

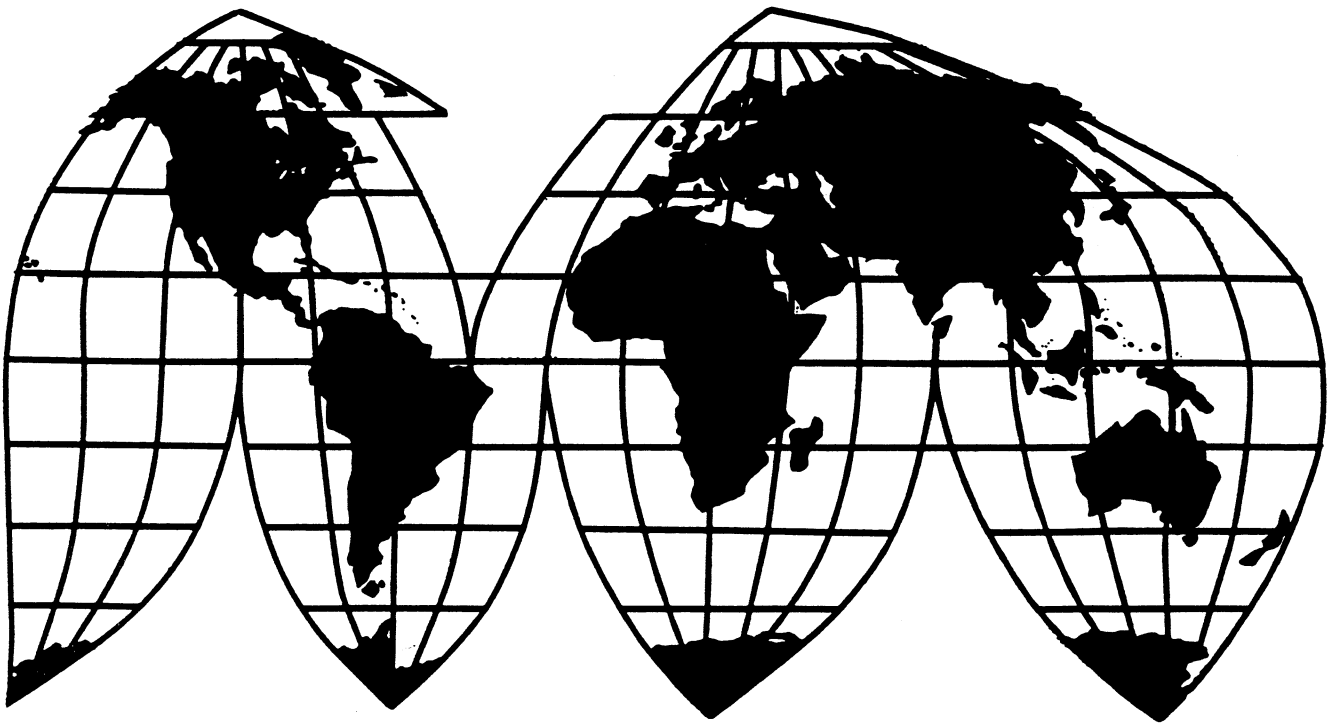
Portable Electric Typewriters From Singapore

Investigation No. 731-TA-515 (Final)

Publication 2681

September 1993

U.S. International Trade Commission



Washington, DC 20436

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-515 (Final)

PORTABLE ELECTRIC TYPEWRITERS FROM SINGAPORE

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Singapore of portable electric typewriters, provided for in subheadings 8469.10.00 and 8469.21.00 of the Harmonized Tariff Schedule of the United States,³ that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 8, 1993, following a preliminary determination by the Department of Commerce that imports of portable electric typewriters from Singapore 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,

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

² Chairman Newquist and Vice-Chairman Watson dissenting.

³ For purposes of this investigation, portable electric typewriters are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria. They must (1) be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate their portability; (2) be electric, regardless of source of power; (3) be comprised of a single, integrated unit (e.g., not in two or more pieces); (4) have a keyboard embedded in the chassis or frame of the machine; (5) have a built-in printer; (6) have a platen (roller) to accommodate paper; and (7) only accommodate their own dedicated or captive software, if any.

Washington, DC, and by publishing the notice in the Federal Register of March 25, 1993 (58 F.R. 16205). The hearing was held in Washington, DC, on June 25, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF COMMISSIONERS DAVID B. ROHR AND JANET A. NUZUM

On the basis of the record developed in this final investigation, we find that the industry in the United States producing portable electric typewriters ("PETs") is materially injured by reason of imports of PETs from Singapore that have been found by the U.S. Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").

I. LIKE PRODUCT

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, we first define the "like product" and the domestic "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant domestic industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."¹ In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."²

¹ 19 U.S.C. § 1677(4)(A).

² 19 U.S.C. §1677(10). Our determination of what is the appropriate like product or products in an investigation is a factual determination, to which it applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. *Asociacion Colombiana de Exportadores de Flores v. United States*, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (Asocolflores). In defining the like product, we generally consider 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 when appropriate, (6) price. See, e.g., Asocolflores at 1170 n.8; Calabrian Corp. v. United States Int'l Trade Comm'n,

Commerce defined the class or kind of imported merchandise subject to this investigation as:

certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria:

- (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;
- (2) Electric, regardless of source of power;
- (3) Comprised of a single, integrated unit;
- (4) Having a keyboard embedded in the chassis or frame of the machine;
- (5) Having a built-in printer;
- (6) Having a platen to accommodate paper; and
- (7) Only accommodating its own dedicated or captive software, if any.³

Portable electric typewriters include typewriters with text memory (automatics, or "PATs").⁴ Parts and subassemblies are not included in the

794 F. Supp. 377, 382 n.4 (Ct. Int'l Trade 1992). No single factor is dispositive, and we may consider other factors we deem relevant based upon the facts of a particular investigation. We look for clear dividing lines among possible like products and disregards minor variations. See, e.g., 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); S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

³ Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters from Singapore, 58 Fed. Reg. 43,334 (Aug. 16, 1993).

⁴ Report at I-8. Low-end, basic PETs include one-line memory correction, but have no spell-check, additional memory or display. Further up the scale are dictionary PETs, which include a spell-check function. In addition to the features of the basic and dictionary PETs, PATs have extra memory and a display. PATs are closer to portable electric word processors ("PEWPs") than are other PETs, but PATs have no external storage capability, as do PEWPs. See Report at I-43-44.

PETs which meet all of the following criteria, i.e. PEWPs, are excluded from the scope of the investigation: (1) seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is within the scope of the investigation. 58 Fed. Reg. 43,334.

Personal word processors ("PWP") have a display of 8 to 24 lines and standard external storage permitting storage of 32k to 240k per disk. Typewriters are distinguishable from PWPs as having a maximum two-line display

scope of this investigation.

In its preliminary determination, the Commission found one like product, including PETs and portable electric word processors ("PEWPs").⁵ In this final investigation, petitioner argues that the like product should include only PETs because there is a clear dividing line between PETs and PEWPs.⁶ Respondent, Smith Corona Corporation, believes that PETs and PEWPs comprise one like product -- that there is a continuum of products.⁷

We find in this final investigation that the evidence supports the finding of a sufficiently bright line between PETs on the one hand and PEWPs on the other to determine that PEWPs are not part of the same like product as PETs. The general purpose of the products, i.e. the production of printed text, is similar. However, the essential characteristics of PEWPs, their unlimited storage capacity and sophisticated word processing packages, are not found in PETs.⁸ While they can be used for the same purposes, PETs are no longer generally used for the type of long document processing for which PEWPs are designed. The evidence suggests that PEWPs and PETs are interchangeable to only a limited degree due to the differing consumer perceptions of the

and not having external storage capabilities. PWPs also have more advanced software than typewriters. Certain Personal Word Processors from Japan, Inv. No. 731-TA-483 (Final), USITC Pub. 2411, at 8 (Aug. 1991).

⁵ USITC Pub. 2388, at 6 (June 1991).

⁶ Pre-Hearing Brief on Behalf of Petitioner, Brother Industries (USA) Inc. at 3, 8 (June 18, 1993); Post-Hearing Brief on Behalf of Petitioner, Brother Industries (USA), Inc. at 8 (July 6, 1993); Tr. at 11-12, 50.

⁷ Prehearing Brief of Smith Corona Corporation at 24 (June 18, 1993); Post-hearing brief of Smith Corona Corporation at 2 (July 6, 1993); Response of Smith Corona Corporation to Questions of the Commission and Staff at 1 (July 6, 1993); Tr. at 138, 158.

⁸ Report at I-10-11.

products,⁹ and that the end uses and general functions of the products are at least somewhat different. Prices for PEWPs are generally substantially higher.¹⁰

On the other hand, the manufacturing facilities and employees are the same for both PETs and PEWPs. So, too, are the channels of distribution. On balance, however, we believe that there are sufficiently clear dividing lines, based on prices, interchangeability, customer perceptions and end uses, to warrant limiting the like product to PETs only.

II. DOMESTIC INDUSTRY AND RELATED PARTIES

The petitioner in this investigation, BIUSA, is a wholly-owned subsidiary of Brother Industries, Ltd. of Nagoya, Japan. It is a significant U.S. producer of PETs.¹¹ From 1991, when the preliminary investigation began, to the present time, its domestic production has increased significantly.¹² However, some of the production activities related to the articles that it manufactures in its U.S. facilities occur in Japan. The issue posed by these circumstances is whether the U.S. production activities of BIUSA are sufficient for BIUSA to be considered a "domestic producer."

In the preliminary investigation, the Commission determined that BIUSA engaged in sufficient production-related activity in the United States to be

⁹ Report at I-13-14.

¹⁰ Report at I-13-14.

¹¹ Report at I-17-18.

¹² Report at I-17-18.

considered a domestic producer.¹³ Having reexamined this conclusion in this final investigation, we again conclude that BIUSA is a domestic producer within the meaning of the statute.

Section 771(4)(A) of the Act defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."¹⁴ The statute requires the Commission to consider only United States production of the like product.¹⁵

We find that BIUSA should be considered a domestic producer. BIUSA has made a substantial investment in both capital and labor in its domestic production facilities, and it is increasing its investment by expanding those

¹³ USITC Pub. 2388, at 11. The Commission based its finding on the nature and extent of the actual production-related activities performed in the United States, the number of employees engaged in these activities, the extent to which petitioner sources parts and subassemblies domestically, and the domestic value added by petitioner's domestic operations. However, the Commission emphasized that it reached this conclusion only with respect to the preliminary investigation and that it would consider the issue further in the final investigation.

¹⁴ 19 U.S.C. § 1677(4)(A).

¹⁵ See 19 U.S.C. §§ 1677(4)(D); 1677(7)(B)(III) (the Commission is to consider the impact of the imports "only in the context of production operations within the United States"). See also General Motors Corp. v. United States, Slip op. 93-128 (Ct. Int'l Trade July 12, 1993). To assist it in making a determination as to which firms comprise the domestic industry, the Commission has considered six factors. They include: (1) the extent and source of a firm's capital investment; (2) the technical expertise involved in domestic production activity; (3) employment levels; (4) the value added to the product in the United States; (5) the quantities and types of parts sourced in the United States; and (6) any other costs and activities in the United States leading to production for the like product, including where production decisions are made. See, e.g., Sulfur Dyes from China and the United Kingdom, Invs. Nos. 731-TA-548 & 551 (Final), USITC Pub. 2602, at 10 (Feb. 1993).

The Court of International Trade considered the six factors delineated above in the context of deciding that BIUSA had standing to file its petition. See Brother Industries (USA), Inc. v. United States, 801 F. Supp. 751, 758-59 (Ct. Int'l Trade 1992).

facilities. Although the main logic boards of petitioner's PETs are assembled from imported parts, the plastic housing, covers and other parts are produced domestically. While petitioner already employs a substantial number of employees who perform more than assembly operations, it is also enlarging its research and development staff and increasing the number of its engineers. The value added to its product in the United States is likewise significant.¹⁶ BIUSA is thus properly considered a domestic producer.

A question has also arisen in this investigation as to whether Smith Corona should be excluded from the domestic industry as a related party. Section 774(4)(B) of the Act provides that producers who are related to exporters or importers, or who are themselves importers of allegedly dumped or subsidized merchandise, may be excluded from the domestic industry in appropriate circumstances.¹⁷

¹⁶ At the time the petition was submitted in 1991, petitioner had invested \$13 million in its domestic plant and employed 450 people. It had three product assembly lines (two devoted to PETs and one devoted to PWP's), as well as one printed circuit board assembly line. Petitioner had begun to produce its own liquid crystal display circuits. The plastic housing was then sourced in the United States, as were ribbons, correction tapes, cartons, and packing materials. Brother Industries (USA), Inc. v. United States, 801 F. Supp. at 755. Petitioner now employs more people at its plant, has expanded its production operations and has increased its research and development expenditures. Report at I-18.

¹⁷ 19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined 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 competitive position of the related domestic producer vis-a-vis other domestic producers.

Application of the related parties provision is within the Commission's discretion based upon the facts presented in each case. The principal purpose of the related parties provision is to avoid distortions in the data that might mask the injury being experienced by the domestic industry. This might occur, for example, if the aggregate data is inflated by the better-than-normal results of related parties, whose operations are shielded from the effects of the subject imports.¹⁸

Smith Corona Corporation was a major producer of PETs in the United States prior to 1990. It has not produced any basic PETs (i.e., those without text memory) at its central domestic production facility since 1990, having shifted all such production to its affiliated company, Smith Corona Singapore, by the end of 1989.¹⁹ Smith Corona is now a major importer of the subject product.²⁰ As it increased its import sourcing, Smith Corona correspondingly reduced its domestic production activities. By the end of the period examined, Smith Corona was more accurately identified as an importer, rather than as a domestic producer, of PETs.

As a domestic producer who is both an importer and the corporate parent of a Singaporean manufacturer of dumped PETs, there is no question that Smith Corona meets the legal definition of a "related party." However, the issue remains whether appropriate circumstances exist to exclude it from the

The 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.

¹⁸ Heavy Forged Handtools from the People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357, at 18 (Feb. 1991).

¹⁹ Report at I-18-19.

²⁰ Report at I-20.

domestic industry.

While there are valid arguments for excluding Smith Corona, we believe there is a stronger case for leaving this producer in the domestic industry. Smith Corona has made no issue out of the fact that it transferred its manufacturing activities related to PETs away from the United States during the period reflected in the Commission's data. It has admitted that it will not manufacture any significant quantity of PETs in the United States in the near future. However, the data which the Commission has collected show that throughout the period of investigation Smith Corona accounted for a substantial percentage of total domestic production, particularly in the early years of the period of investigation. Its books are kept separately from those of its subsidiary, and reflect its declining U.S. production in a manner that does not include its Singaporean operations. Inclusion of Smith Corona does not therefore mask any injury being experienced by the domestic industry. To the contrary, under the unique circumstances of this investigation, exclusion of Smith Corona would result in the distortion of the data by failing to account for the move of its PET production activities to Singapore. We therefore decline to exclude Smith Corona from the domestic industry.

III. CONDITIONS OF COMPETITION

The makeup of the domestic PETs industry has changed dramatically during the period 1988-92: the largest producer at the beginning of the period -- Smith Corona -- shifted the bulk of its production off-shore. During the period, BIUSA expanded operations to become the largest U.S. producer, and two small firms entered the industry. Our determination with regard to material injury is based on the condition of the industry as a whole. We recognize,

however, that the changing nature of operations at the two largest firms has a substantial effect on aggregate industry data. Specifically, declines observed for 1988-90 were due in large part to the relocation off-shore of Smith Corona's production facilities, and increases in 1990-92 reflect the final stages of start-up operations at the BIUSA facility.

The Commission collected data, except for pricing data, for the 5-year period 1988-92. The period covers both the decline of Smith Corona's domestic production and the growth of BIUSA's domestic production. This restructuring of the industry is important to our evaluation of the changing nature of competition in this market.

We have considered the evidence of record for the full 5-year period, but are mindful that our determination is made with regard to present material injury. While we find that the full five years of data provides us with a broader perspective to understand what is currently affecting the industry, we rely more heavily on the more recent data in making our determination.

IV. CONDITION OF THE DOMESTIC INDUSTRY

U.S. capacity to produce PETs declined by one-third from 1988 to 1990 as Smith Corona contracted and reallocated capacity. Capacity then rose somewhat from 1990 to 1992, as BIUSA expanded its operations, ending at a level still well below that for 1989.²¹ Production declined at a steeper rate overall, particularly from 1989 to 1990, as Smith Corona shifted the major portion of its PET operations to Singapore.²² Production continued to decline in 1991, although capacity was increasing at the same time. Production rose in 1992

²¹ Report at Table 3.

²² Id. and Report at I-24.

but, again, remained substantially below 1988-89 levels. Capacity utilization rose in 1989 to a peak for the period, then fell sharply in 1990, and in 1991 hit a low for the period. Capacity utilization in 1992 remained below the level for each year except 1991.²³

U.S. shipments of PETs fell each year from 1988 to 1992 on both a quantity and value basis. The drop in terms of volume was close to 50 percent, and the drop in terms of value was nearer to two-thirds. These declines were concentrated in, but not limited to, the period 1988-90. Shipment volumes and value in 1992 were only about three-quarters of what they had been in 1990. The consistently steeper declines in terms of value reflect the steady deterioration in unit values during the period.²⁴ This deterioration is particularly noteworthy considering that, during this period, Smith Corona was progressively concentrating its domestic production in higher value models; such a shift in product mix would be expected to have put upward, or at least stabilizing, pressure on unit values.²⁵

Yearend inventory levels fluctuated a great deal during the period examined. As a ratio to annual shipments, yearend inventories peaked in 1989, then declined through 1991. By December 31, 1992, however, inventories had risen to near their 1989 high.

Employment levels dropped steadily during 1988-91 and stabilized in 1992. The number of production and related workers producing PETs in 1992 was substantially less than one-half the number of such workers in 1988. Hours worked fell throughout the period. Total compensation fell steadily and

²³ Report at Table 3.

