Professional Electric Cutting and Sanding/Grinding Tools From Japan

Investigation No. 731-TA-571 (Final)

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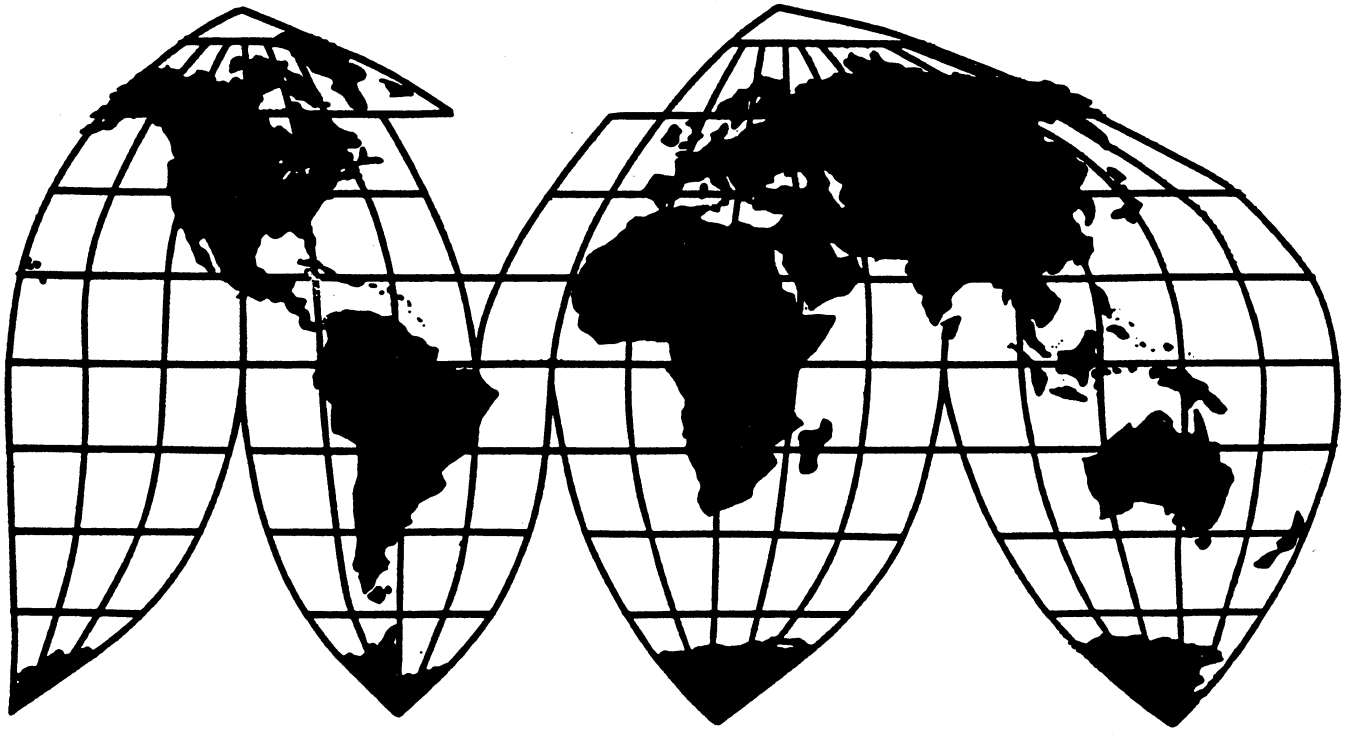
U.S. International Trade Commission



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U.S. International Trade Commission

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

DETERMINATIONS AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-571 (Final)

PROFESSIONAL ELECTRIC CUTTING AND SANDING/GRINDING TOOLS FROM JAPAN

Determinations

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Japan of professional electric cutting tools, provided for in subheadings 8508.20.00, 8508.80.00, 8461.50.00, and 8465.91.00 of the Harmonized Tariff Schedule of the United States (HTS), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

On the basis of the record developed in the subject investigation, the Commission also determines, pursuant to section 735(b) of the Act, that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Japan of professional electric sanding/grinding tools, provided for in subheadings 8508.20.00 and 8508.80.00 of the HTS, that have been found by the Department of Commerce to be sold in the United States at LTFV.

Background

The Commission instituted this investigation effective January 4, 1993, following a preliminary determination by the Department of Commerce that

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

imports of professional electric cutting and sanding/grinding tools from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). 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 February 3, 1993 (58 F.R. 6975). The hearing was held in Washington, DC, on May 21, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF CHAIRMAN NEWQUIST, COMMISSIONER ROHR
AND COMMISSIONER NUZUM

Based on the record in this final investigation, we determine that the industry in the United States producing professional electric cutting tools is materially injured by reason of imports of professional electric cutting tools from Japan that the Department of Commerce ("Commerce") has found to be sold at less than fair value ("LTFV").

We also determine that the industry in the United States producing professional electric sanding/grinding tools is neither materially injured nor threatened with material injury by reason of imports of professional sanding/grinding tools from Japan that Commerce has found to be sold at LTFV.[1]

I. LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . . ."[2] In turn, the Act defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article

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[1] Whether the establishment of an industry in the United States is materially retarded by reason of the subject imports is not an issue in this investigation and will not be discussed further.

[2] 19 U.S.C. § 1677(4)(A).

subject to an investigation . . . ."[3]

The Department of Commerce ("Commerce") has identified the articles subject to this investigation as:

> two classes or kinds of merchandise, PECTs [professional electric cutting tools] and PESGTs [professional electric sanding/grinding tools]. The tools may be assembled or unassembled and corded or cordless. . . .
>
> PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable band saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.
>
> PESGTs have moving abrasive surfaces used primarily for grinding, scraping, cleaning, deburring, and polishing wood, metal, and other materials. PESGTs include angle grinders, finishing sanders, disc sanders, orbital sanders, belt sanders, polishers, straight grinders, die grinders and similar sanding/grinding tools.[4] [5]

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[3] 19 U.S.C. § 1677(10). The Commission's determination of what is the appropriate like product or products in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. In analyzing like product issues, the Commission considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and (6) where appropriate, price. Calabrian Corp. v. United States, 794 F. Supp. 377, 382, n.4 (Ct. Int'l Trade 1992). No single factor is dispositive, and the Commission may consider other factors relevant to its like product determination in a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. E.g., S. Rep. No. 249, 96th Cong. 1st Sess. 90-91 (1979); Torrington Co. v. United States ("Torrington 1990"), 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991); Asociacion Colombiana de Exportadores de Flores v. United States ("Asocoflores"), 693 F. Supp. 1165, 1169 (Ct. Int'l Trade 1988)("It is up to [the Commission] to determine objectively what is a minor difference.").

[4] Final Determinations of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools From Japan, 58 Fed. Reg. 30144, 30145 (May 26, 1993) (hereinafter Commerce Final Notice). Report at A-6.

[5] In its preliminary determination, Commerce defined the scope of investigation regarding professional tools by listing a set of factors. If a tool possessed the required number of factors, the tool was deemed a consumer tool and, therefore, not subject to investigation. In its final

(continued...)

B. Like Product Issues

In its preliminary determination, the Commission considered several issues concerning the definition of like product and found that: (1) PEC tools and PES tools constituted separate like products; (2) the differences between the range of types and sizes of products covered in either the PEC or PES categories ("families of tools") were fairly minor and did not constitute clear dividing lines for defining more than two separate like products;[6] (3) consumer electric power tools should not be included in definitions of like product for purposes of the preliminary determination, but the Commission indicated that the issue would be reexamined in any final investigation; and (4) separate like products may not be defined to correspond to specific imported tools which are not produced domestically, rather a like product must be defined as the U.S.-made products which are like or similar to the subject imports.[7]

There is no evidence in the record in this final investigation that warrants a different conclusion for the first and fourth of these issues. The

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[5](...continued)
determination, Commerce essentially reversed the criteria so that if a tool possessed the required number of criteria, it was deemed a professional tool and, therefore, subject to investigation. See Commerce Final Notice at 30145; Report at A-6. As a result of this switch in approach, a few tools which did not meet the consumer test and, therefore, were considered professional in Commerce's preliminary determination, have been found not to meet the professional criteria and, therefore, are not included in the articles subject to Commerce's final investigation. The Commission's data have been revised to correspond to Commerce's change in scope and, therefore, to include only imports subject to Commerce's final determination.

[6] The Commission invited parties to submit further evidence on this issue. While the petitioner reiterated its opposition to separate like products divided by families of tools, no new evidence was submitted by the parties in the final investigation.

[7] See Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA-571 (Preliminary), USITC Pub. 2536 at 6-17 (July 1992).

Commission reconsidered the second and third of these issues, as addressed below. Only the third issue was contested by the parties.[8] [9]

1. Whether There Should Be More Than Two Like Products Defined for PEC and PES Tools

In this final investigation, no party has urged the Commission to consider defining the like product more narrowly than PEC tools and PES tools.[10] The key question that we considered is whether PEC tools' and PES tools' categories are each a continuum of tools[11] or whether each category

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[8] The parties are: Petitioner, The Black & Decker Corporation (herein referred to as "Black & Decker"); Respondent, Makita Corporation, Makita U.S.A., Inc. and Makita Corporation of America (herein collectively referred to as "Makita," unless otherwise noted); Respondent, Hitachi Koki Co. Ltd. and Hitachi Power Tools U.S.A., Ltd. (herein collectively referred to as "Hitachi"); and Respondent, Ryobi, Ltd., Ryobi America, Ryobi Motor Products Corp. and Ryobi Electric Tool Manufacturing Corp. (herein collectively referred to as "Ryobi," unless otherwise noted).

[9] In the final investigation, petitioner continued to propose that the Commission define two like products -- PEC tools and PES tools -- corresponding to the two classes or kinds of subject imports. Petitioner's Prehearing Brief at 3. Two respondents contended that the like products should be defined to include all electric cutting and sanding/grinding tools, consumer as well as professional. Respondent's (Makita) Prehearing Brief at 8; Respondent's (Hitachi) Prehearing Brief at 6. In the final investigation, Hitachi also argues that "imports of slide compound saws and other imported Japanese products for which there are no domestically produced substitutes must be specially considered under the statute . . . pertain[ing] to the Commission's injury and causation analysis, rather than to the definition of the subject imports or the 'like product.'" Hitachi's Posthearing Brief at 8 -11. Ryobi did not brief the Commission in the final investigation.

[10] In light of the fact that the parties did not contest this issue in this final investigation, Chairman Newquist did not reconsider the preliminary finding and, thus, does not join this discussion.

[11] See e.g., Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea ("PET Film"), Inv. No. 731-TA-458 and 459 (Final), USITC Pub. 2383 at 8 and 10 (May 1991); Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989). See e.g., Sony Corporation of America v. United States, 712 F. Supp. 978, 983 (Ct. Int'l Trade 1989).

should be further subdivided into smaller continuums of tools.[12] Subdivision of the PEC and PES categories by product categories could result in up to 20 PEC tools like products and up to 8 PES tools like products, i.e., subdivision into families of tools. With rare exception, we have not defined separate like products as narrowly as would be required to classify like products by families of tools.[13] And we do not find it appropriate to do so in this investigation.

We also considered classification by operating elements. There are similarities in physical characteristics and uses, production processes, and customer and producer perception as well as some interchangeability among the PEC tools.[14] While there is a distinction between the method of operation for

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[12] See e.g., Heavy Forged Handtools from the People's Republic of China ("Heavy Forged Handtools"), Inv. No. 731-TA-457 (Final), USITC Pub. 2357 at 5 and 6 (February 1991), aff'd, Tianjin Machinery Import & Export Corporation v. United States, Slip Op. 93-61 (Ct. Int'l Trade April 27, 1993); Compare Antifriction Bearings, USITC Pub. 2185 (May 1989).

[13] When the Commission has narrowly defined like products, the courts have required the Commission to clarify its rationale and have required evidence in the record which clearly and explicitly differentiates between the like products. See e.g., Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands, Inv. Nos. 701-TA- 275 - 278 and 731-TA-327 - 331 (Final), USITC Pub. 1956 (March 1987); Certain Fresh Cut Flowers from Peru, Kenya, and Mexico, Inv. Nos. 303-TA-18 and 731-TA-332 and 333 (Final), USITC Pub. 1968 (April 1987), remanded, Asocoflores, 693 F. Supp. at 1170 (Ct. Int'l Trade 1988).

[14] The various types of PEC tools have similar physical characteristics and uses and are distinguished primarily by removable blades that, when activated by the motor and directed by the operator, can cut various materials in various ways. All PEC tools are designed for professional capability and are electrically powered, corded or cordless. PEC tools can be interchanged with one another; for example, either a band saw or a circular saw may be used for cutting a wood board, although one type may be more appropriately suited for the specific application. Further, PEC tools are perceived to be similar by producers and have similar production processes. Report at I-4.

some of the PEC tools,[15] we find that there is no clear dividing line along the continuum of PEC tools and, therefore, define one like product which corresponds to all subject PEC tools.

In considering classification by operating elements, we found that tools in the PES category have similar physical characteristics and uses,[16] the same methods of operation -- hand-held operation,[17] can be interchanged with one another,[18] are perceived as similar by producers, and have similar production processes.[19] Further, all PES tools are designed for professional capability and are electrically powered, corded or cordless.[20] Based on the evidence in this investigation, therefore, we find one like product which corresponds to all subject PES tools.

2. Whether the Like Products Corresponding to Subject PEC and PES Tools Should Include Consumer Tools

Commerce has defined the two classes or kinds of merchandise subject to investigation as professional electric cutting and professional electric sanding/grinding tools. The inclusion of power tools in the two classes or

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[15] While PEC tools are predominately hand-held, i.e., wholly held and moved by hand while in use, there are a few bench-top, hand-operated PEC tools included in this investigation. While bench-top, hand-operated PEC tools, such as miter saws, are not hand-held, nevertheless, the apparatus containing the functional part of these tools, i.e., the saw blade, must be held and moved by hand during operation. Report at I-4.

[16] Sanders and grinders are distinguished from other tools primarily by removable abrasive surfaces that, when actuated by the motor or directed by the operator, can remove and/or refinish surfaces from various materials. Sanders are used primarily for wood; grinders are primarily used for metals. Report at I-5.

[17] There are no bench-top, hand-operated PES tools included in the subject merchandise. Report at I-5.

[18] For example, either a sander or grinder could be used to refinish or sand a surface.

[19] Report at I-5.

[20] Report at I-5.

kinds of merchandise is based on whether the tools possess a required number of characteristics. We have considered whether domestic consumer tools should be included in the like product definition and determined that they should not.[21]

In past investigations, we have considered the professional versus consumer product issue and have decided not to include consumer/household products in the definition of professional/commercial like products in a number of cases. For example, recently in Defrost Timers, the Commission considered whether the definition of the product like the subject imports of residential defrost timers should be expanded to include commercial defrost timers.[22] We determined that the differences in construction, i.e., commercial timers are much larger, heavier and more powerful, the additional features of the commercial timers to fit the owner's needs, the substantially higher price of the commercial timers, and the different manufacturing process and equipment demonstrated that commercial and residential defrost timers are not like products.[23]

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[21] See, e.g., Certain Electric Fans from the People's Republic of China, Inv. No. 731-TA-473 (Final), USITC Pub. 2461 at 8 (December 1991)("Even if there is a domestic product identical to the imports subject to investigation, the Commission may find the like product to be broader than that identical product.")(footnote omitted), aff'd, Holmes Products Corp. v. United States, Slip Op. 92-230 (Ct. Int'l Trade, December 30, 1992); see also, Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea ("PET Film"), Inv. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383 at 8, 15 and 16 (May 1991). Cf. Torrington 1990, 747 F. Supp. 744, aff'd, 938 F. 2d 1278 (Commission's like product determination need not be coextensive with Commerce's class or kind determination.).

[22] Defrost Timers from Japan, Inv. No. 731-TA-643 (Preliminary), USITC Pub. 2609 at 9 and 10 (March 1993).

[23] Defrost Timers from Japan, Inv. No. 731-TA-643 (Preliminary), USITC Pub. 2609 at 9 and 10 (March 1993). See also, Commercial Microwave Ovens, Assembled or Unassembled from Japan, Inv. No. 731-TA-523 (Preliminary), USITC

(continued...)

An analysis of the like product factors for PEC tools and PES tools compared to corresponding consumer tools follows.[24]

(a) Physical characteristics and uses

In general, the professional/industrial tools are designed to withstand harsher treatment, perform under more extreme conditions, and operate more or less continuously.[25] Thus, professional tools are designed to be more durable than their consumer counterparts.[26] To this end, professional tools are generally heavier in weight, housed in heavier-gauge steel or compound materials, powered by higher amperage and more overload-tolerant motors, have heavier and more wear-resistant bearings, and are fixed with a thicker-jacketed power cord of special rubber to resist abrasion and retain flexibility during cold weather.[27] The professional/industrial tool is also

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[23](...continued)
Pub. 2405 at I-7 - I-9 (July 1991)(household microwave ovens were not included in the like product with commercial microwave ovens based on Commission's finding that the products were similar in production processes, but differed in physical and technical characteristics, uses, and channels of distribution, and that the industry had "no trouble telling the two types of ovens apart."); Certain Residential Door Locks from Taiwan, Inv. No. 731-TA-433 (Preliminary), USITC Pub. 2198 at 9-12 (June 1989)(Commission found that residential and commercial door locks constituted separate products based on the fact that "commercial locks are generally heavier, thicker, and more durable than residential locks. . . . [that there were] differences in performance [and that] commercial locks often provide greater security . . . than a standard residential lock.").

[24] See Report at I-4 - I-7.

[25] Report at I-6.

[26] Petitioner alleged that the unit life for professional tools is much longer than for consumer tools. For example, a professional circular saw is designed to perform for 500 hours; a consumer circular saw is designed for occasional use and should operate for 100-200 hours. Petitioner's Prehearing Brief at 6; Report at I-7.

[27] Petitioner asserted that professional tools predominately use ball, needle or roller bearings which are protected by self-contained seals and are permanently lubricated. Consumer tools have sleeve or plain bearings which
(continued...)

assembled from different components than the consumer tool.[28]

Finally, although, professional and consumer tools are used for the same purposes, namely, to cut or sand wood or some other material,[29] from a market perspective, the end uses for professional and consumer tools are different. Professional tools are used primarily in commercial and industrial applications, where harsher conditions exist. Consumer tools, by contrast, are more frequently used under far less demanding conditions.

(b) Interchangeability

For most every type of electric hand tool designed for professional and/or industrial use there is a similarly functioning tool designed, and priced, for consumer and/or home use. The extent of the actual differences varies from one tool type to another.[30]

It appears that most employees and other persons making a living with

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[27](...continued)
are much less expensive than ball bearings ($0.10 v. $1.00). Professional tools generally use helical, spiral-bevel, or worm gearing rather than the less expensive and less durable spur or straight-bevel gearing found in consumer tools. Power supply cords on professional tools have rubber jackets with separate cord protectors which meet U.L. specifications "S" or "SJ" compared to thermo-plastic jacketed supply cords of consumer tools which meet the "ST" or "SJT" specifications set forth in U.L. specification "UL 62." Professional tools are designed so that certain parts that wear out first, such as motor brushes, can be easily replaced or repaired while consumer tools are not designed to allow for repairs. Petitioner's Prehearing Brief at Exhibit 3.

[28] Professional tools predominately use heat-treated transmission parts, such as shafts, gears, and spindles, for increased strength, durability and resistance to wear. The motors of professional tools have an expensive armature construction, which is two-coil per slot, i.e., twice the number of commutator bars as there are slots in the steel laminations in the motor which reduces heat and increases the life of the motor brushes. Consumer tools use the lowest cost design of armature construction which is one-coil per slot. Petitioner's Prehearing Brief at Exhibit 3.

[29] Report at I-5.

[30] Report at I-5.

power hand tools use professional tools.[31] These users of professional tools account for a large majority of consumption of professional tools in the United States. Employees and persons making a living with power-hand tools generally cannot substitute consumer power tools for professional power tools. It does not appear, nor is it expected, that the hobbyist, home do-it-yourselfer, or other user for non-professional purposes will invariably use the consumer variety. While the majority of homeowners probably purchase consumer tools, the extent to which some purchase professional quality tools has not been quantified.[32] Nevertheless, although homeowners or hobbyists may prefer to use a professional tool, their ability to complete a particular project is not as dependent on their choice between professional and consumer tools as is the ability of a professional carpenter or construction worker to complete a job on his or her selection of a professional versus a consumer tool. In other words, to the extent that there is some degree of interchangeability between professional and consumer tools, it appears to be

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[31] The 1991 Professional Power Tool Brand Image and Purchase Tracking Study, conducted by the Caney Research Group ("the Caney Report"), found that 25 percent of the tradesmen had purchased a consumer tool, but that only 9 percent of those surveyed would purchase a consumer tool again for a professional job. Caney Report at Table 111. Petitioner alleged that only half that percentage (4.5 percent) of tradesmen would purchase a consumer cutting or sanding/grinding tool since half would select a consumer drill or screwdriver for the professional job. Petitioner's Prehearing Brief at 10.

[32] Report at I-7. Black & Decker and Ryobi believe that there is minimal overlap on this issue; however, Makita believes that the overlap is extensive. Id. at I-7. Petitioner estimated that 70-75 percent of professional tools are purchased by professional users. Petitioner's Prehearing Brief, Exhibit 20 at 2. In the final investigation, Makita estimated that "between 60 and 65 percent of its tools are currently purchased by do-it-yourselfers" based on Makita's warranty returns and marketing studies. Makita's Prehearing Brief, Vol. I at 22. We note that in the preliminary investigation, Makita's estimates were only half of their estimates in the final, i.e., Makita estimated that "between 30 and 35 percent of its tools were purchased by do-it-yourselfers. "Makita's Postconference Brief at 10. Makita provided no explanation for the different estimates.

primarily in one direction.

(c) Customer and producer perceptions of the products

The distinction between professional and consumer tools is widely accepted in the industry.[33] The producers' catalogs of their products also differentiate between professional and consumer tools.

The warranties and safety certifications generally differ for professional and consumer tools. Petitioner indicated that it "warrants professional tools for one year, and provides for a 30-day over-the-counter warranty exchange."[34] In contrast, for consumer tools, Black & Decker "offers an over-the-counter exchange anytime within a two-year warranty period . . ." which "is voided if the tool is used for professional use."[35] Any tools, including PEC and PES tools, used by employees of a firm, i.e., contracting firms, must meet the safety requirements of the Occupational Safety & Health Administration (OSHA). Indeed, such tools sold in the United States frequently are packaged with some notice, whether on the box or in the

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[33] Report at I-5. In the final investigation, Hitachi asserted that "Hitachi does not recognize that a clear line can be described or established that separates 'professional' tools from 'consumer' tools," however, Hitachi acknowledged that it "uses those designations purely for marketing purposes, and Hitachi understands that other companies do the same." Respondent's (Hitachi) Posthearing Brief at 14. In contrast, during the preliminary investigation, Hitachi acknowledged that "tools to be used by professionals generally are designed with higher power capacity and for longer life, and while there may be a general perception among users that the high end products are better suited for heavy professional use . . ." Hitachi's Postconference Brief at 8. While Makita contended that there is one market, in the preliminary investigation they acknowledged a separate consumer market in their allegations that Black & Decker has a poor image. In particular, Makita stated that "Black & Decker . . . had been associated with lower cost, lower quality tools with which Petitioner had flooded the consumer market." Makita's Postconference Brief at 36.

[34] Petitioner's Prehearing Brief at 9, n.5.

[35] Petitioner's Prehearing Brief at 9, n.5.

instructional material, that they meet and/or exceed OSHA requirements.[36] Depending on the manufacturer and the tool type, consumer electric hand tools also may meet OSHA safety requirements although notice of this fact is rarely provided.[37]

(d) Channels of distribution

Both professional and consumer tools are widely available to all potential end-users, irrespective of whether they are professional craftsmen or home-hobbyists.[38] For large institutional buyers, i.e., manufacturing companies, construction firms and government/public maintenance departments, PEC and PES tools are available from industrial and construction supply wholesalers served by the manufacturers, or from the manufacturers directly. Smaller institutional buyers and individual users purchase PEC and PES tools from hardware stores, lumber yards, and home-improvement centers supplied either by the manufacturer (or the manufacturer's agent) or from the same industrial and construction supply wholesalers that serve the larger institutional users. Similar consumer tools also are available at these outlets, supplied by the manufacturer in much the same way as are professional tools. However, manufacturers also ship an equal or larger number of consumer tools to mass-merchandise and catalog stores, such as Sears and K-Mart, that generally do not serve the professional market.[39]

(e) Production processes

To produce PEC and PES tools, major components (such as motor, housing,

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36 Report at I-6, n. 10.

37 Report at I-6, n. 10.

38 Report at I-10 and I-11.

39 Report at I-10.

gears, and bearings) are first manufactured and then assembled into a complete unit.[40] Most motors and housings are produced in-house; gears, bearings, and smaller components may also be purchased from other U.S. producers, acquired from domestic affiliates, or imported. After assembly, the completed tools are tested, packaged, and shipped to the customer.

The degree to which equipment and production workers are dedicated to the production of major components, particularly the motor, for either professional or consumer tools varies by individual producer.[41]

The major components of professional and consumer tools are produced differently.[42] Steel parts for professional tools are heat-treated and straightened to provide more strength and durability than their consumer counterparts. The motors for professional tools are manufactured with more sophisticated procedures and parts for extra durability. In general, parts and components for professional tools are manufactured using a greater number of production steps,[43] higher quality raw materials, i.e., alloy v. low carbon steel, and are designed to meet higher tolerances than parts and components for consumer tools.

There are at least three types of assembly lines for professional power tools: a whole unit assembly; a timer-indexed conveyor with housings; and a

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[40] Report at I-7.

[41] Report at I-7.

[42] Report at I-7.

[43] The manufacturing process for professional tools includes: steel machining, casting machining, injection molding, heat treatment, motor manufacture, and tool assembly. In contrast, the manufacturing process for consumer tools include: steel machining, motor manufacture, and tool assembly.

roller and pallet system.[44] Assembly of most consumer tools is done on a progressive conveyor belt that runs constantly, with each assembler performing a single task.[45] Depending on each producer's manufacturing methods, each assembly line may be dedicated to a particular type of tool, or alternate between different tools, after a set-up interval. For some producers, assembly lines may alternate between professional and consumer tools after a set-up interval.

(f) Price

Professional tools may be several times the price of the corresponding consumer/home-use tools at the retail level.[46]

In summary, we find that the differences between professional and consumer electric tools in physical characteristics, uses, producer and customer perceptions, production processes, and limited interchangeability outweigh the similarities in terms of channels of distribution. Based on the record in this investigation, we reaffirm our like product findings from the preliminary investigation, namely, that there are two like products, PEC tools and PES tools, which correspond to the two classes or kinds of imports subject to investigation.

II. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Producers

In light of our like product determinations, there are two domestic industries in this investigation, one comprised of the domestic producers of

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[44] Report at I-7.

[45] Report at I-8.

[46] Report at I-6.

professional electric cutting ("PEC") tools, and the other comprised of the domestic producers of professional electric sanding/grinding ("PES") tools. The identification of who is a "domestic producer" is subject to dispute among the parties.[47] [48]

In the preliminary determination, the Commission concluded that MCA and Ryobi were domestic producers. However, the Commission found for the purposes of the preliminary determination, that appropriate circumstances existed to exclude MCA, as a related party. The Commission indicated that it would reconsider these issues in any final investigation.

In this investigation, we have considered three domestic industry issues: (1) whether MCA and Ryobi U.S. have sufficient domestic operations to be deemed domestic producers of PEC tools and PES tools;[49] (2) whether MCA and Ryobi U.S. are related to exporters or importers subject to the investigation;

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[47] Petitioner contended that the "operations of MCA [Makita Corporation of America] do not manifest the requisite 'practical indicia' of domestic production" and that MCA should not be considered a member of the domestic industry. However, Black & Decker argued for the inclusion of Ryobi's U.S. production affiliates in the domestic industry, even though they are related to Ryobi Limited of Japan. Petitioner's Prehearing Brief at 19-22 and 28. Conversely, Makita contended that "the circumstances of this case do not warrant excluding Makita Corporation of America from the domestic industry." Respondent's (Makita) Prehearing Brief, Vol. II at 62 and 63.

[48] A description of the parties in dispute follows: Makita Corporation (Japan) is the sole owner of the U.S. importer, Makita, U.S.A. and has a 20 percent ownership interest in MCA (production facility in Buford, Georgia). Makita, U.S.A. has an 80 percent ownership interest in MCA. Ryobi Limited (Japan) owns a U.S. importer, Ryobi America Corp., and two U.S. production facilities, Ryobi Electric Tool Mfg. and Ryobi Motor Products Corp. (herein collectively "Ryobi U.S."). Hitachi is not a U.S. producer.

[49] Since MCA does not produce PES tools, it clearly should not be considered a member of the domestic PES tools industry. MCA produces a sander which originally was classified by Commerce as a PES tool. However, in its final determination, Commerce reclassified this sander as a consumer tool. So contrary to the evidence then-available and reported in our preliminary investigation, MCA does not produce PES tools. Report at I-8.

and (3) if MCA or Ryobi U.S. are related parties, then whether there are appropriate circumstances to exclude any of the related parties from the domestic industry.

A principal question in defining the domestic industry is whether the domestic operations of the respondents' U.S. subsidiaries are sufficient for them to be considered a member of the domestic industry. In considering whether a firm is a domestic producer, the Commission has looked to the overall nature of its production-related activities in the United States.[50] Evidence in the record in this final investigation indicates that both MCA and Ryobi U.S. have made significant capital investments in domestic production facilities, employ a considerable number of U.S. workers and have significant, and for MCA, increasing production activities in the United States.[51] Based on the information in the record, we find that MCA and Ryobi U.S. are domestic producers.[52]

B. Related Parties

Under section 771(4)(B), producers who are related to exporters or importers, or who are themselves importers of allegedly dumped or subsidized

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[50] Specifically, in resolving this issue, the Commission has examined six factors: (1) the source and extent of the firm's capital investment; (2) the technical expertise involved in U.S. production activities; (3) the value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product. See, e.g., Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand ("Butt-Weld Pipe Fittings"), Inv. Nos. 731-TA-520 and 521 (Final), USITC Pub. 2527 at 6, n. 16 (June 1992).

