in its home market during the portion of our investigation encompassing that period (and during the preceding periods covered by our investigation) were somewhat less than their sales of such products in the United States.^{43/} Thus it is likely that the LTFV sales caused the prices of the Taiwanese imports to be lower than they otherwise would have been by only a portion, perhaps less than half, of the LTFV margin.

^{41/} For a description of the manner in which the alleged dumping margins were calculated, see Petition at 8-10.

^{42/} See, e.g., Certain All-Terrain Vehicles from Japan, USITC Pub. 2163, Inv. No. 731-TA-388 (Final) 58-60 (March 1989) (Additional Views of Commissioner Cass); Granular Polytetrafluoroethylene Resin from Japan and the Netherlands, USITC Pub. 2112, Inv. Nos. 731-TA-385 and 386 (Final) 74 (Aug. 1988) (Additional Views of Commissioner Cass); Certain Bimetallic Cylinders from Japan, USITC Pub. 2080, Inv. No. 731-TA-383 (Final) 44 (May 1988) (Additional Views of Commissioner Cass).

In reality, an estimate of the decrease in the price of the dumped product that is derived in this fashion will be somewhat overstated as it represents an approximate upper bound of that decrease. For a thorough explication of this subject, see Office of Economics, Assessing the Effects on the Domestic Industry of Price Dumping, USITC Memorandum EC-L-149 at 1, n. 1, 13, 19-21 (May 10, 1988). A more accurate statement of the effects of dumping on import prices also may require some adjustment to reflect the fact that dumping margins are calculated on an ex-factory, rather than final sales price, basis. However, the evidence that would be necessary to make such an adjustment is not contained in the record here.

^{43/} See Report at A-13, Table 13. In 1988, home market sales by Respondents accounted for 45% of its total sales in a combined Taiwan/U.S. market. *Id.* During the first three months of this year, home market sales accounted for [*]% of Respondents' sales in such a combined market. *Id.*

The Department of Commerce has determined that the subject imports from Taiwan were sold at prices reflecting dumping margins ranging from 0.74% to 28.06%, with a weighted average of 5.65%.^{44/} In each instance, the margin was calculated on the basis of differences in actual sales prices charged by the subject foreign producers in the United States and the Taiwan home market (or, in the case of Wei Long and Cheng Kwang, another third country market used by Commerce as a surrogate for the home market, because those producers reported insufficient sales in Taiwan). Given the magnitude of those margins, and the evidence that only a portion of those margins are likely to have been reflected in their United States sale price, the evidence suggests that dumping generally did not cause substantial decreases in the prices at which the Taiwanese imports were sold.

The record evidence indicates that the changes in the prices of the subject imports from Taiwan that occurred consequent to dumping did not produce significant increases in the volume of imports from that country. The degree to which decreases in import prices result in increases in the volume of import sales is, in large measure, a function of the degree to which the imported goods in question are substitutable for the domestic like product from the standpoint of domestic consumers. For the reasons stated in the succeeding section of these Views, the record evidence suggests that there are important limitations on the substitutability of the imported and domestic products, and that these limitations sharply circumscribed the effects that dumping had on sales of the subject imports from Taiwan.

2. Effects on Prices and Sales of the Domestic Like Product

^{44/} Id. at A-3.

In evaluating the effects of subject imports on domestic prices and sales, it is necessary to understand the markets for the domestic and imported products. In that regard, the manner in which consumers' reactions affect these markets is especially important. The evidence bearing on three issues is central to analysis of imports' effects on domestic products' prices and sales: the share of the domestic market held by the subject imports; the degree to which consumers see the imported and domestic like products as similar (the substitutability of the subject imports and the domestic like product); and the degree to which domestic consumers change their purchasing decisions for these products based on variations in the prices of those products. Each of these three issues is considered in turn.

During the period in which dumping is alleged to have occurred, the market share of the subject Taiwanese imports was small but not insignificant. During the first three months of 1988 — the portion of our investigation that most closely corresponds to the period of alleged dumping of Taiwanese imports — the Taiwanese imports accounted for [*]% of the quantity, and [*]% of the value, of domestic consumption of 12-volt motorcycle batteries.^{45/} This represented a relatively unchanged level from that experienced in 1987, when the subject Taiwanese imports accounted for [*]% of domestic consumption on a quantity-measured basis and [*]% of domestic consumption on a value-measured basis.^{46/} The market share of the Taiwanese imports was considerably lower in 1989: [*]% on a quantity-measured basis and [*]% on a value-measured basis.

^{45/} Report at A-24, Table 15.

^{46/} Id.

Other evidence indicates, however, that the collective market share accounted for by the subject imports is not an entirely accurate indication of the imports' effects on domestic prices and sales. In particular, other information underlying the market share data provides a strong indication that the substitutability of the subject imports and the domestic like product was quite limited. Notably, Yuasa-Exide, the Petitioner here, and Exide, which owns nearly half the outstanding equity in Petitioner, collectively accounted for a significant percentage of imports from Taiwan throughout the period covered by our investigation. In 1988, for example, import purchases by those firms amounted to almost [*]% of the total volume of domestic shipments of imports from Taiwan.^{47/} In assessing the substitutability of the Taiwanese imports for the domestic like product, the fact that Petitioner and its minority (near-majority) shareholder, Exide, have controlled a major portion of the import supply is important. Petitioner and Exide had (and have) a strong interest in maintaining the profitability of both enterprises, including Yuasa-Exide's domestic battery production operations; each firm would have taken this interest into account when deciding whether to import batteries from Taiwan and in deciding what types of batteries to import. Although the imported batteries clearly could replace domestic production, given the relation among the companies it appears unlikely that the batteries imported from Taiwan by Petitioner and Exide would compete with those made domestically by those companies. [* * * *] but they would surely not compete directly with the domestic production of the companies importing them. Given the interests of these parties, it would be self-defeating to import competing batteries if

^{47/} See Report at A-11, Table 3; A-24, Table 15.

decreases in the prices at which batteries were imported by Petitioner and Exide from Taiwan consequent to dumping would necessarily result in commensurate decreases in either prices or sales of Petitioner's product.^{48/}

The common Yuasa ownership interest in Petitioner, Respondent and Yuasa Taiwan likewise suggests that the subject imports and the domestic like product are not fully substitutable. There is a real question respecting the degree to which imports from the Taiwanese sister company of the Petitioner compete with the domestic like product. The inherent limits on competition between firms that have close corporate relationships of the sort presented here must be taken into account in assessing the extent to which different products can be deemed essentially duplicative, the degree to which domestic consumers can in fact substitute imported batteries for the domestic like product, and ultimately on the degree to which the imported batteries affected prices and sales of domestic batteries.

The other important evidence bearing on the extent to which the imported and domestic like products are substitutable concerns the end-user markets in which those products are sold. The record contains evidence that batteries from Taiwan are generally perceived by end-users to be of lower quality than the Petitioner's domestically-produced 12-volt motorcycle batteries..

^{48/} The market share data also suggest that there may be significant differences in the quality of Taiwanese batteries and the domestic like product. Specifically, as previously noted, in 1988, the value-measured market share of the Taiwanese imports was significantly lower than the quantity-measured market share of those imports. These data indicate that the quality of the Taiwanese imports as a group may be inferior in some respects to domestically produced batteries. However, because the record in this preliminary investigation does not contain evidence corroborating this inference, product differences do not form the basis for my conclusions respecting the substitutability issue.

Testimony to this effect was presented to the Commission,^{49/} and remains essentially unrebutted by Petitioner. Furthermore, original equipment manufacturers ("OEMs") account for the vast majority of sales of 12-volt motorcycle batteries.^{50/} Yet, in this important market, few Taiwanese imports were reported during the period covered by our investigation.^{51/} Taiwanese imports sold in the OEM market were reported only recently and only to a very limited extent. The explanation for this offered by Petitioner, and confirmed by other evidence available to the Commission, is that the delivery lead time for the imported product is substantially longer than required by domestic OEMs that use "just-in-time" delivery systems when procuring parts.^{52/} In the most important segment of the market, the OEM market, the imported product is, therefore, simply not available to any significant extent as a substitute for domestically-produced batteries.

The remaining issue that must be considered in evaluating the effects that dumping of the subject imports had on prices and sales of the domestic like product relates to the degree to which domestic consumers of motorcycle batteries respond to changes in the price of these products. When consumer demand for the domestic and imported products as a group is highly responsive to changes in price, the effects of dumping on prices and sales of the domestic like product is attenuated, for in that case the lower prices

^{49/} Tr. at 91.

^{50/} Report at A-18.

^{51/} Id. at A-25. There were sales reported to OEM accounts for equipment other than motorcycles (e.g., ride-on lawnmowers and garden tractors) that sometimes use 12-volt motorcycle batteries subject to this investigation. These sales were of relatively insignificant volume and were not directly competitive with sales to motorcycle OEM accounts.

^{52/} Report at A-25.

resulting from dumping will stimulate significantly increased domestic demand for the lower priced product. Much greater effects will be felt by U.S. producers when consumers perceive no difference between the imported and domestic product other than price but their overall purchases of these products are relatively unresponsive to price changes. In the latter case, consumers will simply switch their purchases from U.S.-made to lower-priced imported products, resulting in detrimental impacts on both prices of the U.S. product and sales of that product.

In this investigation, the parties adduced no evidence bearing on this issue. However, other information collected by the Commission is sufficient to support the inference that domestic demand for motorcycle batteries is relatively unresponsive to changes in the price of that product. In particular, there are essentially no substitutes for motorcycle batteries in the uses to which such batteries are put.^{53/} Accordingly, there is no basis for inference that the price responsiveness of domestic demand attenuated the effects of dumping. While this fact, standing alone, increases the likely effect of LTFV sales on prices and sales of the like product, that fact manifestly does not stand alone on this record. Given that other evidence indicating that the substitutability of the domestic like product and the subject imports is limited, no such inference of attenuated effects to consumers' response to price is required in order to reach the conclusion that the subject imports did not have a significant impact on either prices or sales of the domestic like product.

3. Investment and Employment

^{53/} Report at A-5.

The investment and employment data compiled by the Commission for the domestic industry producing 12-volt motorcycle batteries are consistent with, but do not provide strong independent support for, the conclusion that the subject imports from Taiwan did not have a material, adverse impact on that industry. In every case that comes before us, there will be many factors that will have affected the performance of the domestic industry, ranging from the overall state of the domestic and global economies to developments that may affect only specific companies within an industry. These factors, most of which are not related in any way to unfairly traded imports, will also be reflected in the various indicators of industry performance that we normally consider. Accordingly, it is important that we view such indicators of industry performance with care and in the context of the other information that is available to us respecting the effects of the LTFV imports in question.

With that caveat in mind, the investment and financial data that the Commission has gathered are noteworthy in two respects. First, as the Commission majority has suggested, these data collectively indicate that the industry is thriving. As previously discussed, unlike the Commission majority, I do not believe that it is appropriate for us to make a separate finding concerning the condition of the industry. As I have explained in other opinions, however, I believe that Congress has clearly expressed its intent that we take the condition of the industry into account in determining what constitutes "material injury" in any particular case.^{54/} In other words, a minor impact that might be regarded as "material" for an industry

^{54/} E.g., Digital Readout Systems, supra, at 117-18.

that is on the brink of extinction need not and should not be so treated when the industry is as healthy as the one before us in the instant investigation.

Second, the various indicators of industry performance that are normally considered by the Commission are in fact devoid of any evidence that might plausibly suggest that the industry's performance has suffered materially by reason of LTFV imports. The profitability of the industry, as measured by the industry's operating income, declined slightly over the period from 1986 to 1989; more notably, however, industry operating income improved substantially in the first three months of this year.^{55/} If the industry's quarterly income is extrapolated over the full year, it becomes readily apparent that the industry is more profitable than it has been during any other period surveyed in our investigation. The level of production by the industry is also high,^{56/} which is remarkable given the fact that Exide closed its South Carolina plant in 1987.

