

# **DRAFTING MACHINES AND PARTS THEREOF FROM JAPAN**

Determination of the Commission in  
Investigation No. 731-TA-432  
(Final) Under the Tariff Act  
of 1930, Together With the  
Information Obtained in  
the Investigation

**USITC PUBLICATION 2247**

**DECEMBER 1989**

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



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## CONTENTS

	<u>Page</u>
<b>Determination and Views of the Commission:</b>	
Determination.....	1
Views of the Commission.....	3
Views of Chairman Anne E. Brunsdale.....	21
Additional Views of Vice Chairman Ronald A. Cass.....	35
Additional Views of Commissioner Eckes.....	67
<b>Information obtained in the investigation:</b>	
Introduction.....	A-1
Background.....	A-2
Nature and extent of sales at LTFV.....	A-2
The product:	
Description and uses.....	A-3
Track drafting machine.....	A-3
Band-and-pulley (elbow-type) drafting machine.....	A-3
Protractor head.....	A-5
Parts of drafting machines.....	A-5
Manufacturing processes.....	A-5
Track drafting machine.....	A-7
Band-and-pulley drafting machine.....	A-7
Protractor head.....	A-7
Substitute products.....	A-8
Portable drafting system.....	A-8
Portable drawing board.....	A-8
Computer-aided design systems.....	A-8
U.S. tariff treatment.....	A-9
The U.S. market:	
Apparent U.S. consumption.....	A-10
U.S. producers.....	A-10
U.S. importers.....	A-11
Channels of distribution.....	A-12
Consideration of alleged material injury to an industry	
in the United States.....	A-13
U.S. producer's capacity, production, and capacity utilization.....	A-13
U.S. producer's shipments.....	A-13
Domestic shipments.....	A-13
Export shipments.....	A-15
Total shipments.....	A-15
U.S. producer's inventories.....	A-15
U.S. employment, wages, and productivity.....	A-16
Financial experience of the U.S. producer.....	
Overall establishment operations.....	A-16
Operations on drafting machines and parts thereof.....	A-19
Financial ratios.....	A-20
Value of plant, property, and equipment.....	A-21
Capital expenditures.....	A-21
Research and development expenses.....	A-21
Capital and investment.....	A-21

## CONTENTS

	<u>Page</u>
<b>Information obtained in the investigation--Continued</b>	
Consideration of the question of threat of material injury.....	A-22
U.S. importers' inventories.....	A-23
The producers in Japan.....	A-24
Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury:	
U.S. imports.....	A-25
Market penetration by the subject imports.....	A-27
Market structure:	
Market participants.....	A-28
Competition between drafting machines and CAD systems.....	A-30
Prices.....	A-31
Price trends.....	A-33
Price comparisons.....	A-34
Lost sales and lost revenues.....	A-36
Exchange rates.....	A-37
 <b>Appendixes</b>	
A. Commission's <u>Federal Register</u> notice.....	B-1
B. Commission's <u>Federal Register</u> notice pertaining to its hearing, and list of witnesses who appeared at the hearing.....	B-5
C. Commerce's <u>Federal Register</u> notice.....	B-11
D. Percentage changes in market data.....	B-15
E. Comments by Vemco on the effects of imports from Japan on its growth, investment, development and production efforts, and ability to raise capital.....	B-17
F. Ranges of sales prices.....	B-19
 <b>Figures</b>	
1. Types of drafting machines.....	A-4
2. Types of protractor heads.....	A-6
F-1. Drafting machines: Largest quarterly sales prices and ranges of highest and lowest sales prices as reported by Vemco and Mutoh for products 1 and 2, by quarters, January 1988-June 1989.....	B-20
F-2. Drafting machines: Largest quarterly sales prices and ranges of highest and lowest sales prices as reported by Vemco and Mutoh for products 3 and 4, by quarters, January 1988-June 1989.....	B-20

## CONTENTS

Page**Tables**

1.	Drafting machines and parts thereof: U.S.-produced domestic shipments, U.S. shipments of imports, and apparent U.S. consumption, 1986-88, January-June 1988, and January-June 1989....	A-11
2.	Drafting machines: U.S. shipments, by markets and types of protractor head, 1988.....	A-12
3.	Drafting machines: U.S. capacity, production, and capacity utilization, 1986-88, January-June 1988, and January-June 1989....	A-13
4.	Drafting machines and parts thereof: U.S. producer's company transfers, domestic shipments, export shipments, and total shipments, 1986-88, January-June 1988, and January-June 1989.....	A-14
5.	Drafting machines: U.S. producer's end-of-period inventories, inventories as a share of U.S. shipments, and inventories as a share of total shipments, as of Dec. 31 of 1986-88, June 30, 1988, and June 30, 1989.....	A-15
6.	Average number of employees and production and related workers, producing drafting machines and parts thereof and all products, hours worked, wages paid, hourly wages, total compensation paid, productivity, and unit labor costs, 1986-88, January-June 1988, and January-June 1989.....	A-17
7.	Income-and-loss experience of Vemco Corp. on the overall establishment operations within which drafting machines are produced, accounting years 1986-88, January-June 1988, and January-June 1989.....	A-18
8.	Income-and-loss experience of Vemco Corp. on its operations producing drafting machines and parts thereof, accounting years 1986-88, January-June 1988, and January-June 1989.....	A-20
9.	Drafting machines: End-of-period inventories of Japanese products, as of Dec. 31 of 1986-88, June 30, 1988, and June 30, 1989.....	A-24
10.	Drafting machines: Mutoh Industries, Ltd.'s capacity, production, capacity utilization, end-of-period inventories, inventories as a share of total shipments, home-market shipments, exports to the United States, exports to all other countries, and total shipments, 1986-88, January-June 1988, and January-June 1989.....	A-26
11.	Drafting machines and parts thereof: U.S. imports, 1986-88, January-June 1988, and January-June 1989.....	A-27
12.	Drafting machines and parts thereof from Japan: U.S. importers' domestic shipments, export shipments, and total shipments, 1986-88, January-June 1988, and January-June 1989.....	A-28
13.	Drafting machines and parts thereof: Shares of U.S. consumption supplied by Japan, and all other countries, 1986-88, January-June 1988, and January-June 1989.....	A-29
14.	Drafting machines: F.o.b. prices and margins of underselling (overselling) reported by Vemco and Mutoh America for sales to distributors of product 1, by quarters, January 1986-June 1989....	A-33

## CONTENTS

	<u>Page</u>
<b>Tables--Continued</b>	
15. Drafting machines: F.o.b. prices and total quarterly shipments of products 2, 3, and 4 to distributors as reported by Vemco and Mutoh America, by quarters, January 1986-June 1989.....	A-34
16. Exchange rates: Indexes of the nominal and real exchange rates between the U.S. dollar and Japanese yen, and indexes of producer prices in Japan and the United States, by quarters, January 1986-June 1989.....	A-38
D-1. Drafting machines: Percentage changes in market data, 1986-87, 1987-88, and January-June 1988 to January-June 1989.....	B-16

**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-432 (Final)

DRAFTING MACHINES AND PARTS THEREOF FROM JAPAN

Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Japan of drafting machines and parts thereof, provided for in subheadings 9017.10.00 and 9017.90.00, respectively, of the Harmonized Tariff Schedule of the United States (previously reported under item 710.80 of the former 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 August 25, 1989, following a preliminary determination by the Department of Commerce that imports of drafting machines and parts thereof from Japan were being, or were likely to be sold at LTFV within the meaning of section 733 of the act (19 U.S.C. § 1673b). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S.

International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 20, 1989 (54 F.R. 38750). The hearing

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

was held in Washington, DC, on November 14, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.



## VIEWS OF THE COMMISSION

On the basis of the record developed in this investigation, we unanimously determine that an industry in the United States is materially injured by reason of imports of drafting machines and parts thereof from Japan that the Department of Commerce has determined are sold at less than fair value (LTFV). <sup>1/</sup>

### I. Like product

As a threshold matter in title VII investigations, the Commission must determine what constitutes the domestic industry. The statute defines 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 . . . ." <sup>2/</sup> "Like product," in turn, is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with" the articles subject to investigation. <sup>3/</sup>

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<sup>1/</sup> Material retardation is not an issue in this investigation.

<sup>2/</sup> 19 U.S.C. § 1677(4)(A).

<sup>3/</sup> 19 U.S.C. § 1677(10). In its Notice of Final Determination of Sales at Less Than Fair Value, Commerce defined the articles subject to investigation as follows:

The scope of this investigation includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. For purposes of this investigation, "drafting machine" refers to "track" or "elbow-type" drafting machines used by

(continued...)

The Commission's decision concerning like product is factual and is made on a case-by-case basis. <sup>4/</sup> The Commission has not drawn distinctions based on minor physical differences, <sup>5/</sup> and instead has looked for clear dividing lines between articles before considering them to be separate like products. <sup>6/</sup>

3/ (...continued)

designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be read and set and lines to be drawn. The machine is generally clamped to the board. Both "track" and "elbow-type" drafting machines are classified under HTS 9017.10.00.

Also included within the scope of this investigation are parts of drafting machines classified under HTS 9017.90.00. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, parts of band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps, and scales are not subject to this investigation.

54 Fed. Reg. 46,961 (November 8, 1989).

4/ Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT \_\_\_\_, 693 F. Supp. 1165, 1169 & n.5 (1988); 3.5" Microdisks and Media Therefor from Japan (3.5" Microdisks), Inv. No. 731-TA-389 (Final), USITC Pub. 2170 (March 1989) at 6. The Commission traditionally considers: (1) physical characteristics and uses, (2) interchangeability, (3) channels of distribution, (4) customer and producer perceptions, (5) common manufacturing facilities and employees, and (6) price. No single factor is dispositive, and the Commission may consider other factors. Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan (Sweaters), Invs. Nos. 731-TA-448-450 (Preliminary), USITC Pub. 2234 (November 1989), at 4.

5/ S. Rep. 249, 96th Cong., 1st Sess. 90-1 (1979).

6/ Sweaters at 5; Operators for Jalousie and Awning Windows from El Salvador, Inv. Nos. 701-TA-272, 731-TA-319 (Final), USITC Pub. 1934 (January 1987) at 4.

In the preliminary investigation, we determined that track and elbow-type drafting machines were the like product. No party has challenged that finding; nor has information been adduced in this final investigation that would compel a different finding. Thus, we again find that track and elbow drafting machines are part of the same like product.

We further found in the preliminary investigation that portable drafting machines, such as those made by Draftette Corporation, were "like" the articles described in Commerce's scope determination, but constituted a separate like product. <sup>7/</sup> We rendered a negative preliminary determination with respect to the domestic industry producing portable drafting machines. In light of this fact, and because no party has advanced any like product arguments concerning portable machines in the final investigation, we believe that further consideration of portable drafting machines is inappropriate.

Respondent Mutoh argues that parts of drafting machines are a separate like product from completed drafting machines. As explained below, we find that parts of drafting machines and finished drafting machines are a single like product. <sup>8/</sup>

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<sup>7/</sup> Commissioner Eckes dissented from the finding of a separate like product for portable drafting machines. USITC Pub. 2192 at 13, n.39.

<sup>8/</sup> In deciding whether semifinished or component articles are like the finished products to which they pertain, the Commission typically examines several factors: (1) the necessity for further processing; (2) the cost of such processing and the value added thereby; (3) whether the article at an earlier stage of production embodies or imparts to the finished article an  
(continued...)

All "parts" destined for use in drafting machines-- ranging from individual parts such as screws, bearings, and small plastic pieces, to completed subassemblies such as horizontal and vertical tracks and protractor heads -- are within the scope of investigation. <sup>9/</sup> With the exception of generic items such as screws and bearings, drafting machine parts are dedicated for use in drafting machines. <sup>10/</sup> Along with the lack of independent uses, there does not appear to be a significant independent market for drafting machine parts. Most drafting machine parts are produced and consumed internally by Vemco in the production of finished drafting machines. <sup>11/</sup>

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<sup>8/</sup> (...continued)

essential characteristic or function; (4) whether there are significant uses or independent markets for the finished and unfinished articles; and (5) the degree of interchangeability of articles at the different stages of production. 3.5" Microdisks at 7; Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom (Antifriction Bearings), Invs. Nos. 303-TA-19 & 20, 731-TA-391-399 (Preliminary), USITC Pub. 2083 (May 1988) at 7; Light-Duty Integrated Hydrostatic Transmissions and Subassemblies Thereof, With or Without Attached Axles, From Japan, Inv. No. 731-TA-425 (Preliminary), USITC Pub. 2149 (January 1989) at 19, n.64. The Commission considers other factors as appropriate.

<sup>9/</sup> "Assembly" differs greatly depending on whether one considers "complete" assembly from the smallest individual parts, "final" assembly from major subassemblies, or assembly from the three main track machine subassemblies. Report at A-5; Tr. at 152-153.

<sup>10/</sup> Tr. at 105; Report at A-5.

<sup>11/</sup> Replacement parts represent a small fraction of the total value of shipments of drafting machines and parts. Report at A-14, Table 4. Mutoh alleges that some replacement parts go to drafting machine refurbishers instead of to the distributors or end-users that purchase new machines. Prehearing Brief of Mutoh (continued...)

Furthermore, because Vemco makes most of the drafting machine parts, there is a substantial coincidence in the production facilities, equipment, and employees used to make finished drafting machines and parts.

For the above reasons, we find that the like product consists of drafting machines and parts thereof. <sup>12/</sup> Accordingly, we find that the domestic industry consists of domestic producers of the like product.

## II. Condition of the Industry

In assessing the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, production, capacity utilization, shipments, inventories, employment, wages, sales, financial performance, ability to

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<sup>11/</sup> (...continued)

at 13. Even if this is true, such parts would be small in number and would end up in drafting machines.

<sup>12/</sup> Mutoh argues in the alternative that replacement parts -- as distinguished from parts internally consumed by Vemco in producing new drafting machines -- should be a separate like product. Replacement parts are identical to parts that go into new drafting machines in all respects apart from how they are sold. In prior investigations, the Commission has found that marketing differences alone do not justify separate like product treatment. See, e.g., *Yuasa-General Battery Corp. v. United States*, 11 CIT \_\_\_\_, 661 F. Supp. 1214, 1216-7 (1987) (Court upheld Commission finding that the like product included batteries sold in original equipment market as well as batteries sold in replacement market.); *Generic Cephalixin Capsules from Canada*, Inv. No. 731-TA-423 (Final), USITC Pub. 2211, (August 1989) at 6 & n.14 (generic and branded capsules the same like product); Sweaters at 13 (sweaters sold as part of ensembles included with other sweaters in the like product). We see no reason on the basis of the record of this investigation to depart from that principle.

raise capital, and investment. <sup>13/</sup> The Commission evaluates these factors in the context of the business cycle and competitive conditions of the particular industry concerned. <sup>14/</sup>

Because there is only one domestic producer of drafting machines in this investigation, specific data on the condition of the industry are confidential. Thus, we will discuss the condition of the domestic industry producing drafting machines only in general terms.

Apparent U.S. consumption of drafting machines<sup>15/</sup> decreased in both quantity and value from 1986 through 1988, and fell further in "interim" -- i.e., January through June -- 1989 in comparison with interim 1988. <sup>16/</sup> U.S. production of drafting machines decreased from 1986 to 1987 and recovered somewhat in 1988, for an overall decline from 1986 to 1988. Production fell further in interim 1989 when compared to the same period in 1988. <sup>17/</sup> Because capacity to produce drafting machines was constant, capacity utilization showed an overall decline. <sup>18/</sup>

Domestic shipments declined steadily from 1986 through

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<sup>13/</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>14/</sup> Id.

<sup>15/</sup> Unless otherwise noted, figures for drafting machines include parts.

<sup>16/</sup> Report at A-11, Table 1. The parties agree that this drop was the result of increased use of computer-aided design (CAD) systems in place of mechanical drafting machines. See discussion, infra.

<sup>17/</sup> Report at A-13, Table 3.

<sup>18/</sup> Id.

1988, in terms of quantity and value, and fell further from interim 1988 through interim 1989. 19/ By contrast, export shipments of the domestic industry grew during the period. 20/ The value of total shipments fell steadily from 1986 through 1988, and continued to drop in interim 1989. Inventories fell from 1986 through 1988, but exhibited an upturn in interim 1989 in comparison with interim 1988. 21/

Employment and compensation data were mixed. The number of employees producing drafting machines increased from 1986 through 1988, but decreased from interim 1988 through interim 1989. Hours worked by production and related employees declined from 1986 through 1988. 22/ Wages and total compensation rose from 1986 through 1988, but fell from interim 1988 to interim 1989. 23/

Net sales for the drafting machine industry decreased from 1986 to 1987, then remained at that lower level in 1988. 24/ Interim 1989 net sales were below figures for interim 1988. With respect to operating and net income or loss, and cash flow, the industry's financial condition worsened steadily from 1986

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19/ Report at A-14, Table 4.

20/ Id. Shipments of parts also increased from 1986 through 1988. However, parts accounted for only a tiny fraction of total shipments of drafting machines and parts. Id.

21/ Report at A-15, Table 5.

22/ Report at A-17, Table 6.

23/ Id.

24/ Report at A-20, Table 8.

through 1988. <sup>25/</sup> This was primarily because the cost of goods sold accounted for an increasing share of net sales. Financial performance showed slight improvement from interim 1988 through interim 1989. <sup>26/</sup> The domestic industry had difficulty in obtaining capital from outside sources during the period. <sup>27/</sup> Capital expenditures and spending on research and development decreased from 1986 through 1988. <sup>28/</sup>

To summarize, most indicators of industry condition showed a decline. Production, capacity utilization, domestic and total shipments, and sales all dropped. The industry's financial performance deteriorated over the period of investigation. The industry spent less on research and development, and it had trouble raising capital. Accordingly, we determine that the

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<sup>25/</sup> Id. Mutoh challenges certain allocations made in the financial data Vemco submitted to the Commission. Following verification of Vemco's books, staff revised some of Vemco's figures. We are satisfied that the allocations that underlie the financial data contained in the staff report are acceptable according to Commission standards. In any event, the financial data contained in the report are the best information available. 19 U.S.C. § 1677e(c); see New Steel Rails from Canada, Inv. No. 701-TA-297, 731-TA-422 (Final), USITC Pub. 2217 (September 1989) at 13, n.31.

<sup>26/</sup> Although we do not ignore this small improvement, we give it less weight than the full year data in this investigation. This is because the interim data may not meet external reporting requirements and may well not be indicative of full-year performance. See, Report at A-20, Table 8 (large difference in income-and-loss data for interim 1988 when compared with full-year 1988). Furthermore, the magnitude of any improvement is not such that it would alter our conclusion that the domestic industry is experiencing material injury. Vice Chairman Cass does not join in this statement. See n.30, infra.

<sup>27/</sup> Report at A-21.

<sup>28/</sup> Id.



domestic industry producing drafting machines and parts thereof is materially injured. 29/ 30/ 31/ 32/

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29/ Chairman Brunsdale does not reach a separate legal conclusion based on the condition of the domestic industry. She believes that the discussion of the domestic industry is accurate and relevant to her determination regarding material injury by reason of the LTFV imports. See Certain Light-Walled Rectangular Pipes and Tubes from Taiwan, Inv. No. 731-TA-410 (Final), USITC Pub. 2169 (March 1989) at 10-15 (Views of Chairman Brunsdale and Vice-Chairman Cass).

30/ Vice Chairman Cass does not join in this conclusion. He believes that the statute under which the Commission conducts Title VII investigations does not contemplate that the Commission will make a separate legal finding respecting the condition of the domestic industry. While he believes the condition of the domestic industry is relevant to assessing whether the effect of the LTFV imports had been "material," that information has relevance only in assessing material injury by reason of the 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, Inv. No. 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.

31/ Commissioner Eckes reached an affirmative determination in this investigation by employing a bifurcated or dual-requirement method of injury analysis, consistent with the statutes and guidance of the reviewing courts. See Additional Views of Commissioner Eckes, infra.

32/ Commissioner Lodwick considers this particular industry to be most vulnerable to the effects of LTFV imports given the declining fortunes of the drafting machines business. The statute is not intended to make relief "more difficult to obtain for those industries facing difficulties from a variety of sources, precisely those industries that are most vulnerable to subsidized or dumped imports." H.R. Report No. 317, 96th Congress, 1st session, 47 (1979).

### III. Material injury by reason of LTFV imports 33/ 34/

In this final investigation, we must determine whether a domestic industry is materially injured or threatened with material injury "by reason of" the imports under investigation. 35/ We consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers. 36/ In doing so, we examine whether import volumes or increases in volume are significant, whether there has been significant underselling by imports, whether imports significantly depress or suppress prices for the like product, and actual or potential declines in such factors as production, sales, and profitability. 37/

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33/ Chairman Brunsdale does not join this section of the Commission's opinion. Her analysis is set forth separately in her Additional Views.

34/ Vice Chairman Cass does not join this section of the Commission's opinion. His analysis of the question whether there is material injury to any domestic industry by reason of LTFV imports is set forth separately in his Additional Views.

35/ 19 U.S.C. § 1673d(b)(1). This contrasts with a preliminary investigation, in which the Commission determines whether there is a "reasonable indication" of material injury or the threat thereof "by reason of" the subject imports. 19 U.S.C. § 1673b(a).

36/ 19 U.S.C. § 1677(7)(B)(i).

37/ 19 U.S.C. § 1677(7)(C).

The Commission may consider alternative causes of injury, 38/ but it may not weigh causes. 39/ Nor must the Commission determine that imports are the principal or a substantial cause of material injury. "Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; industries that are often the most vulnerable to less-than-fair-value imports." 40/

At the outset it is important to note the effect of computer-aided design (CAD) on the domestic drafting machine market. Witnesses at the Commission's hearing in this investigation testified that many firms have been switching to CAD because it is more efficient and offers more capabilities than

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38/ Alternative causes may include:

the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry.

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). See also, H.R. Rep. 317, 96th Cong., 1st Sess. 47 (1979).

39/ LMI - La Metalli Industriale, S.p.A. v. United States, 13 CIT \_\_\_, Slip op. 89-46 (April 11, 1989) at 31, citing, British Steel Corp. v. United States, 8 CIT 86, 593 F. Supp. 405, 413 (1984); Citrosuco Paulista, S.A. v. United States, 12 CIT \_\_\_, 704 F. Supp. 1075, 1101 (1988); Hercules, Inc. v. United States, 11 CIT \_\_\_, 673 F. Supp. 454, 481 (1987); See also, Maine Potato Council v. United States, 9 CIT 293, 613 F. Supp. 1237, 1244 (1985) (The Commission must reach an affirmative determination if it finds that imports are more than a "de minimis" cause of injury.).

40/ S. Rep. No. 249, 96th Cong., 1st Sess. 74-5 (1979).

mechanical drafting machines. 41/ The price of CAD has decreased in recent years so that it is now within the reach of many drafting machine users. Both Vemco and Mutoh agree that CAD explains the overall decline in the market for drafting machines. The declining market, in turn, has had an adverse effect on the fortunes of the domestic industry. 42/

The question remains, however, whether LTFV imports of drafting machines have nonetheless contributed to the injury being experienced by the domestic industry. As we explain below, we believe that the answer to this question is in the affirmative. We base this finding primarily on the persistent significant market share held by imports, and on evidence of price suppression and underselling by imports.

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41/ Tr. at 119-121, 124-125, 127-128.

42/ Commissioner Lodwick considers CAD/CAM systems to continue as a major influence on the drafting machines market. The record indicates that CAD systems with lesser functionality may cost as little as \$3,000. INV-M-131 at 14. However, he notes that a person using a simple CAD software package on a personal computer (PC) may be very likely to have a PC regardless of his CAD applications, so the incremental cost for CAD to this user is the price of the software and whatever portion of the plotter or output device is allocated to this user. Automated design provides a user with functions and productive tools far beyond a manual drafting machine, so the fact that there is a price difference between CAD and drafting machines in itself, does not necessarily imply low substitutability between these two products.

He believes that despite the role of CAD in continuing to reduce consumption and in making demand for drafting machines more sensitive to lower prices, CAD and other substitutes, such as used drafting machines, do not appear to affect demand for new drafting machines in the current market to the point where there is not sufficient displacement of domestic product to warrant a finding of material injury by reason of the LTFV imports.

Although we are not free to discuss specific figures publicly, we find that the absolute volume of drafting machine imports and the share of the domestic market accounted for by imports were significant throughout the period of investigation. <sup>43/</sup> It is true that imports decreased absolutely and in terms of market share. However, import market share in value terms was highest, and the decline in that market share only modest, from 1986 through 1988, the period in which the profitability of the domestic industry suffered most. <sup>44/</sup> This indicates a connection between the imports and the performance of the domestic industry. Because Japanese and domestic drafting machines are substitutable and are sold through similar channels, <sup>45/</sup> the consistently high and significant import market share, particularly in terms of value from 1986 through 1988, contributed to Vemco's inability to make sufficient sales and thus depressed its financial performance.

The Commission requested information from the domestic industry and importers on the prices obtained for the largest quarterly sales, net of discounts, of several representative

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<sup>43/</sup> Report at A-27, Table 11; A-29, Table 13.

<sup>44/</sup> Report at A-20, Table 8; A-29, Table 13. Just as we have given less weight to Vemco's interim financial data, we accord less weight to interim 1989 import volume and market share information. Such information may not be indicative of full year performance. In any event, we have found import volume and market share to be significant -- and probative of a causal link between imports and material injury to the domestic industry-- throughout the period of investigation, including the most recent interim period.

<sup>45/</sup> Memorandum INV-M-131 at 13; Report at A-12.

drafting machines to distributors. An examination of the data received reveals that prices charged by both Vemco and Mutoh for all models sampled increased similarly during the period of investigation. 46/

However, we find that imports from Japan "prevent[ed] price increases, which otherwise would have occurred, to a significant degree." 47/ 48/ Although Vemco's prices have risen, Vemco's costs of producing drafting machines have also substantially increased. 49/ A further increase in Vemco's prices with the same volume of sales would have improved Vemco's income-and-loss

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46/ Report at A-33, Table 14; A-34, Table 15.

47/ 19 U.S.C. § 1677(7)(C)(ii)(II).

48/ Commissioner Lodwick considers the imported and domestic drafting machines to be moderately close substitutes given similar characteristics, uses and distribution channels. See Memorandum INV-M-131 at 10-13. The fungibility of the product is supported by fairly low margins of underselling, although the products are not true commodities. Report at A-33. He doubts that the LTFV imports in this market significantly affect prices or prevent significant price increases. The domestic industry has substantial excess capacity or potential supply and CAD is becoming increasingly affordable as a substitute. Id. at A-13. That is, although the petitioner faces no other domestic competition, there is no reason to think that even with a far lesser presence in the market of Mutoh, the domestic producer could raise prices significantly without further accelerating the erosion of his market to CAD and other substitutes. Therefore, he believes that the effect of the LTFV imports in this market is more likely felt through the displacement of sales, not in significant price suppression.

He believes that the financial difficulties due to increasing costs do not necessarily imply significant price suppression by the LTFV imports, especially in a declining market. Increased sales would help offset sunk or fixed costs and such sales themselves could restore financial returns to this industry.

49/ Report at A-20, Table 8. From 1986 through 1988, the costs of goods sold increased substantially as a percentage of net sales of the like product. Id.

position significantly. 50/ Based upon the characteristics of the domestic drafting machine market and the pricing data received by the Commission, 51/ we find that the presence of imports from Japan sold at less-than-fair-value have precluded such a price increase. 52/

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50/ Commissioner Rohr notes that a simple variance analysis of the financial data in this investigation reveals that the increase in average unit costs of the drafting machines had a substantially greater negative impact on the financial performance of the industry than the relatively small positive impact of the average unit price increases. In his view, this provides further support to the conclusion that the injury being experienced by the industry is related to its inability, over an extended period of time, to raise prices sufficiently to cover increased costs. Because the other information gathered in the investigation clearly established the LTFV imports from Japan are one of the factors responsible for the pricing in the market, he concludes there is sufficient support for the conclusion that the Japanese LTFV imports are a cause of material injury to the domestic industry.