[51] Report at I-8, D-3; Commission Prehearing Staff Report at D-9; Tr. at 124-126; and Ryobi's Postconference Brief at 9 -11.

[52] Further, Commissioner Rohr and Commissioner Nuzum could assume and need not definitively conclude that MCA is a domestic producer of PEC tools, since they find that appropriate circumstances exist for excluding it as a related party as discussed below.

merchandise, may be excluded from the domestic industry in appropriate circumstances.[53] Application of the related parties provision is within the Commission's discretion based upon the facts presented in each case.[54]

MCA, which produces PES tools in Buford, Georgia is 80 percent owned by Makita, U.S.A. (a U.S. importer which is owned by Makita Corporation of Japan) and 20 percent owned by Makita Corporation.[55] Ryobi U.S., which produces PEC and PES tools in South Carolina, is wholly-owned by Ryobi America Corp. (a U.S. importer which is owned by Ryobi Limited of Japan).[56]

If a company qualifies as a related party under section 771(4)(B), the Commission determines whether "appropriate circumstances" exist for excluding the producer in question from the domestic industry.[57] The purpose of excluding related parties is to minimize any distortion in the aggregate data bearing on the condition of the domestic industry that might result from including related parties whose operations are shielded from the adverse effects of the subject imports.[58] While the statute itself does not define what "appropriate circumstances" are, Congress has provided the following guidance on when "appropriate circumstances" exist:

> The ITC is given discretion not to include within the domestic industry those domestic producers of the like

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[53] 19 U.S.C. § 1677(4)(B).

[54] Torrington v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd, Slip Op. 92-1383,-1392 (Fed. Cir. March 5, 1993); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int'l Trade 1987).

[55] Respondent's Prehearing Brief, Vol. II at 62.

[56] Staff report at I-8.

[57] See, e.g., Empire Plow Co., 675 F. Supp. at 1353 (Ct. Int'l Trade 1987); Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 at 15 (January 1989).

[58] See e.g., Torrington v. United States, 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd, Slip Op. 92-1383,-1392 (Fed. Cir. March 5, 1993).

> product which are either related to exporters or importers of the imported product being investigated, or which import that product. Thus, for example, where a U.S. producer is related to a foreign exporter and the foreign exporter directs his exports to the United States so as not to compete with his related U.S. producer, this should be a case where the ITC would not consider the related U.S. producer to be a part of the domestic industry.[59]

Further, the Court of International Trade has approved the Commission's exclusion of a related party in situations where the producer is related to the foreign exporter, appears to have benefited from the consistently lower prices of the dumped imports, and where the exporter appears to have been directing its exports in such a manner so as not to compete with its related U.S. importer/producer.[60] [61]

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[59] S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979)(emphasis added).

[60] See Sandvik AB v. United States, 721 F. Supp. 1322, 1331 (Ct. Int'l Trade 1989), aff'd, 904 F. 2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1353-54 (Ct. Int'l Trade 1987)(An analysis of "[b]enefits accrued from the relationship" as a major factor in deciding whether to exclude a related party held to be "a reasonable approach in light of the legislative history . . . .").

[61] The primary factors we examine in deciding whether appropriate circumstances exist to exclude the related parties include:

> (1) the percentage of domestic production attributable to related producers;
>
> (2) the reason why importing producers choose to import the articles under investigation -- to benefit from the unfair trade practice or to enable them to continue production and compete in the domestic market; and
>
> (3) the position of the related producers vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co., 790 F. Supp. 1161, 1168 (Ct. Int'l Trade 1992), aff'd, Slip Op. 92-1383,-1392 (Fed. Cir. March 5, 1993)(Court upheld the Commission's practice of examining these factors in determining that appropriate circumstances did not exist to exclude related party). The

(continued...)

As a new entrant to the domestic PEC tools industry, MCA was responsible for a small percentage of U.S. PEC tool production during the period of investigation.[62] Similarly, MCA's U.S. shipments of domestically produced PEC tools as a share of total U.S. shipments for Makita of PEC tools (domestic production and imports) was small for 1992.[63] Makita has indicated that separate profit and loss accounting records are kept for MCA and that day-to-day operations are independent of Makita Corporation's control.[64] However, Makita acknowledges that "[a]ll production decisions are made by MCA in conjunction with Makita U.S.A. [Makita's U.S. importer], but not in conjunction with Makita Corporation."[65] Further, nearly all of MCA's production is transferred to Makita U.S.A. for marketing and distribution.[66] Centralized marketing suggests that the related party's U.S. production is shielded from competition from the imports. Here, it is even more likely since the amount and type of subject imports are coordinated with MCA's production to avoid competition between the imported and domestic tools.[67] [68]

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[61] (...continued)
Commission has also considered whether each company's books are kept separately from its "relations" and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., PET Film, USITC Pub. 2383 at 17-18 (May 1991); Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 at 12 (January 1986).

[62] Report, Table 1 at I-9.

[63] Report, Table 2 at I-10.

[64] Respondent's (Makita) Prehearing Brief, Vol. II at 62.

[65] Respondent's (Makita) Prehearing Brief, Vol. II at 62.

[66] Staff Report on MCA plant visit at 2; Professional Electric Cutting and Sanding/Grinding Tools from Japan (Preliminary), USITC Pub. 2536 at 22 (July 1992).

[67] At the hearing, Makita acknowledged that imports and domestic production do not compete, i.e., no tools for sale in the United States were dual-sourced from Georgia and from Japan. Tr. at 190-191.

Based on these facts, MCA appears to be shielded from competition from the subject imports and we find that appropriate circumstances exist to exclude MCA from the domestic industry.[69]

During the period of investigation, Ryobi U.S. was responsible for a moderate share of domestic production of both PES and PEC tools.[70] In strong contrast to MCA, shipments of Ryobi's domestically produced PES tools, as a share of total U.S. shipments of all Ryobi's PES tools (domestic production and imports), was very substantial. Ryobi's shipments of domestically produced PEC tools as a share of total U.S. shipments for Ryobi of PEC tools (domestic production and imports) was significant for 1992.[71] As with MCA, nearly all of Ryobi U.S.'s production is transferred to Ryobi Limited's U.S. importer, Ryobi America, for marketing and distribution.[72] This case is different from Makita's, however, in that Ryobi has a significant presence in the U.S. market as a domestic producer rather than relying on imports. Further, Ryobi U.S.'s financial performance data is similar to that of other U.S. producers and, therefore, would not skew the data for the rest of the industry.[73] Thus, we do not find appropriate circumstances exist to exclude Ryobi U.S. as a related party.

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[68](...continued)
[68] See e.g., Butt-Weld Pipe Fittings, Inv. Nos. 731-TA-520 and 521 (Final), USITC Pub. 2527 (June 1992).

[69] While MCA's financial performance is similar to the other U.S. producers and might not skew the data for the rest of the industry, MCA's acknowledgement of coordination of its marketing with that of Makita U.S.A. and Makita of Japan, in our view, warrants MCA's exclusion.

[70] Report, Table 1 at I-9.

[71] Report, Table 2 at I-10.

[72] See Professional Electric Cutting and Sanding/Grinding Tools from Japan (Preliminary), USITC Pub. 2536 at 23 (July 1992).

[73] Report, Table 10 at I-22 and Table 12 at I-24.

III. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether there is material injury to a domestic industry by reason of dumped imports, we consider "all relevant economic factors which have a bearing on the state of the industry in the United States . . . ."[74] These include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital and research and development.[75] No single factor is determinative, and we consider all relevant factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[76]

A. Domestic PEC Tools Industry

The data for the PEC tools industry evidence divergences between certain positive factors, such as production, shipments and net sales, and other negative factors, such as operating and net income.[77] Similar divergences do not appear with respect to these factors in the PES tools industry, as discussed below.

Apparent U.S. consumption of PEC tools by quantity increased moderately between 1990 and 1992.[78] Apparent U.S. consumption of PEC tools by value followed a similar trend, although with a more significant increase reported

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[74] 19 U.S.C. § 1677(7)(C)(iii).

[75] 19 U.S.C. § 1677(7)(C)(iii).

[76] 19 U.S.C. § 1677(7)(C)(iii). The parties did not allege any business cycle nor conditions of competition that are distinctive to these industries. Nor did the Commission receive any information relevant to such considerations.

[77] Chairman Newquist does not join in this statement.

[78] Data referred to in this paragraph are summarized in Report, Table 21 at I-32, unless otherwise noted.

for 1990 to 1992.

Domestic production of PEC tools by quantity increased by 11.7 percent over the period of investigation, while capacity to produce PEC tools increased by 6.2 percent from 1990 to 1992.[79] Overall capacity utilization rates were very low for the domestic PEC tools industry over the period of investigation, ranging from 50 to 55 percent. Further, from 1990 to 1992, capacity utilization rates for the PEC tools industry increased by only 2.7 percentage points.

The domestic industry's U.S. shipments of PEC tools by both quantity and value, declined from 1990 to 1991 and both increased from 1991 to 1992, for an overall increase of 8.1 percent by quantity and of 16.5 percent by value for the period of investigation.[80] Those shipments, both by quantity and value, increased at a rate less than apparent U.S. consumption did during that period. Export shipments of PEC tools by the domestic industry increased by 36.3 percent by quantity and by 47.5 percent by value from 1990 to 1992.

The domestic industry reported large but moderately decreasing year-end inventories of PEC tools for the 1990-1992 period.[81] Inventories as a share of U.S. shipments remained constant from 1990 to 1991 and declined slightly from 1991 to 1992.

Employment and hours worked in the domestic PEC tools industry

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[79] Data referred to in this paragraph are summarized in Report, Table 5 at I-16, unless otherwise noted.

[80] Data referred to in this paragraph are summarized in Report, Table 6 at I-17, unless otherwise noted.

[81] Data referred to in this paragraph are summarized in Report, Table 7, at I-18, unless otherwise noted.

fluctuated with a very slight increase over the period of investigation.[82] Total compensation rose by 10.7 percent from 1990 to 1992, with a similar increase (8.9 percent) reported for hourly total compensation. Productivity remained constant over the period of investigation.

The financial performance indicators for the domestic PEC tools industry showed declines and very low or negative operating and net income margins from 1990 to 1992. The PEC tools industry experienced a modest decrease by quantity and value in net sales from 1990 to 1991, increasing from 1991 to 1992 to a level above 1990.[83] Operating income, while positive for each year during the period 1990-1992, dropped sharply from 1990 to 1991 and recovered only partially from 1991 to 1992, notwithstanding the more substantial increase in net sales during the same period. As a result, the PEC tools industry experienced a 30.6 percent decline in operating income over the period of investigation. Similarly, net income declined sharply from a positive level in 1990 to a loss in 1991 and, despite some improvement, it remained as net losses in 1992. The operating income margins (ratio of operating income to net sales) were very low for the period of investigation, ranging from 0.9 percent to 3.5 percent. Similarly, the net income margins were minuscule or negative for the period of investigation, ranging from -1.5 percent to 0.5 percent.

The cost of goods sold for the domestic PEC tools industry declined slightly between 1990 and 1991, but increased substantially between 1991 and

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[82] Data referred to in this paragraph are summarized in Report, Table 8, at I-19, unless otherwise noted.

[83] Data referred to in this paragraph are summarized in Report, Table 9 at I-21, unless otherwise noted.

1992.[84] While selling, general, and administrative (SG&A) expenses also increased significantly over the period of investigation, SG&A expenses as a share of net sales remained relatively constant for the period of investigation, ranging from 22.6 percent to 23.6 percent.

Research and development expenditures for the domestic PEC tools industry increased over the period of investigation.[85] Finally, the domestic industry's capital expenditures increased from 1990 to 1991 and then declined from 1991 to 1992.[86] [87]

B. Domestic PES Tools Industry

Apparent U.S. consumption of PES tools, by both quantity and value, fluctuated between years but overall increased moderately between 1990 and 1992.[88] Domestic production of PES tools by quantity increased by 23.2 percent over the period of investigation.[89] Capacity to produce PES tools increased by 7.5 percent from 1990 to 1992. Capacity utilization rates for the PES tools industry, though relatively low, also increased by 7.3 percentage points throughout the period of investigation.

The domestic industry's U.S. shipments of PES tools increased by 30.1

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[84] Data referred to in this paragraph are summarized in Report, Table 9 at I-21, unless otherwise noted.

[85] Report at Table 13, I-24.

[86] Report, Table 16 at I-26.

[87] Based on the low capacity utilization rates, low or negative margins of income and other weak financial performance, Chairman Newquist and Commissioner Rohr conclude that the domestic PEC tools industry is experiencing material injury.

[88] Data referred to in this paragraph are summarized in Report, Table 21 at I-32, unless otherwise noted.

[89] Data referred to in this paragraph are summarized in Report, Table 5 at I-16, unless otherwise noted.

percent by quantity and by 11.8 percent by value from 1990 to 1992.[90] Those shipments, both by quantity and value, increased more than apparent U.S. consumption did during that period. Export shipments of PES tools by the domestic industry increased by 80.2 percent by quantity and by 65.8 percent by value from 1990 to 1992.

The domestic industry reported initially large but sharply declining year-end inventories of PES tools for the 1990-1992 period.[91] Inventories as a share of U.S. shipments increased slightly from 1990 to 1991 and declined significantly from 1991 to 1992.

Employment in the domestic PES tools industry increased by 6.8 percent over the period of investigation.[92] Hours worked, total compensation and hourly total compensation increased by 7.1 percent, 10.9 percent and 3.6 percent, respectively, from 1990 to 1992. Productivity increased moderately over the period of investigation.

The financial performance indicators for the domestic PES tools industry showed increases over the period of investigation as a result of a very strong performance for 1992. The PES tools industry experienced a substantial increase in net sales by quantity over the period of investigation.[93] Net sales by value also increased from 1990 to 1992, but at a rate less than by quantity. Operating income, which was positive for each year during the

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[90] Data referred to in this paragraph are summarized in Report, Table 6 at I-17, unless otherwise noted.

[91] Data referred to in this paragraph are summarized in Report, Table 7, at I-18, unless otherwise noted.

[92] Data referred to in this paragraph are summarized in Report, Table 8, at I-19, unless otherwise noted.

[93] Data referred to in this paragraph are summarized in Report, Table 11 at I-23, unless otherwise noted.

period 1990-1992, declined from 1990 to 1991, but rose remarkably from 1991 to 1992. As a result, the PES tools industry experienced a substantial increase in operating income over the period of investigation. Similarly, net income, which also was positive for each year during the period 1990-1992, declined slightly from 1990 to 1991 but soared from 1991 to 1992. The operating income margins (ratio of operating income to net sales) were moderate and increasing during the period of investigation. The net income margins were low and relatively constant for 1990 and 1991 (1.1 percent and 1.2 percent, respectively), but increased substantially to 6.3 percent for 1992.

The cost of goods sold for the domestic PES tools industry increased from 1990 to 1992 but, as a share of net sales, remained constant from 1990 to 1991 and declined from 1991 to 1992.[94] While selling, general, and administrative (SG&A) expenses also increased significantly over the period of investigation, SG&A expenses as a share of net sales declined only slightly for the period.

Research and development expenditures for the domestic PES tools industry remained relatively constant from 1990 to 1992.[95] Finally, the domestic industry's capital expenditures increased from 1990 to 1991 and then declined from 1991 to 1992.[96] [97]

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[94] Data referred to in this paragraph are summarized in Report, Table 11 at I-23, unless otherwise noted.

[95] Report at Table 13, I-24.

[96] Report, Table 16 at I-26.

[97] Based on the relatively stable, and in the most recent year remarkably improving, performance of the domestic PES tools industry, Chairman Newquist and Commissioner Rohr conclude that the domestic PES tools industry is not experiencing material injury. Nonetheless, they also determine that, had there been material injury to the domestic PES tools industry, such injury would not be by reason of LTFV imports of PES tools from Japan.

IV. MATERIAL INJURY BY REASON OF LTFV IMPORTS

A. Legal Standard

In determining whether a domestic industry is materially injured by reason of the imports as to which Commerce has made an affirmative determination, the statute directs the Commission to consider in each case:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
>
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
>
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . . .[98]

In making its determination, the Commission may consider "such other economic factors as are relevant to the determination . . ." but must explain why they are relevant.[99] Although we may consider information that indicates that injury to the industry is caused by factors other than the LTFV imports, we do not weigh causes.[100] The Commission need not determine that imports are "the principal, a substantial or a significant cause of material injury."[101] Rather, a finding that imports are a cause of material injury is

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[98] 19 U.S.C. § 1677(7)(B)(i).

[99] 19 U.S.C. § 1677(7)(B).

[100] Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988); Encon Industries Inc. v. United States, Slip Op. 92-164 at 4 and 5 (Ct. Int'l Trade, September 24, 1992).

[101] S. Rep. No. 249, 96th Cong., 1st Sess. 57, 74 and 75 (1979) ("Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources, industries that are often the most vulnerable to less-than-fair-value imports.").

sufficient.[102] The Commission may also consider whether factors other than the LTFV imports have made the industry more vulnerable to the effects of the LTFV imports.[103]

For the reasons discussed below, we find that the domestic PEC tools industry is materially injured by reason of LTFV imports of PEC tools from Japan. However, we also find that the domestic PES tools industry is not materially injured by reason of LTFV imports of PES tools from Japan.

B. Material Injury to the Domestic PEC Tools Industry by Reason of the LTFV Imports

LTFV imports of PEC tools from Japan, and U.S. shipments of those imports, increased significantly, both in terms of quantity and value during the period of investigation.[104] U.S. shipments of subject imports increased at a substantially faster rate over the period of investigation than the increase in domestic consumption.[105] As such, the subject imports accounted for a large and increasing share of apparent U.S. consumption throughout the period of investigation.[106] The large volume of subject imports as well as the significant and increasing share of domestic consumption accounted for by the U.S. shipments of LTFV imports of PEC tools from Japan are important factors in our affirmative determination.

The market for PEC tools appears to be relatively price sensitive. With

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[102] E.g., Metallverken Nederland, B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

[103] See generally Iwatsu Electric Co. Ltd. v. United States, 758 F. Supp. 1506, 1512 (Ct. Int'l Trade 1991).

[104] Report, Table 20 at I-30 and Table 21 at I-32.

[105] Report, Table 21 at I-32.

[106] Report, Table 21 at I-32.

relatively limited substitutability of other products for PEC tools, demand for PEC tools is price inelastic.[107] Furthermore, the subject imports are very good substitutes for the domestically produced PEC tools. Therefore, the increase in the supply of the subject imports puts downward pressure on the U.S. market price for PEC tools and the increase in imports will come at the expense of U.S. producers' sales of PEC tools, rather than increasing the level of domestic consumption of PEC tools.

Discounts play a major role in the marketing of PEC tools. All producers and importers publish price lists and discount schedules for use by their wholesalers and retail outlets.[108] As a general matter, these schedules provide the recommended retail price for each tool and accessory, and enumerate the discounts available for the purchase of various quantities of tools. The basic discount to a distributor is generally 30 percent below the recommended retail price. Additional discounts ranging from 10-25 percent may be applied as larger quantities of tools are purchased. In addition to published discounts, all producers and importers provide distributors with occasional promotional and advertising support, rebates, financial incentives or other benefits, which may be passed along to the retail level. Special promotional pricing may be available for individual tools or across product lines.

The Commission requested pricing information from U.S. producers and importers and from purchasers for three PEC tools -- reciprocating saws,

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[107] See Staff Economic Memorandum at 16.

[108] Information referred to in this paragraph is contained in Report at I-34 - I-36, unless otherwise noted.

circular saws, and jig saws.[109] This pricing information evidences significant price suppression caused by frequent and consistent underselling of the subject imports.

The prices of the Japanese reciprocating saws were lower than the prices for the domestic product in every quarter during the period of investigation as reported both by the U.S. producers/importers and by purchasers.[110] Further, the degree of underselling, particularly as reported by the U.S. producers/importers, increased over the period of investigation.[111] Prices for U.S. reciprocating saws increased only slightly during the period of investigation.[112]

Prices of Japanese circular saws as reported by U.S producers/importers were higher than those of the U.S. product at the beginning of the period of investigation.[113] However, prices for the U.S. product and for the Japanese product closely followed each other for the eight quarters beginning with January-March 1991, with underselling reported for half of that period and small margins of overselling for the other four quarters of that period.[114] Further, while the purchasers reported a similar trend for prices, they also reported lower prices for Japanese circular saws in more than half of the quarters during the period of investigation, with small margins of overselling

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[109] Three products with detailed specifications were identified for pricing information because prices of PEC tools vary with the specific type of tool and features found on the individual models.

[110] Report, Table 22 at I-38 and Table 29 at I-41.

[111] Report, Table 22 at I-38 and Table 29 at I-41.

[112] Report, Table 22 at I-38 and Table 29 at I-41.

[113] Report, Table 23 at I-38.

[114] Report, Table 23 at I-38.

reported for the remaining quarters.[115] While the prices of both domestic and Japanese circular saws increased over the period of investigation, the rate of increase for the subject imports was extremely low.[116]

The prices of the Japanese jig saws were lower than the prices for the domestic product in every quarter during the period of investigation as reported by purchasers and in every quarter except one as reported by the U.S. producers/importers.[117] Further, the degree of underselling as reported by the U.S. producers/importers increased over the period of investigation.[118] While the prices of both domestic and Japanese jig saws increased over the period of investigation, the rate of increase for the subject imports was extremely low and lower than the domestic increases.[119]

The Commission received lost sales and lost revenue allegations from the domestic industry that the Commission attempted to confirm. A number of major purchasers, contacted by the staff, confirmed that domestic producers lost sales and revenues because of lower prices offered on the subject imports.[120]

In sum, the record in this investigation indicates that LTFV imports of PEC tools from Japan often were sold at prices below the domestic product and accounted for an increasing share of apparent U.S. consumption. As noted earlier, the data concerning the industry's performance showed declining

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115 Report, Table 30 at I-41.

116 Report, Table 23 at I-38.

117 Report, Table 27 at I-39 and Table 31 at I-41.

118 Report, Table 27 at I-39.

119 Report, Table 27 at I-39.

120 Report at I-42 - I-44. In particular, a number of purchasers indicated that Makita offered special pricing in December 1992 on circular saws, miter saws, reciprocating saws, worm drive saws and cut saws with extended dating terms of 6-months to one-year. Id. at I-43 and I-44.

profitability despite an increase in shipments and net sales. Much of the decline in operating income appears to be attributable to increases in the industry's costs of production that outpaced the increases in net sales. The fairly widespread underselling by the LTFV imports, in conjunction with price sensitivity in this market and the increase in costs of production for the domestic industry, is evidence that the imports prevented to a significant degree increases in price that would otherwise have occurred, i.e., price suppression. Moreover, LTFV imports from Japan managed to capture a significantly larger portion of the increase in consumption than did the domestic industry. Thus, notwithstanding some positive indicators of industry performance, we conclude that the LTFV imports contributed to significant price suppression and deprived the industry of a significant portion of an increase in consumption, both of which are reflected in the weakened financial condition of the industry at the end of the period of investigation.

It is unusual in Title VII investigations for the Commission to have available data concerning a comparable industry over the same time period against which to test the conclusions we reach with respect to the impact that dumped imports are having on the domestic industry.[121] In this case, however, we have such a data set -- namely, the data for the PES tools industry. The market conditions and price sensitivity for the PES and PEC tools industries are quite similar. As discussed immediately below, the PES tools industry also experienced increases in net sales, shipments and production. Unlike the PEC tools industry, however, the PES tools industry's financial condition in terms of its operating income improved substantially over the period of

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[121] Chairman Newquist does not join in the discussion in this or the next paragraph.

investigation.

There is one obvious difference in the record between the PEC and PES tools industries and markets, and that is the market share held by dumped imports. For PEC tools, imports increased their market share, while for PES tools, import market share was both smaller overall and decreased. We believe this distinction further supports our conclusion that dumped PEC tools from Japan were a cause of material injury to the domestic PEC tools industry.

C. No Material Injury to the Domestic PES Tools Industry by Reason of the LTFV Imports

LTFV imports of PES tools from Japan increased slightly both in terms of quantity and value from 1990 to 1992.[122] However, U.S. shipments of subject imports declined in quantity while increasing in value from 1990 to 1992.[123] In sharp contrast to subject imports, U.S. apparent consumption of PES tools increased much more substantially in quantity over the period of investigation.[124] Further, the subject imports accounted for a declining share of apparent U.S. consumption throughout the period of investigation.[125] The relatively stable or declining volume of U.S. shipments of subject imports as well as the moderate and declining share of domestic consumption accounted for by the LTFV imports of PES tools from Japan are important factors in our negative determination.

The Commission requested pricing information from U.S. producers and

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122 Report, Table 20 at I-31.

123 Report, Table 21 at I-32.

124 Report, Table 21 at I-32.

125 Report, Table 21 at I-32.

importers and from purchasers for two PES tools -- angle grinders[126] and belt sanders.[127] On balance, we do not find significant underselling or significant price suppressing effects by subject imports of PES tools.

The prices of the Japanese 4-inch angle grinder were higher than the prices for the domestic product in every quarter except one during the period of investigation.[128] Further, the degree of overselling as reported by the U.S. producers/importers increased over the period of investigation.[129] Prices of both domestic and Japanese 4-inch angle grinders increased over the period of investigation.[130] There was some dispute between the parties as to whether the domestic and the import models surveyed were comparable products.[131]

The prices of the Japanese 4 1/2-inch angle grinder were higher than those of the U.S. product at the beginning of the period of investigation.[132] However, from the first quarter of 1992, prices for the U.S. product and for the Japanese product closely followed each other, with underselling reported

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[126] Pricing data supplied by purchasers for angle grinders is not useful since it was for a model of the imported angle grinder which was excluded from the scope of this investigation by Commerce's final investigation. Pricing data, including supplement import data, supplied by U.S. producers/importers for angle grinders were for two different sizes -- 4-inch and 4 1/2-inch -- which we compared separately.

[127] Two products with detailed specifications were identified for pricing information because prices of PES tools vary with the specific type of tool and features found on the individual models.

[128] Report, Table 24 at I-38.

[129] Report, Table 24 at I-38.

[130] Report, Table 24 at I-38.

[131] Makita contended that the Black & Decker tool "has more features to offer. All the competitor models offer higher amperage motors. Two of the four models being compared [to the Makita model] include more costly AC/DC features." Tr. at 130 and 131.

[132] Report, Table 25 at I-39.

for more than half of that period.[133] Prices for the U.S. 4 1/2-inch angle grinder increased slightly while the imported product declined slightly during the period of investigation.[134]

The prices of the Japanese belt sanders were lower than the prices for the domestic product in every quarter during the period of investigation as reported by U.S. producers/importers and in every quarter except one as reported by purchasers.[135] Prices of both domestic and Japanese belt sanders increased moderately over the period of investigation.[136] Again, there was some dispute as the comparability of the models surveyed.[137]

We also have considered the impact of imports on the domestic industry producing PES tools. In this case, we find that the declining volume and market share of shipments of imports from Japan and the mixed pricing data have not had an adverse impact on the domestic industry. The domestic industry continued to supply an increasing majority of U.S. customers and was able to significantly increase its market share from 1991 to 1992.[138] Moreover, the domestic industry's already fairly stable profitability increased significantly while the market share of the imported product declined significantly.

As noted previously, both the PEC and PES tools markets are fairly price

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[133] Report, Table 25 at I-39.

[134] Report, Table 25 at I-39.

[135] Report, Table 26 at I-39 and Table 31 at I-41.

[136] Report, Table 26 at I-39 and Table 31 at I-41.

[137] Makita contended that "all the models being compared to Makita have a higher amperage motor. All but the Ryobi have a faster speed and the Milwaukee and the Porter Cable models offer a more costly AC/DC feature as well." Tr. at 131.

[138] Report, Table 21 at I-32.

sensitive. Thus, it could reasonably be expected that underselling by dumped imports would have some adverse impact on domestic prices in the PES tools market as it had in the PEC tools market. We believe, however, that whatever adverse impact underselling by dumped imports of Japanese PES tools may have had in the PES tools market was offset by the decline in market share held by dumped imports. We, therefore, determine that the U.S. industry producing PES tools is not materially injured by reason to the imports of PES tools from Japan.

V. NO THREAT OF MATERIAL INJURY TO THE DOMESTIC PES TOOLS INDUSTRY BY REASON OF LTFV IMPORTS

We further determine that there is no threat of material injury by reason of LTFV imports of PES tools from Japan.[139] We have considered all the

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[139] Under the statute, the Commission is required to consider the following criteria.

> (I) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement.
>
> (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
>
> (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
>
> (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
>
> (V) any substantial increase in inventories of the merchandise in the United States,
>
> (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(continued...)

statutory factors that are relevant to this investigation.[140]

The statute directs us to determine whether an industry in the United States is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." Our decision "may not be made on the basis of mere conjecture

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[139](...continued)

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

(VIII) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation,

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

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

19 U.S.C. § 1677(7)(F)(i).

In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. 19 U.S.C. section 1677(7)(F)(iii).

[140] Several of the statutory threat factors have no relevance to this investigation and need not be discussed. This antidumping investigation does not involve subsidies or agricultural products nor any potential for product shifting due to other findings or orders under the antidumping or countervailing duty laws, or dumping findings or remedies in third countries. We note that a 1980 Canadian antidumping finding on subject imports was rescinded in 1984. See Canadian Anti-dumping Tribunal Review No. R-5-84 (1984).

or supposition."[141]

We do not find that there is any increase in production capacity or unused capacity in Japan likely to result in a significant increase in imports of PES tools to the United States. Capacity utilization levels of the Japanese producers were very high throughout the period of investigation.[142] Moreover, there is no evidence of record to suggest an increase above the present 1-shift, 40 hour weekly operations of the Japanese producers is likely or imminent. In particular, there was no evidence presented that the Japanese producers used more than one shift at any time during the period of investigation. Thus, we find petitioner's assertion to the contrary[143] to be mere conjecture.[144]

We also find that the record does not support a finding that there will be any rapid increase in United States market penetration of PES tools from Japan, nor is there a likelihood that the penetration will increase to an injurious level. Although the volume of subject imports in the U.S. market has been relatively large throughout the period of investigation,[145] there has not been a rapid increase in market penetration. To the contrary, the market share held by U.S. shipments of Japanese PES tools declined over the period,

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[141] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. U.S., 744 F.Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire, 8 CIT at 28, 590 F.Supp. at 1280.