The number of workers employed in the domestic industry fell [*]% from 1986 to 1988, but it increased [*]% in 1989.^{57/} The productivity data compiled by the Commission indicate that the mild decline in employment experienced earlier is more than accounted for by the improvement in labor productivity that the industry has registered over the full period covered by our investigation.^{58/} By all other measures -- hours worked, total compensation, and hourly compensation -- the terms and conditions of

^{55/} Report at A-14, Table 6.

^{56/} Id. at A-10m Table 1.

^{57/} Id. at A-13, Table 5.

^{58/} Id.

employment in the domestic industry have improved.^{59/} All of the investment and employment data are, therefore, consistent with the conclusion otherwise suggested by the record evidence before us: that the subject Taiwanese imports did not cause material injury to the domestic industry.

II. THREAT OF MATERIAL
INJURY FROM ALLEGEDLY LTFV IMPORTS

I join the Commission's discussion of threat, but I believe a few additional points are worth noting. First, it is important to understand analysis of threat as a distinct inquiry, related to, but not merely an appendage to analysis of injury from allegedly LTFV imports. This ground for relief addresses a particular factual context, where a clear threat of imminent injury from LTFV imports exists even though no significant effect has yet been felt.

Second, as threat analysis requires prediction, an even less precise process than divination of past effects, it is important to describe carefully the basis of our analysis, else this becomes a very slippery tool.^{60/} We must be cautious not to use threat analysis as an escape valve for difficult cases, finding threat where we cannot quite find injury.

A third point follows from these observations: we should be careful to cumulate in threat analysis only where the evidence clearly shows a basis for belief that imports from the various countries at issue are likely to be subject to the same influences and to produce the same effects on the domestic industry.

^{59/} Id.

^{60/} Congress has specifically cautioned the Commission against making affirmative determinations of threat based on conjecture or supposition. 19 U.S.C. § 1677(7)(F)(ii).

Finally, I understand the threat factors contained in the statute to require the same sort of integrated analysis presented above with respect to actual injury from allegedly LTFV imports. The factors are not a checklist of criteria that should be evaluated on a disaggregated basis, with a negative threat finding ensuing if a majority of statutory factors do not indicate a threat. Rather, the factors suggest where we should look to see whether probable events over the near term will produce the sorts of effects on the domestic industry's prices and sales, and ultimately on its financial returns and employment, that would constitute material injury. Where, as here, the factors almost uniformly move in a single direction, any analysis that refers to them — even on a factor-by-factor basis — should produce a sensible result. Where, however, the factors produce a less consistent picture, careful inspection of that information becomes critical.

CONCLUSION

For the foregoing reasons and, as indicated above, for reasons stated in the Views of the Commission, I find that the domestic industry has been not been materially injured, nor is it threatened with such injury, by reason of the imports that are the subject of this investigation.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

Following a preliminary determination by the U.S. Department of Commerce that imports of 12-volt motorcycle batteries¹ from Taiwan are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective April 18, 1989, instituted investigation No. 731-TA-238 (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, or the establishment of an industry in the United States is materially retarded, 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 of May 4, 1989 (54 F.R. 19253).² The hearing was held in Washington, DC, on July 6, 1989.³

In its final determination, published in the Federal Register of June 28, 1989 (54 F.R. 27191), Commerce determined that imports of 12-volt motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at LTFV.⁴ The applicable statute directs that the Commission make its final determination by August 16, 1989. The Commission voted on this investigation on August 8, 1989.

Background

This investigation results from a petition filed by General Battery Corp. (GBC)⁵ on January 11, 1985, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of 12-volt motorcycle batteries from Taiwan. In response to that petition, the Commission instituted investigation No. 731-TA-238 (Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) and, on February 25, 1985, determined⁶ that there was no reasonable indication of

¹ Twelve-volt motorcycle batteries are provided for in subheading 8507.10.00 of the Harmonized Tariff Schedule of the United States (HTS).

² A copy of the Commission's Federal Register notice is presented in app. A.

³ A list of the participants in the hearing is presented in app. B.

⁴ A copy of Commerce's notice of final determination is presented in app. C.

⁵ The petition was later amended to include as co-petitioner Yuasa-General Battery Corp. (Yuasa-General).

⁶ Chairwoman Stern, Vice Chairman Liebel, and Commissioners Eckes, Lodwick, and Rohr unanimously voted in the negative. Current Chairman Brunsdale, current Vice Chairman Cass, and Commissioner Newquist were not members of the Commission at the time.

material injury or threat thereof.⁷ The petitioners appealed to the Court of International Trade ("CIT") for a reversal of the Commission's determination.

On May 22, 1987, the CIT affirmed the Commission's preliminary determination of no reasonable indication of material injury to the domestic industry by reason of imports of 12-volt motorcycle batteries. However, the CIT remanded for reconsideration⁸ the Commission's determination with respect to the question of a reasonable indication of threat of material injury to the domestic industry by reason of the subject imports. Having reconsidered the record in its entirety, the Commission, on July 6, 1987, determined⁹ that there was no reasonable indication of threat of material injury to the domestic industry by reason of the subject imports, and provided its views to the CIT.

On July 12, 1988, the CIT instructed¹⁰ the Commission to issue a "preliminary determination that there is a reasonable indication of a threat of material injury to the 12-volt motorcycle battery industry in the United States by reason of imports of such merchandise from Taiwan." In following the order of the CIT, the Commission unanimously determined, on September 12, 1988, that there was a reasonable indication that the domestic 12-volt motorcycle battery industry was threatened with material injury by reason of the subject imports.

As a result of the Commission's affirmative redetermination, Commerce reinstituted its investigation effective November 14, 1988. On April 18, 1989, Commerce preliminarily determined that 12-volt motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at LTFV.

Previous Investigations

Motorcycle batteries from Taiwan have been the subject of a previous antidumping investigation by the Commission and Commerce.¹¹ Following a final investigation, the Commission, on March 28, 1982, notified Commerce of its unanimous determination that an industry in the United States was not materially injured or threatened with material injury, and that an industry in

⁷ 12-Volt Motorcycle Batteries From Taiwan: Determination of the Commission in Investigation No. 731-TA-238 (Preliminary) . . . , USITC Publication 1654, February 1985.

⁸ See General Battery Corp. v. United States, Slip op. 87-60, 11 CIT__, 661 F. Supp. 1214 (1987).

⁹ Chairman Liebel, Vice Chairman Brunsdale, and Commissioner Rohr voted in the negative. Commissioners Eckes and Lodwick dissented. Current Vice Chairman Cass was not a member of the Commission at the time.

¹⁰ See General Battery Corp., et al v. United States, Slip op. 88-89, CIT__.

¹¹ The previous investigation included both 6-volt and 12-volt motorcycle batteries.

the United States was not materially retarded, by reason of LTFV imports of motorcycle batteries from Taiwan.¹²

On May 17, 1989, an antidumping petition was filed with the Commission and Commerce by counsel for Yuasa-Exide Battery Corp., Reading, PA, on 12-volt motorcycle batteries from the Republic of Korea. On July 3, 1989, pursuant to its resulting preliminary investigation of 12-volt motorcycle batteries from Korea, the Commission unanimously determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the Republic of Korea of 12-volt motorcycle batteries, provided for in subheading 8507.10.00 of the HTS, that are alleged to be sold at LTFV.¹³

Nature and Extent of Sales at LTFV

On June 28, 1989, Commerce published in the Federal Register its final determination that 12-volt motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at LTFV (54 F.R. 27191). Commerce's investigation involved Ztong Yee Industrial Co., Ltd.; Wei Long Electric Industrial Co., Ltd.; and Cheng Kwang Storage Battery Co., Ltd., which collectively accounted for a substantial portion of exports of 12-volt motorcycle batteries from Taiwan to the United States during the period of investigation (Apr. 1, 1988, through Sept. 30, 1988). The final weighted-average LTFV margins are presented in the following tabulation (in percent):

<u>Producer/exporter</u>	<u>LTFV margins</u>
Ztong Yee.....	28.06
Wei Long.....	3.15
Cheng Kwang.....	.74
All others.....	5.65

The weighted-average LTFV margin for Ztong Yee was based on the "best information available," pursuant to section 776(c) of the Act. The most appropriate basis for best information available was the 28.06 LTFV margin calculated for Ztong Yee in Commerce's preliminary determination. Reasons for Commerce's use of best information available for Ztong Yee are addressed at length in Commerce's notice of final determination presented in appendix C of this report. According to Commerce, fundamental flaws found in Ztong Yee's questionnaire responses are justification for using the best available information. The quantity of U.S. sales for Ztong Yee examined by Commerce amounted to *** units, valued at \$***. Sales found to be at LTFV amounted to

¹² Motorcycle Batteries From Taiwan: Determination of the Commission in Investigation No. 731-TA-42 (Final) . . . , USITC Publication 1228, March 1982.

¹³ 12-Volt Motorcycle Batteries from the Republic of Korea: Determination of the Commission in Investigation No. 731-TA-434 (Preliminary) . . . , USITC Publication 2203, July 1989.

*** units, valued at \$***. LTFV margins ranged from *** percent to *** percent.¹⁴

The quantity of U.S. sales for Wei Long examined by Commerce amounted to *** units, valued at \$***. Sales found to be at LTFV amounted to *** units, valued at \$***. LTFV margins ranged from less than *** percent to *** percent.

The quantity of U.S. sales for Cheng Kwang examined by Commerce amounted to *** units, valued at \$***. Sales found to be at LTFV amounted to *** units, valued at \$***. LTFV margins ranged from *** percent to *** percent.

The Product

Description and uses

The motorcycle batteries that are the subject of this investigation are lead-acid storage batteries having a nominal output of 12 volts and rated from 2 to 32 ampere-hours (at a 10-hour discharge rate). Such batteries are principally used for motorcycles, but are also used to a lesser extent for riding lawnmowers, garden tractors, and other applications. For purposes of this report, these batteries are collectively referred to as motorcycle batteries.

A storage battery is a device that is capable of converting chemical energy into electrical energy through a chemical reaction. The chemical reaction can be effectively reversed, and thus the battery can be recharged by passing an electrical current in the opposite direction of the discharge current. Storage batteries differ from primary batteries in that primary batteries cannot be efficiently recharged by the reversal of the discharge current.

Motorcycle batteries are constructed of cells, each of which has a nominal output of 2 volts. Each cell consists of cast antimonial-lead or calcium-lead grids (or "plates") coated with baked lead oxide. The plates are alternately given negative and positive charges and are separated to provide the necessary voltage. Motorcycle batteries can be stored indefinitely in their dry condition and must be activated by the addition of sulfuric acid prior to use.

The ampere-hour rating for motorcycle batteries is well below the rating of lead-acid storage batteries used in automobiles. Automobile-starting currents and electrical systems usually require a battery rated at a minimum of 35 ampere-hours. The physical characteristics of motorcycle batteries (i.e., dimensions, location of positive and negative terminals, placement of the pressure relief vent, and so forth) are dependent upon the specifications of the particular motorcycle. The electrical and physical specifications of

¹⁴ Because of fundamental flaws in Ztong Yee's questionnaire responses, information for Ztong Yee is based on data compiled by Commerce in its preliminary investigation.

virtually all motorcycle batteries sold in the United States are identified by Japanese Industrial Standards (JIS) numbers. For example, a JIS 12N14A-3A battery is a 12-volt, 14-ampere model, with top terminals.

All recent-model, street-legal motorcycles use 12-volt batteries for their ignition systems, and certain older motorcycles use 6-volt batteries to power their horn and lights. The batteries are installed on the motorcycle, and, although they are recharged by the vehicle's electrical system, they must be replaced periodically, generally after several years of use. Motorcycles with relatively large engines require batteries with higher ampere-hour ratings than motorcycles with smaller engines.