51/ Several attributes of the drafting machine market indicate that import prices had a suppressing effect on the prices of the like product. As noted above, (1) the volume and market share of imports were large; (2) domestic and imported machines are fairly close, albeit not exact, substitutes; (3) domestic and imported drafting machines are sold through similar channels. In addition, purchasers indicate that price is one of the most important considerations in purchasing decisions. Report at A-30. The pricing data actually collected by the Commission bear out the relationship between import prices and prices for the like product. Prices for imported and domestic drafting machines moved in a similar fashion and were in the same general range throughout the period of investigation. Report at A-33, Table 14; A-34, Table 15. In a mature market dominated by two firms, this indicates some interrelationship between the pricing of the two firms.

52/ We reject Mutoh's alternative explanations for price suppression. CAD systems differ more in price and are not as close a substitute for domestic drafting machines as imported drafting machines are. Compare Tr. at 119, with Report at A-33, Table 14; A-34, Table 15. Similarly, the information on the record does not indicate that used drafting machines have suppressed prices for the like product. Few purchasers  
(continued...)

We have also analyzed the pricing data for evidence of underselling by imports. 53/ An examination of all models surveyed for the entire period of investigation reveals that imports undersold the domestic like product in slightly more than half the quarters. 54/ For the one model in which Vemco's and Mutoh's features and warranties were nearly identical, imports undersold the domestic like product in nearly all quarters. 55/ Because purchasers indicated that price is an

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52/ (...continued)

indicated that used machines are a significant factor in the market. Memorandum INV-M-131 at 15, n.33. It is likely that sales of used machines are local and any market for them informal. Tr. at 48-49.

53/ 19 U.S.C. § 1677(7)(C)(ii)(I). In making price comparisons, we are mindful that despite sharing certain size and capability attributes, most drafting machine models compared differed in such characteristics as features and warranties. In most cases, Mutoh models chosen for comparison offered more features than their domestic counterparts. Report at A-34--A-36. By contrast, for most models compared the warranty offered by Vemco exceeded Mutoh's warranty. Report at A-32 & n.55. Nonetheless, the majority of purchasers that expressed an opinion agreed that the model comparisons the Commission chose were the most appropriate that could be made. Report at A-35. Other conditions of sale-- such as payment of shipping costs and small discounts for cash payments or for payments received within a certain number of days -- do not significantly affect these price comparisons. Report at A-31 & n.50; A-33, Table 14, n.1; A-34, Table 15, n.1. However, in light of the potential difficulties in making price comparisons, we give less weight to underselling in our determination than we would have had better price comparisons been possible.

54/ Report at A-33, Table 14; A-34, Table 15.

55/ Report at A-33, Table 14; Memorandum INV-M-131 at 11, n.22. We note that this product accounted for more than a trivial amount of Vemco's shipments of drafting machines during the period of investigation.



important consideration in buying decisions, 56/ the underselling indicates that imports gained at least some sales that would otherwise have gone to the domestic producer. We therefore find that underselling was significant.

Additional support for our finding of material injury by reason of imports is provided by our investigation of Vemco's lost sales and lost revenues allegations. Several of the purchasers cited by Vemco indicated that they had bought imports instead of domestic machines at least partly because of price, or that Vemco lowered its price to make sales. 57/ 58/ 59/

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56/ Report at A-30.

57/ Report at A-36--A-37.

58/ We do not believe that any other alternative explanations fully account for the material injury being experienced by the domestic industry. Although feature differences, brand loyalty, and the desire of distributors to offer endusers alternative products may have benefitted Mutoh, those factors cannot explain the large volume of imports and their effect on prices for the like product. The most important factors for customers appear to be quality and price, and the majority of purchasers indicate that Vemco's and Mutoh's drafting machines are comparable in quality. Report at A-30, n.46. We also note that the same comparability holds true for Vemco's and Mutoh's service. As for the frequency of sales calls made by Vemco and Mutoh salespeople, purchaser questionnaires indicate, if anything, better performance by Vemco.

59/ Commissioner Lodwick considers the moderately high substitutability of the domestic and imported products and the significant penetration of the LTFV imports in the residual drafting machine market not yet filled by CAD as evidence of sufficient and significant displacement of domestic sales in the context of a declining domestic industry, to determine that a domestic industry is materially injured by reason of LTFV imports.

#### **IV. Conclusion**

Based upon the above discussion, we determine that an industry in the United States is materially injured by reason of imports of drafting machines and parts thereof from Japan that the Department of Commerce has determined are being sold at less than fair value.

VIEWS OF CHAIRMAN ANNE E. BRUNSDALE

Drafting Machines and Parts Thereof from Japan

Investigation No. 731-TA-432 (Final)

December 22, 1989

Based on the record in this investigation, I concur with the Commission's finding that the domestic industry producing drafting machines is materially injured by reason of dumped imports from Japan.<sup>1</sup> I also join in the Commission's determination of like product and its characterization of the condition of the domestic industry.

Material Injury by Reason of Dumped Imports

While I acknowledge the importance of examining conditions in the domestic industry, I do not believe that it is possible to reach any conclusion on that basis alone. In assessing material injury, the Commission is instructed to consider in each case "(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 the like products, and (III) the impact of imports of such merchandise on domestic producers of the like product."<sup>2</sup> The Commission is further instructed to evaluate all factors within the context of

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<sup>1</sup> Material retardation is not an issue in these investigations and will not be discussed further.

<sup>2</sup> 19 U.S.C. 1677(7)(B)(i).

"conditions of competition that are distinctive to the affected industry."<sup>3</sup>

It would be impossible to analyze the effect of dumped imports on the domestic drafting machine industry by looking only at the trends in industry performance during the period of investigation. That was a time of great change in the market for drafting machines. Technological innovations that had resulted in the increased use of computer-aided design (CAD) systems was causing a precipitous decline in demand for drafting machines. As a consequence, the number of firms producing and selling drafting machines in the United States also declined. Looking at data on prices, sales, or employment cannot allow us to separate the effects of dumped imports from changes in the "conditions of competition."

In order to assess the impact of the dumped imports on the domestic industry as required by the antidumping statute, I examine the conditions of supply and demand in the market for drafting machines. Particularly, I analyze the evidence on the record in a fashion that reveals (1) the degree to which overall demand for drafting machines responds to changes in price, (2) the degree of substitutability between the subject imports and domestic products, (3) the responsiveness of domestic supply to changes in price, and (4) the response of fairly traded imports

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<sup>3</sup> 19 U.S.C. 1677(7)(C)(iii).

to changes in price.<sup>4</sup> Using these tools to evaluate the evidence on the record, I can assess the impact of dumped imports on the prices and volume of output in the domestic industry.

### Demand for Drafting Machines

#### Background

The domestic industry has been in a period of decline for reasons apparently unrelated to dumped imports. Since 1985, following the exit of three domestic producers, petitioner Vemco has been the sole domestic producer of drafting machines.<sup>5</sup> Respondent Mutoh has been the only firm to export a significant number of drafting machines to the United States.<sup>6</sup>

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<sup>4</sup> For a more thorough discussion of my analysis, see Internal Combustion Forklift Trucks from Japan, Inv. No. 731-TA-377 (Final), USITC Pub. 2082 (May 1988), at 66-83 (Additional Views of Vice Chairman Anne E. Brunsdale); see also Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046 (December 1987), at 23-32 (Additional Views of Vice Chairman Anne E. Brunsdale); Cold-Rolled Carbon Steel Plates and Sheets from Argentina, Inv. No. 731-TA-175 (Final) (Second Remand), USITC Pub. 2089 (June 1988), at 31-51 (Additional Views of Vice Chairman Anne E. Brunsdale). The Court of International Trade has also discussed with approval the use of elasticities. See Copperweld Corp. v. United States, No. 86-03-00338, slip op. 88-23, at 45-48 (Ct. of Int'l Trade, February 24, 1988); USX Corp. v. United States, 12 CIT \_\_\_\_\_, slip op. 88-30, at 19 (March 15, 1988); Alberta Pork Producers' Marketing Board v. United States, 11 CIT \_\_\_\_\_, 669 F.Supp. 445, 461-65 (1987).

<sup>5</sup> One former drafting machine producer continued to sell imported drafting machines until 1988. Staff report A-11.

<sup>6</sup> Petitioner charges that were it not for dumping, Mutoh would not have a large share of the market for drafting machines in the United States. See hearing transcript, p. 25.

During the period of investigation, the value of U.S. drafting machine consumption fell by over \*\*\* percent. Petitioner and Respondent agree that this is overwhelmingly attributable to the growing use of CAD systems. The price of CAD systems has fallen considerably since the mid-1980s, making them accessible to small firms and even to individual users.<sup>7</sup>

There has been some dispute as to whether the demand for drafting machines will continue to decline rapidly, or whether, as petitioner contends, there is a core demand for drafting machines that will continue for some time.<sup>8</sup> I am persuaded that the computer revolution is unlikely to wane and that, as a result, CAD systems are likely to become better and cheaper in the future. In addition, even if drafting machines continue to be preferable for some tasks, given the existing stock of these machines, it is unlikely that the demand for new machines will remain at the current level.

#### Aggregate Price Effects

To evaluate the effect of dumped imports on the demand for drafting machines, the Commission needs to judge how consumers

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<sup>7</sup> Petitioner claims that CAD systems cost between \$20,000 and \$50,000. Mr. William Fanning, Director of Research of Professional Services Management Journal, however, testified that a simple CAD work-station costs slightly over \$2,800. See hearing transcript, p. 119.

<sup>8</sup> Petitioner argues that schools will continue to teach students how to draw using drafting machines. However, it seems logical that as more businesses switch to using CAD, schools will teach on CAD.

would respond to a decline in drafting machine prices.<sup>9</sup> The effect of dumped imports on the domestic industry would be mitigated if a price decline led to a relatively large increase in purchases, since in that event a greater portion of the increased sales of the imports would result from market expansion rather than decreased domestic producer's sales.

Drafting machines are used primarily by draftsman, engineers, architects, and other related professionals. The demand for drafting machines is derived from demand for the drawings, blueprints, or other services of these professionals. Since those services are crucial and the cost of a drafting machine is a very small part of the cost of providing those services, it is unlikely that a change in the price of drafting machines would result in a change in the output of the final services. Therefore, in this case, the primary determinant of the consumers' response to price changes is the availability of reasonably good substitutes. CAD is an attractive substitute for drafting machines. In addition, portable drafting machines can be used as a substitute for some tasks, and used drafting machines may also be substituted for new machines.<sup>10</sup>

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<sup>9</sup> This economic concept is known as the elasticity of demand. To be more exact, the elasticity of demand is defined as the percentage change in the quantity of a good demanded divided by the percentage change in its price, all other things being equal. If demand is elastic (that is, the elasticity of demand is greater than 1) consumers will increase their total expenditure on a product when its price falls.

<sup>10</sup> The Commission determined that portable drafting machines should not be considered part of the like product in this investigation.

Petitioner argues that CAD is so much more expensive than a drafting machine that people would not switch on the basis of price.<sup>11</sup> Furthermore, while Petitioner acknowledges the loss in market share due to CAD, it claims that it retains a core business for which CAD is not a viable substitute at the present time. Petitioner believes that sales of used drafting machines are sporadic and are not a factor in the market.<sup>12</sup>

Respondent argues that consumers are sensitive to changes in price and would switch away from new drafting machines if their price increased.<sup>13</sup> The growing stock of used machines no longer needed by firms that have switched to CAD would have a large effect on demand for new drafting machines. Not only would there be used drafting machines for sale, but businesses would be able to delay purchasing new machines by utilizing their stock of old machines.

The Commission's Applied Economics Division concludes that consumers are somewhat responsive to changes in the price of

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<sup>11</sup> See testimony of Mr. Vaughn, President of Vemco Corporation, hearing transcript, p. 76.

<sup>12</sup> See Petitioner's Additional Comments on Business Proprietary Information, p. 7. Petitioner does not offer a specific estimate of the demand elasticity.

<sup>13</sup> See Respondent's Posthearing Brief, the response of Mr. Madian, Respondent's economic expert, to staff's economics memo, p. 10. He estimates the demand elasticity to be between \*\*\* and \*\*\*. Mr. Madian's estimate is derived from the available price and sales data. However, as he acknowledges, because his estimate does not attempt to isolate quantity changes due to price changes from the overall market decline due to CAD, it is the equivalent of sophisticated "trend analysis."



drafting machines.<sup>14</sup> I agree with staff's conclusion.<sup>15</sup> Although CAD is more expensive than a drafting machine, given the versatility and the increased productivity of CAD, it makes little sense to compare the prices of CAD and drafting machines one for one. While there is no doubt that CAD will continue to displace drafting machines, it is not clear how much that process is governed by the price of drafting machines.

I believe that some consumers, be they individuals, educational institutions, or businesses, would find an alternative to buying a new drafting machine if their price increased. They could switch to a CAD system, buy a portable machine or a used machine, or delay replacement purchase. Also, individuals could use the CAD system in their school or office, rather than buy a drafting machine.<sup>16</sup>

Since consumers are somewhat responsive to changes in the price of drafting machines, a portion of the increase in import sales resulting from low dumped prices comes from sales of drafting machines that would not have occurred had the imports been fairly priced. Another portion, however, comes from sales that would have been made by the domestic producer.

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<sup>14</sup> It estimates the elasticity of demand to be between 1 and 1.5. See Economics Memo, p. 14.

<sup>15</sup> If demand is moderately elastic, then one would expect that some portion of dumped import sales would have displaced sales by the domestic industry.

<sup>16</sup> It is even possible that someone would buy the CAD software and simply print their drawing at the office.

### Substitutability of the Domestic and Imported Product

In this case most imported drafting machines are those made by the respondent, Mutoh.<sup>17</sup> Making a determination as to the substitutability of the domestic and imported products is central to determining whether material injury in a Title VII case is "by reason of" the dumped imports.<sup>18</sup> Obviously the more substitutable domestic and imported products are, the greater the impact of the imported product on sales of the domestic product, all other things being equal.

Both Vemco and Mutoh produce a variety of different drafting machines, in the same basic range of prices and qualities. The two producers' drafting machines differ, however, in terms of features, warranties, and lead times for shipment. Staff found that because of these differences it was not possible to directly compare the prices of various models.<sup>19</sup>

Petitioner argues that Vemco and Mutoh drafting machines are more or less perfect substitutes. It offers numerous affidavits

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<sup>17</sup> There are other producers of drafting machines in Europe and Japan. However they account for less than \*\*\* percent of U.S. consumption. See Staff Report, pp. 28-29.

<sup>18</sup> This can be determined by examining the elasticity of substitution, an economic concept defined as the percentage change in ratio of the quantities of two products demanded divided by the percentage change in their relative price. If the elasticity of substitution is positive, then goods are considered substitutes. A high elasticity of substitution indicates that goods are close substitutes. For a more explicit definition of the elasticity of substitution, see Forklift Trucks, supra, note 4, at 75-76; Color Picture Tubes, supra, note 4, at 25-26.

<sup>19</sup> This points to one of the problems inherent in examining underselling strictly on the basis of price differences when goods are heterogeneous.

and points to testimony offered during the hearing.<sup>20</sup> Respondent argues that brand loyalty exhibited by institutions and "Buy America" policies may limit substitutability.<sup>21</sup>

The Applied Economics Division suggests that substitutability is moderate.<sup>22</sup> It reasons that Vemco and Mutoh drafting machines perform the same function and are sold through the same channels of distribution, with similar terms of sales and service.<sup>23</sup> On the other hand, it points out that there are certain patented features of each producer's machine that may be important to some consumers and that there is some degree of brand loyalty.

Viewing the record as a whole, it appears that domestic and imported drafting machines are reasonably good substitutes. The record contains evidence suggesting that customers will switch suppliers when offered the necessary price incentives.<sup>24</sup> In addition, there have been no real breakthroughs in drafting

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<sup>20</sup> See Vemco's Posthearing Brief, p. 9. Petitioner offers no numerical estimate of the elasticity of substitution.

<sup>21</sup> Mr. Madian estimates the elasticity of substitution to be between \*\*\* and \*\*\*. He bases this on a comparison with elasticities of substitution of brass sheet and strip and gasoline. However, he makes no connection between the drafting machine industry and these other industries. See Respondent's posthearing brief, response to staff's Economics Memo, p. 13.

<sup>22</sup> It estimates the elasticity of substitution to be between 2 and 4. See Economics memo, p. 11.

<sup>23</sup> See Economics memo, pp. 11-13.

<sup>24</sup> See hearing transcript, p. 172.

machine technology in the last twenty-five years.<sup>25</sup> I therefore conclude that the substitutability of imported and domestic drafting machines is moderate to high.<sup>26</sup>

### The Supply of Domestic and Imported Drafting Machines

In order to assess the effect of dumping on the domestic volume of production and the prevailing price, one must ascertain how the domestic industry and fairly traded imports would respond to an increase in the price of drafting machines.<sup>27</sup> As a general proposition, the greater the increase of imported and domestic supply in response to a price increase, the smaller the effect of the dumped imports on the price of the product in the domestic market. The supply response can be evaluated by looking at the extent of excess capacity, the ease with which capacity could be added or reduced, the availability of alternative markets, and the ease of entry and exit from the U.S. market.

#### Import Supply

Mutoh is the primary exporter of drafting machines to the U.S. There are no fairly traded imports at the current time. A \*\*\* number of other Japanese drafting machines were imported by \*\*\*. In addition, there are drafting machine producers in West

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<sup>25</sup> See hearing transcript, p. 75, testimony of Mr. Vaughn.

<sup>26</sup> I would expect that the elasticity of substitution is in the upper range of staff's estimate, i.e. 3-4.

<sup>27</sup> This economic concept, the elasticity of supply, is defined as the percentage change in the quantity of a good supplied divided by the percentage change in its price, all other things being equal.

Germany and Italy not currently selling in the U.S. market.

Therefore, in order to assess the supply response of fairly traded imports to a price increase, we must explore the question of entry of fairly traded imports into the domestic market.

Petitioner and Respondent differ in their characterizations of the responsiveness of import supply to an increase in the U.S. price of drafting machines. Petitioner indicates that it would be costly for foreign producers to set up a distribution network in the United States. In addition, it argues that because foreign drafting machines are priced higher than U.S. machines, the U.S. market would remain unattractive absent a substantial price increase. Petitioner characterizes this market as having barriers to entry in distribution.<sup>28</sup> Respondent argues that the import supply response would be quite high if Mutoh were forced from the market, but that at present prices the supply response would be minimal.<sup>29</sup>

While it is possible that other foreign producers of drafting machines might have sold in the U.S. market had there been no dumped imports, there is no solid evidence to either confirm or deny this. Given that the market is small and shrinking, it seems reasonable to believe that prices of U.S.

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<sup>28</sup> See Petitioner's Additional Comments on Business Proprietary Information, p. 9.

<sup>29</sup> See Respondent's Posthearing Brief, Mr. Madian's response to staff's Economics Memo, p. 14. He estimates the import elasticity of supply to be anywhere from less than \*\*\*, at present prices, up to \*\*\*, if Mutoh were forced from the market.

drafting machines would have to increase substantially before attracting any fairly traded imports.

#### Domestic Supply

In a declining market with one domestic producer and no fairly traded imports, it is difficult to predict how the domestic producer would respond to a price increase. Petitioner claims to have excess capacity and export sales that could be diverted to the U.S. market. The extent to which expanding domestic sales would be Vemco's profit-maximizing strategy, however, is not clear. We have been told that machinery used to make drafting machines is not specialized and can be used for many other purposes. Therefore, Vemco has the option of reducing capacity without incurring substantial costs, and it may choose to increase sales to a lesser degree, while selling drafting machines at a higher price. Thus, Petitioner believes that it would have sufficient ability to raise prices and increase output substantially, before facing competitive constraints.<sup>30</sup>

The Applied Economics Division estimates that domestic supply would increase a great deal in response to a price increase, assuming that the market behaves competitively.<sup>31</sup> Staff cautions, however, that Vemco may have some market power in the absence of the dumped imports, in which event staff's

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<sup>30</sup> Petitioner offers no numerical estimate of the domestic supply elasticity.

<sup>31</sup> They estimate the elasticity of domestic supply to be greater than 5. See Economics memo, p. 6.

estimate of the domestic supply response would be too high.

Respondent agrees with staff's estimate.<sup>32</sup>

The evidence on the record indicates that Vemco might be able to institute a price increase in the absence of dumped imports without attracting either new entry or fairly traded imports. Therefore, it is difficult to predict the extent to which Vemco would increase supply in response to a price increase rather than simply accept a higher level of profit per unit.<sup>33</sup> However, if Vemco were not constrained by dumped imports, it could choose to sell more drafting machines or to sell them at higher prices, depending on its profit-maximizing strategy. Under the statute, this constitutes injury.

### Conclusion

The margin of dumping in this case is high, 90 percent. In addition the subject imports accounted for over \*\*\* of the market during the entire period of investigation. The relatively high degree of substitutability, the moderate demand elasticity, and the lack of any fairly traded imports suggest that the domestic industry would have been able to increase both its output and price significantly absent the dumped imports.

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<sup>32</sup> Mr. Madian cautions that technically monopoly producers do not have a supply elasticity. Respondent's Posthearing Brief, Mr. Madian's response to staff's economics memo, p. 13.

<sup>33</sup> I think that the supply elasticity estimate of the Applied Economics Division may be high, since it is based on the assumption that the market for drafting machines behaves competitively.

Given the conditions of competition in the domestic industry, I conclude that the domestic drafting machine industry is materially injured by reason of the dumped imports.



ADDITIONAL VIEWS OF VICE CHAIRMAN RONALD A. CASS

Drafting Machines and Parts Thereof from Japan  
Inv. No. 731-TA-432  
(Final)

I concur with the Commission's unanimous affirmative determination in this final investigation. I join in the Commission's discussion of the definition of the domestic like product, and its discussion of the condition of the domestic industry producing that product to the extent that it accurately summarizes certain data that I have taken into account in my disposition of the Petition. I offer these Additional Views because I believe that my analysis of the question whether the subject less-than-fair value ("LTFV") imports have materially injured the domestic industry differs in important respects from that reflected in the Views of the Commission.<sup>1/</sup>

In determining whether the domestic industry has been materially injured by reason of LTFV sales of the subject imported products from Japan, the appropriate starting point is,

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<sup>1/</sup> I assume that this is so based on opinions in previous cases with which certain of my colleagues have been identified. I cannot, however, describe the analysis actually set forth in the Views of the Commission. As in other investigations, critical portions of the majority opinion prepared by the General Counsel's office for the Commission have not been made available to me. Notwithstanding explicit judicial criticism of this practice (see *Borlem S.A. v. United States*, Ct. No. 87-06-00693, slip op. 89-93, at 24, note 4 (Ct. Int'l Trade, June 29, 1989)), certain of my colleagues will not allow the Commission's opinion (or parts of that opinion) to be made available to any Commissioner deemed not likely to concur in that opinion (or portion of the opinion).

of course, the statute itself. Title VII directs the Commission, in assessing the causation of injury by dumped imports, to consider, among other factors:

- (i) the volume of imports of the merchandise which is the subject of the investigation,
- (ii) the effect of imports of that merchandise on prices in the United States for like products, and
- (iii) the impact of imports of such merchandise on domestic producers of like products . . . .<sup>2/</sup>

These three factors are described in greater detail in succeeding portions of the statute.

By its own terms, Title VII does not purport to identify all of the factors relevant to an assessment of whether LTFV imports have materially injured a domestic industry. Indeed, the statute explicitly contemplates that the Commission will consider relevant economic factors in addition to those identified in the statute.<sup>3/</sup> The factors that are specifically identified in the

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<sup>2/</sup> See 19 U.S.C. § 1677(7)(B).

<sup>3/</sup> See 19 U.S.C. § 1677(7)(C).

Under Title VII, as amended by the Omnibus Trade and Competitiveness Act of 1988, we are required to explain how these factors affect the outcome reached in any particular investigation. The statute also requires Commissioners to describe the relevance of other economic factors that we consider in addition to those specifically identified in the statute. See Pub. L. No. 100-418, § 1328(1), 102 Stat. 1107, 1205 (to be codified as 19 U.S.C. § 1677(7)(B)(ii)). I have explained in detail in other opinions how the three-part inquiry that I employ considers certain other economic factors relevant to an assessment of the impact of unfairly traded imports on the domestic industry producing the like product -- e.g., dumping margins -- in addition to the specific factors listed in the statute. See, e.g., New Steel Rails from Canada, USITC Pub. 2135,

statute and the order in which they are listed nevertheless provide important guidance respecting the basic elements of the analysis that we are to perform. In particular, the statute identifies three related questions as critical to an assessment of the possible existence of material injury by reason of LTFV imports.<sup>4/</sup>

First, the volumes of imports of the merchandise under investigation must be considered. The absolute volumes of imports and their magnitude relative to domestic sales of the competing like product are both relevant in carrying out such an assessment. The effect of LTFV sales on the prices of the imports are also a matter that must be considered, as the change in import volumes brought about by dumping will be closely related to changes in the prices of the imports that occurred as a result of sales at LTFV prices.

Second, the Commission must assess how the subject imports affected prices, and concomitantly sales, of the domestic like product. In performing this inquiry, in addition to examining evidence respecting the prices at which imports and domestic like

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Inv. Nos. 701-TA-297, 731-TA-422 (Preliminary) 35-37 (Nov. 1988) (Additional Views of Commissioner Cass); Generic Cephalixin Capsules from Canada, USITC Pub. 2143, Inv. No. 731-TA-123 (Preliminary) 56-58 (Dec. 1988) (Additional Views of Commissioner Cass).

<sup>4/</sup> In considering each of these three questions, we also must consider the particular dynamics of the relevant industries and markets. See new Section 771(C)(iii)(IV) of the statute (to be codified at 19 U.S.C. § 1677(7)(C)(iii)). See also S. Rep. No. 71, 100th Cong., 1st Sess. 117 (1987).

products are sold,<sup>5/</sup> it also is essential to consider the record evidence bearing on three other issues: 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.

Finally, the Commission must evaluate the extent to which the changes in demand for the domestic like product caused by LTFV imports, as reflected in changes in the prices and sales of the domestic like product, affected the financial and employment performance of the domestic industry. We must also determine whether these effects are material.<sup>6/</sup> Such factors as return on

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<sup>5/</sup> Congress explicitly has asked us to look for the existence of significant price underselling. 19 U.S.C. § 1677(7)(C)(ii). This clearly implicates information on relative prices of imported and domestic products. Title VII does not, however, define price underselling. The statute surely does not mean to equate this term to the simple observation of price differences between imports and domestic products. As the record before us in this investigation illustrates, although information about simple price differences can be useful, such price differences cannot provide a basis for inference of effects of dumping or of LTFV imports on domestic products' prices without, at a minimum, analysis of various product features and sales terms that may differ across products and sales. See also Certain Granite from Italy and Spain, USITC Pub. 2110, Inv. Nos. 701-TA-289 and 731-TA-381 (Final) (Aug. 1988).

<sup>6/</sup> The judgment as to whether these effects are "material" within the meaning of the statute may be assimilated to the third inquiry or may be seen as a fourth part of our inquiry. See Digital Readout Systems and Subassemblies Thereof from Japan USITC Pub. 2150, Inv. No. 731-TA-390 (Final) 117-19 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass).

investment and the level of employment and employment compensation in the domestic industry are central to any consideration of that issue.

I. VOLUME AND PRICES OF LTFV IMPORTS

In 1988, which encompassed the initial portion of the six-month period during which dumping was found to have occurred, [ \* ] drafting machines were imported from Japan.<sup>7/</sup> During the first six months of 1989, which encompassed the remaining portion of the period investigated by the Commerce Department, [ \* \* ] such machines were imported from Japan (compared to [ \* \* ] during the first six months of 1988).<sup>8/</sup> In contrast, in both 1986 and 1987 the volume of imports exceeded [ \* ] units.<sup>9/</sup> The pattern revealed in the reported value of the subject imports is similar, with about \$[ \* ] in imports of Japanese drafting machines and parts thereof reported in 1988 (compared to approximately \$[ \* ] in 1986 and 1987) and approximately \$[ \* ] in Japanese imports reported during the first six months of 1989 (compared to approximately \$[ \* ] in the comparable six-month period in 1988).<sup>10/</sup>

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<sup>7/</sup> Report at A-27, Table 11.