[142] Report, Table 19 at I-30.

[143] Petitioner's Posthearing Brief at 14.

[144] See S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Citrosuco Paulista v. United States, 704 F. Supp. 1075, 1095 (Ct. Int'l Trade 1988) (Commission's determination may not be based on mere conjecture or supposition.)

[145] Report, Table 20 at I-31.

and there is no evidence of record to suggest an imminent reversal of this trend.[146] Further, there is evidence on the record of a commitment by Makita to shift PES production to the United States during the period of investigation.[147]

The record does not support a finding that the increase in inventories in the United States will have an injurious effect on the U.S. industry. The increase in import inventories occurred over the same period of investigation while the U.S. shipments of imports declined.[148] Moreover, given the very strong performance of the PES tools industry, we are not persuaded that the inventory levels constitute a real threat of imminent injury. We further determine that the record does not support a finding that imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices. As discussed above, prices of domestic and imported PES tools have generally increased during the period of investigation and we do not find significant price suppressing effects by the imports.[149] There is no indication that future imports would be any more likely to affect prices adversely in the near future than they do now.[150]

There are no "other demonstrable adverse trends" that indicate that imports will be the cause of actual injury, nor are there "actual and

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[146] Report, Table C-5 at C-6. Imports of PES tools from Japan, including both U.S. shipments and U.S. inventories, remained relatively constant for the 1990-1992 period. Id., Table 20 at I-31.

[147] Tr. at 124 and 125.

[148] Report, Table C-5 at C-6. Imports of PES tools from Japan, including both U.S. shipments and U.S. inventories, remained relatively constant for the 1990-1992 period. Id., Table 20 at I-31.

[149] Report at I-39 and - I-40.

[150] See 19 U.S.C. § 1677(7)(F)(i)(IV).

potential negative effects on existing development and production efforts of the domestic industry."[151] Based on these facts, we find that the domestic industry producing PES tools is not threatened with material injury by reason of the LTFV imports from Japan.

CONCLUSION

We determine that the information of record in this final investigation, particularly the significant volume of imports of PEC tools from Japan, the significant and increasing share of apparent U.S. consumption held by subject imports, and the declining condition of the domestic industry, demonstrates that the domestic industry producing PEC tools is materially injured by reason of the subject imports from Japan. In contrast, we find that the evidence in the record regarding PES tools, including the declining volume and market share accounted for by subject imports and the profitable and improving condition of the domestic industry, demonstrates that the domestic industry producing PES tools is not materially injured nor threatened with material injury by reason of LTFV imports from Japan.

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[151] See 19 U.S.C. §§ 1677(7)(F)(i)(VII) and (X).

VIEWS OF VICE CHAIRMAN WATSON, COMMISSIONER BRUNSDALE AND COMMISSIONER CRAWFORD

Based on the record in this final investigation, we determine that an industry in the United States producing electric cutting tools is materially injured by reason of imports of professional electric cutting tools from Japan that the Department of Commerce ("Commerce") has found to be sold at less than fair value ("LTFV"). We also determine that an industry in the United States producing electric sanding/grinding tools is neither materially injured nor threatened with material injury by reason of imports of professional sanding/grinding tools from Japan that Commerce has found to be sold at LTFV.[1]

I. LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product . . . ."[2] In turn, the Act defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article

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[1] Whether the establishment of an industry in the United States is materially retarded by reason of the subject imports is not an issue in this investigation and will not be discussed further.

[2] 19 U.S.C. § 1677(4)(A).

subject to an investigation . . . ."[3]

The Department of Commerce ("Commerce") has identified the articles subject to this investigation as:

> two classes or kinds of merchandise, PECTs [professional electric cutting tools] and PESGTs [professional electric sanding/grinding tools]. The tools may be assembled or unassembled and corded or cordless. . . .
>
> PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable band saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.
>
> PESGTs have moving abrasive surfaces used primarily for grinding, scraping, cleaning, deburring, and polishing wood, metal, and other materials. PESGTs include angle grinders, finishing sanders, disc sanders, orbital sanders, belt sanders, polishers, straight grinders, die grinders and similar sanding/grinding tools.
>
> The products subject to these investigations include all hand-held PECTs and PESGTs and certain bench-top, hand-operated PECTs. . . .
>
> These investigations do not include:
>
> - o Professional electric drilling/fastening tools;
> - o Lawn and garden tools;
> - o Heat guns;
> - o Paint and wallpaper strippers; and
> - o Chain saws, currently classifiable under subheading 8508 of the HTSUS.
>
> Parts or components of PECTs and PESGTs when they are imported as kits, or as accessories imported together with covered tools, are

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[3] 19 U.S.C. § 1677(10). The Commission's determination of what is the appropriate like product or products in an investigation is a factual determination, and the Commission has applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. In analyzing like product issues, the Commission considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability of the products; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) the use of common manufacturing facilities and production employees; and (6) where appropriate, price. Calabrian Corp. v. United States, 794 F. Supp. 377, 382, n.4 (Ct. Int'l Trade 1992). No single factor is dispositive, and the Commission may consider other factors relevant to its like product determination in a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. E.g., S. Rep. No. 249, 96th Cong. 1st Sess. 90-91 (1979); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991); Asociacion Colombiana de Exportadores de Flores v. United States ("Asocoflores"), 693 F. Supp. 1165, 1169 (Ct. Int'l Trade 1988)("It is up to [the Commission] to determine objectively what is a minor difference.").

included within the scope of these investigations.

"Corded" and "cordless" PECTs and PESGTs are included within the scope of these investigations. "Corded" PECTs and PEGSTs, which are driven by electric current passed through a power cord, are, for purposes of these investigations, defined as power tools which have at least five of the following seven characteristics:

(1) The predominate use of ball, needle, or roller bearings (i.e., a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);

(2) Helical, spiral bevel, or worm gearing;

(3) Rubber (or some equivalent material which meets AWL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;

(4) Power supply cord with a separate cord protector;

(5) Externally accessible motor brushes;

(6) The predominate use of heat treated transmission parts (i.e., a majority or greater number of the transmission parts in the tool are heat treated); and

(7) The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular "corded" tool, then that tool must have at least four of the six characteristics to be considered a "corded" PECTs or PESGTs.

"Cordless" PECTs and PESGTs, for the purposes of these investigations, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.[4] [5]

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[4] Final Determinations of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools From Japan, 58 Fed. Reg. 30144, 30145 (May 26, 1993) (hereinafter Commerce Final Notice). Staff Report at A-6. In its preliminary determination, Commerce defined the scope of investigation regarding professional tools by listing a set of factors. If a tool possessed the required number of factors, the tool was deemed a consumer tool and, therefore, not subject to investigation. In its final determination, Commerce essentially reversed the criteria so that if a tool possessed the required number of criteria, it was deemed a professional tool and, therefore, subject to investigation. As a result of this switch in approach, a few tools which did not meet the consumer test and, therefore, were considered professional in Commerce's preliminary determination, have been found not to meet the professional criteria and, therefore, are not included in the articles subject to Commerce's final investigation. The Commission's data has been revised to correspond to Commerce's change in scope and, therefore, to include only imports subject to Commerce's final determination.

[5] The fact that Commerce's reversal of criteria from a consumer to a professional test resulted in the shifting of some tools from within to outside the scope of investigation provides some indication that there is not a clear dividing line between these tools.

B. Like Product Issues and the Commission's Preliminary Determination

In its preliminary determination, the Commission considered several issues concerning the definition of like product: (1) whether PEC tools and PES tools constitute separate like products; (2) whether the range of types and sizes of products covered in either the PEC or PES categories is too broad to constitute one like product and should be separated into additional like products; (3) whether consumer tools are similar to professional tools so as to include them in the like product; and (4) whether the Commission should define separate like products which correspond to specific imported tools but which are not produced domestically.[6] Only the third issue was contested by the parties in this final investigation.[7]

The Commission concluded in its preliminary determination that there were at least two like products, PEC and PES tools. The Commission also reaffirmed that a like product must be defined as the U.S.-made products which

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[6] For a complete description of the preliminary determination see Professional Electric Cutting and Sanding/Grinding Tools from Japan, Inv. No. 731-TA-571 (Preliminary), USITC Pub. 2536 at 6-17 (July 1992).

[7] In the final investigation, petitioner continued to propose that the Commission define two like products -- PEC tools and PES tools -- corresponding to the two classes or kinds of subject imports. Petitioner's (The Black & Decker Corporation, herein referred to as "Black & Decker") Prehearing Brief at 3. Two respondents contended that the like products should be defined to include all, consumer as well as professional, electric cutting and sanding/grinding tools. Respondent's (Makita Corporation, Makita U.S.A., Inc. and Makita Corporation of America, herein collectively referred to as "Makita") Prehearing Brief at 8; Respondent's (Hitachi Koki Co. Ltd. and Hitachi Power Tools U.S.A., Ltd., herein collectively referred to as "Hitachi") Prehearing Brief at 6. Ryobi, Ltd., Ryobi America, Ryobi Motor Products Corp. and Ryobi Electric Tool Manufacturing Corp. (herein collectively referred to as "Ryobi") did not brief the Commission in the final investigation.

are like or most similar to the imports subject to investigation.[8] There is no evidence in the record in this final investigation that suggests a different conclusion for these two issues.

For the purposes of the preliminary determination, the Commission concluded that the differences between the families of tools were fairly minor and did not constitute clear dividing lines for defining more than two separate like products. However, the Commission invited parties to submit further evidence in any final investigation on this issue. Finally, the Commission considered whether consumer tools were so similar to professional tools that the like products should be defined more broadly than the two classes or kinds of subject imports. While the Commission decided not to include consumer tools in the definitions based on the record in the preliminary investigation, it indicated that the issue would be reexamined in any final investigation. Each of these issues is addressed below.

C. Domestic Products "Like" PEC Tools and PES Tools

1. Whether There Should Be More Than Two Like Products Defined

While in this final investigation no party has urged the Commission to consider defining the like product more narrowly than PEC tools and PES tools, we considered whether cutting tools' and sanding/grinding tools' are each a continuum of tools or whether each category can be further subdivided.

In past investigations involving ranges or families of products, the

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[8] In the final investigation, Hitachi indicated that they have "not requested that the Commission exclude any imports determined by the Department to be within the scope." Rather, "Hitachi submits that imports of slide compound saws and other imported Japanese products for which there are no domestically produced substitutes must be specially considered under the statute" pertaining to the Commission's injury and causation analysis, rather than to the definition of the subject imports or the 'like product.'" Hitachi's Posthearing Brief at 8 -11.

Commission has found separate like products each consisting of a continuum of articles. In some cases, the Commission has found a dividing line by product category[9] or by operating element.[10] In other cases, the Commission has found no clear dividing lines and included everything in one like product.[11] We find that the evidence in the record does not support defining separate like products as narrow as would be required to classify like products by product categories or families of tools.[12]

In the subject investigation, we also considered classification by operating elements. There are similarities in physical characteristics and uses, production processes, and customer and producer perception as well as some interchangeability between the cutting tools.[13] While there is a

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[9] See e.g., Heavy Forged Handtools from the People's Republic of China ("Heavy Forged Handtools"), Inv. No. 731-TA-457 (Final), USITC Pub. 2357 at 5 and 6 (February 1991), aff'd, Tianjin Machinery Import & Export Corporation v. United States, Slip Op. 93-61 (Ct. Int'l Trade April 27, 1993).

[10] See e.g., Antifriction Bearings, USITC Pub. 2185 (May 1989).

[11] See e.g., Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea ("PET Film"), Inv. No. 731-TA-458 and 459 (Final), USITC Pub. 2383 at 8 and 10 (May 1991); Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989). See e.g., Sony Corporation of America v. United States, 712 F. Supp. 978, 983 (Ct. Int'l Trade 1989).

[12] When the Commission has narrowly defined like products, the courts have required the Commission to clarify its rationale and have required evidence in the record which clearly and explicitly differentiates between the like products. See e.g., Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands, Inv. Nos. 701-TA- 275 - 278 and 731-TA-327 - 331 (Final), USITC Pub. 1956 (March 1987), and Certain Fresh Cut Flowers from Peru, Kenya, and Mexico, Inv. Nos. 303-TA-18 and 731-TA-332 and 333 (Final), USITC Pub. 1968 (April 1987), remanded, Asocoflores, 693 F. Supp. 1165, 1170 (Ct. Int'l Trade 1988).

[13] The various types of cutting tools have similar physical characteristics and uses and are distinguished primarily by removable blades that, when activated by the motor and directed by the operator, can cut various materials in various ways. Cutting tools can be interchanged with one another; arguably, either a band saw or a circular saw may be used for cutting a wood

(continued...)

distinction between the method of operation for some of the cutting tools,[14] we find based on the evidence in this investigation that there is no clear dividing line along the continuum of cutting tools and define one like product which includes all subject cutting tools.

In the case of sanding/grinding tools, we found that they have similar physical characteristics and uses, the same methods of operation -- hand-held operation, can be interchanged with one another, are perceived as similar by producers, and have similar production processes.[15] Based on the evidence in this investigation, we find one like product which corresponds to all subject sanding/grinding tools.

2. Whether Consumer Tools Are Similar to Professional Tools

The Commission may define the like product to be broader than the class of articles identified as subject to Commerce's determination.[16] In

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[13](...continued)
board, although one type may be more appropriately suited for the specific application. Cutting tools are perceived to be similar by producers and have similar production processes. Report at I-4.

[14] While cutting tools are predominately hand-held, i.e., wholly held and moved by hand while in use, there are a few bench-top, hand-operated cutting tools included in this investigation. While bench-top, hand-operated cutting tools, such as miter saws, are not hand-held, the apparatus containing the functional part of these tools, i.e., the saw blade, must be held and moved by hand during operation. Report at I-4.

[15] Sanders and grinders are distinguished from other tools primarily by removable abrasive surfaces that, when actuated by the motor or directed by the operator, can remove and/or refinish surfaces from various materials. Sanders are used primarily for wood; grinders are primarily used for metals. Report at I-5.

[16] See, e.g., Certain Electric Fans from the People's Republic of China, Inv. No. 731-TA-473 (Final), USITC Pub. 2461 at 8 (December 1991)("Even if there is a domestic product identical to the imports subject to investigation, the Commission may find the like product to be broader than that identical product.")(footnote omitted), aff'd, Holmes Products Corp. v. United States, Slip Op. 92-230 (Ct. Int'l Trade, December 30, 1992); see also, Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea
(continued...)

identifying the appropriate like product, the Commission is to find the product or products like or most similar to the subject imports.[17] Therefore, instead of doing a general comparison of consumer and professional power tools, we find it appropriate to find which domestic power tools are like Japanese professional electric cutting and sanding/grinding tools.[18] Commerce deemed power tools to be professional, if they possess 5 of 7 specified characteristics.[19] Therefore, we considered based on the facts in this investigation whether domestic consumer tools are similar to the subject imports or whether a clear dividing line exists between professional and consumer tools.[20] As discussed below, we conclude that no clear dividing lines exist between professional and consumer electric cutting ("EC") tools and professional and consumer electric sanding/grinding ("ES") tools and find two like products, EC tools and ES tools.

When the Commission, in previous investigations, has faced the problem of multiple like products based upon alleged distinctions among types of

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[16](...continued)
("PET Film"), Inv. Nos. 731-TA-458 and 459 (Final), USITC Pub. 2383 at 8, 15 and 16 (May 1991); Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC 2211 (August 1989). Compare Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Final), USITC Pub. 2502 at 10 (April 1992). Cf. Torrington v. United States, 747 F. Supp. 744 (Ct. Int'l Trade 1990), aff'd, 938 F. 2d 1278 (Fed. Cir. 1991)(Commission's like product determination need not be coextensive with Commerce's class or kind determination.)

[17] 19 U.S.C. § 1677(10).

[18] Makita accounts for a significant share of the subject imports.

[19] If only 6 of the specified characteristics are applicable, the tool must possess 4 of the characteristics to be deemed professional by Commerce.

[20] Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other." S. Rep. No. 96-249, 96th Cong., 1st Sess. 90-91 (1979).

products, it has looked for clear dividing lines between the various products. If the Commission has been unable to find clear dividing lines, then it usually has found a continuum and included everything in one like product.

In reaching our determination regarding the appropriate like product, we have considered relevant Commission precedent and conducted an analysis of the like product factors. In Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea ("PET Film"), the Commission found that "PET Film is a continuum product without clear dividing lines between the multiple like products . . . [a]lthough there are many distinct end uses for different types of PET film."[21] In defining a single like product for PET Film, the Commission found that there were "essential characteristics common to all PET Film: high tensile strength, durability, heat resistance, good gas-barrier properties, dimensional stability, chemical inertness, and clarity."[22] The Commission also considered that on the whole U.S. producers viewed all PET film as a continuum of PET film product in spite of recognizing the existence of different market segments within this PET film.[23]

The Court of International Trade has repeatedly upheld the Commission practice of defining one like product which includes a number of similar products.[24] For example, in Sony Corp. of America, the CIT held that:

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[21] PET Film, USITC Pub. 2383 at 8 (May 1991).

[22] PET Film, USITC Pub. 2383 at 10 (May 1991). The Commission determined "that the general similarity in physical characteristics, the general similarity in production processes and production facilities, the single product perceptions of U.S. producers, and the similar channels of distribution indicate that PET film. . . is a single like product in these final investigations." Id. at 14.

[23] PET Film, USITC Pub. 2383 at 12 (May 1991).

[24] See, e.g., Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989).

> the fact that there are certain differences between the Trinitron tube and other CPTs [color picture tubes] does not mean that the Trinitron is not "like" other CPTs within the meaning of the relevant statutes. Nor is it disputed that the end use, i.e., television viewing sets, is the same for Trinitron CPTs as for other CPTs.[25]

The Commission also has considered the issue of similar products with a range from low to high qualities or grades and found one like product. In New Steel Rails, the Commission found that different quality T rails, premium and standard, were a single like product.[26] In defining a single like product, the Commission found that "premium and standard T rail have nearly identical characteristics and uses; are interchangeable at least in part; are sold through the same channels of distribution; and are produced in the same facilities, on much of the same equipment and by the same employees."[27] In Nepheline Syenite, we considered whether the more expensive glass-grade potash feldspar which is used for specialty glass applications should be included in the like product with glass-grade soda feldspar which is used in container glass production.[28] We determined that "[w]hile potash feldspar has different qualities and some different uses than soda feldspar, the record indicates that it competes directly with the subject import among glassmakers" and

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[25] Sony Corporation of America v. United States, 712 F. Supp. 978, 983 (Ct. Int'l Trade 1989).

[26] New Steel Rails from Japan, Luxembourg, and the United Kingdom, Inv. Nos. 731-TA-557-559 (Preliminary), USITC Pub. 2524 at 8 (June 1992). See also Stainless Steel Wire Rod from Brazil, France, and India, Inv. Nos. 731-TA-636-638 (Preliminary), USITC Pub. 2599 at 8-10 (February 1993); Industrial Nitrocellulose from Brazil, Japan, the People's Republic of China, the Republic of Korea, the United Kingdom, and West Germany, Inv. Nos. 731-TA-439-444 (Final), USITC Pub. 2295 at 5 and 6 (June 1990).

[27] New Steel Rails from Japan, Luxembourg, and the United Kingdom, USITC Pub. 2524 at 10 (June 1992).

[28] Nepheline Syenite from Canada, USITC Pub. 2502 at 8 and 9 (April 1992).

included it in the definition of like product.[29]

In prior investigations directly considering the professional versus consumer issue, the Commission found different channels of distribution to be a key factor in its like product decisions. In Commercial Microwave Ovens, the Commission decided against including household microwave ovens (HMO) in the like product definition with commercial microwave ovens (CMO).[30] The Commission found that the small overlap in uses between the household and commercial microwave ovens "is only one-way, because a consumer cannot easily purchase a CMO. . . . CMOs and HMOs are sold in different channels of distribution, with CMOs sold through commercial food distributors and HMOs sold through appliance dealers."[31] In Certain Electric Fans, the Commission determined "that industrial fans are not like the imported fans subject to investigation" because "industrial fans are generally unavailable to household consumers."[32]

An analysis of the like product factors for professional tools compared

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[29] Nepheline Syenite from Canada, USITC Pub. 2502 at 9 (April 1992).

[30] Commercial Microwave Ovens, Assembled or Unassembled from Japan ("Commercial Microwave Ovens"), Inv. No. 731-TA-523 (Preliminary), USITC Pub. 2405 at I-9 (July 1991) (The Commission found that the products were similar in production processes, but differed in physical and technical characteristics, uses, and channels of distribution, and that the industry had "no trouble telling the two types of ovens apart.") Id. at I-7 - I-9.

[31] Commercial Microwave Ovens, USITC Pub. 2405 at I-8 and I-9 (July 1991). The Commission also considered that "HMO's warranties and insurance are allegedly voided if it is used for commercial purposes." Id. at I-8.

[32] Certain Electric Fans from the People's Republic of China, Inv. No. 731-TA-473 (Preliminary), USITC Pub. 2340 at 9 and 10 (December 1990) (In finding that industrial fans were not similar, the Commission also indicated that the motors of the industrial fans exceeded the 125 watt limitation on the fans subject to investigation, that their blades generally were made of steel or aluminum rather than plastic, and that they circulated a substantially larger quantity of air.).

to related consumer tools follows.[33]

(a) Physical characteristics and uses

Since professional/industrial tools generally are designed to withstand harsher treatment, perform under more extreme conditions, and operate more or less continuously, they may be assembled from different grades of components than their consumer counterparts.[34] However, in terms of physical characteristics, there is less difference between a professional tool and its consumer counterpart than between types of cutting tools or types of sanding/grinding tools. For example, a professional and consumer circular saw have the same general appearance and the same key cutting components such as a circular blade. In contrast, a professional circular saw and professional router are not similar in appearance and have different key cutting components, a circular blade and bit, respectively. Further, professional and consumer tools are used fundamentally for the same ends, although professional tools generally are used for lengthier periods under heavier workloads.[35]

Commerce's scope of investigation provides that a tool is deemed a subject import (i.e., professional cutting or sanding/grinding tool) if it possesses a specified number of factors. All of these factors relate to the physical characteristics of the tool, such as the length of the power supply cord and its composition. In applying the appropriate factors, Commerce found

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[33] See Report at I-4 - I-7.

[34] Since professional tools are designed to be more durable than their consumer counterparts, they generally are heavier in weight, housed in heavier-gauge steel or compound materials, powered by higher amperage and more overload-tolerant motors, have heavier and more wear-resistant bearings, and are fixed with a thicker-jacketed power cord of special rubber to resist abrasion and retain flexibility during cold weather. Report at I-6 and I-7; Petitioner's Prehearing Brief at 6.

[35] Report at I-7.

that there were some tools which certain industry participants might consider professional which only met 4 of the 7 factors and, therefore, were deemed to be consumer tools.[36] This provides some indication that there is not a clear dividing line between these tools.[37]

(b) Interchangeability

For most every type of electric hand tool designed for professional and/or industrial use there is a similarly functioning tool designed, and priced, for consumer and/or home use. The extent of the actual differences varies from one tool type to another.[38] For many types of tools, there are a number of models that range from the low-end to high-end. The differences between models at either end of the range are significant, but the differences between models in the middle of the range often are minor.

While it is probably true that most employees and other persons making a living with power hand tools use the professional variety tool,[39] it is not

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[36] For example, a sanding/grinding tool was excluded by Commerce from the scope because it met at most only four of the seven criteria. The tool had a power supply cord of proper length (8 feet) but Commerce determined after physically examining the cord that it was made of thermo-plastic material and not rubber as required by Commerce's criteria for professional tools. See Commerce Memorandum A-588-823, Attachment 2-B at 15.

[37] Commerce found that 82 of 83 Makita corded U.S. cutting tools examined were professional because they met at least five of the seven or four of the six scope criteria. However, 10 of those deemed professional met the minimum number of criteria. For Makita's corded sanders/grinders, only 36 of 46 met the professional criteria, with seven of those professional models possessing only the minimum number of criteria (five or four). See Commerce Memorandum A-588-823, Attachment 2 at 1 and 2.

[38] Report at I-5.

[39] The 1991 Professional Power Tool Brand Image and Purchase Tracking Study ("the Caney Report") conducted by the Caney Research Group found that 25 percent of the tradesmen had purchased a consumer tool, but that only 9 percent of those surveyed would purchase a consumer tool again for a professional job. Caney Report at Table 111; Petitioner's Prehearing Brief at 10.

true, nor is it expected, that the hobbyist, home do-it-yourselfer, or other user for non-professional purposes will invariably use the consumer variety. The extent to which they purchase professional quality tools has not been quantified.[40] Black & Decker and Ryobi contended that there is minimal overlap on this issue; however, Makita testified that the overlap is extensive.[41] In the final investigation, Makita estimated that "between 60 and 65 percent of its tools are currently purchased by do-it-yourselfers" based on Makita's warranty returns and marketing studies.[42] [43] It is clear, however, that mail order catalogs, hardware stores, lumber yards, and "home remodeling" centers all carry both professional and consumer power tools that are accessible to both ordinary consumers and professionals.

(c) Customer and producer perceptions of the products

Most of the industry accepts a distinction between professional and consumer tools, at least for marketing purposes.[44] The subject imports of PEC and PES tools seem to appeal to consumers and compete to some degree with consumer products.[45] There also is some dispute as to which products are

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[40] Report at I-7.

[41] Report at I-7.

[42] Respondent's (Makita) Prehearing Brief, Vol. I at 22. Petitioner contended that Makita failed to produce its warranty evidence and that based on Black & Decker's records "the rate of return on warranty cards for professional tools is significantly less than 10 percent." Petitioner's Posthearing Brief at 4, n.7. In the preliminary investigation, Makita estimated that "between 30 and 35 percent of its tools were purchased by do-it-yourselfers." Makita's Postconference Brief at 10.

[43] It may be that more do-it-yourselfers use Makita tools.

[44] Report at I-5.

[45] Makita indicated that it was surprised when its products started selling so well through retail distribution centers to consumers for the home market other than to the contractor or tool specialist. Makita reasoned that "the quality spoke for itself. People were willing to pay more. They had

(continued...)

consumer tools and which products are professional tools. For example, when Commerce shifted its approach in defining professional tools to reference a series of characteristics of professional, rather than consumer, tools, a few tools deemed professional in its preliminary determination were found not to meet the professional criteria. In the final investigation, Hitachi asserted that "Hitachi does not recognize that a clear line can be described or established that separates 'professional' tools from 'consumer' tools;" however, Hitachi acknowledged that it "uses those designations purely for marketing purposes, and Hitachi understands that other companies do the same."[46] While producers' catalogs of their products typically differentiate between professional and consumer tools, it is not clear that their definition matches Commerce's definition for professional tools.

One producer may offer a different warranty from another producer for their tools. In addition, some producers offer different warranties for their professional and consumer tools. Petitioner indicated that it "warrants professional tools for one year, and provides for a 30-day over-the-counter warranty exchange."[47] In contrast on consumer tools, Black & Decker "offers an over-the-counter exchange anytime within a two-year warranty period" . . . which "is voided if the tool is used for professional use."[48] Makita indicated, however, that "[a]ll of Makita's tools are covered by the same

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[45](...continued)
initially purchased low cost tools and they had . . . failed . . . or done the job poorly. So, the next time around they wanted to buy something better, and many of them chose Makita." Tr. at 172.

[46] Respondent's (Hitachi) Posthearing Brief at 14.

[47] Petitioner's Prehearing Brief at 9, n.5.

[48] Petitioner's Prehearing Brief at 9, n.5.

warranty, regardless of the purchaser."[49] Makita also indicated that "no possible cancellation of warranty applies to Makita's power tools -- Makita's warranties apply equally to all -- regardless of the user."[50]

(d) Channels of distribution

Both professional and consumer tools are widely available to professionals and non-professionals alike.[51] Large institutional buyers (i.e., manufacturing companies, construction firms and government/public maintenance departments) generally purchase professional tools from industrial and construction supply wholesalers served by the manufacturers, or from the manufacturers directly. Smaller institutional buyers and individual users purchase professional tools from hardware stores, lumber yards, and home-improvement centers also served by the manufacturer (or the manufacturer's agent), or from the same industrial and construction supply wholesalers that serve the larger institutional users. Consumer tools also are available at these outlets, supplied by the manufacturer in much the same way as are professional tools.[52] Manufacturers also ship an equal or larger number of consumer tools to mass-merchandise and catalog stores, such as K-Mart, that generally do not serve the professional market.

(e) Production processes

Both professional and consumer tools have similar major components (such

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[49] Respondent's (Makita) Prehearing Brief, Vol. I at 41.

[50] Respondent's (Makita) Prehearing Brief, Vol. I at 41.

[51] Report at I-10 and I-11.

[52] For example, stores such as Sears carry a line of power tools of each type. The top of the line consists of tools which are designed for professional, heavy-duty use and have added features; tools at the bottom are designed for light, household use. However, there are other models in the middle which are applied to both types of use.

as motor, housing, gears, and bearings). To produce both professional and consumer tools, major components are first manufactured and then assembled into a complete unit.[53] Most motors and housings are produced in-house; gears, bearings, and smaller components may also be imported, acquired from domestic affiliates, or purchased from other U.S. producers. After assembly, the completed tools are tested, packaged, and shipped to the customer. The manufacturing processes for professional and consumer tools have several similar steps: steel machining, motor manufacturing, and tool assembly.[54] In general, parts and components for professional tools, however, are manufactured using a greater number of production steps,[55] higher quality raw materials (i.e., alloy v. low carbon steel), and are designed to meet higher tolerances than parts and components for consumer tools.

