CERTAIN TELEPHONE SYSTEMS AND SUBASSEMBLIES THEREOF FROM KOREA

Determination of the Commission in Investigation No. 731-TA-427 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal the confidential operations of individual firms may not be published and therefore has been deleted from this report.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-427 (Final)

CERTAIN TELEPHONE SYSTEMS AND SUBASSEMBLIES THEREOF FROM KOREA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Korea of certain small business telephone systems and subassemblies thereof,[3] provided for in subheadings 8504.40.00, 8517.10.00, 8517.30.20, 8517.30.25, 8517.30.30, 8517.81.00, 8517.90.10, 8517.90.15, 8517.90.30, 8517.90.40, and 8518.30.10 of the Harmonized Tariff Schedule of the United States (previously in items 682.60, 684.57, 684.58, and 684.59 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 2, 1989, following a preliminary determination by the Department of Commerce that imports of certain small business telephone systems and subassemblies thereof from Korea were being sold at LTFV within the meaning of section 735 of the act

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

[2] Chairman Brunsdale, Vice Chairman Cass, and Commissioner Lodwick dissenting.

[3] For the purposes of this investigation, "certain small business telephone systems and subassemblies thereof" are telephone systems, whether complete or incomplete, assembled or unassembled, the foregoing with intercom or internal calling capability and total nonblocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of such a system. These subassemblies are defined as follows: control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch; circuit cards and modules, including power supplies; and telephone sets and consoles, consisting of proprietary corded telephone sets or consoles.

(19 U.S.C. § 1673d(a)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of August 16, 1989 (54 F.R. 33783). The hearing was held in Washington, DC, on October 31, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONER ECKES, COMMISSIONER ROHR, AND COMMISSIONER NEWQUIST

On the basis of the information gathered in this final investigation, we determine that the domestic industry producing equipment dedicated for use in small business telephone systems (SBTSs) is materially injured by reason of imports from Korea that the Department of Commerce (Commerce) has determined are sold at less than fair value. Our determination is based, inter alia, on the poor financial condition of the domestic industry that is the result, at least in part, of the significant volume and market share of cumulated LTFV imports and their depressing and suppressing effect on domestic prices and profits.

The rationale for our determination in this investigation is substantially the same as that set forth in our views in our recent determinations regarding LTFV imports from Japan and Taiwan, 1/ which are incorporated herein by reference. It is fundamental that Commission decisions in Title VII investigations are sui generis because they are based upon the information of record in a particular investigation and that information usually varies from investigation to investigation. 2/ Nevertheless, given that the record in this investigation is virtually

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1/ See Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 (November 1989)(Views of Commissioner Eckes, Commissioner Rohr, and Commissioner Newquist).

2/ See Citrosuco Paulista v. United States, 704 F. Supp. 1075, 1087 (CIT 1988).

identical with the record in our recent investigations of Japan and Taiwan, 3/ that the Commission thoroughly discussed all the relevant issues in its determinations regarding imports from Japan and Taiwan, and that the submissions of the respondents raise essentially the same issues that were disposed of in our prior determinations, we do not repeat in detail that analysis here.

I. Like Product and the Domestic Industry

In our preliminary determination, and in the final determinations regarding LTFV imports from Japan and Taiwan, we found one domestic like product, consisting of "all equipment dedicated for use in a small business telephone system." 4/ None of the respondents in this investigation challenged the Commission's like product analysis, nor do we find any basis in the record for changing that determination. Therefore, we again adopt that like product definition. Further, we adopt the domestic industry and related party determinations made in the

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3/ The only "new" information in the record in this investigation is the final dumping margins for the various Korean producers and their posthearing submissions. All other data are identical to the data in the Japan and Taiwan investigations.

4/ See Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan, Inv. Nos. 731-TA-426-428 (Preliminary), USITC Pub. 2156 at 3-21 (February 1989); Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 at 3-13 (November 1989)(Views of Commissioner Eckes, Commissioner Rohr, and Commissioner Newquist).

prior investigations of LTFV imports from Japan and Taiwan. 5/

II. The Condition of the Domestic Industry

In assessing the condition of the domestic industry, the Commission considers, among other factors, domestic consumption, domestic production, capacity, capacity utilization, shipments, inventories, employment, and financial performance. 6/ Consideration of all the indicators relating to the condition of the domestic industry leads us to conclude that the industry is experiencing material injury. Shipments are declining, inventories have built up. There have been significant adverse trends in employment. Most importantly, financial data show inadequate operating margins and an insufficient cash flow to fund necessary investment in the maintenance, modernization, and expansion of domestic production facilities and the development of the next generation of products. 7/

III. Cumulation

In our prior determinations regarding LTFV imports from Japan and Taiwan, we determined that cumulation with imports from

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5/ See id. at 13-17.

6/ 19 U.S.C. § 1677(7)(C)(iii).

7/ A more detailed analysis of the condition of the domestic industry is set forth in Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 at 17-25 (November 1989)(Views of Commissioner Eckes, Commissioner Rohr, and Commissioner Newquist), which has been incorporated into these views by reference.

Korea was required. That determination has been challenged by the Korean respondents who collectively raised three cumulation arguments in their posthearing submissions.

First, the Korean respondents argue that cumulation should be limited to small volume imports and that the Commission should not cumulate large volume imports, such as those from Korea and Japan. In support of this argument they refer, not to the plain language of the statute itself, which contains no such limitation, but to some ambiguous language in the legislative history of the 1984 Act that suggests that Congress was concerned with the impact of imports from several countries which individually are minimal, but when combined are injurious. 8/ Thus, they argue that Congress intended cumulation to be limited to such situations and should not be applied to combine large volume imports with one another. Other than this reliance on an ambiguous reference in the legislative history, respondents provide no other rationale to support their position. Further, we note that respondents failed to address a decision of the Court of International Trade (CIT) directly contradicting their position.

The CIT has held that the Commission need not distinguish between imports of large and small magnitude in applying the cumulation provision. LMI-La Metalli Industriale, S.p.A. v.

8/ Posthearing Brief of Executone at 9 (citing H.R. Rep. No. 725, 98th Cong., 2d Sess. 37 (1984)).

United States. 9/ The CIT stated that "[t]he language of the cumulation statute itself does not exclude smaller volumes of imports from cumulation with larger volumes." 10/ Further, the CIT in LMI Metalli noted that "[t]he fact that the level of Italian imports is substantially less than the level of West German imports is an insufficient basis upon which to justify exclusion of Italian imports from the Commission's cumulative injury analysis under 19 U.S.C. § 1677(7)(C)(iv) (Supp. V 1987)." 11/ In light of this decision, and the lack of a statutory basis to support their argument, we reject respondents' "small volume" requirement for cumulation. 12/

The second cumulation argument put forward by the Korean respondents is similarly flawed. Goldstar argues that the Commission should not cumulate imports from Korea with those from

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9/ 712 F. Supp. 959 (CIT 1989)(appeal of Certain Brass Sheet and Strip from France, Italy, Sweden, and West Germany, Invs. Nos. 701-TA-270 and 731-TA- 313, 314, 316, and 317 (Final), USITC Pub. 1951 (Feb. 1987)). See also Marsuda-Rodgers International v. United States, 719 F. Supp. 1092, 1100-01 (CIT 1989).

10/ 712 F. Supp. at 969-70.

11/ 712 F. Supp. at 971.

12/ While we find no basis in the statute for placing an "upper bound" volume limitation on cumulation, we do note that Congress has placed a "lower bound" volume limitation in the form of the "negligible imports" exception to cumulation. See 19 U.S.C. § 1671(7)(C)(v). None of the parties to this investigation raised a "negligible imports" argument, although it was relevant to our prior determinations regarding imports from Japan and Taiwan. See Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 at 27-33 (November 1989)(Views of Commissioner Eckes, Commissioner Rohr, and Commissioner Newquist). In any event, we conclude that Korean imports are not negligible within the meaning of the statutory provision.

Japan and Taiwan since imports from Japan and Taiwan are no longer "subject to investigation." Goldstar does acknowledge that the Commission has cumulated in situations involving "recently issued orders," especially when the investigations in question were initiated at the same time, as they were in this case. 13/ However, Goldstar argues that the "recent order exception" is contrary to the statute, 14/ and, even if it were not contrary to the statute, its application is discretionary and the Commission should not apply it in this case.

On this issue as well, Goldstar also failed to address precedent directly contrary to their position. The CIT in Chaparral Steel Co. v. United States 15/ held that the Commission must cumulate imports that were subject to investigation at any time during the period for which the Commission collected data. In the instant investigation that would mean cumulation with imports subject to investigation from 1986 to the present, and, thus would require cumulation with imports from Japan and Taiwan for which the investigations were completed in November, 1989. While the Commission disagrees with, and has appealed, the CIT decision in Chaparral to the Court of Appeals for the Federal

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13/ Posthearing Brief of Goldstar at 6-8. To prohibit cumulation with recent orders when the underlying investigations were initiated simultaneously merely invites respondents to seek extensions from Commerce in the hopes of avoiding cumulation by having the last investigation decided by the Commission.

14/ Id. at 7 (citing Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 at 17 (July 1987)(Additional Views of Vice Chairman Brunsdale)).

15/ 698 F. Supp. 254 (CIT 1988).

Circuit, the Commission is not contesting the principle that cumulation with some prior determinations is appropriate. Rather, the Commission is attempting to obtain approval of its "recent order" limitation, rather than the more expansive interpretation of the CIT. Nevertheless, the current state of the law at the CIT is even more inclusive than the Commission's practice of cumulating only "recent orders."

With regard to the discretionary nature of the "recent order exception," Goldstar misstates the nature of that discretion. The Commission does not have the discretion to apply the "recent order" rationale in some cases, but not others. Rather, the Commission uses its discretion in each case to determine whether an order is sufficiently recent to require cumulation. The investigations regarding imports from Japan, Taiwan, and Korea were initiated simultaneously. The only reason that the final determinations are not concurrent is that the Korean respondents obtained an extension from Commerce. All of the data relevant to the issue of cumulation are identical. None of the imports from Japan and Taiwan that are candidates for cumulation entered the country after the date of the antidumping order covering those countries. Thus, cumulation of imports from Japan and Taiwan would not involve, to any degree, cumulation with "fairly traded" imports as Goldstar suggests. In light of the foregoing, we reject the "recent order" cumulation arguments of Goldstar.

The third cumulation argument presented by the Korean respondents is that Korean imports do not compete sufficiently

with those of Japan and Taiwan. In support of their argument they rely on the recent CIT decision in Marsuda-Rodgers International v. United States. 16/ In Marsuda-Rodgers, the CIT reaffirmed its prior holding in Fundicao Tupy v. United States 17/ that, in order for cumulation to be required, there must be evidence of a "reasonable overlap" in the marketing of the imported and domestic products. 18/ This "reasonable overlap" test is required, not in order to draw a causal connection to each countries' imports separately, but in order to "sufficiently implicate the product of each country in the general pattern of activity which is causing injury." 19/

Respondents argue first that, since most Korean producers are subcontractors for U.S. designers and importers, those Korean entities are not involved in domestic sales and are not engaging in the "general pattern of activity" that is harming the domestic industry. This argument ignores the fact that their products are part of that "general pattern of activity," even if those products are marketed by a separate entity.

16/ 719 F. Supp. 1092 (CIT 1989).

17/ 678 F. Supp. 898 (CIT 1988), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

18/ 719 F. Supp. at 1097-98. See also Granges Metallverken AB v. United States, 716 F. Supp. 17, 22 (CIT 1989)("The Commission need not track each sale of individual sub-products and their counterparts to show that all imports compete with all other imports and the domestic like products. Rather, the Commission need only find evidence of reasonable overlap in competition to support its determination to cumulate imports.")(emphasis added).

19/ Id. at 1100 (emphasis added)(quoting Fundicao Tupy, 678 F. Supp. at 902).

Respondents also maintain that imports from Korea are custom-made and do not compete with other imports or the domestic like product. They go on to suggest that the cumulation provision requires a finding of fungibility before cumulation is appropriate. To the extent that they suggest that only perfect substitutes are candidates for cumulation, respondents are mistaken. The degree of fungibility is relevant to the cumulation inquiry, but a finding of absolute fungibility is not required. 20/ As noted above, Marsuda-Rodgers requires only that there be evidence in the record of a "reasonable overlap" of competition among imports from each country and the domestic like product. 21/

The Commission has already unanimously stated that there is sufficient evidence of competition among imports from Korea, Japan, and Taiwan and the domestic like product. 22/ We do not

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20/ Marsuda-Rodgers, 719 F. Supp. at 1096. See also Wieland Werke, AG v. United States, 718 F. Supp. 50, 52 (CIT 1989). If a finding of absolute fungibility were required, cumulation would rarely, if ever, be appropriate in the case of finished consumer goods, since such goods are seldom absolutely fungible. Further, intense price competition among various imports and the domestic like product may exist even with products that are not perfect substitutes for one another, as is the case here.

21/ While we believe that Marsuda-Rodgers was incorrectly decided insofar as it appears to reintroduce the contributing effects test for cumulation that was rejected in Fundicao Tupy, 678 F. Supp. at 901 and USX Corp. v. United States, 655 F. Supp. 487, 493 (CIT 1987), we also believe that cumulation is required in this case regardless of the decision in Marsuda-Rodgers.

22/ See Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 at 28, n. 76 (November 1989)(Views of Commissioner Eckes, Commissioner Rohr, and Commissioner Newquist), at 101

(continued...)

believe that the Korean respondents have presented sufficient evidence to warrant a contrary finding. Small business telephone systems from all three countries compete with one another and with the domestic like product. While there is a vast array of possible configurations for a small business telephone system depending upon customer needs, all producers, whether foreign or domestic, offer systems in all of the size ranges relevant to this investigation. The systems of all producers are sold or offered for sale throughout the United States, 23/ usually through one of two types of distribution systems, 24/ and they are simultaneously present in the market. 25/ We therefore conclude that LTFV imports from Japan, Korea, and Taiwan meet the requirements for cumulation set forth in the statute.

IV. Material injury by reason of LTFV imports

In addition to finding material injury to a domestic industry, the Commission must also determine whether such injury

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22/ (...continued)
(Dissenting Views of Chairman Brunsdale), at 264-65 (Dissenting Views of Vice Chairman Cass), at 317 (Dissenting Views of Commissioner Lodwick).

23/ Id. at A-86-A-90.

24/ AT&T and Executone generally market their product through direct sales to end users, although AT&T does sell a significant volume to independent distributors and interconnects. All other domestic producers and importers market their products primarily to independent distributors. Id. at A-20. Moreover, several importers of the subject merchandise are developing distribution systems that increasingly resemble that of AT&T. Id. at A-22.

25/ Id. at A-58-A-69.

is "by reason of" the less than fair value imports. 26/ In making this determination, we are required to consider, inter alia, the volume of the imports subject to investigation, the effect of such imports on domestic prices, and the impact of such imports on the domestic industry. 27/ Evaluation of these factors involves a consideration of: (1) whether the volume of imports, or increase in volume is significant, (2) whether there has been significant price underselling by the imported products, and (3) whether imports have otherwise depressed prices to a significant degree, or have prevented price increases. 28/ In addition, the Commission must evaluate the effects of the subject imports on such relevant economic factors as actual and potential changes in profits, productivity, capacity utilization, and investment. 29/

We determine that the volume of LTFV imports from Japan, Korea, and Taiwan, both in an absolute sense and in terms of market share, is significant and has had a depressing or suppressing effect on domestic prices. This impact has been especially severe in systems sales in the 1-10 station market segment, but has been significant in all market segments. The losses in the new systems market will inevitably be compounded by the loss of aftermarket sales and the loss of the domestic industry's installed base. The adverse price effects of LTFV

26/ 19 U.S.C. § 1673d(b)(1).

27/ 19 U.S.C. § 1677(7)(B).

28/ 19 U.S.C. § 1677(7)(C)(i-ii).

29/ 19 U.S.C. § 1677(7)(C)(iii).

imports have been translated into lower revenues for the domestic industry than would otherwise have been the case. The lower revenues have manifested themselves in consistently poor operating margins for the domestic industry and the inability to generate funds for research and development of new products and investment in the industry in general. Thus, we conclude that the LTFV imports from Korea are a cause of material injury to the domestic industry. 30/

30/ A more detailed analysis of causation is provided in Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, Inv. Nos. 731-TA-426 and 428 (Final), USITC Pub. 2237 at 33-62 (November 1989)(Views of Commissioner Eckes, Commissioner Rohr, and Commissioner Newquist), which has been incorporated into these views by reference.