<sup>8/</sup> Id.

<sup>9/</sup> Id.

<sup>10/</sup> Id. at A-29, Table 13.

Measured as a percentage of domestic consumption, the volume of the subject imports, while somewhat lower than in earlier years, remains substantial. During 1988, the subject imports amounted to [ \* ]% of all drafting machines purchased in the United States.<sup>11/</sup> In the first six months of this year, quantity-measured import penetration fell slightly, to [ \* ]%.<sup>12/</sup> During 1988, the subject imports accounted for [ \* ]% of the value of domestic consumption of drafting machines and drafting machine parts. During the first six months of the current year, the value-measured market penetration by the subject imports also fell slightly, to [ \* ]%.<sup>13/</sup>

The record evidence before us in this final investigation indicates that the volumes of the subject imports increased significantly, and the prices of those imports declined significantly, as a result of LTFV sales of the subject imports. Prices of the subject imports declined substantially consequent to dumping. The Department of Commerce found that Respondent Mutoh sold its products in the United States at prices reflecting a dumping margin of 90.87%.<sup>14/</sup> This margin was calculated by Commerce as the "best information available" based on an average

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<sup>11/</sup> Id.

<sup>12/</sup> Id.

<sup>13/</sup> Id.

<sup>14/</sup> Report at A-2.

of the highest margins contained in the Petition because Mutoh declined to participate in Commerce's investigation.<sup>15/</sup>

As I stated in another case recently decided by the Commission,<sup>16/</sup> in considering dumping margins of the magnitude presented here that are based on "best information available" as set forth in the Petition, I believe that the full amount of the relevant dumping margin should be used as the measure of the extent to which dumping affected price of the subject imports, with the recognition that this may overstate to some degree the extent to which dumping caused the prices of the subject imports to decline. However, special care must be used in evaluating dumping margins derived solely from information contained in the Petition because such margins are, of course, based on unverified information contained in the Petition, and they generally can be presumed to represent Petitioners' maximum estimate of the magnitude of dumping that has taken place.<sup>17/</sup> In many cases, after the alleged margins have been subjected to scrutiny by the Department of Commerce, the actual margin turns out to be lower.<sup>18/</sup> Nevertheless, we are, in my view, constrained to

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<sup>15/</sup> 54 Fed. Reg. 46961-62 (Nov. 9, 1989).

<sup>16/</sup> See Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, USITC Pub. 2237, Inv. Nos. 731-TA-426 and 428 (Final) 274-75 (Dec. 1989) (Dissenting Views of Vice Chairman Cass) ("Telephone Systems").

<sup>17/</sup> Certainly, a Petitioner has no incentive to assert anything less.

<sup>18/</sup> See, e.g., Telephone Systems, supra, at 274-75.

accept the dumping margins calculated by the Commerce Department, on whatever methodology the Department chooses to employ, as the most credible evidence before us respecting the magnitude of the dumping that has occurred.

However, in this investigation, as in most other Title VII cases, the actual decrease in the price of subject imports that occurred consequent to dumping was less than the amount of the dumping margin.<sup>19/</sup> In cases where, as here, the 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 be only a fractional percentage of the dumping margin. 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. and the exporter's home market (or other surrogate foreign market) that is accounted for by sales in the home market.<sup>20/</sup>

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<sup>19/</sup> See Certain Telephone Systems and Subassemblies Thereof from Japan, Korea and Taiwan, USITC Pub. 2156, Inv. Nos. 731-TA-426-428 (Preliminary) 75 (Feb. 1989) (Additional Views of Commissioner Cass).

<sup>20/</sup> 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



Respondent's sales of drafting machines in its home market have [ \* \* \* \* \* ] its sales of such products in the United States.<sup>21/</sup> Accordingly, in this investigation, the record evidence indicates that dumping caused the price of the subject imports to decline by a substantial percentage of the dumping margin.

These decreases in the price of the subject imports that occurred as a result of LTFV sales of the subject imports also produced significant increases in volumes and sales of the subject imports. The extent to which decreases in the prices of the subject imports produce increases in the sales of those products is, in large measure, a function of the degree to which the imported product is substitutable for the domestic like product. As set forth in the following section of these Views, there is record evidence consistent with an inference that the imported and domestic products are, if less than perfect, at least reasonably close, substitutes.

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(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.

<sup>21/</sup> See Report at A-26, Table 10.

## II. PRICES AND SALES OF THE DOMESTIC LIKE PRODUCT

In determining how the subject imports affected prices, and concomitantly sales, of the domestic like product, it is necessary to take into account certain evidence in addition to the record evidence relating to import volumes and the prices at which imports and domestic like products are sold. For any analysis of the effect of LTFV imports on domestic goods' prices and sales, and particularly for analysis of the extent to which LTFV imports depress or suppress prices of the domestic like product,<sup>22/</sup> the record evidence respecting three additional matters is critical: the share of the domestic market held by the subject imports; 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.

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<sup>22/</sup> The significance of price underselling in this context is discussed supra at note 5. As noted therein, although Title VII does not define price underselling, the statute surely does not equate this term to the simple observation of price differences between imports and domestic products. Information about simple price differences can be useful, but cannot provide a basis for inference of effects of dumping or of LTFV imports on domestic products' prices without, at a minimum, analysis of various product features and sales terms that may differ across products and sales. See, e.g., Certain Granite from Italy and Spain, USITC Pub. 2110, Inv. Nos. 701-TA-289 and 731-TA-381 (Final) (Aug. 1988). While it will be the rare case in which evidence reveals the sale of the same merchandise on the same terms in the same market at different prices, we nonetheless examine the record for this possibility. Of course, even where that is not shown, the imports still may depress or suppress domestic goods' prices.

In this investigation, as in all other investigations that we conduct under Title VII, we must consider this evidence in light of Congress' direction that we evaluate all relevant economic factors within the context of the "conditions of competition that are distinctive to the affected industry".<sup>23/</sup> This Congressional mandate is especially important in this case because the evidence suggests that competition in the domestic market at issue here is relatively circumscribed. The significance of these limits on competition for present purposes is discussed below.

Although the market penetration of the subject imports declined somewhat over the period covered by our investigation, the level of market penetration remains high. Measured on the basis of quantity, the subject imports accounted for [ \* ]% of domestic consumption of drafting machines in 1988 and [ \* ]% of domestic consumption during the first six months of the current year.<sup>24/</sup> These quantity-based market share data do not capture the drafting machine parts that are also subject to this investigation; these parts are, however, reflected in the value-based market share data collected by the Commission. These value data reveal that import market penetration in 1988 amounted to

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<sup>23/</sup> 19 U.S.C. § 1677(7)(c)(iii).

<sup>24/</sup> Report at A-29, Table 13. By contrast, quantity-measured import market penetration was [ \* ]% in 1986 and [ \* ]% in 1987. Id.

approximately [ \* ]%.<sup>25/</sup> During the first six months of this year, the imports constituted about [ \* ]% of the value of domestic consumption of drafting machines and parts thereof.<sup>26/</sup>

In my view, the record evidence in this investigation also suggests that the subject imported drafting machines are at least moderately substitutable for domestically produced drafting machines. The drafting machines manufactured by Petitioner and Respondent perform the same basic functions and are made in the same basic designs (with both firms producing "track" and "band-and pulley" machines).<sup>27/</sup> To be sure, there are some differences between the imported and domestic products that are significant to consumers. A few features that distinguish different products are notable.<sup>28/</sup> For example, the braking systems used on Petitioner's and Respondent's track drafting machines are somewhat different; Petitioner's machines have a "stop and go" system, while Respondent's machines have a brake that must be locked and unlocked.<sup>29/</sup> In addition, some standard features offered by Petitioner are not offered by Respondent Mutoh and

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<sup>25/</sup> Id. By contrast, value-measured market penetration was [ \* ]% in both 1986 and 1987. Id.

<sup>26/</sup> Id.

<sup>27/</sup> See, e.g., USITC Memorandum INV-M-131 (December 15, 1989) from the Office of Investigations ("Elasticities Memorandum") at 11.

<sup>28/</sup> Id. at 11.

<sup>29/</sup> Id. at 11, n. 23.

vice versa.<sup>30/</sup> One example is the "magnetic levitation" feature offered by Mutoh; Mutoh has patented this device, thereby precluding other suppliers from offering it.<sup>31/</sup> By and large, however, the different features offered by Petitioner and Respondents do not significantly affect the performance of their machines.<sup>32/</sup>

There are also some differences between the imported and domestic like product in the warranty, service and terms of sale associated with sales of the product. However, the evidence before us suggests that these differences are slight. Information obtained by the Commission from independent observers -- i.e., drafting machine distributors who sell both Petitioner's and Respondent's products -- indicates that the service and sales terms of the domestic and imported products are regarded as comparable.<sup>33/</sup> Similarly, the warranties offered by Petitioner and Respondent Mutoh differ only slightly.<sup>34/</sup>

Finally, there is some evidence of "brand loyalty" by certain customers. This may have served to limit, to some extent, the substitutability of the domestic and imported

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<sup>30/</sup> It also appears that Mutoh, on balance, offers more features on its machines than Petitioner. Id. at 12.

<sup>31/</sup> Id. at 11, n. 26.

<sup>32/</sup> Id. at 12.

<sup>33/</sup> Id.

<sup>34/</sup> Id.

products.<sup>35/</sup> However, we have received no information suggesting that brand loyalty is anything more than a secondary factor in the domestic consumer market. Those distributors who carry both Vemco and Mutoh products do so not because they believe that customers have a strong preference for one brand over another, but because this enables them to offer customers a wider choice of features.<sup>36/</sup>

On balance, the evidence as a whole is consistent with an inference that the domestic and imported products are at least moderately substitutable one for the other. Although there are some apparent differences between these products, these differences are not major.

The third issue that must be considered concerns the degree to which domestic consumers change their purchasing decisions for drafting machines based on variations in the prices of such machines. Evidence respecting this issue is important because, when consumer demand for the product group in which subject imports are included is highly responsive to changes in price, the effects of dumping on prices and sales of the domestic like product are attenuated, for in that case the lower prices accompanying dumping of the subject imports will stimulate significantly increased domestic demand for the lower-priced product. Conversely, much greater effects will be felt by U.S.

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<sup>35/</sup> Id. at 13.

<sup>36/</sup> Id. at 11-12.

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, with resulting adverse effects on both prices and sales of the domestic product.

In this investigation, I believe that the evidence supports an inference that domestic consumer demand for drafting machines is reasonably responsive to changes in the price of such machines, but not so responsive as to have prevented dumping from causing significant adverse effects on prices and sales of the domestic like product. The major body of evidence suggesting a significant measure of consumer demand responsiveness to drafting machine prices concerns the existence of other products that may be substituted for drafting machines of the type under investigation in the uses to which drafting machines are put. Two reasonably good potential substitutes for such drafting machines exist: computer-aided design systems ("CADs") and used drafting machines.

All parties agree that consumption of drafting machines has been adversely affected by the increasing use of CADs.<sup>37/</sup> Petitioner and Respondent disagree, however, in their assessment of the relative importance of CADs.

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<sup>37/</sup> See, e.g., Report at A-19, A-30-A-31.

Petitioner asserts that the inroads made by CADs in the market served by drafting machines have been limited and gradual. In that context, Petitioner note that the price of the average CAD has historically been significantly higher than that of the average drafting machine.<sup>38/</sup> Petitioner also notes that CADs currently generate only about one-quarter of all technical drawings.<sup>39/</sup>

Respondent, on the other hand, asserts that CADs are the major source of any difficulties now being experienced by the domestic industry.<sup>40/</sup> Respondent observes, *inter alia*, that the cost of CADs has dropped significantly in recent years.<sup>41/</sup> Respondent also notes that the extent to which CADs are likely to be substituted for drafting machines cannot, in any event, be gauged simply by comparing the prices of the two products, for CADs enhance productivity and have technical capabilities that drafting machines do not (*e.g.* engineering analysis functions).<sup>42/</sup>

On this issue, I believe that Respondent has the better of the argument. The record evidence indicates that CAD prices

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<sup>38/</sup> Prehearing Brief of Petitioner Vemco Corporation ("Petitioner's Prehearing Brief") at 34-35.

<sup>39/</sup> See *id.* at 32-34.

<sup>40/</sup> Prehearing Brief of Mutoh Corporation and Mutoh America, Inc. in Opposition to the Imposition of Antidumping Duties ("Respondent's Prehearing Brief") at 17, 26.

<sup>41/</sup> *Id.* at 18.

<sup>42/</sup> *Id.* at 19-20. See also Report at A-8-A-9.



have, in fact, fallen dramatically, to levels that have placed them within the reach of more and more end users. Although drafting machines are still cheaper than even the least expensive CAD,<sup>43/</sup> it is undisputed that CADs are far more productive in many uses than drafting machines. Accordingly, the absolute disparity between the prices of CADs and the prices of drafting machines does not, standing alone, suggest the absence of significant competition between those products. Finally, the statistics cited by Petitioner respecting the percentage of all drawings now performed by CADs -- approximately 25% -- do not, in my view, indicate that CADs are a minor competitive force in the market in which drafting machines are sold. Indeed, I believe that these statistics, if anything, show that CADs embody a new technology that has made substantial inroads in that market in a relatively short period of time. CADs have, in short, become a close substitute for drafting machines in many applications.

Used drafting machines -- which are not part of the domestic like product made by the industry we are examining for evidence of LTFV imports' effects -- are a second, albeit significantly less important, substitute for the drafting machines produced by the domestic industry. The evidence on this issue is not as well developed as the evidence available to us respecting the role of CADs. Among other things, we do not even have reliable data on the total stock of drafting machines in the United States that is

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<sup>43/</sup> See Elasticities Memorandum at 14.

potentially available for resale.<sup>44/</sup> Respondent asserts that the total stock is quite large, perhaps as large as 1 million.<sup>45/</sup> However, we have no data before us sufficient to enable us to evaluate whether that estimate is reasonable. Furthermore, and perhaps more importantly, we have no data whatever respecting the scope of the market in which used drafting machines are actually sold.<sup>46/</sup> The record is notably devoid of any evidence suggesting that there is, in fact, a significant market for sales of used drafting machines. Respondent has argued persuasively that, as a logical matter given what is known about the movement of much high volume professional drafting to CADs, the increasing concentration of drafting machine use in teaching and low volume applications, and the durability of drafting machines, the existence of used drafting machines as a potential substitute for new drafting machines in some applications may increase the extent to which domestic demand for new drafting machines is affected by changes in prices of new machines. Yet we have been provided with no evidence that would support an inference that used drafting machines significantly increase the price responsiveness of demand for new machines.

To sum up, although the record before indicates that the availability of substitutes for the drafting machines produced by

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<sup>44/</sup> Elasticities Memorandum at 15.

<sup>45/</sup> Respondent's Posthearing Economics Submission at 6-8.

<sup>46/</sup> Id. at 15.

the domestic industry attenuated to some extent the effects of dumping on prices and sales of that product, at the end of the day, the record also indicates that the effects of LTFV sales of the subject imports on domestic prices and sales were nevertheless significant. This inference is suggested by the large decreases in import prices and concomitant increases in import volumes that resulted from LTFV sales; the relatively high level of import penetration in the domestic market; and the evidence suggesting that the subject imports are at least moderately substitutable for the domestic like product.

In drawing inferences respecting matters such as the effect of LTFV imports on prices from the record before us, it is both legally and logically necessary to consider the evidence in the context of the conditions of competition that exist in this particular market. One tool that often assists the evaluation of record evidence in particular market contexts is known as the CADIC model. CADIC (or "Comparative Analysis of the Domestic Industry's Condition") is a computable market-simulation model developed by the Commission's Office of Economics.<sup>47/</sup> The CADIC model generates estimates of changes in the prices and quantities sold of a domestic industry's like product that occurred, given

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<sup>47/</sup> The analytical framework underlying the CADIC model is explained in detail in Assessing the Effects on the Domestic Industry of Price Dumping, USITC Memorandum EC-L-149 (May 10 & 18, 1988) from the Office of Economics (unpublished). The results of the Commission staff's use of the model in this case are set forth in USITC Memorandum INV-M-132 (December 18, 1989) from the Office of Investigations ("CADIC Memorandum").

various data relating to import volumes, dumping margins, and the markets for the imports and the domestic like product. The CADIC model has been fully described in publicly available documents,<sup>48/</sup> and copies of the computer program have been available for some time to interested members of the public. Parties to our Title VII investigations have also been routinely advancing arguments to the Commission based on use of the model for some time.

The CADIC model enables the Commission to integrate and analyze record evidence and argument by the parties respecting a host of issues critical to assessment of the impact of unfairly traded goods on the relevant domestic industry. Among the information that can be analyzed helpfully by CADIC is evidence of record relating to the volume of unfairly traded imports, the magnitude of dumping or subsidization, the nature of consumer and producer markets for the relevant domestic and imported product, and the domestic market shares held by those products. The CADIC model does not of itself provide a basis for directly evaluating evidence respecting these factual issues, but the information that may be developed through use of the CADIC model can assist the Commission in assessing the significance of different judgments respecting, *inter alia*, the substitutability of imported and domestic products and consumers' reactions to

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<sup>48/</sup> See Assessing the Effects on the Domestic Industry of Price Dumping, USITC Memorandum EC-L-149 (May 10 & 18, 1988) from the Office of Economics (unpublished).

changes in prices of the products at issue. These are judgments that, for reasons previously discussed, critically affect our assessment of injury causation under the criteria set forth in Title VII.

Of course, each commissioner must decide what factual inferences should be drawn from the record in a given investigation respecting these matters, and each commissioner must also decide what weight to give to the estimates generated through application of the model. When I do not believe that the information generated by the model is useful (that is, when I find that the assumptions upon which the model is based are unrealistic in light of the other evidence of record in a particular investigation or that the information necessary to employ the model cannot be reliably inferred from the other evidence of record), I do not rely upon the estimates that the model produces.<sup>49/</sup>

In this investigation, Respondent argued that the use of the CADIC model is not appropriate for two reasons. First, Respondent contended that the domestic market in which drafting machines are sold is not competitive.<sup>50/</sup> Respondent asserted that the market is highly concentrated in that [ \* \* ]

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<sup>49/</sup> See, e.g., Certain Granite from Italy and Spain, USITC Pub. 2110, Inv. Nos. 701-TA-289 and 731-TA-381 and 382 (Final) (Aug. 1988).

<sup>50/</sup> Respondent's Prehearing Economic Submission by Alan L. Madian of Erb and Madian, Inc. dated November 7, 1989 ("Respondent's Prehearing Economic Submission").

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\* ]51/ Respondent also claimed that there are high barriers facing any firm contemplating entry into that market.52/ Respondent pointed to a number of such barriers to entry; among other things, Respondent noted that significant investment in manufacturing and distribution facilities would be required in order to enter the market, and asserted that it is unlikely that such investments will occur given the widespread perception that the domestic market is declining due, inter alia, to competition from CADs.53/

As Respondent correctly asserted, the CADIC model assumes that prices of the domestic like product are determined competitively.54/ Put another way, the model assumes that individual domestic producers do not have market power sufficient to enable them to set prices non-competitively. Where this is not the case, although careful selection of parameters will allow CADIC to approximate within some range the effects of dumped imports on domestic prices and sales, it will not provide so reliable an estimate as in cases that more closely fit that assumption. I will return to this issue below.

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51/ Id. at 2-3.

52/ Id. at 3-4.

53/ Id. at 3-4.

54/ CADIC Memorandum at 3.

As a second basis for eschewing use of CADIC in this investigation, Respondent claimed that the assumptions that underlie the CADIC model are not applicable here because domestic consumers supposedly perceive little homogeneity between the products produced by Petitioner and those produced by Respondent.<sup>55/</sup>

This second argument is not persuasive. The CADIC model explicitly assumes that there is a measure of differentiation between the domestic like product and the imported products subject to our investigation. Indeed, one of the principal elements taken into account by the model is the extent to which the subject imports are, in any given case, substitutable for the domestic like product. The model is, in short, expressly equipped to assist in analysis of cases of the type posited by Respondent, that is, cases where the subject imports and the domestic like product are highly differentiated.

There is, however, substantially more force to Respondent's first argument. In my view, the record evidence suggests that Petitioner enjoys a measure of market power incompatible with the competitive assumptions upon which the CADIC model are based. Clearly, the domestic market in which drafting machines are sold is highly concentrated, and has been throughout the period covered by our investigation; indeed, the market has, for some time, consisted only of Petitioner and Respondent. Standing

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<sup>55/</sup> Respondent's Economic Submission at 2.

alone, such concentration would not necessarily be conclusive evidence of the existence of market power. If used drafting machines were as readily available and as closely substitutable for new drafting machines as Respondent has argued, that, too, would so constrain both Petitioner's and Respondent's pricing as to negate the inference of market power. I have already suggested the limitation of this argument. Alternatively, as Respondent acknowledged, if other firms (either domestic or foreign) are able and willing to enter the domestic market, existing producers would enjoy little, if any, ability to set prices. However, I believe that the evidence before us suggests that such entry is unlikely as a practical matter.

There is, to be sure, little evidence that would support an inference that the quantum of investment or lead time required to enter the domestic drafting machine market is so substantial as to preclude the possibility that other firms could enter the market in the short or medium term. A number of foreign firms not now operating in the United States already produce drafting machines; such firms would not have to make any substantial investment in new production facilities in order to enter the U.S. market. Production of drafting machines by other firms not currently producing such products also would not necessarily be prohibitively expensive, time-consuming or financially risky. The equipment used to manufacture drafting machines can be used



to produce other products.<sup>56/</sup> Consequently, certain other firms now producing other products apparently could use their production equipment to produce drafting machines, and firms making drafting machines could exit that market with relative ease.

The need to arrange for product distribution likewise would not appear by itself to represent an insuperable obstacle to entry into the drafting machine business. I do not believe that the record supports Respondent's contention that any new producer of drafting machines might well have to construct a distribution network from scratch.<sup>57/</sup> Many distributors already carry both Petitioner's and Respondent's products and the record provides us with no basis upon which to conclude that such distributors would not be willing also to carry drafting machines made by other firms.

Nevertheless, in order to enter the domestic drafting machine market, any prospective new producer of drafting machines would have to spend time and money in amounts that would be, if not enormous, at least substantial. The real question is whether the domestic drafting machine market is likely to attract such investment. Although the answer to that question is not crystal clear, and any attempt to answer that question necessarily

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<sup>56/</sup> Elasticities Memorandum at 4. For example, Vard Newport ceased manufacturing drafting machines in 1985, but continued to use most of its production equipment to [ \* \* \* ]. Id. at n. 4.

<sup>57/</sup> See Respondent's Prehearing Economic Submission at 4.

requires the exercise of some judgment, I believe that the record strongly suggests that such investment is unlikely for a number of reasons.

Certainly, we have seen no new entry into the domestic drafting machine market for some time. Indeed, a number of domestic firms, notably Vard Newport and Keuffel and Esser, have abandoned the domestic production of drafting machines over the past several years.<sup>58/</sup> The increasing use of CADs appears to have been a major motivating factor in those decisions.<sup>59/</sup> Also no doubt due in large part to the growth of demand for CADs, domestic consumption of drafting machines has fallen continuously and significantly.<sup>60/</sup>

The change in the market for these machines is, among other things, reflected in the industry's financial performance. During most of the period covered by our investigation, the domestic industry generated [ \* \* ] returns on investment.<sup>61/</sup> Although the industry appears to have [ \* \* \* \* ] during the first six months of the current year, even during that period, industry [ \* \* ] was [ \* \* ].<sup>62/</sup> In short, the industry is, at best,

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<sup>58/</sup> Report at A-10-A-11.

<sup>59/</sup> Id. at A-11.

<sup>60/</sup> Id. at A-11, Table 1.

<sup>61/</sup> Id. at A-21.

<sup>62/</sup> Id. at A-20, Table 8.

[ \* \* ], and it has been shrinking, not growing, for reasons that are largely out of its control. Under the circumstances, there is, in my view, little, if anything, about the drafting machine business in the United States that would be likely to appeal to prospective new entrants.

Accordingly, I believe that Respondent's characterization of the market as non-competitive is correct. I therefore accept Respondent's argument that the estimates generated by the CADIC model in this investigation do not accurately measure the effects that dumping of the subject imports had on prices and sales of the domestic like product. I note, however, that this ultimately does not argue in favor of an affirmative determination in this investigation. Where, as here, the assumptions of the CADIC model do not hold true because the domestic industry is not competitive, the estimates generated by the CADIC model are most likely to understate the actual effects of dumping on the domestic industry. This is so because the model does not capture the lost profits sustained by the domestic industry as a result of dumping due to the industry's loss of monopoly returns that the industry would have otherwise enjoyed.<sup>63/</sup> To be sure, a

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<sup>63/</sup> CADIC Memorandum at 3. I note that one commentator has argued against consideration of such losses as injury within the meaning of Title VII. "Unfair" Trade Injury: A Competition-Based Approach, 41 Stan. L. Rev. 1153 (1989). This argument is not critical to disposition of the instant investigation, but it is notable that the predicate on which it rests is the imperative of harmonizing pro-competitive principles of antitrust law with the dictates of dumping law. This is not, of course, the first instance in which lawyers have sought to reconcile the irreconcilable, but it surely is not so straightforward a task as

precise statement of the losses to a domestic producer with substantial market power may not be readily attained, given possibilities for strategic behavior that cannot be simply modeled. The reduction in confidence, however, does not deprive us of the ability to estimate within any order of magnitude the scope of such effects or to say in which direction those effects will differ from the effects of LTFV imports on a more firm-competitive market.<sup>64/</sup> In short, Respondent's point is well taken but unavailing; in this investigation, the effects of dumping on the domestic industry were, if anything, even greater than the estimates generated by the CADIC model would suggest.

#### C. Investment and Employment

As in other investigations, it is difficult, if not impossible, to draw meaningful conclusions respecting the impact of the subject LTFV imports on the domestic industry based only on an examination of the financial and employment data compiled by the Commission. A host of factors wholly unrelated to LTFV sales of the subject imports have inevitably influenced the performance of the industry during the period covered by our investigations. Among other things, as previously noted, all

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the commentary supposes.

<sup>64/</sup> I use the term "firm-competitive" here in recognition that a market with fewer rivals may be more competitive in some respects, as in production of more diverse products. See Brent T. Upson Memorial Lecture, 100 Years of Antitrust, delivered by Professor Harold Demsetz at the George Mason University School of Law on September 21, 1989.

parties agree that the domestic industry's performance has been adversely affected by the increasing use of CADs.<sup>65/</sup> Given Congress' explicit instruction that we are to take the dynamics of the market into account in our deliberations, I would be very reluctant to reach any conclusion on the ultimate issue before us -- whether LTFV sales of the subject imports have materially injured the domestic industry -- based solely on the various indicators of industry performance that we have collected.

In this investigation, such caution is especially appropriate because the financial and employment indicators are ambiguous and almost impossible to interpret in isolation. Petitioner reported [ \* \* \* ] of \$[ \* ] on its drafting machine operations in 1988, on the heels of \$[ \* ] operating [ \* ] in 1987.<sup>66/</sup> However, these operations were marginally [ \* \* ] during the first six months of the current year, with Petitioner reporting operating [ \* ] of \$[ \* ] (compared to [ \* \* \* ] in the first six months of 1988).<sup>67/</sup> Furthermore, it is evident that Petitioner's [ \* ] during the past two years were due in part to "dramatic increases" in the price of aluminum, a drafting machine input that accounts for approximately [ \* ] of

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<sup>65/</sup> See, e.g., Report at A-19, A-30-A-31.

<sup>66/</sup> Id. at A-20, Table 8.

<sup>67/</sup> Id.

Petitioner's raw material costs.68/ I also note that  
 Petitioner's capital expenditures have [ \* \* \* ] from  
 1986 levels.69/ However, the data before us indicate that this  
 [ \* \* \* \* \* \* \* \* ]  
 [ \* \* \* \* \* \* \* \* ]  
 \* ]70/

The employment data collected by the Commission likewise do  
 not shed a great deal of light on the extent to which LTFV sales  
 of the subject imports affected the domestic industry.  
 Petitioner employed the same number of production and related  
 workers in its drafting machine operations in [ \* \*  
 \* \* ] as it did during [ \* \* \* \* ]71/  
 These employment levels were higher than those reported in  
 [ \* \* ]; however, they are somewhat below the employment  
 level reported for [ \* \* \* \* ]72/ Our data on  
 both the average wage, and the total wages, paid to Petitioner's  
 production workforce reveal a similar pattern.73/ I believe that  
 it is simply impossible to draw from these data alone any

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68/ Id. at A-19.