The degree to which equipment and production workers are dedicated to the production of major components, particularly the motor, for either professional or consumer tools varies by individual producer.[56]

Producers use at least three types of assembly lines for professional power tools: a whole unit assembly; a timer-indexed conveyor with housings; and a roller and pallet system.[57] Assembly of most consumer tools is done on a progressive conveyor belt that runs constantly, with each assembler performing a single task.[58] Depending on each producer's manufacturing

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[53] Report at I-7.

[54] Report at I-7.

[55] There are three manufacturing steps between the steel machining and the motor manufacture in the production process for professional tools. These steps include: casting machining, injection molding, and heat treatment.

[56] Report at I-7.

[57] Report at I-7.

[58] Report at I-8.

methods, each assembly line may be dedicated to a particular type of tool, or alternate between different tools, after a set-up interval. For some producers, the conveyor belt assembly lines may alternate between professional and consumer tools after a set-up interval.

(f) Price

There are continua of prices for both cutting and sanding/grinding tools. For example, there is an apparent continuum in the prices of circular saws: $39.74; $59.00; $89.99; $109.00; and $149.00.[59] The first three products would be classified by Commerce as consumer products and the last two would be deemed professional products. Moreover, while professional tools may be several times the price of the corresponding consumer/home-use tools at the retail level,[60] there are wide ranges of price for professional power tools. Finally, because the imports of PEC and PES tools from Japan tend to be positioned at the moderate or middle range of prices, they are more likely to compete with domestic consumer tools.[61]

In summary, our analysis of the like product factors discussed above leads us to conclude that no clear dividing lines exist between professional and consumer electric cutting tools and professional and consumer electric sanding/grinding tools. We find two like products, EC tools, comprised of consumer and professional tools, and ES tools, comprised of consumer and professional tools, which correspond to the two classes or kinds of imports subject to investigation. In light of our like product determination, there

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[59] Respondent's (Makita) Posthearing Brief at Exhibit 4.

[60] Report at I-7.

[61] Tr. at 153. Makita indicated that: "[w]e happen to be positioned pretty much in the middle. You've got the premium brands on top. You've got the lower quality, lower price . . . [items] below us." Tr. at 173.

are two domestic industries in this investigation, one comprised of the domestic producers of EC tools, both professional and consumer, and the other comprised of the domestic producers of ES tools, both professional and consumer.[62]

III. MATERIAL INJURY BY REASON OF LTFV IMPORTS

In determining whether a domestic industry is materially injured by reason of the LTFV imports, the Act directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
>
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
>
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations within the United States . . . .[63]

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[62] We concur with the finding reached by Chairman Newquist, Commissioner Rohr and Commissioner Nuzum that appropriate circumstances exist to exclude Makita Corporation of America ("MCA") from the domestic industry as a related party. We join in their discussion of these matters, except to make note of certain information specific to the EC and ES tool industries.

As a new entrant to the domestic EC and ES tools industry, MCA was responsible for an extremely small percentage of U.S. EC tool production but accounted for a moderate share of U.S. ES tool production during the period of investigation. Report, Table 1 at I-9. Similarly, MCA's U.S. shipments of domestically produced EC tools as a share of total U.S. EC tools' shipments for Makita (U.S. shipments of domestic production and imports) was extremely small for 1992. Report, Table 2 at I-10. MCA's shipments of domestically produced ES tools as a share of total U.S. shipments for Makita of ES tools (domestic production and imports) also was extremely small in 1992. Id.

During the period of investigation, Ryobi U.S. was responsible for a substantial share by quantity of both U.S. ES tool production and U.S. EC tool production. Report, Table 1 at I-9. In strong contrast to MCA, Ryobi U.S.'s shipments of domestically produced ES tools as a share of total U.S. ES tools' shipments for Ryobi (U.S. shipments of domestic production and imports) was very substantial and U.S. shipments of domestically produced EC tools as a share of total U.S. shipments for Ryobi of EC tools (domestic production and imports) was significant for 1992. Report, Table 2 at I-10.

[63] 19 U.S.C. § 1677(7)(B)(i).

In assessing the effect of dumped imports, we compare the current condition of the domestic industry to that which would have existed had imports not been dumped.[64] Then, taking into account the condition of the industry, we determine whether the resulting change of circumstances constitutes material injury.[65] For the reasons discussed below, we find that the domestic EC tools industry is materially injured by reason of LTFV imports of PEC tools from Japan, and that the domestic ES tools industry is not materially injured by reason of LTFV imports of PES tools from Japan.

A. Background

In assessing whether there is material injury to a domestic industry by reason of dumped imports, we consider "all relevant economic factors which have a bearing on the state of the industry in the United States . . . ."[66] We consider these factors "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[67]

1. Domestic EC Tools Industry

Apparent U.S. consumption of EC tools by quantity increased modestly between 1990 and 1992.[68] While apparent U.S. consumption of EC tools by value fluctuated between years, it increased significantly from 1990 to 1992.

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[64] See 19 U.S.C. § 1677(7)(C)(iii).

[65] Vice Chairman Watson believes that in some cases the record evidence is sufficient to allow such an analysis, which although not required by the Act, can be relevant.

[66] 19 U.S.C. § 1677(7)(C)(iii).

[67] 19 U.S.C. § 1677(7)(C)(iii). No argument addressing the business cycle nor conditions of competition was raised by any of the parties to this investigation. Nor did the Commission receive any information relevant to such considerations.

[68] Data referred to in this paragraph are summarized in Report, Table C-8, at C-8, unless otherwise noted.

Domestic production of EC tools by quantity increased by 7.2 percent from 1990 to 1991, and by 2.5 percent from 1991 to 1992.[69] Capacity to produce EC tools remained relatively constant from 1990 to 1991, with an increase of 2.0 percent from 1991 to 1992. Similar to the domestic production trend, capacity utilization rates for the EC tools industry increased by 4.2 percentage points from 1990 to 1991, and remained relatively constant from 1991 to 1992. Overall capacity utilization rates were relatively low, ranging from 61.1 percent to 65.7 percent for the domestic EC tools industry over the period of investigation.

The domestic industry's U.S. shipments of EC tools by quantity remained relatively constant from 1990 to 1991, and increased by 5.6 percent from 1991 to 1992.[70] While the domestic industry's U.S. shipments of EC tools by value fluctuated between years, an increase of 13.5 percent was reported over the period of investigation. Export shipments of EC tools by the domestic industry increased by 27.2 percent by quantity and by 30.7 percent by value from 1990 to 1991, but declined by 11.9 percent by quantity and by 3.8 percent by value from 1991 to 1992. Inventories as a share of shipments increased during 1990-1992 from 10.2 percent to 11.4 percent.

Hours worked fluctuated between years but remained relatively constant from 1990 to 1992.[71] Total compensation declined slightly between 1990 and 1991, but rose moderately from 1991 to 1992, for an overall modest increase.

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[69] Data referred to in this paragraph are summarized in Report, Table C-8, at C-8, unless otherwise noted.

[70] Data referred to in this paragraph are summarized in Report, Table C-8, at C-8, unless otherwise noted.

[71] Data referred to in this paragraph are summarized in Report, Table C-8, at C-8, unless otherwise noted.

In contrast, hourly total compensation rose steadily over the period of investigation. Productivity increased moderately between 1990 and 1991, but declined slightly from 1991 to 1992, for an overall moderate increase over the period of investigation.

The EC tools industry experienced a modest increase by quantity and a moderate increase by value in net sales from 1990 to 1992.[72] Operating income, while positive for each year during the period 1990-1992, dropped significantly over the period of investigation.

The cost of goods sold for the domestic EC tools industry increased significantly from 1990 to 1992, with most of the increase reported from 1991 to 1992.[73] Selling, general, and administrative expenses also increased significantly over the period of investigation with a slight decline reported from 1990 to 1991.

Finally, the domestic industry's capital expenditures declined modestly during the period 1990 to 1992, with a significantly drop from 1990 to 1991.[74]

2. Domestic ES Tools Industry

Apparent U.S. consumption of ES tools by quantity and by value was relatively constant from 1990 to 1991, but rose substantially both by quantity and value from 1991 to 1992.[75]

Domestic production of ES tools increased modestly from 1990 to 1991,

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[72] Data referred to in this paragraph are summarized in Report, Table C-8, at C-8, unless otherwise noted.

[73] Data referred to in this paragraph are summarized in Report, Table C-8, at C-8, unless otherwise noted.

[74] Data referred to in this paragraph are summarized in Report, Table C-8, at C-8, unless otherwise noted.

[75] Data referred to in this paragraph are summarized in Report, Table C-11, at C-10, unless otherwise noted.

but rose significantly from 1991 to 1992, for a substantial increase over the period of investigation.[76] Capacity to produce ES tools increased slightly from 1990 to 1992. Capacity utilization rates for the ES tools industry increased moderately from 1990 to 1992.

The domestic industry's shipments of ES tools remained relatively constant by quantity and declined slightly by value from 1990 to 1991, but experienced a substantial increase from 1991 to 1992.[77] Export shipments of ES tools by the domestic industry increased substantially by quantity and value from 1990 to 1991, but declined modestly from 1991 to 1992.

The domestic industry's year-end inventories of ES tools fluctuated for an overall slight increase for the 1990-1992 period.[78] Inventories as a share of shipments declined slightly during that period.

Employment in the domestic ES tools industry fluctuated with a modest increase over the period of investigation.[79] Hours worked increased slightly from 1990 to 1992. Total compensation also increased modestly over the period of investigation. Hourly total compensation fluctuated, but increased slightly overall from 1990 to 1992. Productivity increased substantially over the period of investigation.

The ES tools industry experienced a slight increase by quantity and value in net sales from 1990 to 1991 and reported a substantial increase from

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[76] Data referred to in this paragraph are summarized in Report, Table C-11, at C-10, unless otherwise noted.

[77] Data referred to in this paragraph are summarized in Report, Table C-11, at C-10, unless otherwise noted.

[78] Data referred to in this paragraph are summarized in Report, Table C-11, at C-10, unless otherwise noted.

[79] Data referred to in this paragraph are summarized in Report, Table C-11, at C-10, unless otherwise noted.

1991 to 1992.[80] Operating income, which was positive for each year during the period 1990-1992, increased modestly from 1990 to 1991, but increased from 1991 to 1992. Operating income as a share of net sales increased over the period of investigation.

The cost of goods sold for the domestic ES tools industry increased significantly from 1990 to 1992, with all of the increase reported from 1991 to 1992.[81] As a share of net sales, the cost of goods sold for the domestic ES tools industry declined from 1990 to 1992. Selling, general, and administrative expenses also increased significantly over the period of investigation.

Finally, the domestic industry's capital expenditures increased moderately during the period 1990 to 1992.[82]

B. Material Injury to the Domestic EC Tools Industry by Reason of the LTFV Imports

1. Volume of PEC Tool Imports

In determining whether there is material injury by reason of LTFV imports, the statute directs the Commission to consider "whether volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[83]

Imports of PEC tools from Japan accounted for over 25 percent of the

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[80] Data referred to in this paragraph are summarized in Report, Table C-11, at C-10, unless otherwise noted.

[81] Data referred to in this paragraph are summarized in Report, Table C-11, at C-10, unless otherwise noted.

[82] Data referred to in this paragraph are summarized in Report, Table C-11, at C-10, unless otherwise noted.

[83] 19 U.S.C. § 1677(7)(C)(i).

domestic market in terms of value and over 15 percent in terms of quantity in 1992.[84] This represented a small increase between 1990 and 1992, and was the highest market share attained by Japanese producers during the period of investigation. Domestic producers held over 60 percent of the market in terms of value and over 70 percent of the market in terms of quantity in 1992.[85] Further, importers' U.S. shipments of PEC tools from Japan increased significantly both in terms of quantity and value from 1990 to 1992.[86] While it is clear that the larger the volume of LTFV imports, the larger the effect they will have on the domestic industry, a determination of whether the volume is significant must consider other factors, such as the level of substitutability and the availability of substitute products. Given the condition of the industry and the non-price factors discussed below, we find the volume of imports to be significant.

2. Effect of LTFV PEC Imports on Domestic Prices

In evaluating the effect of LTFV imports on prices, the Commission considers whether there has been significant price underselling of imports and whether the imports depress prices to a significant degree or prevent price increases that otherwise would have occurred, to a significant degree.[87]

To analyze the effect of this volume of imports on domestic prices of the like product and on the domestic industry, we consider a number of factors about the industry and the nature of the products, such as substitutability between the subject imports and the domestic like product, the availability of

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[84] Report, Table C-8 at C-8.

[85] Report, Table C-8 at C-8.

[86] Report, Table 21 at I-32.

[87] 19 U.S.C. § 1677(7)(C)(ii).

substitute products in the market, and the dumping margin, which was 54.43 percent in this case.[88]

Substitutability is an important factor in this case. Clearly the more substitutable the LTFV imports and the domestic like product the more likely purchasers will base their decisions on price differences between the products. It is clear that EC tools are not commodity products. They differ in physical characteristics, features, overall quality and durability, safety features, and price.[89] Brand names are also important in this market, and purchasers have indicated certain brand preferences for different types of tools.[90] As stated earlier, Japanese imports have occupied a mid-level position on the price-quality spectrum of EC tools, competing in all market segments. Overall, subject imports and the domestic product appear to be relatively good substitutes.

There are few good substitutes for EC tools. Purchasers, particularly do-it-yourselfers, may be able to put off buying a tool, effectively substituting an old tool for a new tool. In addition, do-it-yourselfers may be inclined to buy more types of EC tools as well as higher quality EC tools if prices are lower. Professionals, on the other hand, are likely to purchase the tools they need for a given job, regardless of price changes.[91] Because

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[88] Vice Chairman Watson did not consider the dumping margin in his analysis.

[89] Staff Economic Memorandum at 12.

[90] According to the Caney Research Group study, professional named the brands of specific types of tools they would most like consider purchasing as follows: Makita was named most often for regular circular saws and miter saws, Milwaukee for reciprocating saws, Porter-Cable for routers, Black & Decker and Bosch for jig saws, and Skil for worm drive circular saws. The Caney Research Group, 1991 Professional Power Tool Brand Image and Purchase Tracking Study, May 1991, pp. 9-13.

[91] Tr. at 80.

the price of EC tools make up a relatively small part of the cost of any individual project, it is unlikely that an increase in tool prices would adversely impact the home remodeling and building industries.[92]

If Japanese PEC imports were fairly traded, their prices would have increased substantially.[93] Given the fact that subject imports and the domestic products are relatively good substitutes, it is likely that, instead of purchasing Japanese tools at the higher prices, a large number of purchasers would have purchased domestic tools.[94] [95] While some may have purchased fairly-traded imports and others may have done without a new EC tool, our analysis of the evidence shows sales diverted from the large market share held by subject imports would have caused domestic sales to increase significantly had imports been fairly traded.[96] Because of the significant excess capacity in the domestic EC industry,[97] we do not believe that such an increase in demand would have caused a significant increase in the price of the domestic product. Accordingly, we find it unlikely that LTFV imports suppressed domestic prices to a significant degree.[98] [99]

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92 Tr. at 80.

93 Vice Chairman Watson does not draw the conclusion that prices of the subject EC imports would have necessarily been substantially higher.

94 Staff Economic Memorandum at 3.

95 Vice Chairman Watson notes that the record indicates that a professional may look at four or five different brands, "but if all things are equal if there's five manufacturers that make basically the five same tools they're going to buy the one with the lowest price." Tr. at 57 and 58.

96 See Staff Economic Memorandum EC-Q-064.

97 Data referred to in this paragraph are summarized in Report, Table C-8, at C-8, unless otherwise noted.

98 Vice Chairman Watson notes that the Commission requested pricing information from U.S. producers and importers and from purchasers for three EC tools -- reciprocating saws, circular saws, and jig saws. In addition,

(continued...)

3. Impact on the Domestic EC Tool Industry

In assessing the impact of LTFV imports on the domestic industry, we consider, among other relevant factors, U.S. consumption, production, shipments, capacity utilization, employment, wages, financial performance, capital investment, and research and development expenses.[100] Overall capacity utilization rates were relatively low for the domestic EC tools industry over the period of investigation.[101] U.S. shipments of domestic EC tools increased at a lower rate than apparent U.S. consumption did from 1990 to 1992. For the reasons discussed above, we find that if subject imports had been fairly traded the domestic volume of sales would have increased significantly and, therefore, the condition of the domestic industry would have been materially better.[102]

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[98](...continued)
pricing data was requested from U.S. producers for a circular saw at the low range of the continuum. Since there are no comparative models imported, he does not discuss this pricing data. The prices of the Japanese reciprocating saws and jig saws were lower than the prices for the domestic product in every quarter, except one, during the period of investigation. Further, the degree of underselling for both products increased over the period of investigation. Prices of domestic and Japanese circular saws closely followed each other for the eight quarters beginning with January-March 1991, with underselling reported for half of that period and small margins of overselling for the other four quarters. Prices of all three products increased over the period of investigation, however, the rate of increase for the subject imports, particularly the circular saws and the jig saws was extremely low. See Report, Tables 22, 23, 27-31, and 33 at I-38 - I-41.

[99] Commissioner Brunsdale and Commissioner Crawford note that evidence of underselling is not very probative in cases, like this one, where one cannot simply assume that non-price factors distinguishing the dumped from the domestic product are trivial.

[100] 19 U.S.C. § 1677(C)(iii).

[101] Data referred to in this paragraph are summarized in Report, Table C-8, at C-8, unless otherwise noted.

[102] Vice Chairman Watson notes that the domestic industry experienced a loss of market share over the period of investigation despite the significant
(continued...)

We conclude, therefore, that the domestic industry is materially injured by reason of LTFV imports of PEC tools from Japan.

C. No Material Injury to the Domestic ES Tools Industry by Reason of the LTFV Imports

1. Volume of PES Tool Imports

In determining whether there is material injury by reason of LTFV imports, the statute directs the Commission to consider "whether volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant."[103]

Imports of PES tools from Japan accounted for less than 15 percent of the domestic market in terms of value and less than 10 percent in terms of quantity in 1992.[104] This was the lowest market share attained by Japanese producers during the period of investigation. Domestic producers held over 65 percent of the market in terms of value and over 70 percent of the market in terms of quantity in 1992, their highest market share during the period of investigation.[105] Further, U.S. shipments of subject imports declined in quantity while increasing in value from 1990 to 1992.[106] In contrast to the EC market, fairly traded ES imports actually had a greater share of the

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[102](...continued)
increases in U.S apparent consumption during the same time period. At the same time, the lower priced LTFV imports gained market share at the expense of the domestic EC tools industry. The domestic EC tools industry's decline in operating profits and loss of market share can be attributed at least in part to the increased shipments of the lower priced LTFV imports. See Report, Table C-8 at C-8.

[103] 19 U.S.C. § 1677(7)(C)(i).

[104] Report, Table C-11 at C-10.

[105] Report, Table C-11 at C-10.

[106] Report, Table 21 at I-32.

domestic market than subject imports. While it is clear that the larger the volume of LTFV imports, the larger the effect they will have on the domestic industry, a determination of whether the volume is significant must consider other factors, such as the level of substitutability and the availability of substitute products. Given the condition of the industry and the non-price factors discussed below, we do not find the volume of LTFV imports to be significant in this case.

2. Effect of LTFV PES Imports on Domestic Prices

In evaluating the effect of LTFV imports on prices, the Commission considers whether there has been significant price underselling of imports and whether the imports depress prices to a significant degree or prevent price increases that otherwise would have occurred, to a significant degree.[107]

To analyze the effect of this volume of imports on domestic prices of the like product and on the domestic industry, we consider a number of factors about the industry and the nature of the products, such as substitutability between the subject imports and the domestic like product, the significance of fairly traded imports, the availability of substitute products in the market, and the dumping margin, which was 45.43 percent in this case.[108]

Substitutability is also an important factor in this case, and the substitutability of Japanese and domestic ES tools is almost identical to the substitutability of the various EC tools. While ES tools are differentiated in a number of important respects, subject imports and the domestic like

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[107] 19 U.S.C. § 1677(7)(C)(ii).

[108] Vice Chairman Watson did not consider the dumping margin in his analysis.

product are relatively good substitutes.[109]

There are few good substitutes for ES tools and price responsiveness is basically identical to that for EC tools, with do-it-yourselfers being more likely to respond to price changes and professionals being somewhat insensitive to price movements.

If Japanese PES imports were fairly traded, their prices would have increased substantially.[110] Instead of purchasing those Japanese tools at the higher prices, consumers would likely have purchased domestic tools, fairly-traded imports, or not purchased a tool at all. Because the market share held by Japanese PES producers is relatively small in this case, and because of the relatively important presence of fairly traded imports, evidence shows that domestic sales would not have increased significantly had imports been fairly traded. Given the substantial excess capacity in the domestic ES industry, and the relatively small increase in demand for the domestic like product that would have resulted from higher Japanese prices, LTFV imports were unlikely to have suppressed domestic prices.[111] [112]

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[109] According to the Caney Research Group study, professional named the brands of specific types of tools they would most like consider purchasing as follows: Porter-Cable for belt sanders, and Black & Decker and Porter-Cable for orbital/palm sanders. The Caney Research Group, 1991 Professional Power Tool Brand Image and Purchase Tracking Study, May 1991, pp. 9-13.

[110] Vice Chairman Watson does not draw the conclusion that prices of the subject ES imports would have necessarily been substantially higher.

[111] Vice Chairman Watson notes that the Commission requested pricing information from U.S. producers and importers and from purchasers for two PES tools -- angle grinders and belt sanders. On balance, however, he does not find significant underselling or significant price suppressing effects by subject imports of PES tools, since there was mixed overselling and some underselling. Further, prices of both domestic and Japanese belt sanders and angle grinders increased over the period of investigation. Report, Tables 24-26 and 31 at I-38, I-39 and I-41.

3. Impact on the Domestic ES Tool Industry

In assessing the impact of LTFV imports on the domestic industry, we consider, among other relevant factors, U.S. consumption, production, shipments, capacity utilization, employment, wages, financial performance, capital investment, and research and development expenses.[113] U.S. shipments of domestic ES tools increased at a higher rate than apparent U.S. consumption did from 1990 to 1992.[114] We do not find any evidence in the record which demonstrates that the declining level of subject imports has adversely impacted upon the domestic ES tools industry. We note that the domestic ES tools industry has been able to significantly increase its operating income and market share over the period of investigation. For the reasons discussed above, we find that if imports had been fairly traded, the domestic volume of sales would not have increased significantly and the condition of the industry, therefore, would not have been materially better.

We conclude, therefore, that the domestic industry is not materially injured by reason of LTFV imports of PES tools from Japan.

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[112](...continued)

[112] As stated previously, Commissioner Brunsdale and Commissioner Crawford note that evidence of underselling is not very probative in cases, like this one, where one cannot simply assume that non-price factors distinguishing the dumped from the domestic product are trivial.

[113] 19 U.S.C. § 1677(C)(iii).

[114] Data referred to in this paragraph are summarized in Report, Table C-11 at C-10, unless otherwise noted.

V. NO THREAT OF MATERIAL INJURY TO THE DOMESTIC ES TOOLS INDUSTRY BY REASON OF LTFV IMPORTS

We further determine that there is no threat of material injury by reason of LTFV imports of PES tools from Japan.[115] We have considered all the

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[115] Under the statute, the Commission is required to consider the following criteria.

> (I) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement.
>
> (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
>
> (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
>
> (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
>
> (V) any substantial increase in inventories of the merchandise in the United States,
>
> (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
>
> (VII) any other demonstrable adverse trends that indicate probability that importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,
>
> (VIII) the potential for product shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation,
>
> (IX) in any investigation under this title which involves imports of both raw agricultural product (within the meaning of paragraph (4)(E)(iv) and any product processed from such raw agricultural product, the likelihood there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(continued...)

statutory factors that are relevant to this investigation.[116]

The statute directs us to determine whether an industry in the United States is threatened with material injury by reason of imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent." Our decision "may not be made on the basis of mere conjecture or supposition."[117]

We do not find that there is any increase in production capacity or unused capacity in Japan likely to result in a significant increase in imports of PES tools to the United States. Capacity utilization levels of the Japanese producers were very high throughout the period of investigation.[118]

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[115](...continued)

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

19 U.S.C. § 1677(7)(F)(i), as amended by 1988 Act sections 1326(b), 1329.

In addition, the Commission must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or kind of merchandise suggest a threat of material injury to the domestic industry. See 19 U.S.C. section 1677(7)(F)(iii), as amended by 1988 Act section 1329.

[116] Several of the statutory threat factors have no relevance to this investigation and need not be discussed. This antidumping investigation does not involve subsidies or agricultural products nor any potential for product shifting due to other findings or orders under the antidumping or countervailing duty laws, or dumping findings or remedies in third countries. We note that a 1980 Canadian antidumping finding on subject imports was rescinded in 1984. See Canadian Anti-dumping Tribunal Review No. R-5-84 (1984).

[117] 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. U.S., 744 F.Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire, 8 CIT at 28, 590 F.Supp. at 1280.

[118] Report, Table 19 at I-30.

Moreover, there is no evidence of record to suggest an increase above the present 1-shift, 40 hour weekly operations of the Japanese producers is likely or imminent. Any assertion to the contrary is mere conjecture and cannot form the basis for an affirmative threat determination.[119]

We also find that the record does not support a finding that there will be any rapid increase in United States market penetration of PES tools from Japan, nor is there a likelihood that the penetration will increase to an injurious level. The market share held by U.S. shipments of Japanese PES tools, which never exceeded a moderate level, declined steadily over the period of investigation and there is no evidence of record to suggest an imminent reversal of this trend.[120]

The record does not support a finding of that the increase in inventories in the United States will have an injurious effect on the U.S. industry. There is a direct correlation between the increase in inventories over the period of investigation and the decline in U.S. shipments of imports for the period.[121] We further determine that the record does not support a finding that imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices. As discussed above, prices of domestic and imported ES tools have generally increased during the period of investigation and we do not find significant price suppressing

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[119] See S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Citrosuco Paulista v. United States, 704 F. Supp. 1075, 1095 (Ct. Int'l Trade 1988) (Commission's determination may not be based on mere conjecture or supposition.)

[120] Report, Table C-5 at C-6.

[121] Report, Table C-5 at C-6. Imports of PES tools from Japan, including both U.S. shipments and U.S. inventories, remained relatively constant for the 1990-1992 period. Id., Table 20 at I-30.

effects by the imports.[122] There is no indication that future imports would be any more likely to affect prices adversely in the near future than they do now.[123]

There are no "other demonstrable adverse trends" that indicate that imports will be the cause of actual injury, nor are there "actual and potential negative effects on existing development and production efforts of the domestic industry."[124] Based on these facts, we find that the domestic industry producing ES tools is not threatened with material injury by reason of the LTFV imports of PES tools from Japan.

CONCLUSION

We therefore determine that the information of record in this final investigation, particularly the significant volume of imports of PEC tools from Japan, the significant and increasing share of apparent U.S. consumption held by subject imports, and the declining condition of the domestic industry, demonstrates that the domestic industry producing EC tools is materially injured by reason of the subject imports from Japan. In contrast, we find that the evidence in the record regarding ES tools, including the declining volume and market share accounted for by subject imports and the profitable condition of the domestic industry, supports a finding that the domestic industry producing ES tools is not materially injured nor threatened with material injury by reason of LTFV imports from Japan.

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122 Report at I-39 and I-40.

123 See 19 U.S.C. § 1677(7)(F)(i)(IV).

124 See 19 U.S.C. §§ 1677(7)(F)(i)(VII) and (X).

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

Following a preliminary determination by the U.S. Department of Commerce that imports of professional electric cutting tools and professional electric sanding/grinding tools from Japan are being sold in the United States at less than fair value (LTFV) (58 F.R. 81, January 4, 1993), the U.S. International Trade Commission, effective January 4, 1993, instituted investigation No. 731-TA-571 (Final) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports. Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on February 3, 1993 (58 F.R. 6975).[1] The hearing was held in Washington, D.C., on May 21, 1993.[2] Commerce's final LTFV determination was made on May 26, 1993 (58 F.R. 30144). The applicable statute directs that the Commission make its final injury determination within 45 days after the final determination by Commerce.

BACKGROUND

On May 29, 1992, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by The Black & Decker Corp., Towson, MD, alleging that imports of professional electric cutting and professional electric sanding/grinding tools are being sold at LTFV and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. In response to that petition the Commission instituted antidumping investigation No. 731-TA-571 (Preliminary) and, on July 13, 1992, determined that there was a reasonable indication of such material injury.[3]

Professional electric cutting and sanding/grinding tools, as a whole, have not been the subject of any other investigation conducted by the Commission. Nibblers, a type of professional electric cutting tool, were the subject of a Commission preliminary antidumping investigation involving imports from Switzerland in 1980 (inv. No. 731-TA-35, USITC publication 1108). Imports of certain sanding and grinding tools from Japan that are the subject of the current investigation were subject to 100 percent retaliatory duties from April 17 to November 10, 1987, as part of a section 301 investigation involving barriers preventing the sale of foreign semiconductors in Japan. Although the petitioner in this investigation, Black & Decker, believed that these tools were being sold at LTFV, evidence of dumping was never established.[4]

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[1] Copies of the Commission's and Commerce's notices are shown in app. A.

[2] A list of witnesses who attended the hearing is presented in app. B.

[3] The Commission preliminarily determined that professional electric cutting tools and professional electric sanding/grinding tools constituted separate "like products."

[4] Petitioner's posthearing brief, exhibit 1, pp. 16-17, and exhibit 15.

NATURE AND EXTENT OF SALES AT LTFV

Commerce's affirmative final LTFV determination in this investigation was based on data of one exporter, Makita Corp., for the period December 1, 1991, through May 31, 1992. U.S. price was based on exporters' sales price calculations, and foreign market value was derived from home market sales and best information available (in lieu of using Makita's constructed value data). For professional electric cutting tools, the dumping margin for Makita and for all other exporters was 54.43 percent ad valorem; for professional electric sanding/grinding tools, the margin was 46.75 percent ad valorem for both Makita and all other exporters. Commerce made a negative determination with regard to critical circumstances, failing to find massive imports.