²⁴ Id. at Table 4.

²⁵ See id. (unit values for Smith Corona).

sharply from 1988 to 1990, rose slightly in 1991, and then fell to a low for the 5-year period in 1992. Hourly total compensation rose very slightly each year during 1988-91, and declined somewhat in 1992. Overall, hourly total compensation increased by little more than 10 percent during the entire 5 years.

Net sales declined after 1989 as a result of both declining sales volumes and declining unit sales values. Reduced per-unit costs-of-goods-sold accounted for a relatively small portion of the decline in per-unit revenues. Per-unit gross profits fell steadily and substantially through the period examined. The results at the operating income level were only very slightly less pronounced.²⁶ Operating income as a percent of net sales, cash flow, operating return on total assets, and research and development expenses in 1992 each represented lows for the period examined.²⁷

On the basis of these factors, Commissioner Rohr finds that the domestic industry producing PETs is currently experiencing material injury.

V. VOLUME OF THE SUBJECT IMPORTS

The volume of imports fluctuated during the period examined, rising from a low in 1988 to a peak to 1989. The second-highest volume of imports entered in 1991 and the second-lowest volume entered in 1992. The value of imports also varied, reflecting both volume fluctuations and a near-steady decline in unit values.

In terms of market share, by volume, U.S. producers accounted for the largest share of the market during 1988-89, and the subject imports accounted

²⁶ Id. at Table 9.

²⁷ Id. and Report at Table 14.

for the largest share during 1990-92. U.S. producers' share declined slightly from 1989, then dropped more sharply in 1990. U.S. market share continued to deteriorate in 1991, but most of that loss was regained in 1992. Overall, domestically produced product lost a substantial portion of its market share.

Imports from Singapore, meanwhile, nearly gained an even greater share of the U.S. market than domestic producers lost. The subject import market share, by volume, increased steadily from 1988 to 1991. In 1992, Singapore's market share declined slightly but remained above the level for each year other than 1991.²⁸

We find that the volume and market share of the subject imports were significant throughout the period examined, and particularly so during 1990-92. Further, the record reflects that this market share was achieved and held at the direct expense of U.S.-based productive capacity and jobs.

VI. PRICE EFFECTS OF THE SUBJECT IMPORTS

Extensive pricing data were obtained in these investigations; prices were collected from U.S. producers, importers, and purchasers for three products in eight channels of distribution for the period January-March 1990 through January-March 1993.²⁹ U.S. producers prices for all products and nearly all customer types declined. The majority of importer prices series also declined, although overall price increases were registered in a minority of series.

²⁸ While the increases in volume occurred primarily in the earlier part of the period, the imports from Singapore accounted for approximately *** of all PETS sold in the United States during each of the last three years, a substantial market share by any calculation. See Report at Table 2.

²⁹ Report at I-43-44.

Price comparisons show mixed underselling and overselling during the period examined, with a slight majority of underselling overall.³⁰ Underselling occurred in all three product types and channels of distribution. Price series for most products and in most channels of distribution showed mixed patterns of underselling, with domestic products and imported products priced lower than the other in different quarters. Thus, it appears that neither domestic products nor imported products maintain consistently higher or lower prices than the other. Information on the record with regard to price competition in the U.S. market indicates that, indeed, the major suppliers must respond to price levels at which comparable products from competitors are offered.³¹ Thus, the "mixed" observations of underselling/overselling are, in fact, a reflection of the intense degree of price competition in this industry. We find, therefore, that despite instances of overselling, the impact of underselling by the subject imports in the U.S. market is quite significant.

We further find that the subject imports had a significant price-depressing effect on domestic prices. Smith Corona has argued that it responds to competitive prices but does not undercut BIUSA's prices. The instances of underselling by imported products show this assertion to be unsupported by the data. Although other factors, including most significantly

³⁰ Report at Tables 21-26.

³¹ Purchasers indicated a number of factors considered in a purchase decision. The large majority reported that price, quality, and model features were all "very important." At the same time, nearly all purchasers indicated that the domestic and imported products are of comparable quality, and that similar features are available in both domestic and imported models. Report at I-41-42. The extent to which domestic products and imported products are comparable in terms of quality and features means that purchasers are all the more sensitive to price differences. Prices of PETS, therefore, must remain within a certain range to be competitive.

a shift in demand away from portable typewriters, likely contributed to declines in prices, the substantial volume of highly price-competitive imported products also contributed to these declines. We also note that prices for PETs for each supplier depend to some extent on the "opening price point" (OPP) model, or lowest end model, for that company. Smith Corona's OPP model is an imported model. Thus, the prices Smith Corona can obtain for its higher value domestic models are directly affected by the price it sets for its OPP imported model.³²

VII. IMPACT OF THE SUBJECT IMPORTS ON THE DOMESTIC INDUSTRY

We find that the domestic industry producing PETS in the United States is materially injured by reason of the subject imports from Singapore. We base this determination in large part on the substantial volume of subject imports, the price-depressing effect of those imports on U.S. prices, and the combined impact of these factors on the condition of the domestic industry, particularly as reflected in the financial performance indicators.

We recognize that the circumstances leading to increases in the absolute volume of imports during 1988-89, and in the shift of market share away from the domestic industry and towards the subject imports during 1988-91 were somewhat unusual. Specifically, these increases resulted from the decision of a long-time U.S.-based manufacturer to shift its production operations abroad.

The PETS industry, like many manufacturing industries, operates in a global market and has increasingly moved towards globalizing production operations. We presume that Smith Corona's decision to relocate its

³² See Tr. at 179-80.

production facilities outside the United States was deemed by its corporate management to be in the best interest of Smith Corona as a corporate entity. That, however, is not the issue we must examine under U.S. antidumping law. Our statutory responsibility is to examine whether a domestic industry -- not any particular corporate entity -- is materially injured by reason of LTFV imports -- no matter what corporate entity produces the dumped imports. In assessing the impact of the subject imports on the condition of the industry, the Commission is specifically directed to consider aggregate data only on production operations located in the United States.³³ Thus, our analysis focuses on such factors as U.S. capacity, U.S. employment, and U.S. research and development, among others.

Consistent with our statutory mandate, our affirmative determination in this investigation is based on the significant adverse impact on aggregate U.S. production operations from the significant volumes of LTFV imports from Singapore at prices which had significant price-depressing effects.

³³ The statute specifically requires the Commission to consider the impact of imports "only in the context of production operations within the United States." See 19 U.S.C. § 1677(7)(B)(III).

VIEWS OF COMMISSIONERS BRUNSDALE AND CRAWFORD

Based on the record in this final investigation, we determine that an industry in the United States is materially injured¹ by reason of imports of portable electric typewriters (PETs) from Singapore that the Department of Commerce (Commerce) has found to be sold at less than fair value (LTFV).

I. LIKE PRODUCTA. Statutory Criteria

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 domestic industry as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."² In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."³

¹ The material retardation of the establishment of an industry is not an issue in this investigation.

² 19 U.S.C. § 1677(4)(A).

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, to which it applies the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (Asocolflores). In defining the like product, the Commission generally 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)

(continued...)

B. Product Description and Analysis

The Department of Commerce defined the class or kind of imported merchandise as

certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria:

- (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;
- (2) Electric, regardless of source of power;
- (3) Comprised of a single, integrated unit;
- (4) Having a keyboard embedded in the chassis or frame of the machine;
- (5) Having a built-in printer;
- (6) Having a platen to accommodate paper; and
- (7) Only accommodating its own dedicated or captive software, if any.⁴

³ (...continued)

the use of common manufacturing facilities and production employees; and when appropriate, (6) price. See, e.g., Asocolflores at 1170 n.8; Calabrian Corp. v. United States Int'l Trade Comm'n, 794 F. Supp. 377, 382 n.4 (Ct. Int'l Trade 1992). No single factor is dispositive, and the Commission may consider other factors it deems relevant based upon the facts of a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See, e.g., 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); S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

⁴ Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters from Singapore, 58 Fed. Reg. 43,334 (Aug. 16, 1993).

PETs include automatic typewriters with text memory ("PATs").⁵ Parts and subassemblies are not included in the scope of this investigation.

In the preliminary determination, the Commission found one like product that included PETs and portable electric word processors (PEWPs).⁶ The Commission found that the degree of overlapping functions and features between PETs and PEWPs indicated a lack of a clear dividing line between the products.⁷ The Commission also cited the facts that PETs and PEWPs are essentially similar in appearance because substantially similar components are used; they are sold through the same channels of distribution; and they can be, and are being, produced in the same facilities by the same employees. In addition, the Commission noted that there was no clear dividing line based on the prices of the machines.⁸ The information obtained in this final

⁵ Report at I-8. Low-end, basic PETs include one-line memory correction, but have no spell-check, additional memory or display. Further up the scale are dictionary PETs, which include a spell-check function. In addition to the features of the basic and dictionary PETs, PATs have extra memory and a display. PATs are closer to portable electric word processors (PEWPs) than are other PETs, but PATs have no external storage capability, as do PEWPs. See Report at I-43-44.

Machines that meet all of the following criteria, i.e. PEWPs, are excluded from the scope of the investigation: (1) seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is within the scope of the investigation. 58 Fed. Reg. 43,334.

Personal word processors (PWP) have a display of 8 to 24 lines and standard external storage permitting storage of 32k to 240k per disk. Typewriters are distinguishable from PWPs as having a maximum two-line display and not having external storage capabilities. PWPs also have more advanced software than typewriters. Certain Personal Word Processors from Japan, Inv. No. 731-TA-483 (Final), USITC Pub. 2411, at 8 (Aug. 1991).

⁶ USITC Pub. 2388, at 6 (June 1991).

⁷ USITC Pub. 2388, at 6-8.

⁸ USITC Pub. 2388, at 6.

investigation, however, demonstrates a dividing line between PETs and PEWPs sufficiently clear for Commissioner Crawford, if not Commissioner Brunsdale.

In Certain Personal Word Processors from Japan, the Commission faced this same like product issue and determined that PEWPs are not like PETs.⁹ Based on the evidence in the record of this final investigation, Commissioner Crawford finds no reason to deviate from the detailed analysis and like product finding in Certain Personal Word Processors.¹⁰

Commissioner Crawford notes specifically that, in the preliminary PETs determination, the Commission did not address extensively the matter of end uses in its like product determination. Two months later, in the final PWP investigation, the Commission found that PWPs and typewriters have distinct end uses.¹¹ The issues of interchangeability and customer and producer perceptions were not addressed in the preliminary PETs investigation.¹² In the PWPs investigation, however, the Commission found that the basic purpose of a typewriter is to impress letters on paper, while the basic purpose of a word processor is to draft, edit and print out text. Moreover, on a typewriter, as opposed to a word processor, it is not possible to view pages of text before printing, move large blocks of text within a document, or store

⁹ USITC Pub. 2411, at 6 (Commissioner Brunsdale dissented on this point).

¹⁰ While the Commission is not bound to adhere to a like product determination made in an earlier investigation, any departure from earlier determinations must be explained. Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1088 (Ct. Int'l Trade 1988).

¹¹ USITC Pub. 2411, at 8-9 (footnotes omitted).

¹² See USITC Pub. 2388, at 6.

a lengthy document for filing or future use.¹³ The evidence of record in this final investigation also supports this finding.¹⁴

In this final investigation, the record demonstrates that a key characteristic of PEWPs, as with all word processors, is a floppy disk drive that permits unlimited external storage capability. Because of their sophisticated software and an LCD display of at least 560 characters enabling them to perform text-editing functions which cannot be performed on automatic typewriters, the primary purpose of PEWPs is to draft long documents, paginate automatically, footnote, edit, and build a library of documents to be used in the future.¹⁵ PETs, on the other hand, are used primarily when an impression is needed, such as on a form, or for very short projects, such as typing envelopes, letters, invoices, and the like.¹⁶

In the PETs preliminary, the Commission determined that there was not a clear dividing line between PETs and PEWPs based on price. The PWP's determination incorporated pricing data gathered during the PETs preliminary investigation that demonstrated the existence of a significant difference in price between the least expensive PWP and the most expensive PAT, supporting the determination that PWPs are distinguishable from PETs.¹⁷ In this final investigation, the record also shows that there are significant price differences between PETs and PEWPs. The various models of PETs differ in

¹³ USITC Pub. 2411, at 11.

¹⁴ See Report at I-9 - I-14; Petitioner's Prehearing Brief at 10-12.

¹⁵ Petitioner's Prehearing Brief at 8; Petitioner's Posthearing Brief at 8; see Tr. at 53-54.

¹⁶ Petitioner's Prehearing Brief at 12; Tr. at 54-55.

¹⁷ USITC Pub. 2411, at 13.

price by only approximately 20 dollars. However, PEWPs are significantly more expensive than PETs with an estimated \$100 price differential between the highest priced PET and the lowest priced PEWP.¹⁸ The majority of PET sales occurs at the basic PET level,¹⁹ where the price differences between them and PEWPs are even greater.²⁰ Thus, the higher price of PEWPs limits their substitutability for PETs, especially for the large number of sales in which low price is important.²¹

There is also a clear distinction between PETs and PEWPs with respect to consumer perceptions and market niches. Evidence on the record indicates that students are more likely to buy a word processor (e.g., a PEWP) than a typewriter, while clerical personnel are more likely to buy a typewriter. Of persons operating businesses outside of their homes, most purchased a typewriter over a word processor.²² Further evidence shows that retailers have a strong preference for one product over the other, depending on the needs and expectations of their customers.²³

The production processes, manufacturing facilities, employees, and channels of distribution are the same for PETs and PEWPs.²⁴ However, there

¹⁸ Petitioner's Posthearing Brief at 9; accord Tr. at 52, 63-64; see also Tr. at 56 (there is over a 40 percent differential at retail between PETs and PEWPs); Report at I-14.

¹⁹ Petitioner's Posthearing Brief, App. D, at 3.

²⁰ For cost differences between PETs and PEWPs, see Report at D-3.

²¹ See Report at I-13, I-14.

²² Petitioner's Posthearing Brief, App. D, at 1.

²³ Petitioner's Posthearing Brief, App. D, at 3-4.

²⁴ Petitioner's Prehearing Brief at 18; Petitioner's Posthearing Brief at 9; Tr. at 58-63.

are different production lines, albeit within the same facility, for producing PETs and PEWPs. Employees generally are assigned to a particular product line.²⁵

Based on the analysis above, Commissioner Crawford finds that there is a clear dividing line separating PETs from PEWPs according to physical characteristics, end uses, limited interchangeability, customer perceptions, and price. She therefore defines the like product to be limited to PETs.

Commissioner Brunsdale, in contrast, continues to find that there is one like product, consisting of PETs, PATs, and PEWPs. She focuses her like product analysis on the substitutability of the potential like products among both their purchasers and their producers. Her goal is always to identify an industry that it is reasonable to expect would be directly affected by any dumping of the articles subject to investigation, whether that effect is caused by consumers switching their purchases, or manufacturers switching their production. She finds that the record in this final investigation shows little or no cost to producers in switching their production lines from PETs to PEWPs and vice versa.²⁶ This persuades her that any dumping of PETs from Singapore will directly and immediately affect the producers of PEWPs as well as PETs. Thus, she finds them to be one like product in this investigation, as she did in the preliminary and as she did in Personal Word Processors from Japan.²⁷

²⁵ Tr. at 59, 61-63.

²⁶ See Report at I-14 & n.49.

²⁷ See USITC Pub. 2411. She notes that she included personal word processors in the like product as well, but does not here because the Commission collected no data on them.

As we shall see, though, the definition of like product makes no difference in our determination.

II. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Domestic Industry

Section 771(4)(A) of the Act defines the relevant domestic industry as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."²⁸ The statute requires the Commission to consider only United States production of the like product.²⁹

Commissioner Brunsdale believes the statute itself compels inclusion of Brother and exclusion of Smith Corona from the domestic industry. Petitioner points to the statute's language: "Brother undeniably manufactures the like product (typewriters) in the United States from materials and components that are not, themselves, like products. Therefore, Brother qualifies as a domestic producer under the plain language of the U.S. antidumping law."³⁰ This is a sound point. The statute itself grants those who manufacture the like product in this country status as interested parties,³¹ and Brother's suggested definition is largely compatible with that generally used by the Customs Service to determine the country of a good's origin. That definition

²⁸ 19 U.S.C. § 1677(4)(A).

²⁹ See 19 U.S.C. §§ 1677(4)(D); 1677(7)(B)(III) (the Commission is to consider the impact of the imports "only in the context of production operations within the United States"). See also General Motors Corp. v. United States, Slip op. 93-128 (Ct. Int'l Trade July 12, 1993).

³⁰ Petitioner's Posthearing Brief, App. C, at 1-2.

³¹ 19 U.S.C. § 1677(9)(C).

depends on the location of final physical transformation into the relevant product. Brother meets that definition here.

As Commissioner Brunsdale has noted before, "[t]he problems with placing such importance on final assembly are obvious. A domestic screwdriver plant set up only to assemble imported parts would be able to seek relief from products that, except for assembly, are made in the United States. Using a Customs standard, we would ignore the fact that the domestic content was substantially higher in the product assembled abroad. Therefore granting relief to the so-called domestic industry would actually decrease productive activity in the United States."³² Indeed, years ago, the Commission did consider the design and production of parts in the United States, and assembly abroad, sufficient for inclusion in the domestic industry.³³ But, she notes,

³² Certain Cameras, Inv. No. 201-TA-62, USITC Pub. No. 2315 (Sept. 1990) at 35.

³³ See Certain Radio Paging and Alerting Receiving Devices from Japan, Inv. No. 731-TA-102, USITC Pub. 1410 (Aug. 1983) at 10 (Views of Chairman Eckes and Commissioner Haggart). The same was true in defining industries under Section 201, see, e.g., Certain Motor Vehicles and Certain Chassis and Bodies Therefor, Inv. No. 201-TA-44, USITC Pub. No. 1110 (Dec. 1980) at 15 (Views of Chairman Alberger) and at 101 (Views of Commissioner Stern).

that has not happened at all in the years since.³⁴ Instead, as we held in Minivans from Japan:³⁵

[W]e reject petitioners' argument that the "industry" includes producers of related products, or upstream products such as parts and components. Nor is the industry defined as all operations of a legal entity identified as producing a like product. It is defined specifically to be

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.