69/ Id. at A-21.

70/ Id.

71/ Id. at A-17, Table 6.

72/ Id.

73/ Id.

meaningful conclusions respecting the effects that LTFV sales of the subject imports have had on the domestic industry.

Accordingly, considered in isolation, neither the financial nor the employment data collected by the Commission provide a clear indication of the extent to which the industry has been affected by LTFV sales of the subject imports. For the reasons previously stated, however, I believe that the record contains ample evidence demonstrating that these LTFV sales have had significant adverse effects on the prices and sales of the domestic like product. In reaching an affirmative determination in this investigation, I have given great weight to this evidence, and far less weight to the more ambiguous data before us respecting the industry's overall financial and employment performance.

#### CONCLUSION

For the foregoing reasons, I have concluded that the domestic industry producing drafting machines and parts thereof has been materially injured by reason of LTFV sales of the subject imports. Accordingly, I need not, and do not, reach the question whether that industry is also threatened with material injury by reason of the subject imports.





## ADDITIONAL VIEWS OF COMMISSIONER ECKES

It is not necessary for me to justify at length the legal bases for my own analytical decisions in this investigation involving drafting machines and parts thereof from Japan. My approach is anchored firmly in traditional Commission practice and the statute, and has, I believe, been approved by our reviewing courts.<sup>1</sup> Nonetheless, a few words of additional explanation seem in order in light of the misconceptions which continue to surround Commission discussion of the lawful standards for injury analysis.

First, let me discuss briefly my own approach. In this investigation, as in other Title VII cases involving allegations or findings of injurious dumping and subsidization, I have employed the dual-requirement, or bifurcated, method of conducting injury analysis. Under this

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<sup>1</sup> For a more complete discussion of my analytical approaches, see New Steel Rails from Canada, Inv. No. 701-TA-297 (Final), USITC Pub. 2217 (September 1989), at 29-70 [hereinafter 'Rails'], and Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 (November 1989), at 63-100 [hereinafter 'Phones']. For a similar perspective from another colleague, see the "Additional Views" of Commissioner Rohr, Rails, supra, at 71-82.

For verbal variety I use the following terms interchangeably: bifurcated analysis, dual requirement, dual standard, two-factor, or two-prong inquiry.

method, an affirmative injury determination can result only if two conditions are satisfied. The domestic industry producing the like product (or in the absence of like, most similar in characteristics and uses) must be materially injured. Also, less-than-fair value imports must be a cause ["by reason of"] of that material injury. In essence, then, the I must find a causal nexus between unfairly traded imports and injury. And, if the evidence of record fails to satisfy either of these threshold conditions, I make a negative determination.

Bifurcated analysis has been used in the Commission for about twenty years.<sup>2</sup> During this period the dual-requirement

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<sup>2</sup> In *Rails, supra*, at 67-69, I presented a lengthy discussion of Commission adherence to the bifurcated approach during the 1970s pursuant to requirements of the Antidumping Act of 1921.

Here is a brief summary of those conclusions:

(1) By 1972 the Commission regularly applied bifurcated injury and causation analysis. Indeed, in twenty-nine of fifty-seven cases decided between May 1972 and December 1975, the bifurcated criteria were explicitly stated in the Commission's majority opinion. Moreover, in twenty-four of the twenty-nine cases the Commission said that use of the bifurcated approach was required under terms of the Antidumping Act of 1921. In the remaining five cases, the Commission used similar language: "The Antidumping Act, 1921, as amended, imposes two conditions which must be satisfied before an affirmative determination can be made...."

See cases cited in *Rails, supra*, at 68-69.

(2) Over the last twenty-one years a group of twenty-two Commissioners regularly utilized bifurcated analysis and made separate findings of injury and causation. No member of the Commission since 1970, who served more than a few weeks, failed to employ this pattern of analysis.

My review of Commission findings indicates that the following Commissioners have used the bifurcated approach:

(continued...)

<sup>2</sup>(...continued)

(1) Glenn W. Sutton; (2) James W. Culliton; (3) Dan H. Fenn, Jr.; (4) Stanley D. Metzger; (5) Will E. Leonard, Jr.; (6) George M. Moore; (7) J. Banks Young; (8) Catherine Bedell; (9) Joseph O. Parker; (10) Italo H. Ablondi; (11) Daniel Minchew; (12) William Relph [sic] Alberger; (13) Paula Stern; (14) Michael Calhoun; (15) Alfred E. Eckes, Jr.; (16) Eugene Frank; (17) Veronica Haggart; (18) Seeley Lodwick; (19) Susan Liebeler; (20) David Rohr; (21) Anne Brunsdale; and (22) Don Newquist. The only exception in the last twenty years was Chairman Chester L. Mize, who served less than three months, and did not participate in any antidumping investigation.

Even one Commissioner who criticizes the bifurcated approach has employed it. I recently discovered that Vice Chairman Cass used bifurcated analysis in eleven discrete determinations. See Antifriction Bearings (other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand and the United Kingdom, Inv. Nos. 303-TA-19+20, 731-TA-391-399 (Preliminary), USITC Pub. 2083 (May 1988), at 36, 42. Commissioner Cass joined the Commission view in concluding that there was "a reasonable indication that the domestic industries producing anti-friction bearings are experiencing material injury." Then, in "Additional Views" he reiterated a separate material injury finding, saying: "... based upon the record before us and in light of the standards applicable to preliminary investigations under Title VII, I must find that there is a reasonable indication of material injury to the domestic industries in question."

More recently, of course, my colleague has asserted that the other Commissioners who use the bifurcated approach, thus making threshold decisions about the presence of material injury, "have misinterpreted the law in important respects and are, as a consequence, contributing to an overall understanding of U.S. trade law that is contrary to Congressional intent as embodied in that law and contrary to our international obligations under the GATT." See Rails, supra, at 126, 151. See, e.g., Phones, supra, at 171-175.

Of course, Chairman Brunsdale has recently advised the Commission that "lack of strict adherence to precedent should not be viewed as a failing on the part of the Commission or any Commissioner." Perhaps, Vice Chairman Cass would agree with the Chairman that his "views have evolved over time as ... experience as a Commissioner has led to new 'understanding and insights.'" See Phones, supra, at 141 Appendix.

(continued...)

approach has been approved by the Commission's reviewing courts on a number of occasions.<sup>3</sup>

With respect to causation issues, I have continued the Commission practice, which began prior to the 1979 Trade Agreements Act, of seeking to determine only whether a class or kind of foreign merchandise that the Department of Commerce has found to contain unfairly traded products is materially injuring the domestic industry. This approach, also, has been affirmed by the Commission's reviewing courts.<sup>4</sup>

Finally, in assessing the impact of less-than-fair value imports on the domestic industry, I again have sought to

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<sup>2</sup>(...continued)

Nonetheless, in light of this apparent inconsistency, it is worth reiterating my own point that every Commissioner who has participated in an antidumping or countervailing duty case has found the dual standard, or bifurcated, approach relevant to Commission decisionmaking, even including those Commissioners who loudly condemn its use. See, for example, Rails, supra, at 142-144, and Phones, supra, at 171-175.

<sup>3</sup> Under provisions of the 1921 Antidumping Act bifurcated analysis was affirmed in Pasco Terminals, Inc., v. United States, 477 F. Supp. 201 (Customs 1979), aff'd, 634 F.2d 610 (CCPA 1980); and Armstrong Bros. Tool Co. v. United States, 483 F. Supp. 312 (Customs 1980); aff'd, 626 F.2d 168 (CCPA 1980).

Under the 1979 Act, bifurcated analysis has been approved in American Spring Wire Corporation v. United States, 590 F. Supp. 1273, 1276, 1281 (CIT, 1984). Aff'd, 760 F. 2d 249 (Fed. Cir.,, 1985). National Association of Mirror Manufacturers v. United States, 696 F. Supp. 642, 647 (CIT 1988); Roses, Inc. v. United States, 720 F. Supp. 180, 184 (CIT 1989).

<sup>4</sup> Algoma Steel Corp., LTD. v. United States, 688 F. Supp. 639 (CIT 1988); aff'd, 865 F.2d 240 (Fed. Cir. 1989), at 241; cert. denied, 109 S. Ct. 3244 (1989).

follow the guidance of our reviewing courts.<sup>5</sup> An affirmative determination requires only that imports be a contributing cause to the material injury experienced by the domestic industry. Such a contributing cause is clearly more than a de minimis cause but less than a sole, major, or principal cause of injury. In attempting to draw a line where Congress has been vague, the courts have apparently used the terms "minimal cause" and "slight cause" synonymously with "contributing cause."<sup>6</sup>

I regret to write that not all Commissioners seem to employ these methods. While my own additional views in this investigation were prepared without the benefit of access to the additional views of other Commissioners,<sup>7</sup> I have reason to

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<sup>5</sup> Pasco Terminals, Inc. v. United States, 477 F. supp. 220-221 (Customs, 1979); aff'd, 634 F.2d 612 (1980). British Steel Corp. v. United States, 593 F. Supp. 405, 413 (CIT, 1984); Maine Potato Council v. the United States, 613 F. Supp. 1237 (CIT 1985), at 1243; Citrosuco Paulista, S.A., v. United States, 704 F. Supp. 1075 (CIT 1988), at 1101, 1103; Florex et al. v. United States, 705 F. Supp. 582, 593 (CIT 1989); Gifford-Hill Cement Co. v. United States, 615 F. Supp. 577, 585-86 (CIT 1985); Hercules, Inc., v. United States, 673 F. Supp. 454 (CIT 1987); Wieland Werke, A.G., v. United States, 718 F.Supp. 50, 56 (CIT 1989); LMI-La Metalli Industriale, S.p.A. v. United States, slip op. 89-46 (CIT 1989), at 31; Granges Metallverken A.B. v. United States, slip op. 89-80 (CIT 1989), at 18; Metallverken Nederland B.V. v. United States, slip op. 89-170 (CIT 1989), at 26.

<sup>6</sup> For a discussion of court decisions affecting the Commission's consideration of causation issues, see my discussion in Phones, supra, at 89-99.

<sup>7</sup> Lack of access to the views of other Commissioners is from time to time a source of frustration to many Commissioners, including this one, and apparently to at least  
(continued...)

believe, based on a pattern of previous decisionmaking, that others may use a different pattern of so-called "unitary analysis". This approach, which incidentally has not been subjected to court review, appears to rest on assumptions incompatible with dual-standard analysis. It is my understanding that exponents of unitary analysis would evaluate only dumped or subsidized imports, as distinguished from the class or kind of merchandise which the Department of Commerce has reported to contain unfairly traded merchandise. It is my further understanding that those who use this novel method do not make separate findings for injury to the domestic industry and for causation. Finally, it is my understanding that at least one advocate of the unitary

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<sup>7</sup>(...continued)

one judge on the Court of International Trade. See, e.g., Fresh, Chilled, or Frozen Pork from Canada, Inv. No. 701-TA-298 (Final), USITC Pub. 2218 (September 1989), at 63, note 78 (Dissenting Views of Chairman Brunsdale and Vice Chairman Cass); Rails, supra, at 126, note 2 (Dissenting Views of Vice Chairman Cass); Borlem S.A. v. United States, 718 F.Supp. 41, 49-50 (CIT 1989).

In the best of all worlds, in which each Commissioner worked at approximately the same pace and the institution faced no tight statutory deadlines for the completion of investigations, a complete sharing of views would be both feasible and desirable to focus argumentation and facilitate court review. But, in final ITC investigations Commissioners have approximately one week, not months, to complete their views. Within such a tight timetable, it has been my experience that some of the most zealous advocates of a complete exchange of draft views are least able to provide reciprocal access to their own views in a timely manner and thus demonstrate that such sharing is equitable to all Commissioners, and not simply a device for gaining a tactical advantage in the opinion-writing process.

approach objects to the "minimal causation" standard explained above and upheld by the Commission's reviewing courts.<sup>8</sup>

I have examined carefully the arguments advanced and sources cited in support of these views. It is my impression that when one peers behind the effervescent rhetoric, one finds strained interpretations of statutes and legislative history, misunderstanding of prior Commission practice, and disregard for the holdings of our reviewing courts which are supposed to direct our administrative decisionmaking.

Let me be more specific:

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<sup>8</sup> In *Phones*, supra, at 149-150, an advocate of the unitary approach poses these issues in the form of questions:

First, in evaluating the possible existence of material injury by reason of unfairly traded imports, is the Commission expected to evaluate the effects of the unfair trade practices that are the subject of our investigation, or are we to consider the effects of the imports themselves, without regard to whether, or the extent to which, they have been fairly traded?

Second, does the law contemplate that, in assessing whether the domestic industry has suffered 'material injury' by reason of unfairly traded imports, the Commission will make a threshold assessment of the overall condition of the domestic industry with a view toward determining whether it is 'injured', without any consideration of the effects on that industry of the unfairly traded imports that are the subject of our investigation?

Third, in evaluating the condition of the domestic industry, is the Commission required to render an affirmative determination whenever we believe that industry conditions are less than satisfactory and believe that the subject imports may have contributed, even in small measure, to those conditions?

Misconception No. 1: Examining only Dumped or Subsidized Imports

This first issue raises a fundamental question central to Commission analysis. At first glance one might presume that the difference between assessing the effects of unfair imports [dumped and/or subsidized] and assessing the effects of the class or kind of imports found by the Department of Commerce to contain less-than-fair value goods is a distinction without a difference that might fruitfully employ the debating skills of only incorrigible semanticists. But, in fact the issue cuts to the heart of the ITC's investigation, and its statutory relationship with the Department of Commerce. Most importantly, it can affect the outcome of a significant number of cases.<sup>9</sup>

There are obviously vast differences of interpretation separating those who hold to the view that the Commission's responsibility is to assess the "class or kind" of merchandise that Commerce has found to contain LTFV items, from an individual Commissioner who asserts that the Commission is expected to examine only the impact of unfairly traded imports. The latter asserts that consistency with GATT and the Trade Agreements of 1979 directs the Commission to examine only the impact of dumped or subsidized merchandise on the domestic industry.

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<sup>9</sup> Phones, supra, at 80-84.



To support this argument, Article VI(6)(a) of GATT is quoted at length:

No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization [sic], as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

From this Commissioner Cass asserts "there is no doubt that these undertakings [GATT] require [emphasis added] an analysis of the effects of the unfair trade practice(s) at issue and not of imports whether or not dumped or subsidized."<sup>10</sup>

Furthermore, he insists that Congress in its efforts to make U.S. law consistent with GATT understood that the Commission's material injury analysis "was to focus on the effects of unfair trade practices [emphasis added] [dumping or subsidies], and not the effects of imports whether or not dumped or subsidized."<sup>11</sup> While Commissioner Cass acknowledges "there are... phrases in the legislative history that could ... spawn confusion...",<sup>12</sup> he concludes that:

...there is clear evidence in legislative history, in the context in which the statutory text was adopted, in the institutional context to which it applies, and in Commission precedent, that the Commission's mandate under U.S. law and in

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<sup>10</sup> Quotes from Phones, supra, at 156-157.

<sup>11</sup> Phones, supra, at 160-161.

<sup>12</sup> Id., at 162.

conformity to the GATT is to analyze the effects of dumping or subsidization, as transmitted through dumped or subsidized imports.<sup>13</sup>

He interprets Section 731, 19 U.S.C. §1673, as not authorizing the Commission to examine a "class or kind of merchandise" because such an analysis would conflict, he believes, with GATT, and "the structure and legislative history of the statute indicate that, in so providing, Congress did not intend anything substantively different from GATT."<sup>14</sup>

This exposition is from my vantage point fascinating in a historical sense,<sup>15</sup> but of dubious legal significance. The issue has been fully litigated before the Commission's reviewing courts and resolved in a manner that confirms the

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<sup>13</sup> Id., at 171.

<sup>14</sup> Rails, supra, at 129.

<sup>15</sup> My colleague has revived discussion of an old issue in slightly different form. Previously, some Commissioners debated whether the statute and the GATT Codes required the Commission to find a link between dumping margins or subsidies and injury to the domestic industry.

On this issue, it is my view that the literal language of the GATT codes does not require the Commission to trace injury from subsidized imports to the subsidy or injury from dumped goods to the margin of dumping. See Alberta Pork Producers' Marketing Board v. United States, 669 F. Supp. 445, 466 (1987) (The Codes "do not unambiguously require that there be a causal connection between the foreign subsidy and the injury to the domestic industry....") and Hyundai Pipe Co. v. United States International Trade Commission, 670 F. Supp. 357, 361 (1987) ("The Court holds that the Code does not unambiguously require that margins be considered as a mandatory factor in the Commission's determinations.")

Commission's regular practice of looking only at the class or kind the Department of Commerce determines to contain unfairly traded merchandise. In Algoma Steel Corp., LTD. v. United States, both the Court of International Trade and the Court of Appeals for the Federal Circuit affirmed the Commission's position, and the Supreme Court denied certiorari, thus concluding the appeals process.<sup>16</sup>

Because this case is critical to an understanding of why the unitary theory seems fatally flawed, it deserves further discussion at this juncture. The Algoma appeal grew out of a majority Commission determination in June 1986 that an industry was materially injured by reason of subsidized and LTFV imports of oil country tubular goods [OCTG] from Canada and LTFV imports of OCTG from Taiwan. Algoma, a Canadian producer, appealed, arguing for reasons of consistency with the GATT Codes and U.S. statute, the Commission must look behind the Department of Commerce determination and separate out fairly priced transactions.

In short, several of the arguments raised by Commissioner Cass were first advanced in appellant Algoma's brief and oral argument. In the Algoma appeal, defendant International Trade Commission observed that while the causation standard of Title VII does indeed require that "an industry must be materially injured 'by reason of' less than fair value imports," it noted

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<sup>16</sup> 688 F. Supp. 639; aff'd, 865 F.2d 240, 241; cert. denied, 109 S. Ct. 3244.

also that the legislative history "gives content to this statement" by instructing the Commission to "consider the volume of imports of merchandise with respect to which the administering authority [Department of Commerce] has made an affirmative final determination on ... less than fair value sales."<sup>17</sup>

The Commission rebutted the argument, voiced subsequently by Commissioner Cass in Phones, that the consistent Commission practice before 1980 was to separate fairly traded imports from dumped imports.<sup>18</sup> The Commission's brief also explained

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<sup>17</sup> See Brief of Appellee U.S. International Trade Commission in Appeal No. 88-1491 before the Court of Appeals for the Federal Circuit, at 23-24.

<sup>18</sup> See, Phones, supra, at 151. My colleague has said: "Until the early 1980s, no Commissioner seriously questioned that, in antidumping and countervailing duty cases, the Commission's proper focus is on the impact of unfair trade practices affecting sales of goods subject to our investigation, and not on the impact that may have resulted from the mere importation of those goods."

This resembles the argument made by plaintiff in Algoma, 688 F.Supp.639, 642, that prior to 1980 the Commission had segregated LTFV and fairly traded imports. However, the court of International Trade examined this issue and found "that ITC's pre-1979 Act practice was not consistent." The Court noted that "as the 1979 Act approached, ..., there were many occasions on which ITC based its decision on total import volumes, ..., without differentiating between LTFV and fair value sales."

However, in a further appeal the Commission explained that the argument that the Commission departed from pre-1980 practice in the course of implementing the Trade Agreements Act of 1979 "stems from a flawed premise." Indeed, "in the overwhelming majority of determinations prior to 1980 the Commission included all imports subject to an affirmative Treasury Department dumping determination." The Commission's brief listed some sixteen cases for the proposition that "in

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that Congress had ample opportunity to review this procedure and assess whether it was compatible with Congressional intent, but "in 1984 and again in 1988, Congress substantially revised the trade laws without changing the language of the statute under which the Commission declined to look behind a Commerce affirmative LTFV determination."<sup>19</sup>

In Algoma the Commission also rebutted claims that ITC

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<sup>18</sup>(...continued)

the period from November 1976 through March 1979, the Commission considered all imports from companies for which the Treasury Department had made an affirmative LTFV determination but where fewer than all sales examined had LTFV margins...." See Brief of Appellee U.S. International Trade Commission in Appeal No. 88-1491 before the Court of Appeals for the Federal Circuit, at 26.

But, Commissioner Cass in seeking to document that the Commission before 1980 looked only at dumped sales, cites two Commission cases from 1964 and another from 1973. See, Phones, supra, at 151-152. Assuming his analysis of these cases is correct, it seems significant that none of these cases falls within the window of time that the Commission examined from November 1976 through March 1979, a time period immediately before implementation of the Tokyo Round codes.

In light of this record - especially the holding of the Court of International Trade that there was no consistent pattern and the subsequent Commission argument that indeed there was a pattern of evaluating all imports subject to dumping determinations prior to 1980 - I am frankly puzzled at Commissioner Cass's unique interpretation. It is unclear to me how one reaches such a divergent interpretation of the pre-1980 record without rebutting the Commission's prior statement to the court on this issue. In my view, a persuasive argument for an alternative theory requires more than the three isolated examples cited in Phones, supra, at 151-152.

<sup>19</sup> See Brief of Appellee U.S. International Trade Commission in Appeal No. 88-1491 before the Court of Appeals for the Federal Circuit, at 28.

practice was inconsistent with the GATT Antidumping Code. "The Code describes antidumping proceedings in general terms, and does not address the specific and detailed administrative procedures which individual countries need to use to implement the Code."<sup>20</sup> Moreover, "construed most favorably to appellants' argument, the Code is at most ambiguous, and ambiguous language in the international agreement cannot be used to upset the careful interlocking scheme of title VII."<sup>21</sup>

The Court of International Trade affirmed the Commission. In its Algoma decision the court firmly rejected plaintiff's claim that the Commission must examine only dumped sales.<sup>22</sup>

Judge Restani stated:

Plaintiffs' basic misunderstanding [emphasis added] is reflected in their continual use of the phrase 'LTFV sales' as if the statute says that ITC must find that injury is attributable to particular sales found to be at LTFV. The statute refers instead to imports which are sold at LTFV. ITC is basing its decision on the affects [sic] of relevant imports from companies determined to have sold the subject merchandise at LTFV. Obviously, it is unlikely that every sale is at LTFV, and Congress may be presumed to have perceived this.

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<sup>20</sup> See Brief of Appellee U.S. International Trade Commission in Appeal No. 86-07-00839 before the Court of International Trade, at 48, and Brief of Appellee U.S. International Trade Commission in Appeal No. 88-1491 before the Court of Appeals for the Federal Circuit, at 45.

<sup>21</sup> See Brief of Appellee U.S. International Trade Commission in Appeal No. 86-07-00839 before the Court of International Trade, at 50 and Brief of Appellee U.S. International Trade Commission in Appeal No. 88-1491 before the Court of Appeals for the Federal Circuit, at 46.

<sup>22</sup> 688 F. Supp. 639, 645.

Subsequently, plaintiff's made the same argument on further appeal to the Court of International Trade's reviewing court, and the Court of Appeals for the Federal Circuit, also rejected this claim. The Federal Circuit held that "an injury determination, not confined to the LTFV sales alone" is not "arbitrary, capricious, or otherwise contrary to the law."<sup>23</sup>

First, in reviewing Section 731, 19 U.S.C. §1673, the Court said:

The statute seems to us to speak in plain language and to be unambiguous. .... If a 'class or kind' of that merchandise is sometimes sold at LTFV, the terms of any individual sale do not matter. .... Some LTFV sales must be found, but if they occurred, the ITC is not required to pursue details as to the chain of causation of every instance where the foreign supplier supplanted the domestic one.<sup>24</sup>

This holding from the court would appear to shut the door to the argument that the Commission's traditional practice of examining the effects of a class or kind of merchandise the Department of Commerce has found to be unfairly traded is inconsistent with U.S. law.

Second, both courts also considered the argument that the requirements of the statute differed from GATT, and rejected that argument as well. The Court of International Trade stated:

Whatever the ideal embodied in GATT, Congress has not simply directed ITC to determine directly if dumping itself is causing injury. .... Perhaps Congress believed that such a standard was not

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<sup>23</sup> 865 F.2d 241.

<sup>24</sup> 865 F.2d 242.

sufficiently specific or that it involved a type of analysis that was unworkable. In any case, Congress opted to direct ITC to determine if imports of a specific class of merchandise, determined by ITA to have been sold at LTFV, are causing injury. This seems to be Congress' way of implementing GATT.<sup>25 26</sup> In the subsequent appeal of the CIT's decision, the

Federal Circuit said:

Congress no doubt meant to conform the statutory language to the GATT, but we are not persuaded it embodies any clear position contrary to ours. Should there be a conflict, the United States legislation must prevail. 19 U.S.C. §2504(a).<sup>27</sup>

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<sup>25</sup> 688 F. Supp. 639, 645.

<sup>26</sup> Advocates of the unitary theory discussed in this section appear to have given inadequate attention to the implications of Algoma. In Rails, supra, the following reference to this case appears at 135:

Our reviewing courts have concluded that Congress did not limit the Commission to examining only the particular imports specifically determined by Commerce to have been unfairly traded, but in allowing the Commission to examine other imports that may be swept into the class or kind or merchandise that Commerce found to have been unfairly traded, the Court of International Trade cast this decision as consistent with examination of the effects of the unfair trade practice. [footnote omitted]

I do not believe that advocates of this alternative view have confronted directly holdings of the Court of International Trade and the Court of Appeals for the Federal Circuit in Algoma. They choose to avoid a full discussion of either court's language, and make no effort to reconcile their own position with these rulings. Moreover, there is no mention of the Supreme Court's denial of certiorari for a third appeal in Phones, supra, at 169-171.

<sup>27</sup> 865 F.2d 240, 242. See also Timken Co. v. United States 673 F.Supp. 495, 520-21 (CIT 1987). "The court cannot agree that the ITA [Commerce Department] should follow a Code provision not incorporated into United States law. The Code has no independent force as law."



To summarize, although some Commissioners may wish to continue debate over whether the Commission is to assess the impact of dumped imports or to assess the impact of a class or kind of merchandise found to be sold at less than fair value on the domestic industry, this must be viewed as a futile exercise. Our reviewing courts have resolved these issues.

In Algoma both the Court of International Trade and the Court of Appeals for the Federal Circuit held the Commission is to examine the entire class of merchandise, not simply dumped imports. The Commission is not required to examine only dumped or subsidized imports. Indeed, the courts have said that it is lawful for the Commission to look only at the class or kind of merchandise found by the Department of Commerce to include dumped or subsidized merchandise.<sup>28</sup>

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<sup>28</sup> I note that the Court of International Trade did "not resolve the issue" of whether the Commission may "...view sales by sales data and attempt to match up LTFV sales with evidence of lost U.S. sales." However, the court cautioned that "in few cases would ITC be justified in stopping there, as by statute it must look at volume and price effects, as well as the impact of imports on the domestic industry." See 688 F.Supp. 644.

I also note that the court did not resolve the issue of whether ITC "should consider evidence of an extremely low percentage of sales at LTFV, if requested to do so." See 688 F. Supp. 645.

Misconception No. 2: Bifurcated Analysis Is Incompatible with  
U.S. Law and GATT Codes

I have already addressed this second issue, involving Commission use of dual standard injury and causation analysis, at length in previous opinions, and will not burden the reader with a recital of those points.<sup>29</sup> Nonetheless, in light of the claims made in Phones that use of bifurcated analysis is contrary to U.S. law and our obligations under the General Agreement on Tariffs and Trade, additional comment on this subject is warranted.<sup>30</sup>

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<sup>29</sup> See Rails, supra, 29-70, and the views of Commissioner Rohr, at 71-82, as well as Phones, supra, at 66-80.

<sup>30</sup> Recently the following claims have been advanced in criticism of existing Commission practice. See, Phones, supra, at 144-145, 147.