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 certain telephone systems and subassemblies thereof from Korea. My approach is anchored in traditional Commission practice and the statute, and has, I believe, been approved by our reviewing courts.[1] Nonetheless, a few words of additional explanation seem in order in light of some of the "dissenting views" expressed in the companion investigations, Certain Telephones and Subassemblies Thereof from Japan and Taiwan.[2]

First, let me discuss briefly my own approach. In this investigation, as in other Title VII cases involving

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[1] 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"], 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 I"], and Drafting Machines and Parts Thereof from Japan, Inv. No. 731-TA-432(Final), USITC Pub. 2247 (December 1989), at 67-99 [hereinafter "Drafting Machines"]. 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.

[2] Phones I, supra, at 143-241.

allegations or findings of injurious dumping and subsidization, I have employed the dual-requirement, or bifurcated, method of conducting injury analysis. Under this method, an affirmative injury determination can result only if two conditions are satisfied. The domestic industry producing the like product must be materially injured. Also, less-than-fair value imports must be a cause ["by reason of"] of that material injury. In essence, then, 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.[3] During this period the dual-requirement

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[3] 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. See also, Phones I, supra, at 66-80; Drafting Machines, supra, 84-91.

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.

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approach has been approved by the Commission's reviewing courts on a number of occasions.[4]

With respect to causation issues, I have continued the Commission practice, which began prior to the 1979 Trade

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[3](...continued)

My review of Commission findings indicates that the following Commissioners have used the bifurcated approach: (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 reported in Drafting Machines, supra, at 69-70, note 2, that Vice Chairman Cass apparently 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 and 20, 731-TA-391-399 (Preliminary), USITC Pub. 2083 (May 1988), at 36, 42.

[4] 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).

In Rails, supra, at 70, I observed that "in light of the judicial precedents, the real question for trade law administrators is not whether the bifurcated method is lawful, but instead whether unitary analysis is in any way compatible with the required two-factor approach to material injury and causation."

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.[5] This approach, also, has been affirmed by the Commission's reviewing courts.[6]

Finally, in assessing the impact of less-than-fair value imports on the domestic industry, I again have sought to follow the guidance of our reviewing courts.[7] [8] 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

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[5] See Phones I, supra, at 80-84; Drafting Machines, supra, at 74-83.

[6] 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).

[7] See Phones I, supra, at 85-99; Drafting Machines, supra, at 91-99.

[8] 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; 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); 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); 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.

has been vague, the courts have apparently used the terms "minimal cause" and "slight cause" synonymously with "contributing cause."[9]

I regret to write that at least one Commissioner seems to employ divergent methods. While my own additional views in this investigation were prepared without the benefit of access to the additional views of other Commissioners,[10] I have

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[9] For a discussion of court decisions affecting the Commission's consideration of causation issues, see my discussion in Phones I, supra, at 89-99.

[10] 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 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.

Furthermore, it is important to note that according to Commission custom and practice any draft views prepared at the express direction of Commissioners voting in the majority are not the General Counsel's views, but rather are the "Views of the Majority." If dissenting Commissioners are prepared to exchange initial drafts of their dissenting views, I personally would have no objection to an exchange. To my

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reason to believe, based on the views in Certain Telephones and Subassemblies Thereof from Japan and Taiwan, that another may use a pattern of analysis labelled "unitary analysis". This approach, which incidentally has not been subjected to court review, appears to rest on assumptions incompatible with dual-standard analysis.[11]

It is my understanding that the present exponent 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 he does not make separate findings for injury to the domestic industry and for causation, and claims that those Commissioners who do make separate findings for injury and causation are misinterpreting the statute and GATT. Finally, it is my understanding that the one advocate of the unitary approach objects to the "minimal causation" standard explained above and upheld by the Commission's reviewing

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[10](...continued)
knowledge, those who complain loudly in public about denial of access to "Majority Views" have offered no workable proposals for a timely and equitable exchange with their colleagues. They seem more eager to engage in public criticism and debate than to consult collegially.

[11] Phones I, supra, at 143-241. I do not rule out the possibility that some future form of unitary analysis may be found compatible with the statute and case law. It may be possible to consider both injury and causation within the context of a unitary analysis that is nonetheless compatible with the case law cited in note 4. However, in my judgment the present version of unitary analysis is fatally flawed in three respects. I discuss these "misconceptions" in Drafting Machines, supra, at 74-99.

courts.[12]

Elsewhere, I have examined carefully the arguments advanced and sources cited in support of "unitary analysis."[13] As I noted in Drafting Machines, it is my belief that these views rest on 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.[14]

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[12] In Phones I, 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?

[13] See Rails, supra, at 29-70; Phones I, supra, at 63-100; and Drafting Machines, supra, at 67-99.

[14] Drafting Machines, supra, at 67-99.

DISSENTING VIEWS OF CHAIRMAN ANNE E. BRUNSDALE

Small Business Telephone Systems and Subassemblies Thereof From Korea
Investigation Number 731-TA-427 (Final)

Based on the information gathered in this investigation, I join Vice Chairman Cass and Commissioner Lodwick in dissenting from the Commission's affirmative determination that an industry in the United States is materially injured, or threatened with material injury, by reason of dumped imports of small business telephone systems from Korea.[1]

The Commission was originally scheduled to decide this case at the same time as Certain Telephone Systems and Subassemblies Thereof From Japan and Taiwan.[2] Our decision was postponed when the Department of Commerce delayed the final dumping margins for the Korean respondents.[3]

The investigation of dumped SBTSs from Korea involves essentially the same set of facts as was presented to the Commission in its consideration of dumped SBTSs from Japan and Taiwan. In addition, my determination that an industry in the United States has not been materially injured by reason of dumped imports of small business telephone systems (SBTSs) from Korea is

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[1] 19 U.S.C. 1673d(b). Material retardation is not an issue in this investigation and will not be discussed further.

[2] Inv. Nos. 731-TA-426 and 731-TA-428 (Final), USITC Pub. 2237, November 1989 ("Telephones I").

[3] 54 Fed. Reg. 33261 (August 14, 1989). Commerce announced its final determinations on Korea on December 18, 1989. (See 54 Fed. Reg. 53141 (December 27, 1989).)

based on essentially the same reasoning I used in concluding that an industry had not been injured by reason of dumped imports of SBTSs from Japanese and Taiwan. Finally, I cumulated imports from Korea with those from Japan and Taiwan in reaching that decision. As I discuss below, despite arguments to the contrary, I find that it is now appropriate to cumulate imports from Japan and Taiwan with those from Korea in reaching the current decision. My opinion in the Japanese and Taiwan cases, therefore, provides the basis of my opinion in the present case. I refer the reader to that opinion rather than repeating all of that material here.[4]

The only significant change since I reached my determinations in the Japanese and Taiwan investigations is the increase in the dumping margins for the Korean importers from the preliminary margins I employed in my analysis of those cases. In its final determination, the Department of Commerce found that the Korean producers had an average dumping margin of 13.90 percent,[5] significantly higher than the average preliminary Korean margins of 7.79 percent.[6] While the increase is almost 80

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[4] See Telephones I at 102-134 (Dissenting Views of Chairman Anne E. Brunsdale). Further, there are no new issues related to like product, definition of the domestic industry, related parties, or the condition of the domestic industry that need to be addressed. Since I did not cumulate Korean imports with those from Japan and Taiwan in reaching my negative determination on threat in the earlier case, I discuss the issue of threatened injury as a result of Korean imports below.

[5] Staff Report, p. A-4.

[6] 54 Fed. Reg. 31980 (August 3, 1989).

percent, the margin remains small, particularly when compared to margins in excess of 125 percent for each of the Japanese respondents and the one Taiwan firm found to have a positive margin.[7] Therefore, in spite of the increase, I remain persuaded that the injury from dumped imports of small business telephone systems from Japan, Korea, and Taiwan does not cross the threshold of materiality.

I discuss below the reasons for my determination that cumulation of Korean imports with imports from Taiwan and Japan is appropriate and I address arguments presented by AT&T suggesting that my analysis in the Japan and Taiwan investigations was flawed and should lead to an affirmative determination here (as it should have, says AT&T, in those investigations themselves). I also consider the threat posed by the Korean imports to the domestic industry.

Cumulation

I join in the plurality's holding that, under 19 U.S.C. 1677(7)(C)(iv), imports from Korea in this investigation must be cumulated with the imports from Taiwan and Japan that were the subject of investigations completed just nine weeks ago. I also agree in large measure with the plurality's reasoning on this issue, particularly with respect to the "under investigation" requirement and the impact of the Court of International Trade's

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[7] See Telephones I at A-2 - A-3.

decision in Chaparral.[8] However, I part company with my colleagues with respect to their wholesale disapproval of the decision in Marsuda-Rodgers International[9] and, because I believe that case to be extremely important to understanding the place of cumulation in the statutory scheme, I write separately on that issue.

Marsuda-Rodgers was an appeal from the Commission's determination in Tapered Roller Bearings . . . from Hungary, the People's Republic of China, and Romania.[10] Three related investigations involving imports of the same products from Italy, Japan, and Yugoslavia occurred at about the same time.[11] Referring to the statutory requirement for cumulation that the "imports compete with each other and with like products of the domestic industry in the United States market,"[12] Marsuda-Rodgers, an importer of Hungarian bearings, argued that "the gap in quality between the Hungarian [bearings] on the one hand, and the domestic, Japanese, and Italian [bearings] on the other, is

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[8] Chaparral Steel Co. v. United States, 698 F. Supp. 254 (Ct. of Int'l Trade 1988).

[9] Marsuda-Rodgers International v. United States, 719 F. Supp. 1092 (Ct. of Int'l Trade 1988).

[10] Inv. Nos. 731-TA-341 and 344-45 (Final), USITC Pub. 1983 (June 1987).

[11] Inv. Nos 731-TA-342 and 346 (Final), USITC Pub. 1999 (August 1987), and Inv. No. 731-TA-343 (Final), USITC Pub. 2020 (Sept. 1987).

[12] 19 U.S.C. 1677(7)(c)(iv).

so marked that the requisite competition is not present to cumulate."[13]

In the course of its decision accepting the plaintiff's argument and vacating the Commission's determination, the court stated that cumulation must be supported by data that "sufficiently implicate the product of each country in the general pattern of activity that is causing injury."[14] Applying the well-recognized and judicially accepted test for cumulation, that there be a "'reasonable overlap' in sales between imports and domestic product in certain segments of the market,"[15] the court found insufficient evidence on the record to support such a finding. It thereupon remanded the Hungarian investigation to the Commission for further proceedings.

The plurality in this case, while purporting to follow Marsuda-Rodgers, takes umbrage with its central holding. The plurality argues that "Marsuda-Rodgers was incorrectly decided insofar as it appears to reintroduce a contributing effects test for cumulation."[16] I believe this understanding misreads Marsuda-Rodgers and misstates the implications of its holding for cumulation analysis. Marsuda-Rodgers does not stand for the

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[13] Marsuda-Rodgers, 719 F. Supp. at 1096.

[14] Id. at 1100.

[15] Id. at 1097-98, quoting Fundicao Tupy S.A. v. United States, 678 F.Supp. 898 (Ct. of Int's Trade), aff'd, 859 F.2d 915 (Fed. Cir. 1988).

[16] Views of Commissioners Eckes, Rohr, and Newquist, supra at 9 n.21.

proposition that imports from each country must be shown to have contributed to the injury to the domestic industry; that, in fact, is precisely the backwards Commission logic that the court rejected.[17] Rather, the decision stands for the correct proposition, explicit in the cumulation provision of the statute and its legislative history, that cumulation is proper only when the imports act together in concert to create the injury to the domestic industry.[18]

Imports under investigation from each of the countries will always be examined to determine their impact on the domestic industry. The question is whether they should be considered together. The answer depends on the nature of the competition among the different countries' products in the United States market.[19] Once that matter is decided, the Commission can

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[17] The Commission in its brief before the CIT argued that "where cumulation is appropriate, volume is to be considered on a cumulated basis without regard to whether imports from one country are independently a cause of material injury." Marsuda-Rodgers, 719 F. Supp. at 1099, quoting Defendant's Memorandum In Opposition to Plaintiff's Motion for Judgment on the Agency Record. The court responded: "The problem with Defendant's position is that, in effect, defendants have circumvented the proper order of injury analysis: decision as to appropriateness of cumulation analysis is subsequent, and not prior, to an affirmative finding of competition." Id.

[18] The legislative history, for example, refers to the "hammering effect on domestic industry" caused by simultaneous unfair imports, noting however, that cumulation is "limited to imports which are having a simultaneous impact on the domestic industry by competing during the same time period." H. Rep. 100-40, Part I, 100th Cong., 1st Sess., 130-131 (1987).

[19] The statute is very clear on that point, requiring that cumulated imports "compete with each other and with like products of the domestic industry in the United States market." 19 U.S.C. 1677(7)(C)(iv).

evaluate the imports, together or separately as appropriate, to assess their impact on the domestic industry. While one might always quibble with the specific details or language of a judicial decision, the Commission's arguments in opposition to Marsuda-Rodgers are, in my view, largely spurious.

This analysis disposes of the primary objection of the Korean respondents to cumulation. In particular, one Korean respondent has argued that, for the purposes of cumulation, the Korean imports do not compete with the Japanese and Taiwan imports because the Korean products were designed by U.S. firms pursuant to multinational production arrangements. Furthermore, we are told that the Korean systems are distributed through different channels of distribution.[20]

As I noted in my views in the Japanese and Taiwanese investigations, these factors relate more to the impact of the imports on the domestic industry than they do to the issue of cumulation. Despite the differences in the systems, a business interested in purchasing an SBTS could consider the Korean as well as the Japanese or Taiwanese products. The factors cited by the Korean respondents therefore relate to differences within the systems market. In Marsuda-Rodgers the court found cumulation inappropriate because the products were so different that they

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[20] See Posthearing Brief of Goldstar Telecommunication Co., Ltd., at 2-6.

were traded on different markets.[21] The difference is subtle but important to the proper application of the trade laws.

Domestic Producers Other than AT&T

The second issue that needs to be addressed is AT&T's argument that I ignored or significantly understated the effect of the non-AT&T portion of the domestic industry in reaching my negative determination in the Japanese and Taiwan cases.[22] This argument is incorrect. While some of my discussion in this unusually complicated case may have, for simplicity of exposition, focused on AT&T -- the predominate domestic producer -- I fully considered the effect of the dumping on the entire domestic industry in reaching my negative determination.[23]

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[21] Specifically, the court in Marsuda-Rodgers referred to the "market segmentation" that resulted from the product differences at issue. 719 F. Supp. at 1096.

[22] See Posthearing Brief of American Telephone and Telegraph Company at 6-10.

[23] In particular, my discussion of the elasticity of substitution between the domestic and imported product in footnote 45 on pages 120 and 121 may have led some observers to the view that I was focusing only on AT&T, since the calculation discussed there uses data on the cross-elasticity of demand between AT&T and non-AT&T products. Explicitly including the non-AT&T portion of the domestic industry in this calculation would require a much more complicated discussion and would not lead to any significant change in the reported estimate. In order to determine the elasticity of substitution between the domestic industry and imports, it would be necessary to determine a weighted average of the elasticity of substitution between AT&T and the imports and the elasticity of substitution between the non-AT&T producers and the imports. The elasticity of substitution between AT&T and all other producers would be lower than the elasticity between the domestic industry and the imports reported in the earlier opinion, because the market share to be used in converting the

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Threat of Material Injury

My approach to threat determinations is fully outlined in my recent opinion in Fresh, Chilled, or Frozen Pork from Canada.[24] This approach is captured in three propositions. First, Congress has explicitly indicated in the statutory language and the legislative history that "threat analysis" should not be used to avoid difficult judgments on actual injury. Second, the statutory standard for an affirmative threat determination is high. That is, an affirmative determination must be based on evidence that "the threat of injury is real and actual injury is imminent," and may not be based on supposition or conjecture.[25] Our reviewing courts have ruled that the mere possibility of future injury does not meet this standard.[26] Finally, the threat factors listed in 19 U.S.C. § 1677(7)(F), together with information obtained from the inquiry into actual injury, are to form the basis of our threat inquiry. These factors focus on two issues: the likelihood that the foreign industry will sustain or

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[23](...continued)
cross-elasticity to an elasticity of substitution is larger. This occurs because the relevant market share becomes the share of all producers other than AT&T, not just the share of imports. Appropriately combining this lower value for AT&T with the higher value for the other domestic producers results in an elasticity of substitution between the domestic industry and imports that is largely unchanged from the range reported in the earlier opinion.

[24] Inv. No. 701-TA-298 (Final), USITC Pub. 2218 (September 1989).

[25] 19 U.S.C. 1677(7)(F)(ii).

[26] Alberta Gas Chemical Corp. v. United States, 515 F.Supp. 781, 791 (Ct. of Int'l Trade 1981).

increase its penetration of the U.S. market to levels that would produce material injury in the relatively near future and the sensitivity of the domestic industry to imports.[27] Threat analysis, which necessarily involves prognostication, is a very difficult task.