THE PRODUCT

Description and Uses

The petitioner identified two products that are the subject of its complaint and Commerce's scope of investigation:[5] professional electric cutting tools (PEC tools) and professional electric sanding/grinding tools (PES tools), which are two classes of professional electric tools in general. Both classes are designed for professional and/or industrial capability (as opposed to exclusively non-professional or consumer use, such as for the home or hobbies); both are electrically powered, corded or cordless; and both are predominantly hand-held, i.e., wholly held and moved by hand while in use.[6]

PEC tools are primarily distinguished from PES tools and other classes of professional electric hand tools by removable blades that, when activated by the motor and directed by the operator, can cut various materials in various ways. The principal types, and the types to which Commerce has limited the scope of its investigation,[7] are circular saws, jig saws, reciprocating saws, metal-cutting saws, portable band saws, planers, routers, joiners, jointers, shears, nibblers, miter saws, cut-off saws, PVC saws, chop saws, and cut-off machines. Because miter saws, cut-off saws and machines, PVC and chop saws, and portable band saws are designed to rest on a table top, work bench, or other elevated surface while in use, they are not hand-held in the same sense as the other tools subject to the petitioner's complaint. However, the apparatus containing the functional part of these tools, i.e., the saw blade, must be held and moved by hand during operation. (Miter saws

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[5] For the actual language of Commerce's scope, refer to its notice of final determination in app. A. The description that follows is consistent with both Commerce's scope and the product(s) complained of by the petitioner.

[6] There are a few bench-top, hand-operated PEC tools included in this investigation (miter saws, including slide compound saws, cut-off saws, PVC saws, chop saws, cut-off machines, and band saws with detachable bases). There are no bench-top, hand-operated PES tools included in the subject merchandise.

[7] Although the petitioner feels that the following list is reasonably comprehensive, it recognizes that there may be disagreements with respect to tool nomenclature and does not wish an otherwise named or renamed PEC or PES tool to escape inclusion in any future dumping order.

are designed to cut pieces of lumber crosswise at various angles by resting the lumber horizontally on the saw's body and then drawing the saw blade down and through a cross section; cut-off saws function similarly for relatively small widths of steel bar, rod, and other types of materials).

PES tools are primarily distinguished from other classes of professional electric hand tools by removable abrasive surfaces that, when actuated by the motor and directed by the operator, can remove and/or refinish undesirable surfaces from various materials. (Sanders are primarily used for wood; grinders are primarily used for metals). The principal types, and the types to which the petitioner has principally directed, but not limited, its complaint, are disc sanders, belt sanders, finishing sanders, orbital sanders (similar to finishing sanders but with a rotating motion of the abrasive surface), angle sanders, polishers, disc grinders, angle grinders, straight grinders, and die grinders.

Several parts for PEC and PES tools, including the primary functioning part, may be removed and individually purchased and replaced. A sizable number of accessories for these tools are also separately available. Only parts and accessories sold with the original equipment, however, are subject to the petitioner's complaint--including any tools in unassembled or disassembled condition.[8]

A third major class of professional electric hand tools, drilling/fastening tools (PED tools)--distinguished by a primary functional part that bores, screws, or hammers into various materials--is excluded from the petitioner's complaint. Gardening tools are also excluded from the petitioners' complaint.

A more or less complete line of both U.S.- and Japanese-produced PEC and PES tools is available in the United States.[9] Although there are differences in design, construction, and features available from one manufacturer's tool to another, they are all designed to perform similar, if not identical, functions.

For most every type of electric hand tool designed for professional and/or industrial use, there is a similarly functioning tool designed, and priced, for consumer and/or home use. Although the distinction between these two product lines is widely accepted in the industry, the actual differences vary from one tool type to another. In general, professional/industrial tools

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[8] An unassembled or disassembled tool consists of parts, packaged together, for a complete tool. Such goods are classifiable for tariff purposes with the assembled articles.

[9] Hitachi reports that four of the cutting tools it imports--the slide compound miter saw, the 15-inch miter saw, and the 14-inch and 16-inch chop saws--are not produced in the United States. The slide compound miter saw is made so that its blade can not only be drawn down and through a section of lumber but also across the section, like a radial arm saw, permitting it to perform the function of two tools. As most miter saws are made to accommodate a blade of 12 inches or less in diameter, the Hitachi model, with its 15-inch blade, is able to cut through somewhat larger sections of wood. Prehearing brief, p. 13.

are designed to withstand harsher treatment, perform under more extreme conditions, and operate more or less continuously--in short, to be more durable.[10] To this end they are generally housed in heavier gauge steel or compound materials, powered by higher amperage and more overload-tolerant motors, have heavier and more wear-resistant bearings, and are fixed with a thicker-jacketed power cord of special rubber to resist abrasion and retain flexibility during cold weather.[11] The result is that the professional/industrial tool is assembled from mainly different components that are sometimes fabricated on different equipment (based on company manufacturing styles) and may be several times the price of the corresponding consumer/home-use tool at the retail level.

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[10] Any tool used by the employees of a firm, including PEC and PES tools, must meet the safety requirements of the Occupational Safety & Health Administration (OSHA), and most such tools sold in the United States are packaged with some notice, whether on the box or in the instructional material, that they meet and/or exceed OSHA requirements. Depending on the manufacturer and tool type, consumer electric hand tools may also meet OSHA safety requirements, though notice of this fact is rarely provided.

[11] Commerce identified seven criteria in its final LTFV determination to determine whether a corded electric power tool should be classified for purposes of this investigation as a professional tool. A tool must possess 5 of the following 7 characteristics (or 4 of 6 if only 6 are relevant) to be classified as a professional tool:

1. The predominate use of ball, needle, or roller bearings (i.e., a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);

2. Helical, spiral bevel, or worm gearing;

3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed supply cord with a length of 8 feet or more;

4. A power supply cord with a separate cord protector;

5. Externally accessible motor brushes;

6. The predominate use of heat treated transmission parts (i.e., a majority or greater number of the transmission parts in the tool are heat treated); and

7. The presence of more than one coil per slot armature.

Cordless professional tools have a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

These criteria are essentially the reverse of the seven consumer tool criteria Commerce published in its preliminary LTFV determination; all other tools were purported to be professional tools. The result of this reversal of criteria, to describe professional tools, is that some tools were reclassified from subject professional tools to non-subject consumer tools.

Despite the price and physical distinctions, both classes of tools are available to professionals and non-professionals alike. While it is probably true that most employees and other persons making a living with power hand tools use the professional variety tool, it is not true, nor is it expected, that the hobbyist, home do-it-your-selfer, or other user for non-professional purposes will invariably use the consumer variety. While the majority of homeowners probably purchase consumer tools, the extent to which they purchase professional quality tools has not been quantified. Some firms, like Black & Decker and Ryobi, believe that there is minimal overlap on this issue; however, Makita believes that the overlap is extensive.

Manufacturing Process

To produce PEC and PES tools, major components (such as motors, housings, gears, shafts, spindles, and bearings) are first manufactured and then assembled into a complete unit. Most motors and housings are produced in-house; gears, bearings, and smaller components may also be imported, acquired from domestic affiliates, or purchased from other U.S. producers. After assembly, the completed tools are tested, packaged, and shipped to the customer.

Individual firms vary in the degree to which their equipment and production workers are dedicated to the production of major components, particularly the motor, for either professional or consumer tools. ***. Steel parts for professional tools are heat treated and straightened, providing more strength and durability than their consumer counterparts. Motors for professional tools are likewise manufactured with more sophisticated procedures and parts for extra durability. (For example, a motor for a professional circular saw is designed to perform for about 500 hours, while its consumer counterpart is manufactured to last only 200 hours.) In general, parts and components for professional tools are manufactured using a greater number of production steps, higher quality raw materials (i.e., alloy vs. low carbon steel), and are designed to meet higher tolerances than parts and components for consumer tools.

There are at least three types of assembly lines for professional power tools: a whole-unit assembly; a timer-indexed conveyer with housings; and a roller and pallet system. The whole-unit assembly approach consists of a team of several assemblers at one work bench, where all parts and subassemblies are brought to the bench and assembled into a whole tool. The timed conveyer belt is a system in which clam shell housings are passed down the line in automatic timed intervals, and the assemblers perform a variety of assembly tasks at each timed interval. In the roller-pallet system, each assembler performs more complex and various tasks at each station, with a number of components on one pallet. After all the tasks on each tool are performed, the assembler pushes the pallet down the line.

Depending on each individual firm's manufacturing methods, each assembly line may be dedicated to a particular type of tool (i.e., circular saws), or alternate between different tools, after a set-up interval. While assembly lines may alternate between professional and consumer tools after a set-up interval, much of the assembly of consumer electric power tools is done on a

progressive conveyer belt that runs constantly, with each assembler performing a single task.

U.S. Tariff Treatment

The subject PEC tools and PES tools, other than miter saws and cut-off saws, are provided for in subheadings 8508.20.00 and 8508.80.00 of the Harmonized Tariff Schedule of the United States (HTS), subheadings that apply to electric cutting and/or sanding/grinding hand tools irrespective of their professional or consumer design. The column 1-general or most-favored-nation (MFN) rate of duty for these subheadings, applicable to products of Japan, is 2.2 percent ad valorem. Bench-top hand-operated PEC tools are provided for in HTS subheadings 8465.91.00 (sawing machines, with an MFN duty rate of 3 percent ad valorem) and 8461.50.00 (nonenumerated sawing or cutting-off machines, with an MFN duty rate of 4.4 percent ad valorem).

U.S. PRODUCERS

At least 10 firms produce one or more types of professional or consumer power tools in the United States, including two of the Japanese producers cited by the petitioner. Their identities, plant locations, and shares of U.S. power tool production in 1992 (by quantity) are shown in table 1.

Keystone Machine, Inc., and Sioux Tools, Inc., produced only PEC tools; and Wen Products, Inc., produced only consumer electric cutting (CEC) and consumer electric sanding/grinding (CES) tools during the period for which data were collected. Four producers--Black & Decker, Makita Corp. of America, Ryobi North America, Inc., and Skil Corp.--produced both professional and consumer power tools in the United States.

* * * * * * *

Other products produced in the establishments in which PEC and/or PES tools are produced include PED tools, CEC and CES tools, other types of electric tools and devices, and parts and accessories for all types.

U.S. IMPORTERS AND RELATED PARTIES

Wholly owned U.S. affiliates of Japanese producers Makita Corp., Hitachi Koki Co., Ltd., and Ryobi, Ltd.--Makita USA, Inc., La Mirada, CA; Hitachi Power Tools USA, Ltd., Tarrytown, NY; and Ryobi America Corp., Anderson, SC, respectively--are by far the largest importers of PEC and PES tools from Japan. Little or no value is added to the imported product. Unlike Hitachi USA, Makita USA and Ryobi America have affiliated firms in the United States that produce certain types of the subject products. ***.[12]

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[12] *** at the public hearing, Makita indicated that imports and domestic production did not compete (i.e., that no tools for sale in the United States were dual-sourced from Georgia and Japan. Transcript of hearing, pp. 190-191.

Table 1
Power tools: U.S. producers, plant locations, respective shares of domestic production (by quantity), and position on the petition, by firms, 1992

Item	Plant location	Share of 1992 PEC production	Share of 1992 PES production	Share of 1992 PEC+CEC production	Share of 1992 PES+CES production	Position on petition
		Percent				
Professional tool producers:						
Keystone Machine, Inc.	Littlestown, PA	***	***	***	***	***
Milwaukee Electric Tool Corp.	Brookfield, WI Blytheville, AR Jackson, MS Pewaukee, WI	***	***	***	***	***
Porter-Cable Corp.	Jackson, TN	***	***	***	***	***
Robert Bosch Power Tool Corp.	New Bern, NC	***	***	***	***	***
Sioux Tools, Inc.	Sioux City, IA	***	***	***	***	***
Professional and consumer tool producers:						
Black & Decker (U.S.), Inc. 1/	Easton, MD Fayetteville, NC	***	***	***	***	Petitioner
Makita Corp. of America	Buford, GA	***	***	***	***	***
Ryobi North America, Inc.	Anderson, SC Pickens, SC	***	***	***	***	***
Skil Corp.	Heber Springs, AR Walnut Ridge, AR	***	***	***	***	***
Consumer tool producers:						
Wen Products, Inc.	Akron, IN Fowler, IN	***	***	***	***	***
Total		100.0	100.0	100.0	100.0	

1/ Black & Decker (U.S.), Inc., is wholly owned by the Black & Decker Corp., Towson, MD.

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

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

Other U.S. producers, ***, and one importer, ***, also import professional power tools from Japan and from other countries. *** import power tools only from nonsubject countries. Table 2 shows the extent to which U.S. producers import the subject merchandise, and the proportion of their imports in relation to their U.S. production and total shipments.

Table 2
Power tools: U.S. producers' respective shares (by quantity) of 1992 PEC and PES tool imports from Japan, ratios of 1992 PEC and PES tool imports from Japan to U.S. production, and 1992 shares of PEC and PES tool total shipments that were U.S.-produced

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U.S. MARKET AND CHANNELS OF DISTRIBUTION

The market for PEC and PES tools--exceeding 4.5 million units and $535 million annually--consists of (1) a large number and wide array of institutional buyers, both large and small, such as manufacturing companies, construction firms, and public maintenance departments of all levels of government, and (2) a large number of individual buyers that purchase such tools for both professional and non-professional use. For large institutional buyers, PEC and PES tools are available from industrial and construction supply wholesalers served by the manufacturers, or from the manufacturers directly. Smaller institutional buyers and individual users can purchase such tools from hardware stores, lumber yards, and home-improvement centers, also served by the manufacturer (or the manufacturer's agent) or by the same industrial and construction supply wholesalers that serve the larger institutional users. Similar consumer tools are also available at these outlets, supplied by the manufacturer in much the same way as are professional tools; however, very few are presumed to be purchased by institutions or by individuals for professional use.

The market for CEC and CES tools--exceeding 8.5 million units and $235 million annually--consists almost entirely of individual users buying for hobbies or home maintenance; and, although manufacturers ship a large number of these tools to outlets where professional tools are also available, an equal or larger number are shipped to mass-merchandise and catalog stores, such as Sears and K-Mart, that generally do not serve the professional market. The proportions of power tools shipped to wholesalers/distributors vs. retailers/end users varies more according to country of origin than according to whether the tools are classified as professional or consumer, as shown in the following tabulation of 1992 U.S. shipments compiled from questionnaire data (in percent):

	Wholesaler/distributor	Retailer/end user
PEC tools:		
U.S.-produced.....	***	***
Imports from Japan..	***	***
CEC tools:		
U.S.-produced.....	***	***
Imports from Japan..	***	***
PES tools:		
U.S.-produced.....	***	***
Imports from Japan..	***	***
CES tools:		
U.S.-produced.....	***	***
Imports from Japan..	***	***

The types of professional and consumer cutting and sanding power tools produced in the United States and imported from all sources are shown in tables 3 and 4. The most popular hand-held PEC tools in 1992 were corded circular saws, reciprocating saws, jig saws, and routers. There were very few cordless PEC tools in the market, all of which were imported. The most popular bench-top hand-operated PEC tools were miter saws and slide compound saws, most of which were imported. Angle grinders, finishing sanders, orbital sanders, and belt sanders made up the bulk of the corded PES tool market. Cordless tools were an insignificant factor in 1992, and all were imported. The market for consumer tools in 1992 was similar to (albeit larger in terms of quantity than) the professional market.

CONSIDERATION OF MATERIAL INJURY

The data in the following sections represent all known PEC and PES tool production in the United States during 1990-92, except for Makita's.[13] The Commission found in the preliminary investigation that appropriate circumstances exist to exclude Makita from the domestic industry as a related party. Summary data for the PEC/PES tool industry excluding Makita, as well as data for the entire U.S. industry, and data excluding both Makita and Ryobi as potential related parties are presented in appendix C. Summary data relating to PEC/CEC and PES/CES tool operations in the United States (total operations, operations excluding Makita, and operations excluding both Makita and Ryobi) are also presented in appendix C.

[13] Data presented in the following sections conform with the new Commerce definition of PEC and PES tools, thereby altering the data set presented in the prehearing report in this investigation.

Table 3
PEC/PES tools: U.S. production 1/ and imports from all sources, quantity and share of total, by tool, 1992

(Units in thousands; shares in percent)

Item	U.S. production		Imports		Total	
	Units	Share of total	Units	Share of total	Units	Share of total
Hand-held PEC tools:						
Chop saws:						
Corded	***	***	***	***	***	***
Circular saws:						
Corded	473	37.9	332	31.5	805	35.0
Cordless	***	***	***	***	***	***
Jig saws:						
Corded	119	9.5	108	10.3	227	9.9
Cordless	***	***	***	***	***	***
Reciprocating saws:						
Corded	***	***	***	***	***	***
Cordless	***	***	***	***	***	***
Miter saws:						
Corded	***	***	***	***	***	***
Portable band saws:						
Corded	***	***	***	***	***	***
Cut-off machines:						
Corded	***	***	***	***	***	***
Shears:						
Corded	***	***	***	***	***	***
Cordless	***	***	***	***	***	***
Nibblers:						
Corded	***	***	***	***	***	***
Planers:						
Corded	***	***	***	***	***	***
Routers:						
Corded	207	16.6	104	9.9	311	13.5
Joiners:						
Corded	***	***	***	***	***	***
Jointers:						
Corded	***	***	***	***	***	***
Other cutting tools:						
Corded 2/	***	***	***	***	***	***
Cordless 3/	***	***	***	***	***	***
Total	***	100.0	***	100.0	***	100.0

Table continued on next page.

Table 3--Continued
PEC/PES tools: U.S. production 1/ and imports from all sources, quantity and share of total, by tool, 1992

(Units in thousands; shares in percent)

Item	U.S. production		Imports		Total	
	Units	Share of total	Units	Share of total	Units	Share of total
Bench-top hand-operated PEC tools:						
Cut-off saws	***	***	***	***	***	***
PVC saws	***	***	***	***	***	***
Chop saws	***	***	***	***	***	***
Cut-off machines	***	***	***	***	***	***
Miter saws	***	***	***	***	***	***
Slide compound saws	***	***	***	***	***	***
Band saws	***	***	***	***	***	***
Other 4/	***	***	***	***	***	***
Total	***	100.0	***	100.0	***	100.0
Hand-held PES tools:						
Angle grinders:						
Corded	442	41.9	216	32.0	658	38.1
Finishing sanders:						
Corded	306	29.0	75	11.1	380	22.0
Cordless	***	***	***	***	***	***
Disc sanders:						
Corded	***	***	***	***	***	***
Cordless	***	***	***	***	***	***
Orbital sanders:						
Corded	168	16.0	50	7.4	218	12.6
Belt sanders:						
Corded	***	***	***	***	***	***
Polishers:						
Corded	***	***	***	***	***	***
Straight grinders:						
Corded	***	***	***	***	***	***
Die grinders:						
Corded	***	***	***	***	***	***
Other sanding/grinding tools:						
Corded 5/	***	***	***	***	***	***
Cordless 6/	***	***	***	***	***	***
Total	***	100.0	***	100.0	***	100.0

1/ Includes data ***.
2/ Includes rust chippers, laminate and metal trimmers, angle cutters, concrete planers, scroll saws, and tile cutters.
3/ Includes cutters.
4/ Includes scroll saws and table saws.
5/ Includes sander-polishers, angle sanders, disc grinders, belt disc sanders, and random orbital sanders.
6/ Includes sander-polishers.

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

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

Table 4
PEC/PES and CEC/CES tools: U.S. production 1/ and imports from all sources, quantity and share of total, by tool, 1992

(Units in thousands; shares in percent)

Item	U.S. production		Imports		Total	
	Units	Share of total	Units	Share of total	Units	Share of total
Hand-held PEC/CEC tools:						
Chop saws:						
Corded	***	***	***	***	***	***
Circular saws:						
Corded	2,690	47.8	332	22.7	3,023	42.6
Cordless	***	***	***	***	***	***
Jig saws:						
Corded	1,498	26.6	460	31.4	1,958	27.6
Cordless	***	***	***	***	***	***
Reciprocating saws:						
Corded	361	6.4	198	13.5	559	7.9
Cordless	***	***	***	***	***	***
Miter saws:						
Corded	***	***	***	***	***	***
Portable band saws:						
Corded	***	***	***	***	***	***
Cut-off machines:						
Corded	***	***	***	***	***	***
Shears:						
Corded	***	***	***	***	***	***
Cordless	***	***	***	***	***	***
Nibblers:						
Corded	***	***	***	***	***	***
Planers:						
Corded	***	***	***	***	***	***
Routers:						
Corded	894	15.9	104	7.1	999	14.1
Joiners:						
Corded	***	***	***	***	***	***
Jointers:						
Corded	***	***	***	***	***	***
Other cutting tools:						
Corded 2/	***	***	***	***	***	***
Cordless 3/	***	***	***	***	***	***
Total	***	100.0	***	100.0	***	100.0

Table continued on next page.

Table 4--Continued
PEC/PES and CEC/CES tools: U.S. production 1/ and imports from all sources, quantity and share of total, by tool, 1992

(Units in thousands; shares in percent)

Item	U.S. production		Imports		Total	
	Units	Share of total	Units	Share of total	Units	Share of total
Bench-top hand-operated PEC/CEC tools:						
Cut-off saws.....	***	***	***	***	***	***
PVC saws.....	***	***	***	***	***	***
Chop saws.....	***	***	***	***	***	***
Cut-off machines.....	***	***	***	***	***	***
Miter saws.....	***	***	***	***	***	***
Slide compound saws..	***	***	***	***	***	***
Band saws.....	***	***	***	***	***	***
Other 4/.....	***	***	***	***	***	***
Total.....	***	100.0	***	100.0	***	100.0
Hand-held PES/CES tools:						
Angle grinders:						
Corded.....	560	10.6	258	24.7	819	13.0
Finishing sanders:						
Corded.....	2,155	40.9	107	10.2	2,262	35.9
Cordless.....	***	***	***	***	***	***
Disc sanders:						
Corded.....	***	***	***	***	***	***
Cordless.....	***	***	***	***	***	***
Orbital sanders:						
Corded.....	635	12.1	56	5.3	691	10.9
Cordless.....	***	***	***	***	***	***
Belt sanders:						
Corded.....	***	***	***	***	***	***
Polishers:						
Corded.....	***	***	***	***	***	***
Straight grinders:						
Corded.....	***	***	***	***	***	***
Die grinders:						
Corded.....	***	***	***	***	***	***
Other sanding/grinding tools:						
Corded 5/.....	***	***	***	***	***	***
Cordless 6/.....	***	***	***	***	***	***
Total.....	***	100.0	***	100.0	***	100.0

1/ Includes data from ***.
2/ Includes rust chippers, laminate and metal trimmers, angle cutters, concrete planers, scroll saws, and tile cutters.
3/ Includes cutters.
4/ Includes scroll saws and table saws.
5/ Includes sander-polishers, angle sanders, disc grinders, belt disc sanders, and random orbital sanders.
6/ Includes sander-polishers.

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

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

U.S. Production, Capacity, and Capacity Utilization

U.S. production, capacity, and capacity utilization are shown in table 5. In general, from 1990 to 1992, indicators for PEC tools increased, with a slight dip in 1991. PES tool capacity experienced similar trends with greater increases overall, while PES tool production and capacity utilization showed steady increases.

Table 5
PEC/PES tools: U.S. producers' (except for Makita's) capacity, production, and capacity utilization, by products, 1990-92

Item	1990	1991	1992
	Average-of-period capacity (1,000 units)		
PEC tools	3,115	3,122	3,309
PES tools	1,982	1,847	2,131
	Production (1,000 units)		
PEC tools	1,635	1,564	1,826
PES tools	1,000	1,012	1,233
	Average-of-period capacity utilization (percent)		
PEC tools	52.5	50.1	55.2
PES tools	50.5	54.8	57.8

Note.--Capacity utilization is calculated from unrounded figures, using data of firms providing both capacity and production information.

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

U.S. Shipments

PEC tool U.S. shipments generally rose between 1990 and 1992, with a decline in quantity and value in 1991, as shown in table 6. Average unit values increased steadily over the period. U.S. shipments of PES tools experienced overall increases in quantity and value (with a slight dip in 1991) from 1990 to 1992. However, quantity rose faster than value, resulting in steady declines in the average unit values of PES tool shipments.

Table 6
PEC/PES tools: Shipments by U.S. producers (except for Makita), by products and by types, 1990-92

Item	1990	1991	1992
	Quantity (1,000 units)		
PEC tools:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	1,462	1,334	1,580
Exports	187	250	255
Total	1,649	1,585	1,835
PES tools:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	863	843	1,123
Exports	85	158	153
Total	948	1,001	1,276
	Value (1,000 dollars)		
PEC tools:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	173,117	158,755	201,738
Exports	16,069	21,378	23,699
Total	189,186	180,133	225,437
PES tools:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Subtotal	70,949	66,174	79,351
Exports	4,787	8,153	7,939
Total	75,736	74,327	87,290
	Unit value (per unit)		
PEC tools:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Average	$118.39	$118.96	$127.65
Exports	85.98	85.38	93.06
Average	114.71	113.66	122.85
PES tools:			
Company transfers	***	***	***
Domestic shipments	***	***	***
Average	82.19	78.48	70.68
Exports	56.28	51.51	51.80
Average	79.87	74.22	68.41

Note.--Because of rounding, figures may not add to the totals shown. Unit values are calculated from the unrounded figures.

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

U.S. Producers' Inventories

PEC and PES tool inventory levels and the ratio of inventories to U.S. shipments generally declined from 1990 to 1992, as shown in table 7.

Table 7
PEC/PES tools: End-of-period inventories of U.S. producers (excluding Makita), by products, 1990-92

Item	1990	1991	1992
	Quantity (1,000 units)		
PEC tools	237	216	208
PES tools	175	186	143
	Ratio to U.S. shipments (percent)		
PEC tools	16.2	16.2	13.1
PES tools	20.3	22.1	12.8

Note.--Ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

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

Employment

From 1990 to 1992, employment, hours worked, wages, and total compensation trends for PEC and PES tools either remained steady or improved, generally with a decline in 1991, as shown in table 8. On an hourly basis, wages and total compensation increased fairly consistently during 1990-92. Productivity and unit labor costs in 1992 were equal to 1990 levels for PEC tools, but showed improvement for PES tools.

Individual producers reported permanent and temporary layoffs during 1990-92, for a variety of reasons:

* * * * * * *

Table 8
Average number of U.S. producers' (excluding Makita's) production and related workers producing PEC/PES tools, hours worked, 1/ wages and total compensation paid to such employees, and hourly wages, productivity, and unit labor costs, 2/ by products, 1990-92

Item	1990	1991	1992
	Number of production and related workers (PRWs)		
PEC tools	1,096	1,046	1,106
PES tools	382	393	408
	Hours worked by PRWs (1,000 hours)		
PEC tools	2,410	2,155	2,451
PES tools	822	769	880
	Wages paid to PRWs (1,000 dollars)		
PEC tools	22,949	21,306	25,143
PES tools	8,152	7,762	9,243
	Total compensation paid to PRWs (1,000 dollars)		
PEC tools	31,427	29,420	34,798
PES tools	11,220	10,985	12,441
	Hourly wages paid to PRWs		
PEC tools	$9.52	$9.89	$10.26
PES tools	9.92	10.09	10.50
	Hourly total compensation paid to PRWs		
PEC tools	$13.04	$13.65	$14.20
PES tools	13.65	14.28	14.14
	Productivity (units per hour)		
PEC tools	0.7	0.7	0.7
PES tools	1.2	1.3	1.4
	Unit labor costs (per unit)		
PEC tools	$19.22	$18.81	$19.06
PES tools	11.22	10.85	10.09

1/ Includes hours worked plus hours of paid leave time.
2/ On the basis of total compensation paid.

Note.--Ratios are calculated using data of firms supplying both numerator and denominator information.

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

Financial Experience of U.S. Producers

Eight U.S. producers[15] accounting for virtually all U.S. production of PEC and PES tools provided income-and-loss data on their operations on PEC and PES tools.[16] Data of Ryobi North America, Inc., are included in the total industry data, whereas data of Makita Corp. of America are not included, but are shown separately in this section. Ryobi Motor Products/Ryobi Electric and Makita Corp. of America transship the bulk of their production to their respective importing affiliates for sale and distribution. These two companies were requested to provide a consolidated response, i.e., to provide the net sales value charged to their unrelated customers and to include in reported costs the associated selling, general, and administrative expenses incurred by the related selling companies in marketing their products, along with costs incurred in manufacturing and transferring these products. Both firms provided consolidated data.

Five firms--Black & Decker, Makita, Skil, Ryobi, and Wen Products--accounting for all U.S. production of CEC and CES tools supplied income-and-loss data on their operations on CEC and CES tools. These data have been aggregated with PEC and PES tool data and are presented in appendix tables C-7 through C-12.

***'s exports to its *** subsidiary accounted for about *** percent or less of its total net sales value for PEC and PES tools and were revalued at market prices. *** reported its exports at ***; these exports accounted for about *** percent or less of its total net sales value for PEC and PES tools.

The unit analyses for both PEC and PES tools are not presented because of the wide range of values of the various types of both PEC and PES tools and the likelihood of material product mix changes from period to period.

Domestic value added, with and without selling, general, and administrative expenses, of each reporting firm for PEC and PES tools for fiscal year 1992 are presented in appendix D.

Operations on PEC Tools

The income-and-loss experience of the U.S. producers on their PEC tool operations is presented in table 9. Net sales decreased by 6.7 percent from $180.0 million in 1990 to $167.9 million in 1991 and then increased by 27.4 percent from the level of 1991 sales to $213.9 million in 1992.