Section 771(4) also requires that "[t]he effect of subsidized or dumped imports shall be assessed in relation to the United States production of a like product"³⁶

There are exceptions -- agricultural products³⁷ and "screwdriver" plants³⁸ come to mind -- but they are exceptions. Might this focus on final

³⁴ Internal Combustion Forklift Trucks from Japan, Inv. No. 731-TA-377 (Final), USITC Pub. 2082 (May 1988), is not an exception. In that investigation, the articles subject to investigation specifically included certain components, see Internal Combustion Forklift Trucks from Japan, USITC Pub. 2082, at A-1 n.1, making appropriate the investigation of whether firms which did not make those components in the U.S. were really part of the domestic industry, since they were not making the like product only from materials and components that were not themselves like products.

Commissioner Brunsdale notes as well that many of the domestic industry and related parties problems that arise as production becomes componentized are better addressed as like product problems, with a better analysis possible if parties recognize that upstream and downstream producers may well constitute one or more industries, each requiring separate analysis.

³⁵ Inv. No. 731-TA-522 (Final), USITC Pub. No. 2529 (July 1992).

³⁶ Minivans from Japan, USITC Pub. 2529, at 63 (emphasis in original) (footnotes omitted).

³⁷ See 19 U.S.C. § 1677(4)(E).

³⁸ In recognition of the concern of Congress in preventing easy circumvention of the antidumping laws, the Commission has created a six factor test useful in determining whether a firm that assembles parts into a like product is actually producing the like product. These factors are: (1) the extent and source of a firm's capital investment; (2) the technical expertise
(continued...)

physical transformation reduce productive activity in the United States? Of course. But just as the Commission must not take into account the possible costs of enforcement of the law on downstream industries that use a like product as an input, or on the ultimate consumer, so we should not consider the possible costs of enforcement of the law on upstream designers and parts manufacturers. As Commissioners, we exercise power delegated to us by Congress, and we are keenly aware that our mission is not to further what we think the ultimate goal was that Congress had in passing these laws, but to enforce them according to their terms.

On the specific facts of this record, then, Commissioner Brunsdale determines that Smith Corona is no longer part of the domestic industry producing the like product (whether defined as PETs or PETs/PEWPs) in the United States, because as of the day of our determination [[***.³⁹]]⁴⁰ In contrast, Brother accounted for a significant percentage of U.S. production of PETs in 1992,⁴¹ and from 1991 (when the preliminary investigation began) to the present, its domestic production increased substantially.⁴²

³⁸ (...continued)
involved in domestic production activity; (3) employment levels; (4) the value added to the product in the United States; (5) the quantities and types of parts sourced in the United States; and (6) any other costs and activities in the United States leading to production for the like product, including where production decisions are made. See, e.g., Sulfur Dyes from China and the United Kingdom, Invs. Nos. 731-TA-548 & 551 (Final), USITC Pub. 2602, at 10 (Feb. 1993). There was some argument that Brother's own Tennessee plant did not pass this test. Even the respondent now concedes that it does. Respondent's Response to Questions at 11.

³⁹ See Respondent's Posthearing Brief at 17 & n.3.

⁴⁰ Commissioner Crawford does not join the four preceding paragraphs.

⁴¹ Report at I-17, I-18.

⁴² Report at I-18.

Commissioners Brunsdale and Crawford reach the same result -- a domestic industry that includes Brother and excludes Smith Corona -- by applying the Commission's own multifactor test to include Brother and the related parties provision of the statute to exclude Smith Corona. Under that test, Brother is part of the domestic industry. The specific factors were discussed at length in the preliminary investigation. Even then, the Commission found that the nature and extent of its actual production-related activities performed in the United States, the number of employees engaged in these activities, the extent to which Brother sources parts and subassemblies domestically, and the domestic value added by Brother's domestic operations sufficed.⁴³

Since then, the Court of International Trade has upheld Brother's standing to file the petition⁴⁴ and Brother now employs even more people at its plant, has expanded its production operations and has increased its research and development expenditures.⁴⁵ Even respondent concedes that petitioner need not be excluded from the domestic industry.⁴⁶

⁴³ USITC Pub. 2388, at 11.

⁴⁴ See Brother Industries (USA), Inc. v. United States, 801 F. Supp. 751, 758-59 (Ct. Int'l Trade 1992).

⁴⁵ See Report at I-18; Tr. at 25-26; Petitioner's Prehearing Brief at 20-22 & n.50 ; Petitioner's Posthearing Brief at 2-3; App. A, at 1-2 & App. Ex. 2, at 4.

⁴⁶ Respondent's Response to Questions at 11. We note that Nakajima and Canon are also subsidiaries owned, in whole or in part, by Japanese companies. See Report at I-20. No party raised the issue of their exclusion in this investigation.

B. Related Parties

The related parties provision, section 771(4)(B) of the Act,⁴⁷ allows the exclusion of certain domestic producers from the domestic industry. Even if Smith Corona is a domestic producer (as it undoubtedly was during much of the period of investigation), this provision excludes it from the domestic industry.⁴⁸ Smith Corona has not produced any basic PETs (*i.e.*, those without text memory) at its central domestic production facility since 1990, having shifted all such production to its affiliated company, Smith Corona Singapore, by the end of 1989.⁴⁹ Because respondent imports the subject goods,⁵⁰ it is a related party.⁵¹ Thus, we must determine whether appropriate circumstances exist to exclude respondent from the domestic industry.

In the preliminary investigation, the Commission determined that exclusion of respondent's domestic production operations would affect significantly the overall domestic indicators. However, the Commission indicated that it was unclear whether respondent's imports have the effect of "shielding" it from import competition or whether its primary interests are in

⁴⁷ 19 U.S.C. § 1677(4)(B).

⁴⁸ The rationale for the related parties provision is the concern that domestic producers that are related parties may be in a position that shields them from any injury that might be caused by the imports. See S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979). Thus, including these parties within the domestic industry would cause the industry to appear healthier than it in fact is. See, e.g., Sandvik AB v. United States, 721 F. Supp. at 1331-32 (related party appeared to benefit from dumped imports).

⁴⁹ Report at I-18, I-19.

⁵⁰ Respondent's Singapore facility, which is a wholly-owned subsidiary, keeps its own financial records, which are consolidated at the corporate level. Tr. at 185.

⁵¹ 19 U.S.C. § 1677(4)(B).

domestic production or in importation, and respondent was not excluded as a related party.⁵²

This investigation presents a factual situation that, to the best of our knowledge, is without precedent. The Commission's experience in applying the related party provision principally involves the following situations: (1) both unfinished and finished products are subject to investigation, and domestic producers of the finished product import the unfinished product for internal consumption; and (2) domestic producers import products to supplement their domestic production or serve specific geographical markets.

In this investigation, respondent has a long history of production in the United States. However, respondent is in the final stages of ceasing production in the United States. Respondent imports products produced by its subsidiary in Singapore to replace, not supplement, its U.S. production.

From 1990 to 1992, subject imports accounted for the vast majority of respondent's sales in the United States. Conversely, domestic production accounted for a minority of respondent's U.S. sales.⁵³ These data would support a conclusion that respondent's primary, major or principal interest laid even then in importation, not production in the United States. However, we need not address the vexing questions of defining and quantifying the necessary level of respondent's interest in importation. The record clearly demonstrates that, because respondent is in the final stages of ceasing U.S. production, its sole interest is in importation. For this reason, we exclude respondent from the domestic industry.

⁵² USITC Pub. 2388, at 13.

⁵³ See Report at I-20.

III. LEGAL STANDARD

In determining whether a domestic industry is materially injured by reason of the imports under investigation, the statute 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.⁵⁴

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.⁵⁵ Then, taking into account the condition of the industry, we determine whether the resulting change of circumstances constitutes material injury.

Historically, the Commission has collected data on the statutory impact factors listed in 19 U.S.C. §1677(7)(C)(iii) covering a three-year period. This time period has been designated the period of investigation, and the data have been presented in the section of the opinion titled "Condition of the Industry." In general, these data and the trends in these data have been the information on which some Commissioners make a separate legal conclusion that the domestic industry is materially injured.

⁵⁴ 19 U.S.C. § 1677(7)(B)(i). In making its determination, the Commission may consider "such other economic factors as are relevant to the determination." 19 U.S.C. §1677(7)(B)(ii).

⁵⁵ See 19 U.S.C. §1677(7)(C)(iii).

In our analysis, we do not make a separate legal or factual conclusion of whether or not the domestic industry is materially injured. Rather, we analyze whether the condition of the industry would have been materially different if the imports had not been dumped. The law requires a determination that the industry is presently materially injured by reason of dumped imports.⁵⁶ Therefore, we focus our analysis on the most appropriate recent data.

When the Commission made its preliminary determination in 1991, the record included data collected for the period 1988 to 1990. Litigation has delayed the Commission's final determination until September 1993. In this final investigation, the record has been updated to include data for 1991 and 1992.⁵⁷

The parties have raised an issue of what constitutes the proper period of investigation, i.e. whether the Commission should evaluate the data collected for the period 1988 to 1992 or for the period 1990 to 1992. The parties' preferences for a particular period appear to be based on their analysis of the data and trends in the data in reaching a separate legal conclusion of whether the domestic industry is materially injured. To the extent that data collected over a multiyear period are relevant or useful in our analysis, we believe that evaluating more recent data is more consistent

⁵⁶ 19 U.S.C. §1673d(b)(1). See also Chr. Bjelland Seafoods A/C v. United States, Slip op. 92-196, at 21-22 (Ct. Int'l Trade Dec. 9, 1992) (although statute directs Commission to consider material injury factors in context of industry's business cycle, it does not authorize the Commission to base a material injury determination on the lingering effects of a past injury).

⁵⁷ See Report at I-3 - I-7; I-22.

with the statute and Chr. Bjelland. Therefore, we have considered only the data for the period 1990 to 1992 in making our determination.⁵⁸

IV. MATERIAL INJURY BY REASON OF LTFV IMPORTS

We determine that an industry in the United States is materially injured by reason of LTFV imports of PETs from Singapore. Because we have found different like products, we make individual determinations that the domestic industry producing PETs is materially injured by reason of LTFV imports and that the domestic industry producing PETs and PEWPs is materially injured by reason of LTFV imports. However, Commissioners Brunsdale and Crawford join each other's analyses as alternate holdings.

Their basic analytic method is the same. In the circumstances of this investigation, the results of using that method are also the same.⁵⁹

A. Volume of the Subject Imports

From 1990 to 1992, LTFV imports of PETs from Singapore accounted for the largest share of domestic consumption. The market share of the domestic PETs industry was substantially smaller in comparison.⁶⁰ The market share of the subject imports in the domestic PETs/PEWPs industry was naturally smaller (because no PEWPs are imported from Singapore),⁶¹ but still substantial.⁶² We

⁵⁸ The Commission has discretion to establish the period of investigation. See Kenda Rubber Industrial Co. v. United States, 630 F. Supp. 354, 359 (Ct. Int'l Trade 1986).

⁵⁹ Cf. In the Matter of Magnesium from Canada, Nos. USA-92-1904-05-06, (U.S.-Canada Binational Panel Review Aug. 27, 1993).

⁶⁰ Report at I-39, Table 20.

⁶¹ Report at I-20 n.75; I-38 n.112.

⁶² Report at I-39, Table 20.

find the volume of LTFV imports to be significant, particularly in light of its effects on industry revenue.

B. Effect of LTFV Imports on Domestic Prices

To analyze the effect of subject 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, like the degree of substitutability between the subject imports and the domestic like product, and the dumping margin, which was found to be 15.51 percent.⁶³

Our examination of substitutability involves an analysis of factors such as quality and conditions of sales, as well as purchaser preferences.⁶⁴ Nearly all purchasers responding to the Commission's questionnaire stated that the domestic product and imported PETs are of "comparable" quality.⁶⁵ More than half of the responding purchasers indicated that they maintain multiple unrelated sources of supply,⁶⁶ and most purchasers buy both the domestic and the imported products.⁶⁷ The longer delivery times for imports are offset by higher levels of inventories.⁶⁸ Similarly, terms of sale in the form of post-invoice allowances, offered by both petitioner and respondent, vary in form and volume, but provide only minor differences between domestic PETs and

⁶³ 58 Fed. Reg. 43,339.

⁶⁴ See Economic Memorandum, EC-Q-095, at 15 (Sept. 13, 1993).

⁶⁵ Report at I-42.

⁶⁶ EC-Q-095 at 16.

⁶⁷ EC-Q-095 at 17.

⁶⁸ See Report at I-26, I-27. Prompt delivery is essential in the PETs market. Report at I-26, I-27.

subject imports.⁶⁹ Therefore, the subject imports and the domestic PETs are close substitutes.⁷⁰ The staff estimated an elasticity of substitution of 4 to 6, which we find to be reasonable.⁷¹

The absence of imports of PEWPs from Singapore during the period of investigation prescribes a somewhat lower elasticity of substitution between the subject imports and the broader domestic like product, due to the additional features and higher price of PEWPs generally.

To determine the effect of the dumping of the LTFV imports on the like product's prices requires us to consider as well the elasticities of demand and supply. The demand for PETs critically depends on the availability of substitute products. The closest substitute for PETs are PEWPs, though there is some competition from other word processors and personal computers. The substitutability of these other products for PETs is limited in the case of consumers to whom low cost is important, and for them there is no alternative to a PET. Demand is likely to be fairly inelastic, since many consumers do want the simplicity of use, low cost, and basic typing functions that PETs can

⁶⁹ EC-Q-095 at 16.

⁷⁰ See EC-Q-095 at 15.

⁷¹ EC-Q-095 at 15. The staff assumed a similar elasticity, 4 to 6, when comparing the domestic like product and the subject imports to fairly traded imports. See EC-Q-095 at 25 and 26. Because fairly traded imports are mostly made by the same firms as make the domestic like product, it is reasonable to assume that they are about as substitutable, and the high elasticity of substitution gives the respondent the benefit of the doubt (since assuming a high degree of substitutability means that part of the injury caused by the dumping will be felt by the makers of fairly traded imports).

best provide.⁷² The staff's estimate of the elasticity of demand for PETs of -0.5 to -1.25⁷³ therefore appears reasonable.

Broadening the like product to include PEWPs only reduces the elasticity of demand further. The closest substitutes to the broad like product are personal computers and word processors that are not portable. These products tend to be significantly more expensive and difficult to use for the simpler tasks consumers use typewriters and PEWPs for. The staff estimated an elasticity of demand of between -0.25 and -0.95.⁷⁴ This again appears reasonable.

The elasticities of domestic supply depend on the extent of U.S. producers' excess capacity, alternative production possibilities, and alternative markets.⁷⁵ Although capacity utilization for the domestic PETs and PETs/PEWPs industries is relatively high,⁷⁶ their domestic supply elasticity is moderately increased by the large proportion of U.S. production that is exported, and the high inventory levels that exist.⁷⁷ These conditions would allow the domestic industry to shift additional PETs or PEWPs to the domestic market quickly in response to a small change in price. Moreover, the domestic industry can switch production from PEWPs and other

⁷² See EC-Q-095 at 20.

⁷³ EC-Q-095 at 20.

⁷⁴ EC-Q-095 at 21.

⁷⁵ EC-Q-095 at 12.

⁷⁶ Report at Table 3. This is due in part to exclusion of Smith Corona's data, which show by far the lowest capacity utilization, from the domestic industry. See EC-Q-095 at 15 n.32.

⁷⁷ This is also true, even after Smith Corona's departure from the industry. See EC-Q-096 at 2 n.1.

products to PETs (and from other products to PEWPs) at a very low cost and a very high speed.⁷⁸ These factors undermine the apparent constraints of high capacity utilization, and led the staff to conclude that the elasticity of supply is within a range of 3 to 5, for both the PETs and the PETs/PEWPs industries.⁷⁹ We agree.

C. Impact on the Domestic Industry

The effect of the a highly elastic supply on highly substitutable goods is that, were PETs from Singapore to increase in price to levels the Commerce Department would find fair, import sales would drop dramatically, and domestic suppliers would increase their sales rather than raise prices. It seems unlikely that prices would increase very much.

The lack of significant price effects, however, is not the whole story. Because they are close substitutes, domestic PETs and subject imports compete substantially on the basis of price. A 15.51 percent higher price for the subject imports would allow the domestic PETs industry to increase its sales substantially. Even if the price of each sale did not increase very much, the greater quantity sold (and, given the subject import's market share, that quantity is likely to be very large indeed) would materially increase the revenue of the domestic PETs industry.⁸⁰ Therefore, we determine that the lost revenue caused by the dumping of the subject imports materially injured the domestic industry. That material injury is most directly felt in lower output, sales, and profits than would have been the case in the absence of dumped imports. The effect on other statutory factors -- such as employment,

⁷⁸ See Report at I-14 & n.49.

⁷⁹ EC-Q-096 at 2.

⁸⁰ See EC-Q-096 at 2 (Sept. 15, 1993).

wages, cash flow, and investment⁸¹ -- either reflects or is derived from the material effect on revenues caused by the dumping of the subject imports.

On this record, the analysis is not much different for the domestic industry producing PETs/PEWPs. As noted above, the broader industry would have been able to make or sell more PETs if the price of respondent's imports had been 15.51 percent higher. The relative revenue effect would be somewhat smaller,⁸² simply because the broader industry has a greater revenue base, but it would still be far from inconsequential. We therefore find that broader industry to be materially injured by reason of the dumping of the subject imports as well.

V. CONCLUSION

We determine that the information of record in this final investigation demonstrates that a domestic industry is materially injured by reason by LTFV imports of PETs from Singapore.

⁸¹ 19 U.S.C. § 1677(C)(iii).

⁸² Id. at 2.