My understanding of the relevant law is, in certain respects, fundamentally different from that of each of the Commissioners who have voted in the affirmative in these investigations.[footnote omitted] In my view, these Commissioners have misinterpreted the law [emphasis added] in important respects, and are, as a consequence, employing a legal standard that I believe is contrary to the governing statute, Title VII of the Tariff Act of 1930 [footnote omitted], to the legislative understanding inherent in that statute, and to our international obligations under the General Agreement on Tariffs and Trade ("GATT"), which are implemented through Title VII.

\* \* \* \* \*

... some of my colleagues have a radically different understanding of the task that the Commission is to perform. These Commissioners apparently believe that the Commission's initial (and primary) task is to assess the condition of the domestic industry, and to reach a judgment as to whether the data respecting industry profits, employment, capacity  
(continued...)

Commissioner Cass continues to assert that the dual standards approach to injury and causation analysis is "not consistent with, and certainly do[es] not follow the preferable interpretation of, Title VII.... I have explained interalia," he says, "that the text, structure and legislative history of Title VII do not support such a reading of the statute."<sup>31</sup>

At the risk of understatement, this interpretation of Title VII could be described as "imaginative." It is not a view which apparently is shared by reputable legal scholars, for the author of these comments cites no disinterested authorities for his claims. Nor, does the writer find explicit support in judicial opinions for this critique. Instead, he concedes in Phones that "judicial pronouncements do indeed provide the strongest support for bifurcated approaches."<sup>32</sup>

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<sup>30</sup> (...continued)  
utilization, and so on, indicate that the industry is doing sufficiently poorly to be deemed 'materially injured,' wholly without regard to the impact of the imports (or the trade practice that affects their volumes and prices) that are the subject of our investigation.

<sup>31</sup> Phones, supra, at 175.

<sup>32</sup> Phones, supra, at 220. Interestingly, his discussion of relevant cases does not include two key decisions: Pasco Terminals, Inc., v. United States, 477 F. Supp. 201 (Customs 1979), aff'd, 634 F.2d 610 (CCPA 1980); and Armstrong Bros. Tool Co. v. United States, 483 F. Supp. 312 (Customs 1980); aff'd, 626 F.2d 168 (CCPA 1980). In the latter case, the Customs Court described use of bifurcated analysis as a "correct legal theory."

He also repeats the assertion from Rails that the dual standard approach is "fundamentally at odds" with Title VII.<sup>33</sup> However, Commissioner Cass offers no explicit language from the statute or legislative history to support this original interpretation. Instead, my colleague's argument seems to rest, in the final analysis, on his own personal belief that certain selected statutory language is more compatible with the unitary than the bifurcated approach.<sup>34</sup>

But, congressional acceptance of the traditional bifurcated approach can be inferred from several other sources. For example, there are references to separate injury and causation tests in the legislative history of the 1979 Act. Furthermore, recent publications of the House Ways and Means Committee make reference to the ITC's "two-prong" injury and causation inquiry.<sup>35</sup>

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<sup>33</sup> Phones, supra, at 193; Rails, supra, at 151.

<sup>34</sup> See, Phones, supra, at 181-189.

<sup>35</sup> Indeed, H.R. Rep. No. 96-317, 96th Cong., 1st Sess., at 44-47 (1979), in summarizing the Tokyo Round agreements on countervailing and antidumping measures refers separately in discussing "key provisions" to an "injury test" and to a "causal link of imports to injury" in both countervailing duty and antidumping investigations. Similarly, in discussing "implementation of the agreements in domestic law," the House Report considers material injury and the causation element separately. Had the House desired a "unitary" test, such as one Commissioner advocates, it is doubtful that such language referring separately to injury and causation would have been used in the bill report.

The Senate Report in discussing "the major common elements of the two agreements" lists: "... A provision that  
(continued...)

Now, let me address a second aspect of the bifurcation issue. From my vantage point the claim that Commission practice is incompatible with GATT Code obligations has serious flaws. First, as the Commission argued in Algoma, the GATT Code contains ambiguities, and it is the responsibility

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<sup>35</sup>(...continued)

investigations may be initiated ... only if there is 'sufficient evidence' and allegation of (a) subsidization or dumping, (b) material injury, and (c) 'a causal link' between the subsidization or dumping and the injury." S.Rep. No. 96-249, 96th Cong., 1st Sess., at 41 (1979). This language also suggests to me that legislators thought the new Codes would be administered with separate injury and causation findings, although I recognize that other language in the reports can be construed to support a single unitary determination. Certainly, there is nothing explicit in the legislative reports to suggest that the Commission was not to employ the bifurcated analysis it had used regularly during the 1970s.

Indeed, as I have indicated in Rails, at 61, both the House Ways and Means Committee and the Senate Finance Committee expressed approval of ITC material injury criteria during a period from January 3, 1975, to July 2, 1979, when the Commission regularly invoked the two-factor approach.

More recently, legislative acceptance of a bifurcated approach can be inferred from House Committee on Ways and Means, Overview and Compilation of U.S. Trade Statutes, WMCP 100-1, 100th Cong., 1st sess. (1987), at 43, 52:

The ITC determination of injury basically involves a two-prong inquiry: first, with respect to the fact of material injury, and second, with respect to the causation of such material injury.

While this volume is not legislative history as such, it does reflect congressional understanding of the statute. Interestingly, identical language was used in the 1989 edition, thus suggesting strongly that the Omnibus Trade and Competitiveness Act of 1988 did not contain provisions modifying use of the bifurcated approach. House Committee on Ways and Means, Overview and Compilation of U.S. Trade Statutes: 1989 Edition, WMCP 101-14, 101st Cong., 1st sess. (1989), at 49, 58.

of national authorities to devise mechanisms for implementing these obligations.<sup>36</sup>

Second, there is nothing in the Codes that clearly conflicts with use of the bifurcated approach. Indeed, to the extent that the negotiators of the original GATT Antidumping Code in 1967 contemplated either a unitary or a bifurcated approach to injury and causation analysis, they seem to have favored the bifurcated approach, which has actually been employed in the Commission.

John Rehm, then General Counsel of the Office of Special Representative for Trade Negotiations, and one who was directly involved in negotiation of that Code, has indicated this expectation. Parties to the negotiations, he observed, had criticized past determinations of the U.S. Tariff Commission for inconsistency particularly in resolving "such difficult problems as the nature of the causal relationship

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<sup>36</sup> Supra, at note 21 and accompanying text.

between the dumped imports and the alleged injury...." <sup>37</sup>

It was Rehm's interpretation of the resulting agreement that:

... the first subsidiary question to be considered is whether a domestic industry is suffering material injury. It provides that the evaluation of injury shall be based on an examination of all factors having a bearing on the state of the industry in question, such as market share, profits, prices, employment, utilization of capacity, productivity, and other named factors. This listing indicates that material injury is a relative notion and that the economic condition which existed immediately before the imports were dumped has a direct bearing on the question.

The second subsidiary question is whether the dumped imports have been the principal cause of the material injury. In this regard, the Code provides that all other factors which, individually or in combination, may be adversely affecting the industry shall be examined. Explicitly listed as examples are the volume and prices of undumped imports of the product in question, competition between the domestic producers themselves, and contraction in demand due to substitution of other products. [emphases added] <sup>38</sup>

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<sup>37</sup> John B. Rehm, "Developments in the Law and Institutions of International Economic Relations," American Journal of International Law 62 (1968), 403-434. Quote at p. 428. This article was "edited" by Stanley D. Metzger, then Chairman of the U.S. Tariff Commission.

Metzger noted that "European trading partners of the United States were particularly concerned that in a number of determinations 'injury' had been found which was not 'material' and causation had been found where the connection between the dumped imports and the injury was quite insubstantial." Compliance with International Obligations: Some Recent United States and Canada Injury Determinations Under the International Antidumping Code. (Occasional Papers 31, Norman Paterson School of International Affairs, Carleton University, Ottawa, Canada) (May 1976), at p. 5.

<sup>38</sup> Ibid., at 431-432.

Thus, it is plain from the material quoted above that the chief legal adviser to the President's Trade Negotiator, and the individual who explained the Antidumping Code to skeptical Senators, believed a bifurcated approach to injury and causation analysis was an appropriate way to honor U.S. obligations under the first Antidumping Code negotiated to implement Article 6 obligations.

I am aware of nothing from the negotiating or legislative history of the 1979 Code that specifies a different approach.<sup>39</sup>

While the causation sections of the revised Antidumping Code were modified, none of the negotiators seem to have indicated that the revisions were intended to promote an analytical approach different from the bifurcated method, which by this time was well established in U.S. procedure. I have discussed the gradual adoption of the bifurcated approach in U.S. practice, perhaps partly as an effort to provide the analytical rigor and consistency desired by foreign governments in the negotiating process.<sup>40</sup> Whatever

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<sup>39</sup> Indeed, as discussed in note 35, adequate support can be found in the legislative history and other congressional documents for a bifurcated approach.

<sup>40</sup> I speculate that some Commissioners may have expounded the dual standard injury and causation analysis to conform to requirements of the Code in the absence of any conflicting language in the Antidumping Act of 1921. Certainly, at meetings of the GATT Committee on Anti-Dumping Practices representatives of the United States were obliged to defend Tariff Commission procedures, and did so with the assertion that "present United States law was being applied in a manner (continued...)



the explanation for evolving U.S. practice, the dual-requirement approach was regularly repeated, tested in the courts, and affirmed as the "correct legal theory."<sup>41</sup> <sup>42</sup> Also in decisions made pursuant to the authority of the 1979 Trade Agreements Act, the Commission's reviewing courts affirmed use of this dual-standard approach. <sup>43</sup>

To summarize, in my view the theory that U.S. law and our obligations to GATT require, or prefer, a unitary approach to assessing the causal nexus between imports and the domestic industry is fatally flawed.

Misconception No. 3: Minimal Causation Incompatible with Law

There is a third substantive issue that merits further comment at this point. One Commissioner continues to assert that the Commission majority's reliance on a "contributory cause" standard contradicts GATT obligations, and represents a new departure for the Commission in the aftermath of the 1979 Trade Agreements Act.<sup>44</sup> I have also examined this issue

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<sup>40</sup>(...continued)

consistent with the provisions of the Code." See GATT, Basic Instruments and Selected Documents, 19th Suppl., March 1973, at 16-17 [hereinafter 'BISD']; BISD, 20th Suppl., January 1974, at 43-46; BISD, 21st Suppl., February 1975, at 31-33.

<sup>41</sup> 483 F. Supp. 323.

<sup>42</sup> infra, at note 2.

<sup>43</sup> Infra, at note 3

<sup>44</sup> Commissioner Cass has written:

(continued...)

previously, but several more comments responding to claims raised in Phones may be warranted.<sup>45</sup>

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<sup>44</sup>(...continued)

Those Commissioners who believe that the Commission must examine the effects of imports, rather than the effects of dumping or subsidization, also appear to believe that 'even a slight contribution' to overall industry injury from the imports subject to investigation is a sufficient basis for an affirmative determination....

I find it difficult to believe that anyone who had not been immunized by frequent exposure to this argument could accept this standard as consistent with U.S. trade law (or with the provisions of the GATT that the law was intended to implement. [Phones, supra, at 229-31].

The minimal causation approach also is contrary to our international obligations under the GATT.... [Phones, supra, at 149].

<sup>45</sup> Phones, supra, at 92-93. The contributing cause standard emerged from the Commission's own decisions in the early 1970s and was approved by our reviewing courts in Pasco, 477 F. Supp. 220-221; aff'd 634 F.2d 612 (1980); and by the Senate Finance Committee in S. Rep. No. 93-1298, 93d Cong., 2d Sess. (1974), at 180.

Similarly, my colleague seems unaware of the many cases since 1980 in which at least four present judges of the Court of International Trade have embraced the contributory cause standard. While noting British Steel, 593 F. Supp. 405, 413 (1984), and making reference to Citrosuco, 704 F. Supp. 1075, 1101, 1103 (1987) and Hercules, 673 F. Supp. 454, 481 (1987) in his views in Rails, supra, at 139-142, and Phones, supra, at 238-241, he overlooks a number of other cases taking the same approach: Maine Potato Council, 613 F. Supp. 1237, 1243 (1985); Florex, 705 F. Supp. 582, 593 (1989); Gifford-Hill, 615 F. Supp. 577, 585-6 (1985); Wieland Werke, A.G., v. United States, 718 F. Supp. 50, 56 (CIT 1989); LMI-La Metall Industriale, S.p.A. v. United States, slip op. 89-46 (CIT 1989), at 31; and Granges Metallverken A.B. v. United States, slip op. 89-80 (CIT 1989), at 18. Recently the court released another, Metallverken Nederland B.V. v. United States, slip op. 89-170 (CIT 1989), at 26.

I understand my colleague to assert that while Congress intended for the Trade Agreements Act of 1979 to implement U.S. obligations under the GATT Countervailing Duty and Antidumping Codes, he believes that those who use a "minimal causation" approach in administering countervailing duty and antidumping law have rendered U.S. law inconsistent with GATT. As he says:

There is no basis to suppose that Congress intended that Title VII would have the GATT-inconsistent meaning that advocates of the minimal causation approach have ascribed to it and certainly no basis for belief that Congress understood its 1979 amendments to the Tariff Act of 1930, designed expressly to implement the Antidumping and Subsidies Codes negotiated in the Tokyo Round of the GATT, to have altered settled U.S. law to render it GATT-inconsistent.<sup>46</sup>

If this is an accurate reflection of his views, he appears misinformed on a number of key points. For example, he evidently misunderstands the causation test used by the Commission in the 1970s before passage of the Trade Agreements Act. He also seems unfamiliar with the causation test included in the Tokyo Round GATT Codes. And, he is apparently unaware of the advice the Commission provided Congress as it prepared legislation to implement the Tokyo Round agreements. As a consequence, his implication that while Congress in 1979 sought to implement requirements of the GATT Codes individual ITC Commissioners imposed a new and lower causation standard

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<sup>46</sup> Phones, supra, at 152-157. Quote at 157.

is wide of the mark.<sup>47</sup>

Let me review the origins of the contributory cause standard. This did not emerge in the 1980s as one individual appears to think. As I have explained in Phones, the Commission adopted the "contributory cause" standard before the Tokyo Round GATT Codes were negotiated, and those Codes embodied U.S. practice, not the reverse.<sup>48 49</sup>

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<sup>47</sup> See Phones, supra, 231-237.

<sup>48</sup> Phones, supra, at 95.

<sup>49</sup> Several prominent legal scholars have examined this issue, and they, too, have concluded that the 1979 Code adopted the contributory cause standard embodied in previous American practice. See, Edwin A. Vermulst, Antidumping Law and Practice in the United States and the European Communities: A Comparative Analysis (1987), at 559-560. Richard Dale, Anti-dumping Law in a Liberal Trade Order (1980), at 113-114.

Rodney de C. Grey of Canada, a former Canadian trade negotiator, has also stated that "a weak causal link between dumping and the condition of the domestic producers of a like product has been virtually established in U.S. law implementing GATT Article VI." See his "Trade Policy and the System of Contingency Protection in the Perspective of Competition Policy," (unpublished manuscript), February 1, 1986, at 26.

Barcelo notes in his article Antidumping Laws as Barriers to Trade - the United States and the International Antidumping Code, 57 Cornell L. Rev. 555-6 (1972), that the Tariff Commission adopted the contributory cause standard in 1971.

Metzger, a former Chairman of the Tariff Commission, also traces the origins of the contributory cause standard to a 1971 case, involving Ferrite Cores from Japan, Inv. No. AA1921-65, T.C. Pub. 360 (January 1971), pp. 4-5. He claims in his book Lowering Nontariff Barriers (1974), at 96, that in the aftermath of U.S. debate over the 1967 Antidumping Code "the commission appeared to be guided by the conviction that little more than de minimus injury need be shown, and that the

(continued...)

Further evidence that the U.S. adopted the contributory cause standard before implementation of the Tokyo Round Codes can be found in a 1979 report of the U.S. International Trade Commission to the Senate Finance Committee. This document indicated that the causation standard included in the Antidumping and Countervailing Duty Codes "comprise[d] a test of injury causation which is currently performed in Commission investigations." Thus, it is clear that Congress was informed of the causation standard contained in the Codes and how that standard compared to previous U.S. practice.<sup>50</sup>

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<sup>49</sup>(...continued)

sales at less than fair value need only be a contributing cause of that injury."

<sup>50</sup> In an official report to the Senate Finance Committee, drafted by lawyers Jeff Lang and Theodore W. Kassinger, the Commission interpreted the 1979 Codes as containing a contributing cause standard. See Senate Committee on Finance, MTN Studies: Agreements Being Negotiated at the Multilateral Trade Negotiations in Geneva: U.S. International Trade Commission Investigation No. 332-101, CP 96-27, 96th Cong, 1st sess., Study 6, part 2 (1979), at 156-158.

Regarding the Causation requirement in Article 6, see, at 54-56:

"2.1.6(4).1 Interpretation, paragraph 4

Paragraph 4 would require that subsidized imports be a cause of injury, that is a contributing factor in causing or threatening injury. A requirement that subsidized imports must be the only cause of injury or the principal cause of injury (language in the 1967 International Antidumping Code) would render an injury test inoperable. . . . Requiring that subsidized imports be 'the' cause of injury would be tantamount to repealing the statute."

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(continued...)

Finally, it is useful to review the comments of former Tariff Commission Chairman Stanley Metzger, who in 1974, commented on the Commission's contributory cause approach.<sup>51</sup>

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<sup>50</sup> (...continued)

The proposed revision of the International Antidumping Code would conform Article 3(d) of that code to paragraph 4.... This same policy of not weighing factors is followed in the Commission's administration of the duty-free provision of the countervailing duty statute."

The language to the effect that subsidized imports must be 'a contributing factor in causing or threatening' to cause injury comprises a test of injury causation which is currently performed in Commission investigations. This standard is a qualitative one which does not assign weights to all the possible influencing factors, and has been articulated in opinions of individual Commissioners in specific investigations. [emphases added]

For example, in an antidumping case former Commissioners Leonard and Young stated that--

Besides less than fair value sales, other causes of injury are also present. . . . All that is required for an affirmative determination is that the less than fair value sales be a cause of injury to an industry. The causation between sales at less than fair value and injury must be identifiable. [footnote reference to views of Commissioners Leonard and Young in Inv. No. AA-1921-92, Elemental Sulfur from Mexico (U.S.T.C. Pub. 484, May 1972), at 9.]

<sup>51</sup> Like Commissioner Cass, the proponent of unitary analysis, Metzger once chided Commissioners for alleged failure to implement the GATT Antidumping Code. In his 1974 book, *Lowering Nontariff Barriers*, supra, at 98, Metzger wrote:

The plain fact of the matter is that since the code went into force the commission has contained a statutory majority of protectionist commissioners  
(continued...)

Metzger, who during his two years on the Tariff Commission never voted affirmatively in an antidumping case, favored the 1967 Antidumping Code but condemned the Tokyo Round version. He complained that the "Amended Anti-dumping Code of 1979 is ... a major backward step in the direction of the protectionism that it was the objective of the MTN to avoid."<sup>52</sup>

Why did Metzger, an enthusiastic proponent of the first Antidumping Code, condemn the second Antidumping Code? A major reason related to the contributory cause standard. He explained that "the negotiations resulted in major changes in the 1967 code's formulations on injury so as to bring them into conformity with practices of the American and Canadian tribunals."[emphasis added] The result, as embodied in the Trade Agreements Act of 1979, he added, was a "formulation of injury and causation allow[ing] the widest flexibility to find that dumped imports have resulted in material injury even where they may have contributed thereto only in small degree."[emphasis added]<sup>53</sup>

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<sup>51</sup> (...continued)

who have consciously avoided compliance with the code and have departed drastically from past interpretations of the act by the Tariff Commission.

<sup>52</sup> See Metzger, The Amended Anti-dumping Code and the Trade Agreements Act of 1979, in John Quinn and Philip Slayton, Non-Tariff Barriers after the Tokyo Round (1982), at 163, 164, 167.

<sup>53</sup> Id., at 163-164.

Metzger's statement has present-day relevance, for he conceded the lawfulness of the Commission majority's approach to injury and causation issues. He recognized that an affirmative determination could lawfully result when less-than-fair value imports have only a "small" impact on the domestic industry. In essence, Metzger, a devoted free-trader and critic of antidumping laws, acknowledged that the "minimum contribution" approach to causation employed by the Commission in the 1980s was, in fact, consistent with the 1979 Antidumping Code and Title VII of U.S. law.

Let me summarize the discussion of the contributory cause issue at this point. The statements cited above from legal scholars and negotiators, from the U.S. International Trade Commission, and from former Commissioner Metzger all demonstrate that the claims made in Phones by an advocate of unitary analysis are incorrect. In fact, as I have explained in these "Additional Views," the Commission adopted the contributory cause standard in the early 1970s, not after the 1979 Act. Moreover, the Commission informed Congress that the Tokyo Round Codes conformed to previous Commission practice. Thus, neither Congress in writing the 1979 Act, nor the ITC Commissioners in administering the provisions of that statute "altered settled U.S. law to render it GATT inconsistent," as Commissioner Cass continues to assert.<sup>54</sup>

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<sup>54</sup> Phones, supra, at 157.



Once again, when claims and theories articulated in behalf of unitary analysis are examined closely, serious flaws emerge. Permit me to conclude these "Additional Views" with one more observation. When I look closely at the legal and scholarly underpinnings of the unitary approach, I find only blue smoke and mirrors, not substance. I recognize, however, that it is the responsibility of others to determine whether any aspect of unitary analysis is compatible with U.S. antidumping law.



## INFORMATION OBTAINED IN THE INVESTIGATION

## Introduction

Following a preliminary determination by the U.S. Department of Commerce (Commerce) that imports from Japan of drafting machines and parts thereof<sup>1</sup> 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 August 25, 1989, instituted Investigation No. 731-TA-432 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act). This investigation was instituted 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 September 20, 1989 (54 F.R. 38750).<sup>2</sup> The Commission's hearing, a portion of which was held in camera, was held in Washington, DC, on November 14, 1989.<sup>3</sup>

In its final determination,<sup>4</sup> published in the Federal Register of November 8, 1989 (54 F.R. 46961), Commerce determined that imports of drafting machines and parts thereof from Japan are being, or are likely to be, sold in

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<sup>1</sup> For purposes of this investigation, the term "drafting machines" refers to track and elbow-type drafting machines, whether finished, unfinished, assembled, unassembled, or drafting machine kits. The term "parts" includes, but is not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band-and-pulley mechanisms, parts of band-and-pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps, and scales, are not subject to this investigation. Drafting machines are manually operated devices used to construct a line of predetermined length either through a single point at a predetermined angle with respect to one base line, or alternatively, through a pair of predetermined points. A protractor head allows angles to be set and read, and lines to be drawn at a predetermined angle. A drafting machine is generally clamped to a drafting board and is primarily used by designers, engineers, architects, and layout artists. Drafting machines and parts thereof are provided for in subheadings 9017.10.00 and 9017.90.00, respectively, of the Harmonized Tariff Schedule of the United States (previously under item 710.80 of the former Tariff Schedules of the United States).

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

<sup>3</sup> A copy of the Commission's Federal Register notice pertaining to the hearing, and a list of witnesses who appeared at the hearing, are presented in app. B.

<sup>4</sup> A copy of Commerce's Federal Register notice is presented in app. C.

the United States at less than fair value. The Commission will make its final injury determination by December 22, 1989. The Commission's briefing and vote was held on December 19, 1989.

### Background

This investigation resulted from a petition filed by Vemco Corp., San Dimas, CA, on April 7, 1989, alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports from Japan of drafting machines and parts thereof that are alleged to be sold in the United States at LTFV. In response to this petition, the Commission instituted antidumping investigation No. 731-TA-432 (Preliminary) under section 733 of the act (19 U.S.C. § 1673b(a)). On May 17, 1989, the Commission determined that there was a reasonable indication that an industry in the United States producing larger drafting machines is materially injured by reason of such imports, but that there was no reasonable indication that an industry in the United States producing portable drafting machines is materially injured or threatened with material injury, or that the establishment of such an industry in the United States is materially retarded, by reason of the subject imports. Drafting machines have not been the subject of any other investigations conducted by the Commission.

### Nature and Extent of Sales at LTFV

On November 8, 1989, Commerce issued a final determination that drafting machines and parts thereof from Japan are being, or are likely to be, sold in the United States at LTFV. Since the respondent, Mutoh Industries Ltd., declined to participate in the investigation, Commerce used the best information available as required by section 776(c) of the act. The estimated margins of sales at LTFV presented in the following tabulation (in percent) were based on data contained in the petition:

<u>Manufacturer/exporter</u>	<u>LTFV margin</u>
Mutoh Industries Ltd.....	90.87
All others.....	90.87

Commerce directed the U.S. Customs Service, under section 733(d)(1) of the act, to continue to suspend liquidation of all entries of drafting machines and parts thereof from Japan that are entered, or withdrawn from warehouse, for consumption on or after August 25, 1989, and to require a cash deposit or the posting of a bond equal to the estimated dumping margin.

## The Product

Description and uses

The imported products subject to the petitioner's complaint are drafting machines and parts thereof. Drafting machines are used for lineal graphic presentation by a variety of users including draftsmen, engineers, students, architects, navigators, designers, and graphic artists. Drafting machines are manually operated devices primarily used to construct a line of predetermined length either through a single point at a predetermined angle with respect to one base line or, alternatively, through a pair of predetermined points. The operation of a drafting machine involves aligning perpendicularly situated scales (or rulers) at a variety of angles anywhere on a drawing surface with the use of a protractor head, which allows angles to be set and read, and lines to be drawn at a predetermined angle. If well maintained, a drafting machine should last roughly 30 years.<sup>5</sup>

There are two types of drafting machines: the track drafting machine and the band-and-pulley (elbow-type) drafting machine. These two types of drafting machines are illustrated in figure 1. Within each type, there are various models of domestically-produced and imported drafting machines, characterized by different features. For further discussion of differing features of the various models, please refer to the section of this report entitled "Price comparisons."

Track drafting machine.--The track drafting machine is newer, generally larger, more versatile, and more expensive than the band-and-pulley drafting machine. The major components are the horizontal track (including horizontal carriage and clamps), the vertical track (including vertical track bracket, vertical carriage, and support roller), and the protractor head, which attaches to the vertical carriage.

The track drafting machine consists of a protractor head assembly mounted on a carriage that glides along a vertical track and whose movement is controlled by a vertical brake. The vertical track is, in turn, mounted on a carriage that glides along the horizontal track and is controlled by a horizontal brake. Parallel motion of the protractor head and accurate orientation of the scales is, therefore, achieved by means of the two carriages moving in mutually perpendicular tracks. The track drafting machine is normally mounted on the upper edge of a drafting board or other drawing surface by means of clamps attached to the horizontal track.