Sensitivity of the Domestic Industry to Imports. This issue is treated at length in my analysis of the elasticity of substitution in my earlier opinion.[28] As discussed there, only limited substitutability exists between small business telephone systems produced by AT&T and those produced by other manufacturers, including importers. On the whole, since AT&T accounts for the vast majority of the domestic industry, even after considering the possibly greater substitutability between other domestic manufacturers and imports, I am led to conclude that the domestic industry is not highly sensitive to imports.

Likelihood of Increased or Sustained Penetration by Subject Imports. In this case examination of this issue focuses on four considerations.

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[27] I address the pertinent threat factors here. Factors not specifically mentioned are either inapplicable, were discussed in connection with present injury in Telephones I or have no material bearing on my decision.

[28] See Telephones I at 116-122 (Dissenting Views of Chairman Anne E. Brunsdale). See also discussion at p. 30 above, particularly note 23.

Cumulation. In assessing threat of material injury, the Commission is permitted, but not required, to cumulate imports from different countries.[29] In the earlier case, I chose not to cumulate imports from Korea with imports from Japan and Taiwan in my threat determination. As I explained there, I did not cumulate because of differences in the size of the dumping margins as well as differences in the trends of imports over the period of the investigation.[30] Consistency thus requires that I examine the imports from Korea alone in the reaching a determination on threat in the current investigation.

Likelihood of Increased Import Shipments. The value of imports of small business telephone systems and subassemblies from Korea more than doubled between 1986 and 1987.[31] This surge in imports coincided with two significant events in the history of Korean SBTS production. First, one U.S. importer shifted its sourcing toward Korea and reduced its reliance on producers located in Japan and Taiwan.[32] At the same time, one Korean firm

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[29] 19 U.S.C. 1677(7)(F)(iv). Contrast with 19 U.S.C. 1677(7)(C)(iv) which states that the Commission must cumulate in determining whether an industry has actually been materially injured.

[30] See Telephones I at 136-137 (Dissenting Views of Chairman Anne E. Brunsdale).

[31] See Id. at Table 24, p. A-59.

[32] See Id. at A-19. Consistent with the view that this shift of sourcing was responsible for at least a large portion of the increase in Korean imports, there was a substantial decline in the value of imports from Japan and Taiwan between 1986 and 1987. As a result, the overall value of imports from the three countries -- Japan, Korea, and Taiwan -- declined between 1986 and 1987. (Id. at A-59.)

moved from being an insignificant player in the Korean SBTS market to being a major producer.[33] Since that time, the value of imports from Korea has fallen -- declining by more than 40 percent between the period January-to-June 1988 and the same period of 1989.[34]

The record provides no evidence that additional U.S. importers are planning to shift their sourcing to Korea. Indeed, there may be some shifting to sources that are not subject to the current investigations.[35] Similarly, there is no evidence that additional firms plan major entry into the Korean SBTS market. Because of this and because Korean imports have declined throughout the period of the investigation except for the 1986-1987 increase, I find no reason to anticipate significant increases in Korean imports in the near future.[36]

Korean Production Capacity and Utilization. Between 1986 and 1987, at the same time that Korean production was increasing, Korean capacity to produce SBTS subassemblies also increased. Capacity to produce control-and-switching equipment more than doubled from 81,000 units to 165,000 units, and capacity to produce telephone sets increased by more than 150 percent to 1.8

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[33] Id. at A-56.

[34] See Id. at A-59.

[35] See Id. at A-19.

[36] As noted above, total imports from Japan, Korea, and Taiwan have declined steadily over the period of the investigation. As a result, my conclusions on this issue would not have been different had I cumulated imports from the three countries for purposes of threat determination.

million units. In spite of this large increase, available capacity to produce both control-and-switching equipment and telephone sets was more fully utilized in 1987 than in 1986.[37]

There have been no additional increases in capacity since 1987. Indeed, capacity to produce both control-and-switching equipment and telephone sets has declined. The Korean firms projected that capacity to produce control-and-switching equipment in 1990 will be only 119,000 units and capacity to produce telephone sets will be 1,198,000 units. As for capacity utilization, it exceeded 95 percent for both control-and-switching equipment and telephone sets in 1988. It was expected to decline in 1989, but to remain above 80 percent for control-and-switching equipment and above 85 percent for telephone sets, and to increase again in 1990.[38]

It is not surprising that capacity would increase as a Korean firm seeks to become a major player in the SBTS market and a U.S. importer seeks to source more of its production from Korean firms. This, plus the fact that the increase in capacity occurred two to three years ago and that capacity utilization remains high, suggests that the capacity data provide no evidence of the threat of future material injury.[39]

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[37] See Telephones I at Table 22, p. A-56 - A-57.

[38] See Id.

[39] If one were to cumulate capacity located in Korea with that located in Japan and Taiwan, capacity to produce both control-and-switching equipment and telephone sets would be found to increase between 1986 and 1987. Since then total capacity in the (continued...)

Increased Inventories in the United States. Inventories of Korean control-and-switching equipment were essentially unchanged throughout the period of investigation, both in absolute numbers of units and as a percentage of annual shipments. In contrast, inventories of Korean telephone sets approximately doubled between 1986 and 1988. Nevertheless, with shipments more than doubling during this period, telephone inventories as a percent of shipments declined by more than one-third.[40] In the next six months, however, such inventories more than doubled and, as a percent of shipments, actually rose by approximately 250 percent.[41] However, this increase in inventories appears to be the result of decreased sales of Korean telephones rather than increased imports. Shipments of Korean telephone sets fell by more than 40 percent between the first six months of 1988, when 729,000 telephone sets were shipped, and the comparable period in 1989, when shipments totalled only 410,000 units.[42] U.S. imports of Korean telephone sets did not increase in the first six months

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[39](...continued)
three countries has declined and total capacity in 1989 was projected to be lower than total capacity in 1986. (See Id. at Tables 21, 22, and 23, pp. A-54 - A-58.) If I were considering the threat of future injury on a cumulated basis, I would not find this indicative of future injury.

[40] See Id. at A-51 - A-52.

[41] See Id.

[42] See Id. at Table 4, p. A-28.

of 1989 as compared to the year earlier figures. Indeed they declined to 758,000 units from 787,000.[43]

Conclusion. For all of the above reasons, I conclude that there is no evidence of the threat of material injury as a result of imports of small business telephone systems from Korea.

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[43] See Id. at Table 29, p. A-67. If I were to assess the threat of injury on a cumulative basis, my discussion of trends in inventories would draw upon the same country specific facts as are discussed here and in my opinion in Telephones I. (See pp. 140-141.)

DISSENTING VIEWS OF VICE CHAIRMAN RONALD A. CASS

Certain Telephone Systems and Subassemblies
Thereof from the Republic of Korea
Inv. No. 731-TA-427
(Final)

The Commission's evenly-divided vote in this investigation mirrors our earlier disposition of the Commission's investigations of imports of small business telephone systems and system subassemblies from Japan and Taiwan ("Telephone Systems I"). This outcome is hardly a surprise. The evidence before us in the instant investigation is virtually identical to that which was before us approximately two months ago in Telephone Systems I. The only new record evidence before us concerns the magnitude of the dumping margin for the subject Korean imports. The Department of Commerce recently published its final affirmative determination covering those imports. The final Commerce margins are not, for present purposes, significantly different from those calculated in Commerce's preliminary investigation of Korean imports, which were the best information previously available to us respecting the magnitude of dumping that occurred in the case of Korea.

Notwithstanding the Commission's evident lack of consensus respecting many issues critical to assessment of the appropriate disposition of the Petition (a lack of consensus that, for reasons discussed in Telephone Systems I, in part reflects the nature of the record evidence before us), we are of one mind in concluding that the volume and effect of the subject imports from

Korea must be cumulated with those associated with the imports from Japan and Taiwan that were the subject of our determinations in Telephone Systems I.1/ Given the applicability of the cumulation requirement and given that the evidence now before us is essentially the same as that which was before us in Telephone Systems I, it was virtually inevitable that the Commission's determination in Telephone Systems I would preordain our disposition of the instant investigation.

In dissenting in Telephone Systems I, I offered written views explaining at length the bases for my disagreement with my colleagues who voted in the affirmative.2/ Those Dissenting Views contain a nearly-complete explanation of the reasons why I believe that an affirmative determination is also inappropriate in the instant investigation. No purpose would be served by recapitulating here the discussion set forth in that opinion. Accordingly, my earlier Dissenting Views are simply incorporated by reference in their entirety here.

There are, however, three issues that deserve at least brief additional discussion here. The first such issue concerns the meaning of the legal standard applicable in our Title VII

1/ I concur with my colleagues that the arguments against cumulation advanced by the Korean respondents are unpersuasive. See Views of Commissioner Eckes, Commissioner Rohr and Commissioner Newquist at 5-11.

2/ See Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan, USITC Pub. 2237, Inv. No. 731-TA-426 and 428 (Final) (Nov. 1989) ("Telephone Systems I") (Dissenting Views of Vice Chairman Cass).

investigations. This issue was the subject of considerable discussion in Telephone Systems I, as well as in a number of other antidumping or countervailing duty cases recently before the Commission.3/ Indeed, this issue has been the subject of considerable discussion repeatedly over the past two years. Despite its importance to disposition of this investigation, I revisit it here only to deal briefly with a minor argument. The remaining two issues are more case-specific: these concern (1) the significance of the Commerce Department's final affirmative dumping determination, and (2) the import of certain arguments recently advanced by Petitioner AT&T respecting the impact of dumping of the subject imports on domestic producers other than Petitioner AT&T.

I. THE MINIMAL CAUSATION APPROACH AND THE MEANING OF TITLE VII

As noted in my opinion in Telephone Systems I, there are two bases for the different conclusions Commissioners have reached in this investigation. First, no matter what one reads the law as mandating, there are difficult factual questions that are not unequivocally resolved by the evidence before us.

3/ See, e.g., Telephone Systems I (Dissenting Views of Vice Chairman Cass) (Additional Views of Commissioner Eckes); Certain New Steel Rails from Canada, USITC Pub. 2217, Inv. Nos. 701-TA-297, 731-TA-422 (Final) (Sept. 1989) ("New Steel Rails") (Dissenting Views of Vice Chairman Cass) (Additional Views of Commissioner Eckes) (Additional Views of Commissioner Rohr); Drafting Machines and Parts Thereof from Japan, USITC Pub. 2247, Inv. No. 731-TA-432 (Dec. 1989) ("Drafting Machines") (Additional Views of Commissioner Eckes).

Judgment is necessary in drawing factual inferences from that evidence, and there is ample room on many scores for that judgment reasonably to differ.

A second basis for the differences among Commissioners, and in this investigation perhaps the dominant one, is that we disagree as to the legal standard that should govern our determinations under Title VII of the Tariff Act of 1930. As with the factual record in this investigation, here, too, there is ample room for reasonable disagreement. The legal authorities that must inform construction of the law are not in all respects clear beyond cavil, and Commissioners for a very long time have drawn different conclusions regarding the meaning of particular statutory directions.

To say that reasonable men may differ is not, however, to say that all differences are reasonable. In describing my interpretation of the law, I have noted some points as to which a reasonable basis for disagreement exist and other points for which I cannot find such grounds.

Although debate largely has been cast in terms of bifurcated or unitary views of Title VII's directive to this Commission, that is not the essence of the interpretive issue I find most important and least arguable. I have said repeatedly that some forms of bifurcated analysis arguably can be squared with the governing law, although I do not regard them as the best reading of that law. One particular form of bifurcated analysis, however, cannot.

In a case decided by the Commission last summer, New Steel Rails from Canada,4/ I outlined my disagreement with the interpretation that has been placed on Title VII by certain of my colleagues, an interpretation that I have called the "minimal causation" approach. In essence, the minimal causation approach posits that an affirmative determination is required whenever the Commission believes that an industry is "injured" in the sense that the industry has been performing poorly in absolute or relative terms, and that the imports under investigation, whether or not dumped or subsidized and irrespective of the magnitude of dumping or subsidization, contributed in some measure, however minimal or slight, to the adverse condition of the industry.5/ This approach does more than separate the statutory decision into two components. It fundamentally recasts the statutory command, abandoning any but the most tangential connection of our decision to evaluation of the injury to American industry from dumped or subsidized goods. In a series of opinions culminating in Telephone Systems I, I elaborated my reasons for finding this approach legally insupportable in considerable, if not excruciating, detail.6/

4/ See New Steel Rails, supra (Dissenting Views of Vice Chairman Cass).

5/ See, e.g., Telephone Systems I, supra (Additional Views of Commissioner Eckes); Drafting Machines, supra (Additional Views of Commissioner Eckes).

6/ Telephone Systems I, supra (Dissenting Views of Vice Chairman Cass).

The principal proponent of the minimal causation approach, Commissioner Eckes, has responded to these criticisms by offering written views in several Title VII cases, Telephone Systems I included, that provide a definitive exposition of the bases for the approach that he espouses. So doing, Commissioner Eckes has taken pains to comment on my reading of the law and the manner in which my approach comports with his interpretation. Although many of my colleague's characterizations of my understanding of the law and of court and Commission precedent are flatly incorrect,7/ I do not believe that any extended reply to these

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7/ For example, Commissioner Eckes has stated that I interpret the antidumping laws as "not authorizing the Commission to examine 'a class or kind of merchandise' because such an analysis would conflict . . . . with GATT . . . . ." See Drafting Machines, supra, at 76 (Additional Views of Commissioner Eckes). Commissioner Eckes has also asserted that, in Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639 (Ct. Int'l Trade 1988), aff'd, 865 F.2d 240, 241 (Fed. Cir. 1989), cert. denied, 109 S. Ct. 3244 (1989), the Court of International Trade rejected my view that the statutory language respecting a "class or kind of merchandise" must be read in light of the GATT requirement that the United States, as a party to the GATT, must assess the effects of dumping, and not the effects of imports irrespective of the extent or degree to which they are dumped. See Drafting Machines, supra, at 77-83 (Additional Views of Commissioner Eckes). Neither of these statements is correct.

Certainly, I have never said anything remotely like the statement attributed to me by Commissioner Eckes; to the contrary, as my opinions in Title VII cases have made clear, in considering the volume of imports, the import market share and other statutory factors, I follow the statutory direction that the Commission examine the effects of the "class or kind of merchandise" investigated by the Commerce Department. Taking that particular instruction by itself, however, leaves much open to interpretation. The meaningful questions, necessary to implementation of that direction, are the objective to be served by examination of these effects and the consequent method by which, in service of the statutory objective, we should assess those effects. As I have stated in numerous cases, including

views is either necessary or appropriate here. I will instead confine my comments to the one aspect of my colleague's defense of the minimal causation approach that cannot pass without commentary.

A synopsis of the argument that I have advanced respecting the proper interpretation of Title VII is essential to discussion of this point. In Telephone Systems I, I reviewed certain commonplace rules of statutory interpretation, and explained in detail the manner in which I have used them in arriving at my understanding of the meaning of Title VII.8/ Among other things, I noted that any serious effort at statutory interpretation -- at understanding what a legal directive means as opposed to "interpretive" efforts intended only to find support for previously announced constructions -- must consider primarily the text, structure and legislative history of a statute. Other

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Telephone Systems I, I believe that the language, structure and purpose of the statute plainly indicate that the Commission is directed to carry out such an examination in order to enable us to assess the effects of dumping on domestic industry. See, e.g., Telephone Systems I, supra, at 167-171 (Dissenting Views of Vice Chairman Cass).

As I explained in Telephone Systems I, among other cases, I also believe that an objective reading of Algoma provides no basis whatever for belief that such an understanding is incorrect. See Telephone Systems I, supra, at 169-70 (Dissenting Views of Vice Chairman Cass). Algoma allows the Commission to reach a decision on effects of dumped or subsidized merchandise without tracing injury to specific units of such merchandise or to the magnitude of dumping or subsidization of those particular units. The court did not, however, suggest that we may wholly sever our determination from evaluation of the effects of dumping or subsidization, as Commissioner Eckes suggests.

8/ Id. at 176-181.

guides to the meaning of a statute, such as administrative precedent, may also be used, but only when the primary tools of statutory interpretation provide an insufficient basis from which to divine the statutory meaning. I criticized the minimal causation approach as paying little, if any, heed to those basic rules. I observed that the mode of analysis preferred by advocates of the minimal causation approach appears instead to consist in large measure of a single-minded effort to wrench individual sentences or sentence fragments out of context from the documents in which they appear, to impute to them a meaning that is by no means obvious, and to then elevate them as guides for statutory interpretation above clearer statements to the contrary appearing in more authoritative sources or even in the selfsame document.