DISSENTING VIEWS OF CHAIRMAN NEWQUIST

Unlike the majority of my colleagues, I determine that the domestic industry producing portable electric typewriters is not materially injured or threatened with material injury by reason of imports of such typewriters from Singapore which the Department of Commerce has found to be sold in the United States at less than fair value. Although I concur with my colleague Vice Chairman Watson in this result, I reached my negative determination by a different analytical framework and, therefore, provide this separate opinion.

As a preliminary matter, I am compelled to comment on the obvious irony in this investigation: that the petitioner is a Japanese-owned subsidiary located in the U.S., and the respondent, a long-established U.S. company with a subsidiary located in Singapore. Some suggest that the relief granted in this investigation represents, somehow, a manipulation of our trade laws -- in effect, that a foreign-owned company should not have access to U.S. trade law to the detriment of a U.S. company. I cannot say that I disagree with this suggestion. However, the Commission is not a law- or policy-making body; by law, we administer the trade statutes as enacted by Congress and signed by the President. Therefore, I am required to conduct an analysis of the facts and data presented in the investigation which conforms with the statute as written. That analysis and my conclusions follow.

I. LIKE PRODUCT AND DOMESTIC INDUSTRY

A. Like Product

Applying the Commission's traditional six factor like product test,¹ I find the like product consists of portable electric typewriters ("PETs") including those with memory capability.² I exclude portable electric word processors ("PEWPs") from this finding.

In the preliminary investigation, the Commission unanimously determined that the like product included PETs, PETs with memory capability and PEWPs.³ Two months later, in a final investigation involving imports of portable word processors ("PWPs") from Japan, which raised many of the same like product issues, a majority of the Commission determined that PWPs were not "like" PETs and/or PETs with memory capability.⁴ There has

¹ The Commission considers: (i) physical characteristics and uses; (ii) interchangeability of the products; (iii) channels of distribution; (iv) customer and producer perceptions of the products; (v) the use of common manufacturing facilities and production employees; and (vi) where appropriate, price. Calabrian Corp. v. United States, 794 F. Supp. 377, 382, n.4 (Ct. Int'l Trade 1992); Torrington v. United States, 747 F. Supp. 744 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

² My base inclination is to exclude PETs with memory capability from the like product definition, particularly since the respondent continues to produce PETs with memory in the U.S. However, Commerce's scope determination precludes me from doing so as it includes PETs with memory capability. 58 Fed. Reg. 43,334 (August 16, 1993).

³ Portable Electric Typewriters from Singapore, Inv. No. 731-TA-515 (Preliminary), USITC Pub. 2388 (June 1991).

⁴ Certain Personal Word Processors from Japan, Inv. No. 731-TA-483 (Final), USITC Pub. 2411 (August 1991). It should also be noted that, Brother Industries (USA), Inc. ("BIUSA"), the
(continued...)

been no significant change in technology or product characteristics and uses since that final investigation nor have the parties raised persuasive arguments which cause me to depart from the like product analysis in PWPs from Japan. Accordingly, I adopt and incorporate by reference the relevant portions of that analysis here.

B. Domestic Industry

This investigation raises three domestic industry issues: first, whether the petitioner, BIUSA, is a domestic producer; second, whether Nakajima and Canon are domestic producers; and third, whether the domestic operations of the respondent, SCC, are related to its operations in Singapore and, if so, whether SCC's domestic operations should be excluded from the domestic industry.

1. Whether BIUSA is a Domestic Producer

As I noted at the outset, I am troubled by BIUSA's status as a petitioner in this investigation. Although the Court of International Trade found BIUSA to be an interested party with standing to file the instant antidumping complaint,⁵ I do not believe that this precludes me from determining, as I did in the

⁴(...continued)

petitioner in the instant investigation, was a respondent in PWPs from Japan and that Smith-Corona Corp. ("SCC"), the respondent here, was the petitioner in that investigation.

⁵ Brother Industries (USA), Inc. v. United States, 801 F. Supp. 751 (Ct. Int'l Trade 1992).

PWPs from Japan final investigation, that BIUSA is not a domestic producer.

In considering whether a firm is a domestic producer, the Commission looks to the overall nature of production-related activities in the United States. Specifically, the Commission examines such factors as: (1) the extent and source of a firm's capital investment; (2) the technical expertise involved in United States production activity; (3) the value added to the product in the United States; (4) employment levels; (5) the quantities and types 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.⁶ The Commission has held that no single factor, including value added, is determinative and that value added information becomes more meaningful when other production activity indicia are taken into account.⁷

I scrutinized the data concerning BIUSA's U.S. operations and find that it is more established as a domestic producer than

⁶ See, e.g., Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989); Certain All-Terrain Vehicles from Japan, 731-TA-377 (Final), USITC Pub. 2163 (March 1989); Erasable Programmable Read Only Memories from Japan, Inv. No. 731-TA-288 (Final), USITC Pub. 1927 (Dec. 1986) at 11 & n.23; Low-Fuming Brazing Copper Wire and Rod from New Zealand, Inv. No. 731-TA-246 (Final), USITC Pub. 1779 (Nov. 1985) at 6.

⁷ See, e.g., Color Television Receivers from the Republic of Korea and Taiwan, Inv. Nos. 731-TA-134 and 135 (Final), USITC Pub. 1514 (May 1984) at 7, 8.

it was at the time of the PWPs from Japan determination.⁸

However, while it produces more of its component PET parts in the U.S. than in 1991, a large number are still imported from its parent in Japan or other related sources. Thus, for me, it remains a close question and, in important aspects, I question whether BIUSA is today a domestic producer. On balance, however, I find BIUSA to be a domestic producer.⁹

2. Whether Nakajima and Canon are Domestic Producers

Like BIUSA, Nakajima and Canon are subsidiaries of Japanese companies located in the United States. Unlike BIUSA, however, both are relatively new ventures and substantially less established as U.S. producers. Nakajima began its U.S. operations in 1989 and, until 1991, was [* * * * *]
[* * * * *]
[* * *¹⁰] Although Nakajima is [* * * * *]
[* * * * *] compared to BIUSA and SCC. Nakajima employs [* * * * *]
than either BIUSA or SCC, and has made [* * * * *] capital investment in its facilities or in research and development efforts.¹¹

⁸ See, e.g., Report at I-18-19; Tables 6, 16.

⁹ I note that this finding, in effect, gives BIUSA the benefit of the doubt -- without it, I would be hard pressed to proceed to an injury analysis.

¹⁰ Report at I-20.

¹¹ Report at Tables 6, 15, 16.

Canon is an even later entrant in the industry, establishing U.S. operations in 1991.¹² The evidence in the record suggests that Canon is primarily [* * * * *] a domestic producer. Canon employs [* * * * *] than Nakajima, and has made [* * * * *] capital investment in its facilities or in research and development efforts.¹³

For these reasons, I find that neither Nakajima or Canon is a domestic producer as contemplated by the statute. Accordingly, I do not consider their data in the aggregate condition of the domestic industry.¹⁴

3. Whether SCC is a Related Party and Should be
Excluded from the Domestic Industry

Under section 771(4)(B) of the Tariff Act of 1930, when a producer is related to an exporter or importer of the product under investigation, or is itself an importer of that product, the Commission may exclude such producers from the domestic industry in "appropriate circumstances."¹⁵ Application of the related parties provision is within the Commission's discretion based upon the facts presented in each case.¹⁶

¹² Report at I-20.

¹³ Report at Tables 6, 15, 16.

¹⁴ I note, however, that had I included either Nakajima and/or Canon in the domestic industry, my injury determination would not change.

¹⁵ 19 U.S.C. § 1677(4)(B).

¹⁶ Empire Plow Co. v. United States, 11 CIT 847, 675 F. Supp. (continued...)

The Commission generally applies a two-step analysis in determining whether to exclude a domestic producer from the domestic industry under the related parties provision. The Commission first considers whether the company qualifies as a related party under section 771(4)(B), and second whether in view of the producer's related status there are "appropriate circumstances" for excluding the company in question from the definition of the domestic industry. At the direction of Congress, the Commission employs the related parties provision to avoid 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 effects of the subject imports.¹⁷

The Commission generally examines three factors in deciding whether appropriate circumstances exist to exclude a related party:

- (1) the position of the related producer vis-a-vis the rest of the domestic industry;
- (2) the reasons why the domestic producer has chosen to import the product under investigation, i.e., whether to benefit from the unfair trade practice or to enable the

¹⁶(...continued)
1348, 1352 (1987).

¹⁷ S. Rep. No. 249, 96th Cong., 1st Sess. 83 (1979) ("... 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.")

producer to continue production and compete in the domestic market; and

(3) the percentage of domestic production attributable to related producer.¹⁸

The Commission has also considered whether a company's data regarding domestic production activities are segregated from its importing operation and whether the primary interests of the related producers lie in domestic production or in importation.¹⁹

Obviously, the U.S. operations of SCC are "related" to its operations in Singapore as the U.S. parent is the importer of PETs manufactured by its Singapore affiliate. The remaining question is whether appropriate circumstances exist to exclude SCC's U.S. operations from the domestic industry data in this investigation.

It seems evident that SCC benefits from such imports or it would not have moved its production to Singapore in the first place. In addition, as it concerns PETs and PETs with memory capability, SCC's level of imports compared to domestic production suggests that its primary interest lies in importation.²⁰ Most importantly, the effect of SCC's relocation of its PET production during the period of the investigation on

¹⁸ See, e.g., Heavy Forged Handtools From The People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357 (Feb. 1991) at 18.

¹⁹ See, e.g., Heavy Forged Handtools From The People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357 (Feb. 1991) at 19.

²⁰ Report at Tables 3, 19.

the aggregate industry data is the precise distortion that the exclusion provision contemplates. Inclusion of SCC's domestic operations data provides an analytically unrealistic view of the industry as its declines in production mask the performance of other domestic producers. Thus, in order to capture the condition of the domestic industry, SCC's transition from producer to producer/importer must be taken into account; if not, the analysis is one of apples to oranges, i.e., the industry with SCC as a producer compared to the industry after its voluntary transition to producer/importer. Accordingly, I have determined to exclude SCC's data from the aggregate industry data.

Therefore, as a result of these findings, my assessment of the condition of the domestic industry is based on data for producers which, in fact, are producers of the like product, and excludes from that assessment producers whose domestic operations do not rise to the level of a domestic producer or whose domestic operations are related to subject producers in Singapore.

III. CONDITION OF THE DOMESTIC INDUSTRY

Domestic consumption of PETs²¹ declined by more than 20% during the period of investigation.²² In contrast, domestic shipments of PETs produced by the domestic industry declined by a smaller percentage; thus domestic industry's share of domestic consumption increased during the period.²³ The domestic industry's production of PETs increased between 1990-92.²⁴ The domestic industry's average of period capacity increased throughout the period, and its capacity utilization rates were healthy throughout the period, although they did decline modestly between 1991-92.²⁵ The domestic industry's inventories declined between 1990-91, and increased in 1992.²⁶ As a ratio to U.S. shipments, however, the 1992 inventory level was not significant.²⁷

The number of employees employed in domestic PET industry declined between 1990-91, and increased in 1992 to a level above

²¹ Hereinafter use of "PETs" includes PETs with memory capability unless otherwise stated.

²² Report at Table 2. Although the Commission has available to it five years of data, 1988-92, my analysis focusses on the most recent three years, i.e., 1990-92.

²³ Report at Tables 2, 4.

²⁴ Report at Table 3.

²⁵ Id.

²⁶ Report at Table 5.

²⁷ Id.

that in 1990.²⁸ Hours worked, wages paid, and total compensation paid all followed a similar trend.²⁹

The domestic industry's net sales of PETs held constant between 1990-91 and increased in 1992.³⁰ Although the domestic industry reported operating and net [* * *] in 1990, by 1991, both indicators were [* * * * * * * * * * * * *³¹] The industry again reported [* * * *] financial results in 1992, though at levels [* * *] those of the previous year.³² Its operating income margins [* * * * * * * * * * * * * *³³]

The domestic PET industry's capital expenditures [* * * * *] throughout the period of investigation.³⁴ Its research and development expenditures [* * * * * * * * * *] between 1990-91, and [* * * *] in 1992.³⁵

Based upon the foregoing, I find that domestic industry producing PETs is not experiencing material injury.

²⁸ Report at Table 6.

²⁹ Id.

³⁰ Report at Table 9.

³¹ Id.

³² Id.

³³ Id.

³⁴ Report at Table 15.

³⁵ Report at Table 16.

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LESS THAN FAIR
VALUE IMPORTS

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry 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."³⁶ I have examined each relevant

³⁶ The Commission must consider ten factors in the threat analysis. They are:

(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 factor and discuss each in turn below.

Imports from Singapore increased slightly between 1990-91, and declined in 1992 to a level approximately 10% below that in 1990.³⁷ The productive capacity of producers in Singapore [* * * * *] during the period of the investigation.³⁸ Production [* * * * *] between 1990-91, and [* * * * *] level in 1992.³⁹ Accordingly, Singapore's capacity utilization, which is [* * * * *] during the period.⁴⁰ Producers in Singapore reported [* * * * *] during the period of the investigation.⁴¹ Importer's inventories declined throughout the period of investigation and, in 1992,

³⁶(...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).

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).

³⁷ Report at Table 19.

³⁸ Report at Table 18.

³⁹ Id.

⁴⁰ Id.

⁴¹ Id.

represented approximately the [* * * * *]
[* * * * *]^{42]}

Pricing data obtained by the Commission demonstrate a general decline in prices for both the domestic product and the subject imports.⁴³ These data also show mixed under and overselling by the subject imports.⁴⁴ I am not persuaded, however, that the price declines for domestic PETs are related to unfair imports from Singapore. Rather, I find that the declines reflect the nature of the product cycle. As technology advances and the cost of the technology is spread over increased production, prices will decline.⁴⁵ Here, also, price declines appear to be attributable in part to competition from PEWPs. During the period of the investigation, petitioner's sales of PEWPs [* * * * *]^{46]} In 1990, petitioner's sales of PEWPs were [* * * *] of its sales of PETs; in 1992, its PEWP sales were [* * * *] of its PET sales.⁴⁷ Although PEWPs remain more expensive than PETs and have different

⁴² Report at Table 17.

⁴³ Report at Tables 21-23.

⁴⁴ Id.

⁴⁵ Anyone who has purchased a first generation appliance, such as a stereo TV or compact disk player, can appreciate this phenomenon -- the prices of the more advanced second and third generations are usually only a fraction of the price of the first.

⁴⁶ Report at Table 11.

⁴⁷ Report at Tables 9, 11.

characteristics and uses, PEWP unit values have [* * * * *]
* * *] as a result, PEWPs have increasingly become more
affordable to purchasers who want additional characteristics and
uses not available with PETs.⁴⁸ Accordingly, I do not find any
evidence in the record to suggest that imports of PETs from
Singapore will imminently enter the market at prices that will
have a depressing or suppressing effect on domestic PETs.

Nor do I find that continued imports of PETs from Singapore
will have negative effects on BIUSA's development and production
of advanced versions of the like product. Petitioner already
produces several types of PETs with varying degrees of advanced
features, in addition to its line of PEWPs.

V. CONCLUSION

For the foregoing reasons, I find that the domestic industry
producing portable electric typewriters including those with
memory capability is not materially injured or threatened with
material injury by reason of less than fair value imports from
Singapore.

⁴⁸ Id.

DISSENTING VIEWS OF VICE CHAIRMAN PETER S. WATSON
Portable Electric Typewriters From Singapore
Inv. No. 731-TA-515 (Final)

Based on the record in this final investigation, I determine that the industry in the United States producing both portable electric typewriters (PETs) and portable electric word processors (PEWPs) is not materially injured by reason of imports of PETs from Singapore that the Department of Commerce (Commerce) has found to be sold at less than fair value (LTFV). I also determines that the industry in the United States producing both PETs and PEWPs is not threatened with material injury by reason of the LTFV imports.¹

I. LIKE PRODUCT

In the preliminary investigation, the Commission determined the like product to be all PETs (including portable automatic typewriters (PATs)) and PEWPs. In this final investigation, I find that the record confirms that there is no clear dividing line between PETs and PEWPs.²

In Certain Personal Word Processors from Japan (Word

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 My like product determination is limited to portable electric word processors and does not include non-portable word processors. He notes that data in the record concerning customer perceptions indicates that the portability of PETs and PEWPs distinguishes them from non-portable word processors. Staff Report at I-13-14. Moreover, he notes that Commerce's scope definition emphasizes the portability and the self-contained nature of the unit. 58 Fed. Reg. 43334 (August 16, 1993).

Processors), the Commission determined that "personal word processors are distinguishable from PETs and PATs", and, therefore, declined to include them in the like product with personal word processors (PWP).³ As we noted in the preliminary investigation, the Commission is not bound to follow in a subsequent case a like product definition presented in an earlier investigation.⁴ Word Processors and the instant case can be distinguished, however, on the issue of like product. In Word Processors the Commission's task was to determine the appropriate like product corresponding to all word processors including non-portable word processors. Here, where portability and self-containment are distinguishing features of both PETs and PEWPs, the issue should be reviewed de novo.

There is little question that the production processes, manufacturing facilities, employees, and channels of distribution are the same or similar for PETs as for PEWPs.⁵ With respect to the manufacture of PETs and PEWPs, there are different product lines produced within the same manufacturing facility.⁶ Although

³ Certain Personal Word Processors from Japan, Inv. No. 731-TA-483 (Final), USITC Pub. 2411, at 13 (Aug. 1991).

⁴ Portable Electric Typewriters from Singapore, Inv. No. 731-TA-515 (Preliminary), USITC Pub. 2388 (June, 1991) at 7. See, Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1088 (CIT 1980).

⁵ The parties to this investigation agree that PETs and PEWPs cannot be distinguished on these bases. See, Respondent's Prehearing Brief at 2; Petitioner's Prehearing Brief at 18; Petitioner's Posthearing Brief at 9; Tr. at 58-63.