In the late 1970s, motorcycle manufacturers began phasing out kick starters on on-road motorcycles. Kick starters allow the rider to manually start the engine without a battery. Honda produces an on-road motorcycle with both an electric starting system as well as a kick starter. Many dual-purpose motorcycles (those designed for both on- and off-road use) use kick starters exclusively, although they use a 12-volt battery so that lights and horns can operate while the engine is off, as required by law. Off-road motorcycles use only kick starters, and do not require or use batteries.

Motorcycle batteries are used to a lesser extent in other types of vehicles such as garden tractors, riding lawnmowers, and snowmobiles. This is a limited market for motorcycle batteries owing to several factors, such as the power requirements and charging systems of this equipment, and space available for the location of the battery.

There are no substitute products for 12-volt motorcycle batteries. Although automotive batteries operate in a similar manner to motorcycle batteries, automotive batteries have size, weight, and operation characteristics that prohibit their use in motorcycles.

Manufacturing process

The manufacturing process for motorcycle batteries consists of two major production activities: lead battery plate production, and assembly of the battery. The lead battery plates are constructed by processing lead into the proper grid forms by the use of grid-casting machines. Two thousand pounds of lead oxide (pure lead which has been ground into powder) are then mixed with sulfuric acid and other chemical additives to make the "paste" or "active material." The grids are packed flat with the paste, with the larger and thicker plates (contained in better, more expensive batteries) being packed with more active material. The resulting "pasted panels" are surface-dried by putting them onto skids and leaving them in a room to air dry for at least five days.

After the pasted panels are dry, they are placed into a tank of sulfuric acid for 18 to 20 hours, during which time they are charged. Whether a plate is positively or negatively charged depends on the chemical mixture that is combined with the lead oxide to make the paste. Upon removal from the acid, the plates are washed off and the trays of charged panels are heat dried for 20 hours. After drying, the panels are sawed apart in such a way as to create

two, four, six, or nine separate battery plates, depending on the specific type of battery being manufactured. The plates are then sent to the battery assembly line or to inventory.

The assembly of the batteries occurs on an assembly line, and begins when a line worker places sets of battery plates together in groups, which are then placed into the battery case that encloses the plates and sulfuric acid. Each group of battery plates produces two volts, and the greater the ampere-hour rating of the battery, the more plates are required in each group. Thus, a 12-volt battery contains six groups of plates. Negative and positive plates are alternated within the battery, and a "separator" is placed between each plate.

"Combs" are used to connect (by welding) plates with like charges. The battery terminal posts (one positive, one negative) are welded to their respective combs. The terminals are located on top of the combs at each end of the battery, and will eventually be connected to cables leading to the motorcycle's electrical system when installed on the vehicle.

Following the welding process, the batteries are tested to ensure that the plates are properly joined together. The test procedure identifies any problems in the battery, and rejected batteries are repaired. The procedure eliminates scrap batteries in the manufacturing process.

After testing, plastic covers are placed on the batteries, and are joined to the battery case in a heat-sealing machine. After the batteries are sealed, removable vent plugs are placed in the vent holes on top of the battery. The batteries are then removed from the assembly line, labeled appropriately, and placed into cartons which are inventoried in a dry state, meaning that battery acid has not yet been added.

U.S. tariff treatment

Imports of 12-volt motorcycle batteries are classified in Harmonized Tariff Schedule of the United States (HTS) subheading 8507.10.00, which covers lead-acid storage batteries, of a kind used for starting piston engines. The column 1-general rate of duty for this subheading is 5.3 percent ad valorem. Imports from countries covered by the Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act (CBERA), and the United States-Israel free-trade agreement enter the United States free of duty, as do goods covered by the Automotive Products Trade Act (APTA) and the Agreement on Trade in Civil Aircraft (ATCA). Effective January 1, 1989, the Republic of Korea, Taiwan, Singapore, and Hong Kong lost their status as beneficiary developing countries under the GSP, and imports of 12-volt motorcycle batteries from those countries became subject to the column 1-general rate of duty of 5.3 percent. Goods originating in Canada are dutiable at 4.7 percent ad valorem under the United States-Canada Free-Trade Agreement, and this tariff rate will be phased out by 1990. The column 2-rate of duty on imports from Communist countries is 40 percent ad valorem.

In 1987 and 1988, 12-volt motorcycle batteries were reported for statistical purposes under item 683.0110 of the Tariff Schedules of the United States Annotated (TSUSA), which covered 12-volt lead-acid storage batteries not exceeding a weight of 13 pounds, of a kind used for starting piston engines. Prior to 1987, 12-volt motorcycle batteries were provided for in TSUS items 683.01, 683.02, 683.03, and 683.05, which covered all 12-volt lead-acid storage batteries regardless of weight.

The U.S. Market

U.S. producers

Presently, the domestic industry producing 12-volt motorcycle batteries consists of a single producer, Yuasa-Exide Battery Corp., the petitioner in this investigation.¹⁵ In 1986, there were two U.S. producers of 12-volt motorcycle batteries; Exide Corp. and Yuasa-General Battery Corp. (Yuasa-General), Reading, PA. In April 1987, Exide Corp., citing increased competition from imports, stopped producing 12-volt batteries for use in motorcycles at its Sumter, SC, production facility. This decision in no way affected Exide's manufacture of other battery products, specifically automotive and industrial batteries and 12-volt batteries for use only in garden tractors and marine products such as jet skis.¹⁶

On May 28, 1987, Exide purchased General Battery Corp. and thus acquired the 49-percent minority interest in Yuasa-General previously held by General Battery.¹⁷ Exide changed the name of Yuasa-General to Yuasa-Exide Battery Corp. (Yuasa-Exide) and continued that firm's operations under existing management and production staff.

U.S. importers

Importers of 12-volt motorcycle batteries are primarily distributors of motorcycle parts and accessories, motorcycle battery producers, and U.S. affiliates of Japanese motorcycle producers. Motorcycle parts distributors, which account for the bulk of motorcycle battery imports, are located in all regions of the United States but are concentrated in California, Ohio,

¹⁵ Johnson Controls, Inc., a Milwaukee-based automobile battery maker, also produces a sealed type 12-volt motorcycle battery in limited quantities, approximately *** annually. These batteries are produced for * * *. * * * indicated to the Commission's staff that because of shrinking demand and high tool-up costs, Johnson Controls * * *.

¹⁶ Exide produces 12-volt batteries for use in garden tractors at two Indiana production sites, one in Logansport and one in Frankfort.

¹⁷ Yuasa Battery Co., Ltd., of Japan owned the remaining 51 percent of YGBC indirectly through its wholly owned U.S. subsidiary Yuasa Battery (America), Inc.

Tennessee, and Oregon. In addition to 12-volt motorcycle batteries, motorcycle parts distributors also import motorcycle parts and accessories (e.g., chains, tires, helmets, and filters) and such diverse products as garden tools, flashlights and lanterns, battery manufacturing equipment, lead, and barium sulfate. Yuasa-Exide imports motorcycle batteries to complement and complete its line of motorcycle batteries, as did Yuasa-General and Exide before.^{18 19} Japanese motorcycle producers, through U.S. affiliates, operate two assembly plants in the United States and import motorcycle batteries as part of the original equipment of the U.S.-assembled motorcycles. These U.S. affiliates also import batteries for replacement sales.

There are 13 known U.S. importers, including the U.S. producer, of 12-volt motorcycle batteries from Taiwan. Three of the 13 importers also import 12-volt motorcycle batteries produced in countries other than Taiwan, mainly Japan and Korea. Based on questionnaire responses, five firms (the petitioner included) account for the bulk (79 percent in 1988) of U.S. imports of 12-volt motorcycle batteries from Taiwan. These firms include * * *.

Channels of distribution

There are no distinct differences in the channels of distribution for domestically produced and imported 12-volt motorcycle batteries. The vast majority of 12-volt motorcycle batteries sold in the United States are accounted for by original-equipment manufacturers (OEMs). These channels include motorcycle manufacturers, which install batteries as part of the original equipment of new motorcycles, and to a lesser extent, manufacturers of ride-on lawnmowers and garden tractors. In addition to installing batteries as part of the original equipment of their respective manufactured products, OEMs also distribute replacement batteries to consumers through retail sales affiliates.

Three channels of distribution are used to market 12-volt motorcycle batteries in the replacement segment of the U.S. market. The traditional and largest channel is through OEMs and independent motorcycle warehouse distributors (MWDs). OEMs, such as Honda, Kawasaki, and Harley-Davidson, purchase batteries for resale to consumers through the replacement parts programs of their respective motorcycle dealerships. Motorcycle warehouse distributors carry replacement motorcycle parts and accessories for numerous OEM product lines. The fullest lines of motorcycle battery models are sold in

¹⁸ Yuasa-Exide accounted for *** percent of all U.S. imports of 12-volt motorcycle batteries from Taiwan in 1988, and *** percent of such imports from all sources.

¹⁹ Although Exide Corp. no longer produced 12-volt motorcycle batteries in 1988, the firm continued to import motorcycle batteries through the end of 1988. Exide accounted for *** percent of U.S. motorcycle battery imports from Taiwan in 1988 and *** percent of such imports from all countries.

this channel, through which the petitioner estimates that *** percent of all replacement battery sales are made.²⁰

The second channel of distribution for the replacement market involves sales of batteries to automotive parts distributors and small retailers. Fewer models of batteries are sold through this channel, which accounts for approximately *** percent of all current replacement sales.

The third channel of distribution for replacement sales of motorcycle batteries is through large retail chains (e.g., Sears, Roebuck & Co., Montgomery Ward, J.C. Penney, and K Mart) and automotive and motorcycle accessory discount chains such as Western Auto, Penn-Jersey, and Trak Auto. This market segment is the newest and fastest growing distribution channel for 12-volt motorcycle batteries, accounting for the estimated *** percent remainder of replacement sales. Only the higher volume motorcycle battery models are carried by merchants in this marketing channel.

Annual demand for 12-volt motorcycle batteries for replacement applications is directly related to the total U.S. motorcycle population. Total U.S. motorcycle registrations have declined annually since 1982, from 5.6 million in 1982 to 4.4 million in 1988.²¹ Assuming an approximate average 2-year product life for a motorcycle battery, estimated 1988 replacement demand for motorcycle batteries ranged from 1.8 million units to 2.2 million units.

Consideration of Alleged Material Injury

The information that follows is based on data provided in Commission questionnaires by the domestic producers of 12-volt motorcycle batteries. Although the domestic 12-volt motorcycle battery industry currently consists of only one producing firm, Yuasa-Exide, questionnaire data were also provided by Exide Corp. on its operations up to the time it ceased production in 1987. Also, the 1986-87 data presented for Yuasa-Exide throughout this report are the data reported by Yuasa-General prior to the name change. Additional information on U.S. producers' operations during 1982-85 are presented in appendix D, table D-1.

²⁰ In its questionnaire response, the petitioner estimated that of its total quantity of batteries shipped in 1988, *** percent were shipped to distributors of all types.

²¹ Total registrations includes registrations of motorcycles, scooters, and ATVs.

U.S. production, capacity, and capacity utilization

Partly as a result of the closing of Exide's Sumter, SC, facility in 1987,²² the remaining producer (which since 1987 comprises the entire U.S. industry) operated at increasingly higher levels, in terms of production and capacity utilization. Although its 12-volt motorcycle battery capacity declined by *** percent from 1986 to 1988, Yuasa-Exide's production of 12-volt motorcycle batteries increased by *** percent over the same period (table 1). Total U.S. production increased from *** units in 1986 to *** units in 1988, or by *** percent. Production increased in January-March 1989 by *** percent compared with production in the corresponding period of January-March 1988. The increase in interim 1989 is particularly noteworthy in view of the fact of * * *.²³

Yuasa-Exide's capacity utilization increased from *** percent in 1986 to nearly *** percent in 1988, and was * * * percent in January-March 1989 * * *.