The response to such criticisms has made even more transparent the distortions of legislative and other authorities essential to the minimal causation approach. Commissioner Eckes' most recent response in a case decided late last year, Drafting Machines and Parts Thereof from Japan, is representative as well as revealing. My colleague, once again essaying to demonstrate that administrative tradition is consistent with his version of the bifurcated approach to Title VII, states that every member of this Commission over the last 21 years has used a bifurcated approach.9/ He takes special note of my views in this regard,

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9/ Drafting Machines, supra, at 68, n. 2 (Additional Views of Commissioner Eckes).

asserting that, even though I have repeatedly criticized the bifurcated analysis embodied in the minimal causation approach, I have in fact employed such analysis myself.10/ Indeed, Commissioner Eckes claims recently to have "discovered" that "Vice Chairman Cass used bifurcated analysis in eleven discrete determinations."11/

This assertion may strike even casual observers of the Commission as ridiculous. Almost immediately upon my arrival at the Commission, I stated publicly, in the very first Title VII cases in which I participated at the Commission, that I believed that a unitary, rather than a bifurcated, approach to Title VII cases is contemplated by Title VII.12/ I subsequently elaborated on my views on this issue with extended discussions in 3.5" Microdisks and Media Therefor from Japan,13/ Digital Readout Systems and Subassemblies Thereof from Japan,14/ and many other investigations. I have, since joining the Commission, published

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10/ Drafting Machines, supra, at 69, n. 2 (Additional Views of Commissioner Eckes).

11/ Id. (emphasis in the original)

12/ See Certain Stainless Steel Butt-Weld Pipe Fittings, USITC Pub. 2067, Inv. No. 731-TA-376 (Final) (Mar. 1988) (Additional Views of Commissioner Cass); Certain All-Terrain Vehicles from Japan, USITC Pub. 2071, Inv. No. 731-TA-388 (Preliminary) (Mar. 1988) (Additional Views of Commissioner Cass).

13/ USITC Pub. 2077, Inv. No. 731-TA-389 (Preliminary) 59-70 (April 1989) (Additional Views of Commissioner Cass) ("Microdisks").

14/ USITC Pub. 2150, Inv. No. 731-TA-390 (Final) 98-108 (Jan. 1989) (Concurring and Dissenting Views of Commissioner Cass) ("Digital Readout Systems").

approximately 1500 pages of written views in which I have explained both my approach to Title VII cases, and the manner in which that approach differs sharply from that employed by certain of my colleagues, Commissioner Eckes particularly. One would think that by now anyone who reads our opinions would be painfully familiar with my views on this subject. One might understandably misconstrue a sentence here or there, but it takes willful incompetence to misconstrue fundamentally more than a thousand pages of text.

In asserting that I have used bifurcated analysis in "eleven discrete determinations," my colleague has shown that misconstruction of a sentence here or there can serve as a surrogate for the misreading of larger bodies of work. The authority cited for the proposition that I have used bifurcated analysis eleven times is the Commission's opinion in its preliminary investigation in Antifriction Bearings, an investigation covering products from nine countries, some of which were allegedly both dumped and subsidized.15/ These allegations were contained in one Petition. The Commission, myself included, assessed all allegations on a cumulated basis and wrote a single opinion covering all of the allegations. In other words, the "eleven discrete determinations" are in fact a

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15/ 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, USITC Pub. 2083, Inv. Nos. 303-TA-19-20, 731-TA-391-399 (Preliminary) (May 1988).

single case. Moreover, that case was, of course, decided some time after I had made unmistakably clear my disagreement with the bifurcated approach.

More important yet, my colleague's statement is wrong even with respect to that decision. Only an intentionally obtuse observer could miss that point. In Antifriction Bearings, the Commission made a unanimous affirmative determination in its preliminary investigation. I joined in the Views of the Commission in Antifriction Bearings, but in so doing, I made clear that I did not subscribe to all aspects of those Views. The Views of the Commission included a short discussion of the condition of the industry and the impact of unfairly traded imports in nominally bifurcated form. The Views of the Commission specifically noted, however, that certain Commissioners (myself among them) differed on the method of analyzing the data of record.16/ Moreover, in the Additional Views that I wrote in that case, I specifically stated that

> [M]y views concerning the manner in which certain issues of the kind raised in this proceeding should be analyzed are different from those of certain other members of the Commission. These views are summarized elsewhere (footnote omitted) and no purpose would be served by describing them at length here.

In a footnote to this statement, I cited a number of cases that summarized my views on the appropriate approach to Title VII cases; first among them was Microdisks, in which I had only recently described in great detail the basis for my belief that a

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16/ Id. at 38.

bifurcated reading of the statute was inappropriate. I saw no purpose in reiterating my views on that issue in detail in our preliminary investigation in Antifriction Bearings. Accordingly, in order to make clear that my approach was different from that of certain members of the Commission majority, I simply cross-referenced my opinions in Microdisks and other cases.

Commissioner Eckes, however, quoting a single sentence from the majority opinion and a single sentence from my opinion out of context, finds a basis for interpreting my decision as based on a bifurcated approach. In the face of all of the evidence respecting the method of analysis that I have used not only in Antifriction Bearings, but in all Title VII cases, both before and since, Commissioner Eckes cites Antifriction Bearings for the proposition that I have employed bifurcated analysis on eleven separate occasions. Plainly, this is more than exalting form over substance; it is distorting both form and substance beyond recognition.

It would be difficult, however, to provide a clearer illustration of the mode of interpretation on which Commissioner Eckes' approach rests. One might wonder how Commissioners who disagreed on so much over a twenty-year period would unanimously accept the approach advocated by my colleague. If one reads the decisions of those Commissioners, one wonders even more how the various approaches could be conflated to a single approach, much less to an approach such as Commissioner Eckes employs. When one realizes that Commissioner Eckes is willing to claim that I have

endorsed that approach as well, eleven times, the source of the other claims becomes clear.

I do not, of course, believe that my past decisions should of themselves be taken as the best evidence of what Title VII means. Indeed, as I have made plain, I do not believe that administrative decisions are, as a group, the best evidence of that meaning. My views on the statute are based primarily on those sources that are most authoritative and most instructive. Commissioner Eckes' assertion respecting my views is worth little attention as a guide to statutory interpretation. As an example of the advocacy typically employed in defense of the minimal causation approach, however, his statement respecting my eleven discrete bifurcated determinations speaks eloquently for itself.

II. SMALL BUSINESS TELEPHONE SYSTEMS AND SUBASSEMBLIES FROM KOREA: MATERIAL INJURY BY REASON OF SALES AT LTFV

A. Final Dumping Determination by the Department of Commerce

As previously discussed, the record evidence in this investigation is essentially the same as that which was before us in Telephone Systems I. The only issue on which the evidence now differs somewhat concerns the margin of dumping applicable to the subject imports from Korea. The dumping margins calculated for the Korean Respondents in the final investigation by the Department of Commerce were slightly higher than the preliminary margins that were the best evidence available to us when Telephone Systems I was decided. The final dumping margins were

14.75% for Respondent Goldstar, 13.40% for Respondent Samsung and 13.90% for all other Korean producers;17/ the preliminary margins, by contrast, were 6.09% for Goldstar, 9.33% for Samsung and 7.79% for all other Korean producers.18/ Thus, the final margins, although higher than the preliminary margins, were not dramatically higher.19/ Moreover, the decrease in prices of the subject imports accompanying dumping was even less than that reflected in the full amount of these margins. Indeed, because the subject Korean producers made far more sales of the various major telephone system subassemblies in the United States than they did in their home market,20/ the evidence suggests that the actual decrease in import prices resulting from dumping was, in percentage terms, but a small portion of the dumping margin.21/

In short, the final dumping margins calculated by the Department of Commerce indicate that Korean import prices were not greatly affected by dumping. Furthermore, based on the record before us, it is apparent that the relatively small

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17/ Report at A-4.

18/ Telephone Systems I, supra, at 273.

19/ Certainly, they are far smaller than those calculated for the Japanese producers and for Taiwan Respondent Nitsuko in Telephone Systems I.

20/ See Report at A-56, Table 22.

21/ See Telephone Systems I, supra, at 276-279; Certain Telephone Systems and Subassemblies Thereof from Japan, Korea and Taiwan, USITC Pub. 2156, Inv. Nos. 731-TA-426-428 (Preliminary) 75 (Feb. 1979) (Additional Views of Commissioner Cass) and materials cited therein.

decreases in import prices that did occur did not produce significantly increased volumes of the subject Korean imports. The extent to which decreases in subject import prices generate increased import volumes is, in large measure, a function of the extent to which the imported merchandise is substitutable for the domestic like product. For reasons discussed in depth in Telephone Systems I,22/ the record evidence in this investigation shows that there were clear limits on the substitutability of the subject Korean imports for the domestic like product. These limits were sufficiently great as to preclude the possibility that dumping of the magnitude evident here could have caused significantly increased volumes of imports from Korea. Moreover, for the reasons stated in Telephone Systems I, LTFV sales of imports from Korea, even when cumulated with the Japanese and Taiwan imports that were the subject of our determination in Telephone Systems I, did not have significant adverse effects on either prices or sales of the domestic like product, or on the financial or employment performance of the domestic industry.

B. Effects of LTFV Imports on Smaller Domestic Producers

The final issue that warrants attention here concerns certain arguments advanced by Petitioner AT&T in this investigation respecting the impact of dumping of the subject imports on domestic producers other than Petitioner AT&T.

22/ Telephone Systems I, supra, at 286-98.

Specifically, in its Posthearing Brief, Petitioner stated that, in Telephone Systems I, both I and the Chairman independently "concluded that, absent dumping, market prices would not have been significantly higher, with dumped imports largely being replaced in the market by equipment from other sources."23/ According to Petitioner, the Chairman and I also concluded that "because of its low substitutability for the dumped imports, AT&T equipment would not have participated significantly in this supply effect", and "dismissed as immaterial the extent to which domestic producers other than AT&T would have participated in this supply effect . . . . "24/

I am sure that the Chairman will provide her own response to these comments. For my part, it seems that Petitioner misunderstood the import of the relevant part of my views in Telephone Systems I. Petitioner's characterization suggests that I regarded the effects of the subject LTFV sales on smaller domestic producers as irrelevant. I take it that this is the gist of Petitioner's statement; I do not understand Petitioner's claim that I dismissed the effects of the subject LTFV imports on domestic producers other than AT&T merely to restate the fact that I did not ultimately regard the effects of those imports on the domestic industry (including all domestic producers) as rising to the level of "material" injury to that industry. Read

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23/ Posthearing Brief of Petitioner American Telephone and Telegraph Company ("Petitioner AT&T's Posthearing Brief") at 6.

24/ Id. at 6-7 (emphasis in the original).

in this latter fashion, the statement is both true and tautological. Had I found that these imports did have a material adverse effect on the domestic industry, I would have voted to grant the relief sought by the Petition. A fortiori, having voted in the negative, I did indeed conclude that these effects were "immaterial." That does not, however, seem a useful observation, nor does it appear to be Petitioner's point.

In the relevant part of Telephone Systems I, I summarized my views respecting the impact of LTFV sales on the smaller domestic producers as follows:

> The evidence in sum suggests that, if dumping had not occurred, there would have been some reallocation of market share among imports from the subject countries (footnote omitted), some increase in imports from other countries, and perhaps some increase in sales by the smaller domestic producers. Although the smaller domestic producers, such as Comdial, may have benefited in such a situation, these firms are, as previously noted, a very small part of the domestic industry. Based on all the record evidence before us, I am persuaded that any increases in prices or sales that these smaller producers might have realized would not have been large enough to support an inference that the domestic industry as a whole, or producers whose collective output constitutes a major portion of total domestic production, experienced significantly decreased prices or sales as a consequence of the LTFV sales that have taken place. (footnote omitted).25/

It should, I believe, be plain that my decision in Telephone Systems I took fully into account the effects of LTFV sales of the subject imports on smaller domestic producers; I did not dismiss them as irrelevant. The evidence before us in this investigation as in that case indicates, however, that these

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25/ Telephone Systems I, supra, at 298.

effects, while undoubtedly significant to one or more individual small producers, were not, on balance, significant within the framework relevant to disposition of the investigations -- that is, they were not of a magnitude sufficient to constitute material injury to the domestic industry.26/ By any measure,

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26/ In that context, I note that, in their Posthearing Brief, Petitioner AT&T attempts to demonstrate otherwise. The linchpin of this argument is an assumption that domestic producers other than AT&T "would have replaced at least ten percent of the dumped imports." Petitioner AT&T's Posthearing Brief at 8-9. However, there is no basis in the record for this assumption.

Petitioner claims that such an assumption is "extremely conservative" when one considers that the output of the smaller domestic producers was [* *] than the volume of all non-subject imports and Centrex combined, and supposedly amounted to [* * * * *]. Id. at 8-9. However, such comparisons of raw data provide no basis of any kind for assessing what, if any, additional sales the smaller domestic producers would have made if dumping had not occurred. For example, it is not at all clear why Petitioners believe that this question can be answered by comparing the aggregate demand served by non-subject imports and Centrex with that supplied by the smaller domestic producers of small business telephone systems. This is an apples-to-oranges comparison that appears to have nothing at all to do with the question at issue, i.e., to what extent would smaller domestic producers have increased sales in the absence of dumping? Knowing that the actual sales made by those producers were [*] does not shed any light on that question.

Equally beside the point is Petitioner's assertion that two smaller producers, [*]. See id. at 9-10. The implicit assumption underlying this comparison appears to be that, if dumping had not occurred, the subject foreign producers would have made no sales in the domestic market, and the smaller producers would have been able to supply a significant percentage of the resulting unmet domestic demand. The assumption that the subject imports, which have consistently accounted for a substantial portion of domestic consumption, would have, in essence, disappeared entirely from the domestic market in the absence of dumping is, in my view of the record evidence, patently unrealistic.

AT&T dominates the domestic industry; the effects of the dumped imports on AT&T will therefore reflect the aggregate consequences of those imports to the industry far more than will the effects of those imports on smaller domestic producers. Such an analysis in no way overlooks effects on smaller domestic producers. Rather, it looks at them in the context of overall industry effects. In cases such as this, unlike regional industry cases in which the statute instructs us to consider firm-specific effects,27/ I believe that evaluation of industry effects in that context best accords with our legal mandate.

CONCLUSION

For the reasons stated in these Views and in my Dissenting Views in Telephone Systems I, I have concluded that the domestic industry producing small business telephone systems and subassemblies thereof has not been materially injured by reason of LTFV sales of the subject imports from Korea, and is not threatened with material injury by reason of such imports.

27/ 19 U.S.C. § 1677(4)(C).

Dissenting Views of Commissioner Seeley G. Lodwick

Investigation Nos. 731-TA-427 (Final)
Small Business Telephone Systems and Subassemblies Thereof from Korea

I find that a domestic industry producing small business telephone systems and subassemblies thereof is not materially injured or threatened with material injury by reason of less than fair value imports from Korea. [1]

In my opinion regarding the companion investigations of Japan and Taiwan, I concurred with the majority's views related to like product and domestic industry, and I explained my views regarding the business cycle and conditions of competition, the condition of the domestic industry and threat of material injury. [2] I reaffirm these positions for this case based upon the same record. Since I did not find a basis of material injury, I do not need to address cumulation for an analysis of material injury by reason of LTFV imports from Korea. In regards to cumulating for threat, given my negative determination based upon an analysis of cumulated imports from Japan, Korea and Taiwan, there is no reason for me to revisit this issue. [3]

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[1] Material retardation is not an issue in this case.

[2] See Certain Telephone Systems and Subassemblies thereof from Japan and Taiwan, Inv. nos. 731-TA-426 & 428 (Final), USITC Pub. No. 2237 November 1989 at 317.

[3] In the companion cases regarding Japan and Taiwan, I cumulated the imports from Japan, Korea and Taiwan. Id. at 339. I do not assert that such cumulation is either necessary or more appropriate under the statute and the record for this case. Cumulating all imports provides the best case scenario for the petitioner, so had I decided not to cumulate it would not have changed my determination.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

On August 2, 1989, the U.S. Department of Commerce (Commerce) notified the U.S. International Trade Commission (Commission) of its preliminary determinations regarding imports of small business telephone systems (systems) and subassemblies thereof (subassemblies)[1] from Japan, Korea, and Taiwan. The Commerce notices were published in the Federal Register on August 3, 1989 (54 F.R. 31978, 31980, and 31987, respectively). Commerce found that the subject imports are being, or are likely to be, sold in the United States at less than fair value (LTFV). Accordingly, effective August 2, 1989, the Commission instituted investigations Nos. 731-TA-426-428 (Final), under the provisions of the Tariff Act of 1930, to determine whether an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject products from Japan, Korea, and Taiwan into the United States.