---

[15] *** have fiscal yearends of Dec. 31. *** have fiscal yearends of Sept. 30 and Mar. 31, respectively. However, data of these two companies are reported on a calendar-year basis. ***'s fiscal yearend is Sept. 30. ***.

[16] The producer questionnaire data of Black & Decker were verified. ***.

Table 9
Income-and-loss experience of U.S. producers, excluding Makita, on their operations producing PEC tools, fiscal years 1990-92 1/

Item	1990	1991	1992
	Value (1,000 dollars)		
Net sales	180,029	167,932	213,920
Cost of goods sold	133,038	126,819	160,579
Gross profit	46,991	41,113	53,341
Selling, general, and administrative expenses 2/	40,762	39,551	49,020
Operating income	6,229	1,562	4,321
Interest expense	***	***	***
Other income or (expense), net	***	***	***
Net income or (loss) before income taxes	886	(2,499)	(260)
Depreciation and amortization	5,321	6,434	7,737
Cash flow 3/	6,207	3,935	7,477
	Ratio to net sales (percent)		
Cost of goods sold	73.9	75.5	75.1
Gross profit	26.1	24.5	24.9
Selling, general, and administrative expenses	22.6	23.6	22.9
Operating income	3.5	0.9	2.0
Net income or (loss) before income taxes	0.5	(1.5)	(0.1)
	Number of firms reporting		
Operating losses	2	4	3
Net losses	2	4	3
Data	7	7	7

1/ *** have fiscal yearends of Dec. 31. *** has a fiscal yearend of Sept. 30; however, data of *** are reported on a calendar-year basis. ***'s fiscal yearend is Sept. 30.

*** stated in its questionnaire response that it was unable to determine depreciation for the cash flow computation for PEC tools because all products produced used the same equipment. For this report, the Commission staff estimated depreciation using the same ratio to cost of goods sold for PEC tools as for overall establishment operations.

2/ In 1992, advertising expenses of *** dedicated exclusively to the promotion of PEC tools were included in selling, general, and administrative expenses.

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

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

Operating income declined from $6.2 million, or 3.5 percent of net sales, in 1990, to $1.6 million, or 0.9 percent of net sales, in 1991, and then rose to $4.3 million, or 2.0 percent of net sales, in 1992. The combined companies reported high interest expenses in relation to operating income, which converted operating income to pre-tax net losses in 1991 and 1992, but pre-tax net income-or-loss margins followed a similar trend as operating income-or-loss margins.

Selected income-and-loss data relating to U.S. producers' PEC tool operations, by firms, are presented in table 10. ***.

Table 10
Income-and-loss experience of U.S. producers, excluding Makita, on their operations producing PEC tools, by firms, fiscal years 1990-92

* * * * * * *

Makita started production of PEC tools in the United States in 1992. Data on its PEC tool operations are presented in the following tabulation (in thousands of dollars, except as noted):

Item	1992
Quantity sold (units)	***
Net sales	***
Cost of goods sold	***
Gross profit	***
Selling, general, and administrative expenses	***
Operating ***	***
Interest expense	***
Other income or (expense), net	***
Net *** before income taxes	***
Operating *** as a share of net sales (percent)	***
Pre-tax net *** as a share of net sales (percent)	***

Operations on PES Tools

The income-and-loss experience of U.S. producers[17] on their PES tool operations is presented in table 11. Net sales decreased by 5.5 percent from $73.5 million in 1990 to $69.5 million in 1991 and then increased by 19.5 percent to $83.1 million in 1992. Operating income was $*** in 1990, $3.0 million in 1991, and $7.3 million in 1992. Operating income margins, as a ratio to net sales, declined from *** percent in 1990 to 4.2 percent in 1991, and then rose to 8.7 percent in 1992. The average operating income margins, as a percent of net sales, were higher than those for PEC tools in each period. The combined companies reported high interest expenses related to operating income, which resulted in much lower net incomes in each period.

[17] *** did not produce PES tools.

Table 11
Income-and-loss experience of U.S. producers, excluding Makita, on their operations producing PES tools, fiscal years 1990-92 1/

Item	1990	1991	1992
	Value (1,000 dollars)		
Net sales	73,508	69,492	83,050
Cost of goods sold	51,879	48,920	56,350
Gross profit	21,629	20,572	26,700
Selling, general, and administrative expenses 2/	***	17,621	19,446
Operating income	***	2,951	7,254
Interest expense	***	***	***
Other income, net	***	***	***
Net income before income taxes	841	835	5,256
Depreciation and amortization	2,116	2,426	2,452
Cash flow 3/	2,957	3,261	7,708
	Ratio to net sales (percent)		
Cost of goods sold	70.6	70.4	67.9
Gross profit	29.4	29.6	32.1
Selling, general, and administrative expenses	***	25.4	23.4
Operating income	***	4.2	8.7
Net income before income taxes	1.1	1.2	6.3
	Number of firms reporting		
Operating losses	2	1	1
Net losses	2	2	1
Data	6	6	6

1/ *** have fiscal yearends of Dec. 31. *** has a fiscal yearend of Sept. 30; however, data of *** are reported on a calendar-year basis. ***'s fiscal yearend is Sept. 30.

*** stated in its questionnaire response that it was unable to determine depreciation for the cash flow computation for PES tools because all products produced used the same equipment. For this report, the Commission staff estimated depreciation using the same ratio to cost of goods sold for PES tools as for overall establishment operations.

2/ In 1992, advertising expenses of $*** dedicated exclusively to the promotion of PES tools were included in selling, general, and administrative expenses.

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

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

Selected income-and-loss data of the U.S. producers on their operations producing PES tools, by firms, are presented in table 12. ***.

Table 12
Income-and-loss experience of U.S. producers, excluding Makita, on their operations producing PES tools, by firms, fiscal years 1990-92

* * * * * * *

Research and Development

Research and development expenses of the seven producers of PEC and PES tools are shown in table 13. *** reported *** research and development expenses in each reporting period. Research and development expenses for PEC tools increased in each period, whereas such expenses for PES tools rose from 1990 to 1991 and then declined from 1991 to 1992.

Table 13
Research and development expenses of U.S. producers, excluding Makita, in establishments wherein PEC/PES tools are produced, by products, fiscal years 1990-92

(In thousands of dollars)

Item	1990	1991	1992
All products	35,371	31,030	35,423
PEC tools	3,913	4,007	5,002
PES tools	1,813	2,052	1,846

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

Research and development expenses of Makita for PEC tools are shown in table 14.

Table 14
Research and development expenses of Makita in establishments wherein PEC tools are produced, by products, fiscal years 1990-92

* * * * * * *

Investment in Productive Facilities

The investment in property, plant, and equipment and return on investment for six of the reporting producers (*** did not provide investment in property, plant, and equipment, or total assets, by product) are shown in table 15. The operating and net returns for PES tools are much higher than the returns on PEC tools in each year.

Table 15
Value of assets and return on assets on PEC/PES tool operations of U.S. producers, 1/ excluding Makita, fiscal years 1990-92

Item	1990	1991	1992
	Value (1,000 dollars)		
All products:			
Fixed assets:			
Original cost	465,114	483,778	513,406
Book value	254,764	241,748	237,964
Total assets 2/	547,393	484,663	542,800
PEC tools:			
Fixed assets:			
Original cost	67,240	78,342	77,891
Book value	37,422	43,717	36,257
Total assets 3/	111,307	127,216	125,360
PES tools:			
Fixed assets:			
Original cost	***	***	31,102
Book value	***	***	14,476
Total assets 3/	***	***	45,363
	Return on book value of fixed assets (percent) 4/		
All products:			
Operating return 5/	54.8	46.1	55.2
Net return 6/	17.2	14.0	26.0
PEC tools:			
Operating return 5/	8.5	(4.7)	1.9
Net return 6/	(4.3)	(13.2)	(9.4)
PES tools:			
Operating return 5/	***	***	48.7
Net return 6/	***	***	35.1
	Return on total assets (percent) 3/		
All products:			
Operating return 5/	21.5	17.0	18.8
Net return 6/	11.6	9.7	13.6
PEC tools:			
Operating return 5/	2.2	(1.2)	1.8
Net return 6/	(2.2)	(4.0)	(1.7)
PES tools:			
Operating return 5/	***	***	15.2
Net return 6/	***	***	10.8

1/ The firms are ***.
2/ Defined as book value of fixed assets plus current and noncurrent assets.
3/ Total establishment assets are apportioned, by firm, to product groups on the basis of the ratios of the respective book values of fixed assets.
4/ Computed using data from only those firms supplying both asset and income-and-loss information and, as such, may not be derivable from data presented.
5/ Defined as operating income or loss divided by asset value.
6/ Defined as net income or loss divided by asset value.

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

Capital Expenditures

Capital expenditures by six U.S. producers are shown in table 16. ***. Capital expenditures increased from 1990 to 1991 and then declined from 1991 to 1992 for both PEC and PES tools, Capital expenditures for PEC tools were higher than those for PES tools. All firms reported that their sources of financing for capital expenditures were internal financing, either from affiliates or parent companies.

Table 16
Capital expenditures by U.S. producers, excluding Makita, in establishments wherein PEC/PES tools are produced, by products, fiscal years 1990-92

(In thousands of dollars)

Item	1990	1991	1992
All products:			
Land and land improvements	***	***	***
Building and leasehold improvements	***	***	***
Machinery, equipment, and fixtures	***	***	***
Total	47,912	37,076	50,195
PEC tools:			
Land and land improvements	***	***	***
Building and leasehold improvements	***	***	***
Machinery, equipment, and fixtures	***	***	***
Total	***	***	8,197
PES tools:			
Land and land improvements	***	***	***
Building and leasehold improvements	***	***	***
Machinery, equipment, and fixtures	***	***	***
Total	2,522	2,745	2,550

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

Capital expenditures of Makita for PEC tools are shown in the following tabulation (in thousands of dollars):

Item	1990	1991	1992
PEC tools	***	***	***

Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of PEC and/or PES tools from Japan on their firm's growth, investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of PEC and/or PES tools). The producers' responses are presented in appendix E.

CONSIDERATION OF THE THREAT OF MATERIAL INJURY

Section 771(7)(F)(i) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(F)(i)) provides that--

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the merchandise, the Commission shall consider, among other relevant economic factors--[18]

> (I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (Particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement).
>
> (II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,
>
> (III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,
>
> (IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,
>
> (V) any substantial increase in inventories of the merchandise in the United States,
>
> (VI) the presence of underutilized capacity for producing the merchandise in the exporting country,
>
> (VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury,

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[18] Section 771(7)(F)(ii) of the Act (19 U.S.C. 1677(7)(F)(ii)) provides that "Any determination by the Commission under this title that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition."

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 701 or 731 or to final orders under section 706 or 736, are also used to produce the merchandise under investigation,

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

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.[19]

Subsidies (item (I)) and agricultural products (item (IX)) are not issues in this investigation. Available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between LTFV Imports and Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in appendix E. Available information on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); and any other threat indicators, if applicable (item (VII) above), is discussed below.

Because the quantities of PEC and PES tools manufactured are largely based on projected demand, maintaining adequate inventories is important to importers and U.S. producers alike. End-of-period inventories of PEC and PES tools imported from Japan, in terms of quantity and as a ratio to imports, are shown in table 17.

The data show a noticeable decline in PEC tool inventories and a noticeable increase in PES tool inventories during 1990-92.

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

Table 17
PEC/PES tools: End-of-period inventories of U.S. importers, by products and by sources, 1990-92

Item	1990	1991	1992
	Quantity (1,000 units)		
PEC tools:			
Japan	***	***	***
Other sources	***	***	***
Total	382	315	313
PES tools:			
Japan	***	***	***
Other sources	***	***	***
Total	169	173	238
	Ratio to imports (percent)		
PEC tools:			
Japan	***	***	***
Other sources	***	***	***
Average	29.6	27.8	22.0
PES tools:			
Japan	***	***	***
Other sources	***	***	***
Average	24.1	27.2	34.4
	Ratio to U.S. shipments of imports (percent)		
PEC tools:			
Japan	***	***	***
Other sources	***	***	***
Average	31.3	26.3	22.1
PES tools:			
Japan	***	***	***
Other sources	***	***	***
Average	25.4	28.1	38.7

Note.--Because of rounding, figures may not add to the totals shown. Ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

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

Makita, Hitachi, and Ryobi account for the overwhelming bulk of PEC and PES tools exported to the United States from Japan.[20] Their aggregate production, capacity, and shipments of these products are shown in tables 18 and 19, respectively. ***.

Table 18
PEC tools: Makita's, Hitachi's, and Ryobi's production, capacity, inventories, and shipments, 1990-92, and projected 1993

* * * * * * *

Table 19
PES tools: Makita's, Hitachi's, and Ryobi's production, capacity, inventories, and shipments, 1990-92, and projected 1993

* * * * * * *

* * * * * * *

In 1980, Canada issued a dumping order on Japanese-produced circular saws and sanders/grinders. The order was rescinded in 1984. So far as it is known, there are no extant dumping orders on PEC or PES tools made in Japan.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN LTFV IMPORTS AND MATERIAL INJURY

Imports

Japan is by far the predominant source of U.S. imports of PEC tools and PES tools (table 20).[21] Other sources include Switzerland, Italy, Germany, Taiwan, and Mexico.

Imports from Japan of PEC tools decreased in quantity and value from 1990 to 1991, then increased between 1991 and 1992, for an overall increase during 1990-92. Average unit values followed a similar trend.

PES tool imports from Japan decreased in quantity and value from 1990 to 1991, then increased in quantity and value from 1991 to 1992, for an overall increase during 1990-92. Average unit values increased during the same period.

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[20] Other producers that export to the United States from Japan include Matsushita Electric Works and Shindaiwa ***, and Kosoku and Shibaura ***.

[21] Data presented in the following sections conform with the new Commerce definition of PEC and PES tools, thereby altering the data set presented in the prehearing report in this investigation.

Table 20
PEC/PES tools: U.S. imports, by products and by sources, 1990-92

Item	1990	1991	1992
	Quantity (1,000 units)		
PEC tools:			
Japan	***	***	***
Other sources	***	***	***
Total	1,292	1,134	1,420
PES tools:			
Japan	***	***	***
Other sources	***	***	***
Total	701	635	691
	Value (1,000 dollars)		
PEC tools:			
Japan	***	***	***
Other sources	***	***	***
Total	142,896	117,519	170,559
PES tools:			
Japan	***	***	***
Other sources	***	***	***
Total	46,576	46,907	48,659
	Unit value (per unit)		
PEC tools:			
Japan	$***	$***	$***
Other sources	***	***	***
Average	110.62	103.61	120.11
PES tools:			
Japan	***	***	***
Other sources	***	***	***
Average	66.43	73.89	70.39

Note.--Because of rounding, figures may not add to the totals shown. Unit values are calculated from the unrounded figures, using data of firms supplying both quantity and value information.

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

U.S. Consumption and Market Penetration

U.S. apparent consumption of PEC and PES tools increased in quantity and value during 1990-92, with a dip in 1991, as shown in table 21. The Japanese share of PEC tool consumption increased in quantity and value during the

Table 21
PEC/PES tools: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, by products, 1990-92

Item	1990	1991	1992
	Quantity (1,000 units)		
PEC tools:			
Producers' U.S. shipments:			
Makita	***	***	***
All other firms	1,462	1,334	1,580
Total	***	***	***
Importers' U.S. shipments:			
Japan	***	***	***
Other sources	***	***	***
Total	1,218	1,196	1,418
Apparent consumption	***	***	***
PES tools:			
Producers' U.S. shipments:			
Makita	***	***	***
All other firms	863	843	1,123
Total	***	***	***
Importers' U.S. shipments:			
Japan	***	***	***
Other sources	***	***	***
Total	666	615	614
Apparent consumption	***	***	***
	Value (1,000 dollars)		
PEC tools:			
Producers' U.S. shipments:			
Makita	***	***	***
All other firms	173,117	158,755	201,738
Total	***	***	***
Importers' U.S. shipments:			
Japan	***	***	***
Other sources	***	***	***
Total	164,387	161,178	197,058
Apparent consumption	***	***	***
PES tools:			
Producers' U.S. shipments:			
Makita	***	***	***
All other firms	70,949	66,174	79,351
Total	***	***	***
Importers' U.S. shipments:			
Japan	***	***	***
Other sources	***	***	***
Total	54,722	54,969	55,351
Apparent consumption	***	***	***

Table continued on next page.

Table 21--Continued
PEC/PES tools: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, by products, 1990-92

Item	190	1991	1992
	Share of the quantity of U.S. consumption (percent)		
PEC tools:			
Producers' U.S. shipments:			
Makita	***	***	***
All other firms	***	***	***
Total	***	***	***
Importers' U.S. shipments:			
Japan	***	***	***
Other sources	***	***	***
Total	***	***	***
PES tools:			
Producers' U.S. shipments:			
Makita	***	***	***
All other firms	***	***	***
Total	***	***	***
Importers' U.S. shipments:			
Japan	***	***	***
Other sources	***	***	***
Total	***	***	***
	Share of the value of U.S. consumption (percent)		
PEC tools:			
Producers' U.S. shipments:			
Makita	***	***	***
All other firms	***	***	***
Total	***	***	***
Importers' U.S. shipments:			
Japan	***	***	***
Other sources	***	***	***
Total	***	***	***
PES tools:			
Producers' U.S. shipments:			
Makita	***	***	***
All other firms	***	***	***
Total	***	***	***
Importers' U.S. shipments:			
Japan	***	***	***
Other sources	***	***	***
Total	***	***	***

Note.--Because of rounding, figures may not add to the totals shown; shares are computed from the unrounded figures.

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

period, with a slight dip in value between 1991 and 1992. The Japanese share of PES tool consumption declined in quantity and value from 1990 to 1992, with a slight rise in value in 1991. U.S. producers' PEC tool share declined in quantity and value from 1990 to 1992, with a slight increase in value between 1991 and 1992. Domestic producers' share of PES tool consumption increased in quantity and decreased in value between 1990 and 1992, with a slight rise in value in 1991.

Prices

Marketing Considerations

Producers' and importers' prices of PEC and PES tools vary with the specific type or family of tool and the features found on the individual model. In general, tools having more powerful motors, more durable frames or shells, and of larger working capacity (e.g., blade size, sanding belt surface, or grinding surface) are more expensive. Other features that may increase the price include accessories, protective containers, or similar items.

Producers and importers generally sell PEC and PES tools at two levels of distribution. Two-step distributors consist of dealer-owned and independent wholesalers that warehouse and sell the products to retailers. These wholesalers generally receive a 5-percent discount off of suppliers' prices to retailers. Producers and importers also sell to retailers, or one-step distributors, that sell directly to end users.

Retailers traditionally consisted mainly of industrial and construction distributors. The term "authorized stocking distributor" is used by several suppliers to refer to their network of distributors. In their literature, several firms use language similar to that of Milwaukee to describe the role of these firms:

> Milwaukee Electric Tools are sold through Authorized Stocking Distributors appointed on a market oriented basis to obtain adequate coverage of various trades and industries for whom we make tools. Stocking Distributors are defined as responsible firms selected by the Company who will carry a sufficient stock of tools and accessories, both quantity and assortment, to service their type of trade in their area and who actively promote and sell the Milwaukee line.[22]

In more recent years, home centers have also become a major retail outlet serving both professional builders and consumers. While traditional distributors often mix small numbers of several tools in a given purchase in order to qualify for volume discounts, the buying power of large chains allows them to make large purchases of each tool, often numbering in the thousands.

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[22] Milwaukee Electric Tool Corp., distributor price list-discount schedule, DPL-41.

Each of the U.S. producers and importers publishes price lists and discount schedules for use by their wholesalers and retail outlets. In general, these schedules provide the recommended retail price[23] for each tool and accessory, and enumerate the discounts available for the purchase of various quantities of tools. While the exact terms may vary among suppliers, it is typical for these discounts to be applicable to the total quantity of tools purchased regardless of the specific mix of items included.

The basic discount to a distributor is generally 30 percent below the recommended retail price to consumers. Additional discounts apply as larger quantities of tools are purchased. For example, in 1992, *** granted an additional 10-percent discount for sales between 10 and 49 tools, 15 percent up to 99 tools, and 20 percent for 100 and above. In 1993, *** has offered discounts of 30 percent plus 15 percent for quantities between 1 and 49, 30 percent plus 20 percent for 50-99 tools, and 30 percent plus 25 percent for quantities over 100 tools.[24]

In addition to published discounts, each producer and importer provides occasional promotional and advertising support, rebates, financial incentives, or other benefits to distributors which then may be offered at the retail levels.[25] Special promotional pricing may apply to individual tools or across product lines. During 1992, *** offered several promotions, including a straight 50-percent discount across all product lines to any distributor meeting certain conditions, such as the purchase of at least 250 tools. Similar programs have been offered by other producers and importers. Typically these programs offer reduced thresholds to attain increased discounts, e.g., 100-unit price discounts for purchases of only 50 units. Other programs have included promotional pricing of specific tools, freight allowances, extended dating terms, free accessories, and similar incentives for the distributors to increase sales at slightly higher profit margins.

In addition to incentives that reduce net costs to distributors, suppliers generally provide financial assistance for advertising by distributors on a local level. While there are variations among suppliers' co-operative advertising programs, eligible advertising generally may be in either print media or radio and must feature the supplier's product prominently. The advertising often includes information regarding local dealers. Inclusion of products from other manufacturers may make the advertisement ineligible for reimbursement, or may reduce the level of reimbursement to the distributor. Suppliers typically limit the total level of reimbursement for this kind of advertising to 2 percent of the distributor's net purchases during the relevant period, and the amount rebated

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[23] The retail price recommended by the supplier is explicitly used as a guide for distributor pricing and as a benchmark from which to measure other discounts. The supplier cannot require that subsequent sales be made at the recommended price.

[24] ***.

[25] Distributors may or may not elect to pass the benefits of these programs on to consumers.

for each advertisement varies from 50 percent to 100 percent of the approved costs.[26]

Freight for the delivery of the subject tools from the suppliers' distribution centers to distributors is generally arranged by the supplier, and transportation costs are between 1 and 3 percent of the delivered cost. Suppliers were divided about evenly as to whether these costs have an important effect on their sales to distributors. Nevertheless, while all producers and suppliers reported that prices are quoted f.o.b. warehouse (or other distribution center), each has the policy of prepaying the freight charges on sales exceeding a certain net value, generally in the range of $1,000-$1,500.

Payment terms are similar among suppliers. A 2-percent discount for payment within 10 days of billing, with the total due within 25-30 days is typical. However, extended dating terms are often offered as promotions. For example, during 1992 *** offered extended terms for distributors purchasing over a certain dollar amount.

Quality Considerations

The Commission received information on end users' perceptions from a May 1991 marketing study conducted by the Caney Research Group. The "1991 Professional Power Tool Brand and Image Purchase Tracking Study" surveyed 400 professional contractors and maintenance personnel across the United States. The stated objective of the survey was "to track images, tool ownership, and brand ratings among only professionals and for only professional quality power tools."

In the area of product quality and durability, Milwaukee was rated highest, followed by Porter-Cable, Makita, and Bosch; while Skil, Ryobi, and Black & Decker were rated lowest. Likewise, Milwaukee and Makita were rated the highest for repair and service, while Ryobi was rated lowest. Milwaukee and Makita were also rated highest for overall value and product innovation and technology, and were mentioned by the most respondents as selling products that deserve a price premium.[27] The survey also asked which manufacturers

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[26] The reimbursement of costs under these co-operative advertising programs need not directly affect the distributors' resale price. ***'s co-operative advertisement program literature, for example, specifically states that "in accordance with FTC guidelines, co-op payments can not be deducted from invoices." The goal, however, is apparently to increase sales for the retailers served by each distributor, allowing the distributor to benefit from increased volume discounts, which may subsequently permit lower prices.

[27] *** were the only producers and/or importers that responded affirmatively to the Commission's question "Are differences in quality between your firm's imported (U.S.-produced) professional electric cutting and sanding/grinding tools and the U.S.-produced (imported) products a significant factor in your firm's sales of these products?"

offered the most competitive pricing. Respondents most often mentioned Black & Decker, followed by Makita and Skil.[28]

Finally, the study found that while 25 percent of the professionals surveyed had purchased consumer quality tools for professional work in the past, only 9 percent planned to purchase these in the future. Responses to the purchasers' questionnaire agreed with this; most stated that few professionals would purchase consumer tools for professional work. However, many purchasers stated that they had seen an increase in professional tool sales relative to consumer tool sales as more and more non-professionals are purchasing professional tools for do-it-yourself projects.

Questionnaire Price Data

The Commission requested U.S. producers and importers to report net U.S. f.o.b. prices and transportation costs for sales of several PEC and PES tools (products 1-5) to unrelated U.S. wholesalers and retailers, as well as the total quantity and value of each shipped in each quarter to all U.S. customers. In addition, U.S.-producer pricing was requested for one CEC tool (product 6) and one CES tool (product 7).

The price data were requested for the largest single sale and for total sales of the products specified, by quarters, from January 1990 through December 1992. The products for which price data were requested are:

Product 1: Reciprocating Saw: Approximately 4 to 6.5 amps, variable speed, 2,300 to 2,400 strokes per minute.

Product 2: Circular Saw: Approximately 13 amps, 5,200 to 5,800 rpm, 7.25 inch blade.

Product 3: Angle Grinder: 4" disc, approximately 4.3 to 5 amps, 10,000 to 11,000 rpm.[29]

Product 4: Belt Sander: Belt size 4" by 24" or 4" by 22", approximately 8.5 to 10.5 amps, belt speed 1,100 to 1,500 feet per minute.

Product 5: Jig Saw: Super duty 3.5 to 4.5 amps, orbital cut, speed 0-3,100 strokes per minute.

Product 6: Circular Saw: Approximately 10 amps, 2 to 2-1/8 horsepower motor, 7.25" blade, 4,600 to 5,300 rpm.

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[28] Responses to a question in the purchasers' questionnaire that asked respondents to name which firms were price leaders showed these same results, with 12 purchasers naming Black & Decker (including DeWalt), 8 naming Makita, 6 naming Skil, and 4 naming Ryobi.

[29] ***.

Product 7: Belt Sander: Belt size 3" x 21" or 2-1/2" x 16", approximately 2.8 to 4.7 amps, 1/3 to 1/2 horsepower motor, belt speed 600-1,100 feet per minute.

In each case, specific examples of tool models meeting the above descriptions were supplied, and each supplier was requested to provide the data on those models if possible, or on a competitive model meeting the general description.

U.S. producers' and importers' prices

Seven U.S. producers and three importers provided usable price data in response to the questionnaire, although not necessarily for all products or all periods.[30] [31] Most of the reported sales were to retailers; therefore, only pricing for these sales is discussed.

As shown in tables 22-27 and figures 1-6, weighted-average f.o.b. prices of U.S.-produced and Japanese-produced PEC and PES tools generally increased during the period for which data were collected. Reported prices of the selected U.S.-produced professional tools increased between 4.9 percent and 17.7 percent, with the exception of prices of 4-inch angle grinders which fluctuated between ***, while prices of product 2 from Japan fluctuated between ***. Angle grinder prices were reported only for 1991-92 and generally showed increases from 1991 to 1992, although prices of 4-1/2-inch grinders fell in the last quarter of 1992. Prices of Japanese product 4 increased *** percent and prices of product 5 increased *** percent.

Table 22
Product 1 (reciprocating saw): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, and margins of underselling, by quarters, January 1990-December 1992

* * * * * * *

Table 23
Product 2 (circular saw): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, and margins of underselling (overselling), by quarters, January 1990-December 1992

* * * * * * *

Table 24
Product 3 (4-inch angle grinder): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, and margins of underselling (overselling), by quarters, January 1990-December 1992

* * * * * * *

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[30] ***.
[31] ***.

Table 25
Product 3 (4-1/2-inch angle grinder): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, and margins of underselling (overselling), by quarters, January 1990-December 1992

* * * * * * *

Table 26
Product 4 (belt sander): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, and margins of underselling, by quarters, January 1990-December 1992

* * * * * * *

Table 27
Product 5 (jig saw): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, and margins of underselling (overselling), by quarters, January 1990-December 1992

* * * * * * *

Figure 1
Product 1 (reciprocating saw): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, by quarters, 1990-92

* * * * * * *

Figure 2
Products 2 and 6 (circular saws): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, by quarters, 1990-92

* * * * * * *

Figure 3
Product 3 (4-inch angle grinder): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, by quarters, 1990-92

* * * * * * *

Figure 4
Product 3 (4-1/2-inch angle grinder): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, by quarters, 1990-92

* * * * * * *

Figure 5
Products 4 and 7 (belt sanders): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, by quarters, 1990-92

* * * * * * *

Figure 6
Product 5 (jig saw): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers and importers, by quarters, 1990-92

* * * * * * *

With the exception of PEC circular saws and angle grinders, the weighted-average price of Japanese professional tools was below that of the competing U.S. product in almost every quarter. Overall, the Japanese products were priced lower than the U.S. products in 45 of 64 possible comparisons. The average largest sale quantities reported by importers were much larger than those reported by U.S. producers for products 1-3, but were similar for products 4 and 5.

While weighted-average U.S.-producer prices were generally higher than weighted-average importer prices, there was a range of prices reported. For product 1, reciprocating saws, ***. For product 2, circular saws, *** were priced highest; ***. *** 4-inch angle grinders were priced lower than ***, and both were priced higher than ***. For 4-1/2-inch angle grinders, in some quarters ***. In the case of product 4, belt sanders, *** were priced higher than ***. For product 5, ***.

The Commission also collected pricing on a consumer circular saw and a consumer belt sander (table 28). While reported U.S.-producer prices for the professional circular saw (product 2) increased by *** percent during 1990-92, prices of the consumer circular saw (product 6) remained at approximately the same level throughout 1990-92. U.S.-producer prices of the professional belt sander (product 4) increased by *** percent, while prices of the consumer belt sander (product 7) increased by *** percent during 1990-92.

Table 28
Product 6 (circular saw) and product 7 (belt sander): Weighted-average net f.o.b. prices for sales to retailers as reported by U.S. producers, by quarters, January 1990-December 1992

* * * * * * *

Purchasers' prices

The Commission also collected pricing data from purchasers, as shown in tables 29-33.[32] Prices of professional power tools imported from Japan were lower than prices of U.S.-produced tools in 42 of 48 possible price comparisons.