Table 1
12-volt motorcycle batteries: U.S. producers' average practical capacity, production, and capacity utilization, 1986-88, January-March 1988, and January-March 1989

Firm	1986	1987	1988	Jan. - Mar. - -	
				1988	1989
	*	*	*	*	*

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

U.S. producers' shipments

Domestic shipments.--U.S. producers' domestic shipments of U.S.-produced 12-volt motorcycle batteries increased by *** units, or by *** percent, from 1986 to 1987, but then decreased by *** units, or by *** percent, from 1987 to 1988 (table 2). U.S. producers' domestic shipments increased *** percent in January-March 1989 compared with shipments in January-March 1988. The value of producers' domestic shipments followed a similar trend, increasing from \$*** in 1986 to \$*** in 1987, but then decreasing to \$*** in 1988. The value of such shipments rose by \$***, to \$***, from January-March 1988 to January-March 1989.

²² Exide accounted for about *** percent of the capacity of the U.S. 12-volt motorcycle battery industry in 1986 and 1987.

²³ * * *.

Table 2

12-volt motorcycle batteries: U.S. producers' domestic shipments of production and exports, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	Jan.-Mar.--	
				1988	1989
	*	*	*	*	*

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

Export shipments.--As a share of total shipments, U.S. producers' exports, * * *, of 12-volt motorcycle batteries * * * throughout the period covered by the investigation, accounting for *** percent of total producers' shipments. The value of such exports was * * * throughout the period.

U.S. producers' purchases

Both Exide and Yuasa-Exide purchased 12-volt motorcycle batteries from foreign sources during 1986-88. Yuasa-Exide also purchased from foreign sources in interim 1989.²⁴ All of Exide's foreign purchases * * *. Yuasa-Exide relied on * * * as its source of purchases abroad. Yuasa-Exide also indicated in its questionnaire response * * *.²⁵

Import purchases by the two firms increased from *** units, valued at \$*** in 1986 to *** units, valued at \$***, in 1988 (table 3). From January-March 1988 to January-March 1989, U.S. producers' import purchases increased by *** percent in quantity and by *** percent in value.

Table 3

12-volt motorcycle batteries: U.S. producers' purchases of imports, 1/ 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	Jan.-Mar.--	
				1988	1989
	*	*	*	*	*

1/ * * *.

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

²⁴ Although Exide closed its production facility in 1987, the firm continued to import the subject product through 1988.

²⁵ * * *.

U.S. producers' inventories

As shown in table 4, U.S. producers' inventories of their production of 12-volt motorcycle batteries declined from *** units as of December 31, 1986, to *** units at yearend 1987, but then increased to *** units as of December 31, 1988. As of March 31, 1989, Yuasa-Exide's inventories were * * * from the volume of inventories held on March 31, 1988. * * *.

Table 4

12-volt motorcycle batteries: U.S. producers' inventories as of Dec. 31 of 1986-88, and as of Mar. 31 of 1988 and 1989

Item	As of Dec. 31--			As of Mar. 31--	
	1986	1987	1988	1988	1989
	*	*	*	*	*

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

Employment, wages, and productivity

In 1986, Exide and Yuasa-Exide (formerly Yuasa-General) were the only known producers of 12-volt motorcycle batteries in the United States. Production of 12-volt motorcycle batteries by these two firms was concentrated at plants located in Sumter, SC, and Reading, PA. Exide ceased production of 12-volt batteries for use in motorcycles at its Sumter, SC, plant in April 1987 and effectively withdrew from the motorcycle battery industry, thereby leaving Yuasa-Exide as the sole U.S. producer and only employer of workers in the industry.

As shown in table 5, the average number of production and related 12-volt motorcycle battery workers, all of whom are non-union, and the number of hours worked by such workers increased in 1987, declined in 1988, and increased in January-March 1989 over that in January-March 1988. The earnings of these same workers, as measured by the wages paid, total compensation earned, and average hourly compensation, increased between 1986 and 1988, and again in January-March 1989.

Productivity by production and related workers, measured in terms of the number of units produced per hour worked, increased from *** units per worker hour in 1986 to over *** units per worker hour in 1987 and 1988 to *** units per worker hour in January-March 1989. Unit labor costs decreased slightly from *** per unit in 1986 to *** per unit in 1988. However, such costs decreased from *** in January-March 1988 to *** in January-March 1989, or by *** percent.

Table 5

Average number of production and related workers producing 12-volt motorcycle batteries, hours worked, wages paid, total compensation paid, average hourly compensation paid, productivity, and unit labor costs, 1986-88, January-March 1988, and January-March 1989.

Item	1986	1987	1988	Jan.-Mar.--	
				1988	1989

* * * * *

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

Financial experience of U.S. producers

Yuasa-General, Yuasa-Exide, and Exide provided income-and-loss data on their 12-volt motorcycle battery operations as well as on their overall operations.

Yuasa-General was owned 51 percent by Yuasa Battery (America), Inc., and 49 percent by General Battery Corp. in 1986 and until May 28, 1987. On that date Exide acquired General Battery Corp. Yuasa-General's name was changed to Yuasa-Exide Battery Corp. The financial data are presented for Yuasa-Exide as one company for all periods. Yuasa-Exide presented 1986 and 1987 data as of December 31 and 1988 data as of March 31, 1989, because of a change in its corporate fiscal yearend. However, for this report the 1988 financial data were restated as of Dec. 31, 1988, for consistent comparative purposes. Yuasa-Exide accounted for all known U.S. production of 12-volt motorcycle batteries in 1988. Additional information on the financial experience of U.S. producers during 1982-85 are presented in appendix D, table D-1.

12-volt motorcycle battery operations.--The income-and-loss data on the 12-volt motorcycle battery operations of each company are presented in table 6. Aggregate sales increased from \$*** in 1986 to \$*** in 1987, representing an increase of *** percent, and decreased by *** percent to \$*** in 1988. The decrease in net sales in 1988 is due mainly to Exide's decision to cease production of 12-volt motorcycle batteries in 1987 * * *. During the interim period ended March 31, 1989, net sales rose by *** percent to \$***, compared with sales of \$*** in the corresponding period of 1988. * * *. This contributed to Yuasa-Exide's increased net sales in interim 1989.

Table 6

Income-and-loss experience of U.S. producers on their operations producing 12-volt motorcycle batteries, by firms, accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
	*	*	*	*	*

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

Operating income increased *** percent from \$*** in 1986 to \$*** in 1987 and decreased *** percent to \$*** in 1988. The operating income margin was *** percent in 1986, *** percent in 1987, and *** percent in 1988. Operating income was \$*** in interim 1989 compared with \$*** in interim 1988. The operating income margin was *** percent in interim 1989 compared with *** percent in interim 1988.

Overall establishment operations.--Income-and-loss data for Exide's establishment within which 12-volt motorcycle batteries were produced are shown in table 7. The share of total net sales accounted for by 12-volt motorcycle batteries produced by Exide * * *. Exide reported * * *. Comparatively, Exide reported * * *, as shown in table 6, * * *.

Table 7

Income-and-loss experience on the overall operations of Exide Corp.'s establishment within which 12-volt motorcycle batteries were produced, accounting years 1986-88

Item	1986	1987	1988
	*	*	*

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

Income-and-loss data for Yuasa-Exide's establishment within which 12-volt motorcycle batteries are produced are shown in table 8. The share of total net sales accounted for by 12-volt motorcycle batteries produced by Yuasa-Exide * * *. However, the share of net sales accounted for by 12-volt motorcycle batteries produced by Yuasa-Exide * * *. The * * * in 12-volt motorcycle battery sales was due partially to * * *. Overall establishment

Table 8

Income-and-loss experience on the overall operations of Yuasa-Exide's establishment within which 12-volt motorcycle batteries are produced, accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
	*	*	*	*	*

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

sales * * * from \$*** in 1986 to \$*** in 1987, and \$*** in 1988. Operating income * * * percent from \$*** in 1986 and 1987 to \$*** in 1988. The operating income margin was *** percent in 1986, *** percent in 1987, and *** percent in 1988. Net sales for the interim period ended March 31, 1989, were \$***, representing an *** percent over those of interim 1988 sales of \$***. Operating income was \$*** in interim 1988 and \$*** in interim 1989. The operating income margin was *** percent in interim 1988 and *** percent in interim 1989.

Yuasa-Exide purchases battery components from * * *, finished batteries and accessories from * * *, and finished batteries from * * *. These purchases are made at the suppliers' cost, and represented approximately *** percent and *** percent of the cost of sales in 1986 and 1987, respectively.

Exide Corp. provides * * *.

Investment in productive facilities.--The investment in productive facilities and the return on those investments are presented in table 9 for each company.

Table 9

Value of property, plant, and equipment of U.S. producers, by firms, accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
	*	*	*	*	*

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

Capital expenditures.--The capital expenditures for each company are presented in table 10.

Table 10

Capital expenditures of U.S. producers, by firms, accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

(In thousands of dollars)					
Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
	*	*	*	*	*

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

Research and development expenses.--Research and development expenses are presented in table 11. As shown, Yuasa-Exide * * *. Yuasa of Japan, the parent company of Yuasa America, * * *. Yuasa-Exide * * *.

Table 11

Research and development expenses of U.S. producers, by firms, accounting years 1986-88 and interim periods ended Mar. 31, 1988, and Mar. 31, 1989

(In thousands of dollars)					
Item	1986	1987	1988	Interim period ended Mar. 31--	
				1988	1989
	*	*	*	*	*

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 any actual or potential negative effects of imports of 12-volt motorcycle batteries from Taiwan on their firms' growth, investment, development and production efforts, and ability to raise capital. Their responses are presented in appendix E.

Consideration of the Question of
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^{26 27}--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

²⁶ Sec. 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."

²⁷ The Omnibus Trade and Competitiveness Act of 1988 amended section 771(7)(F) of the Tariff Act of 1930 by adding two items to section 771(7)(F)(i) (19 U.S.C. §§ 1677(7)(F)(i)(IX) and (X)), and by adding section 771(7)(F)(iii) (19 U.S.C. § 1677(7)(F)(iii)) in its entirety. Although this investigation was initiated prior to their effective date, the amendments are presented here for information.

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 736, are also used to produce the merchandise under investigation,

(IX) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.²⁸

The available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury or threat thereof;" information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of alleged material injury." Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets, follows. Subsidies (item (I) above) and the agricultural product provision (item (IX) above) are not at issue in this investigation.

²⁸ Sec. 771(7)(F)(iii) of the act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other GATT member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

U.S. importers' inventories

Data on U.S. importers' inventories of 12-volt motorcycle batteries imported from Taiwan are shown in table 12. End-of-period inventories of U.S. importers increased by *** percent from 1986 to 1987 and decreased by *** percent from 1987 to 1988. Such inventories decreased by approximately *** percent from March 31, 1988, to March 31, 1989. The ratio of inventories to imports increased from *** percent in 1986 to *** percent in 1988 and increased from *** percent as of March 31, 1988, to *** percent as of March 31, 1989.

U.S. producers' inventories of Taiwan-produced 12-volt motorcycle batteries decreased from *** units, or *** percent of total inventories from Taiwan, in 1986 to *** units, or *** percent of the total, in 1988. From March 31, 1988, to March 31, 1989, U.S. producers' inventories decreased by *** percent and declined from *** percent of total inventories to *** percent.

Table 12

12-volt motorcycle batteries: U.S. importers' inventories of Taiwan-produced batteries, as of Dec. 31, 1986-88, and as of Mar. 31, 1988 and 1989

Item	As of Dec. 31--			As of Mar. 31--	
	1986	1987	1988	1988	1989
Inventories:					
U.S. producers:					
Yuasa-Exide (1,000 units)...	***	***	***	***	***
Exide (1,000 units).....	***	***	***	***	***
Subtotal (1,000 units)...	***	***	***	***	***
All other importers (1,000 units).....	111	235	263	308	278
Total (1,000 units).....	***	***	***	***	***
U.S. producers' inventories as a share of the total (percent).....	***	***	***	***	***
Ratio of inventories to imports:					
U.S. producers:					
Yuasa-Exide (percent).....	***	***	***	1/***	1/***
Exide (percent).....	***	***	***	1/***	1/***
Average (percent).....	***	***	***	1/***	1/***
All other importers (percent).....	***	***	***	1/***	1/***
Average (percent).....	***	***	***	1/***	1/***

1/ Based on annualized import data.