Notice of the Commission's investigations was given by posting copies of the notice of institution in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of August 16, 1989.[2] The public hearing on these investigations was held on October 31, 1989.[3]

The Commission received notification of Commerce's final determinations on the subject products from Japan and Taiwan on October 16, 1989. These determinations were published in the Federal Register on October 17, 1989 (54 F.R. 42541 and 42543, respectively). The statute directs the Commission to make a final determination within 120 days after notification of Commerce's preliminary determination or within 45 days after receiving notification of Commerce's final determination, whichever is the later date. Thus, the Commission made its final determinations in investigations Nos. 731-TA-426 and 428, regarding imports of small business telephone systems and subassemblies from Japan and Taiwan, on November 29, 1989. Those determinations were published in the Federal Register of December 6, 1989 (54 F.R. 50446).

On August 14, 1989, Commerce published a notice postponing its final determination on subject imports from Korea until December 18, 1989 (54 F.R. 33261). The Commission is scheduled to make its final determination in investigation No. 731-TA-427, regarding imports of the subject products from Korea, on January 31, 1990. The briefing and vote on this investigation were held on January 22, 1990.

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[1] For the purposes of this investigation, "small business telephone systems and subassemblies thereof" are telephone systems, whether complete or incomplete, assembled or unassembled, the foregoing with intercom or internal calling capability and total nonblocking port capacities of between 2 and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of such a system. These subassemblies are defined as follows: control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch; circuit cards and modules, including power supplies; and telephone sets and consoles, consisting of proprietary corded telephone sets or consoles.

[2] Copies of the Commission's notices are presented in app. A.

[3] A list of witnesses appearing at the hearing is presented in app. B.

Background

On December 28, 1988, counsel for the American Telephone & Telegraph Co., Parsippany, NJ, and Comdial Corp., Charlottesville, VA, filed petitions with the Commission and Commerce alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports from Japan, Korea, and Taiwan of small business telephone systems and subassemblies that were alleged to be sold in the United States at LTFV. Accordingly, effective December 28, 1988, the Commission instituted antidumping investigations Nos. 731-TA-426-428 (Preliminary), under section 733 of the Tariff Act of 1930, to determine whether there was a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States. On February 13, 1989, the Commission determined that there is a reasonable indication that an industry in the United States is materially injured by reason of such imports. These determinations were published in the Federal Register of February 23, 1989 (54 F.R. 7891).

Nature and Extent of the Sales at LTFV

Commerce published its final dumping determination regarding imports of small business telephone systems and subassemblies from Korea in the Federal Register of December 27, 1989.[4] In its investigation, Commerce presented questionnaires to Goldstar Telecommunications Co., Ltd. (Goldstar) and Samsung Electronics Co., Ltd. (Samsung), firms that were found to account for "a substantial portion" of the subject exports to the United States during Commerce's period of investigation, July-December 1988.

Commerce established four categories of products: systems and three subassemblies--control and switching equipment, circuit cards and modules, and telephone sets and consoles. Margins were calculated based on fair value comparisons between U.S. prices and foreign market values. Where there were no comparable sales of identical products, Commerce compared sales of "such or similar" products, making adjustments as required. However, where the volume of home and third-country sales was inadequate for purposes of calculating foreign market value, a constructed value was used.

Samsung had no sales of complete systems during the period of investigation, and constructed value was used for the foreign market value of sales of systems by Goldstar. Home market sales were sufficient to serve as the basis for the foreign market value in subassembly price comparisons except for sales of circuit cards and modules by Goldstar, where third-country sales were used. Commerce examined U.S. sales by Goldstar of $* * * and sales by Samsung of $* * *. * * * percent and * * * percent, respectively, of such sales were found to be at LTFV.[5] The final dumping margins are:

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[4] A copy of Commerce's final determination is presented in app. C.
[5] Comparable quantity data include a mix of system and subassembly units.

Company	Margin percentage
Goldstar	14.75[6]
Samsung	13.40
All others	13.90[6]

Report Format

This report is designed to be used in connection with the Commission report entitled Certain Telephone Systems and Subassemblies Thereof from Japan and Taiwan: Determinations of the Commission in Investigations Nos. 731-TA-426 and 428 (Final) . . ., USITC Publication 2237, November 1989. That report included all information relevant to the investigation regarding imports from Korea with the exception of the final Commerce determination, which is presented above.

[6] Revised data provided by Commerce staff in a telephone conversation on Jan. 18, 1990.

APPENDIX A

THE COMMISSION'S FEDERAL REGISTER NOTICES

[Investigations Nos. 731-TA-426-428 (Final)]

Certain Telephone Systems and Subassemblies thereof from Japan, Korea, and Taiwan

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-426-428 (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, Korea, and Taiwan of small business telephone systems,[1]

[1] For the purposes of these investigations, "small business telephone systems and subassemblies thereof" are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total nonblocking ports capacities of between 2 and 256 ports, and discrete subassemblies thereof designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are: control and switching equipment, circuit cards and modules, and telephone sets and consoles.

provided for in subheadings 8504.40.00, 8517.10.00, 8517.30.20, 8517.30.25, 8517.30.30, 8517.81.00, 8517.90.10, 8517.90.15, 8517.90.30, 8517.90.40, and 8518.30.10 of the Harmonized Tariff Schedule of the United States (previously reported under items 682.60, 684.57, 684.58, and 684.59 of the Tariff Schedules of the United States), and that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before October 10, 1989, and the Commission will make its final injury determinations within 45 days of notification of Commerce's final determinations (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, 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), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), and part 201, subparts A through E (19 CFR part 201) as amended by 54 FR 13672 (April 5, 1989).

EFFECTIVE DATE: August 2, 1989.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), 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. These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of small business telephone systems from Japan, Korea, and Taiwan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on December 28, 1988, by American Telephone & Telegraph Co., Parsippany, NJ, and Comdial Corp., Charlottesville, VA. In response to that petition, the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, 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 7891, February 23, 1989).

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

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations 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), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to section 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33039 (August 29, 1988) and 54 FR 5220 (February 2, 1989), the Secretary will make available business proprietary information gathered in these final investigations 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 these investigations will be placed in the nonpublic record on October 13, 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 these investigations beginning at 9:30 a.m. on October 31, 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 October 20, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on October 25, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 24, 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. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with section 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 6, 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 6, 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), *as amended* by 53 FR 33034 (August 29, 1988), 54 FR 5220 (February 2, 1989), and 54 FR 13672 (April 5, 1989).

Parties that obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), as amended by 53 FR 33034 (August 29, 1988) and 54 FR 5220 (February 2, 1989), 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 13, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are 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: August 11, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-19246 Filed 8-15-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-427 (Final)]

Certain Telephone Systems and Subassemblies Thereof From Korea

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-252-1192), 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: Effective August 2, 1989, the Commission instituted the subject investigation and established a schedule for its conduct (54 FR 33783, August 16, 1989). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from October 10, 1989 to December 18, 1989 (54 FR 33261, August 14, 1989). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's schedule for the investigation is revised as follows: the deadline for filing posthearing briefs is January 3, 1990, and the deadline for Parties to file additional written comments on business proprietary information is January 10, 1990.

For further information concerning this investigation see the Commission's notice of investigation cited above and 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).

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: November 9, 1989.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-26903 Filed 11-15-89; 8:45 am]

BILLING CODE 7020-02-M

APPENDIX B

LIST OF WITNESSES

List of Witnesses

Those persons listed below appeared at the United States International Trade Commission's hearing held in connection with the subject investigations.

Subject: Certain Telephone Systems and Subassemblies Thereof from Japan, Korea, and Taiwan

Invs. Nos: 731-TA-426-428 (Final)

Date and Time: 9:30 a.m., October 31, 1989

Sessions were held in the Main Hearing Room of the United States International Trade Commission, 500 E Street, S.W., Washington, DC

In support of the imposition antidumping duties:

(Appearing as a group)

Covington & Burling
on behalf of

American Telephone & Telegraph Co.

Harvey M. Applebaum)
O. Thomas Johnson, Jr.)
Sonya D. Winner)--OF COUNSEL
Susan L. Burke)
Mark P. Kindall)

Comdial Corp.
Charlottesville, VA

Witnesses:

John A. Blanchard, Senior Vice President, AT&T
John Henderson, Vice President, Frank Lynn & Associates
Paul E. Green, S. S. Kresge Professor of Marketing, The Wharton School, University of Pennsylvania
Alan R. Theesfeld, Product Manager, GBS, AT&T
Thomas M. Woodard, Director, McKinsey & Co.
William G. Mustain, Chief Executive Officer, Comdial
Bruce P. Malashevich, President, Economic Consulting Services Inc.
Thomas Davis, Northeastern Telecommunications

Thomas A. Williams, Finance Manager, GBS, AT&T
Jeff Babka, Financial Vice President, GBS, AT&T^R
Paul Wondrasch, President, GBS, AT&T
Andrew W. Bongiorno, Senior Attorney, GBS, AT&T
Kevin Nuffer, Engagement Manager, McKinsey & Co.

In opposition to the imposition antidumping duties:

(Appearing as a group for Japan)

Akin, Gump, Strauss, Hauer & Feld
on behalf of

Fujitsu Ltd.,
Fujitsu, America, Inc., and
Hasegawa Electric Co., Ltd.

Warren E. Connelly)
Valerie Slater) --OF COUNSEL

Coudert Brothers
on behalf of

NEC Corp. and
NEC America, Inc.

Mark D. Herlach)
Christer L. Mossberg) --OF COUNSEL
James G. Dwyer)

Dorsey & Whitney
on behalf of

Nissho Iwai American Corp.

James Taylor, Jr.)
L. Daniel Mullaney) --OF COUNSEL

Fenwick, Davis & West
on behalf of

Nakayo Telecommunications, Inc. and
Nakayo U.S.A., Inc.

Donald R. Davis)
Roger M. Golden) --OF COUNSEL
Preston T. Scott)

Graham & James
on behalf of

Nitsuko Corp.

Yoshihiro Saito)
Jeffrey L. Snyder) --OF COUNSEL
Lawrence R. Walders)

In opposition to the imposition antidumping duties--Continued

(Appearing as a group for Japan)--Continued

McDermott, Will & Emery
on behalf of

Hitachi, Ltd.

Carl W. Schwarz)
William H. Barrett)--OF COUNSEL
Lizbeth R. Levinson)

Mudge Rose Guthrie Alexander & Ferdon
on behalf of

Toshiba Corp. and
Toshiba America Information Systems, Inc.

N. David Palmeter)
Jeffrey S. Neeley)--OF COUNSEL
Joseph Francois)

Skadden, Arps, Slate, Meagher & Flom
on behalf of

Iwatsu Electric Co.,
Iwatsu America, Inc.,
Executone Business Systems
Business Telephones, Inc.
ATCOM Inc., and
E&H Electronics

William E. Perry--OF COUNSEL

Weil, Gotshal & Manges
on behalf of

Matsushita Electric Industrial Co.,
Matsushita Comminication Industrial Co.,
Kyushu Matsushita Electric Co., Ltd., and
Matsushita Electric Corp. of America

A. Paul Victor)
Jeffrey P. Bialos)--OF COUNSEL
Martin S. Applebaum)

Witnesses:

John W. Wilson, President, J.W. Wilson & Associates
Andrew Wechsler, Director, International Trade Services, Economists Inc.
Harold Furchtgott-Roth, Economists Inc.
Francis R. Collins, President, CCL Corp.
Kenneth M. Munsch, President, ATCOM, Inc.
John Cosgrove, President, Executon Business Systems
Allen Buckalew, Economist, J.W. Wilson & Associates

In opposition to the imposition antidumping duties--Continued

(Appearing as a group for Korea)

Dow, Lohnes & Albertson
on behalf of

Goldstar Telecommunications Co., Inc.

William Silverman)
Michael P. House)--OF COUNSEL
R. Will Planert)
Barry A. Pfeifer)

Hunton & Williams
on behalf of

Executone Information Systems, Inc.

William F. Young)--OF COUNSEL
Lynda M. Rozell)

Oppenheimer Wolff & Donnelly
on behalf of

Oriental Precision Co., Ltd.

David A. Gantz--OF COUNSEL

Witnesses:

Walter H. A. Vandaele, Principle, Putnam, Hayes & Bartlett, Inc.
Steven G. Chrust, Vice President, Corporate Planning, EXECUTONE
H. Nicholas Visser, Jr., Vice President, Direct Sales, EXECUTONE

(Appearing as a group for Taiwan)

Ablondi & Foster
on behalf of

Bitronic Telecoms Co., Ltd.
TAISEL
TECOM Co., Ltd.
Auto Telecom Co.
Sinoca Enterprises, and
Taiwan Telecommunications Industry Co., Ltd.

Peter Koenig--OF COUNSEL

In opposition to the imposition antidumping duties--Continued

(Appearing as a group for Taiwan)--Continued

Graham & James
on behalf of

Taiwan Nitsuko

Yoshihiro Saito)
Jeffrey L. Snyder)--OF COUNSEL
Lawrence R. Walders)

Witness:

Donald Karl, President, Resource Telephone Co.

Whitcom
Long Island, NY

Witness:

Harry Whittelsey, President, Whitcom

APPENDIX C

COMMERCE'S FEDERAL REGISTER NOTICE

[A-580-803]

Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof From Korea

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

ACTION: Notice.

SUMMARY: We determine that certain small business telephone systems and subassemblies thereof (SBTS) from Korea 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 SBTS from Korea 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: December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Contact Nancy Saeed, Brad Hess, Joel Fischl or Tracey Oakes, 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) 377-1777, 377-3003, or 377-3174 respectivley.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that SBTS from Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a) (the Act). The estimated weight-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On July 26, 1989, the Department issued an affirmative preliminary determination (54 FR 31980, August 3, 1989). The following events have occurred subsequent to publication of the preliminary determination.

Verification of the questionnaire responses of Samsung Electronics Co., Ltd. and Samsung Semiconductor & Telecommunications Co., Ltd., (Samsung) and Goldstar Telecommunications Co., Ltd. (GST) was conducted in Korea from August 21 to September 8, 1989. The exporter's sales price (ESP) verification for Goldstar was conducted in Scottsdale, Arizona on September 25–26, 1989, and in Darien, Connecticut on October 3, 9, and 10, 1989.

Interested parties submitted comments for the record in their case briefs dated November 9, 1989, and in their rebuttal briefs dated November 14, 1989. A public hearing was held on November 16, 1989.

Period of Investigation

The period of investigation (POI) is July 1, 1988, through December 31, 1988.

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 number (s). The HTS Item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The products covered by this investigation are certain small business telephone systems and subassemblies

thereof, currently classifiable under *HTS* item numbers 8517.30.2000, 8517.30.2500, 8517.30.3000, 8517.10.0020, 8517.10.0040, 8517.10.0050, 8517.10.0070, 8517.10.0080, 8517.90.1000, 8517.90.1500, 8517.90.3000, 8518.30.1000, 8504.40.0004, 8504.40.0008, 8504.40.0010, 8517.81.0010, 8517.81.0020, 8517.90.4000, and 8504.40.0015. Prior to January 1, 1989, such merchandise was classifiable under items 684.5710, 684.5720, 684.5730, 684.5805, 684.5810, 684.5815, 684.5825, 684.5830, 682.6051, and 682.6053 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Certain small business telephone systems and subassemblies thereof are telephone systems, whether complete or incomplete, assembled or unassembled, with intercom or internal calling capability and total non-blocking port capacities of between two and 256 ports, and discrete subassemblies designed for use in such systems. A subassembly is "designed" for use in a small business telephone system if it functions to its full capability only when operated as part of a small business telephone system. These subassemblies are defined as follows:

(1) Telephone sets and consoles, consisting of proporietary, corded telephone sets or consoles. A console has the ability to perform certain functions including: answer all lines in the system; monitor the status of other phone sets; and transfer calls. The term "telephone sets and consoles" is defined to include any combination of two or more of the following items, when imported or shipped in the same container, with or without additional apparatus: housing; hand set; cord (line or hand set); power supply; telephone set circuit cards; console circuit cards.

(2) Control and switching equipment, whether denominated as a key service unit, control unit, or cabinet/switch. "Control and switching equipment" is defined to include the units described in the preceding sentence which consist of one or more circuit cards or modules (including backplane circuit cards) and one or more of the following items, when imported or shipped in the same container as the circuit cards or modules, with or without additional apparatus: connectors to accept circuit cards or modules; building wiring.

(3) Circuit cards and modules, including power supplies. These may be incorporated into control and switching equipment or telephone sets and consoles, or they may be imported or shipped separately. A power supply converts or divides input power of not more than 2400 watts into output power of not more than 1800 watts supplying DC power of approximately 5 volts, 24 volts, and 48 volts, as well as 90 volt AC ringing capability.

The following merchandise has been excluded from this investigation: (1) Nonproprietary industry-standard ("tip/ring") telephone sets and other subassemblies that are not specifically designed for use in a covered system, even though a system may be adapted to use such nonproprietary equipment to provide some system functions; (2) telephone answering machines or facsimile machines integrated with telephone sets; and (3) adjunct software used on external data processing equipment.