⁶ Respondents contend that PETs and PEWPs are produced on the same production lines by the same basic production process with the only real modification being in the nature of the components going to the line. Respondent's Posthearing Brief at 2; Tr. at

employees are generally assigned to a particular product line, many jobs are interchangeable.⁷

The physical structure and appearance of both PETs and PEWPs are similar. Both are portable and unitary, incorporating a keyboard and a printing mechanism. Both PETs and PEWPs are presented by retailers as a continuum of products sold on the same retail shelf.⁸ The evidence also supports the conclusion that consumers of both PETs and PEWPs are the same class of persons consisting of students, families, small business owners and home office workers.⁹ To a large degree, PETs and PEWPs are interchangeable. They both perform the same basic function of putting printed text on paper through operation of an electronic keyboard. Many of the features and functions of PETs and PEWPs overlap and PEWPs have a separate key allowing them to function as a typewriter.¹⁰ Although consumers producing documents of 20 pages or more are likely to purchase a PEWP rather than a PET, a PET is able to perform that task.¹¹ With regard to price, it appears that the prices for PETs, PATs and PEWPs depict a continuum which is 138.

⁷ Tr. at 59, 61-63.

⁸ Tr. at 140.

⁹ Respondent's consumer survey data indicates that a similar number of purchasers use PATs and PEWPs for personal/at home applications. Respondent's Response to Questions at 3,4; Tr. at 138, 158, 160.

¹⁰ Response of Smith Corona to Questions at 3.

¹¹ Respondent's Response to Questions at 6. Many consumers seeking to produce and edit lengthy documents will purchase personal computers although they are significantly more expensive than PETs and PEWPs and are not self contained.

reflective of gradations in product features and sophistication.¹²

In its purchaser questionnaires, the Commission asked if other products, such as PEWPs, could be substituted for PETs in their end uses. A review of that evidence indicates significant, albeit limited, substitutability between PETs and PEWPs such that this Commissioner can only conclude that the dividing line between PETs and PEWPs is blurred.¹³

To conclude, based on the record in this final investigation, a like product consisting of all PETs and PEWPs is most like the articles subject to investigation, namely PETs from Singapore.

II. DOMESTIC INDUSTRY AND RELATED PARTIES

A. Brother Industries (USA), Inc.

In the preliminary investigation, the Commission determined that petitioner, Brother Industries (USA), Inc. (BIUSA), engaged in sufficient production-related activity in the United States to be considered a domestic producer.¹⁴ The evidence gathered in this final investigation indicates that it is appropriate to include

¹² Respondent's Vice President of Marketing stated that there is about a \$100 price difference between a high end PAT and a low end PWEF. Tr. at 159,160. Evidence presented by the respondent in its Response of Smith Corona to Questions at 8, suggests, however, that the price difference may be far less.

¹³ Report at I-13-14, I-43. Purchasers most frequently reported PEWPs as possible substitutes for PETs in their intended applications. Thirteen of 19 purchasers indicated that PEWPs could be substituted for PETs. A majority of purchasers noted, however, that the difference in price between PETs and PEWPs was an important factor that consumers considered in choosing between the two types of machines.

¹⁴ Portable Electric Typewriters from Singapore, at 11.

petitioner in the domestic industry.¹⁵ Although domestic value added to its PETs is still relatively low¹⁶, during the period of investigation petitioner has significantly expanded its PET production, the value of its domestic assets, employment, and research and development expenditures.¹⁷ Moreover, the petitioner has announced plans to move virtually all of its research and development operations to the United States and to build an addition to its domestic production facility.¹⁸

B. Smith Corona Corporation

A more difficult question is whether the respondent, Smith Corona Corporation, should be treated as a domestic producer. Although the record indicates that Smith Corona has been a domestic producer during a significant part of the Commission's period of investigation, I conclude, for the reasons expressed below, that it should be excluded from the domestic industry as a "related party".

The record indicates that Smith Corona has not produced any basic PETs (those without text memory) at its sole U.S. plant in Cortland, N.Y. since 1990, having shifted all production of basic

¹⁵ In reaching this conclusion, Vice Chairman Watson notes that the Court of International Trade has recently considered the Commission's six factor test in deciding that the petitioner had standing to file its petition on behalf of the domestic industry. Since the time the petition was filed in 1991, petitioner has expanded its domestic operations significantly.

¹⁶ Report at D-3.

¹⁷ Report at I-18.

¹⁸ Id.

PETs to its affiliate, Smith Corona Singapore.¹⁹ The evidence in this final investigation demonstrates that respondent currently has a minimal interest, at best, in domestic production of PETs and PEWPs.²⁰ Recent developments indicate that respondent has taken significant steps to move even the balance of its domestic production to Mexico.²¹ This phase out began in the fall of 1992 and is expected to take approximately one year to complete.²²

Although it is not clear whether respondent is currently a domestic producer, it is clear that during the five years for which the Commission collected data, respondent did produce significant quantities of PETs and PEWPs in the United States.²³ Respondent was, therefore, a part of the domestic industry producing PETs and

¹⁹ Report at I-18.

²⁰ In 1991 and 1992 respectively, approximately [* *] of Smith Corona's combined PET and PEWP shipments were domestically produced. See, Report at Table 4 and Table 20. Domestic value added to those domestically produced shipments of PETs and PEWPs was below [***]. Report at D-4.

²¹ Respondent's Response to Questions at 17-18. In its preliminary determination at page 13, the Commission stated that "(a)t the present time it remains unclear... whether the primary interests of SCC in this instance are in its domestic production or in importation". This question has now been answered definitively. In its Response to Questions at page 17, respondent has stated "that it is clear that [* * * * *]".

²² Id.; Annual Report, Smith Corona Corporation, 1992. Respondent has indicated that [* * * * *] Respondent's Response to Questions at 17. It is expected that Smith Corona's worldwide engineering, product design, customer service, and administrative support activities will remain in the United States. Report at I-19.

²³ Report at Table 2.

PEWPs during the period of investigation.²⁴

There are, however, ample reasons for excluding Smith Corona as a "related party" from the domestic industry. The governing statute provides that when a domestic producer is related to exporters or importers or is itself an importer of the LTFV imports, the term "industry" may be applied in appropriate circumstances to exclude that producer from those included in that industry.²⁵ In the instant case, respondent is clearly a related party, being both an affiliate of the largest Singaporean exporter and the importer of the vast majority of PETs from Singapore.²⁶ For the reasons set forth below, appropriate circumstances exist to exclude Smith Corona's Cortland, N.Y. operations from the domestic industry.

In determining whether appropriate circumstances exist to exclude a related party's domestic production from the domestic industry the Commission has traditionally looked at a number of

²⁴ The Commission has previously considered domestic operations data for that portion of the period of investigation for which a departing domestic producer was still part of the industry. See, Extruded Rubber Thread From Malaysia, Inv. Nos. 303-TA-22 and 731-TA-527 (Final) September, 1992. The question of whether appropriate circumstances exist to exclude a particular "related party" domestic producer is a separate issue to be reached on a case-by-case basis.

²⁵ 19 U.S.C. Section 1677 (4)(B).

²⁶ In addition to Smith Corona, the record indicates that Olivetti began producing PETs in Singapore in [****]. In 1992 Olivetti USA accounted for [****] of PET imports from Olivetti Singapore. In 1993, Olivetti Singapore projects that its share of exports going to the United States will fall to zero. Report at I-37.

factors.²⁷ Those factors include: 1) the percentage of domestic production attributable to the importing producer; 2) the reasons the U.S. producer has decided to import the product subject to investigation; 3) the position of the related producer 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; and 4) whether the related party is shielded from the effects of the subject imports. The unique circumstances of each investigation necessarily require a case-by-case analysis of these factors.

In the case of Smith Corona, the record indicates a rapid and steady decline in U.S. production of PETs and PEWPs.²⁸ As a direct result of recent steps taken by respondent's board of directors, its remaining share of domestic production is expected to reach a de minimis level by the end of 1993.²⁹ Respondent contends that it benefits from the Singaporean imports because "it was enabled by its off-shore assembly operations to lower costs, reduce prices responsively, continue its production of high-end PATs and PEWPs and compete in the U.S. market."³⁰ This statement supports the conclusion that Smith Corona intended to subsidize its remaining

²⁷ See, Certain Carbon Steel Butt-Weld Pipe Fittings From China and Thailand, Inv. Nos. 731-TA-520 and 521 (Final) June, 1992.

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²⁹ Annual Report of Smith Corona Corporation, 1992.

³⁰ Respondent's Posthearing Brief at 5.

domestic production of high-end machines by importing and selling LTFV imports from Singapore. In seeking to obtain a competitive advantage through cost reduction, Smith Corona determined to shift its production offshore and focus on importation. The evidence indicates, therefore, that Smith Corona's pricing policies received some benefit from the LTFV imports.

The inclusion of Smith Corona's financial data for its Cortland operation would also have a significant distorting effect on the picture of the domestic industry as a whole. In the past, the Commission has considered excluding a domestic producer that has benefited financially from LTFV imports to the extent that inclusion of its data would otherwise mask injury to the balance of the domestic industry because such a producer was performing substantially better than non-importing producers.³¹ In this case, including Smith Corona's [* * * ³² *]

³¹ See, Certain Carbon Steel Butt-Weld Pipe Fittings From China and Thailand, Inv. Nos. 731-TA-520 and 521 (Final) June, 1992 at 17.

³² Compare Report at table B-6 with Report at table B-3.

* * * * *

Finally, I note that the petition was filed by Brother Industries (BIUSA), which is responsible for the [*] of domestic production.³⁴ The statute is most faithfully adhered to by determining the impact of the LTFV imports on the industry comprised solely of BIUSA and the other smaller domestic producers which have alleged material injury by reason of Smith Corona's LTFV imports.³⁵ If Smith Corona was not excluded as a related party for purposes of the Commission's material injury determination, the Commission would be placed in the anomalous position of having to attempt to measure the impact of the LTFV imports imported by Smith Corona on an industry which consists primarily of Smith Corona and BIUSA.

III. NO MATERIAL INJURY BY REASON OF LTFV IMPORTS

A. Volume of the LTFV Imports

The record indicates that the volume of LTFV imports is significant and has increased steadily over the five year period

³³ Id.

³⁴ Brother Industries accounted for [*] of combined PET/PEWP production in 1992.

³⁵ In lieu of excluding Smith Corona as a related party, Respondent has suggested that the Commission "disaggregate" the data in determining causation. Respondent's Posthearing Brief at 9-10. Vice Chairman Watson notes, however, that the Commission in reaching its determination must consider the impact of the imports on the defined domestic industry "as a whole". See, e.g., United Engineering & Forging v. United States, 779 F. Supp. 1375 (Ct. Int'l Trade 1991); Minivans From Japan, Inv. No. 731-TA-533 (Final) July 1992 at 16, footnote 50.

for which the Commission gathered information.³⁶ Despite the overall increase in LTFV imports from 1988 through 1992, the domestic industry (excluding Smith Corona), steadily increased to an even greater extent its market share in terms of both quantity and value.³⁷ When viewing the most current three year period for which the Commission gathered data, the LTFV imports actually lost market share while at the same time the domestic industry gained market share.³⁸ The market share data discussed above should be considered in the context of the declining trends in U.S. consumption.³⁹ When done so, it becomes readily apparent that the domestic industry excluding Smith Corona has been remarkably successful in gaining market share during times of trouble for the industry as a whole.

B. The Effect of the LTFV Imports on Domestic Prices

The pricing data available to the Commission do not demonstrate price suppression or price depression by the LTFV

³⁶ Report at B-8.

³⁷ Id. at B-3. [* * * * *]
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³⁸ Although Vice Chairman Watson has considered data from the entire period of investigation from 1988 through 1992, he places the most weight on the most current three year period in making his material injury determination. Id. at B-3. [* * * * *]
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³⁹ Id. [* * * * *]
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imports. Moreover, there are significant flaws in that data.

Commission staff verification of [* * 4 0
* * * *⁴¹ * *] *

In addition to the above, it appears that price comparisons are tenuous because within each product definition, each supplier sells various models of PETs and PEWPs for which prices vary according to features and functions. As a result, changes in prices may not be representative of price trends. Instead they may reflect a shift or variation in the product mix sold by the supplier during different quarters.⁴² Moreover, it is difficult to take into consideration the degree to which improvements in technology have led to the generally declining prices of PETs and PEWPs (namely advances in the speed and processing power of

⁴⁰ See, U.S.I.T.C. Verification Report, Inv. No. 731-TA-515 (Final) at 8-9. In order to establish appropriate price comparisons, U.S. producers, importers and purchasers were specifically requested to report selling or purchase prices net of any post-invoice allowances or rebates.

⁴¹ Id., at 9. [* * * *

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*]. Report at I-44.

⁴² Report at I-44.

semiconductors and the concomitant drop in their prices and by extension, prices of personal computers).⁴³

The pricing data gathered by staff indicates that overall prices for PETs and PEWPS declined during the five year period of investigation.⁴⁴ The data do indicate, however, that prices of domestically produced PETs and PEWPs declined at a greater rate than the LTFV imports, and, further, that in some instances prices of the LTFV imports increased or remained substantially flat over the period of investigation.⁴⁵ Pricing comparisons at the wholesale level [* *] show mixed underselling and overselling by the LTFV imports.⁴⁶ If, however, those pricing comparisons are recalculated to [* * * * *]⁴⁷

Due to the flaws in the pricing data, staff also provided the

⁴³ There is also some indication that the declining demand for PETs puts downward pressure on wholesale prices of PETs. Report at F-3.

⁴⁴ Report at I-44-49.

⁴⁵ Id. See specifically Table 22.

⁴⁶ Report at Tables 21,22 and 23. [* * * * *]

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⁴⁷ Id. [* * * * *]

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Commission with U.S. producers' and importers' average unit prices of basic and dictionary PETs.⁴⁸ Use of this data is also problematic. Although the average unit value data compares prices for basic and dictionary PETs, it does not take into consideration the product mix of different models within those types of PETs. In any event, the adjusted data do not reveal predominate underselling by the LTFV imports.⁴⁹

Overall, average unit values of the LTFV imports declined over the period of investigation.⁵⁰ In contrast, domestic producers' average unit values of all PETs and PEWPs combined remained relatively stable over the five year period of investigation and actually increased in the three year period from 1990 to 1992.⁵¹

Based on the factors noted above, I find that the record does not contain evidence that the LTFV imports had any significant price effects on domestic prices.

C. The Impact of the LTFV Imports on the PET/PEWP Industry

The financial data excluding Smith Corona depict a resilient and healthy industry that is not suffering from material injury. U.S. producers gained significant market share over the period of investigation.⁵² U.S. producer's capacity, production, shipments, number of production workers, total compensation and productivity

⁴⁸ Report at E-3-5.

⁴⁹ Id.

⁵⁰ Report at B-3. [* * * * *]
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⁵¹ Id.

⁵² Report at I-22-33, table B-6.

increased steadily in each year during the five year period of investigation. Operating income fluctuated over the full period of investigation but rose during the last three years.⁵³ The record indicates that capital expenditures and research and development expenses for BIUSA [* *]⁵⁴

The record evidence simply does not demonstrate that the domestic PET/PEWP industry is experiencing any injury by reason of the LTFV imports. The market share gained by the LTFV imports was not at the expense of the domestic industry.⁵⁵ Both the petitioner and respondent alleged lost sales and revenues. None of those allegations were confirmed.⁵⁶

Although domestic PETs and PEWPs compete with the LTFV imports, substitutability between PETs produced by Smith Corona and BIUSA is limited by non-price factors. Wholesale purchasers have indicated that they consider such factors as payment terms, delivery time, quality, features and advertising allowances along with price.⁵⁷ Many retailers also consider it important to provide

⁵³ Id. [* * * * *
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 * *] See, Report at Table 4 and Table 13.

⁵⁴ Report at I-32-33.

⁵⁵ Report at I-17-18 and table 2. [* * * * *
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⁵⁶ Report at I-51, F-3.

⁵⁷ Report at I-51, F-3.

customers with a choice between competing models, and, therefore, buy from both Smith Corona and BIUSA.⁵⁸

Based on the above, I conclude that the industry in the United States producing both portable electric typewriters (PETs) and portable electric word processors (PEWPs) is not materially injured by reason of imports of PETs from Singapore that the Department of Commerce (Commerce) has found to be sold at less than fair value (LTFV).

IV. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of LTFV imports "on the basis of evidence that the threat of material injury is real and that actual injury is imminent."⁵⁹ Upon consideration of the statutory threat factors⁶⁰ relevant to the circumstances of this case, there exists no real and imminent threat of material injury by the LTFV imports.

The share of Smith Corona Singapore's exports going to the United States has [* * * * *]

⁵⁸ Id.

⁵⁹ 19 U.S.C. Section 1677(7)(F)(ii).

⁶⁰ 19 U.S.C. Section 1677(7)(F)(i).

⁶¹ Report at I-37. [* * * * *]
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*]⁶² The record does not contain any significant evidence (i.e. projections) indicating that these trends are likely to change in the near future. I conclude, therefore, that the industry in the United States producing both PETs and PEWPs is not threatened with material injury by reason of the LTFV imports.

* ⁶² Report at I-37. [* * * * *
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INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

On February 8, 1993, the U.S. Department of Commerce (Commerce) published in the Federal Register (58 F.R. 7534) its preliminary determination that imports from Singapore of portable electric typewriters (PETs),¹ provided for in subheadings 8469.10.00 and 8469.21.00 of the Harmonized Tariff Schedule of the United States (HTS), are being sold in the United States at less than fair value (LTFV).² Accordingly, effective February 8, 1993, the U.S. International Trade Commission (Commission) instituted antidumping investigation No. 731-TA-515 (Final), under section 735(b) of the Tariff Act of 1930 (the Act), to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise into the United States.³

Notice of the institution of this investigation 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 March 25, 1993. The Commission conducted a public hearing in this investigation on June 25, 1993, at which time all interested parties presented information and data for consideration by the Commission.⁴

Commerce notified the Commission of its final dumping determination in this investigation on August 11, 1993.⁵ The Commission will transmit its determination in the investigation to Commerce on September 24, 1993.