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

Ability of foreign producers to generate exports and the availability of export markets other than the United States

Based on information provided by counsel for the Taiwan Electric Manufacturers' Association (TEAMA),²⁹ whose member firms consist in part of Taiwan producers of 12-volt motorcycle batteries, there are eight known producers of the subject merchandise in Taiwan.^{30 31} At the request of the Commission, counsel was able to provide pertinent information regarding the 12-volt motorcycle battery operations of five of the eight producers. Two of the eight producers, Pilot Battery Co., Ltd., and Lian Horng Enterprise Co., Ltd., failed to provide information to counsel on their respective operations. Although it cannot be determined whether either firm exports to the United States, each is thought to be relatively small and insignificant in terms of contribution to overall industry output.

A third producer, Yuasa Battery Taiwan Co., Ltd., also did not provide information to counsel regarding its operations involving 12-volt motorcycle batteries. However, based on information provided to Commission's staff by * * *, Yuasa Battery Taiwan Co., Ltd. * * *. Based on questionnaire responses, only * * * imported batteries produced by Yuasa of Taiwan in 1988.

Taiwan's 12-volt motorcycle battery industry is export intensive, dependent on outside markets to absorb more than one-half its production output. Exports increased from 56.0 percent of production in 1986 to 67.4 percent of production in 1988 (table 13). Whereas production increased by 42.9 percent from 1986 to 1988, exports increased by a much higher rate, 72.1 percent, over the same period. Exports to the United States accounted for 59.3 percent of Taiwan's total exports in 1988, compared with 67.4 percent of the total in 1986 and 1987.

Based on projections offered by Taiwan 12-volt motorcycle battery producers, aggregate 12-volt motorcycle battery production is expected to increase from the estimated 2.3 million units that will be produced in 1989 to 2.4 million units in 1990, representing an increase of about 3 percent. Aggregate capacity and export sales are, however, projected to decrease by 12 percent and 8 percent, respectively, compared with those in 1988. Exports to the United States are also projected to decrease in 1990, by about 30 percent

²⁹ Member firms of TEAMA are engaged in a broad range of industrial activity, from computer manufacturing to the manufacture of the product which is the subject of the instant investigation.

³⁰ Based on information provided by counsel, at least three firms (Tahming, Great King, and China Storage) ceased production of 12-volt motorcycle batteries during the period covered by this investigation.

³¹ The producing firms are Cheng Kwang Storage Battery Co., Ltd.; Wei Long Electric Industrial Co., Ltd.; Yuasa Battery Taiwan Co., Ltd.; Maan Shyang Battery Enterprise Co., Ltd.; Koyo Battery Co., Ltd.; Lian Horng Enterprise Co., Ltd.; Pilot Battery Co., Ltd.; and Ztong Yee Industrial Co., Ltd.

Table 13

12-volt motorcycle batteries: Production, capacity, capacity utilization, home-market shipments, exports, and inventories of Taiwan producers, 1/ 1986-90

Item	1986	1987	1988	January- March		Projected-- April-December	
				1988	1989	1989	1989
Production							
(1,000 units).....	1,516	1,948	2,167	444	517	1,796	2,392
Capacity <u>2/</u>							
(1,000 units).....	2,570	3,009	2,995	<u>3/</u>	<u>3/</u>	<u>3/</u>	2,646
Capacity utilization							
(percent).....	59.0	64.7	72.4	<u>3/</u>	<u>3/</u>	<u>3/</u>	90.4
Home market shipments <u>4/</u>							
(1,000 units).....	***	***	***	***	***	***	***
Exports to:							
The United States							
(1,000 units).....	572	947	867	211	183	489	615
All other countries							
(1,000 units).....	<u>277</u>	<u>457</u>	<u>594</u>	<u>93</u>	<u>160</u>	<u>589</u>	<u>734</u>
Total.....	849	1,404	1,461	304	343	1,078	1,349
Share of exports to							
the United States							
to total exports							
(percent).....	67.4	67.5	59.3	69.4	53.4	45.4	45.6
Inventories							
(1,000 units).....	57	53	43	<u>3/</u>	<u>3/</u>	<u>3/</u>	<u>3/</u>
As a share of pro-							
duction:							
Home market							
shipments <u>4/</u>							
(percent).....	***	***	***	***	***	***	***
Total exports							
(percent).....	56.0	72.1	67.4	68.5	66.3	60.0	56.3
Exports to the							
United States							
(percent).....	37.7	48.6	40.0	47.5	35.4	27.2	25.7
End-of-period							
inventories <u>2/</u>							
(percent).....	3.8	2.7	2.0	<u>3/</u>	<u>3/</u>	<u>3/</u>	<u>3/</u>

1/ Data are for Cheng Kwang, Maan Shyang, Wei Long, Koyo, and Ztong Yee.

2/ Capacity data are based on the following: (1) for Cheng Kwang, based on operating * * *; (2) for Maan Shyang, operating * * *; (3) for Koyo, operating * * *; (4) for Ztong Yee, operating * * *; and (5) for Wei Long, based on operating * * *.

3/ Not available.

4/ * * *.

Source: Information provided by Ablondi & Foster, counsel to the Taiwan Electric Manufacturers' Association.

compared with exports to the United States in 1988. The lower expectations of Taiwan producers is based upon increasing labor costs at home and the appreciation of the Taiwan dollar relative to the U.S. dollar. Together, these two factors are perceived by Taiwan producers as contributing causes in the erosion in the price competitiveness of Taiwan-produced 12-volt motorcycle batteries in world markets.

Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury or Threat thereof

Imports

Import data on Korea, Taiwan, and Japan discussed in this report were obtained from responses to questionnaires of the U.S. International Trade Commission. Import data on all other countries were obtained from official statistics of the U.S. Department of Commerce. There are substantial discrepancies between imports from Korea, Taiwan, and Japan as reported in response to the Commission's questionnaires compared with those reported in the official import statistics. The responses to the Commission's questionnaires indicate that imports of 12-volt motorcycle batteries from Korea and Japan are significantly lower, and imports from Taiwan are significantly higher than imports reported in official statistics. In the aggregate, however, data from the two sources are much more comparable, suggesting that imports from Taiwan and Korea have been misclassified as imports from Japan in official statistics. The differences in the data are shown in appendix F, table F-1.

Total U.S. imports of 12-volt motorcycle batteries increased from *** units, valued at \$***, in 1986 to *** units, valued at \$***, in 1987 (table 14). Although there was no change in the quantity from 1987 to 1988, the value of imports increased by *** percent to \$***, largely because of increased values of imports from Korea and Japan. Imports declined in quantity by *** percent from interim 1988 to interim 1989, but increased in value over the same period by *** percent. The average unit value of imports remained in the \$***-\$*** range from 1986 to 1988, but increased sharply to \$*** in interim 1989 compared with \$*** in interim 1988.

Twelve-volt motorcycle battery imports from Taiwan increased from 803,000 units, valued at \$7.7 million, in 1986 to 1.1 million units, valued at \$10.4 million, in 1987. In 1988, imports from Taiwan decreased in quantity by 4.9 percent, but continued to rise in value, increasing by 3.1 percent. From January-March 1988 to January-March 1989, imports from Taiwan decreased in both quantity and value, by 23.8 percent and 8.1 percent, respectively. The average unit value of such imports increased steadily from 1986 to 1988, and again in interim 1989 over that in interim 1988.

As a share of total 12-volt motorcycle battery imports from all sources, imports from Taiwan fluctuated between *** percent and *** percent of the total from 1986 to 1988, and decreased to *** percent of the total in interim 1989.

Table 14

12-volt motorcycle batteries: U.S. imports, by selected sources, 1986-88, January-March 1988, and January-March 1989

Source	1986	1987	1988	January-March--	
				1988	1989
Quantity (1,000 units)					
Taiwan.....	803	1,074	1,021	386	294
Korea.....	***	***	***	***	***
Japan.....	***	***	***	***	***
All other 1/.....	177	66	33	8	42
Total.....	***	***	***	***	***
Value (1,000 dollars)					
Taiwan.....	7,651	10,446	10,769	4,214	3,874
Korea.....	***	***	***	***	***
Japan.....	***	***	***	***	***
All other 1/.....	4,584	2,804	1,632	491	1,134
Total.....	***	***	***	***	***
Average unit value, c.i.f. duty-paid 2/					
Taiwan.....	\$9.53	\$9.73	\$10.55	\$10.92	\$13.18
Korea.....	***	***	***	***	***
Japan.....	***	***	***	***	***
All other.....	25.90	42.49	49.46	58.85	27.01
Average.....	***	***	***	***	***
Percent of total quantity					
Taiwan.....	***	***	***	***	***
Korea.....	***	***	***	***	***
Japan.....	***	***	***	***	***
All other.....	***	***	***	***	***
Total.....	100.0	100.0	100.0	100.0	100.0
Percent of total value					
Taiwan.....	***	***	***	***	***
Korea.....	***	***	***	***	***
Japan.....	***	***	***	***	***
All other.....	***	***	***	***	***
Total.....	100.0	100.0	100.0	100.0	100.0

1/ Based on official import statistics of the U.S. Department of Commerce.

2/ Calculated from data provided by firms supplying both quantity and value information.

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

Source: Imports from Taiwan, Japan, and the Republic of Korea compiled from data submitted in response to questionnaires of the U.S. International Trade Commission; imports from all other sources compiled from official import statistics of the U.S. Department of Commerce.

Apparent U.S. consumption and market penetration

Apparent consumption of 12-volt motorcycle batteries increased by *** percent from 1986 to 1987, by *** percent from 1987 to 1988, and by *** percent in interim 1989 over that of the corresponding period of 1988 (table 15). In terms of value, apparent consumption increased from \$*** in 1986 to \$*** in 1988, representing an increase of *** percent. The trend continued in the interim 1989 period as the value of consumption increased by *** percent over that of interim 1988. The ratio of imports to consumption, by quantity, increased from *** percent of consumption in 1986 to *** percent in 1988. The ratio declined from *** percent in interim 1988 to *** percent in interim 1989. Conversely, the ratio of U.S. producers' shipments to consumption increased from *** percent in interim 1988 to *** percent in interim 1989.

Importers' shipments of Taiwan-produced 12-volt motorcycle batteries increased from *** units, valued at \$***, in 1986 to *** units, valued at \$***, in 1988. Such shipments declined in quantity and value from interim 1988 to interim 1989, decreasing in quantity by *** percent and in value by *** percent. As a share of apparent consumption, imports from Taiwan increased from *** percent, by quantity, in 1986 to *** percent in 1988, and declined from *** percent of consumption in interim 1988 to *** percent in interim 1989.

Table 15

12-volt motorcycle batteries: Apparent U.S. consumption and market shares, 1986-88, January-March 1988, and January-March 1989

Item	1986	1987	1988	<u>January-March--</u>	
				1988	1989
	*	*	*	*	*

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official import statistics of the U.S. Department of Commerce.

Prices

Market characteristics.--In addition to motorcycles, 12-volt motorcycle batteries are used for lawn and garden tractors, snowmobiles, and other recreational vehicles. Yuasa-Exide reports that the lawn and garden market for batteries has grown during the investigation period, while motorcycle sales have remained relatively stable.

All batteries for the replacement market are produced in standardized sizes, and are identified by JIS for electrical and physical specifications. Domestic and imported models may be used interchangeably. Purchasers generally view the domestic and imported batteries as interchangeable in use, although several thought that the Taiwan-produced batteries were inferior in quality to the domestic batteries.³²

Sales of 12-volt motorcycle batteries are strongest during January-June, since many motorcycles have been stored for the winter months. If a battery is not recharged occasionally during the storage period, it will need to be replaced. With proper care, a battery may last several years, but many owners purchase replacement batteries annually.