We note that a number of ambiguities existed in the scope language previously published in the Notice of Initiation with regard to the definition of subassemblies. Therefore, in our preliminary determination, we clarified the language describing the subassemblies under investigation.

The Department continues to receive numerous inquiries regarding the inclusion of dual use subassemblies within the scope of this investigation. As noted in the preliminary determination notice, the Department defines dual use subassemblies as those subassemblies that function to their full capability when operated as part of a large business telephone system as well as a small business telephone system. Because dual use subassemblies by definition are not subassemblies "designed" for use in small business telephone systems, dual use subassemblies are excluded from the scope of the investigation.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16)(C) of the Act, we established four categories of "such or similar" merchandise consisting of: (a) Control and switching equipment; (b) circuit cards and modules; (c) telephone sets and consoles: and (d) complete small business telephone systems ("systems").

Product comparisons were made using criteria which are ranked in order of importance. For control and switching equipment we used the following criteria: (1) Port capacity based on minimum operational configuration; (2) type of central microprocessor; and (3) read-only memory (ROM) size. For circuit cards and modules we considered: (1) Functions; and (2) physical appearance. For telephone sets and consoles we considered: (1) Number of buttons (regardless of function) excluding dialpad; and (2) number of individual visual indicators. For complete telephone systems, we made comparisons on the basis of the similarity of subassemblies, using the criteria described in the preceding sentences.

When there was no identical product in the home or third country market with which to compare a product imported into the United States, the most similar product was compared on the basis of the characteristics described above. We made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(4)(C) of the Act. Consistent with our normal practice, when adjustments for differences in the merchandise proved to be substantial, we used constructed value (CV). In this case, we determined that an adjustment greater than 20 percent of the cost of manufacturing (COM) of the U.S. model is substantial.

In order to determine whether there were sufficient sales of SBTS in the home market to serve as the basis for calculating foreign market value (FMV), we compared the volume of home market sales within each such or similar category to the volume of third country sales within each respective such or similar category, in accordance with section 773(a)(1) of the Act.

Samsung had no sales of systems in the United States during the POI. We determined that there were sufficient home market sales to unrelated customers for each of the other such or similar categories.

For GST, we determined that the home market was viable as compared to third country sales for the following such or similar categories: control and switching equipment; telephone sets and consoles; and circuit cards and modules. As noted in comment 5 of the Goldstar issues section of this notice, however, we used third country sales for comparisons of circuit cards and modules. We also note that for each of the three such or similar categories with viable home market, we used CV in situations where we could not match U.S. sales to home market or third country sales of similar of identical products. GST had no third country sales of systems and a comparison of home market sales to U.S. sales did not provide an adequate basis to make comparisons. Therefore, we requested that GST report CV data for systems and we have used this data as the basis for FMV.

For circuit cards and modules, we determined that sales to third countries were the most appropriate basis for calculating FMV because the merchandise sold in third countries was the most comparable to merchandise sold in the United States, and because

the volume of sales of identical or similar merchandise to third countries constituted a sufficient basis for our comparisons.

Fair Value Comparisons

To determine whether sales of SBTS from Korea to the United States were made at less than fair value, we compared the U.S. price to the FMV, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Samsung, we based the U.S. price on purchase price in accordance with section 772(b) of the Act because all sales were made directly to unrelated parties prior to importation into the United States. For GST, we based the U.S. price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because in each case the sale to the first unrelated purchaser took place after importation into the United States.

Samsung

We calculated purchase price based on packed, f.o.b. Korean port prices to unrelated customers in the United States. We made deductions, where appropriate, for inland freight, wharfage, container freight station fees, and customs clearance fees. We added rebated duties and uncollected taxes pursuant to section 772(d) (1)(B) and (C) of the Act.

GST

We calculated ESP based on packed, delivered prices in the United States. We made deductions, where appropriate, for brokerage, wharfage, inland freight in Korea, stuffing charges, ocean freight, marine insurance, U.S. customs duty, customs brokerage fees, U.S. inland freight, and inland insurance. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for bad debt expenses, installation labor expenses, warranty expenses, expenses for promotional materials, technical service expenses, credit expenses, cooperative advertising, commissions, and indirect selling expenses. We deducted promotional material expenses as indirect selling expenses for sales other than sales to original equipment manufacturers (OEM's), and as direct selling expenses for OEM sales. We treated the portion of the claimed technical services expenses not related to specific sales as indirect selling expenses. We adjusted the reported amounts for installation labor, corporate overhead, and corporate general and administrative ("G&A") in accordance with adjustments noted in our verification reports.

In accordance with section 772 (e)(3) of the Act, we deducted value added resulting from assembly performed on the imported merchandise after its importation. This value added included two parts: the process of assembly (also referred to as "further manufacturing"); and the portion of total profit attributable to further manufacturing (also referred to as "allocated profit"). For purposes of this investigation, we determined that, in addition to the cost of the installation parts and materials, further manufacturing included the proportions of installation labor, installation overhead, corporate overhead, and corporate G&A expenses attributable to the installation parts and materials. The allocated profit included two components: The portion of total profit attributable to further manufacturing; and the profit attributable to the portion of total selling, G&A expenses allocated to further manufacturing as explained above.

In accordance with section 772(d)(1) (B) and (C) of the Act, we made adjustments to the ESP as described in the foreign market value section of this notice. For comparisons to home market and third country sales, we added uncollected import duties to the ESP. For comparisons to home market sales we added uncollected or rebated taxes to the ESP. Although the statute is ambiguous with respect to the treatment of indirect taxes when, as here, home market sales are reported on a tax-exclusive basis, we added uncollected taxes pursuant to section 772(d)(1)(C) of the Act.

Foreign Market Value

In accordance with section 773 of the Act, we calculated FMV for Samsung based on home market sales prices or CV, as appropriate.

For GST, we calculated FMV based on home market sales prices, third country sales prices, and CV, as appropriate, in accordance with section 773 of the Act.

Samsung

For Samsung, we calculated FMV based on packed, delivered prices to unrelated customers in the home market.

We made deductions, where appropriate, for inland insurance, rebates, and discounts. We deducted home market packing costs from the FMV and added U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, warranty expenses, advertising expenses, postage fees and foreign exchange fees, pursuant to section 773(a)(4)(B) of the Act. We did not allow a deduction for home market inland freight because it could not be verified. We did not consider the reported home market technical service expense to be a direct selling expense because it was of a promotional nature and could not be tied to specific sales. We also did not allow a portion of the claimed home market warranty expense because it could not be segregated between products under warranty and those not under warranty.

We made a circumstance of sale adjustment to eliminate any difference in VAT between the U.S. and home market. We computed the VAT adjustment based on a U.S. price net of all charges incurred in the United States and net of all movement charges incurred between the Korean port and the United States.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations. For sales to one customer, we used best information available for difference in merchandise adjustments because we were unable to identify and adjust for the reporting of different costs for identical parts used in both the home market and U.S. models. (See the Department's response to Comment 1 of the Samsung issue section of this notice). As best information available, we adjusted the reported difference in merchandise adjustments for the sales to this customer by the weighted average percentage change of the difference in merchandise adjustments applicable to those other sales for which the Department was able to correct different costs reported for identical parts used in both the home market and U.S. models.

GST

When sales in the home market were used, we calculated FMV based on packed, delivered, or ex-works prices to unrelated customers. We deducted home market packing costs from the FMV and added U.S. packing costs. We made deductions, where appropriate, for inland freight, cash discounts, volume rebates, product rebates and exchange rebates. We made circumstance of sale adjustments, where appropriate, for differences in credit terms, and for advertising expenses, and warranty expenses. We also allowed a deduction for home market indirect selling expenses, such as warrant expenses, inventory carrying costs and other

indirect selling expenses. This deduction for indirect selling expenses was capped by the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.56 (b) of the Department's regulations.

We made a circumstance of sale adjustment to eliminate any difference in VAT between the U.S. and home market. We computed the VAT adjustment based on a U.S. price net of all charges incurred in the United States and net of all movement charges incurred between the Korean port and the United States. We did not use the VAT adjustment reported by GST because it was based on the home market model chosen by GST as the most similar comparison to the U.S. model, rather than on the U.S. model.

Where appropriate, we made further adjustments to the home market price to account for differences in the physical characteristics of the merchandise, in accordance with section 353.57 of the Department's regulations.

We calculated FMV in the third country markets based on packed, delivered, or ex-works prices to unrelated customers. We made deductions, where appropriate, for wharfage, ocean freight, inland freight in the third countries, brokerage, stuffing and marine insurance. We deducted the third country packing costs from the FMV and added U.S. packing costs. We made circumstance of sale adjustments, where appropriate, for credit expenses. We added duty rebates to the third country price. We allowed a deduction for third country commissions and other indirect selling expenses. We capped the amount deducted for indirect selling expenses by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.56 (b) (2) of our regulations.

Where appropriate, we made further adjustments to the third country price to account for differences in the physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

Constructed Value

For those products sold in the United States for which the difference in merchandise adjustment between the reported home market or third country product and the U.S. product was substantial, as explained previously in the "Such or Similar Comparisons" section of this notice, we calculated FMV based on CV in accordance with section 773(e) of the Act.

Samsung

We calculated the FMV based on CV for Samsung in accordance with section 773(e) of the Act. The CV includes the cost of materials and fabrication of the merchandise exported to the U.S., plus general expenses, profit and packing. In all cases, we used actual amounts for general expenses because these exceeded the statutory minimum amount of ten percent of the cost of materials and fabrication. For profit, we applied the statutory minimum amount of eight percent of the combined cost of materials, fabrication and general expenses, because actual profit amounts were less than this figure. We reduced the reported finance expense to account for the interest portion already included in the imputed credit and finished goods inventory carrying costs. We used the CVs submitted by the respondent, except in those instances when the costs were not appropriately quantified or valued. To develop the ration used to calculate the general and finance expenses for the subject merchandise, we used the general and finance expenses of Samsung as a percentage of the cost of Samsung's sales.

Samsung had used a ration based primarily on the relevant business segment's general and finance expenses instead of total corporate general and finance expenses. In addition, gains and losses on the disposal of fixed assets, write-off of research and development (R&D) amortization expenses, special depreciation, and other losses that were incurred by Samsung but not included in the reported CVs were allocated to the subject products as non-specific operating expenses in the computed general expenses. Dividend income, foreign currency translation/transaction gains or losses, or amortizations thereof, sales discounts, charges earned, rental income, and gains or losses on the disposition of marketable securities included in Samsung's submitted general expense calculations were not identified as specific costs of producing the subject merchandise. Accordingly, these items were not included in the Department's calculation of Samsung's general or finance expenses. We increased Samsung's reported costs of manufacturing (Material, labor and factory overhead) to reflect acutal costs recorded by Samsung for the exported merchandise.

From FMV we deducted home market direct selling expenses and added U.S. direct selling expenses. We deducted home market packing costs and added U.S. packing costs.

GST

We calculated the FMV based on CV for GST in accordance with section 773(e) of the Act.. The CV includes the cost of materials and fabrication for the exported merchandise, plus general expenses, profit and packing. We used actual amounts for general expenses because these exceeded the statutory minimum amount of ten percent of the cost of materials and fabrication. We used actual profit because GST's reported profit exceeded the statutory minimum amount of eight percent of the combined cost of materials, fabrication and general expenses. We reduced the reported finance expenses to account in the interest portion already included in the imputed credit and finished goods inventory carrying costs. The COM values submitted by GST did not include value added tax collected on the completed product. We based our CV calculations on these COM values. To develop the ratio used to calculate the general and finance expenses for the subject merchandise, we used the general and finance expenses of GST's a percentage of the cost of GST's sales We did not use the general and finance expenses as reported by GST because GST had used a ratio based primarily its "Keyphone" business segment instead of total corporate general and finance expenses. Foreign currency translation/transaction gains or losse. or amortization thereof, and interest earned on long-term investments in GST's submitted general expense calculations were not identified as specific costs of producing the subject merchandise. Accordingly, these items were not included in our calculation of GST's general or finance expenses.

In accordance with § 353.41(e)(3) of our regulations, we made the following adjustments to data reported by the related importer, Executive Information Systems, Inc. (EIS), which we then use in our calculations of value added in the United States: Installation labor was calculated based on paid labor wages and on payments to outside contractors for installation, as a percentage of corporate sales; corporate overhead we increased to include interest expense based on financial statement interest during the POI; a portion of general and administrative expense was reallocated to further manufacturing cost. We reduced the interest expense to account for the interest portion included in the imputed credit and finished goods inventory carrying costs.

From FMV we deducted home mark direct selling expenses. We also deducted home market indirect selling expenses up to the amount of indirect selling expenses incurred in the U.S. market, in accordance with § 353.56(b) of the Department's regulations. We deducted home market packing costs

from the FMV and added U.S. packing costs.

Currency Conversion

In accordance with § 353.60 of the Department's regulations, we used the official exchange rates in effect on the appropriate dates for determining FMV.

Verification

Except where noted, we verified all information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures, including examination of relevant accounting records and original source documents of each of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Interested Party Comments

General Issues

Comment 1

Petitioner disagrees with the adoption of the 20 percent difference in merchandise test that the Department used to determine the reasonableness of comparisons between home market and U.S. products. Petitioner argues againt the application of the 20 percent test because it: (1) Is not the most appropriate method to determine the reasonableness of a comparison; (2) is arbitrary; and (3) allows for manipulation to avoid otherwise proper home market comparisons. Specifically, petitioner states that the differences in production costs between products do not accurately reflect the physical differences between comparison products and the commercial substitutability of different products. Petitioner suggests that the Department should use model matches exceeding 20 percent when the comparison model differs only in the configuration of a particular model.

DOC Position

We disagree with the petitioner. Section 771(16)(C)(iii) of the Act confers upon the Department discretionary authority to identify similar merchandise which may reasonably be compared with the subject merchandise. To identify reasonable comparison products in this case, the Department adopted a two-prong approach which limited product comparisons to those comparisons: (1) Which satisfied all technical requirements as described in the "such or similar merchandise" section of this notice; and (2) for which the difference in merchandise adjustment was less than or equal to 20 percent of the COM of the U.S. merchandise ("20 percent guideline").

We found it necessary to adopt a 20 percent guideline as a second prong of our product comparison analysis in this case in order to minimize the effect of certain distortions created in our calculations caused by making a difference in merchandise adjustment. It is our current practice to use CV when differences in the merchandise prove to be substantial in order to minimize distortions and unfair results that follow from the inclusion in the home market price of that portion of selling, general and administrative (SG&A) expenses and profit attributable to the amount of the difference in merchandise adjustment. *See Certain Internal-Combustion, Industrial Forklift Trucks from Japan,* 53 FR 12552, 12567, (April 15, 1988). Essentially, the goal is to balance the statutory objective of a fair, precise apples-to-apples comparison, *see Smith-Corona Group, SCM Corp.* v. *United States,* 713 F.2d 1568, *cert. denied,* 465 U.S. 1022 (1983), with the need to complete antidumping investigations within the statutory deadlines. Through the application of the 20 percent guideline, the Department sought to limit to an acceptable level the extent to which the overstatement (or understatement) of SG&A expenses and profit distorts the final margin. Thus, the Department found that selection of comparison products using both criteria in the preceding paragraph resulted in reasonable and fair comparisons.

Comment 2

Petitioner argues that model comparisons submitted by GST and Samsung are incorrect because these comparisons are based on difference in merchandise adjustments that were overstated. Petitioner contends that there may have been more similar comparisons that were originally rejected because difference in merchandise adjustments exceeded 20 percent. Petitioner further argues that because Samsung did not consider comparisons with difference in merchandise adjustments greater than 20 percent, the Department does not have the information to ascertain whether the correct model was chosen.

Both Samsung and GST submit that the Department should follow their recommendations for model comparisons because they based their comparisons on the Department's questionnaire instructions. Samsung additionally contends that it did not rely solely on the 20 percent difference in merchandise limit. In cases where it could not find a match within the 20 percent guideline, it reported both constructed value and the most similar comparison with a difference in merchandise adjustment of 35 percent or less.

DOC Position

We based our selections on our own analysis of respondents' proposed model comparisons and on revisions made to the difference in merchandise adjustments. In determining product comparisons we first considered products that had similar technical specifications according to the criteria outlined in our questionnaire. If there were no technically similar models with difference in merchandise adjustments of 20 percent or less, we used CV for FMV.

For GST, we selected a small number of comparisons that differed from those recommended by GST. For Samsung, we also selected more appropriate matches for a few model comparisons based on our analysis of the proposed model comparisons. Although we did not have revised difference in merchandise information for every possible model match, we have determined that respondents followed our questonnaire instructions in choosing the matches and did not simply choose the most favorable comparisons. We also found several cases where the chosen comparisons were the most similar regardless of the revised difference in merchandise calculations. Therefore, we have accepted respondents' model matches except in the few instances where we found a more appropriate match.