BACKGROUND

Instant Investigation

On April 18, 1991, a petition was filed with the Commission and Commerce by counsel for Brother Industries (USA), Inc. (BIUSA), Bartlett, TN, alleging that an industry in the United States is being materially injured and is

¹ For purposes of this investigation, PETs are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and that meet the following criteria. They must: (1) be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate their portability; (2) be electric, regardless of source of power; (3) be comprised of a single, integrated unit (e.g., not in two or more pieces); (4) have a keyboard embedded in the chassis or frame of the machine; (5) have a built-in printer; (6) have a platen (roller) to accommodate paper; and (7) only accommodate their own dedicated or captive software, if any. The PETs subject to this investigation are those provided for in HTS subheading 8469.21.00 and those with text memory (automatics) provided for in HTS subheading 8469.10.00.

² Copies of Commerce's Federal Register notices relevant to this investigation appear in app. A.

³ 58 F.R. 16205, Mar. 25, 1993. Copies of the Commission's Federal Register notices relevant to this investigation appear in app. A.

⁴ A list of witnesses appearing at the hearing is presented in app. A.

⁵ Letter from Richard W. Moreland, Acting Deputy Assistant Secretary for Investigations, Import Administration, Department of Commerce, to Don E. Newquist, Chairman, U.S. International Trade Commission.

threatened with material injury by reason of imports from Singapore of PETs that were alleged to be sold in the United States at LTFV. Accordingly, effective April 18, 1991, the Commission instituted a preliminary antidumping investigation under the relevant provision of the Act. On June 3, 1991, the Commission determined there was a reasonable indication that an industry in the United States is materially injured by reason of imports of such merchandise into the United States from Singapore.

On October 2, 1991, Commerce published in the Federal Register⁶ its rescission of initiation of the antidumping investigation and dismissal of BIUSA's petition. Commerce's decision was based on its view that because BIUSA "neither manufactures nor produces a like product in the United States, nor wholesales a domestically produced like product, we conclude that Brother is not an interested party as defined in section 771(9)(C)."⁷ Accordingly, in Commerce's view, BIUSA did not have standing to maintain the case and, therefore, it (Commerce) was "compelled to rescind our initiation of the investigation and dismiss the petition."⁸ In making its determination, Commerce considered, among other factors: (1) the extent and source of capital investment; (2) technical expertise; (3) U.S. value-added; (4) employment levels; (5) quantity and types of domestically sourced parts; and (6) other costs and activities leading to production of like product. BIUSA immediately contested Commerce's action before the U.S. Court of International Trade (CIT) and, on September 3, 1992, the CIT reversed Commerce's determination that BIUSA was not an interested party and thus did not have standing to file a petition. The CIT held that Commerce's determination that BIUSA was not a manufacturer was not supported by substantial evidence and was not in accordance with law. In addition, the Court held that a fair application of the criteria stated in Commerce's determination demonstrated that BIUSA is a United States manufacturer with a clear stake in the outcome of the antidumping investigation. Therefore, the CIT remanded the case to Commerce to complete the standing inquiry and, if necessary, to complete the investigation.⁹

On October 13, 1992, BIUSA sought enforcement of the CIT decision. On October 29, 1992, Commerce indicated that because the decision of the CIT was not a "conclusive" decision, there was no requirement that it implement the decision.¹⁰ Further, Commerce stated that "upon a 'conclusive' decision by the Court of Appeals for the Federal Circuit affirming the CIT, the Department will consider whether BIUSA filed the petition on behalf of the domestic industry; if so, the Department will proceed with the investigation."¹¹ However, on November 30, 1992, the CIT granted BIUSA's Motion to Enforce and, on December 22, 1992, Commerce announced its schedule to implement the CIT's decision.¹²

On June 22, 1993, Commerce announced an agreement to suspend the antidumping investigation based on an agreement by the Singaporean

⁶ 56 F.R. 49880.

⁷ Id.

⁸ Id.

⁹ *Brother Industries (USA) Inc. v. United States et al.*, Court No. 91-11-00794, Slip Op. 92-152 (CIT Sept. 3, 1992).

¹⁰ 57 F.R. 49071, Oct. 29, 1992.

¹¹ Id.

¹² 57 F.R. 60796, Dec. 22, 1992.

producers/exporters,¹³ which account for substantially all of the known imports of PETs from Singapore, to revise their prices to eliminate sales of PETs to the United States at LTFV.¹⁴ Subsequent to that announcement, on June 25, 1993, counsel for BIUSA filed with the CIT both an application for a temporary restraining order (TRO) and a motion for a preliminary injunction to enjoin Commerce from lifting suspension of liquidation on entries of PETs from Singapore based on the suspension agreement signed by Commerce and Smith Corona. The CIT granted BIUSA's TRO application and scheduled a hearing on July 12, 1993, to consider BIUSA's preliminary injunction motion. On July 26, the CIT issued an order denying BIUSA's motion for preliminary injunction and, on that same date, Commerce published the suspension agreement in the Federal Register. On July 27, 1993, counsel for BIUSA, in a letter to the Secretary of Commerce, requested that the investigation be continued and a final dumping finding be issued.¹⁵

Previous and Related Investigations

Since 1975, PETs have been the subject of considerable inquiry at the Commission, at Commerce, and at the CIT.

In June 1975, by a 3-2 vote, the Commission determined under section 201(a) of the Antidumping Act of 1921 (19 U.S.C. § 160) that an industry in the United States was not being injured and was not likely to be injured, and was not prevented from being established, by reason of imports of PETs from Japan that were being sold at LTFV.¹⁶ This determination was appealed by Smith Corona to the CIT, which remanded the action to the Commission for further statement of reasons. Upon remand, the CIT affirmed the Commission's negative determination.¹⁷

In May 1980, in response to a new petition from Smith Corona, the Commission unanimously determined, under section 735(b) of the Act, that an industry in the United States was materially injured by reason of imports of PETs from Japan that Commerce found had been sold in the United States at LTFV.¹⁸ This determination resulted in the publication by Commerce of an antidumping duty order (the PETs order). The PETs subject to the original order are provided for in HTS subheading 8469.21.00.

In 1983, coverage of the PETs order was expanded to include portable electronic typewriters.¹⁹ Then, in 1987, Commerce declined to expand the

¹³ Counsel for Smith Corona Corporation and Smith Singapore PTE Ltd. signed the agreement with Commerce.

¹⁴ 58 F.R. 39786, July 26, 1993.

¹⁵ Letter from T. Clark Weymouth, Hogan & Hartson, to the Honorable Ronald H. Brown, Secretary, U.S. Department of Commerce, July 27, 1993.

¹⁶ Portable Electric Typewriters from Japan: Determination of No Injury or Likelihood Thereof in Investigation No. AA1921-145 Under the Antidumping Act, 1921, as Amended, USITC Publication 732, June 1975.

¹⁷ 544 F. Supp. 194. (CIT 1982).

¹⁸ Portable Electric Typewriters from Japan: Determination of Material Injury in Investigation No. 731-TA-12 (Final) Under Section 735(b) of the Tariff Act of 1930, USITC Publication 1062, May 1980 (PETs from Japan).

¹⁹ Portable Electric Typewriters from Japan: Final Results of the Administrative Review of Antidumping Duty Order (48 F.R. 7769, Feb. 24, 1983).

scope further to include either automatic PETs with text memory (automatics) or those typewriters with calculators;²⁰ however, Smith Corona appealed this ruling to the CIT, which remanded the case to Commerce. Upon remand, Commerce expanded the scope to include typewriters with calculators but not those with text memory. The CIT subsequently reversed Commerce's ruling with regard to those with text memory.²¹ Defendant-intervenors appealed the CIT ruling to the Court of Appeals for the Federal Circuit, which upheld the CIT decision on September 26, 1990.²² On May 15, 1990, Smith Corona filed a request for inclusion of certain "later developed portable electric typewriters, including so-called 'personal word processors.'" Commerce issued a final scope ruling in response to that request in November 1990. Under the ruling, Commerce expanded the PETs order to include word processors that meet the portability criteria specified under the PETs order scope;²³ however, the expanded order did not cover the word processors subject to Inv. No. 731-TA-483 (Final), Certain Personal Word Processors from Japan (PWP from Japan).²⁴ In PWPs from Japan, the Commission determined that an industry in the United States was being injured by reason of imports from Japan of certain personal word processors, excluding office typing systems, that were found by Commerce to be sold in the United States at LTFV.

Finally, and of relevance to the instant investigation, is the fact that Smith Corona, on March 18, 1991, filed a petition with Commerce requesting an anti-circumvention inquiry on the PETs order. Specifically, Smith Corona alleged that BIUSA (the petitioner in this investigation) was circumventing the PETs order by importing parts and components from Japan, and assembling them into finished PETs for sale in the U.S. market. Commerce initiated the inquiry on April 12, 1991.²⁵ As the inquiry related to the preliminary portion of the instant investigation, Commerce, in its notice initiating PETs from Singapore, noted that Smith Corona had filed a submission arguing that BIUSA as an assembler of imported parts suspected of circumventing the PETs order was not an interested party entitled to file a petition. Further, Smith Corona argued that Commerce should not initiate the investigation until it

²⁰ Portable Electric Typewriters from Japan: Final Results of Antidumping Duty Administrative Review (52 F.R. 1505, Jan. 14, 1987).

²¹ Smith Corona v. United States, 11 CIT 954, 698 F. Supp. 240 (CIT 1988).

²² Portable Electric Typewriters from Japan: Court of Appeals for the Federal Circuit Decision Concerning the Scope of Antidumping Duty Order (55 F.R. 42423, Oct. 19, 1990). PETs with text memory (automatics) subject to this ruling are provided for in HTS subheading 8469.10.00.

²³ Final Scope Ruling: Portable Electric Typewriters from Japan (55 F.R. 47358, Nov. 13, 1990). For purposes of this report such items are identified as "portable electric word processors" (hereinafter, PEWPs). PEWPs are devices designed principally for the composition and correction of text and consisting of at least the following major units--(1) a keyboard; (2) a video display; and (3) a chassis containing an operating system, software, and internal memory--with nonseparable major units. PEWPs are provided for in HTS subheading 8469.10.00.

²⁴ Certain Personal Word Processors from Japan: Determination of the Commission in Investigation No. 731-TA-483 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation, USITC Publication 2411, August 1991.

²⁵ Initiation of Anti-Circumvention Inquiry on Antidumping Duty Order on Portable Electric Typewriters from Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.) (56 F.R. 14922, Apr. 12, 1991).

made its final determination in the anticircumvention inquiry. Commerce noted that it would make a preliminary determination in that inquiry by August 23, 1991; however, it did not believe that it had the authority to postpone initiation of the instant investigation because of the pending anticircumvention inquiry.^{26 27} On November 15, 1991, Commerce made a final determination that BIUSA was not circumventing the PETs order within the meaning of section 781(a) of the Act.²⁸

NATURE AND EXTENT OF SALES AT LTFV

In making its final determination,²⁹ Commerce compared the United States price (USP) of PETs with their foreign market value (FMV). For USP, Commerce determined that it was appropriate to use exporter's sales price (ESP) methodology for all sales in accordance with section 772(c) of the Act. Commerce calculated ESP based on packed, delivered prices to unrelated customers in the United States. Deductions, where appropriate, were made for foreign brokerage, containerization, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, U.S. inland freight (U.S. warehouse to customer), U.S. handling, freight credits, cash discounts, rebates, key city allowances, direct from invoice advertising credits, and sales allowances. Further deductions, where appropriate, were made for credit, advertising accrual rebates, promotional allowance, prep allowances, warranties, commissions, and indirect selling expenses, including warehousing, product liability premiums, corporate advertising, inventory carrying costs, and U.S. indirect selling expenses in accordance with section 772(c) of the Act.

For FMV, Commerce used third country market sales (to the United Kingdom (UK)). Commerce selected the UK because it had the largest volume of sales to any third country and the market, in terms of organization and development, is most like the United States. For FMV, Commerce calculated delivered price based on packed, delivered prices to unrelated customers in the UK. Deductions, where appropriate, were made for foreign brokerage, foreign inland freight, containerization, ocean freight, marine insurance, UK inland freight (UK warehouse to customer), rebates, other allowances, cash discounts, a customer specific discount, and commissions. Further deductions were made for third country indirect selling expenses, including warehousing, inventory

²⁶ Commerce further stated, "Moreover, at this time, we are not persuaded that even if a party were found to be circumventing an AD order, it automatically would be precluded from being considered an interested party pursuant to 19 CFR 353.2(k)(3) with respect to another investigation."

²⁷ On a related note in the investigation involving PWP's from Japan, Commerce was asked by BIUSA to preclude Smith Corona as an interested party to file a petition and to rescind its initiation of that investigation. The challenge was based on BIUSA's assertion that Smith Corona is an assembler, not a manufacturer, of the like product subject to that investigation. In its final determination of sales at LTFV, Commerce determined that Smith Corona engaged in sufficient operations to be considered a domestic manufacturer of PWP's in the United States. (56 F.R. 31101, July 9, 1991).

²⁸ Negative Final Determination of Circumvention of Antidumping Duty Order: Portable Electric Typewriters from Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.) (56 F.R. 58031, Nov. 15, 1991).

²⁹ Commerce's period of investigation was Nov. 1, 1990, through Apr. 30, 1991.

carrying costs, product liability premiums, corporate advertising, U.S. indirect selling expenses incurred on behalf of UK sales, and UK indirect selling expenses, capped by the amount of indirect selling expenses incurred on ESP sales.

Based on this comparison of USP and FMV, Commerce calculated a final dumping margin of 15.51 percent for Smith Corona PTE Ltd., specifically, as well as all other manufacturers, producers, and exporters of PETs from Singapore.

THE PRODUCTS

The merchandise covered by this investigation consists of PETs, including those with text memory (automatics). These goods are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and that meet the following criteria: they must (1) be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate their portability; (2) be electric, regardless of source of power; (3) be comprised of a single, integrated unit (e.g., not in two or more pieces); (4) have a keyboard embedded in the chassis or frame of the machine; (5) have a built-in printer; (6) have a platen (roller) to accommodate paper; and (7) only accommodate their own dedicated or captive software, if any.

PETs subject to this investigation are finished units as distinguished from parts or subassemblies, in that these units do not require any additional manufacturing before performing their intended function. Neither parts nor subassemblies are included in the scope of this investigation.

Certain other machines which meet all of the aforementioned criteria, PEWPs,³⁰ are excluded from the scope of this investigation as defined by Commerce.³¹ However, given that PEWPs are within the ambit of the antidumping order on PETs from Japan, trade and financial data regarding PEWPs were requested and are presented in the report for whatever consideration the Commission may deem appropriate relevant to like product and material injury. For purposes of the preliminary investigation, the Commission determined the like product included PEWPs as well as PETs.³² Selected features offered by

³⁰ Final Scope Ruling: Portable Electric Typewriters from Japan (55 F.R. 47358, Nov. 13, 1990). See also, fn. 23.

³¹ In its final determination in this investigation, Commerce stated: "Based on petitioner's request, the Department has decided not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (see 58 FR 43334, Aug. 16, 1993)." Further, in an effort to distinguish between PETs and PEWPs, Commerce stated, "PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform 'block move;' and (4) a 'search and replace' function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation." Id. ***.

³² Portable Electric Typewriters from Singapore: Determination of the Commission in Investigation No. 731-TA-515 (Preliminary) Under the Tariff Act
(continued...)

PETs and PEWPs are summarized in table 1. In PWPs from Japan, the Commission determined³³ that the like product consisted of all personal word processors, including both PEWPs and all other personal word processors.³⁴ The Commission further stated that all typewriters, whether PETs or office varieties, were not included in the like product.³⁵

PETs which are capable of producing text from a self-contained electronic memory are distinguishable from personal word processors subject to PWPs from Japan. PETs have limited correction capability and text storage capacity when compared with that of a personal word processor; in particular, they do not have the capability for external storage through use of a floppy disk drive.

In its briefs, as well as at the hearing in the instant investigation, BIUSA has argued for one like product consisting of PETs exclusively, while Smith Corona has argued for one like product consisting of PETs and PEWPs. BIUSA argues that there is "no reason" for the Commission to depart from its final determination in PWPs from Japan that PEWPs are not like PETs.³⁶ In its like product argument, BIUSA states:

"Proper application and weighing of the traditional 'like product' criteria compels the exclusion of PEWPs from the like product in this case: the differences between PETs/PATs and PEWPs are not 'minor' (footnote omitted). In PWPs from Japan (Final), the Commission found that clear dividing lines separate PETs/PATs from PEWPs and other PWPs, based on physical characteristics, and uses the lack of functional interchangeability, customer perceptions, and price (footnote omitted). The Commission's findings and reasoning in PWPs from Japan apply with equal force here."

³² (...continued)

of 1930. Together With the Information Obtained in the Investigation, USITC Publication 2388, June 1991.

³³ Commissioner Brunsdale dissenting with respect to "like product."

³⁴ Certain Personal Word Processors from Japan: Determination of the Commission in Investigation No. 731-TA-483 (Final) Under the Tariff Act of 1930. Together With the Information Obtained in the Investigation, USITC Publication 2411, August 1991, p. 6.

³⁵ Id.

³⁶ In this regard, BIUSA states that given the Commission's reasoning and findings in PWPs from Japan, if the Commission were to conclude in this investigation that PEWPs are like PETs, there would be no rational reason to exclude other PWPs from the like product analysis. BIUSA goes on to note, however, that such analysis would be impossible owing to the absence of any data on PWPs other than PEWPs in the record of this investigation. Posthearing brief of BIUSA, p. 7, fn. 24.

Table 1

PETs and PEWPs: Selected features, by product, 1992 product lines

| Item | PETs | | Dictionary with extra memory and LCD | PEWPs |
|----------------------|-------|------------|---|----------|
| | Basic | Dictionary | | |
| One-line memory | | | | |
| correction..... | Yes | Yes | Yes | Yes |
| Decimal tab..... | Yes | Yes | Yes | Yes |
| Caps lock..... | No | Yes | Yes | Yes |
| Typing speed | | | | |
| (characters per | | | | |
| second)..... | 10 | 12 | 12 | 15 |
| Auto line indent.... | No | Yes | Yes | Yes |
| 10, 12, and 15 | | | | |
| Pitch..... | Yes | Yes | Yes | Yes |
| Dictionary | No | 75K | 75K | 75-90K |
| LCD Display..... | No | No | 16 ch | 8X80 ch |
| Memory: | | | | |
| Internal..... | No | No | 7-22K | 64-128K |
| External..... | No | No | No | 360-720K |

Source: Smith Corona Electronic Typewriters and Word Processors (product brochures, 1992) and BIUSA Electronic Typewriters and Word Processors (product brochures, 1992).