Yuasa-Exide produces 53 types of 12-volt motorcycle batteries, differentiated by physical size, amperage, terminal location, and vent location. It sells these batteries throughout the United States through two major distribution channels: original-equipment manufacturers (OEMs) and aftermarket customers. OEM customers include motorcycle, lawn and garden equipment, and recreational vehicle producers. Aftermarket customers include motorcycle and automotive parts and supply stores, retail stores, and distributors. In 1988, OEM shipments represented about *** percent and aftermarket sales about *** percent of Yuasa-Exide's total shipments.

Prices for the domestic product sold to OEMs are on a cost-plus basis, considering competition, annual volume, and shipment quantity per order. Distributor prices are based on an established price list from which a volume discount may be subtracted. The average leadtime for shipment after a customer orders is 10 days. Transportation costs average *** percent of the total delivered cost of a battery.

Importers of Taiwan batteries reported importing up to 50 different types of 12-volt motorcycle batteries, most of which are targeted to the replacement market. Most importers publish price lists from which discounts are applied depending on purchase volume. The average leadtime between a customer's order and the date of delivery ranged from same-day shipment to one week, if the items are in importers' inventory, to 120 days if shipped from Taiwan. Transportation costs average about *** percent of the total delivered cost. Importers generally market these batteries throughout the United States.

Price data.--The Commission requested quarterly net U.S. f.o.b. selling prices and quantities for two specific 12-volt motorcycle batteries from U.S. producers and importers of the Taiwan-produced batteries. These two sizes were considered by Yuasa-Exide and importers to be high-volume items. Producers and importers were also requested to report the f.o.b. price data separately for sales to OEMs and dealer/distributors. Data were also requested for total sales and values by quarters during January 1986-March 1989. The products for which data were requested are shown below.

³² Eight purchasers responded to this question in the purchaser questionnaire. Not all of those responding have purchased both the domestic and the imported product.

- Product 1: 12-volt motorcycle battery--JIS 12N12A-4A1 (or equivalent)
- Product 2: 12-volt motorcycle battery--JIS 12N14A-3A (or equivalent)

Yuasa-Exide, Yuasa-General Battery, and Exide reported OEM and distributor producer price data for 1986-89. Eight importers reported usable price data for sales to distributors and two importers also reported sales to OEMs. These importers accounted for *** percent of 1988 imports from Taiwan.

Price trends and comparisons--Weighted-average prices and percent margins by which the price of the imported product differed from the domestic product are presented in tables 16-19. Prices for domestically produced product 1 and product 2 showed no clear trends for sales to OEMs or distributors. Despite claims of seasonality in sales and price discounts based on sales volumes, lower prices did not necessarily occur during those quarters with higher sales volumes.

Table 16

12-volt motorcycle batteries: Weighted-average prices and margins of under/(over)selling for JIS 12N12A-4A1 (Product 1) sold to OEMs, as reported by U.S. producers and importers, by quarters, January 1986-March 1989

Period	<u>United States</u>		<u>Taiwan</u>		<u>Margin</u> <u>Percent</u>
	Price per	Quantity	Price per	Quantity	
	unit	<u>Units</u>	unit	<u>Units</u>	
	*	*	*	*	*

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

Table 17

12-volt motorcycle batteries: Weighted-average prices and margins of under/(over)selling for JIS 12N12A-4A1 (Product 1) sold to distributors, as reported by U.S. producers and importers, by quarters, January 1986-March 1989

Period	<u>United States</u>		<u>Taiwan</u>		<u>Margin</u> <u>Percent</u>
	Price per	Quantity	Price per	Quantity	
	unit	<u>Units</u>	unit	<u>Units</u>	
	*	*	*	*	*

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

Table 18

12-volt motorcycle batteries: Weighted-average prices and margins of under/(over)selling for JIS 12N14A-3A (Product 2) sold to OEMs, as reported by U.S. producers and importers, by quarters, January 1986-March 1989

Period	<u>United States</u>		<u>Taiwan</u>		Margin Percent
	Price per	Quantity <u>Units</u>	Price per	Quantity <u>Units</u>	
	unit		unit		
*	*	*	*	*	

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

Table 19

12-volt motorcycle batteries: Weighted-average prices and margins of under/(over)selling for JIS 12N14A-3A (Product 2) sold to distributors, as reported by U.S. producers and importers, by quarters, January 1986-March 1989

Period	<u>United States</u>		<u>Taiwan</u>		<u>Margin</u> <u>Percent</u>
	Price per	Quantity	Price per	Quantity	
	unit		unit		
		<u>Units</u>		<u>Units</u>	
	*	*	*	*	*

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

Domestic prices. -- Prices for U.S.-produced product 1 sold to OEMs * * * during 1986 and 1987, * * * in the first half of 1988, then * * * in the final quarter of 1988. Prices for product 1 sold to distributors * * *.

Prices for product 2 sold to OEMs were * * * during the October-March period compared with those in the April-September period during 1986-89. Prices for product 2 sold to distributors did not follow this pattern. These prices * * * throughout the investigation period, ending * * * in January-March 1989 than in all previous quarters.

Taiwan prices.--Weighted average prices for products 1 and 2 imported from Taiwan and sold to OEMs and distributors showed overall increases from 1986 to 1989. In particular, prices in 1988 and 1989 were generally higher than those in previous years.³³ During the period, prices to distributors followed a somewhat consistent pattern, generally decreasing from the first to last quarter, and increasing again in each subsequent January-March.

OEM prices for the Taiwan products 1 and 2 were higher than prices for the comparable domestic product in all instances. For distributor sales of product 1, the Taiwan product was priced below the domestic product in *** of 13 instances, with margins ranging from *** to *** percent. Prices for the Taiwan-produced product 2 were below those of the domestic product in 9 of 13 quarters, and margins ranged from *** to *** percent.

Lost sales and lost revenues

Yuasa-Exide reported four allegations of lost revenues and five allegations of lost sales because of import competition from Taiwan-produced 12-volt motorcycle batteries. Alleged lost sales were valued at \$*** and lost revenues were valued at \$***. Exide Corp., although not able to identify actual sales or revenues lost to competitors because of import competition from Taiwan, stated that this competition is what forced it out of the motorcycle battery industry. Staff was able to contact six of the seven companies named in these allegations.³⁴ Summaries of staff conversations with parties named in lost sale and lost revenue allegations are presented below.

--Yuasa-Exide reportedly lowered prices to *** in response to import competition from Taiwan, which allegedly resulted in lost revenues of about \$ in ***. *** of *** stated that *** is currently purchasing only Yuasa-Exide batteries and that Yuasa-Exide met the lower Taiwan price. When *** does purchase imported batteries, it is because of the lower price. *** expressed some uncertainty about whether the Yuasa-Exide batteries that *** purchases are all produced in the United States or if some may be imported from Japan. Generally, no difference in quality and applications exist between domestic and Taiwan-produced batteries, according to ***. *** uses 12-volt motorcycle batteries in ***.

--Yuasa-Exide alleged a lost sale in *** because of price competition from the imported product of approximately *** 12-volt motorcycle batteries, valued at \$, to ***. *** of *** cited a number of reasons

³³ Counsel for the Yuasa-Exide argued that 1989 data should not be considered, since this case was instituted in September 1988 and higher prices for the imported product in 1989 may be a result of the on-going investigation (Transcript of the hearing at p. 39). See also petitioner's postconference brief at pp. 16-20.

³⁴ *** was named in an alleged lost sale occurring in *** and totaling *** batteries, valued at \$***. Representatives of *** would not discuss this allegation.

why * * * no longer purchases batteries from Yuasa-Exide, although * * * was not able to recall the specific instance alleged by Yuasa-Exide. * * *.
* * *. * * *.

* * *.--Yuasa-Exide named * * * in a lost sale allegation totaling *** motorcycle batteries valued at \$*** that occurred in * * *. * * * of * * * acknowledged purchasing imported batteries but stated that the price of the 12-volt motorcycle batteries was not the deciding factor in this decision. * * * prefers to limit purchases of batteries, including * * * motorcycle batteries, to only one supplier--* * *. * * * is an importer of private-label motorcycle batteries. Using only one supplier allows * * * to receive favorable discounts and freight rates, because of the large quantities that * * * purchases. * * * believes that the batteries he purchases through * * * are of comparable quality to the Yuasa-Exide product.

* * *.--Yuasa-Exide alleged a lost sale of *** batteries, valued at \$*** in * * * to * * * because of lower priced imports from Taiwan. * * * of * * * reported that his company has only purchased U.S.-produced batteries. According to * * *, the Taiwan-produced batteries with which he is familiar do not have enough cranking power for motorcycles built after 1982. He said that if * * * could purchase Taiwan batteries equal in quality to Yuasa-Exide batteries, and for a lower price, it probably would.

* * *.--Yuasa-Exide alleged that revenues of \$*** were lost on a sale of *** motorcycle batteries to * * * because of price competition * * *. * * *, representative for * * *, denied this allegation. * * * reported that * * * deals exclusively with Yuasa-Exide and, although Taiwan suppliers have contacted * * *, * * *. * * * stated that any pressure * * * put on Yuasa-Exide during the past few years was due to the fact that * * * was increasing the quantity of batteries purchased from Yuasa-Exide and * * * felt that it should receive a better price from Yuasa-Exide. * * * stated that he informed Yuasa-Exide that the pressure on price was not because of competition from imports but because of the above-mentioned reason.

* * *.--Yuasa-Exide alleged a lost sale of *** 12-volt motorcycle batteries, valued at \$***, in * * *, to * * *, because of competition from Taiwan-produced batteries. * * * of * * * denied that the decision to purchase imported batteries was based on price. * * * chose a supplier of imported batteries that also supplied his firm's other battery types. This other supplier was selected in order to avoid Yuasa-Exide's requirements for advance orders and minimum purchase quantities. According to * * *, prices for the imported batteries were almost identical to Yuasa's prices, and he related one incident in which he used the lower domestic price to get a lower price on the Taiwan-produced batteries.

Exchange rates

The nominal value of the Taiwan dollar appreciated relative to the U.S. dollar by about 38 percent during January 1986-December 1988, the latest period for which comparable data were available (table 20). An approximate 5 percent decline in the producer price index in Taiwan compared with a 7 percent U.S. inflation rate resulted in less appreciation of the New Taiwan dollar in real terms, about 24 percent, than in nominal terms.

Table 20

Exchange rates: 1/ Indexes of the nominal and real exchange rates between the U.S. dollar and the Taiwan dollar, and indexes of producer prices in Taiwan and the United States, 2/ by quarters, January 1986-March 1989

Period	Taiwan		Producer price index	U.S. producer price index
	Nominal exchange-rate index	Real exchange-rate index 3/		
1986:				
Jan.-Mar.....	100.0	100.0	100.0	100.0
Apr.-June.....	102.3	104.1	99.8	98.1
July-Sept.....	104.9	106.3	98.9	97.6
Oct.-Dec.....	108.1	108.4	98.2	98.0
1987:				
Jan.-Mar.....	112.3	110.2	97.2	99.1
Apr.-June.....	121.1	116.0	96.4	100.7
July-Sept.....	128.8	121.0	95.7	101.9
Oct.-Dec.....	132.9	122.9	94.7	102.3
1988:				
Jan.-Mar.....	137.2	124.5	93.3	102.8
Apr.-June.....	137.0	123.7	94.5	104.7
July-Sept.....	136.6	122.9	95.5	106.1
Oct.-Dec.....	138.4	123.8	95.4	106.6
1989: Jan.-Mar.....	4/	4/	4/	109.0

1/ Based on exchange rates expressed in U.S. dollars per unit of foreign currency.

2/ The producer price indexes are aggregate measures of inflation at the wholesale level in the United States and Taiwan. Quarterly producer prices in the United States rose by 9.0 percent during the period January 1986-March 1989. Figures for Taiwan were unavailable for the first quarter of 1989. However, producer prices fell by 4.6 percent from the first quarter of 1986 through the end of 1988.