Comment 3

Petitioner argues that Samsung and GST made incorrect adjustments for value-added tax ("VAT") in their questonnaire responses. Both respondents pay a 10 percent VAT for SBTS sold in Korea, but do not pay such a tax on exports to the United States. Petitioner contends that 19 U.S.C. 1677a(d)(1)(C) and decisions of the Court of International Trade require that U.S. price be adjusted by the amount of VAT that would have been paid on a product sold at the pre-tax U.S. price in Korea, but only to the extent that VAT is added to or included in the price of SBTS sold in Korea. In addition, petitioner argues that no circumstance of sale adjustment should be made for differences in the VAT amounts for home market and U.S. market price calculations.

Respondents disagree with petitioner, and argue that the Department should

apply the same methodology employed in its preliminary determination.

DOC Position

In our final determination, we added to U.S. price a tax adjustment calculated by multiplying the Korean VAT rate times the tax-exclusive U.S. price. This is the same amount that would have been paid on a product sold at the pre-tax U.S. price in Korea. Consistent with past practice, we made circumstance of sale adjustments to offset any differences between the VAT in Korea and the imputed VAT on U.S. sales in order to avoid artificially inflating or deflating margins.

In addition, consistent with our past practice, we placed no limitation on the addition to U.S. price based on the incidence of the VAT in Korea. We do not agree that the statute requires a measurement of tax incidences in Korea, and have neither attempted to measure, nor made any assumptions about, the incidence of the VAT in Korea.

Comment 4

Petitioner argues that it has not been able to comment meaningfully on respondents' questionnaire responses because both GST and Samsung refused to disclose in either the public or administrative protective order (APO) versions of their responses the names of their major original equipment manufacturer (OEM) customers or information about their products that might identify those customers. As a result, petitioner submits that the Department cannot rely on respondents' data and must instead base its final determination on the best information available.

DOC Position

We disagree with petitioner. Specifically, we do not agree with petitioner's contention that respondents' submissions should be rejected because of a lack of access to a narrow category of proprietary information, and that the Department should use the best information available for its final determination. During the investigation, the Department informed all parties that respondents would not have to disclose customer names or respondents would not have to disclose customer names or identifiers in the APO and public versions of their submissions. Instead, for the APO versions, they would have to provide complete model numbers when there were no customer indentifiers in the model numbers, and a substitute prefix when there was a coustomer identifier in the model numbers. With regard to the public summaries, the Department determined that respondents should provide substitute model numbers that were consistent with the APO numbers. With the exception of customer or supplier names or identifiers, petitioner's counsel received access to all business proprietary information, including the computer tapes, under the APO issued by the Department. Although petitioner has continued to complain about respondents' APO and public summaries, the Department has found no reason to reconsider the issue. Any objections to the Department's decision not to release the information in question should have been filed with the Court of International Trade within ten days of that decision. 19 U.S.C. 1677f(c)(2).

Comment 5

Petitioner contends that because the responses of both Samsung and GST are generally incomplete and contain errors, the Department cannot rely on the information submitted by respondents in making its final determination. Petitioner suggests that the Department use information in the petition as the best information available.

DOC Position

We disagree with petitioner. Our verifications of both questionnaire responses revealed only minor clerical errors. Given the volume of data sought in antidumping investigations, it is neither uncommon nor unexpected for minor errors or omissions to appear. Moreover, both respondents have been cooperative and forthcoming in providing data as requested. The omissions and errors in this case are not of a type or magnitude that would cause the Department to disregard completely respondents' information and use petitioner's information instead. *See, e.g., Porcelain-on-Steel Cooking Ware from Taiwan*, 51 FR 36425 (October 10, 1986); and *Granite Products from Italy*, 53 FR 27187 (July 19, 1988). However, for certain items of information that we are not satisfied were fully verified, the Department did use the best information available instead of respondents' information.

Samsung Issues

Comment 1

Petitioner contends that the Department should reject Samsung's difference in merchandise adjustment as originally reported because the amount reported was overstated. Petitioner argues that the difference in merchandise adjustment was overstated for the following reasons: (1) Samsung erroneously included costs associated with identical parts; (2) Samsung erroneously included costs on identical parts arising from differences in timing or procurement methods; (3) Samsung erroneously excluded duties related to identical components from the difference in merchandise adjustment; (4) Samsung erroneously reduced the denominator of the difference in merchandise precentage (the ratio of the difference in merchandise adjustment to the total U.S. COM) by the amount of duty paid on identical parts; and (5) Samsung reported material cost for home market models inclusive of duties paid on parts, but reported material costs for U.S. models net of duties paid on parts. Petitioner also argues that the Department cannot use the revised submission becasue inconsistencies exist between the COM charts and the computer tape. Samsung argues that the difference in merchandise adjustments were calculated correctly and that the components in question with identical part numbers were physically different. With regard to the COM charts, Samsung states that the revised data is the same as previously submitted, but in a different format.

DOC Position

At verification, the Department found that Samsung had incorrectly included costs related to indentical parts in the calculation of the difference in merchandise adjustment. Although we requested that Samsung substantiate the claimed physical differences for various identical part numbers, Samsung was unable to do so for the majority of these part numbers. Based on the limited information provided by Samsung in support of its argument, it appears that there may be some instances where components with indentical part numbers have minimal physical differences. However, there also appears to be instances where the cost differences are due to manufacturing rather than physical differences. Our regulations do not permit an adjustment for manufacturing differences.

To remedy this situation without discarding all data, we requested that Samsung eliminate the identical parts found in the difference in merchandise adjustment for each model match. We reviewed the revised data submitted by Samsung in response to our request. For comparison models for which identical part numbers corresponded to identical parts, the Department was able to utilize original data to delete costs associated with identical parts. Therefore, these corrections did not require utilization of new and unverified data. For those model comparisons, however, for which

identical parts were assigned part numbers under a different parts numbering system not allowing indentification of identical parts, the Department used the best information available as explained in the "U.S. price" section of this notice.

The Department rejected Samsung's recalculation of rebated local duties on identical parts and used best information available because the amounts attributable to the duty incurred on the identical parts constituted new and unverified information. Best information, in this instance, was determined to be the amount of rebated local duties for the complete models as provided in Samsung's original response. To calculate the difference in merchandise adjustment percentages, we used the total U.S. COM. We did not use Samsung's revised response for the U.S. COM because Samsung incorrectly reported US COM exclusive of duty on identical parts.

The Department finds that petitioner's assertion that Samsung failed to adjust for duties incurred on material costs for home market and U.S. models is incorrect. To compensate for the duties included in the COM on the home market models, Samsung added rebated local duties to the U.S. COM.

Regarding petitioner's allegation that there are inconsistencies between Samsung's difference in merchandise charts and its computer tape, we have found that the difference is due to packing labor which was correctly adjusted in the computer tape but inadvertently was not deducted from the difference in merchandise charts.

Therefore, we have used Samsung's revised tape except as noted above.

Comment 2

Petitioner argues that the Department should disallow as direct selling expenses amounts for the cost of seminars conducted by Samsung for its home market customers, because the expenses included were of a general promotional nature rather than actual technical services provided for specific customers in connection with specific sales.

Samsung argues that these expenses should be allowed as direct expenses because the seminars addressed specific problems that have been identified with the products under investigation and are not general promotional expenses.

DOC Position

We agree with petitioner that these expenses were of a promotional nature. Although these expenses were incurred for the products under investigation, they cannot be tied to specific sales. Therefore, we have disallowed these expenses as direct selling expenses.

Comment 3

Petitioner argues that the Department should disallow part of the claimed warranty expenses because Samsung could not allocate these expenses between products under warranty and those not under warranty. Furthermore, petitioner contends that several of the items claimed as warranty expenses do not constitute warranty expenses and could not be verified.

Samsung argues that the Department should at a minimum allow the portion of warranty expenses that was verified as a direct expense. For those warranty expenses that could not be isolated to the specific products under warranty, Samsung contends that a portion of the expenses should be allowed because they were reported conservatively and because the Department found no discrepancies in the total expense reported.

DOC Position

We agree with petitioner. Samsung reported warranty expenses associated with the cost of replacement parts and warranty expenses attributable to the "after sales service activity". At verification, the Department found that after sales service activity expenses were service department expenses attributable to products under warranty as well as products not under warranty. Samsung was unable to segregate these expenses. Therefore, we have disallowed these expenses as direct selling expenses. We have, however, allowed as a direct selling expense the cost of replacement parts.

Comment 4

Samsung claims the Department inappropriately adjusted the home market credit, advertising, and technical service expenses in the preliminary determination because the Department believed these expenses were calculated from a VAT-exclusive sales value, but were applied to a VAT-inclusive gross unit price. Samsung states that at verification the Department found that these expenses were appropriately calculated. Therefore, Samsung contends that the Department should use Samsung's calculation of these expenses in its final determination.

DOC Position:

We agree with Samsung. The Department found at verification that these expenses were calculated on a VAT-inclusive sales value. Therefore, we have applied the appropriate expenses to the VAT-inclusive gross unit price.

Comment 5

Petitioner contends that the Department should disallow any adjustment for home market inland freight because the Department was unable to verify Samsung's reported expense. Specifically, in the response, Samsung correctly stated that home market inland freight expenses included only expenses attributable to subject merchandise. At verification, however, the Department found that Samsung had included charges pertaining to non-subject merchandise as well as subject merchandise in the total expense reported for home market inland freight. In addition, Samsung was unable to provide other documentation of actual home market inland freight expenses to support the figures reported in the response.

Samsung claims that the Department should allow most of the foreign inland freight expense claimed in the response because, although the Department was unable to verify the amount of charges reported, it did verify that Samsung incurred some home market inland freight expense. Samsung argues that its inability to provide the necessary data was a result of the structure of its accounting system and the lack of time granted to prepare the response.

DOC Position

The Department agrees with petitioner. In the responses, Samsung claimed that the charges were related to subject merchandise only. During verification, however, we found that the charges included expenses incurred for subject and non-subject merchandise. The worksheets provided demonstrated that Samsung did not follow any verifiable allocation methodology. Furthermore, Samsung could not provide any supportive documentation for the amounts claimed in the response or at verification. Because the Department was unable to verify the amount of home market inland freight charges for the subject merchandise, no deduction for home market inland freight was allowed.

Comment 6

Samsung contends that the Department should exclude sales to one customer from the final determination because those sales constitute third country sales rather than sales to the United States. In support of its argument, Samsung claims that (1) the customer is located in a third country; (2) Samsung bills the customer who then

pays Samsung directly; and (3) the price of the merchandise sold is established prior to the date at which Samsung knows the destination of the merchandise. Samsung argues that because the destination is unknown at the time the price is determined, Samsung cannot practice price discrimination with respect to the United States.

In the alternative, Samsung asserts that, should the Department find that sales to the customer in question constitute U.S. sales, the Department should not consider such sales for the purpose of determining the deposit rate because during the investigation the contract between the customer and Samsung terminated and all sales under the contract were shipped. Furthermore, Samsung does not intend to sell to the customer in the future.

Petitioner argues that Samsung's sales to the customer in question constitute ordinary purchase price transactions because Samsung shipped the merchandise directly to the United States and no evidence exists that supports Samsung's contention that the destination was unknown at the time the sales were consummated. Petitioner further asserts that Samsung's alternative argument that sales to the customer should not be included in the calculations to determine the deposit rate is without merit.

DOC Position

We agree with petitioner. There is no basis for excluding such sales from this investigation. The merchandise in question was produced by Samsung in Korea and conforms to the product scope of this proceeding. Therefore, the Department has properly included those sales within its investigation of SBTS from Korea.

Samsung's argument that its lack of knowledge of the destination of the merchandise at the time price was determined requires the Department to exclude the sales at issue is incorrect. The argument raised by Samsung more appropriately relates to whether the Department has used the correct transaction as the basis for establishing United States price for these sales—*i.e.*, the price charged by Samsung to its customer in the third country or the price charged by the third country customer to the first unrelated purchaser in the United States. The information reported in Samsung's response as well as the information reviewed at verification indicate that the sales in question constitute purchase price transactions.

In its response, Samsung stated that at the time of contracting with the customer in question, the price schedule was blank and the prices and quantities were established through purchase orders. During verification, we found that the price and quantity were documented on the purchase orders and that the destination was established on the purchase order, bill of lading, and commercial invoice. Samsung also presented documentation of price changes that occurred intermittently throughout the period of the contract, including after the purchase order. Based on the information presented, however, the Department has determined that Samsung knew or had reason to know that the sales were destined for the United States. Therefore, all sales to the customer in question were properly treated as purchase price sales attributable to Samsung.

Samsung's argument that the sales should be excluded from the calculation of the deposit rate due to the termination of the contract also is without merit. Under § 353.42(b) of the Department's regulations, the Department normally examines all sales sold during "a period of 150 days prior to and 30 days after the first day of the month during which the petition was filed" or the investigation initiated. The date of sale for the sales made under the contract fell within the POI. Although there is precedent for excluding certain sales from our analysis in a fair value investigation, the Department generally does so only when certain sales are not representative of a firm's general pricing behavior or when the sales present difficult issues that cannot be resolved within the strict statutory deadlines. In this case, neither factor exists. Therefore, we have not excluded the sales in question from our calculations.

Comment 7

Samsung claims the Department should exclude from the final determination certain telephone set subassemblies, because such subassemblies function as dual use subassemblies, which are excluded from the scope of the investigation. Samsung states that the telephone sets in question function to their full capability in small business telephone systems and that "identical telephone sets also function to their full capability when part of a certain large system manufactured by Samsung."

Petitioner urges the Department to reject Samsung's argument and include the telephone sets in the final determination because: (1) Insufficient technical information exists on the record for the Department to determine whether the telephone sets in question function as dual use; (2) the technical information submitted is unverified; and (3) the alleged large system with which the telephone sets in question purportedly function was not introduced into the market prior to or during the POI.

DOC Position

The Department agrees with petitioner. Upon request of the Department, on November 30, 1989, Samsung submitted technical data in support of its exclusion request. From the information submitted, however, the Department is unable to determine whether the telephone sets qualify as dual use telephone sets. We note that the information provided indicates that the large business telephone system with which the telephone sets purportedly function was not introduced into the market prior to or during the POI. Therefore, because the technical data on the record fails to establish conclusively that the telephone sets in question qualify as dual use sets, the Department has not excluded them from the scope of the investigation. If an order is issued in this case, Samsung may want to consider seeking a scope letter ruling, as described in 19 U.S.C. 1516a(a)(2)(B)(vi).

Comment 8

Petitioner claims that the Department should treat the foreign currency exchange fee incurred on all U.S. sales as a direct expense if the fee is directly attributable to individual sales revenue.

DOC Position

The Department agrees with petitioner. During verfication, the Department found that Samsung's bank charged Samsung a fee, which was documented on the letter of credit settlement statement, for converting from U.S. dollars to Korean won revenue earned on sales to the United States. The Department has determined that this expense constitutes a direct selling expense in that the fee would not have been incurred but for the sales to the United States. Therefore, the Department has adjusted the FMV to reflect this circumstance of sale expense.

Comment 9

Petitioner states that Samsung's reported costs of manufacturing should be adjusted due to differences between reported costs and actual costs, which were discovered during the verification of Samsung's response. Samsung argues that the Department should accept Samsung's reported costs of

manufacturing as submitted, and attributes the minor differences between reported and actual costs to rounding and per unit basis differences.

DOC Position

The Department discovered that the reported costs of manufacturing were slightly understated on an aggregate basis for the subject merchandise as a whole when compared to Samsung's actual cost records examined during verification. Accordingly, for purposes of the final determination, Samsung's submitted costs of manufacturing were adjusted to reflect actual costs of manufacturing incurred by Samsung to produce the subject merchandise.

Comment 10

Petitioner argues that Samsung's general expenses should be increased to reflect the corporate-wide general expenses, instead of the division general expenses reported by Samsung. Petitioner notes that Samsung made purchases of materials used in the manufacture of the subject products from the division of the company that Samsung wishes to exclude from the calculation of general expenses. Petitioner alleges that Samsung's failure to include general expenses in the reported costs of components that were obtained from another division of Samsung resulted in the underreporting of costs for the subject merchandise.

Samsung argues that each of Samsung Electronic Corporation's business divisions are managed as an "individual corporation," and as such, no general expenses of the other two sectors that did not produce the subject merchandise should be included in the calculation of general expenses for the subject merchandise.

DOC position

We agree with petitioner. The Department considers general expenses to be those expenses incurred for the operations of the corporation as a whole and that are not related to a specific business segment of a corporation or the manufacture of a particular product. Accordingly, Samsung's use of "business segment general expenses" instead of corporate-wide general expenses resulted in an understatement of Samsung's general expenses allocated to the subject merchandise. Therefore, the Department calculated corporate-wide general expenses as a percentage of corporate cost of goods sold, and multiplied this percentage by each individual product's cost of manufacturing to obtain each product's reported general expense.