Table 29
Product 1 (reciprocating saw): Weighted-average net delivered purchase prices as reported by U.S. purchasers, and margins of underselling, by quarters, January 1990-December 1992

* * * * * * *

Table 30
Product 2 (circular saw): Weighted-average net delivered purchase prices as reported by U.S. purchasers, and margins of underselling (overselling), by quarters, January 1990-December 1992

* * * * * * *

Table 31
Product 4 (belt sander): Weighted-average net delivered purchase prices as reported by U.S. purchasers, and margins of underselling (overselling), by quarters, January 1990-December 1992

* * * * * * *

Table 32
Product 5 (jig saw): Weighted-average net delivered purchase prices as reported by U.S. purchasers, and margins of underselling, by quarters, January 1990-December 1992

* * * * * * *

Table 33
Product 6 (circular saw) and product 7 (belt sander): Weighted-average net delivered purchase prices as reported by U.S. purchasers, by quarters, January 1990-December 1992

* * * * * * *

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[32] A few purchasers that reported purchasing very large quantities of tools reported much lower prices than did other purchasers. Therefore, the prices shown in the tables are for purchases of under 1,000 units per quarter. Also, prices for angle grinders are not shown, as purchasers were instructed to report pricing for Makita model number 9514B, which was excluded from the scope of this investigation by Commerce's final determination.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January 1990-December 1992, the nominal value of the Japanese yen fluctuated but showed an overall appreciation of 20.6 percent relative to the U.S. dollar (table 34).[33] Adjusted for movements in producer price indexes in the United States and Japan, the real value of the Japanese currency showed an overall appreciation of 15.6 percent vis-a-vis the dollar for the period January 1990 through December 1992.

Table 34
Exchange rates:[1] Indexes of nominal and real exchange rates of the Japanese yen and indexes of producer prices in the United States and Japan,[2] by quarters, January 1990-December 1992

Period	U.S. producer price index	Japanese producer price index	Nominal exchange rate index	Real exchange rate index[3]
1990:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	99.8	100.8	95.3	96.3
July-September.....	101.6	100.8	101.8	101.0
October-December....	104.7	101.4	113.1	109.6
1991:				
January-March.....	102.5	101.6	110.5	109.5
April-June.....	101.5	101.1	106.9	106.5
July-September.....	101.4	100.8	107.8	107.2
October-December....	101.5	100.1	114.2	112.6
1992:				
January-March.....	101.3	99.8	115.2	113.5
April-June.....	102.3	99.8	113.5	110.7
July-September.....	102.8	99.7	118.4	114.8
October-December....	103.1	98.8	120.6	115.6

[1] Exchange rates expressed in U.S. dollars per Japanese yen.
[2] Producer price indexes--intended to measure final product prices--are based on period-average quarterly indexes presented in line 63 of the International Financial Statistics.
[3] The real exchange rate is derived from the nominal rate adjusted for relative movements in producer prices in the United States and Japan.

Note.--January-March 1990 = 100.

Source: International Monetary Fund, International Financial Statistics, February 1993.

[33] International Financial Statistics, February 1993.

Lost Sales and Lost Revenues

Several firms responding to the Commission's request for examples of sales and revenues lost in competition with Japanese producers stated that documenting such instances is very difficult. ***, for example, stated that, "While competition from imports has resulted in lost revenues and sales, *** is unable to document specific losses. This is due to the fact that the business is not conducted on an open bid basis."[34] *** observed, similarly, that sales quotations are not made to specific accounts but that promotions are available to all qualified distributors and dealers. They, therefore, could not document specific lost revenues or lost sales. *** was also unable to quantify specific instances of lost sales or lost revenues.

*** claimed lost revenues in 1992 of ***, in 1991 of ***, and in 1990 of ***. *** also claimed lost sales in 1992 of ***. *** made specific claims of lost revenues of *** in 1992 involving sales of *** tools, of *** in sales to two customers in 1991 involving sales of *** tools, and of *** involving sales of *** tools to one customer in 1990. For 1990-92, lost revenues alleged by U.S. producers totaled $46,126, while lost sales totaled $63,554.

*** was named by *** in 1990 lost revenues allegations amounting to ***. It sells a wide variety of products directed toward home and farm buyers. *** carries consumer power tools made by Black & Decker, Makita, Wen, and Skil, and PEC and PES tools manufactured by Black & Decker, Milwaukee, and Makita. *** stated that there is a definite difference between the consumer and professional tools carried by ***, and its advertising deliberately draws attention to professional tools when possible. *** those discounts and promotional prices available to all similar purchasers.

***. Customers preferred the Makita saw by a significant majority. In addition, the cost to ***. He stated that Black & Decker, when informed of this test, suggested that he increase the sale price of the U.S. product above the Makita product since the former is a heavier-duty, premium tool. The strategy did not work and the customers still preferred the Makita tool. *** also observed that Milwaukee's reciprocating saw, the Sawzall, is the premier product in that niche, and *** has recently started carrying it despite the higher price.

*** has also changed its purchasing patterns regarding the angle grinders and chop saws mentioned in the allegations. He stated that the Black & Decker grinder is, again, a larger and heavier-duty tool than the Makita. His cost for the U.S. product was approximately *** compared with a lighter-duty Makita grinder priced at about ***. He viewed these as two complementary products and priced them for retail sale about $20 apart. The Makita outsold the Black & Decker by a margin ***. *** noted that the Makita product has led to increased overall sales. *** are U.S.-produced. When the U.S. producer introduced a smaller grinder to compete with the Makita, ***.

*** had similar experiences with the chop saw mentioned in the lost revenues allegation. Originally he sold two different Black & Decker units at a cost difference of about $60, one of which he considered a "starter" saw,

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[34] *** additionally noted that ***.

although it was listed in the catalog as a professional saw. The primary difference between these two units was the motor size and a cast iron (vs. stamped steel) table. *** of these saws annually, with about 80 percent of them being the less-expensive model. Makita offered a saw similar to the higher-priced domestic saw, except that the table was stamped steel and the cost was about *** less. ***.

Finally, ***. More recently he was informed that Black & Decker had done substantial research into the introduction of the DeWalt line of tools and, in 1992, this line was introduced. *** believes, however, that this may be an effort to remove the Black & Decker name entirely from the PEC and PES tool market, since the DeWalt tools compete in price and features with the Black & Decker product line. He stated that Black & Decker is urging him to carry DeWalt in place of the older "professional" Black & Decker line. ***, like many other retailers, cannot afford to carry multiple lines of competing tools.

*** also named *** in an alleged lost sale of *** priced at ***. *** is a home center which sells both professional and consumer tools. Approximately 80 percent of its sales of professional tools are to professional users. *** purchases from Black & Decker, Delta, Makita, Milwaukee, and Ryobi. *** said that the DeWalt and Makita tools compete directly, whereas the other professional tools are either specialty tools or are much higher-priced than Makita and DeWalt tools.

*** has purchased DeWalt tools since March 1992. *** said that *** did not carry Black & Decker professional tools prior to this because of Black & Decker's poor reputation in the professional tools market. *** has been trying to promote sales of the DeWalt products, and sales of these products increased as Black & Decker ran a special offering free tools with the purchase of 5 tools and a 30-day money-back guarantee for purchases of DeWalt tools.

*** said that, in general, its retail prices for the Makita and DeWalt products have been similar. However, according to ***, in December 1992 Makita offered special pricing in anticipation of tariff increases due to this investigation. In particular, Makita offered its *** which includes a carrying case for the same price as it previously offered this product without the carrying case. In addition, Makita offered extended dating terms. Therefore, in December, *** ordered a one-year supply of merchandise totaling *** from Makita and placed a *** order for DeWalt tools.

*** also named *** in an alleged 1992 lost sale totaling ***. *** is a wholesaler that sells professional tools to industrial users. *** said that there is little overlap between professional and consumer tools except in the case of Makita's tools, which are marketed as both industrial and consumer tools and could compete with Black & Decker's professional and consumer lines of tools. *** said that in December 1992, Makita sold *** at a price which was $15 to $20 less than Makita's usual price and that Makita also offered dating terms of 360 days. He also added that at the same time, Makita offered dating terms of 180 days and a 3-percent "thank you" discount on cut-off saws. *** said that prior to Makita's December 1992 specials, pricing was generally similar among competing models of Black & Decker, Makita, Milwaukee, and Porter-Cable tools, although Makita occasionally offered special discounts of

$15 to $20 per tool. He said that the other three producers from which he purchased power tools did not offer similar discounts.

*** in *** was also named by *** in alleged lost sales in 1992 involving ***. *** buys from Makita, Black & Decker, Milwaukee, and Skil. According to ***, tools manufactured by Makita, Black & Decker, and Milwaukee are generally similar in terms of quality. *** said that these three brands of tools have generally been priced very closely. However, in the last quarter of 1992, Makita lowered prices considerably on miter saws, reciprocating saws, and worm-drive saws and offered six-month dating terms.

APPENDIX A

FEDERAL REGISTER NOTICES

[Investigation No. 731-TA-571 (Final)]

Professional Electric Cutting and Sanding/Grinding Tools From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-571 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of professional electric cutting and sanding/grinding tools.[1]

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

EFFECTIVE DATE: January 4, 1993.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of professional electric cutting and sanding/grinding tools from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 29, 1992, by Black & Decker Corp., Towson, MD.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is 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 BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on May 10, 1993, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

[1] For purposes of this investigation, professional electric cutting tools have blades or other cutting devices used for cutting wood, metal, and other materials. This category of tools includes chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable band saws, cut-off machines, sheers, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools, provided for in subheadings 8508.20.00, 8461.50.00, and 8465.91.00 of the Harmonized Tariff Schedule of the United States (HTS).

Professional electric sanding/grinding tools have moving abrasive surfaces used primarily for grinding, scraping, cleaning, deburring, and polishing wood, metal, and other materials. This category of tools includes angle grinders, finishing sanders, disc sanders, orbital sanders, belt sanders, polishers, straight grinders, die grinders, and similar sanding/grinding tools, provided for in HTS subheading 8508.80.00

The products subject to this investigation may be assembled or unassembled (in kits), corded or cordless, and include all hand-held professional electric cutting and sanding/grinding tools and the following bench-top, hand-operated professional electric cutting tools: cut-off saws, PVC saws, chop saws, cutoff machines, miter saws (including slide compound saws), and band saws with detachable bases, provided for in HTS subheadings 8461.50.00 and 8465.91.00. The subject products do not include consumer electric tools, professional electric drilling/fastening tools, lawn and garden tools, heat guns, paint and wallpaper strippers, and chain saws.

For a more detailed description of the products subject to this investigation, see the Department of Commerce's notice of preliminary determinations published on January 4, 1993 (58 FR 81).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on May 21, 1993, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 13, 1993. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 10 a.m. on May 17, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is May 17, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is June 1, 1993; witness testimony must be filed no later than three (3) days before the hearing. 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 June 1, 1993. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

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.

By order of the Commission.

Issued: January 27, 1993.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93-2519 Filed 2-2-93; 8:45 am]

BILLING CODE 7020-02-M

[A-588-823]

Final Determinations of Sales at Less Than Fair Value: Professional Electric Cutting Tools and Professional Electric Sanding/Grinding Tools From Japan

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

EFFECTIVE DATE: May 26, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Pamela Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1174, respectively.

FINAL DETERMINATIONS: The Department of Commerce (the Department) determines that professional electric cutting tools (PECTs) and professional electric sanding/grinding tools (PESGTs) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d). The Department also determines that critical circumstances do not exist. The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since our announcement of the affirmative preliminary determinations on December 29, 1992, the following events have occurred.

On December 30, 1992, respondent (Makita) and petitioner (Black & Decker) requested a public hearing. On January 4, 1993, an interested party (Hitachi) did the same. Publication of our preliminary

determinations (58 FR 81) occurred on January 4, 1993.

We conducted verification of Makita's questionnaire responses between February 2 and 11, 1993, in Japan and between February 11, and 16, 1993, in California.

Interested parties submitted comments regarding the scope of this proceeding between February 16 and 19, 1993. We received comments from Black & Decker, Makita, and the following interested parties: (1) Hitachi; (2) Amada Cutting Technologies; and (3) Paul Gesswein Company.

Case briefs were filed on April 2, 1993, by Black & Decker, Makita, Hitachi and SB Power Tool Company. Also, on April 7, 1993, we returned certain factual information to the submitting parties because such factual information was presented after the deadline in 19 CFR 353.31(a)(3). Rebuttal briefs were filed on April 7, 1993. A public hearing was held on April 9, 1993.

Based on March 31, 1993, instructions provided by the Department, respondent submitted, on April 6, 1993, revised sales tapes, correcting minor errors discovered at verification.

Scope of Investigations

In the preliminary determinations, the Department invited all interested parties to provide further comments regarding the scope of these investigations, especially criteria which defined professional electric power tools rather than consumer electric power tools. We received comments on these scope issues as noted in the Case History section of this notice. After considering all comments, we have determined that petitioner's revised scope definition, with certain minor modifications, is clear. For a detailed discussion of the determinations regarding the scope issues, see Memorandum with attachments to Barbara R. Stafford, Deputy Assistant Secretary, May 19, 1993.

These investigations cover two classes or kinds of merchandise, PECTs and PESGTs. The tools may be assembled or unassembled and corded or cordless.

- The term "electric" encompasses electromechanical devices, including tools with electronic variable speed features.
- The term "assembled" includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool.
- The term "unassembled" means components, which when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations, (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable band saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

PESGTs have moving abrasive surfaces used primarily for grinding, scraping, cleaning, deburring, and polishing wood, metal, and other materials. PESGTs include angle grinders, finishing sanders, disc sanders, orbital sanders, belt sanders, polishers, straight grinders, die grinders, and similar sanding/grinding tools.

The products subject to these investigations include all hand-held PECTs and PESGTs and certain bench-top, hand-operated PECTs.

- Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface.
- Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. They are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECT investigation includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

These investigations do not include:

- Professional electric drilling/fastening tools;
- Lawn and garden tools;
- Heat guns;
- Paint and wallpaper strippers; and
- Chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs and PESGTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of these investigations.

"Corded" and "cordless" PECTs and PESGTs are included within the scope of these investigations. "Corded" PECTs and PESGTs, which are driven by electric current passed through a power cord, are, for purposes of these investigations, defined as power tools which have at least five of the following seven characteristics:

(1) The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings);

(2) Helical, spiral bevel, or worm gearing;

(3) Rubber (or some equivalent material which meets AWL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;

(4) Power supply cord with a separate cord protector;

(5) Externally accessible motor brushes;

(6) The predominate use of heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and

(7) The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular "corded" tool, then that tool must have at least four of the six characteristics to be considered a "corded" PECT or PESGT.

"Cordless" PECTs and PESGTs, for the purposes of these investigations, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 8508.80.00.55, 8508.80.00.65 and 8508.80.00.90.

PESGTs are currently classifiable under the following subheadings of the HTSUS: 8508.80.00.10, 8508.80.00.15, 8508.80.00.25 and 8508.80.00.35. Although the HTSUS subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Period of Investigations

The period of these investigations (POIs) are December 1, 1991, through May 31, 1992.

Such or Similar Comparisons

We made fair value comparisons using the such or similar categories for PECTs and PESGTs outlined in our preliminary determinations.

We based all product comparisons in the U.S. and home markets on sales of similar merchandise only because identical merchandise was not sold in the two markets. We selected similar merchandise by applying the following criteria in descending order of

importance: (1) configuration; (2) corded vs. cordless; (3) capacity; (4) power (amps, volts, watts); (5) speed; (6) housing material; and (7) size. Where we found more than one home market model equally similar to a U.S. model in terms of these criteria, we treated these models as equally similar (see Comment 15).

We reexamined Makita's model matches and changed two of them as a result of our findings at verification. We also changed two of the four model matches we made in the preliminary determinations. (See memorandum to file dated May 18, 1993, for a detailed discussion regarding model matching.) Furthermore, we did not make comparisons where the difference of merchandise (difmer) adjustment was 20 percent or more because we determined that such comparisons were not reasonable in this case.

In addition, based on the revised scope definition, we found that certain models sold in the home market were no longer included in the scope of these investigations and accordingly were excluded from the calculations. As a consequence, certain U.S. models no longer had home market comparisons. These models were excluded from our analysis. We also excluded certain other miscellaneous sales (*e.g.*, sample sales) from our price-to-price comparisons because they accounted for a negligible percentage of U.S. sales and we had adequate sales coverage in accordance with 19 CFR 353.42(b). Finally, we did not include in our analysis certain of Makita's sales to the United States which were discovered at verification to have been misreported as third country sales. We determined that these sales were a negligible percentage of U.S. sales.

Finally, in accordance with 19 CFR 353.58, we compared, where possible, U.S. sales to home market sales made at the same level of trade (see Comment 8).

Fair Value Comparisons

To determine whether sales of PECTs and PESGTs from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on exporter's sales price (ESP), in accordance with section 772(c) of the Act because the subject merchandise was sold to unrelated purchasers in the United States after importation into the United States.

We calculated ESP based on packed, delivered and/or undelivered prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, foreign brokerage and handling, foreign inland freight, ocean freight, marine insurance, U.S. duties including harbor maintenance fees, U.S. brokerage and handling, and U.S. inland freight in accordance with section 772(d)(2) of the Act. We added to USP restocking fees associated with returned merchandise (see Comment 1) and payments Makita received for drop-ship fees where appropriate.

In accordance with section 772(e) of the Act, we made additional deductions, where appropriate, for credit expenses, commissions, direct and indirect advertising expenses, warranty expenses, product liability premium expenses, and indirect selling expenses, which include inventory carrying costs, bad debt expenses, and indirect selling expenses incurred in the United States or Japan on behalf of U.S. sales.

Based on our findings at verification, we made several recalculations: (1) We recalculated warranty expenses to capture the entire amount incurred by respondent (see Comment 6) and treated these as direct expenses, as they had inadvertently been treated as indirect expenses in the preliminary determinations; (2) we applied freight expenses in certain instances to certain customers where respondent reported no expense but such expenses were actually incurred; and (3) we recalculated cash discounts for certain sales where the discount was incorrectly calculated (see Comment 13).

On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade in *Zenith Electronics Corporation* v. *United States*, Slip Op. 92–1043, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Act provides for an addition to U.S. price to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer make a circumstance-of-sale adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to U.S. price the absolute amount of tax assessed on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to U.S. price, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to U.S. price.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated U.S. prices net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and will begin the rule making process as soon as possible.

Foreign Market Value

In order to determine whether there were sufficient sales of PECTs and PESGTs in the home market to serve as viable bases for calculating FMV, we compared the volume of home market sales of PECTs to the volume of third country sales of PECTs, and compared the volume of home market sales of PESGTs to the volume of third country sales of PESGTs, in accordance with 19 CFR 353.48(a). Makita had viable home markets with respect to sales of PECTs and PESGTs during the POI.

We excluded from our analysis certain home market sales which, because of their small number and unusual nature, (see Preliminary Determinations Concurrence Memorandum) were determined to be outside the ordinary course of trade.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for discounts, rebates and inland freight. We also deducted credit expenses, direct advertising expenses, and warranty expenses.

Based on our findings at verification, we made several recalculations: (1) We disallowed the blanket order discount claimed by respondent because we determined that Makita bore no cost for this discount (see Comment 5); (2) for those transactions where respondent reported a blanket order discount, we recalculated the cash discount to account for the above change; (3) we disallowed large positive values reported for the quantity discount which we determined to be incorrect; (4) we disallowed the post-sale warehousing expenses (see Comment 5); (5) for all transactions, we recalculated inland freight, indirect selling expenses, credit expense, one type of rebate, and direct and indirect advertising expenses

because we disallowed the blanket order discount; and (6) we treated warranty expense as a direct expense, since it had inadvertently been treated as an indirect in the preliminary determinations.

We deducted from FMV the weighted-average home market indirect selling expenses, including, where appropriate, advertising and inventory carrying costs, up to the amount of indirect selling expenses and commissions incurred on U.S. sales, in accordance with 19 CFR 353.56(b). We also deducted home market packing costs and added U.S. packing costs.

For two models, respondent chose not to request a constructed value (CV) questionnaire where they had no identical or similar home market sales. Normally, we use the highest calculated rate but in this case it was aberrational. Therefore, as best information available (BIA) in accordance with 19 CFR 353.37, we used the average of the positive margins calculated for PECT transactions for these sales. See, *e.g.*, Final Results and Termination in Part of Antidumping Duty Administrative Review: 3.5" Microdisks and Coated Media Thereof from Japan, 56 FR 58040 (November 15, 1991).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Analysis of Comments Received

Comment 1

Petitioner argues that we should disallow the restocking fee respondent charges to its customer because this fee is incurred only after the sale has been cancelled. Petitioner maintains that we should not be examining charges associated with cancelled sales. Additionally, it is irrelevant if these items are repackaged or reconditioned for resale.

Respondent states that restocking fees are directly charged to customers on returned merchandise and are a legitimate addition to USP. Respondent states these fees are for both unused and used items returned, which are reconditioned or repackaged and resold. The reimbursements received by respondent on returned merchandise are a direct consequence of respondent's selling operation.

DOC Position

We disagree with petitioner. Respondent claimed this expense for only one transaction, which was not entirely cancelled because only a portion of the merchandise was returned. The amount claimed was charged to the entire sales transaction, which consisted of non-returned items. Therefore, this fee appeared to be directly related to the sale in question. Although we did not examine this particular fee at verification, we established respondent's methodology for other adjustments and found it to be reasonable.

Comment 2

Petitioner argues that the delivery of tools by a salesman during a sales call is not a freight expense but a selling expense. Petitioner claims that personal delivery of tools by salesmen is a marketing tactic. Petitioner noted that the delivery expenses of Makita's salesmen is much greater than the expense of deliveries incurred through a commercial carrier. Petitioner contends that the Department should disallow this expense entirely because of calculation discrepancies such as double counting of deliveries and overstating of work hours. In addition, petitioner argues that the Department should not consider adding these claimed expenses to indirect selling expenses. Respondent maintains that it correctly reported home market delivery expenses incurred by its personnel as movement expenses. Respondent states that the discrepancies found at verification were minor and the Department verified that salesmen do make deliveries. In addition, respondent noted that you cannot compare the value of deliveries made by salesmen to that of a commercial carrier because the salesmen's expenses are greater in amount and are incurred differently. However, if the Department does not accept the full amount claimed, respondent contends that any amount of this delivery expense not allowed as a movement charge should be added back to indirect selling expenses.

DOC Position

We disagree with both parties. We found that respondent's salesmen do make deliveries and those expenses should be considered as a portion of inland freight expense. However, the respondent's proposed method for calculating this expense contained many discrepancies and failed to accurately measure these expenses as mentioned in the verification report. The amount allowable to a commercial carrier is an independent indicator of what these expenses would be. Therefore, as BIA for the salesmen's portion of inland freight, we used the commercial truck expense claimed by respondent. Regarding Makita's claim that these expenses should be reclassified as indirect selling expenses, it is a moot point because home market indirect selling expenses already exceed, and are capped, by U.S. indirect selling expenses.

Comment 3

Respondent states that the Department should not adjust home market indirect selling expenses to exclude certain taxes because these taxes, although paid during the POI, may be attributable to months outside the POI. In addition, there may be other taxes paid outside the POI that relate to amounts paid during the POI.

DOC Position

We disagree with respondent. We found at verification that taxes for the entire year were paid during the POI, but that respondent claimed the full yearly amount as a POI expense. Therefore, we recalculated this expense, allocating it equally to each month in respondent's fiscal year and from this average monthly figure, we then computed that amount of taxes allocable to the POI.

Comment 4

Petitioner states that the Department should deny respondent's claim for post-sale warehousing expense because if the date of sale is the date of shipment, there can be no post-sale warehousing expenses. Furthermore, petitioner argues that respondent does not actually incur this expense since the merchandise remains at respondent's own factory warehouse.

Respondent contends that such post-sale warehousing expenses are incurred on rare occasions when a customer at the time of delivery requests that Makita hold onto a product because no shelf space is available. Therefore, the Department should allow its claim and accept its calculation.

DOC Position

We disagree with both parties. Even though we did not verify this expense, it is clear from the response that this is not an actual direct selling expense. Respondent stores sold merchandise after the date of sale at the specific request of certain customers at no

charge in its own warehouse. However, we disagree with respondent that commercial rates are a good indication of what its costs were. The amount claimed by respondent was for commercial rental space, which did not represent any cost Makita may have had incurred. Therefore, we disallowed this claimed expense. Unlike with the inland freight expense in Comment 4, we did not verify whether Makita experienced any expense at all.

Comment 5

Petitioner states that the Department should deny respondent's claim for the blanket order discount because respondent could not demonstrate who receives the discount.

Respondent contends that the blanket order discount it granted to indirect dealers should be permitted as an adjustment to FMV, because respondent bears the cost of this discount. Respondent states that it is not important whether the wholesaler or dealer receives this discount, as long as the cost is borne by Makita, as it is.

DOC Position

We agree with petitioner. We examined this expense at verification and found that the effect of the discount is to reduce the amount paid to the wholesaler (the first unrelated customer) by the retailer but not the amount paid to Makita from the wholesaler. Consequently, Makita bears no cost as a result of this discount and this does not qualify as a reduction to FMV.

Comment 6

Petitioner states that respondent did not include amounts for factory overhead and labor when reporting its warranty expenses. In addition, petitioner noted the amount recorded in Makita's financial records was several times greater than the amount reported for warranty expenses in the questionnaire. Therefore, petitioner argues that the Department should use as BIA the total amount for warranty expenses as recorded on Makita's financial statements.

Respondent contends that there is no basis for seeking to include labor and factory overhead in its warranty expenses since it is not a U.S. factory. Furthermore, respondent states that labor and overhead expenses incurred as part of its warranty efforts are captured in its reporting of U.S. indirect selling expenses.

DOC Position

We agree with petitioner. At verification we found that respondent's U.S. factory service centers, which provide warranty work, incur operating charges that should have been included in the calculation of warranty expense. As the amount attributable to the full warranty expense was not provided, we used as BIA the total warranty amount reported in respondent's financial statements. We allocated this total over all products because the amount was not segregatable.

Comment 7

Petitioner states that respondent did not report additional expenses incurred in the United States which involved the handling of product liability claims such as legal and settlement fees. Therefore, as BIA, the Department should use petitioner's product liability expenses.

Respondent states that there is no basis for disregarding its verified data and using instead petitioner's data.

DOC Position

We disagree with petitioner. The Department examined the product liability expense at verification and found no related expenses that should have been added to the product liability adjustment. Therefore, we have accepted respondent's claimed expense.

Comment 8

Petitioner states that the Department should reject respondent's suggestion for making level of trade comparisons. The method used by the Department to establish levels of trade is correct and should be used in the final determinations.

Respondent contends that the Department should make its levels of trade comparison based on the party to whom Makita ships the merchandise rather than the party to whom Makita actually bills the merchandise.

DOC Position

We disagree with respondent. We asked respondent to identify the functions of its various customers and to identify appropriate levels of trade. Respondent failed to do so. At the preliminary determinations, we examined respondent's descriptions of its customers and the prices paid by various customers. We found that there were discernible levels in terms of pricing and we used these levels in the price-to-price comparisons. Respondent has provided no information supporting its claim that the customers to whom it ships constitute a basis for separate levels of trade. Therefore, we have rejected Makita's proposed levels of trade and followed the same methodology as in the preliminary determinations.

Comment 9

Petitioner states that the Department should use the highest margins calculated for two U.S. PECTs for which Makita did not supply CV information. Petitioner argues that these amounts are appropriate to use because respondent was noncooperative in failing to request a CV questionnaire from the Department. In addition, petitioner maintains that the sales of these two models were not insignificant when compared to the total U.S. sales of PECTs reported in the databases.

Respondent argues that the sales of the two U.S. PECTs represent a small portion of its total U.S. sales during the POI. In addition, respondent contends that completion of an entire CV questionnaire for the small value of sales at hand would have been unduly burdensome. Furthermore, respondent argues that the Department has the discretion to disregard these sales because the Department is not required to examine every sales transaction during the POI. Respondent cites the decisions the Department made in Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, From the United Kingdom, 58 FR 3257 (January 8, 1993), Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937 (May 26, 1992), Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper From France, 56 FR 56380 (November 4, 1991), Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia, 57 FR 38465 (1992) in support of its argument. If the Department elects not to omit these models, it should base CV on the same calculation as used in the preliminary determinations, which was the average of the positive margins since the highest margin was aberrational.

DOC Position

We disagree with respondent. Respondent failed to submit CV information for the two models in question. Because Makita failed to submit CV information in the manner requested, we find it necessary to resort to BIA in accordance with § 353.37(a)(1) of the Department's regulations. The cases cited by respondent refer to instances where the Department disregarded sample sales and defective merchandise that were insignificant in quantity. However, in this case, respondent failed to provide the requested information and have not provided sufficient explanation why the Department should disregard these sales. There is no information on the

record indicating that these sales were unusual. Therefore, we resorted to BIA. Since the highest calculated margin was aberrational, we used the average of the positive margins calculated for PECT transactions for these sales, as in the preliminary determinations.

Comment 10

Petitioner states that due to the major discrepancies discovered in reporting U.S. freight expense, the Department should reject Makita's proposed imputed calculation. As BIA, the Department should use the highest actual amount reported for freight expense.

Respondent argues that there is no basis to resort to BIA for calculating U.S. freight expense because the calculation methodology was found to be reasonable at verification.

DOC Position

We disagree with petitioner. At verification, we examined the methodology used by respondent. We compared respondent's allocation with the actual expense incurred on several transactions and found the allocation method reasonably approximated Makita's actual freight expenses. Moreover, we found that it would have been unduly burdensome to report the actual freight expense for each transaction.

Comment 11

Petitioner states that respondent's home market sales quantities and values for PESGTs during the POI failed verification. Petitioner argues that as BIA the amount of the discrepancy should be used to increase the price of all PESGTs.