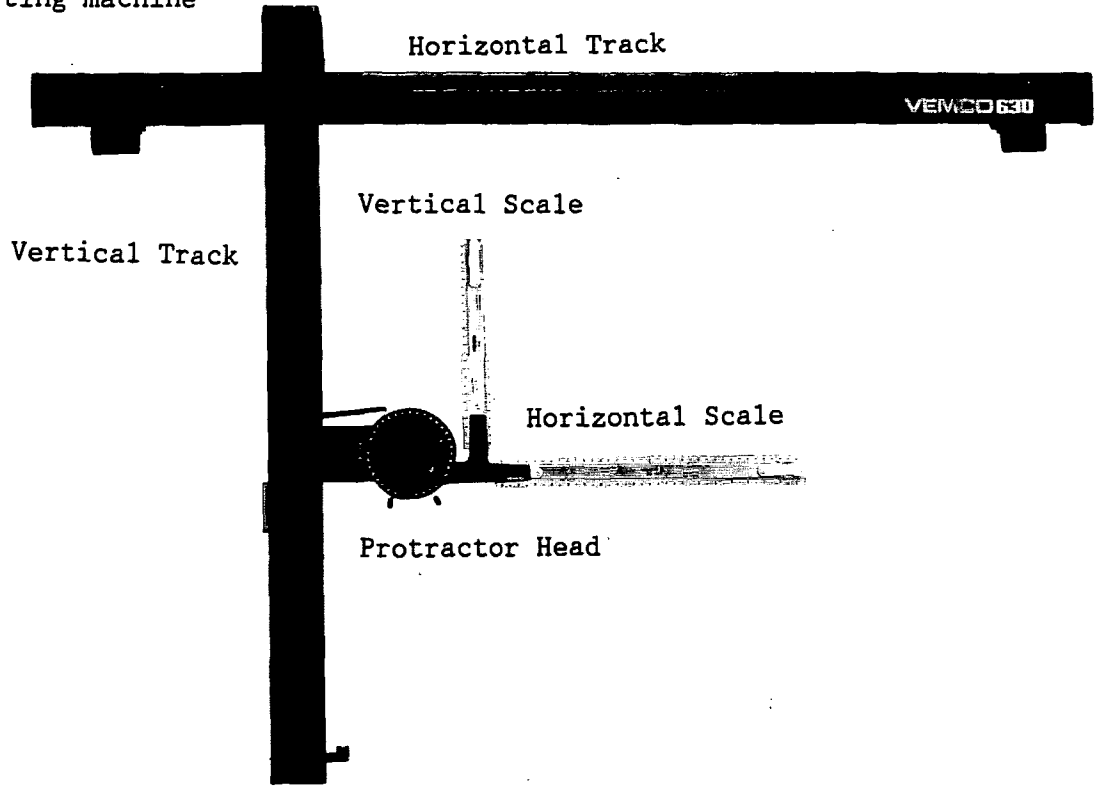
Band-and-pulley (elbow-type) drafting machine.--Generally smaller and less expensive than the track drafting machine, the band-and-pulley drafting machine primarily consists of upper and lower arms, tension bands, a pulley system, and the protractor head. The band-and-pulley drafting machine is mounted by means of a clamp to the upper edge of a drafting board or other drawing surface, not angled more than 25 degrees. The upper and lower arms, tension bands, and pulley linkage provide parallel motion and maintain accurate orientation of the protractor head, allowing rotation at the elbow.

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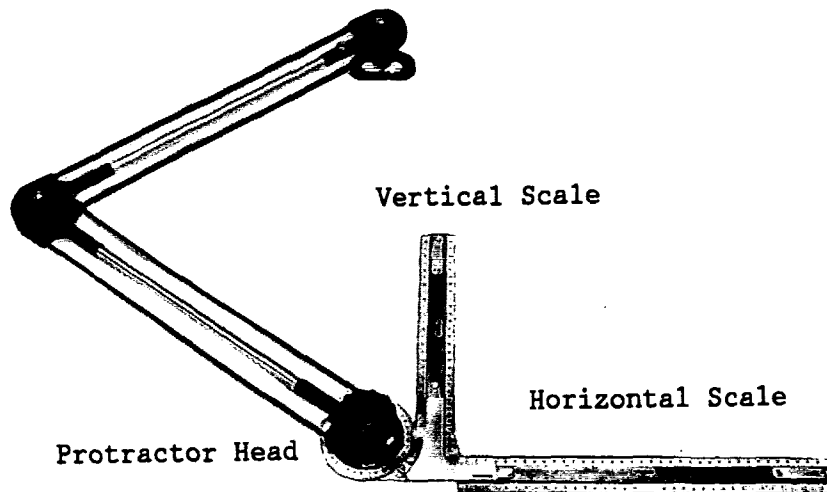
<sup>5</sup> Transcript of hearing, pp. 47, 48.

Figure 1.--Types of drafting machines

Track drafting machine



Band-and-pulley (elbow-type) drafting machine



Note.--Scales are not subject to this investigation.

Source: Vemco Corp.

Disc brakes at the elbow joint steady the lower arm on an inclined board. A gravity-compensating adjustable counterweight may be offered on some models to adjust for more board tilt.

Protractor head.--The primary component of a drafting machine is the protractor head. Protractor heads are available in three types (digital, dial, and vernier), distinguished by preference of use and price. These different protractor head types are illustrated in figure 2. The three types accounted for \*\*\*, \*\*\*, and \*\*\* percent of total 1988 U.S. drafting machine consumption, respectively. <sup>6</sup> The vernier protractor head is the only type currently produced in the United States.

Parts of drafting machines.--For the purposes of this investigation, the term "parts of drafting machines" refers to major components and parts of major components destined for use in drafting machines. The parts covered include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band-and-pulley mechanisms, parts of band-and-pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. The drafting machines of Vemco, the U.S. producer, contain from approximately \*\*\* to over \*\*\* parts, depending on the model.

According to the respondent in this investigation, drafting machine parts are currently produced and exported to the United States as replacement parts only. Drafting machine parts accounted for less than \*\*\* percent of the total value of U.S. shipments of drafting machines and parts thereof during the period covered by the investigation.

#### Manufacturing processes <sup>7</sup>

Vemco fully manufactures or does finishing operations on at least \*\*\* percent--measured by number or cost--of drafting machine parts. Vemco purchases the remainder of the parts from suppliers. During the period of investigation, Vemco used over \*\*\* parts suppliers for two drafting machine models alone. Purchased parts include \* \* \*. <sup>8</sup> The major components of the drafting machine are processed and assembled on a \* \* \*. \* \* \*. Complete assembly of a drafting machine from individual parts takes from \*\*\* to \*\*\* minutes and may be done \* \* \*. The value added thereby is approximately \*\*\* to \*\*\* percent of the value of a drafting machine, depending on the model. "Final assembly" involves assembly of between \*\*\* and \*\*\* minor subassemblies and accounts for well under \*\*\* percent of the value of a drafting machine.

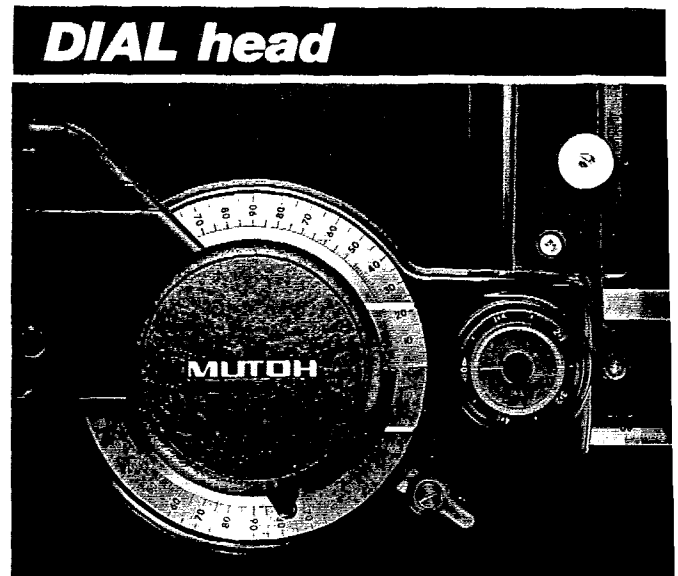
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<sup>6</sup> Based on 1988 U.S. shipments of drafting machines as compiled from responses to questionnaires of the U.S. International Trade Commission.

<sup>7</sup> Information on U.S. manufacturing processes was obtained through an interview with Vemco officials. Information on Mutoh's manufacturing processes was obtained from its postconference brief in the preliminary investigation.

<sup>8</sup> Vemco also manufactures its own \* \* \*.

Figure 2.--Types of protractor heads



Source: Mutoh Industries.



The Japanese exporter of drafting machines to the United States, Mutoh Industries Ltd., reports that its drafting machine parts are \* \* \*. \* \* \*.

The track drafting machine, the band-and-pulley drafting machine, and their respective protractor heads undergo different and separate production processes, and so will be discussed separately.

Track drafting machine.--The assembly of the track drafting machine consists of the following primary stages. Initially, the aluminum extrusions are cut, straightened, and laminated to form the horizontal and vertical beams of the drafting machine. These beams then undergo a preassembly process involving the insertion of a precut stainless steel track into the aluminum extrusions.<sup>9</sup> Stainless steel bearings coupled with rail carriages are then attached to each track.<sup>10</sup> Next, the horizontal and vertical brakes, made of \* \* \* components, are mounted on each track. The support roller, counterweight, and vertical track bracket are also assembled and mounted on the vertical track. Horizontal mounting clamps, consisting of \* \* \*, are attached to the horizontal track. The three main components, the horizontal track (including the horizontal carriage and clamps), the vertical track (including the vertical track bracket, vertical carriage and the support roller), and the protractor head assembly (which attaches to the vertical carriage), are then assembled for final inspection and are subsequently disassembled for packaging and shipment.

Band-and-pulley drafting machine.--The primary assembly steps for band-and-pulley drafting machines are as follows. The upper mast bracket involves the assembly of the flange mounting, the standard mast pulley, and the mast brake assembly. This assembled unit is connected to the elbow bracket assembly by means of an upper arm, which is composed of aluminum tubing. A lower arm links the elbow bracket assembly, consisting of the elbow pulley and elbow brake assembly, to the protractor head bracket assembly. To assemble the protractor head bracket, the head pulley, brake, and protractor are attached to the plate assembly; the unit is then attached to a mast clamp assembly, which secures the machine to the drawing surface. Two continuous loop-welded steel bands are installed on each arm, the tension is adjusted, and the bands are clothed in a semiflexible plastic cover. Following inspection, the drafting machine is then packaged and shipped as a single unit.

Protractor head.--Assembly of the protractor head involves the attachment of a handle assembly to the protractor and head plate assembly, and then attachment of these parts to an index ring and base plate assembly. It is to this base plate assembly that horizontal and vertical scales are later affixed and aligned. In the case of the track drafting machine, the protractor head assembly is attached to a pivot hinge and is joined to the vertical track by means of the vertical carriage. The band-and-pulley protractor head assembly,

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<sup>9</sup> Exceptions include Vemco's models 612 and 520, in which tapered nylon wheels roll on an aluminum surface.

<sup>10</sup> In Mutoh's machine, a permanent magnet is fitted into the vertical track.

which contains a head pulley, is connected to the lower arm by means of the head bracket assembly.

### Substitute products

Some products that are capable of performing the same task as drafting machines may be considered as substitutes for the types of manual drafting machines Vemco produces. The most important of these substitutes are discussed below. Other products, such as Tee squares, parallel rulers, triangles, and manual protractors, may be conceivable substitute products but are not included in this discussion. <sup>11</sup>

Portable drafting system.--The portable drafting system is produced by Draftette Corp., San Diego, CA, and is much less expensive than the standard band-and-pulley drafting machine. Though seemingly similar in appearance to the standard band-and-pulley drafting machine, the portable drafting system is limited in scope and performance capabilities. The lightweight drawing/sketching arms are "designed to be portable but not precisely accurate." <sup>12</sup> Although rotation is maintained at the elbow, it is not achieved through a band-and-pulley mechanism and contains no anti-gravitational devices; therefore, its use is restricted to a horizontal surface. The protractor head assembly attached to the lower arm is a 360-degree protractor head containing no minute reading capabilities. <sup>13</sup>

Portable drawing board.--The portable drawing board is a lightweight, plastic 14-3/4" x 19-1/2" board with a removable graduated straightedge for use in horizontal or vertical ruling. The drawing/drafting head, which may be purchased separately as an attachment to the straightedge, is a 90-degree protractor head with attached scales. It can be set at any degree angle with a locking feature in 15-degree increments, but it contains no minute readings. <sup>14</sup>

Computer-aided design systems.--A computer-aided design (CAD) system is an electronically-controlled device that can perform drafting functions. It is, however, much more expensive than the manual drafting machine, costing between \$14,000 and \$20,000. Most CAD systems include a computer, digitizer, graphic screen, plotter, and software. In such a system the computer executes the commands of the operator, creates digitized images of the drawing, and communicates with the peripheral devices to retrieve or save the images. The

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<sup>11</sup> According to the president of Vemco, products such as these may be used to create drawings but they have "no significant professional drafting use." (Transcript of the conference in the preliminary investigation, p. 21.)

<sup>12</sup> Draftette sales catalog.

<sup>13</sup> The Draftette sales catalogue suggests "Where precision is a prime concern you should order a Vemco arm."

<sup>14</sup> Koh-I-Noor sales catalog. Koh-I-Noor Rapidograph, Inc. of Bloomsbury, NJ  
\* \* \*

digitizer consists of an electronic drawing board and an electronic cursor. A rough sketch is first attached to the drawing board, and sketches may then be traced over by using the electronic cursor; the revised sketch is entered into the computer memory. The graphic terminal is used to create a drawing based on the rough sketch made by using the digitizer; the final images of the drawing are filed in the computer memory. The plotter is utilized to produce drawings on drafting paper.

A sophisticated CAD system generally has engineering analysis capabilities that may include finite element analysis, such as electronic circuit element analysis, fatigue and stress analysis, and aerodynamics analysis. Consequently, a CAD system is likely to be used by an end user who has a number of similar drawings, has drawings that require many changes to the original drawing, or needs engineering analysis capabilities.

### U.S. tariff treatment

Drafting machines are provided for in subheading 9017.10.00 of the Harmonized Tariff Schedule of the United States (HTS),<sup>15</sup> which includes drafting tables and machines, whether or not automatic. Parts of drafting machines are provided for in HTS subheading 9017.90.00. The most-favored-nation (MFN) or column 1-general rate of duty is 4.9 percent ad valorem, applicable to imports from Japan and most other countries.<sup>16</sup> Prior to this year, imports of drafting machines and parts thereof were reported under item 710.8025 of the former Tariff Schedules of the United States Annotated (TSUSA).

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<sup>15</sup> The HTS replaced the previous Tariff Schedules of the United States effective Jan. 1, 1989. Chs. 1 through 97 are based upon the internationally adopted Harmonized Commodity Description and Coding System through the 6-digit level of product description, with additional U.S. product subdivisions at the 8-digit level. Chs. 98 and 99 contain special U.S. classification provisions and temporary rate provisions, respectively.

<sup>16</sup> The rates of duty in rate col. 1-general of the HTS are MFN rates and in general represent the final stage of the reductions granted in the Tokyo Round of the Multilateral Trade Negotiations. Col. 1-general duty rates are applicable to imported products from all countries except those countries and areas enumerated in general note 3(b) to the HTS, whose products are dutiable at the rates set forth in col. 2. Among articles dutiable at col. 1-general rates, particular products of enumerated countries may be eligible for reduced rates of duty or for duty-free entry under one or more preferential tariff programs. Such tariff treatment is set forth in the special rates of duty subcolumn of col. 1.

In addition, pursuant to the Omnibus Budget Reconciliation Act of 1986, a user fee is charged on most U.S. imports to cover the cost of the U.S. Customs Service's processing of imports. The user fee is currently 0.17 percent ad valorem.

## The U.S. Market

Apparent U.S. consumption

Data on apparent U.S. consumption of drafting machines and parts thereof were compiled from information submitted in response to questionnaires sent by the U.S. International Trade Commission. These data are presented in table 1. Apparent U.S. consumption of drafting machines steadily declined throughout the period of the investigation. This contraction of the market is attributed to the growing sales of CAD systems.<sup>17</sup> Consumption fell by \*\*\* percent between 1986 and 1988. For the period January-June 1988 to January-June 1989, consumption fell by \*\*\* percent. The decline in value of apparent U.S. consumption followed a similar trend, decreasing by \*\*\* percent from 1986 to 1988. The value of apparent U.S. consumption of parts of drafting machines increased \*\*\* percent from 1986 to 1988; however, parts of drafting machines account for only \*\*\* to \*\*\* percent of the value of total U.S. shipments of drafting machines and parts thereof.

U.S. producers

The petitioner, Vemco, is the sole remaining manufacturer of drafting machines and parts thereof in the United States. Founded almost 50 years ago, the company currently produces drafting machines, drafting scales, drawing instruments, drafting lamps, diazo white printers, and high-pressure gas regulators. The production of drafting machines and parts thereof accounts for the majority of Vemco's total sales. Vemco produces drafting machines for sale under the Vemco and other distributor labels.<sup>18</sup> In 1986, Vemco moved from its original location in Pasadena, CA, where it occupied ten buildings, to a single facility in San Dimas, CA. \* \* \*. Other Vemco manufacturing facilities are fully devoted to the operation of its gas regulator division.

Vemco has been the only known U.S. producer of drafting machines and parts thereof since 1985, at which time Vard Newport, Santa Ana, CA, ceased manufacturing the subject product. Two other U.S. producers, Keuffel & Esser Co. and Universal Drafting Machines (UDM), left the U.S. drafting machine industry in 1983 and 1979, respectively.

Vard Newport produced drafting machines for over 40 years. These machines were stocked and distributed \* \* \*. In 1985, \* \* \* and Vard decided to discontinue its drafting machine product line at that time. Drafting machine production had been a secondary concern of the company for over 10 years. Vard's main business is the machining of precision parts for the aerospace industry. Officials at \* \* \* reported that the decision to \* \* \* was largely based on Vard's \* \* \*. Afterwards, \* \* \* decided to \* \* \*.<sup>19</sup>

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<sup>17</sup> Transcript of the hearing, p. 43.

<sup>18</sup> Vemco manufactures drafting machines under its own name and also for the trademarks and tradenames of Mayline, Martin Instruments, and Teledyne Post.

<sup>19</sup> Conversation with \* \* \*.

Table 1

Drafting machines and parts thereof: U.S.-produced domestic shipments, U.S. shipments of imports, and apparent U.S. consumption, 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June--	
				1988	1989
<u>Quantity (units)</u>					
Drafting machines:					
U.S.-produced					
domestic shipments.....	***	***	***	***	***
U.S. shipments of imports....	***	***	***	1/ ***	1/ ***
Apparent U.S. consumption..	***	***	***	***	***
<u>Value (1,000 dollars)</u>					
Drafting machines:					
U.S.-produced					
domestic shipments.....	***	***	***	***	***
U.S. shipments of imports....	***	***	***	1/ ***	1/ ***
Apparent U.S. consumption..	***	***	***	***	***
Parts of drafting machines:					
U.S.-produced					
domestic shipments.....	***	***	***	***	***
U.S. shipments of imports....	***	***	***	***	***
Apparent U.S. consumption..	***	***	***	***	***
Drafting machines and parts					
thereof:					
Apparent U.S. consumption....	***	***	***	***	***

1/ Does not include shipments of imports by \* \* \*, a small U.S. importer of drafting machines from \* \* \*, nor \* \* \*, which \* \* \*.

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

The product manager of Keuffel and Esser informed Commission staff that the company stopped producing drafting machines in 1983 when \* \* \*. The company began to \* \* \* until 1988, when the product line was discontinued.<sup>20</sup>

#### U.S. importers

Mutoh America, Inc., Elk Grove Village, IL, is \* \* \* U.S. importer of drafting machines from Japan. \* \* \* discontinued importing drafting machines from Japan in \* \* \*, respectively. \* \* \* discontinued \* \* \*, but continues to import small quantities from \* \* \*. \* \* \*. Import data presented in this report are estimated to account for over 99 percent of the subject imports.

<sup>20</sup> Conversation with \* \* \*.

Channels of distribution

The majority of all drafting machines and parts thereof sold in the United States by the U.S. producer and U.S. importers are sold to unrelated distributors either under the producer's label or the purchaser's trademark. The U.S. producer and importers were requested to report their 1988 shipments of drafting machines, by market. These data, presented in table 2, reveal that the channels of distribution for the domestically produced and imported products are similar. <sup>21</sup> U.S.-produced shipments to unrelated distributors in 1988 accounted for approximately \*\*\* percent of total U.S. shipments of drafting machines, while the remaining \*\*\* percent were shipped to unrelated end users. With the possible exception of some generic items such as \* \* \*, nearly all replacement parts for drafting machines are \* \* \*. U.S. importers reported that their shipments to unrelated distributors in 1988 were \*\*\* percent of their total U.S. shipments, with shipments to unrelated end users accounting for \*\*\* percent.

Table 2

Drafting machines: U.S. shipments, by markets and types of protractor head, 1988

Product category	(In units)			
	Shipments made by--		U.S. importers 2/ to	
	U.S. producer 1/ to unrelated--		unrelated--	
	Distributors	End users	Distributors	End users
Track drafting machines:				
Digital head...	3/	3/	***	***
Vernier head...	***	***	***	***
Dial head.....	3/	3/	***	***
Elbow drafting machines:				
Digital head...	3/	3/	4/	4/
Vernier head...	***	***	***	***
Dial head.....	3/	3/	***	***

1/ Vemco was the only U.S. producer to ship the subject product in 1988.

2/ The only importers to provide usable data are \* \* \*.

3/ Vemco produces drafting machines with vernier protractor heads only.

4/ Elbow drafting machines are not made with digital heads.

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

<sup>21</sup> According to the petitioner, a common dealer network for drafting machines is shared. (Transcript of hearing, p. 16.)

Consideration of Alleged Material Injury  
to an Industry in the United States <sup>22</sup>

The information in this section of the report is based on data received from the only remaining U.S. producer of drafting machines and parts thereof, representing 100 percent of U.S. production for the period covered by the investigation.

U.S. producer's capacity, production, and capacity utilization

Vemco's reported capacity to produce drafting machines was \*\*\* units throughout the period of the investigation (table 3). <sup>23</sup> Reported U.S. production of drafting machines decreased \*\*\* percent from 1986 to 1987, and increased \*\*\* percent in 1988. Overall, production from 1986 to 1988 fell \*\*\* percent. Capacity utilization experienced an overall decrease from \*\*\* percent in 1986 to \*\*\* percent in 1988. Between January-June 1988 and January-June 1989, production fell \*\*\* percent, and capacity utilization fell from \*\*\* percent to \*\*\* percent.

Table 3

Drafting machines: U.S. capacity, production, and capacity utilization, 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June--	
				1988	1989
Capacity (units).....	***	***	***	***	***
Production (units).....	***	***	***	***	***
Capacity utilization (percent)...	***	***	<u>1/</u> ***	<u>1/</u> ***	***

1/ Vemco reports that capacity utilization in 1988 was actually slightly lower than is indicated here. In 1988, Vemco produced \* \* \*.

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

U.S. producer's shipments

Vemco's U.S. shipments and export shipments of drafting machines and parts thereof are presented in table 4.

Domestic shipments.--U.S. shipments of completed drafting machines fell \*\*\* percent from 1986 to 1988, and fell by \*\*\* percent in January-June 1989

<sup>22</sup> Percentage changes in industry data for the period covered by the investigation are presented in app. D.

<sup>23</sup> \* \* \*

Table 4

Drafting machines and parts thereof: U.S. producer's company transfers, domestic shipments, export shipments, and total shipments, 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June--	
				1988	1989
<u>Quantity (units)</u>					
Drafting machines:					
Company transfers.....	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***
U.S. shipments.....	***	***	***	***	***
Export shipments 1/.....	***	***	***	***	***
Total shipments.....	***	***	***	***	***
<u>Value (1,000 dollars)</u>					
Drafting machines:					
Company transfers.....	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***
U.S. shipments.....	***	***	***	***	***
Export shipments 1/.....	***	***	***	***	***
Total shipments.....	***	***	***	***	***
Parts of drafting machines:					
Company transfers.....	***	***	***	***	***
Domestic shipments.....	***	***	***	***	***
U.S. shipments.....	***	***	***	***	***
Export shipments 2/.....	***	***	***	***	***
Total shipments.....	***	***	***	***	***
<u>Unit value</u>					
Drafting machines:					
Domestic shipments.....	***	***	***	***	***
Export shipments.....	***	***	***	***	***
Total shipments.....	***	***	***	***	***

1/ Principal export markets for drafting machines are \* \* \*.

2/ Principal export markets for parts of drafting machines are \* \* \*.

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

compared with the level of U.S. shipments in the corresponding period of 1988. The value of U.S. shipments of completed drafting machines experienced an overall decline of \*\*\* percent from 1986 to 1988. The value of U.S. shipments of parts of drafting machines, which account for approximately \*\*\* to \*\*\* percent of Vemco's total U.S. shipments of drafting machines and parts thereof, rose \*\*\* percent from 1986 to 1988. The unit values of the U.S. producer's domestic shipments of completed drafting machines decreased \*\*\* percent overall from 1986 to 1988, but increased by \*\*\* percent in January-



June 1989 compared with the unit value in the corresponding period of 1988.<sup>24</sup> Vemco's domestic shipments of drafting machines and parts thereof, by value, accounted for \*\*\* percent of its total shipments (i.e., domestic and export) of such products in 1986, \*\*\* percent in 1987, and \*\*\* percent in 1988.

Export shipments.--Vemco's exports of completed drafting machines \* \* \* from 1986 to 1988, rising \*\*\* percent. The value of these exports increased \*\*\* percent for the same period. Exports of completed drafting machines in January-June 1989 increased by \*\*\* percent in quantity and by \*\*\* percent in value compared with exports in the corresponding period of the previous year. In terms of value, Vemco's export shipments of drafting machines and parts thereof accounted for \*\*\* percent of its total shipments in 1986, \*\*\* percent in 1987, \*\*\* percent in 1988, \*\*\* percent in January-June 1988, and \*\*\* percent in January-June 1989.

Total shipments.--Vemco's total shipments of completed drafting machines fell \*\*\* percent between 1986 and 1988. A drop of \*\*\* percent from 1986 to 1987 was reported, with a \* \* \* of \*\*\* percent in 1988. The value of total shipments of drafting machines decreased in both 1987 and 1988, by \*\*\* and \*\*\* percent respectively. Total shipments of drafting machines in January-June 1989 decreased by \*\*\* percent in quantity and by \*\*\* percent in value compared with total shipments in the corresponding period of the previous year.

#### U.S. producer's inventories

Reported yearend inventories of completed drafting machines dropped \*\*\* percent from 1986 to 1988 (table 5). Inventories as of June 30, 1989, were \*\*\* percent above inventories as of June 30, 1988. Inventories as a share of U.S. shipments and of total shipments fell in 1987 and 1988, \* \* \*.

Table 5

Drafting machines: U.S. producer's end-of-period inventories, inventories as a share of U.S. shipments, and inventories as a share of total shipments, as of Dec. 31 of 1986-88, June 30, 1988, and June 30, 1989 1/

Item	December 31 of--			As of June 30--	
	1986	1987	1988	1988	1989
Inventories (units).....	***	***	***	***	***
Inventories as a share of U.S. shipments (percent)...	***	***	***	<u>2/</u> ***	<u>2/</u> ***
Inventories as a share of total shipments (percent)..	***	***	***	<u>2/</u> ***	<u>2/</u> ***

1/ Parts of drafting machines are not included in inventory data.

2/ Based on annualized shipment data.

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

<sup>24</sup> Unit values of the U.S. producer's completed drafting machine shipments are necessarily influenced by shifts in the product mix.

U.S. employment, wages, and productivity

The reported number of production and related workers producing drafting machines and parts thereof decreased \*\*\* percent between 1986 and 1987, then increased \*\*\* percent in 1988 (table 6). Between January-June 1988 and January-June 1989, a decrease of \*\*\* percent occurred. Since June 1989, Vemco has reduced its drafting machines employees by \*\*\* percent, a reduction of \*\*\* employees, owing to \* \* \*. <sup>25</sup> Vemco employees are not represented by a union.

Hours worked, wages paid, and total compensation paid to production and related workers producing all products and drafting machines and parts thereof generally experienced a decrease from 1986 to 1987, an increase in 1988, and a decrease in January-June 1989 compared with levels in the corresponding period of the previous year. Average hourly wages paid to production and related workers producing all products and drafting machines and parts thereof increased during 1986-88, and decreased in January-June 1989 compared with the level in the corresponding period of the previous year.

The number of drafting machines produced per 1,000 hours worked was \*\*\* in 1986, \*\*\* in 1987, \*\*\* in 1988, \*\*\* in January-June 1988, and \*\*\* in January-June 1989. Unit labor costs for drafting machines fell \*\*\* percent from \*\*\* per unit in 1986 to \*\*\* per unit in 1987 and rose \*\*\* percent to \*\*\* per unit in 1988, for an overall increase of \*\*\* percent between 1986 and 1988. Unit labor costs in January-June 1989 amounted to \*\*\*, a decrease of \*\*\* percent compared with unit labor costs in the corresponding period of 1988.

Financial experience of the U.S. producer

The petitioner, Vemco Corp., the only known U.S. producer of drafting machines since 1985, supplied income-and-loss data for both the overall operations of its establishment in which drafting machines and parts are produced and, separately, for its operations producing such products. As a result of verification of Vemco's financial data, revisions were requested for clerical errors and allocation adjustments. The net effect of the revisions increased drafting machines' \* \* \* to \*\*\* in 1986 (from \*\*\*), decreased \* \* \* to \*\*\* in 1987 (from \*\*\*), and decreased \* \* \* to \*\*\* in 1988 (from \*\*\*). \* \* \* did not change in the interim periods.