"The essential characteristic of a PEWP -- like all word processors -- is a floppy disk drive enabling unlimited external storage capability for an unlimited number of documents. PEWPs also contain sophisticated software and an LCD display of at least 560 characters enabling them 'to perform relatively sophisticated text-editing functions that cannot be performed on automatic typewriters.'³⁷ Because of these essential characteristics, the primary purposes of PEWPs is 'to draft long documents, automatically paginate, footnote, edit, and build a library of documents for future use.' (footnote omitted). PETs/PATs do not share the essential characteristics of PEWPs and, therefore, cannot perform a PEWP's primary purpose. As the Commission has already concluded:

"Generally, word processors and typewriters are not functionally interchangeable. While both types of machines may be used to generate text, the basic

³⁷ With regard to this argument, BIUSA notes, in the preliminary investigation on PETs from Singapore, the Commission relied on the common feature of portability cited by two purchasers in "tentatively" concluding that PEWPs are like PETs/PATs; whereas, in PWP from Japan, the Commission concluded that portability is "merely a simple use distinction" and not a dominant "physical characteristic . . ." Posthearing brief of BIUSA, p. 8, fn. 27.

purpose of the machines is different. . . 'The basic purpose of a typewriter is to type, i.e., to impress letters on paper. The basic purpose of a word processor, in contrast, is to draft and edit text, as well as to print it out.'"³⁸

"Because of their significant technological, functional, and feature differences, PETs/PATs are also clearly divided from PEWPs by consumer perceptions, pricing, and market niches (footnote omitted). SCC's Vice-President of Product Marketing admitted that there is about a \$100 price difference between the high-end Display PAT and the low-end PEWP.³⁹ By contrast, retail price differences between the OPP (opening price point) Basic PET models and the Dictionary PET models, and between Dictionary and Display PET models, are on the order of \$20."

"Finally, although isolated consideration of production processes, facilities, and employees, and of channels of distribution may 'not show a dividing line' between products (footnote omitted), the Commission's well-reasoned conclusion in PWP's from Japan informs that the relative weight and importance of each of the six 'like product' factors varies from case to case, depending on the nature of the industry at issue. In the consumer electronic and home office product field, channels of distribution and production facilities generally overlap, which is why the other four factors are of greater significance in this case."^{40 41}

Using the statutory factors the Commission follows in making its like product, Smith Corona argues:

"They (PETs/PATs/PEWPs) are alike in physical appearance, end use, and customer perceptions: they are essentially typewriters in which the keyboard and printing mechanism are incorporated in a unitary portable structure. They are produced on the same production lines, by the same production personnel, and by the same basic assembly processes. They are interchangeable in use, representing essentially an electronic typewriter stepping up from the basic model to dictionary and display models by the addition of ancillary features. They are sold in the same channels of

³⁸ Certain Personal Word Processors from Japan: Determination of the Commission in Investigation No. 731-TA-483 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation, USITC Publication 2411, August 1991, p. 11 (quoting from the Commission's preliminary decision in that investigation).

³⁹ Hearing TR, p. 160.

⁴⁰ On this point, BIUSA notes, "Given that the domestic industry in this case -- producers of portable electric typewriters -- is part of the consumer electronic and home office product field, it is not surprising that PETs/PATs and PEWPs and other PWP's are distributed through the same channels and are manufactured in the same facilities. Those same retail channels, however, buy and sell a plethora of home office products clearly outside of this investigation, some of which are also manufactured by Brother, such as printers and fax machines." Posthearing brief of BIUSA, p. 10, fn. 33.

⁴¹ Posthearing brief of BIUSA, pp. 8-10.

distribution, displayed together in the same department of retail outlets, and are sold in a dispersion of closely related price points. Because each of the models, PET, PAT, and PEWP is essentially a typewriter, the consumers are housewives, students, small business offices, dental and doctors offices, and other persons with an occasional need for a typewriter for personal correspondence, rudimentary business forms, envelopes and relatively short, unprofessional writings."

"By contrast, PWP's are non-portable machines comprising a separate keyboard, printer and CRT (display). Technologically, the PWP software is quite advanced beyond that of a PEWP. PWP software includes the capability of storing documents on small floppy disks, and the versatility of editing text by block moving sentences, paragraphs, etc. PWPs typically also include spreadsheet software. The consumers of PWPs are a different class than of PETs, PATs and PEWPs, consisting of serious writers concerned with composing manuscripts requiring careful editing."

"Clearly, PETs, PATs and PEWPs comprise a like product; PWPs are excluded by the 'bright line' differential in physical appearance, end use, customer perceptions, technology, lack of interchangeability of the product for performance of PET/PAT/PEWP functions with PWPs, etc., and price (there is a larger interval between the wholesale price of the PEWP and that of the PWP than between PETs, PATs and PEWPs, reflecting the higher value niche in the consumer electronics market.)" (Footnote omitted.)

"Concerning the relevance of the Commission's determination of like product in Certain Personal Word Processors from Japan, . . . Smith Corona's position here is consistent with its position in that investigation. There the Commission included PEWPs along with PWPs in its like product determination notwithstanding that PEWPs were then covered by the scope of the PET antidumping duty order. Smith Corona's position was consistent with the ITA's determination of the scope of the petition and of the antidumping duty investigation. In view of the ensuing change in the composition of the Commission, and the additional information in the record of this investigation, Smith Corona submits that reconsideration of the relationship between PEWPs and PWPs would be appropriate."

"This case involves a different product line than Certain Personal Word Processors, and its own distinctive continuum of typewriter-like models. Here, in the context of the PET/PAT/PEWP continuum, there is a 'bright line' distinction between PEWPs and PWPs. From the point of view of technology, end use, class of consumers, physical characteristics, interchangeability of the products, consumer and producer perceptions of the products and price, there is a clear line of demarcation between PEWPs and PWPs, as explained above. Circumstances in Certain Personal Word Processors did not invite a close analysis of the distinction between PETs and PATs on the one hand and PWPs on the other. Portability was not a distinguishing characteristic between PWPs and PEWPs in the context of that case; here, Smith Corona believes it is material for the Commission to consider anew the essential

aspect of portability as a distinguishing feature of PETs, PATs and PEWPs, but not PWPs. In the case of PEWPs the entire operating mechanism is incorporated in an integral structure: keyboard, printer, and display, lending itself to use in varied environments by the user; in PWPs there is lacking the integral structure, and because of non-portability and disaggregation of the principal components of the mechanism, a more permanent operating environment is required to accommodate the separate keyboard, printer and display (CRT)."⁴²

In its purchaser questionnaires, the Commission asked respondents if other products, such as PEWPs, could be substituted for PETs in their end uses and, if so, did their prices affect those of PETs. A few, such as ***, simply responded "no."⁴³ A number of others responded in the affirmative; however, virtually all of the affirmative responses contained caveats that may serve to limit substitutability, primarily the fact that prices of PEWPs were somewhat higher than those of PETs. For example, ***, which purchased more than *** PETs and *** PEWPs⁴⁴ during 1990-92 at a value in excess of ***, stated with respect to substitutability:

"***."

With regard to PEWPs affecting prices for PETs, *** answered "no", stating:

"***."

Another large purchaser, ***, which purchased over *** PETs and *** PEWPs⁴⁵ during 1990-92, commented:

"***."

Insofar as the prices of PEWPs impacting on those of PETs, *** noted:

"***."

***, with purchases of more than *** PETs and over *** PEWPs valued at over *** during 1991-92,⁴⁶ said that ***. With respect to the PEWP price affecting those of PETs, they said:

"***."

Finally, ***, with purchases of over *** PETs and more than *** PEWPs with a value of over *** during 1991-92,⁴⁷ stated:

"***."

⁴² Posthearing brief of Smith Corona, pp. 2-4.

⁴³ Among others there were ***.

⁴⁴ *** percent of *** PET purchases were from U.S. producers while ***.

⁴⁵ More than *** percent of *** purchases of PETs came from *** while more than *** percent of its PEWP purchases came from ***.

⁴⁶ ***. Nearly *** percent of *** purchases of PETs came from *** while over *** percent of its PEWP purchases came from ***.

⁴⁷ ***. Nearly *** percent of *** purchases of PETs came from *** with ***. More than *** percent of its purchases of PEWPs were from ***.

Concerning the PEWP/PET price effects relationship, *** said:

"***."

The Manufacturing Process⁴⁸

PETs and PEWPs are produced in much the same manner as other consumer electronic products. Pre-production steps include product development and design of the electronic circuitry and other parts. The manufacturing process consists of parts fabrication and assembly. The product is tested during and after manufacture. The machinery and equipment involved can be used to produce a variety of other electronic products. Specifically, in the United States, word processors are produced using the same production equipment used in the manufacture of PETs and PEWPs.⁴⁹ In their questionnaire responses, producers described the downtime and extent of equipment modifications necessary to shift production between PETs and PEWPs as either *** or ***.

Design of the Printed-Circuit Board.⁵⁰

The proper functioning of any electronic product depends on the design of the circuitry. In the first step of the design phase, the locations of the components and interconnections of the circuits on the printed-circuit board are determined. The printed-circuit pattern is then laid out on a grid by a computer and an enlarged artwork master is produced. Next, the enlarged masters are photographed and reduced to the appropriate dimensions of the finished board. The final phase covers the actual fabrication of the board.

Manufacture of Parts and Subassemblies

PETs and PEWPs are composed of hundreds of individual parts that are designed and produced specifically for use in the subject products. Parts are fabricated from a variety of materials using numerous different manufacturing processes; for this reason, a number of parts are purchased by the producer of PETs and PEWPs from other firms.⁵¹

Most parts are first used to create discrete subassemblies. Such subassemblies include the keyboard, video display, power supplies, storage units, platen, and printed-circuit boards. Most subassemblies are produced at dedicated workstations or on dedicated production lines. The nature of these operations, and the expertise required for certain subassemblies, also allow these operations to be carried on by firms other than the producer of PETs and

⁴⁸ As noted, the scale of operations varies considerably among U.S. producers.

⁴⁹ Firms responding to the producer questionnaire that produced word processors as well as PETs indicated that they were produced in the same facilities by the same people with little or no down time to shift between products.

⁵⁰ ***.

⁵¹ ***.

PEWPs.⁵² In some cases, the producer sources subassemblies from related companies.⁵³

The printed-circuit board is assembled by the producer of the PETs. Assembly requires a combination of mechanical and manual insertion and soldering of components. Smaller components, such as resistors and capacitors, are mechanically inserted onto the printed-circuit board. An automatic insertion machine places each component into its proper position and then clinches the leads of the component against the conductors on the opposite side of the board at that position. The leads are then mechanically soldered to the conductors. Larger and/or more delicate components may need to be manually inserted and soldered.

Final assembly and testing

The various subassemblies and other parts are combined into a finished PET or PEWP on an assembly line operation. An empty frame enters the line, subassemblies are added one-by-one, the workings are encased in an exterior housing, and a functioning PET or PEWP exits the line. Testing and quality assurance are carried out at various stages in this process and each completed PET or PEWP must successfully complete a test run. Labels such as a company logo are affixed to the product and it is packaged for shipment.

U.S. Tariff Treatment

PETs are classified in HTS subheading 8469.21.00 and enter free of duty from all sources. PETs with text memory (automatics) and finished personal word processors are classified in HTS subheading 8469.10.00. They are assessed a column 1-general rate of duty of 2.2 percent ad valorem. Such PETs are eligible for duty-free entry upon request if imported from Canada, Israel, or countries designated under the Caribbean Basin Economic Recovery Act, the Generalized System of Preferences, or the Andean Trade Preferences Act.

APPARENT U.S. CONSUMPTION

This report presents data concerning apparent U.S. consumption of PETs and PEWPs, separately and collectively, as compiled from responses to Commission questionnaires (table 2).⁵⁴ Based on testimony at the hearing held in conjunction with this investigation, as well as staff conversations with industry participants, there is a consensus that the size of the domestic market ranged from 2 to 3 million units during 1988-92, with the higher end having been achieved in the earlier part of the period. With regard to production and shipments of PETs and PEWPs, the Commission received usable data from all known U.S. producers of such merchandise--the petitioner, Smith Corona, Nakajima All Manufacturing Co. Ltd. (Nakajima), and Canon Business

⁵² ***.

⁵³ ***.

⁵⁴ The size of the market for such products cannot be calculated as the sum of producer shipments and official import data on the product. While PETs without text memory enter under a discrete HTS subheading, official U.S. import statistics do not, however, separate imports of automatics or PEWPs from imports of other types of word-processing machines. Therefore, any estimate calculated on this basis would be considerably overstated.

Machines (Canon)--along with the vast majority of known importers of PETs and PEWPs. Thus, consumption figures for PETs and PEWPs are relatively complete. As a result, data in this report consist of reported U.S. shipments of PETs and PEWPs by U.S. producers, combined with reported U.S. shipments of imports of those products.

PETs

Apparent U.S. consumption of PETs declined steadily from 1988 to 1992 by *** percent on a quantity basis; it dropped *** percent on a value basis. By quantity, shipments of imports also showed a steady decline from 1988 to 1992, falling by *** percent; by value, the drop was *** percent. In 1992, imports held *** percent of the market (in terms of quantity) compared with *** percent in 1988. This change reflects a *** percent drop in U.S. producers' shipments due primarily to Smith Corona's continuing movement of PET production to Singapore.

Table 2

PETs/PEWPs: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, by products, 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

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

PETs/PEWPs

Apparent consumption of PETs/PEWPs dropped less sharply than consumption of PETs, owing primarily to increased shipments of PEWPs by ***. By 1992, U.S. producers accounted for *** sales of PEWPs in the U.S. market. During the period of investigation, there were no imports of PEWPs from Singapore. PEWP sales increased as a portion of combined PET/PEWP sales from *** percent in 1988 to *** percent in 1992. As noted earlier, Smith Corona produces PEWPs exclusively at its Cortland, NY, plant and BIUSA began production at Bartlett, TN, in June 1990.

According to the 1991 Electronic Market Data Book, the market for portable electronic typewriters was expected to show steady growth. It stated that "Manufacturers of portable typewriters are now bringing advanced office machine features to mass market machines at affordable prices. Word processing functions, liquid crystal displays and spell-checking features can be found on inexpensive models available to consumers." However, it went on to say that "Despite these added features, drastically declining prices, changing distribution channels, and steady growth in word processor sales have resulted in flat unit sales."

When queried at the conference during the preliminary investigation concerning the future of the PET market, Mr. G. Lee Thompson, Chairman and CEO of Smith Corona, said "... I think you have to look at the product, it is

not a category within a product. A product category state-of-the-art technology is a transitory thing. Twenty years ago it was electromechanical and manual machines. There is a need for a customer to be able to put printed word on paper. Now whether he does that with a typewriter PET, typewriter PAT (PET with text memory), whether he puts it on with PWP or a PC, they still have a need to put it on paper."⁵⁵ At the hearing in the final investigation, Mr. Thompson stated, "... our customer forms coming back identified why they (customers) buy and all the demographic data. There is no difference between a typewriter and a PEWP buyer. They buy it for a specific reason and for a specific use, so they look at it at use, they look at it at price points, and a number of factors."⁵⁶

Smith Corona indicated that during 1989-90 the market (PETs, PATs, PEWPs, and PWPs) was at approximately 3.2 to 3.3 million units, but has now declined to 2.5 million units, attributing it to recession in the United States, which had a big impact on consumer spending on durable goods. According to Smith Corona, outside forecasters say the "typewriter is declining at a rate of 4.8 percent a year, and the word processor segment is growing at 15 percent per year."⁵⁷ BIUSA acknowledged the marketplace is one where "overall demand for PETs and PATs is falling even though there is still a significant marketplace to be served."⁵⁸ BIUSA cited the recession and increased demand for PWPs as causes for decline in demand for PETs; however, it stated that the latter can explain "at most a small fraction of the decline in domestic consumption of PETs."⁵⁹

The world market for PETs and PEWPs is dominated by many of the same firms that compete in the U.S. market, primarily Smith Corona, BIC, and Olivetti, as well as other firms such as Canon and the Korean operations of Sharp, Samsung, and Packard-Bell, which sell considerable quantities for export around the world.

U.S. Producers⁶⁰

BIUSA

In 1992, BIUSA was the *** U.S. producer of PETs, accounting for *** percent of U.S. production of PETs. BIUSA accounted for *** percent of combined PET/PEWP production in 1992. In 1992, BIUSA's shipments of PETs accounted for *** percent of apparent U.S. consumption, while its combined shipments of PET/PEWPs held a *** percent share of that market.

BIUSA is the petitioner in this proceeding and a wholly owned subsidiary of Brother Industries, Ltd., of Nagoya, Japan. BIUSA was incorporated in 1986 and began production of PETs at its Bartlett, TN, facility in June 1987. PETs with text memory (automatics) were added to BIUSA's production lineup in April 1990 and PEWP production began in June 1990. Additionally, BIUSA began production of the WP-1 series of personal word processors (subject to PWPs

⁵⁵ Conference TR, p. 158.

⁵⁶ Hearing TR, p. 187.

⁵⁷ Id.

⁵⁸ Testimony of Mr. Patrick Gilmore, BIUSA. Hearing TR, p. 29.

⁵⁹ Testimony of Dr. Paula Stern on behalf of BIUSA, Hearing TR, p. 76.