Respondent contends that according to its database there is no discrepancy in the volume and value verified and the amount reported to the Department.

DOC Position

We agree with respondent. At the time of verification, there was a discrepancy between the volume and value of sales contained in the computer sales tape submitted to the Department and the amount reported in the narrative questionnaire response. We verified the number in the narrative response and found that the discrepancy in question was caused by a problem with the computer tape which has been corrected.

Comment 12

Petitioner argues that the Department should disallow respondent's customer-specific allocation methodology for calculating the sales discount in the home market because Makita, in some cases, reported amounts for this discount when no discount was granted. Petitioner also states that respondent did not isolate the actual sales that received a sales discount.

Respondent argues that the customer-specific allocation methodology used in calculating this expense is reasonable and does not lead to distortions in calculating FMV.

DOC Position

We agree with respondent. We examined the allocation methodology employed by respondent at verification and found that it was reasonable. Although the method occasionally resulted in the discount being allocated to sales where none was actually paid, overall the method did distribute the total amount of this discount over all sales on a customer-specific and uniform basis. Given that we are using weighted average prices, we determine that this method was non-distortive. Moreover, since respondent has numerous home market customers, we find that it would have been unduly burdensome to report an actual sales discount amount for each transaction.

Comment 13

Petitioner contends that the Department should use, as BIA, the highest actual cash discount for all U.S. invoices because of the discrepancies revealed at verification for this expense.

Respondent states that the Department essentially verified the methodology and amount reported for cash discounts as applied to U.S. sales. Respondent contends that the Department has already collected the information to correct the few discrepancies found at verification.

DOC Position

We agree with respondent. The sales examined at verification revealed an error in calculating cash discounts for selected sales at one branch office because an amount for freight allowance was not subtracted from the gross unit price. However, apart from this minor error, respondent's methodology was verified as non-distortive. We have applied the methodology we examined at verification to the sales with errors and recalculated the cash discounts.

Comment 14

Petitioner contends that the Department should not offset positive margins with negative margins because this would be contrary to the Department's long-standing practice of preventing selective dumping.

Respondent argues that the Department should offset positive margins with negative margins in its calculation of any estimated duty rates because assigning a dumping amount of zero to negative margins is unfair.

DOC Position

We agree with petitioner. In accordance with 19 CFR 353.2(f)(2), the Department treats so-called "negative" dumping margins as being equal to zero in calculating a weighted average margin because otherwise exporters would be able to mask their dumped sales with non-dumped sales.

Comment 15

Respondent argues that the Department should not compare U.S. models to "pools" of home market models sharing the seven product characteristics noted in Appendix V of the Department's questionnaire because this methodology does not allow for further distinctions between models within the pool. Respondent states that the Department cannot by law use this procedure for administrative convenience and that comments about this procedure should have been solicited before the Department adopted this policy. In addition, respondent argues that if pooling is used in the home market it should also be used in the U.S. market. Respondent states that the Department should continue to rely on individual model matches with adjustments for physical difmers, and where more than one match is possible, the Department should apply respondent's additional criteria to determine the most similar models.

Petitioner states that the Department's pooling methodology should continue to be followed in these final determinations because it produces a single, virtually identical model comparison 80 percent of the time. In those instances where it does not, a pool of more than one home market model results and is used in the comparison. Petitioner states that this type of matching method is in accordance with the Department's longstanding administrative practice and law. Petitioner cites to the matching methods used in the Final Determination of Sales at Less Than Fair Value: Internal-Combustion Industrial Forklift Trucks from Japan, 53 FR 12552 (April 15, 1988) (Forklift Trucks) and Final Determination of Sales at Less Than Fair Value: Limousines from Canada, 55 FR 11036 (March 26, 1990) (Limousines) in support of its argument.

DOC Position

We disagree with respondent. Respondent argues that we should consider physical characteristics, in addition to those in Appendix V, in selecting similar merchandise and that we should select, what respondent deems, the most similar model for price-to-price comparisons.

First, we have already considered the additional physical characteristics proposed by respondent and have determined that they were not relevant to the selection of similar merchandise. Specifically, these characteristics did not lead to any further meaningful distinction between products (see Appendix V memorandum dated August 10 1992).

Second, in the absence of identical merchandise, the Department bases its selection of similar merchandise on physical characteristics which it selects after considering all comments. It is common to find minor differences between models which are, in essence, comparable. We ignore these minor differences because they do not affect the reasonableness of our price-to-price comparisons.

It is our longstanding practice to ignore minor differences in products in determining whether products are reasonably comparable and use the physical characteristics in appendix V to establish product similarity for purposes of price-to-price comparisons. Appendix V of the Department's questionnaire in this case uses the same matching methodology applied in Forklifts, Limousines, and in the Final Determinations of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, ("AFBs") 54 FR 18992 (May 3, 1989), and Final Determination of Sales at Less Than Fair Value: New Minivans From Japan, 57 FR 21937 (May 26, 1992) to name a few. Additionally, our methodology is discussed in the Final Determinations of Sales at Less Than Fair Value: Sweaters from Korea, 55 FR 32659 (August 10, 1990), and Final Determinations of Sales at Less Than Fair Value: Sweaters from Taiwan, 55 FR 34585 (August 23, 1990). Respondent also argues that the Department should allow it to decide the most similar model. However, this is the responsibility of the Department, not the respondent, to chose the most similar matches. See *Timken Co.* v. *U.S.* 630 F Supp. 1327, 1338–39 (CIT 1986). Using our longstanding methodology, we have made comparisons in accordance with the matching criteria outlined in appendix V and in only twenty percent of the cases was more than one home market model identified as equally similar. Within this grouping, only those models with a difmer of 20 percent or less have been used in the comparison.

Comment 16

Respondent challenged petitioner's standing by claiming that petitioner was not a producer of all specific tools covered in the ITC's like product definition because it imported many of the tools subject to these investigations. In addition, respondent claimed that there is no evidence that the petition is supported by a majority of the U.S. industry, and that petitioner accounts for only a small percentage of shipments of the covered products. Furthermore, respondent contends that it has provided more than sufficient evidence to show that petitioner lacks standing.

Petitioner argues that respondent's challenge to petitioner's standing should be rejected based on the Department's regulations and practice. In addition, petitioner pointed out that respondent's standing questionnaire response did not provide adequate information concerning respondent's share of total U.S. production.

DOC Position

We agree with petitioner. Because Makita Corporation of America (MCA) qualifies as a related party pursuant to section 771(4)(B) of the Act, and is itself a respondent in these investigations, we find that MCA should be excluded from consideration as part of the domestic industry and thus is not in a position to challenge petitioner's standing. Furthermore, petitioner has already demonstrated that it produces products within each of the two like product categories and, thus, has standing to file on behalf of the domestic industry. (See AFBs from Japan, 54 FR 19101 (May 3, 1989), upheld in *Koyo Seiko Co., Ltd.* v. *U.S.* 768 F. Supp. 832 (1991).

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of PECTs and PESGTs from Japan. Section 735(a)(3) of the Act provides that critical circumstances exist if:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is subject of the investigation over a relatively short period.

Pursuant to 19 CFR 353.16(f), we generally consider the following factors in determining whether imports have been massive: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. (See, e.g., *Forklift Trucks*). To determine whether imports have been massive over a short period of time, we normally compare the export volume for the base period, which is a period of not less than three months beginning with the month the petition was filed (provided that the petition was filed before the mid-way point in the month), with an immediately previous period of comparable duration (see 19 CFR 353.16(g)). We used export sales data provided by Makita, which we verified. We looked at Makita's company-specific shipment data and compared the six month period after the filing of the petition (the comparison period), June through November 1992 to a prior six month period which included the month the petition was filed, December through May 1992.

Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive." Based on this analysis, we find that imports of the subject merchandise during the period subsequent to the receipt of the petition have not been massive.

Since we do not find that there have been massive imports, pursuant to section 735(a)(3)(B) of the Act, we need not consider whether there is a history of dumping or whether the importers of this product knew or should have known that it is being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of PECTs and PESGTs from Japan.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of PECTs and PESGTs from Japan, as defined in the "Scope of Investigations" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after January 4, 1993, which is the date of publication of our preliminary determination in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal

to the estimated amount, with respect to the two classes or kinds of merchandise, by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage	
	PECTs	PESGTs
Makita Corporation, Makita USA, Inc., and Makita Corporation of America	54.43	46.75
All others	54.43	46.75

International Trade Commission (ITC) Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on PECTs and PESGTs from Japan entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)), and 19 CFR 353.20(a)(4).

Dated: May 19, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-12472 Filed 5-25-93; 8:45 am]

BILLING CODE 3510-DS-P

APPENDIX B

LIST OF WITNESSES

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

Subject	:	PROFESSIONAL ELECTRIC CUTTING AND SANDING/GRINDING TOOLS FROM JAPAN
Inv. No.	:	731-TA-571 (Final)
Date and Time	:	May 21, 1993 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E St., S.W., Washington, D.C.

OPENING REMARKS:

Petitioner

Respondents

In support of Imposition of Antidumping Duties:

PANEL 1

Stroock & Stroock & Lavan
Washington, D.C.
On behalf of

Black & Decker (U.S.) Inc.

Gary T. DiCamillo, Group Vice President,
President-North American Power Tools,
Black & Decker

Ronald S. Taylor, Vice President,
Product Development-New Business,
U.S. Power Tool Group,
Black & Decker

Natalie Shields, Tax and Trade Counsel,
Black & Decker

In support of Imposition of
Antidumping Duties:

John Reilly, Partner
Nathan Associates

Harley Mooney, Purchasing Manager,
Truitt & White Lumber Co.

Randy Meyer, General Manager,
Homco Building Materials

Philip W. Welch, Jr., CEO/Owner,
Kel-Welco Distributing

Black & Decker Officials Available for Questions:

Charles E. Fenton, Vice President and General Counsel
Harry Pogash, Vice President of Tax & Trade
Bruce M. Cazenave, Vice President, Marketing and Sales Service
Michael Golden, Vice President, Sales

James Taylor, Jr.)
Alexei J. Cowett)--OF COUNSEL
Will E. Leonard)

In Opposition to the Imposition of
Antidumping Duties:

PANEL 2

Verner, Liipfert, Bernhard, McPherson and Hand
Washington, D.C.
On behalf of

Makita Corporation

Makita Corporation of America

Noris Hattori, President
Makita U.S.A., Inc.

Patrick Griffin, Senior Vice President
Makita U.S.A., Inc.

In Opposition to the Imposition of Antidumping Duties:

Roy Thompson, Product Manager
Makita U.S.A., Inc.

Timothy Donovan, Vice President
Makita Corporation of America

Gregg Kunde, Manager
Pacific West Construction

Jeff Royall, Vice President
Royall-Matthiessen

Vince Toumey, President
AAA Wholesale Tool

Rick Marchesano (Individual)
Cheverly, Maryland

Bruce Malashevich, President
Economic Consulting Services, Inc.

Maarten Van de Geijn, Economist
Economic Consulting Services, Inc.

William A. Zeitler)
)--OF COUNSEL
Kathleen H. Hatfield)

PANEL 3

McDermott, Will & Emery
Washington, D.C.
On behalf of

Hitachi Koki Co., Ltd.

Hitachi Power Tools U.S.A., Ltd.

Carl W. Schwarz)
David J. Levine)--OF COUNSEL
David R. Chapman)--Trade Specialist

APPENDIX C

SUMMARY TABLES

Table C-1
PEC tools: Summary data concerning the U.S. market, 1990-92

* * * * * * *

Table C-2
PEC tools: Summary data excluding Makita, 1990-92

(Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted)

Item	Reported data			Period changes		
	1990	1991	1992	1990-92	1990-91	1991-92
U.S. consumption quantity:						
Amount	***	***	***	***	***	***
Producers' share: 1/						
Makita	***	***	***	***	***	***
All other firms	***	***	***	***	***	***
Total	***	***	***	***	***	***
Importers' share: 1/						
Japan	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total	***	***	***	***	***	***
U.S. consumption value:						
Amount	***	***	***	***	***	***
Producers' share: 1/						
Makita	***	***	***	***	***	***
All other firms	***	***	***	***	***	***
Total	***	***	***	***	***	***
Importers' share: 1/						
Japan	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total	***	***	***	***	***	***
U.S. importers' imports from--						
Japan:						
U.S. shipments quantity	***	***	***	***	***	***
U.S. shipments value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory qty	***	***	***	***	***	***
Other sources:						
U.S. shipments quantity	***	***	***	***	***	***
U.S. shipments value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory qty	***	***	***	***	***	***
All sources:						
U.S. shipments quantity	1,218	1,196	1,418	+16.4	-1.9	+18.6
U.S. shipments value	164,387	161,178	197,058	+19.9	-2.0	+22.3
Unit value	$134.93	$134.81	$138.94	+3.0	-0.1	+3.1
U.S. producers'-- 2/						
Average capacity quantity	3,115	3,122	3,309	+6.2	+0.2	+6.0
Production quantity	1,635	1,564	1,826	+11.7	-4.3	+16.7
Capacity utilization 1/	52.5	50.1	55.2	+2.7	-2.4	+5.1
U.S. shipments:						
Quantity	1,462	1,334	1,580	+8.1	-8.7	+18.4
Value	173,117	158,755	201,738	+16.5	-8.3	+27.1
Unit value	$118.39	$118.96	$127.65	+7.8	+0.5	+7.3

See footnotes at end of table.

Table C-2--Continued
PEC tools: Summary data excluding Makita, 1990-92

(Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted)

Item	Reported data			Period changes		
	1990	1991	1992	1990-92	1990-91	1991-92
U.S. producers'--Continued 2/						
Export shipments:						
Quantity	187	250	255	+36.3	+34.0	+1.7
Exports/shipments 1/	11.3	15.8	13.9	+2.5	+4.5	-1.9
Value	16,069	21,378	23,699	+47.5	+33.0	+10.9
Unit value	$85.98	$85.38	$93.06	+8.2	-0.7	+9.0
Ending inventory quantity	237	216	208	-12.4	-8.7	-4.1
Inventory/shipments 1/	14.4	13.7	11.3	-3.1	-0.7	-2.3
Production workers	1,096	1,046	1,106	+0.9	-4.6	+5.7
Hours worked (1,000s)	2,410	2,155	2,451	+1.7	-10.6	+13.7
Total comp. ($1,000)	31,427	29,420	34,798	+10.7	-6.4	+18.3
Hourly total compensation	$13.04	$13.65	$14.20	+8.9	+4.7	+4.0
Productivity (units/hour)	0.7	0.7	0.7	+9.8	+7.0	+2.6
Unit labor costs	$19.22	$18.81	$19.06	-0.9	-2.2	+1.3
Net sales--						
Quantity	***	***	***	***	***	***
Value	180,029	167,932	213,920	+18.8	-6.7	+27.4
Cost of goods sold (COGS)	133,038	126,819	160,579	+20.7	-4.7	+26.6
Gross profit (loss)	46,991	41,113	53,341	+13.5	-12.5	+29.7
SG&A expenses	40,762	39,551	49,020	+20.3	-3.0	+23.9
Operating income (loss)	6,229	1,562	4,321	-30.6	-74.9	+176.6
Capital expenditures	***	***	8,197	***	***	***
Unit COGS	$84.92	$87.72	$93.58	+10.2	+3.3	+6.7
COGS/sales 1/	73.9	75.5	75.1	+1.2	+1.6	-0.5
Op.income (loss)/sales 1/	3.5	0.9	2.0	-1.4	-2.5	+1.1

1/ 'Reported data' are in percent and 'period changes' are in percentage-point.
2/ Data presented are for U.S. producers excluding Makita.

Note.--Period changes are derived from the unrounded data. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

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

Table C-3
PEC tools: Summary data excluding Makita and Ryobi, 1990-92

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Table C-4
PES tools: Summary data concerning the U.S. market, 1990-92

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Table C-5
PES tools: Summary data excluding Makita, 1990-92

(Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted)

Item	Reported data			Period changes		
	1990	1991	1992	1990-92	1990-91	1991-92
U.S. consumption quantity:						
Amount	***	***	***	***	***	***
Producers' share: 1/						
Makita	***	***	***	***	***	***
All other firms	***	***	***	***	***	***
Total	***	***	***	***	***	***
Importers' share: 1/						
Japan	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total	***	***	***	***	***	***
U.S. consumption value:						
Amount	***	***	***	***	***	***
Producers' share: 1/						
Makita	***	***	***	***	***	***
All other firms	***	***	***	***	***	***
Total	***	***	***	***	***	***
Importers' share: 1/						
Japan	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total	***	***	***	***	***	***
U.S. importers' imports from--						
Japan:						
U.S. shipments quantity	***	***	***	***	***	***
U.S. shipments value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory qty	***	***	***	***	***	***
Other sources:						
U.S. shipments quantity	***	***	***	***	***	***
U.S. shipments value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory qty	***	***	***	***	***	***
All sources:						
U.S. shipments quantity	666	615	614	-7.9	-7.8	-0.2
U.S. shipments value	54,722	54,969	55,351	+1.1	+0.5	+0.7
Unit value	$82.13	$89.45	$90.21	+9.8	+8.9	+0.9
U.S. producers'-- 2/						
Average capacity quantity	1,982	1,847	2,131	+7.5	-6.8	+15.4
Production quantity	1,000	1,012	1,233	+23.2	+1.2	+21.8
Capacity utilization 1/	50.5	54.8	57.8	+7.4	+4.4	+3.0
U.S. shipments:						
Quantity	863	843	1,123	+30.1	-2.3	+33.2
Value	70,949	66,174	79,351	+11.8	-6.7	+19.9
Unit value	$82.19	$78.48	$70.68	-14.0	-4.5	-9.9

See footnotes at end of table.

Table C-5--Continued
PES tools: Summary data excluding Makita, 1990-92

(Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted)

Item	Reported data			Period changes		
	1990	1991	1992	1990-92	1990-91	1991-92
U.S. producers'--Continued 2/						
Export shipments:						
Quantity	85	158	153	+80.2	+86.1	-3.2
Exports/shipments 1/	9.0	15.8	12.0	+3.0	+6.8	-3.8
Value	4,787	8,153	7,939	+65.8	+70.3	-2.6
Unit value	$56.28	$51.51	$51.80	-8.0	-8.5	+0.6
Ending inventory quantity	175	186	143	-18.3	+6.3	-23.1
Inventory/shipments 1/	18.5	18.6	11.2	-7.3	+0.1	-7.4
Production workers	382	393	408	+6.8	+2.9	+3.8
Hours worked (1,000s)	822	769	880	+7.1	-6.4	+14.4
Total comp. ($1,000)	11,220	10,985	12,441	+10.9	-2.1	+13.3
Hourly total compensation	$13.65	$14.28	$14.14	+3.6	+4.7	-1.0
Productivity (units/hour)	1.2	1.3	1.4	+15.1	+8.2	+6.4
Unit labor costs	$11.22	$10.85	$10.09	-10.0	-3.3	-7.0
Net sales--						
Quantity	***	***	***	***	***	***
Value	73,508	69,492	83,050	+13.0	-5.5	+19.5
Cost of goods sold (COGS)	51,879	48,920	56,350	+8.6	-5.7	+15.2
Gross profit (loss)	21,629	20,572	26,700	+23.4	-4.9	+29.8
SG&A expenses	***	17,621	19,446	***	***	***
Operating income (loss)	***	2,951	7,254	***	***	***
Capital expenditures	2,522	2,745	2,550	+1.1	+8.8	-7.1
Unit COGS	$57.53	$54.82	$47.64	-17.2	-4.7	-13.1
COGS/sales 1/	70.6	70.4	67.9	-2.7	-0.2	-2.5
Op.income (loss)/sales 1/	***	4.2	8.7	***	***	***

1/ 'Reported data' are in percent and 'period changes' are in percentage-point.
2/ Data presented are for U.S. producers excluding Makita.

Note.--Period changes are derived from the unrounded data. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

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

Table C-6
PES tools: Summary data excluding Makita and Ryobi, 1990-92

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Table C-7
PEC/CEC tools: Summary data concerning the U.S. market, 1990-92

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Table C-8
PEC/CEC tools: Summary data excluding Makita, 1990-92

(Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted)

Item	Reported data			Period changes		
	1990	1991	1992	1990-92	1990-91	1991-92
U.S. consumption quantity:						
Amount	***	***	***	***	***	***
Producers' share: 1/						
Makita	***	***	***	***	***	***
All other firms	***	***	***	***	***	***
Total	***	***	***	***	***	***
Importers' share: 1/						
Japan	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total	***	***	***	***	***	***
U.S. consumption value:						
Amount	***	***	***	***	***	***
Producers' share: 1/						
Makita	***	***	***	***	***	***
All other firms	***	***	***	***	***	***
Total	***	***	***	***	***	***
Importers' share: 1/						
Japan	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total	***	***	***	***	***	***
U.S. importers' imports from--						
Japan:						
U.S. shipments quantity	***	***	***	***	***	***
U.S. shipments value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory qty	***	***	***	***	***	***
Other sources:						
U.S. shipments quantity	***	***	***	***	***	***
U.S. shipments value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory qty	***	***	***	***	***	***
All sources:						
U.S. shipments quantity	1,524	1,511	1,810	+18.8	-0.9	+19.8
U.S. shipments value	178,804	176,185	215,655	+20.6	-1.5	+22.4
Unit value	$117.32	$116.60	$119.13	+1.5	-0.6	+2.2
U.S. producers'-- 2/						
Average capacity quantity	9,398	9,420	9,612	+2.3	+0.2	+2.0
Production quantity	5,746	6,159	6,315	+9.9	+7.2	+2.5
Capacity utilization 1/	61.1	65.4	65.7	+4.6	+4.2	+0.3
U.S. shipments:						
Quantity	5,051	5,065	5,348	+5.9	+0.3	+5.6
Value	312,151	302,593	354,334	+13.5	-3.1	+17.1
Unit value	$61.79	$59.74	$66.25	+7.2	-3.3	+10.9

See footnotes at end of table.

Table C-8--Continued
PEC/CEC tools: Summary data excluding Makita, 1990-92

(Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted)

Item	Reported data			Period changes		
	1990	1991	1992	1990-92	1990-91	1991-92
U.S. producers'--Continued 2/						
Export shipments:						
Quantity	810	1,030	907	+12.1	+27.2	-11.9
Exports/shipments 1/	13.8	16.9	14.5	+0.7	+3.1	-2.4
Value	37,642	49,201	47,311	+25.7	+30.7	-3.8
Unit value	$46.50	$47.77	$52.15	+12.2	+2.7	+9.2
Ending inventory quantity	599	656	716	+19.6	+9.5	+9.2
Inventory/shipments 1/	10.2	10.8	11.4	+1.2	+0.5	+0.7
Production workers	2,202	2,146	2,223	+1.0	-2.5	+3.6
Hours worked (1,000s)	4,680	4,395	4,659	-0.4	-6.1	+6.0
Total comp. ($1,000)	54,701	53,480	59,434	+8.7	-2.2	+11.1
Hourly total compensation	$11.69	$12.17	$12.76	+9.1	+4.1	+4.8
Productivity (units/hour)	1.2	1.4	1.4	+10.4	+14.1	-3.3
Unit labor costs	$9.52	$8.68	$9.41	-1.1	-8.8	+8.4
Net sales--						
Quantity	5,555	5,682	5,876	+5.8	+2.3	+3.4
Value	335,234	333,022	382,122	+14.0	-0.7	+14.7
Cost of goods sold (COGS)	250,765	252,689	290,286	+15.8	+0.8	+14.9
Gross profit (loss)	84,469	80,333	91,836	+8.7	-4.9	+14.3
SG&A expenses	68,876	68,070	78,444	+13.9	-1.2	+15.2
Operating income (loss)	15,593	12,263	13,392	-14.1	-21.4	+9.2
Capital expenditures	14,150	11,343	13,299	-6.0	-19.8	+17.2
Unit COGS	$45.15	$44.47	$49.40	+9.4	-1.5	+11.1
COGS/sales 2/	74.8	75.9	76.0	+1.2	+1.1	+0.1
Op.income (loss)/sales 1/	4.7	3.7	3.5	-1.1	-1.0	-0.2

1/ 'Reported data' are in percent and 'period changes' are in percentage-point.
2/ Data presented are for U.S. producers excluding Makita.

Note.--Period changes are derived from the unrounded data. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

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

Table C-9
PEC/CEC tools: Summary data excluding Makita and Ryobi, 1990-92

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Table C-10
PES/CES tools: Summary data concerning the U.S. market, 1990-92

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Table C-11
PES/CES tools: Summary data excluding Makita, 1990-92

(Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted)

Item	Reported data			Period changes		
	1990	1991	1992	1990-92	1990-91	1991-92
U.S. consumption quantity:						
Amount	***	***	***	***	***	***
Producers' share: 1/						
Makita	***	***	***	***	***	***
All other firms	***	***	***	***	***	***
Total	***	***	***	***	***	***
Importers' share: 1/						
Japan	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total	***	***	***	***	***	***
U.S. consumption value:						
Amount	***	***	***	***	***	***
Producers' share: 1/						
Makita	***	***	***	***	***	***
All other firms	***	***	***	***	***	***
Total	***	***	***	***	***	***
Importers' share: 1/						
Japan	***	***	***	***	***	***
Other sources	***	***	***	***	***	***
Total	***	***	***	***	***	***
U.S. importers' imports from--						
Japan:						
U.S. shipments quantity	***	***	***	***	***	***
U.S. shipments value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory qty	***	***	***	***	***	***
Other sources:						
U.S. shipments quantity	***	***	***	***	***	***
U.S. shipments value	***	***	***	***	***	***
Unit value	$***	$***	$***	***	***	***
Ending inventory qty	***	***	***	***	***	***
All sources:						
U.S. shipments quantity	969	934	933	-3.8	-3.6	-0.2
U.S. shipments value	68,069	69,928	70,841	+4.1	+2.7	+1.3
Unit value	$70.21	$74.84	$75.95	+8.2	+6.6	+1.5
U.S. producers'-- 3/						
Average capacity quantity	6,507	6,406	6,692	+2.8	-1.6	+4.5
Production quantity	3,712	3,970	4,654	+25.4	+6.9	+17.3
Capacity utilization 1/	57.0	62.0	69.5	+12.5	+4.9	+7.6
U.S. shipments:						
Quantity	3,371	3,366	4,323	+28.2	-0.1	+28.4
Value	154,818	151,149	191,094	+23.4	-2.4	+26.4
Unit value	$45.93	$44.90	$44.21	-3.8	-2.2	-1.5

See footnotes at end of table.

Table C-11--Continued
PES/CES tools: Summary data excluding Makita, 1990-92

(Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted)

Item	Reported data			Period changes		
	1990	1991	1992	1990-92	1990-91	1991-92
U.S. producers'--Continued 3/						
Export shipments:						
Quantity	310	475	437	+40.9	+53.3	-8.1
Exports/shipments 1/	8.4	12.4	9.2	+0.8	+3.9	-3.2
Value	11,204	17,900	16,870	+50.6	+59.8	-5.8
Unit value	$36.14	$37.66	$38.63	+6.9	+4.2	+2.6
Ending inventory quantity	419	542	436	+3.9	+29.3	-19.6
Inventory/shipments 1/	11.4	14.1	9.2	-2.2	+2.7	-5.0
Production workers	930	986	980	+5.4	+6.0	-0.6
Hours worked (1,000s)	1,893	1,900	1,976	+4.4	+0.4	+4.0
Total comp. ($1,000)	22,201	23,135	23,937	+7.8	+4.2	+3.5
Hourly total compensation	$11.73	$12.18	$12.11	+3.3	+3.8	-0.5
Productivity (units/hour)	2.0	2.1	2.4	+20.1	+6.5	+12.7
Unit labor costs	$5.98	$5.83	$5.14	-14.0	-2.6	-11.8
Net sales--						
Quantity	3,508	3,556	4,515	+28.7	+1.4	+27.0
Value	160,800	160,989	200,203	+24.5	+0.1	+24.4
Cost of goods sold (COGS)	111,052	108,697	129,499	+16.6	-2.1	+19.1
Gross profit (loss)	49,748	52,292	70,704	+42.1	+5.1	+35.2
SG&A expenses	32,961	34,369	42,461	+28.8	+4.3	+23.5
Operating income (loss)	16,787	17,923	28,243	+68.2	+6.8	+57.6
Capital expenditures	3,963	4,366	4,378	+10.5	+10.2	+0.3
Unit COGS	$31.66	$30.56	$28.68	-9.4	-3.4	-6.2
COGS/sales 1/	69.1	67.5	64.7	-4.4	-1.5	-2.8
Op.income (loss)/sales 1/	10.4	11.1	14.1	+3.7	+0.7	+3.0

1/ 'Reported data' are in percent and 'period changes' are in percentage-point.
2/ A decrease of less than 0.05 percentage points.
3/ Data presented are for U.S. producers excluding Makita.

Note.--Period changes are derived from the unrounded data. Because of rounding, figures may not add to the totals shown. Unit values and other ratios are calculated from the unrounded figures, using data of firms supplying both numerator and denominator information.

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

Table C-12
PES/CES tools: Summary data excluding Makita and Ryobi, 1990-92

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APPENDIX D

DOMESTIC VALUE ADDED, FISCAL YEAR 1992

DOMESTIC VALUE ADDED
FISCAL YEAR 1992

Company--Black & Decker

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Company--Keystone

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Company--Milwaukee

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Company--Porter Cable

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Company--Robert Bosch

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Company--Skil

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Company--Makita

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Company--Ryobi

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APPENDIX E

EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND ABILITY TO RAISE CAPITAL

The Commission requested U.S. producers to describe any actual or anticipated negative effects of imports of PEC and/or PES tools from Japan on their growth, investment, ability to raise capital, or existing development and production efforts, including efforts to develop a derivative or more advanced version of the product. The Commission also asked U.S. producers to report the influence of such imports on their scale of capital investments undertaken. The responses are as follows:

Actual Negative Effects

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Anticipated Negative Effects

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Influence of Imports on Capital Investment

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