Overall establishment operations.--Overall establishment financial results, which are the combined operations of the Vemco and Quantum divisions of Vemco Corp., are presented in table 7. The overall establishment operations of the firm are devoted primarily to producing drafting machines and parts thereof. On the basis of net sales, these products accounted for \*\*\* percent of the overall establishment operations during 1986-88. Goods produced other than drafting machines are drafting scales, drafting lamps, and instruments. The Quantum division produces diazo printers.

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<sup>25</sup> Petitioner's questionnaire response.

Table 6

Average number of employees and production and related workers producing drafting machines and parts thereof and all products, hours worked, wages paid, hourly wages, total compensation paid, productivity, and unit labor costs, 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June--	
				1988	1989
Average number of employees.....	***	***	***	***	***
Number of production and related workers producing--					
All products.....	***	***	***	***	***
Drafting machines and parts thereof.....	***	***	***	***	***
Hours worked by production and related workers producing--					
All products (1,000 hours).....	***	***	***	***	***
Drafting machines and parts thereof (1,000 hours).....	***	***	***	***	***
Wages paid to production and related workers producing--					
All products (1,000 dollars)...	***	***	***	***	***
Drafting machines and parts thereof (1,000 dollars).....	***	***	***	***	***
Average hourly wages paid to production and related workers producing--					
All products.....	***	***	***	***	***
Drafting machines and parts thereof.....	***	***	***	***	***
Total compensation paid to production and related workers producing--					
All products (1,000 dollars)...	***	***	***	***	***
Drafting machines and parts thereof (1,000 dollars).....	***	***	***	***	***
Productivity (drafting machines):					
Quantity (units/1,000 hours)...	***	***	***	***	***
Percentage change.....	***	***	***	***	***
Unit labor costs (drafting machines):					
Per unit.....	***	***	***	***	***
Percentage change.....	***	***	***	***	***

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

Table 7

Income-and-loss experience of Vemco Corp. 1/ on the overall establishment operations within which drafting machines are produced, accounting years 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June-- 2/	
				1988	1989
	Value (1,000 dollars)				
Net sales.....	***	***	***	***	***
Cost of goods sold.....	***	***	***	***	***
Gross profit.....	***	***	***	***	***
Selling, general, and administrative expenses....	***	***	***	***	***
Operating income or (loss)...	***	***	***	***	***
Interest expense.....	***	***	***	***	***
Other income or (loss), net..	***	***	***	***	3/ ***
Net income or (loss) before income taxes.....	***	***	***	***	***
Depreciation and amorti- zation included above.....	***	***	***	***	***
Cash-flow 4/.....	***	***	***	***	***
	Share of net sales (percent)				
Cost of goods sold.....	***	***	***	***	***
Gross profit.....	***	***	***	***	***
Selling, general, and administrative expenses....	***	***	***	***	***
Operating income or (loss)...	***	***	***	***	***
Net income or (loss) before income taxes.....	***	***	***	***	***

1/ Vemco and Quantum divisions.

2/ January-June data are reported on an internal basis that is not necessarily comparable to annual data that conform to external reporting requirements.

3/ Includes capital gain of \*\*\* on sale of land less other expense.

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

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

Overall establishment income-and-loss data show a \*\*\* percent decrease in net sales from \*\*\* in 1986 to \*\*\* in 1987 and 1988. There was a \* \* \* of \*\*\* percent in net sales in January-June 1989 from the same period in 1988. \* \* \*, however, \* \* \* from \*\*\* in January-June 1988 to \*\*\* in January-June 1989. The cost of goods sold, in absolute dollars and as a share of net sales, \* \* \* during 1986-88; therefore, \* \* \* progressively \* \* \* in 1987 and 1988. \* \* \*. The three major components of cost of goods sold (raw materials, direct labor, and factory overhead) were \* \* \*.

Operations on drafting machines and parts thereof.--The financial results of Vemco Division on its drafting machines and parts thereof are presented in table 8. \* \* \* to the experience in overall establishment operations, net sales decreased by \*\*\* percent from \*\*\* in 1986 to \*\*\* in 1987, and \* \* \* in 1988. Net sales in January-June 1989 decreased by \*\*\* percent from the same period in 1988. Cost of goods sold, in absolute dollars and as a share of net sales, increased in each year during 1986-88. The increases \* \* \* caused \* \* \* during 1986-88. \* \* \*. \* \* \* in January-June 1989 was \*\*\* compared with \* \* \* of \*\*\* during the same period in 1988.

Vemco's counsel, in a submission dated May 2, 1989, indicated that there were \* \* \* in the price of aluminum during 1987 and 1988. For the period 1985-89, the price increases ranged from \*\*\* percent for track materials to \*\*\* percent for aluminum strip. The aluminum costs represent approximately \* \* \* of Vemco's raw material purchases. A cost increase of \*\*\* percent for chrome steel bearings was also shown in the same exhibit.

Total selling, general, and administrative (SG&A) expenses for the Vemco and Quantum divisions, after a decrease in 1987 from 1986, increased slightly in 1988. The five major accounts are shown in the following tabulation (in thousands of dollars):

\* \* \* \* \*

Drafting machines' portion of these expenses ranged from approximately \*\*\* percent in \* \* \* to \*\*\* percent in \* \* \*. Vemco indicated in its questionnaire response that the selling expenses were allocated to drafting machines on the basis of respective sales revenues, and general and administrative expenses were allocated on the basis of respective cost of goods sold. These allocations were verified and are considered acceptable under Commission guidelines.

Vemco leased its facilities from \* \* \* under a one-year lease expiring December 31, 1988. Subsequent to December 31, 1988, Vemco \* \* \*. Its monthly rent on the main facilities is subject to \* \* \*. Net rent expense for Vemco Division for the years ended December 31, 1986, 1987, and 1988, was \*\*\* , respectively. The changes in the expense are primarily related to changes in warehouses leased.

The U.S. market for drafting machines has contracted significantly each year since 1985. It is conceded by Vemco officials <sup>26</sup> that the newer, and more expensive, technology, CAD, has softened the drafting machine market; however, Vemco also believes that there is still a marketing niche for drafting machines because of their much lower costs compared with the hardware and software costs of the CAD systems. Notwithstanding the possible erosion of the market by the newer technology, Vemco officials believe that had the

<sup>26</sup> Telephone conversation on Apr. 24, 1989, with \* \* \*, Vemco Corp., and Collier, Shannon, Rill & Scott, submission of May 2, 1989, p. 23, statement attributed to Philip Vaughan, Vemco's president.

Table 8

Income-and-loss experience of Vemco Corp. on its operations producing drafting machines and parts thereof, accounting years 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June--1/ 1988 1989	
				1988	1989
Value (1,000 dollars)					
Net sales.....	***	***	***	***	***
Cost of goods sold.....	***	***	***	***	***
Gross profit.....	***	***	***	***	***
Selling, general, and administrative expenses....	***	***	***	***	***
Operating income or (loss)...	***	***	***	***	***
Interest expense.....	***	***	***	***	***
Other income or (loss), net..	***	***	***	***	***
Net income or (loss) before income taxes.....	***	***	***	***	***
Depreciation and amorti- zation included above.....	***	***	***	***	***
Cash-flow 2/.....	***	***	***	***	***
Share of net sales (percent)					
Cost of goods sold.....	***	***	***	***	***
Gross profit.....	***	***	***	***	***
Selling, general, and administrative expenses....	***	***	***	***	***
Operating income or (loss)...	***	***	***	***	***
Net income or (loss) before income taxes.....	***	***	***	***	***

1/ Interim data are reported on an internal basis that is not necessarily comparable to annual data that conform to external reporting requirements.  
2/ Cash-flow is defined as net income or loss plus depreciation and amortization.

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

prices of the subject product from Japan reflected the same proportional appreciation as the yen vis-a-vis the dollar, Vemco would have \* \* \* during 1986-88.

Financial ratios.--Analysis of Vemco's financial statements revealed \* \* \* when compared with income-and-loss performance. For instance, Vemco Division's current ratio (current assets divided by current liabilities), which measures the ability to meet short-term obligations with current assets, \* \* \*. However, additional analysis reveals that this \* \* \* is caused by \* \* \*, \* \* \*. The current and rates-of-return ratios are shown in the following tabulation:

\* \* \* \* \*

The return on total assets measures management's effectiveness at using company assets to generate income. Return on stockholders' equity summarizes management's success at maximizing the return to the stock investors. Comparison of the various \* \* \*.

Vemco Division's accounts receivable turnover rate (net sales divided by accounts receivable) is \* \* \*, as shown in the following tabulation:

\* \* \* \* \*

Average outstanding receivables greater than 45 days is considered undesirable, and as the period expands, the less desirable it becomes with respect to working capital requirements.

Enclosed with Vemco's questionnaire response were \* \* \*. <sup>27</sup>

Value of plant, property, and equipment.--The data provided by Vemco on its end-of-period investment in productive facilities in which drafting machines are produced are shown in the following tabulation (in thousands of dollars):

\* \* \* \* \*

Capital expenditures.--The data provided by Vemco relative to its capital expenditures for land, buildings, and machinery and equipment used in the manufacture of drafting machines are shown in the following tabulation (in thousands of dollars):

\* \* \* \* \*

Research and development expenses.--Research and development expenses by Vemco relating to all products and drafting machines are shown in the following tabulation (in thousands of dollars):

\* \* \* \* \*

Capital and investment.--The Commission requested Vemco to describe any actual or potential negative effects of imports of drafting machines and parts from Japan on its growth, investment, development and production efforts, and ability to raise capital. Vemco's response is presented in appendix E.

<sup>27</sup> Telephone conversation on Oct. 19, 1989, with \* \* \*, Vemco Corp.

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 <sup>28</sup>--

(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,

(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

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<sup>28</sup> 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."



(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.<sup>29</sup>

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 of this report entitled "Consideration of the causal relationship between imports of the subject merchandise and the alleged material injury;" and 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 to an industry in the United States." 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.

#### U.S. importers' inventories

U.S. importers' yearend inventories of drafting machines imported from Japan fell \*\*\* percent from \*\*\* units in 1986 to \*\*\* units in 1988 (table 9). Importers' inventories as of June 30, 1989, amounted to \*\*\* units,

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<sup>29</sup> 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."

representing a decrease of \*\*\* percent compared with the level of inventories on June 30, 1988. Inventories held by U.S. importers were \* \* \*. This is reportedly due to a \* \* \* lead time from Mutoh Industries Ltd.<sup>30</sup> Inventories as a share of shipments for U.S. importers of Japanese-produced drafting machines dropped from \*\*\* percent in 1986 to \*\*\* percent in 1987 and \*\*\* percent in 1988; they rose from \*\*\* percent in January-June 1988 to \*\*\* percent in January-June 1989. U.S. importers' inventories as of November 30, 1989, were \*\*\* units.

Two U.S. importers, \* \* \*, reported inventories of drafting machines for the period 1986-88. \* \* \* was responsible for the majority of inventories held throughout the period of investigation. Decreasing inventories held by \* \* \* are attributable to its decision to \* \* \*.

Table 9

Drafting machines: End-of-period inventories <sup>1/</sup> of Japanese products, as of Dec. 31 of 1986-88, June 30, 1988, and June 30, 1989

Item	December 31 of--			June 30 of--	
	1986	1987	1988	1988	1989
Quantity (units).....	***	***	***	***	***
As a share of importers' U.S. shipments (percent).....	***	***	***	2/ ***	2/ ***

<sup>1/</sup> Inventories are reported for completed drafting machines only.

<sup>2/</sup> Based on annualized shipment data.

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

### The producers in Japan<sup>31</sup>

The Commission requested counsel for Mutoh Industries Ltd., a major Japanese producer and exporter of drafting machines and parts thereof to the United States, to provide information on its Japanese capacity, production, inventories, and shipments of the subject products for the period of investigation. Mutoh Industries produces drafting machines, drafting tables, and other accessory items, as well as CAD systems. In existence since 1952, Mutoh Industries has exported its products to the United States since September 1965.<sup>32</sup> Information regarding additional producers of drafting

<sup>30</sup> Telephone conversation on May 4, 1989, with counsel for Mutoh Industries Ltd. and Mutoh America, Inc.

<sup>31</sup> Other foreign producers of drafting machines and parts thereof include Kuhlman, West Germany; Neolt, Italy; and Technostyl, Italy. These producers are believed to export an extremely small quantity of the subject product to the United States.

<sup>32</sup> Transcript of the conference in the preliminary investigation, pp. 54 and 56.

machines and parts thereof in Japan was also requested of the U.S. Embassy in Tokyo by the Commission.<sup>33</sup> The Embassy's response contained only recent export data; no details on indicators such as capacity, production, or inventories were provided.

Data received from counsel to Mutoh are presented in table 10. These data show a decline in all reported indicators in 1987, with the exception of home-market shipments, which increased \*\*\* percent over 1986 levels. Conversely, most indicators increased in 1988 and in the interim 1989 period. However, inventories as a share of total shipments and exports to the United States continued to fall in 1988, then increased during January-June 1989. Mutoh is currently operating at a \* \* \* rate of capacity utilization, \*\*\* percent, and \* \* \*. As a share of total shipments of drafting machines, Mutoh's reported exports to the United States fell throughout the period of investigation, from \*\*\* percent in 1986 to \*\*\* percent in 1988. During the interim periods it remained constant at \*\*\* percent. Mutoh has \* \* \* markets for its drafting machines. According to Mutoh officials, Mutoh Industries currently accounts for \* \* \* of Japanese-produced drafting machine exports to the United States. Mutoh's market share in Japan is \* \* \*.<sup>34</sup> Mutoh Industries is the parent company of Mutoh America, Inc., a subsidiary engaged in the sale and distribution of drafting machines in the United States. Mutoh America, Inc., does not possess U.S. production capability, \* \* \*. In addition, there is no evidence of the existence of dumping findings or antidumping remedies in other GATT-member markets relating to drafting machines and parts thereof from Japan.

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

U.S. imports

Data on imports of drafting machines and parts thereof, shown in table 11, were compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and are believed to represent close to 99 percent of total imports of the subject articles. Five firms provided usable import data: \* \* \*. Mutoh America, Inc.'s imports account for \* \* \* imports of drafting machines and parts thereof from Japan during the period of investigation and Mutoh America is \* \* \*.<sup>35</sup> \* \* \* stopped importing from Japan in \*\*\*, respectively. \* \* \* stopped importing \* \* \*, but continues to import small quantities from \* \* \*. \* \* \*.

U.S. imports of drafting machines from Japan fell \*\*\* percent during 1986-88, and \*\*\* percent from January-June 1988 to January-June 1989. The total value of these imports similarly declined \*\*\* percent from 1986 to 1988,

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<sup>33</sup> In particular, information was requested on Max Co., Ltd., and Uchida Yoko Co., Ltd. \* \* \*.

<sup>34</sup> Prehearing brief of Graham & James, p. 31.

<sup>35</sup> Mutoh's projected imports for 1989 are \*\*\* units.

Table 10

Drafting machines: Mutoh Industries, Ltd.'s capacity, production, capacity utilization, end-of-period inventories, inventories as a share of total shipments, home-market shipments, exports to the United States, exports to all other countries, and total shipments, 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June--	
				1988	1989
Capacity (units).....	***	***	***	***	***
Production (units).....	***	***	***	***	***
Capacity utilization (percent)...	***	***	***	***	***
End-of-period inventories (units)	***	***	***	***	***
Inventories as a share of total shipments (percent).....	***	***	***	***	***
Shipments:					
Exports to the U.S. (units)....	***	***	***	***	***
Other exports (units).....	***	***	***	***	***
Total exports (units).....	***	***	***	***	***
Home market (units).....	***	***	***	***	***
Total shipments (units).....	***	***	***	***	***

Source: Data submitted by counsel for Mutoh Industries in response to a request for information by the Commission.

and \*\*\* percent from January-June 1988 to January-June 1989. Although imports of parts of drafting machines experienced an overall increase over the period of investigation, they accounted for only \*\*\* to \*\*\* percent of the total value of imports of drafting machines and parts thereof during the period of investigation. The aggregate value of imports of drafting machines and parts thereof declined \*\*\* percent from 1986 to 1988, and further declined \*\*\* percent from January-June 1988 to January-June 1989. Unit values of drafting machines from Japan decreased nearly \*\*\* percent from 1986 to 1987, increased almost \*\*\* percent in 1988, and increased \*\*\* percent from January-June 1988 to January-June 1989. <sup>36</sup>

U.S. importers' shipments of drafting machines and parts thereof from Japan are presented in table 12. U.S. importers' domestic shipments of drafting machines decreased \*\*\* percent from 1986 to 1988, and decreased \*\*\* percent from January-June 1988 to January-June 1989. The value of U.S. importers' shipments of drafting machines similarly decreased \*\*\* percent from 1986 to 1988, and decreased \*\*\* percent from January-June 1988 to January-June 1989. The value of shipments of imports of parts of drafting machines increased \*\*\* percent from 1986 to 1988, then decreased \*\*\* percent from January-June 1988 to January-June 1989. Export shipments made by U.S. importers of drafting machines and parts thereof were \*\*\* percent of their total shipments. Unit values of U.S. shipments by U.S. importers fell \*\*\*

<sup>36</sup> Unit values are necessarily influenced by shifts in the product mix.

Table 11

Drafting machines and parts thereof: U.S. imports, 1/ 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June--	
				1988	1989
<u>Quantity (units)</u>					
Drafting machines:					
From Japan 1/.....	***	***	***	***	***
From other countries 2/.....	***	***	***	***	***
Total imports.....	***	***	***	***	***
<u>Value (\$1,000) 3/</u>					
Drafting machines:					
From Japan 1/.....	***	***	***	***	***
From other countries 2/.....	***	***	***	***	***
Total imports.....	***	***	***	***	***
Parts of drafting machines: 4/					
From Japan.....	***	***	***	***	***
From other countries.....	***	***	***	***	***
Total imports.....	***	***	***	***	***
<u>Unit value</u>					
Drafting machines:					
From Japan.....	***	***	***	***	***
From other countries 2/.....	***	***	***	***	***
Average, all sources.....	***	***	***	***	***

1/ Excludes imports of \* \* \*, which provided U.S. shipment data but no import data. If it is assumed that \* \* \* imports equal its U.S. shipments, then total U.S. imports from Japan in this table would be \*\*\* units in 1986, valued at \*\*\*, \*\*\* units in 1987, valued at \*\*\*, \*\*\* units in 1988, valued at \*\*\*. \* \* \* did not provide partial-year data.

2/ The only U.S. importers of drafting machines that reported imports from any other country were \* \* \*.

3/ Landed, duty paid.

4/ \* \* \*.

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

percent from 1986 to 1987, rose \*\*\* percent in 1988, and rose \*\*\* percent from January-June 1988 to January-June 1989. <sup>37</sup>

#### Market penetration by the subject imports

As shown in table 13, overall U.S. consumption of drafting machines fell by \*\*\* percent from 1986 to 1988. During the period, the ratio of U.S.

<sup>37</sup> Ibid.

Table 12

Drafting machines and parts thereof from Japan: U.S. importers' domestic shipments, export shipments, and total shipments, 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June--	
				1988	1989
<u>Quantity (units)</u>					
Drafting machines:					
Domestic shipments.....	***	***	***	***	***
Export shipments.....	***	***	***	***	***
Total shipments.....	***	***	***	***	***
<u>Value (\$1,000)</u>					
Drafting machines:					
Domestic shipments.....	***	***	***	***	***
Export shipments.....	***	***	***	***	***
Total shipments.....	***	***	***	***	***
Parts of drafting machines:					
Domestic shipments.....	***	***	***	***	***
Export shipments.....	***	***	***	***	***
Total shipments.....	***	***	***	***	***
<u>Unit value</u>					
Drafting machines:					
Domestic shipments.....	***	***	***	***	***
Export shipments.....	***	***	***	***	***
Total shipments.....	***	***	***	***	***

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

importers' shipments of Japanese-produced drafting machines to U.S. consumption was \*\*\* percent in 1986, \*\*\* percent in 1987, \*\*\* percent in 1988, \*\*\* percent in January-June 1988, and \*\*\* percent in January-June 1989. The ratio of the value of U.S. importers' U.S. shipments of drafting machines to the value of U.S. consumption was \*\*\* percent in 1986, \*\*\* percent in 1987, \*\*\* percent in 1988, \*\*\* percent in January-June 1988, and \*\*\* percent in January-June 1989. <sup>38</sup>

### Market structure

Market participants.--The drafting machine market comprises two principal suppliers--Vemco, the only U.S. producer, and Mutoh, the largest importer of

<sup>38</sup> The value of U.S. importers' U.S. shipments of parts of drafting machines was \*\*\* percent of the value of apparent U.S. consumption of such parts in 1986, \*\*\* percent in 1987, and \*\*\* percent in 1988. Apparent U.S. consumption of drafting machine parts accounts for between \*\*\* and \*\*\* percent of the value of total apparent U.S. consumption of drafting machines and parts thereof combined.

Table 13

Drafting machines and parts thereof: Shares of U.S. consumption supplied by Japan, and all other countries, 1986-88, January-June 1988, and January-June 1989

Item	1986	1987	1988	January-June--	
				1988	1989
<u>Quantity (units)</u>					
Drafting machines:					
Apparent consumption.....	***	***	***	***	***
Share of apparent consumption supplied by--					
Japan (percent).....	***	***	***	***	***
All other countries (percent)	***	***	***	1/	1/
Total imports (percent)....	***	***	***	***	***
<u>Value (\$1,000)</u>					
Drafting machines:					
Apparent consumption.....	***	***	***	***	***
Share of apparent consumption supplied by--					
Japan (percent).....	***	***	***	***	***
All other countries (percent)	1/	1/	1/	1/	1/
Total imports (percent)....	***	***	***	***	***

1/ Questionnaire responses indicate that the share of U.S. consumption supplied by these countries is \*\*\* percent.

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

drafting machines from Japan.<sup>39</sup> The majority of domestic and imported drafting machines sold in the United States are sold to distributors, with the remainder sold directly to end users.<sup>40</sup> These distributors resell the drafting machines to end users such as draftsmen, engineers, architects, navigators, designers, and graphic artists. In addition, both Vemco and Mutoh also sell drafting machines to private-label distributors who, \* \* \*.

<sup>39</sup> Mutoh and Vemco were the most frequently mentioned suppliers by purchasers; other suppliers mentioned include Keuffel & Esser, a U.S. firm that ceased production in 1983 and then \* \* \*, and Teledyne Post, a private-label distributor.

<sup>40</sup> Respondents allege that there is a growing stock of used drafting machines available for sale in the U.S. market. There is no data available on the size of this stock or how these drafting machines are being sold. Petitioner stated at the hearing that used machines are not usually advertised because they are sold at low prices, do not generate a lot of revenue, and are generally marketed in very localized areas (Transcript of the hearing, p. 48).

Distributors reported selling both domestic and imported drafting machines. <sup>41</sup> Over half of the responding distributors reported purchasing drafting machines from both Vemco and Mutoh; several stated that they did so in order to offer customers a choice of different features. Some distributors compete directly with Vemco or Mutoh or both; <sup>42</sup> however, most reported that they compete with other distributors for sales of drafting machines. Distributors tend to stay with the same supplier, and since there are so few suppliers, they always know the country of origin of the product. Only four distributors reported that they switched suppliers during the last three years. Reasons given for switching include inventory investment advantages of domestic sources, <sup>43</sup> discontinuation of the product by Keuffel & Esser; dissatisfaction with the current supplier (Mutoh); and fluctuations in the dollar-yen exchange rate. <sup>44</sup>

The participants in the drafting machines market have not changed during the last three years. In fact, only two distributors named suppliers that have entered the market recently--Nestler and Marabu (both of West Germany). Since distributors do not generally change from one supplier to another, most reported that they only contact one supplier before making a purchase. <sup>45</sup> In making purchases, distributors consider many different factors, such as quality, current availability, price, quality, and delivery. Quality appears to be the most important factor, as ten distributors ranked it as the most important criterion. <sup>46</sup> Price is also a major factor in a purchasing decision, with four distributors ranking it as their first consideration and four placing it second.

Competition between drafting machines and CAD systems--Some end users may consider CAD systems as an alternative product to drafting machines. <sup>47</sup> Although there is agreement that CAD systems have had an impact on the drafting machine market, there is disagreement as to the extent to which the

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<sup>41</sup> Sixteen firms responded to the Commission's questionnaires; these purchasers accounted for approximately 14 percent of total drafting machine sales in 1988.

<sup>42</sup> Private-label distributors that \* \* \*.

<sup>43</sup> This purchaser stated that longer leadtimes for the Japanese product required the company to maintain larger inventories (Staff interview with \* \* \*).

<sup>44</sup> This purchaser had been buying drafting machines produced in Japan by \* \* \*.

<sup>45</sup> Those distributors that purchase drafting machines from both Mutoh and Vemco contact both suppliers before making a purchase.

<sup>46</sup> The majority of distributors reported that the quality of Vemco and Mutoh drafting machines is comparable.

<sup>47</sup> For a description of CAD systems, see the section of this report entitled "Substitute products."



two products compete. The petitioner agrees that sales of drafting machines have decreased due to increased sales of CAD systems but does not believe that all users of drafting machines will switch to CAD. <sup>48</sup> Mutoh agrees with Vemco in that there will always be a drafting machine market. Industry sources, on the other hand, argue that sales of CAD systems have increased and will continue to do so until they replace virtually all new drafting machines. <sup>49</sup> Many distributors reported that sales of drafting machines have declined during the past three years and that CAD systems have been a cause of this. However, distributors disagreed as to whether CAD systems will eventually replace drafting machines in the marketplace. Some distributors indicated that they expected the downward trend in drafting machine sales and the upward trend in CAD sales to continue, because CAD systems are more productive and efficient. Several distributors commented that some engineering and architectural schools are now teaching students on CAD systems and that this may influence purchasing decisions later. On the other hand, other distributors stated that there would always be a market for drafting machines despite the existence of CAD systems. These distributors stated that basic skills of drawing must be learned on drafting machines and that the higher costs of CAD systems would prohibit some users, particularly small companies, from buying them.

### Prices

Prices for drafting machines are generally quoted on an f.o.b. plant basis. Transportation costs account for a small share, less than \*\*\* percent, of the total cost of a drafting machine. \* \* \*. <sup>50 51</sup> Average leadtime for delivery is similar for Vemco and Mutoh drafting machines, with most being shipped within \*\*\* days. For custom-made machines the average leadtime is much longer, taking \* \* \* for delivery.

Actual transaction prices are discounted from published list prices by both Vemco and Mutoh. <sup>52</sup> Vemco's discount schedule is based on the quantity of drafting machines purchased and \* \* \*. <sup>53</sup> \* \* \*. Vemco's discount

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<sup>48</sup> Transcript of the hearing, p. 73.

<sup>49</sup> Transcript of the hearing, pp. 118-128.

<sup>50</sup> \* \* \*.

<sup>51</sup> \* \* \*.

<sup>52</sup> Many distributors reported that prices for drafting machines change approximately once a year.

<sup>53</sup> In addition to quantity-based discounts, Vemco also offers a \* \* \* discount for \* \* \* and a \* \* \* discount for \* \* \*. These discounts only account for approximately \*\*\* percent of total dollar sales. Vemco's reported prices do not reflect these additional discounts; therefore the reported prices may be somewhat overstated. (Staff interview with \* \* \*).

schedules, based on the number of machines purchased in a single transaction, are presented in the tabulation below: <sup>54</sup>

\* \* \* \* \*

Dealers that sell Vemco drafting machines under private labels constitute the fourth category. Discounts for these companies \* \* \*. For example, \* \* \* has received discounts of \* \* \* from Vemco.

Mutoh bases its discounts on the quantity of drafting machines \* \* \*. \* \* \*.

Both Mutoh and Vemco offer warranties on their drafting machines; however, these differ somewhat. Vemco warranties vary from model to model. Vemco's warranties range from 2 years on parts and labor for its elbow-type drafting machines to 10 years on parts and labor for its 630 track drafting machine. <sup>55</sup> Mutoh has one warranty for all models--two years against defects in parts and craftsmanship.