Comment 11

Petitioner argues that offsets to Samsung's reported general expenses due to non-operating income/expense items, including gains and losses on foreign currency transactions and sales discounts, should be disallowed.

Samsung maintains that these non-operating items properly belong in reported general expenses.

DOC Position

We agree with petitioner. The Department recognizes gains/losses on foreign currency transactions and sales discounts only if specifically identified by the manufacturer as part of the manufacturing costs incurred to produce the products under investigation. In Samsung's case, these costs were classified as general expenses of the corporation, and not as specific costs incurred exclusively to manufacture the products under investigation. Accordingly, these items were not included in the general expenses calculated for the subject merchandise by the Department.

Comment 12

Petitioner argues that Samsung's reported finance expenses should be recalculated to reflect all corporate finance expenses, instead of the corporate finance expenses allocated to the business segment producing the subject merchandise.

Samsung notes that the financing expenses are reported by Samsung included total corporate financing in the allocation of this expense to each business segment, and as such, should not be adjusted.

DOC position

We agree with petitioner. The Department considers financing expenses to be those costs incurred for the general operations of the corporation. The Department recognizes the fungible nature of a corporation's invested capital resources, including both debt and equity, and does not allocate corporate finance expenses to individual divisions of a corporation on the basis of fixed assets or sales per division, as Samsung had done in its submitted finance expenses. Instead, the Department allocates the interest expense related to the debt portion of the capitalization of the corporation, as appropriate, to the total operations of the consolidated corporation. For Samsung, the Department calculated corporate-wide finance expense as a percentage of corporate cost of goods sold, reduced by a proportional amount for the imputed credit and inventory carrying costs of Samsung.

Comment 13

Petitioner argues that Samsung's reported general expenses should be increased to reflect expense items, such as certain depreciation, a write-off of general research and development expense, and gains and losses on fixed assets, which had been excluded from the reported general expenses by Samsung due to Samsung's classification of these expenses as "extraordinary" in their financial statements.

Samsung cites Korean generally accepted accounting principles (GAAP) as allowing the classification of certain income and expense items as extraordinary items in Korean company income statements, thereby excluding them from calculation of the operating income for the corporation. Samsung maintains that the Department should comply with Korean GAAP and afford the same treatment to these items, thereby excluding these expenses from the reported costs of production.

DOC Position

In general, the Department adheres to GAAP and to an individual firm's recording of costs in accordance with the GAAP of its home country when the Department is assured that foreign GAAP accurately recognizes the actual costs incurred by that company. However, because GAAP was developed primarily as a conceptual framework to reflect profitability of a company and not per unit costs of each product sold, it does not always fully meet the needs of the Department. The Department must look at costs on a very specific, per unit basis. In Samsung's case, the exclusion of a write-off of capitalized general R&D instead of recording the amortization of the R&D, the exclusion of certain depreciation, and the exclusion of gains and losses on disposal of fixed assets, all represent the exclusion of actual costs incurred by Samsung in its manufacturing operations. This exclusion results in an understatement of reported general expenses, which, when allocated to the subject merchandise, results in an understatement of reported per unit costs. The Department therefore included the referenced costs in the general expenses allocated to the subject products in order to capture all costs incurred by Samsung in its manufacturing operations.

Goldstar Issues

Comment 1

Petitioner argues that GST incorrectly calculated the difference in merchandise adjustments in its response because GST reported different costs for identical components used in the United States and home market model matches. Although GST submitted revised data, petitioner claims that GST's revised data includes unverified revisions to the response, and that the revised COM charts must be verified if the Department is to rely on anything other than the best information available.

GST maintains that the revised COM charts consists of verified data and require no additional calculations or verification.

DOC Position

We are using GST's revised difference in merchandise adjustment charts as the best information available because of the facts that follow. For purposes of the adjustments for physical differences in merchandise, in our questionnaire we asked GST to include costs for parts that are not identical within each model match. However, at verification we noted that GST had included costs for identical as well as non-identical parts in its calculations. We requested that GST exclude the identical parts from its calculations. GST informed us that, due to the way its records are maintained, it would instead replace the costs for parts in the home market model with the costs for the identical U.S. part within each model match. However, in its revised submission, GST replaced the costs for parts in the home market models with costs for U.S. parts that are identical, but that are not from models included in the same model match. We have determined that the revised difference in merchandise data submitted by GST, although presented in a different format than that requested by the Department, is verified information. Therefore, we have used the revised difference in merchandise data as the best information available.

Comment 2

Petitioner notes that according to the Department's report from GST's verification in Korea, company officials indicated that a portion of U.S. packing expenses needed to be verified in the United States. This U.S. portion of U.S. packing is not reported separately in the response and is not treated in either of the Department's reports on verification of sales data in the United States.

DOC Position

The portion of packing referred to by petitioner is included in EIS's warehousing expenses. The only packing performed in the United States, however, involved one product that was replaced in boxes for shipment to a few customers. These packing expenses were too small to be accounted for separately on EIS's books, and comprised a very small portion of EIS's warehousing activity. Because the activity was negligible, we did not note it in our verification report.

Comment 3

GST contends that there are two clerical errors in the computer program used by the Department to calculate the preliminary dumping margin.

DOC Position

We agree with GST. We have corrected the clerical errors in our final determination.

Comment 4

EIS contends that the Department should correct clerical errors regarding corporate overhead, credit expense, and inland freight charges that were noted in the Department's report on verification of EIS sales data in Darien, Connecticut.

DOC Position

We have corrected the clerical errors regarding corporate overhead and credit expense. For the inland freight charges we have used the amount that is set forth in an October 30, 1989 correction to the report on the Darien, Connecticut EIS verification.

Comment 5

Petitioner argues that the Department should use GST's home market sales of circuit cards and modules in its final determination because the home market is viable for that such or similar category. According to petitioner, the Department incorrectly based its preliminary determination on sales to third countries. Moreover, because GST did not provide the home market information needed to determine product matches and to make the appropriate adjustments for differences in merchandise, the Department must resort to the use of the best information available.

GST maintains that the Department's use of third country sales, even when the home market has been determined to be viable, is a reasonable exercise of the Department's discretion under the antidumping law.

DOC Position

We agree with GST that, in this case, the use of third country sales for purposes of our final determination is appropriate. Although the home market was viable for circuit cards and modules under the normal rule set forth in 19 CFR 353.48(a) (5 percent of third country sales), that rule, by its terms, is to be applied in "normal" circumstances. In this case, we determined that the volume of reported home market sales of identical and similar merchandise appeared insufficient to serve as an adequate basis for FMV. Accordingly, we requested that GST report sales to third countries of identical and similar merchandise. We determined that by using third country sales, we could base many more of our comparisons on identical and similar matches than we could by using home market sales. Therefore, we have used third country sales as a more adequate basis for FMV in our final determination.

Comment 6

Petitioner argues that for its final determination analysis the Department should use the U.S. sales to end-users that were not considered for purposes of the preliminary determination.

DOC Position

We agree. We have included the end-user sales for purposes of our final determination. These sales were excluded previously because, although timely filed, information necessary for our analysis was submitted too late in the proceeding to be considered for purposes of our preliminary determination.

Comment 7

Petitioner argues that sales of some GST's control units in the home market that are most similar to control units sold in the United States have not been used for comparison purposes. Petitioner contends that this is because the control unit sold in the home market are sold with circuit cards already "stuffed" inside. Conversely, those sold in the United States are essentially "empty," and their circuit cards are "stuffed" into the control units after the sale to the first unrelated customer. Petitioner contends that simply because marketing practices are different in the two markets, GST should not be permitted to avoid like product comparisons.

GST and EIS submit that control units should be compared in the condition in which they are actually sold to the first unrelated customer.

DOC Position

We have based our comparisons on the configuration of the merchandise as imported into the United States. We note also that adoption of petitioner's position would require us to make difference in merchandise adjustments which in many instances would be greatly in excess of 100 percent.

Comment 8

GST and EIS state that warranty expenses claimed in both the U.S. and home markets should be allowed as direct selling expenses.

DOC Position

We agree. We have verified that the warranty expenses claimed by GST and EIS as direct selling expenses should be treated as such for our final determination.

Comment 9

EIS contends that its claimed installation costs should be deducted form the ESP as selling expenses which are incurred regardless of whether or not value is added by the aggregation of non-GST subassemblies. EIS claims that there is no appreciable value added from the aggregation process itself, because the subassemblies remain unchanged. Furthermore, EIS states that installation occurs after the sale and, therefore, cannot be considered as value added as set forth in 19 U.S.C. 1677a(e)(3). The only value added is due to the non-GST subassemblies, which are aggregated and assembled as part of the installation process, and to profit attributable to such subassemblies. EIS also argues that its claimed adjustment for G&A expenses should not be included in any further manufacturing costs which the Department might deduct from the ESP as value added for purposes of our final determination.

Petitioner argues that, because the price of the installed system sold by EIS to the first unrelated customer includes assembly that occurs after importation, the Department must make an adjustment for all such assembly costs and expenses incurred by EIS. Furthermore, if the Department were to exclude manufacturing or assembly incurred after the sale, related importers could perform much of the manufacturing or assembly after importation without being required to make any adjustment by simply setting a formal date of sale before such further manufacturing or assembly occurs.

DOC Position

As explained in the "United States Price" section of this notice, we are treating part of the installation expenses (installation labor, corporate overhead, corporate G&A and installation overhead) as value added from assembly. Because non-subject merchandise is added to the subject subassemblies, the portion of installation expenses attributable to the addition of the non-subject merchandise cannot reasonably be treated as a circumstance of sale adjustment. It is, rather, part of the value added in conjunction with the non-subject merchandise. Whether this value is added before or after the sale is irrelevant because, for this product, EIS's customers expect the installed system to have the characteristics added by the non-subject merchandise. Therefore, we are deducting that part of the installation expenses attributable to the addition or assembly of the non-GST subassemblies, as well as a proportional amount of the profit or loss related to these installation expenses, as value added.

Comment 10

GST is partially owned by Siemens, A.G. of West Germany. GST, in turn, owns a small interest in EIS in the United States. EIS makes some sales to Siemens Information Systems ("SIS"), a wholly owned subsidiary of Siemens, A.G.

Petitioner contends that EIS's sales to SIS should not have been reported because of the relationship between the several companies involved. Petitioner argues, rather, that GST should have reported sales made by SIS to its first unrelated customer in the United States. According to petitioner, the Department should not rely on GST's data for these sales and instead must calculate the margin for those sales on the basis of the best information available, which would be the highest margin alleged in the petition for each relevant subassembly.

GST argues that it does not sell to SIS in the U.S. market, and that it and SIS are not "related parties."

DOC Position

We disagree with petitioner. We verified that all of GST's sales of the subject merchandise in the U.S. market were made to EIS. Because we determined that GST and EIS are "related parties," we used ESP as the basis for U.S. price and requested information on all of EIS's sales to its customers in the U.S. market. We have determined that SIS has no ownership interest in GST, and that EIS and GST hold no ownership interest in SIS. Petitioner's claim that GST and SIS are related apparently arises from the fact that Siemens, A.G. owns GST stock. SIS, however, is a customer of EIS, not GST. At most, Siemens, A.G.'s ownership in GST may be said to give it a very small minority interest in EIS. The Department does not consider an indirect minority interest to be a sufficient basis for considering the parties to be "related."

Petitioner appears to be arguing that SIS qualifies as an "exporter" within the meaning of the antidumping law, and therefore, that sales to the company may not be used in the Department's calculations. See 19 U.S.C. 1677(13). SIS, however, does not qualify as an "exporter" under the standard set forth in the statute. The statute provides that a U.S. person may be called an "exporter" for purposes of ESP if, *inter alia*, that person is someone by whom or for whose account the merchandise is imported into the United States. 19 U.S.C. 1677(13). SIS is neither the importer nor the person for whose account the merchandise is imported. EIS is the importer, and the Department has determined that EIS is the "exporter" for ESP purposes. Thus, because the sales from EIS to SIS are not "related party" sales, the Department has included those sales in its calculations.

Comment 11

Petitioner claims that GST's revised data include a "new" calculation of fixed overhead that is not tied to verified data. Petitioner claims the calculation cannot be correct because it assumes that the ratio of variable to fixed overhead is exactly the same for all models, and that this cannot be correct because variable overhead costs are, by definition, variable and would never be a constant percentage of total overhead on a model by model basis.

GST claims that the adjustment made to fixed overhead for correction of difference in merchandise data yields a variable overhead amount that varies by model.

DOC Position

We disagree with petitioner. The Department determined that GST's segregation of variable and fixed overhead was based on verified data. The terminology "variable factory overhead" related to the nature of the expenses as they are incurred, not to the method used to absorb expenses for product costing purposes. GST's methodology accounted for a varying amount of factory overhead, model by model, depending on the length of time the model was on the production line. The adjustment made to factory overhead to remove the fixed overhead

for the difference in merchandise calculations yields a different "absolute" amount of variable overhead which varies by model and which reflects the time spent in production.

Comment 12

Petitioner claims that GST has not reported all of its research and development expenditures. Petitioner further asserts that a "reasonable" share of historical product-specific R&D should have been accumulated and allocated to the product sold during the POI. GST claims that its reported CV figures accurately account for R&D expenses.

DOC Position

We disagree with petitioner. The Department agrees that capturing historic, product-specific R&D is appropriate when design or major modification of a product require significant outlays and when such development costs would be substantial. For technologies in which R&D costs do not form a significant portion of initial project outlays and in which modifications are ongoing, the Department would not look to historic R&D to capture previously recognized expenditures. GST allocated general product line R&D costs incurred during the POI to the manufacturing costs of products under investigation. Additionally, current year amortization of capitalized, project-specific expenditures was included in general and administrative costs for purposes of calculating CV.

Comment 13

Petitioner claims that GST underreported interest expense in its response and that unrelated income and exchange gains should be disallowed.

GST asserts that the reported financing cost reflects the true, company-wide cost of financing related to key-phone products, and that income used to offset the cost, including interest on marketable securities and exchange gains, was properly included.

DOC Position

The Department disallowed income that was not derived exclusively from telephone manufacturing operations as an interest income offset. Thus, exchange gains and losses, and interest earned on long-term investments (which did not result from the manufacture of telephones) were disallowed.

For purposes of calculating interest expense, the Department uses total interest expense for operations of the consolidated corporation. Because the Department's methodology for calculation of CV includes the home-market credit expense, a deduction is made from the interest expense calculated for CV to avoid double counting this amount.

Comment 14

GST claims that the Department should use home market profit for all CV calculations.

DOC Position

For purposes of CV calculations, the Department used profits on home market sales of the same general class or kind of merchandise by the producer under investigation. The profit amount provided in GST's response was appropriately adjusted to reflect the percentage of profit on the basis of cost of sales rather than sales revenue, because this percentage is applied to the cost of manufacturing.

Comment 15

EIS suggests that the Department use the installation labor factor provided at verification rather than figures included in the submitted sales tapes.

DOC Position

We agree. EIS's revised installation labor factor was verified and used for the final determination.

Comment 16

Petitioner asserts that interest incurred by EIS during the POI that was not included as financing costs should be included in G&A for the final determination.

EIS claims that interest expense incurred during the POI related primarily to acquisitions and mergers, and that only 13 percent of those expenses related to the products under investigation. EIS also claims that if interest were included in G&A expenses, double counting would result, because imputed interest expense for inventory carrying costs and accounts receivable were reported to the Department.

DOC Position

The Department recognizes the fungible nature of an entity's borrowings, and therefore, used EIS's corporate-wide interest expense for the POI.

For purposes of calculating interest expense to be included in G&A, the Department uses total interest expense for operations of the corporation. Because the Department's methodology includes U.S. market credit expense and inventory carrying cost, a deduction was made from the interest expense calculated for further manufacturing to avoid double counting the portion related to imputed credit and inventory carrying costs.

Comment 17

Petitioner claims the EIS's general and administrative expense should be added to GST's CV calculation because they are related parties and because EIS's operations include development and manufacture of the subassemblies as well as selling and installation.

DOC Position

For purposes of the final determination, the Department treated a portion of EIS's installation and G&A expenses as "value added", and reduced U.S. price for these amounts to derive the value of the products as imported.

The Department did not include the costs incurred in the United States in CV, because CV is based on the cost of the product in its condition as imported.

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 SBTS from Korea, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of the subject merchandise from Korea exceeds the U.S. price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Margin percentage
Goldstar Telecommunication Co., Ltd	15.85
Samsung Electronics Co., Ltd	13.40
All others	14.30

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.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to any of the products under investigation, the proceeding will be terminated and all security posted as a result of the suspension of liquidation will be refunded or cancelled as to those products. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on SBTS from Korea, 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 FMV exceeds the U.S. price.

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

Dated: December 18, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Adminstration.

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