3/ The real value of the Taiwan dollar is the nominal value adjusted for the difference in inflation rates in the United States and Taiwan, as measured by the producer price indexes in those countries.

4/ Data not available.

Source: Bank of China Report, December 1988.

APPENDIX A

THE COMMISSION'S FEDERAL REGISTER NOTICE

(Investigation No. 731-TA-238 (Final))**12-Volt Motorcycle Batteries from Taiwan; Antidumping Investigation****AGENCY:** United States 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-238 (Final) under Section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b) (the act)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Taiwan of 12-volt motorcycle batteries, provided for in subheading 8507.10.00 of the Harmonized Tariff Schedule of the United States (formerly provided for in item 683.01 of the Tariff Schedules of the United States), 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). Unless the investigation is extended, Commerce will make its final LTFV determination on or before June 22, 1989, and the Commission will make its final injury determination by August 16, 1989 (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 207, as amended, 53 FR 33041 *et seq.* (August 29, 1988) and 54 FR 5220 *et seq.* (February 2, 1989)), and part 201, subparts A through E (19 CFR part 201), as amended, 54 FR 13672 *et seq.* (April 5, 1989).

EFFECTIVE DATE: April 18, 1989.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-252-1188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20438. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background—This investigation is being

instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of 12-volt motorcycle batteries from Taiwan 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 January 11, 1985, by General Battery Corp. (GBC), Reading, PA. The petition was later amended to include as co-petitioner Yuasa-General Battery Corporation, which together with GBC comprised the bulk of the U.S. industry producing 12-volt motorcycle batteries. (The petitioner is now Yuasa-Exide Battery Corporation, a successor entity to the original petitioners.) In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of the investigation, determined that there was no reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of imports of the subject merchandise.

On May 22, 1987, the Court of International Trade affirmed the Commission's preliminary determination of no reasonable indication of material injury to the domestic industry by reason of subject imports, but remanded for reconsideration the Commission's determination with respect to the issue of whether there is a reasonable indication of threat of material injury to the domestic industry by reason of the subject imports. On July 6, 1987, the Commission determined, having reconsidered the record in its entirety, that there was no reasonable indication of threat of material injury to the domestic industry by reason of the subject imports, and provided its views to the Court of International Trade. On July 12, 1988, the Court of International Trade reversed the Commission's determination and ordered the Commission to issue an affirmative preliminary determination with respect to the question of reasonable indication of threat of material injury to the 12-volt motorcycle battery industry in the United States by reason of imports of such merchandise from Taiwan.

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 section 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.

Public service list.—Pursuant to section 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with sections 201.16(c) and 207.3 of the rules, as amended (19 CFR 201.16(c) and 207.3, as amended), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public 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.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on June 16, 1989, and a public version will be issued thereafter, pursuant to section 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 July 6, 1989, 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 June 29, 1989. 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 June 30, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is June 29, 1989.

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

Written submission. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on July 14, 1989. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 14, 1989.

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 business proprietary data will be available for public inspection during regular business hours (8:45 a.m. 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a), as amended) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such

information no later than July 20, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

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.

Kenneth R. Mason.

Secretary.

Issued: April 26, 1989.

[FR Doc. 89-10641 Filed 5-3-89; 8:45 am]

BILLING CODE 7020-02-M

APPENDIX B

LIST OF PARTICIPANTS IN THE COMMISSION'S
HEARING IN THE INVESTIGATION

CALENDAR OF PUBLIC HEARING

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

Subject : 12-Volt Motorcycle
Batteries from
Taiwan

Inv. No. : 731-TA-238 (Final)

Date and Time : July 6, 1989 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room (room 101) of the United States International Trade Commission, 500 E Street, S.W., Washington, DC.

In support of the imposition of antidumping duties

Brownstein, Zeidman, and Schomer--Counsel
Washington, DC
on behalf of--

Exide Corp.

A.J. Snyder, Jr., Legal Consultant

Yuasa-Exide Battery Corp. (Yuasa-Exide)

Bruce Retter, Vice President of Sales and Marketing, Yuasa-Exide
Battery Corp.

Wayne Krick, Director of Operations, Yuasa-Exide Battery Corp.

Penny Guido, Marketing Manager, Yuasa-Exide Battery Corp.

Steve Kersner)
Ron Wisla) --OF COUNSEL

In opposition to the imposition of antidumping duties

Ablondi & Foster--Counsel
Washington, DC
on behalf of--

Cheng Kwang Storage Battery Co., Ltd.
Wei Long Electric Industrial Co., Ltd.
Yuasa Battery Taiwan Co., Ltd.
Maan Shyang Battery Enterprise Co., Ltd.
Koyo Battery Co., Ltd.
Pilot Battery Co., Ltd.
Lian Horng Enterprise Co., Ltd.
Ztong Yee Industrial Co., Ltd.

Italo Ablondi) --OF COUNSEL
Peter Koenig)

Dorcy International
Ted Davis, President

GNB, Inc.
Jerry Lawrie, Vice President of Sales

APPENDIX C
COMMERCE'S FEDERAL REGISTER NOTICE OF FINAL DETERMINATION

Notices

Federal Register

Vol. 54, No. 123

Wednesday, June 28, 1989

International Trade Administration

[A-583-501]

Final Determination of Sales at Less Than Fair Value: 12-Volt Motorcycle Batteries From Taiwan

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

ACTION: Notice.

SUMMARY: We determine that 12-volt motorcycle batteries from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of the subject merchandise from Taiwan as described in the "Continuation of Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the publication of this

notice, whether these imports materially injure or threaten material injury to a U.S. industry.

EFFECTIVE DATE: June 28, 1989.

FOR FURTHER INFORMATION CONTACT:

John Gloninger or Gray Taverman, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (203) 377-8330 or 377-0161.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that 12-volt motorcycle batteries 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 estimated weight-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since our notice of preliminary determination (54 FR 15507, April 18, 1989), the following events have occurred. Verification of the questionnaire responses submitted by Wei Long Electric Industrial Co. Ltd. (Wei Long), Ztong Yee Industrial Co. Ltd. (Ztong Yee) and Cheng Kwang Storage Battery Co. Ltd. (Cheng Kwang) was conducted in Taiwan in April 1989. A public hearing was held on May 25, 1989. Petitioner and respondents filed pre-hearing briefs on May 24, 1989 and posthearing briefs on June 2, 1989.

Scope of Investigation

The United States had developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The Department is providing the appropriate HTS item number(s) for convenience and customs purposes. The Department's written description of the products under investigation remains dispositive as to the scope of the products covered by this investigation.

This determination covers 12-volt motorcycle batteries. Motorcycle batteries are lead-acid storage batteries which are rated from 2 to 32 ampere

hours (10 hour rate) with voltage levels of either 6 or 12 volts. This investigation is limited to 12-volt motorcycle batteries. The batteries are mainly used as replacement batteries for motorcycles, but may, to a very limited extent, be used in snowmobiles, lawnmowers, and other such equipment. They are currently classifiable under HTS item number 8507.10.00.

Period of Investigation

This period of investigation is April 1, 1988 through September 30, 1988.

Fair Value Comparisons

To determine whether sales of certain 12-volt motorcycle batteries from Taiwan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For each of the respondents in this investigation, all sales used in our analysis were made directly to unrelated parties prior to importation into the United States. Therefore, we based the United States price on purchase price, in accordance with section 772(b) of the Act.

The calculation of United States price for each respondent is detailed below.

A. Ztong Yee: For the reasons detailed in the DOC Position to Comment 2, we have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for Ztong Yee.

B. Wei Long: We calculated purchase price based on the packed, F.O.B. or C.I.F. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, quantity discounts, port fees and bank processing fees. We also made a deduction for a discount which Wei Long claimed in its response to be a warranty expense, but which we verified was simply a reduction to the invoice price.

During verification, we found that Wei Long had not reported a 0.5 percent port tax on exports of the subject merchandise. Therefore, we made a deduction of 0.5 percent of gross unit price for this port tax.

C. Cheng Kwang: We calculated purchase price based on the packed, F.O.B. or C.I.F. price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine

insurance, bank processing fees, port charges, and customs inspection fees.

During verification, we found that on some sales, Cheng Kwang calculated brokerage and handling, ocean freight, foreign inland freight and packing expenses based on a catalog weight. These expenses were recalculated based on actual weights obtained at verification.

Foreign Market Value

In accordance with section 773(a)(1) of the Act, we calculated foreign market value based on home market or third country sales. The calculation of foreign market value for each respondent is detailed below.

A. Ztong Yee: For the reasons detailed in the DOC position to Comment 2, we have determined in accordance with section 776(c) of the Act, that the use of best information available is appropriate for Ztong Yee.

B. Wei Long: Wei Long had no home market sales during the period of investigation; therefore, we used third country sales for the purpose of determining foreign market value in accordance with section 773(a)(1)(B) of the Act. We calculated foreign market value based on the packed, F.O.B. price to the unrelated trading company, and F.O.B. or C.I.F. prices for the direct sales. We made deductions where appropriate for brokerage and handling charges, foreign inland freight, ocean freight, marine insurance, quantity discounts, and port fees. We made circumstances of sale adjustments for differences in credit and warranty expenses pursuant to section 353.56 of the department's new regulations. 54 FR 12742 (March 28, 1989) (to be codified at 19 CFR 353.56). We deducted third country packing and added U.S. packing.

In addition, we added commissions incurred on U.S. sales and offset these expenses by the verified indirect selling expenses incurred on third country sales, in accordance with § 353.56 of the antidumping regulations. (See DOC position to Comment 5).

All product matches claimed by Wei Long were identical; therefore, no adjustment was made for differences in physical characteristics.

C. Cheng Kwang: Cheng Kwang's home market sales during the period of investigation were inadequate for determining foreign market value; therefore, we used third country sales, for purposes of determining foreign market value in accordance with section 773(a)(1)(B) of the Act. We calculated foreign market value based on the packed, F.O.B. or C.I.F. prices. We made

deductions, where appropriate, for foreign inland freight, brokerage and handling charges, ocean freight, marine insurance, port usage fees, banking charges, and customs inspection fees.

We made a circumstance of sale adjustment for differences in credit expenses pursuant to § 353.56 of the antidumping regulations. We deducted third country packing and added U.S. packing.

We made adjustments, where applicable, for differences in the physical characteristics of the merchandise in accordance with § 353.57.

Cheng Kwang claimed an adjustment to third country price for additional costs incurred on smaller production lots. We disallowed this claim for the final determination because we were not able to verify a direct relationship between the costs of differing production lot sizes and selling price. (See DOC position to Comment 3).

Currency Conversion

Since we calculated United States price on a purchase price basis, we used the official exchange rates in effect on the date of sale, in accordance with § 353.60. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

Verification

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined 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.

Comments

Comment 1. Petitioner contends that the responses of Ztong Yee and Wei Long should be rejected by the Department because the public versions were inadequate and in direct violation of the Department's regulations. Petitioner also contends that while the public version of Cheng Kwang's response contained some summarization, it was incomplete, particularly in its summarizations of difference in merchandise adjustments.

Petitioner argues that the failure of these respondents to submit adequate public versions of their responses has prevented it from knowing the full extent and significance of respondents' claims. Petitioner further argues that the absence of adequate public versions has

eliminated the possibility of any input by the company officials of Yuasa-Exide.

DOC Position

The original public versions of Wei Long's and Ztong Yee's responses did not provide adequate summarization of business proprietary information. Therefore, we issued a deficiency letter on February 21, 1989, requesting that respondents amend their non-confidential summaries by ranging or indexing numerical data in accordance with § 353.32. We further noted that if any information was not susceptible to such summary or presentation, then a statement of the reasons must be submitted. On February 28, 1989 and on March 1, 1989, we received revised public versions from Ztong Yee and Wei Long, respectively.