The Commission requested Vemco and U.S. importers of drafting machines from Japan to provide data on their largest quarterly sales to distributors from January 1986 to June 1989. <sup>56</sup> The products selected are those considered by both Vemco and Mutoh to be most representative of the drafting machine market. Product descriptions are as follows:

PRODUCT 1: Elbow or band-and-pulley drafting machines with 18" arm size.

PRODUCT 2: Track drafting machines with vernier protractor head and 32" x 42" board size.

PRODUCT 3: Track drafting machines with vernier protractor head, secondary baseline setting scale, and 37"-37.5" x 60" board size.

PRODUCT 4: Track drafting machines with vernier or dial-type protractor head, secondary baseline setting scale, stainless steel bearings or rollers, and 37"-37.5" x 60" board size.

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<sup>54</sup> During the past few years Vemco has introduced a \* \* \*.

<sup>55</sup> Vemco's warranty on the 520 track machine is 3 years on parts and labor; on the 612 track machine it is 2 years on the track assembly and 10 years on the protractor head.

<sup>56</sup> Price data for sales to private-label distributors were also requested from producers and importers. Prices for domestic and imported drafting machines sold to \* \* \* are discussed in the "price trends" section, but are not shown in tabular form.

Vemco and Mutoh provided price data for sales of drafting machines that best fit these four product descriptions. These specific products represented \*\*\* percent of domestic shipments and \*\*\* percent of imports of drafting machines from Japan during 1988. Although these descriptions fit the four main drafting machines sold by both Vemco and Mutoh, problems arise when direct comparisons of the different models are attempted. Both petitioner and respondent acknowledge the difficulty in making comparisons because of different features offered on each model. <sup>57</sup>

Price trends.--Prices reported by Vemco for three of the four products fluctuated slightly but increased overall during the period of investigation; prices for product 1 decreased overall. Mutoh's prices increased irregularly for the four products during the period. Many of the fluctuations in both Vemco and Mutoh's prices are a result of different discounts. Prices for products 1-4 reported by Vemco and Mutoh are shown in tables 14-15. <sup>58</sup>

Vemco's prices for product 1 \* \* \* from January-March 1986 to October-December 1986 and \* \* \* through the end of 1987. <sup>59</sup> During 1988, prices \* \* \* to a level \*\*\* percent \* \* \* the January-March 1986 level; they then \* \* \* to \* \* \* in April-June 1989, for an overall \* \* \* of \*\*\* percent. <sup>60</sup> Mutoh's prices for product 1 \* \* \* in the third quarter of 1986 and \* \* \* through the end of 1987. Prices then \* \* \* in January-March 1988 and again in April-June 1989, for an overall \* \* \* of \*\*\* percent.

Table 14:

Drafting machines: F.o.b. prices and margins of underselling (overselling) reported by Vemco and Mutoh America for sales to distributors of product 1, by quarters, January 1986-June 1989

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\* \* \* \* \*

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

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<sup>57</sup> Staff interview with \* \* \*, Vemco Corp., Sept. 6, 1989, and \* \* \*, Mutoh America, Sept. 5, 1989.

<sup>58</sup> Ranges of highest and lowest sales prices for products 1-4 reported by Vemco and Mutoh are presented in app. F. In general, \* \* \*.

<sup>59</sup> \* \* \*. Vemco's list price actually remained the same during these quarters.

<sup>60</sup> The price reported in April-June 1989 reflects a sale to \* \* \*.

Vemco and Mutoh also reported prices for sales of product 1 to \* \* \*, but these are not displayed in a table. <sup>61</sup> \* \* \*. <sup>62</sup>

Vemco's prices for its 520 model (product 2) increased irregularly during the period for an overall increase of \*\*\* percent (table 15). Mutoh's prices for its AV model (product 2) generally increased throughout the period and in April-June 1989 reached a level \*\*\* percent above that of the first quarter of 1986.

Table 15

Drafting machines: F.o.b. prices and total quarterly shipments of products 2, 3, and 4 to distributors as reported by Vemco and Mutoh America, by quarters, January 1986-June 1989

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\* \* \* \* \*

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

Prices for product 3 reported by Vemco increased approximately \*\*\* percent during the period. In February 1988, Vemco introduced its model 612 track drafting machine, which replaced the model MK12. <sup>63</sup> Mutoh's prices for its SA model fluctuated during the period, with an overall increase of \*\*\* percent.

Vemco introduced its model 630 (product 4) in April 1987. Prices for the 630 \* \* \* during 1987 and then \* \* \* in January-March 1988. Prices for the 630 were approximately \*\*\* percent higher in April-June 1989 than they were in April-June 1987. Prices for Mutoh's LM model (product 4) generally increased during the period, reaching a level \*\*\* percent higher in April-June 1989 than in January-March 1986.

Price comparisons--Although all four of the products for which sales prices are reported fit the general descriptions, direct price comparisons are only made for product 1. Price comparisons for products 2, 3, and 4 are difficult and have not been presented in the tables because of the differences

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<sup>61</sup> Prices for sales to private-label distributors are discussed separately because the drafting machines are made specifically for the private-label distributors and bear the purchaser's trademark.

<sup>62</sup> \* \* \*.

<sup>63</sup> \* \* \*.

in product features and warranties. <sup>64</sup> According to the petitioner, Vemco and Mutoh models are not directly comparable; rather, they fall into a "stairstep listing." The order from top to bottom is as follows--Mutoh LM, followed by Vemco 630, Mutoh SA, Vemco 612, Mutoh AV, and then the Vemco 520. <sup>65</sup> <sup>66</sup> Respondents stated that the following models compete directly in the marketplace: Mutoh LM and Vemco 630, and Mutoh SA and Vemco 612. <sup>67</sup> Purchasers were also asked to compare models, and many responded that direct product comparisons are difficult because of the differing features. Those that responded stated that the Mutoh LM and the Vemco 630, and the Mutoh SA and the Vemco 612 are the most comparable.

Price comparisons for product 1, the elbow or band-and-pulley drafting machine, are presented in table 14. <sup>68</sup> Mutoh's model E-18 undersold Vemco's model 3300 in \*\*\* of 14 quarters by between \*\*\* and \*\*\* percent. In \*\*\* quarters, prices for Mutoh's product were \*\*\* and \*\*\* percent higher than those for Vemco's 3300. <sup>69</sup>

Both Vemco's model 520 and Mutoh's model AV (product 2) have vernier protractor heads with readings to 5 minutes of arc and braking systems. <sup>70</sup> Mutoh's AV, however, also has stainless steel bearings, a secondary baseline indicator, and a protractor headlifter. <sup>71</sup> Thus, \* \* \*, Mutoh's AV model has several additional features that Vemco's 520 does not.

The Vemco 612 and the Mutoh SA (product 3) both have vernier protractor heads with readings to 5 minutes of arc, protractor headlifters, braking

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<sup>64</sup> Although these features may affect the cost of a drafting machine, they do not significantly affect the overall performance of the machine. The differences in warranties are discussed earlier in the price section of this report.

<sup>65</sup> Transcript of the hearing, p. 106.

<sup>66</sup> At the Commission's hearing, petitioner made graphical comparisons between models, making adjustments for the cost of different features on Mutoh's models. Comparisons were made between Vemco's 630 and Mutoh's LM, Vemco's 520 and Mutoh's AV, and Vemco's 3300 and Mutoh's model E-18.

<sup>67</sup> Transcript of the hearing, p. 159.

<sup>68</sup> Price comparisons for sales to \* \* \* are not made because \* \* \*.

<sup>69</sup> Mutoh's price for product 1 was \*\*\* percent \* \* \* than Vemco's in the second quarter of 1989; this was the quarter when Vemco's \* \* \*.

<sup>70</sup> The braking systems are slightly different in that Vemco's has a "stop-and-go" system while the Mutoh model has a brake that must be locked and unlocked.

<sup>71</sup> The stainless steel wheels allow for a smoother glide of the tracks; the headlifter allows the protractor head to be above the drafting board and, thus, move freely around the board.

systems, secondary baseline indicators, and micrometer adjustments. Mutoh's SA model also has stainless steel bearings and contains a baseline vernier. In \*\*\* quarters, Mutoh's prices for the SA were lower than Vemco's prices for its 612. In the remaining \*\*\* quarters, Vemco's prices were lower than those of Mutoh.

The Vemco 630 and Mutoh LM have many of the same features as the previously discussed 612 and SA; however, each has additional features. The 630 model has a protractor headlifter and stainless steel ball bearings, as does the LM model. The 630 also has a more precise secondary baseline scale (5 minutes as opposed to 10 minutes). Mutoh's SA has a dial-type protractor head instead of a vernier type and has magnetic levitation.<sup>72</sup> Mutoh's prices for the LM were lower than those of Vemco's 630 in \*\*\* quarters; Vemco's prices were lower than Mutoh's in the remaining \*\*\* quarters.

#### Lost sales and lost revenues

Vemco reported 4 instances of lost sales, involving a total of \*\*\* drafting machines, valued at \*\*\*, and 4 instances of lost revenues, totaling \*\*\*, involving a total of \*\*\* drafting machines.<sup>73</sup> Staff contacted all of the 6 purchasers named in the allegations and a summary of the information obtained follows.

Vemco alleged losing revenues of \* \* \*. \* \* \*, spokesman for \* \* \*, stated that the firm did buy drafting machines from Vemco at that time. \* \* \* stated that \* \* \* purchases drafting machines from both Vemco and Mutoh. According to \* \* \*, prices for Vemco and Mutoh drafting machines are generally similar. \* \* \* added that both firms have increased prices during 1989 but that in the past it has usually been \* \* \*. \* \* \* declined to provide any additional information concerning the alleged lost revenues.

Vemco alleged that revenues of \*\*\* were lost on sales of \*\*\* drafting machines to \* \* \*, due to competition from Japanese imports. \* \* \*. \* \* \*, spokesman for \* \* \*, stated that Vemco did have to lower its price in order for \* \* \* to purchase drafting machines from Vemco. \* \* \* stated that \* \* \*. \* \* \* reported that \* \* \* previously purchased drafting machines \* \* \*.

Vemco alleged that revenues of \*\*\* were lost on sales of approximately \*\*\* drafting machines to \* \* \*, due to competition from imports from Japan. \* \* \* stated that Vemco did lower its price, but he could not recall the specific number of machines involved. \* \* \* explained that \* \* \*.

Vemco reported that revenues of \*\*\* were lost on \* \* \* sold to \* \* \*.

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<sup>72</sup> "Magnetic levitation" refers to the fact that the counterweight is suspended magnetically instead of by ball bearings.

<sup>73</sup> Vemco reported that substantially every drafting machine Mutoh sells represents a lost sale; however, Vemco was unable to provide specific details on lost sales other than those reported.

Vemco reported that revenues of \*\*\* were lost on \*\*\* sold to \*\*\*. \*\*\*. \*\*\* stated that the company \*\*\*. According to Vemco, it tried to sell drafting machines to \*\*\*. \*\*\* stated that prices paid for Vemco machines may have been lower than those of Mutoh; however, Mutoh's prices for \*\*\* machines \*\*\*. \*\*\* added that \*\*\*.

Vemco named \*\*\* in a lost sales allegation totaling approximately \*\*\* and involving \*\*\* drafting machines. \*\*\* spokesman for \*\*\* stated that his company tried to sell drafting machines to the \*\*\* and was told that the price of the Vemco machine was too high. According to \*\*\*, \*\*\* decided to purchase the drafting machines from Mutoh instead. \*\*\*. \*\*\* because sales of drafting machines have been declining substantially. \*\*\* attributed much of this decline to the increasing use of CAD systems.

Vemco named \*\*\* in a lost sales allegation totaling approximately \*\*\* and involving \*\*\* drafting machines allegedly purchased from Japanese suppliers. \*\*\*, a spokesman for \*\*\*, stated that a \*\*\* purchased \*\*\* drafting machines from Mutoh instead of purchasing the Vemco machines from \*\*\*. \*\*\* reported that \*\*\* was advised that the price for the Vemco machine was higher and that the Mutoh machine had more features.

#### Exchange rates

The nominal value of the Japanese yen appreciated relative to the U.S. dollar by approximately 36 percent during January 1986-June 1989 (table 16). A decline of approximately 6-percent in the producer price index in Japan compared with an 11-percent increase in the U.S. inflation rate resulted in less appreciation of the Japanese yen in real terms, about 15 percent, than in nominal terms.

Table 16

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

Quarter	Nominal exchange- rate index	Real exchange- rate index 3/	Japanese producer price index	U.S. producer price index
1986:				
Jan.-Mar.....	100.0	100.0	100.0	100.0
Apr.-June.....	110.4	108.3	96.3	98.2
July-Sept.....	120.6	115.8	93.8	97.7
Oct.-Dec.....	117.2	111.0	92.8	98.1
1987:				
Jan.-Mar.....	122.7	114.0	92.2	99.2
Apr.-June.....	131.7	119.5	91.5	100.8
July-Sept.....	127.9	116.2	92.6	101.9
Oct.-Dec.....	138.4	124.8	92.3	102.3
1988:				
Jan.-Mar.....	146.8	130.1	91.3	102.9
Apr.-June.....	149.6	129.8	90.9	104.8
July-Sept.....	140.5	121.5	91.8	106.2
Oct.-Dec.....	150.0	128.0	91.0	106.7
1989:				
Jan.-Mar.....	146.3	122.7	91.5	109.0
Apr.-June.....	136.1	115.3	93.9	110.9

1/ Exchange rates are expressed in U.S. dollars per unit of foreign currency.

2/ Producer price indexes--intended to measure final product prices--are based on average quarterly indexes presented in line 63 of the International Financial Statistics.

3/ The indexed real exchange rate represents the nominal exchange rate adjusted for relative movements in producer price indexes in the United States and Japan. Producer prices in the United States increased by 10.9 percent between January 1986 and June 1989 compared with a 6.1-percent decrease in Japan during the same period.

Note.--January-March 1986=100.

Source: International Monetary Fund, International Financial Statistics, September 1989.



APPENDIX A

COMMISSION'S FEDERAL REGISTER NOTICE

735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b)).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

**EFFECTIVE DATE:** August 25, 1989.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202-252-1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. 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 drafting machines and parts thereof from Japan are being sold, or are likely to be, in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 7, 1989, by Vemco Corp., San Dimas, CA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (54 FR 23293, May 31, 1989).

**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 § 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 §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public 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)), 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 October 26, 1989, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

**Hearing.** The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on November 14, 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 November 6, 1989. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 9, 1989, at the U.S. International Trade Commission Building. Pursuant to

(Investigation No. 731-TA-432 (Final))

**Drafting Machines and Parts Thereof From Japan**

**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-432 (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 Japan of drafting machines and parts thereof, provided for in subheadings 9017.10.00 and 9017.90.00 of the Harmonized Tariff Schedule of the United States (previously under item 710.80 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 November 1, 1989, and the Commission will make its final injury determination by December 22, 1989 (see sections

§ 207.22 of the Commission's rules (19 CFR § 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is November 8, 1989.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a 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 § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

**Written submissions.** Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 20, 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 November 20, 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. to 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)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written

comments on such information no later than November 24, 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).

Issued: September 15, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-22212 Filed 9-19-89; 8:45 am]

SELLING CODE 7030-02-0



APPENDIX B

COMMISSION'S FEDERAL REGISTER NOTICE PERTAINING TO ITS HEARING,  
AND LIST OF WITNESSES WHO APPEARED AT THE HEARING

**INTERNATIONAL TRADE  
COMMISSION**

[Investigation No. 731-TA-432]

**Drafting Machines and Parts Thereof  
From Japan; Commission  
Determination to Conduct a Portion of  
a Hearing in Camera**

**AGENCY:** U.S. International Trade  
Commission.

**ACTION:** Closure of a portion of a  
Commission hearing to the public.

**SUMMARY:** Upon request of respondents in the above-captioned final investigation, the Commission (Commissioner Lodwick dissenting) has determined to conduct a portion of its hearing scheduled for November 4, 1989, *in camera*. See Commission rules 201.13 and 201.35(b)(3) (19 CFR 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public.

**FOR FURTHER INFORMATION CONTACT:** William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202)-252-1116. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202)-252-1810.

**SUPPLEMENTARY INFORMATION:** The Commission believes that unusual circumstances are present in this investigation such as it is appropriate to hold a portion of the hearing *in camera*. Because petitioner is the only domestic manufacturer of drafting machines, and there is a single foreign manufacturer/importer of subject drafting machines, much of the information collected by the Commission is business proprietary information (BPI). In light of this, the Commission has determined that a full discussion of petitioner's financial condition and of many of the other indicators that the Commission examines in assessing material injury by reason of subject imports could only take place if at least part of the hearing were held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will begin with the usual public presentation by petitioner, followed by questioning of petitioner by the Commission. Respondents will then make their public arguments, and be questioned as appropriate by the Commission. Following respondents' public presentation and questioning, an *in camera* session concerning

petitioner's BPI will begin. For this, the room will be cleared of all persons except: (1) those who have been granted access to business proprietary information under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation, and (2) personnel of petitioner Vemco, if any. See 19 CFR 201.35(b)(1), (2). In the *in camera* session, respondents will make a presentation, limited to a discussion of petitioner's BPI to be followed by questions from the Commission as appropriate. Petitioner will then have an opportunity to respond, and will also be questioned by the Commission as appropriate.

Following these presentations and questions concerning petitioner's BPI, if requested by either petitioner or respondents, the Commission will allow *in camera* presentations concerning BPI submitted by respondents (with or without accompanying discussion of the BPI of petitioner for comparative purposes). For these presentations, personnel of Vemco who are not under the Commission's APO will be excused from the room. Following any presentations concerning respondents' BPI, the Commission may question either or both sides as appropriate. Following the *in camera* session, the Commission may determine that it is appropriate to reopen the hearing to the public for concluding statements or for additional public questioning by the Commission. The time for the parties' presentations in the *in camera* session will be taken from their respective overall allotments for the hearing. All those planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Drafting Machines and Parts Thereof from Japan, Inv. No. 731-TA-432 (Final)* may be closed to the public to prevent the disclosure of business proprietary information.

Issued: November 13, 1989.

By order of the Commission.

Kenneth R. Mason,  
Secretary.

[FR Doc. 89-27507 Filed 11-22-89; 8:45 am]

BILLING CODE 7020-02-M





In Opposition to the Imposition of  
Antidumping Duties:

Graham and James  
Washington, D.C.  
on behalf of

Mutoh Industries, Ltd.

Mutoh America, Inc.

Hikomichi Sakai, International Business  
Division, Mutoh Corporation

Martin Foley, Salesman, Mutoh America,  
Incorporated

Alan Madian, Economist,  
Erb and Madian, Incorporated

William F. Fanning, Director of  
Research, Professional Services  
Management Journal

Wendell Hottman, Vice President, Isthmus  
Engineering and Manufacturing  
Corporation

Mark Zelisko, President, Castle  
Engineering Company

Yoshihiro Saito )  
                          )---OF COUNSEL  
Brian E. McGill )

-end-



APPENDIX C

COMMERCE'S FEDERAL REGISTER NOTICE

provided for in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

#### Case History

On August 18, 1989, we made an affirmative preliminary determination (54 FR 35363, August 25, 1989).

Interested parties submitted comments for the record in their case briefs dated October 2, 1989 and petitioner submitted a rebuttal brief dated October 10, 1989. No public hearing was held.

#### Period of Investigation

The period of investigation (POI) is November 1, 1988 through April 30, 1989.

#### Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States 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 this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of this investigation.

The products covered by this investigation include drafting machines and parts thereof from Japan, currently classifiable under the Harmonized Tariff Schedule sub-headings 9017.10.00, and 9017.90.00. Prior to January 1, 1989, such merchandise was classified under item 710.8025 of the Tariff Schedules of the United States Annotated (TSUSA).

The scope of this investigation includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. For purposes of this investigation, "drafting machine" refers to "track" or "elbow-type" drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be read and set and lines to be drawn. The machine is generally clamped to the board. Both "track" and "elbow-type" drafting machines are classified under HTS 9017.10.00.

Also included within the scope of this investigation are parts of drafting machines classified under HTS 9017.90.00. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, parts of band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps and scales are not subject to this investigation.

#### Such or Similar Comparisons

Pursuant to section 771(16), we established two categories of "such or similar" merchandise: (1) Track drafting machines and (2) elbow-type drafting machines.

Product comparisons for track and elbow-type drafting machines were based on information submitted in the petition.

#### Fair Value Comparisons

To determine whether sales of drafting machines and parts thereof from Japan to the United States we made at less than fair value, we compared the United States price to the foreign market value. For our preliminary determination, we used the best information available, as required by section 776(c) of the Act, because respondent declined to participate in this investigation. For the final determination we are again using best information available as required by section 776(c) of the Act.

Since the prices contained in the petition were not expressly identified as in effect throughout 1988, the Department of Commerce used 1987 prices and an inflation factor based on price data from the petition over a thirty-four month period (January 1985–October 1987) to arrive at an adjusted 1988 list price for each model. We made deductions from the adjusted 1988 list price for a sales discount to unrelated dealers, U.S. warehousing fees, and U.S. Customs duties to arrive at an adjusted United States price for each model.

The Department's calculation of foreign market value was based on November 1988 list prices in Japan converted to U.S. dollars using an average daily yen per dollar exchange rate for the month of November 1988 (see Currency Conversion section of this notice). Deductions from the 1988 list prices were made for a sales discount to unrelated dealers and a difference in merchandise adjustment for Japanese models that include a scale balancer.

For this final determination, we took the highest margin for each such or

#### International Trade Administration

(A-588-811)

#### Final Determination of Sales at Less Than Fair Value: Drafting Machines and Parts Thereof From Japan

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

**ACTION:** Notice.

**SUMMARY:** We determine that drafting machines and parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of drafting machines and parts thereof from Japan 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, the U.S. industry.

**EFFECTIVE DATE:** November 8, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mark Wells or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3798 or (202) 377-5288, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Final Determination

We determine that drafting machines and parts thereof from Japan are being, or are likely to be, sold in the United States at less than fair value, as

similar category of merchandise and calculated a simple average of the values to determine the margin for Mutoh Industries and the All Other rate.

#### United States Price

United States price was based on the U.S. price information provided in the petition as described above.

#### Foreign Market Value

Foreign market value was based on home market prices provided in the petition as described above.

#### Currency Conversion

In our preliminary determination, the Department used the 131 yen to the dollar exchange rate specified in the petition.

In our final determination, the Department has converted Mutoh's home market list prices using an average daily yen per dollar exchange rate of 123.139 for the month of November 1988. This exchange rate is more contemporaneous with the U.S. price data used in our margin calculations.

#### Interested Party Comments

##### Comment 1

Petitioner (Vemco Corporation) contends that the Department, in its preliminary determination, should have calculated United States price based on the price data contained in the petition. Petitioner argues that the list prices provided in the petition were in effect from October 1987 through the date of filing of the petition and that the Department should not have adjusted the data to account for inflation. In addition, in its October 2, 1989 case brief, petitioner also provided testimony from the ITC hearing which indicated that respondent did not raise its U.S. prices until April 10, 1989.

##### DOC Position

As best information for this final determination, we have used the prices contained in the petition, as adjusted and used in our initiation and preliminary determination. The prices contained in the petition were not expressly identified as in effect throughout 1988. The ITC testimony also does not conclusively state that respondent's prices remained constant during this period. Therefore, we have not altered our methodology in this regard for the final determination.

##### Comment 2

Respondent argues that the Department should have used a two percent rather than a one percent difference in merchandise adjustment for home market models that have a

scale balancer. In addition, respondent indicates that a difference in merchandise adjustment should have been made for rail extensions and two scales, both of which are included on every drafting machine sold in the home market.

Petitioner contends that the Department properly adjusted the list prices for differences in merchandise because the petition calculated a merchandise difference of "2 percent of cost or 1 percent of list."

Regarding respondent's claims for difference in merchandise adjustments for rail extensions and scales, petitioner argues that respondent, in deciding not to respond to the Department's questionnaire, forfeited all opportunity to submit information in support of these claimed adjustments.

##### DOC Position

As best information available, the Department utilized the difference in merchandise adjustment provided in the petition, which is 1 percent of list price for scale balancers. There is no information on the record, including the petition, pertaining to rail extensions and scales.

##### Comment 3

Respondent argues that the U.S. Customs duty adjustment should have been based on respondent's U.S. wholesale prices rather than respondent's adjusted 1988 U.S. list prices.

Petitioner contends that the Department was reasonable in basing the adjustment for U.S. Customs duty on list prices, because the list prices were actual, known prices.

##### DOC Position

In the preliminary determination, we based the U.S. Customs duty adjustment on respondent's adjusted 1988 list prices. For our final determination, we have calculated the duty adjustment based on respondent's adjusted 1988 list prices less a sales discount to U.S. dealers. We believe that the discounted price more closely approximates the customs value on which the actual duty was based.

##### Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation under section 733(d) of the Act, of all entries of drafting machines and parts thereof from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after August 25, 1989,

the date of publication of the preliminary determination in the Federal Register. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The estimated less than fair value margins are shown below:

Manufacturer/Producer/Exporter	Margin Percentage
Mutoh Industries, Ltd. (Mutoh)	90.87
All others	60.87

##### ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, 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 Deputy Assistant Secretary for Investigations, Import Administration.

The ITC has 45 days from this final determination to determine whether or not material injury exists, or if threat of material injury exists. If the ITC determines that material injury, or threat of material injury, does not exist, 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 material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on drafting machines and parts thereof from Japan entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

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

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Dated: November 1, 1989.  
Eric L. Gerfinkel,  
*Assistant Secretary for Import  
Administration.*  
[FR Doc. 89-28275 Filed 11-7-89; 8:45 am]  
GSA FPMR CODE 2510-06-02

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APPENDIX D

PERCENTAGE CHANGES IN MARKET DATA

Table D-1

Drafting machines: Percentage changes in market data, 1986-87, 1987-88, and January-June 1988 to January-June 1989

Item	1986-87	1987-88	Interim 1988-89
Apparent U.S. consumption:			
Quantity.....	***	***	***
Value.....	***	***	***
Market shares:			
U.S. producers:			
Quantity.....	***	***	***
Value.....	***	***	***
Imports from Japan:			
Quantity.....	***	***	***
Value.....	***	***	***
U.S. producer's--			
Production capacity.....	***	***	***
Production.....	***	***	***
Capacity utilization.....	***	***	***
Domestic shipments:			
Quantity.....	***	***	***
Value.....	***	***	***
Unit value.....	***	***	***
Export shipments:			
Quantity.....	***	***	***
Value.....	***	***	***
Unit value.....	***	***	***
End-of-period inventories.....	***	***	***
Employment:			
Production and related workers.....	***	***	***
Hours worked.....	***	***	***
Total compensation.....	***	***	***
Productivity.....	***	***	***
U.S. importers'--			
Imports from Japan:			
Quantity.....	***	***	***
Value.....	***	***	***
Unit value.....	***	***	***
End-of-period inventories.....	***	***	***

Source: Compiled from data presented in the section of this report entitled "Information Obtained in the Investigation."



APPENDIX E

COMMENTS BY VEMCO ON THE EFFECTS OF IMPORTS FROM JAPAN ON  
ITS GROWTH, INVESTMENT, DEVELOPMENT AND PRODUCTION EFFORTS,  
AND ABILITY TO RAISE CAPITAL

"ACTUAL NEGATIVE IMPACT.--

\* \* \* \* \*

ANTICIPATED NEGATIVE IMPACT.--

\* \* \* \* \*

APPENDIX F  
RANGES OF SALES PRICES

Figure F-1

Drafting machines: Largest quarterly sales prices and range of highest and lowest sales prices as reported by Vemco and Mutoh for products 1 and 2, by quarters, January 1988-June 1989

\* \* \* \* \*

Legend: - denotes largest quarterly sales price

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

Figure F-2

Drafting machines: Largest quarterly sales prices and ranges of highest and lowest sales prices as reported by Vemco and Mutoh for products 3 and 4, by quarters, January 1988-June 1989

\* \* \* \* \*

Legend: - denotes largest quarterly sales price

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