While certain summaries in the public version submitted by all three respondents were not as detailed as requested in our deficiency letter, it is our view that there was enough information contained in the summaries of each data set and in the summaries as a whole as to give petitioner the ability to participate fully in the investigation. Therefore, the public summaries are not so inadequate as to warrant the rejection of the responses as deficient. Furthermore, with the exception of customer or supplier names, sources of information, verification exhibits and trade secrets, petitioner's counsel received access to all business proprietary information under administrative protective order (APO) issued by the Department.

Comment 2. Petitioner asserts that the Department should not use Ztong Yee's response for purposes of the final determination due to extensive errors and discrepancies found during verification, contending that the errors reflect a basic unreliability in the responses themselves.

Petitioner argues that the product concordance reported some merchandise as being identical when significant cost differentials existed. Furthermore, labor costs for acid packaging were not verified, and claimed inspection expenses for special quality control were allegedly overstated and included expenses not associated with quality control. Home market and export packing were reported by Ztong Yee as identical, but they were found to be different at verification. The commission charge on U.S. sales was understated, and the claimed duty drawback adjustment was not in existence during the period of investigation. In addition, Ztong Yee failed to report all home market sales of

the merchandise subject to investigation. In sum, petitioner argues, the sections of the response that cannot be used due to respondent's failure to support such claims during verification, plus the magnitude of errors found at verification, raise serious questions as to the accuracy of the entire response. Petitioner contends that the Department should reject Ztong Yee's response and use best information available for the final determination.

Ztong Yee argues that its concordance is correct and should be accepted by the Department, particularly since the criteria used for comparison purposes was proposed by the petitioner. The product characteristics listed in Appendix V of the Department's questionnaire were used in determining which merchandise is identical for purposes of the investigation. Ztong Yee further argues that its use of the criteria listed in Appendix V of the questionnaire was made clear in its response of January 11, 1989, and that petitioner should have objected to the concordance at that time.

With respect to petitioner's argument that respondent failed to report all home market sales of merchandise subject to investigation, Ztong Yee claimed that it reported these sales as being sold during the period of investigation, but did not report them in the Section B sales listing because they were not considered by Ztong Yee to be such or similar to any U.S. sales.

In its January 13, 1989 response, it indicated that given the large number of home market sales, it limited its questionnaire response to those home market sales which it felt the Department needed.

Furthermore, Ztong Yee disputes the statement in the verification report and petitioner's allegation that certain commissions were understated, claiming that its May 12, 1989 submission addressed this issue.

DOC Position

In accordance with section 776(c) of the Act, we have used best information available for Ztong Yee.

It is not uncommon to find minor methodological problems and mathematical errors during verification. However, during the verification of Ztong Yee's sales response, we found that the magnitude of the discrepancies, unreported expenses and costs, methodological errors, and information that could not be supported by sources documents were so extensive as to require completely new responses, which at that stage of the proceeding could not be subjected to satisfactory

analysis or verification. The deficiencies found during verifications are outlined in the public versions of our verification report.

In particular, we discovered at verification that for a substantial percentage of U.S. sales, Ztong Yee reported certain U.S. models as identical to home market models, when significant cost differences existed.

Faced with responses containing numerous fundamental flaws, the Department could not properly base its determination on the information submitted by Ztong Yee. 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 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 analyze fully the information and other parties are able to review and comment on it." 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. Furthermore, the May 12, 1989 submission by Ztong Yee which addressed the issue of commissions was received after verification. The submission was not verified; therefore, it cannot be considered for purposes of this final determination.

For all of the reasons described above, we have determined that rejection of Ztong Yee's response and use of best information available is appropriate for this determination. Furthermore, because we have used best information available with respect to Ztong Yee, petitioner's and respondent's comments pertaining to specific charges, adjustments, and other issues concerning Ztong Yee's response need not be addressed. We have determined that the 28.06 percent rate calculated for Ztong Yee in the preliminary determination is the most appropriate basis for best information available. This rate is higher than either the rate alleged in the petition or the calculated rate for any other respondent in this investigation.

Comment 3. Petitioner argues that no quantity adjustment should be allowed because Cheng Kwang did not meet the requirements as outlined in § 353.55(b) of the antidumping regulations. In particular, petitioner argues that no price list or discount schedule was maintained, and that only one third country sale contained an actual discount. Furthermore, petitioner claims that although Cheng Kwang did quantify the cost of production differences between the United States and third country merchandise due to differences in the length of production runs, the formula presumed a standard of 250 units per changeover. Petitioner claims that during verification, the Department discovered that the average production run claimed did not accurately measure production run lengths during the period of investigation.

DOC Position

As stated in *Brass Sheet and Strip from the Netherlands*, 53 FR 2341, 2342 (1988), "the controlling requirement of § 353.14 [353.55 under the new antidumping regulations] is that, to be eligible for a quantity-based adjustment, a respondent must demonstrate a clear and direct correlation between price differences and quantities sold or costs incurred." The exporter must clearly demonstrate that discounts are warranted on the basis of savings which are specifically attributable to longer production runs. Cheng Kwang failed to establish that discounts granted in the United States are directly reflective of these savings. In its response, Cheng Kwang claimed that during the period of investigation, its minimum production quantity standard was 250 units per type of battery. Cheng Kwang was unable to provide any documents at verification to support this minimum standard nor its relationship to the actual prices charged.

Accordingly, we have disallowed Cheng Kwang's claim for an adjustment for differences in quantities.

Comment 4. Petitioner argues that due to the high number of errors in the packing and credit adjustments reported by Wei Long, best information should be used instead of the submitted information.

DOC Position

We disagree. At verification, we found only two discrepancies in packing charges for the preselected sales. Other errors in packing charges were noted by reviewing the database during verification. We found that many of these errors were the result of a faulty telefax transmission from Wei Long to the company in Washington which prepared its computerized database.

The original values for packing were provided at verification and are noted in our verification report.

In the credit category, only two errors were noted in the preselected sales: A misreported date of shipment and date of payment. The correct information was noted at verification. Furthermore, for the final determination, we have recalculated Wei Long's credit expenses based on information obtained at verification.

Comment 5. Petitioner argues that for purposes of the final determination, no offset for indirect selling expenses claimed by Wei Long should be allowed. First, petitioner contends that Wei Long did not itemize its claimed expenses in a form that could be analyzed. Second, petitioner argues that several claimed expenses were not verified by the Department, including claims for bad debt and certain air freight charges for samples. Third, petitioner claims that Wei Long improperly included the salary of the general manager as part of the salaries paid to Export Department employees. Since the general manager has management and production responsibilities, petitioner argues his salary cannot be properly included. Finally, petitioner contends that Wei Long has misallocated its indirect selling expenses by including several claimed expenses attributable to sales other than to the United Kingdom.

DOC Position

We disagree and have allowed the offset for the final determination; however, we have recalculated the amount of the offset based on verified information. Wei Long's original submission did not itemize properly its claimed indirect selling expenses, but did so prior to verification in its revised submission of April 12, 1989. Furthermore, the expenses claimed were verified by checking source documents, and no errors were found in the amounts claimed. Certain changes were made, however, to properly allocate some of the expenses. Air freight sample expenses were allocated over the total U.K. order value; however, Wei Long was unable to support its claim that all samples were shipped to the U.K. during the period of investigation. We recalculated this amount by allocating the air freight expenses over Wei Long's total export sales value. We also made an adjustment to the total expenses claimed for salesman salaries. Since we found at verification that the general manager spends three out of five days a week in non-sales functions, we reduced this category of expenses by three-fifths of this salary. Two percent reserve for

bad debts was not allowed as an indirect selling expenses, as respondent was unable to support its claim at verification.

Finally, we disagree with petitioner's assertion that respondent misallocated these expenses by including expenses which are attributable to sales other than to the U.K. In its April 12, 1989 submission, Wei Long properly allocated each category of expense.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of 12-volt motorcycle batteries from Taiwan 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 will require a cash deposit equal to the estimated amounts by which the foreign market value of 12-volt motorcycle batteries from Taiwan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Zhong Yee	28.06
Wei Long	3.15
Cheng Kwang	0.74
All Others	5.65

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 Assistant Secretary for Import Administration.

If the ITC determines that material injury or threat of material injury does not exist with respect to the products under investigation, the 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.

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

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

June 22, 1989.

[FR Doc. 89-15301 Filed 6-27-89; 8:45 am]

BILLING CODE 3510-08-M

APPENDIX D

ADDITIONAL DATA ON U.S. PRODUCERS' OPERATIONS
CONCERNING 12-VOLT MOTORCYCLE BATTERIES

Table D-1

Summary data of U.S. producers' 12-volt motorcycle battery operations, 1982-88

Item	1982	1983	1984	1985	1986	1987	1988
	*	*	*	*	*	*	*

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

APPENDIX E

COMMENTS RECEIVED FROM PRODUCERS ON THE IMPACT OF IMPORTS FROM
TAIWAN ON THEIR GROWTH, DEVELOPMENT AND PRODUCTION EFFORTS,
INVESTMENT, AND ABILITY TO RAISE CAPITAL

Actual negative effects

Exide Corp. --* * *.

Yuasa-Exide --* * *.

Anticipated negative effects

Exide Corp. --* * *.

Yuasa-Exide --* * *.

Influence of imports on capital and investment

Exide Corp. --* * *.

Yuasa-Exide --* * *.

APPENDIX F

COMPARISON OF IMPORT DATA AS REPORTED IN QUESTIONNAIRES OF THE
U.S. INTERNATIONAL TRADE COMMISSION AND DATA REPORTED IN THE
OFFICIAL STATISTICS OF THE U.S. DEPARTMENT OF COMMERCE

Table F-1

12-volt motorcycle batteries: Comparison of import data as reported in Commission questionnaires and data reported in the official statistics of the U.S. Department of Commerce, 1986-88, January-March 1988, and January-March 1989

	1986	1987	1988	January-March--	
				1988	1989
Taiwan:					
Quantity (1,000 units):					
Questionnaires.....	803	1,074	1,021	386	294
Official statistics.....	<u>1/</u> 447	528	528	174	142
Value (1,000 dollars):					
Questionnaires.....	7,651	10,446	10,769	4,214	3,874
Official statistics.....	<u>1/</u> 3,518	5,129	5,508	1,871	1,332
Unit value:					
Questionnaires.....	\$9.53	\$9.73	\$10.55	\$10.92	\$13.18
Official statistics.....	<u>3/</u> \$7.87	\$9.71	\$10.43	\$10.75	\$9.38
Republic of Korea:					
Quantity (1,000 units):					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 149	135	263	91	63
Value (1,000 dollars):					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 2,425	1,681	3,186	1,171	758
Unit value:					
Questionnaires <u>2/</u>	***	***	***	***	***
Official statistics.....	<u>3/</u> \$16.28	\$12.45	\$12.11	\$12.87	\$12.03
Japan:					
Quantity (1,000 units):					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 573	815	1,258	357	257
Value (1,000 dollars):					
Questionnaires.....	***	***	***	***	***
Official statistics.....	<u>1/</u> 6,012	9,250	15,860	3,996	3,308
Unit value:					
Questionnaires <u>2/</u>	***	***	***	***	***
Official statistics.....	<u>3/</u> \$10.49	\$11.35	\$12.61	\$11.19	\$12.87

1/ Because 12-volt motorcycle batteries were not separately provided for in the TSUS prior to 1987, the 1986 data were estimated by the staff of the U.S. International Trade Commission.

2/ Calculated from data provided by firms supplying both quantity and value information.

3/ Calculated from the estimated data.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

ERRATA

Import data obtained from Commission questionnaires presented in this report (table 14 and table F-1) are overstated by 5-10 percent. The overstatement results from the incorrect reporting by one U.S. firm of its purchases as imports (i.e., the U.S. importer correctly reported its imports, but its U.S. purchaser also reported its purchases as imports). Because imports are overstated, market penetration by imports is slightly overstated (table 15).