⁶⁰ For the purposes of this report, all firms that responded to the producers' questionnaire are referred to as "producers."

from Japan) in October 1990.⁶¹ BIUSA currently operates three lines a day, five days a week, with a second shift on two lines.⁶²

BIUSA's production facility consists of approximately 182,000 square feet, with an additional 220,000 square feet of BIC warehouse space also located in Bartlett, TN. From the time of the preliminary investigation in 1991, BIUSA's operations have gone from generating 55,000 units a month to approximately *** units per month today. The product mix consists of PETs, PEWPs, and other word processors. Growth has been experienced in all elements of the product mix. According to BIUSA, its initial investment at Bartlett was \$8.5 million; that investment had grown to *** million by the end of 1992.⁶³

Although product development for BIUSA's products is coordinated at its U.S. marketing arm, BIC, most product design and engineering is done in Japan. At the hearing in this investigation, BIC officials confirmed plans to add 48,000 square feet to the Bartlett production facility in the near future "both to accomodate a research and development staff of between 80 to 100 people and to enlarge the facility's production capabilities."⁶⁴ Operations in Bartlett consist of assembly of the main logic boards from imported parts, welding the chassis for the various products, and final assembly and testing. Plastic housings, covers, and other parts are produced domestically by a number of firms through subcontractor arrangements.⁶⁵ In 1992, BIUSA started producing PET jackets, or upper and lower covers, with the installation of an in-house injection molding operation.⁶⁶

In its petition (April 1991), BIUSA characterized itself as virtually the only domestic producer of basic PETs (those without text memory), contending that Smith Corona had ceased all production of these products at its Cortland, NY, facility after 1989.⁶⁷ BIUSA noted that Smith Corona produces PETs with text memory (automatics) and PEWPs, as well as other products, at Cortland.

Smith Corona

Smith Corona has not produced any basic PETs (those without text memory) at its Cortland, NY, facility since 1990, having shifted all such production

⁶¹ BIUSA's PETs, PEWPs, and the WP-1 series are produced in the same facility and by the same employees. Employees are trained to do a variety of functions for the assembly of the different products, with some elements of the training taking 4 to 5 weeks to complete. Commission staff visit of the BIUSA plant and discussions with company officials, May 1991.

⁶² Testimony of Mr. Len Gilley, BIUSA. Hearing TR, p. 20.

⁶³ Staff conversation with BIUSA officials, May 1993. These numbers include the cost of land, building, and equipment for BIUSA's Bartlett factory, but do not include BIC's "substantial" investment in land, building, and equipment for its distribution and warehouse facility.

⁶⁴ Testimony of Mr. Patrick Gilmore, BIC. Hearing TR, pp. 25-26.

⁶⁵ BIUSA's procurement process involves acquiring parts and components from over 30 U.S. vendors. Testimony of Mr. Len Gilley, BIUSA. Hearing TR, p. 20.

⁶⁶ Testimony of Mr. Len Gilley, BIUSA. Hearing TR, p. 22..

⁶⁷ In its petition (though not presently), BIUSA argued that for purposes of determining the U.S. industry, Smith Corona should be excluded because it is related to the manufacturer/exporter of the allegedly dumped merchandise. Petition, pp. 2-3.

to its affiliated company, Smith Corona Singapore, by the end of 1989. All basic PETs shipped by Smith Corona since 1990 were produced by its affiliate. With respect to domestically produced PETs, Smith Corona was *** U.S. producer in 1992, accounting for *** percent of total U.S. PET production. Its share of combined PET/PEWP production in 1992 was *** percent. As a share of apparent consumption, Smith Corona's shipments of U.S. product accounted for a *** percent share of the U.S. PET market in 1992. If shipments of Smith Corona's Singapore-produced PETs are added to its shipments of domestically-produced product, it accounted for *** percent of the U.S. PET consumption in 1992. In the combined PET/PEWP market, Smith Corona's U.S.-produced share was *** percent, while its combined U.S.-Singapore share was *** percent.⁶⁸

Throughout this proceeding and in its anticircumvention inquiry at Commerce, Smith Corona has contended that BIUSA is not a U.S. producer, but is a mere "screwdriver" operation assembling PETs from imported parts in an effort to circumvent the PETs order. Consequently, Smith Corona throughout this proceeding has emphasized its opposition to the petition and its firmly held belief that BIUSA, not being a U.S. producer, lacks standing to file for relief under the antidumping laws.

With respect to Smith Corona's business history, it has been producing office machines since the turn of the century, and was the first company to produce a portable electric typewriter, in 1957. Since 1989, Smith Corona has been publicly held, with Hanson PLC, a British firm, the largest shareholder with a ***-percent stake. Typewriters and personal word processors have been and are still Smith Corona's mainstay; however, in 1991 it announced plans to manufacture personal computers in a joint venture with Acer America Corporation (Acer), San Jose, CA.⁶⁹ On June 30, 1992, Smith Corona terminated the joint venture with Acer.⁷⁰

Smith Corona's central production facility is located in Cortland, NY. Although at one time it had six or seven production facilities in the Cortland area, in the mid-1980s it consolidated all of its operations into one plant. The Cortland facility is an integrated manufacturing facility, housing all steps of the PET/PEWP and other word processor production processes from product development through final assembly. Of the more than 600 parts in its PETs with text memory (automatics), Smith Corona fabricates about *** at Cortland, including most of the plastic and metal parts. Many of the modular components are assembled in the same facility. Among the subassemblies not produced at Cortland are ***.⁷¹ On July 20, 1992, Smith Corona's Board of Directors approved a plan to phase out its manufacturing operations in Cortland and move them to a new facility in Tijuana, Mexico. Smith Corona's worldwide engineering, product design, customer service, and administrative support activities will remain in Cortland, employing nearly 400 people.⁷²

⁶⁸ No PEWPs were imported from Singapore during 1988-92.

⁶⁹ Annual Report, Smith Corona Corporation, 1991.

⁷⁰ In terminating the joint venture, Smith Corona noted in its 1992 Annual Report:

"Although the joint venture successfully combined the skills and talents of the two companies, sustained and intense price competition in the personal computer marketplace made it clear that the Company could not achieve its objectives in a reasonable period of time."

⁷¹ Staff discussions with Smith Corona officials, May 1991.

⁷² Testimony of Mr. Lee Thompson, Smith Corona. Hearing TR, p. 178.

The phase-out began in the fall of 1992 and is expected to take approximately one year to complete.⁷³

Nakajima

Nakajima, which began operations in March 1989, is located in Ottawa, IL. Nakajima is wholly owned by Nakajima All Co., Ltd., of Tokyo, Japan. Nakajima is ***.⁷⁴ ***.

Nakajima's production is *** when compared with that of BIUSA and Smith Corona. In 1992, its share of the U.S. PET production was *** percent. Nakajima ***. Nakajima ***.

Canon

Canon, which ***, is *** percent owned by Canon, Inc. of Tokyo, Japan, and *** percent owned by Canon USA, Inc., of Lake Success, NY. Canon began U.S. manufacture of PETs in September 1991 at its facility at Costa Mesa, CA. ***. Canon ***. Canon's 1992 production accounted for *** percent of total U.S. PET production. In July 1990, Canon began manufacturing PETs at its facility in Tijuana, Mexico for importation into the United States. ***.

U.S. Importers

Imports of PETs enter the United States under HTS item 8469.21.00, a discrete category which provides for electric typewriters "weighing not more than 12kg, excluding case," whereas PETs with text memory (automatics) and PEWPs enter under HTS item 8469.10.00, a broad category that provides for "automatic typewriters and word-processing machines." In this report, the Commission has used importer information from nine companies, including the three which accounted for virtually all imports of the subject products from Singapore.

Three firms, Smith-Corona, Olivetti Office USA, Inc. (Olivetti USA), and the American Telephone & Telegraph Company (AT&T), were responsible for virtually every import from Singapore of PETs during 1988-92.⁷⁵ A discussion of the three firms follows.

Smith Corona

Smith Corona was *** importer of PETs throughout 1988-92, accounting for *** percent of the volume (by quantity) of such imports from Singapore and *** percent of imports from all sources in 1992. Smith Corona imports *** from its sister plant in Singapore. Smith Corona established its Singaporean operations in 1974 and moved production of basic PETs and some PETs with text memory (automatics) there in 1987 and 1988, respectively.⁷⁶

⁷³ Annual Report, Smith Corona Corporation, 1992.

⁷⁴ ***

⁷⁵ As noted earlier, no imports from Singapore of PEWPs were reported during the period for which data were gathered.

⁷⁶ Conference TR at pp. 151-152. A more detailed discussion of Smith Corona's Singaporean operations can be found in the section of this report entitled "Consideration of the Question of Threat of Material Injury."

Olivetti USA

Olivetti USA, Bridgewater, NJ, a subsidiary of Ing. C. Olivetti & C., S.p.A. (Olivetti Italy), imports from its fellow subsidiary, Olivetti Singapore Pte., Ltd. (Olivetti Singapore). Olivetti has been manufacturing PETs for a number of years in Singapore as well as at subsidiaries in ***.⁷⁷ Olivetti USA, which ***, accounted for *** percent of PET imports from Singapore in 1992 and *** percent of imports from all sources.

AT&T

In 1990, AT&T was responsible for *** percent of PET imports from Singapore. All of AT&T's imports were the product of Olivetti Singapore. In October 1990, AT&T made a decision to terminate its marketing arrangement with Olivetti and cease selling typewriters and personal word processors. ***.⁷⁸

Other Importers

Six other firms, BIC, ***, ***, ***, ***, and ***.

*** of BIC's and *** imports came from ***. BIC's imports of PETs dropped from *** units in 1988 to *** as BIUSA's operation at Bartlett increased its output. Similarly, *** imports ***. BIC is based in Somerset, NJ (until 1988 in Piscataway, NJ). During the early portion of the period of investigation, BIC ***.

***.

The remaining importer, ***.

Eight of the nine companies providing importer data are subsidiaries of, or related to, larger companies. These firms, and their related companies, are presented in the following tabulation:

| <u>Importer</u> | <u>Related company</u> | <u>Percent ownership</u> |
|-----------------|--------------------------------------|--------------------------|
| BIC | Brother Japan | *** |
| *** | *** | *** |
| *** | *** | *** |
| *** | *** | *** |
| *** | *** | *** |
| Olivetti USA | Olivetti Supplies, Inc. ¹ | *** |
| *** | Triumph-Adler AG (Germany) | *** |
| *** | *** | *** |
| Smith Corona | HM Holdings (Hanson PLC) | *** |
| *** | *** | *** |

¹ Olivetti Italy is the corporate parent.

⁷⁷ Olivetti USA reported that ***.

⁷⁸ See letter from ***.

Channels of Distribution

PETs and PEWPs are sold by U.S. producers and importers through the same channels of distribution: National retail chains, mass merchandisers, department stores, catalog house accounts, electronic discount stores, office equipment dealers, and office superstores.⁷⁹ U.S. producers and importers from Singapore were requested to report the number of PETs and PEWPs that were shipped to each channel of distribution in 1992. The resulting distribution percentages are presented in the following tabulation:

| <u>Channel</u> | <u>Producers</u> | <u>Importers</u> |
|--------------------------------|------------------|------------------|
| National retail chains..... | 13.5 | 36.5 |
| Mass merchandisers..... | 11.0 | 8.5 |
| Department stores..... | 5.3 | 2.0 |
| Catalog stores..... | 16.9 | 9.5 |
| Electronic discount stores.... | 6.8 | 7.1 |
| Office equipment dealers..... | 9.2 | 5.6 |
| Office superstores..... | 27.3 | 24.0 |
| Other..... | <u>9.8</u> | <u>6.8</u> |
| Total..... | 100.0 | 100.0 |

**CONSIDERATION OF MATERIAL INJURY TO
AN INDUSTRY IN THE UNITED STATES⁸⁰**

The information in this section of the report is compiled from responses to Commission questionnaires. The Commission received responses from the four producers of PETs and PEWPs, thus accounting for 100 percent of U.S. production during 1988-92, the period for which data were collected in this investigation.⁸¹

Data in this section are presented on a company-by-company as well as aggregate basis for two primary reasons. The first is due to changes in the nature of the operations of each producer as well as the differing views with regard to which firms qualify as U.S. producers. The changes in operational character have been discussed in detail in the "U.S. Producers" section of this report, but are reviewed here. In brief, they are: (1) Petitioner, BIUSA, began operations in 1987 and steadily increased output during 1988-92; at the same time, its corporate parent, BIC, drew its imports of subject products from Japan down to near zero. (2) Smith Corona, the largest U.S. producer of PETs in the 1980s, shifted all its basic PET production and part of its PET with text memory (automatics) production to Singapore, and became the *** importer of those products during the period of investigation. When

⁷⁹ National retail chains include operations such as K-Mart, Wal-Mart, Sears, Montgomery Ward, and J.C. Penney. Mass merchandisers include discount stores such as Bradlees, Caldor, and Target. Department stores include such stores as Macy's, Lechmere, Hechts, Marshall Fields, and Woodward and Lothrop. Catalog stores include catalog showroom stores such as Best Products, Consumer Distributing Company, and Service Merchandise. Electronics discount stores include such stores as Circuit City, Silo, Best Buy, and Luskins. Office equipment dealers are generally local office equipment dealers and include such stores as Western Typewriter, Bundy Typewriter, and Valley West Business. Office superstores include such stores as Office Depot, Staples, and Office Max.

⁸⁰ Summary data for PET, PEWP, and combined PET/PEWP operations are presented in app. B.

⁸¹ Canon produced ***. Nakajima produced ***.

Smith Corona's imports are combined with its U.S. production, it *** in the U.S. market. (3) Nakajima began U.S. operations in March 1989 (albeit on a small scale when compared with the other firms), as it reduced its imports of subject products from Japan. (4) Canon, the fourth producer, began production in September 1991 at its facility at Costa Mesa, CA; however, ***. ***.

The second reason for disaggregated consideration of the data is due to Smith Corona's contention that appropriate circumstances exist to exclude Smith Corona as a related party⁸² from the Commission's consideration of injury to the domestic industry. In making the argument, Smith Corona states that the Commission should arrive at such a conclusion based on its determination that:

"(1) Smith Corona's domestic production relative to all other domestic production indicates a significant decline, (2) ***, (3) inclusion of Smith Corona-Cortland in the analysis of the domestic industry skews the data for the industry, and (4) Smith Corona-Cortland is not injured, but in fact, substantially benefits from its Singapore imports."⁸³

Further, in support of the notion that Smith Corona benefited from its Singapore imports, it states that such benefits occurred "because it was enabled by its off-shore assembly operations to lower costs, reduce prices responsively, continue its production of high-end PATs and PEWPs and compete in the U.S. market."⁸⁴

On the other hand, BIUSA states there is no basis for excluding Smith Corona's domestic operations from the domestic industry. With respect to the issue of whether Smith Corona substantially benefited from its Singapore imports, BIUSA states:

"In this case, the question is whether SCC's domestic production operations have substantially benefited from the dumped imports, not whether Smith Corona's consolidated global operations as a whole have benefited. The profits earned by Smith Corona from dumped imports in no way can or should be confused with the condition of its domestic production operations."

"In analyzing whether to exclude a domestic producer under the 'related parties' provision, a significant factor is 'whether each company's financial records are kept separately from its foreign operations.' (Footnote omitted). Such is the case with SCC. The producer data SCC submitted to the Commission, including profit and loss data, is derived exclusively from the books of SCC's domestic PET operations. (Footnote omitted). Based on SCC's questionnaire response and other data in the record, there simply is no evidence that SCC's domestic operations have either benefited or been shielded from the effects of the dumped imports, and there is no evidence that including SCC's U.S. operations improperly masks the injury to domestic industry. (Footnote omitted). Moreover, as Commissioners Brunsdale and Rohr noted in the preliminary determination, excluding SCC's domestic operations would distort severely the Commission's data on the domestic industry by removing one of the two dominant U.S. producers.

⁸² 19 U.S.C. § 1677(4)(B).

⁸³ Posthearing brief of Smith Corona, Responses to Commissioners' questions, p. 32.

⁸⁴ Posthearing brief of Smith Corona, p. 5.

(Footnote omitted). In such circumstances, the Commission consistently has refused to distort its injury analysis by excluding a related party." (Footnote omitted).⁸⁵

In citing other factors arguing for not excluding Smith Corona, BIUSA states that Smith Corona's imports are not directed at the "U.S. market so as not to compete with the related domestic producer."⁸⁶ Rather, "The evidence in this case demonstrates that all PET models compete for the same purchasers and consumers."⁸⁷ Finally, BIUSA argues that Smith Corona's reasons for importing PETs (to avail itself of cheaper labor rates enabling it to compete in the U.S. market)⁸⁸ run counter to the domestic interests of its (Smith Corona's) production operations and that the *** confirm that Smith Corona's "domestic production operations are not shielded from injury caused by dumped imports."⁸⁹

The parties also disagree on the time period the Commission should consider in analyzing whether or not the domestic industry is injured. BIUSA argues that the full period for which data were gathered (commencing in 1988) is appropriate, citing, among other things, the "peculiar" circumstances of this case and industry with interruptions in the statutory scheme and the aforementioned changes in the nature of operations of each producer since 1988.⁹⁰

Smith Corona argues that the appropriate period for Commission examination begins in 1990. In addition to stating that the Commission "has established through its determinations a strong preference for a three-year period of investigation, plus any interim period," it argues:

"It is pertinent to this case to consider that the industry being analyzed was in transition. As reviewed above, during 1988 and 1989, Smith Corona was in transition, scaling back domestic production of PETs and PATs, and beginning production of those models in Singapore. Furthermore, Brother added PATs to its Bartlett, Tennessee facility in April 1990 and PEWP production began at Bartlett just two months later. Thus, production developments at Singapore, Cortland, and Bartlett, which are the focus of this investigation, support an investigatory period commencing in 1990."⁹¹

Summary tables showing the industry's performance with Smith Corona's data excluded are presented in appendix B tables B-4 through B-6.

⁸⁵ Posthearing brief of BIUSA, pp. 3-5.

⁸⁶ Posthearing brief of BIUSA, pp. 5-6.

⁸⁷ Posthearing brief of BIUSA, p. 6.

⁸⁸ In this instance, counsel for BIUSA makes reference to the hearing testimony of Mr. Lee Thompson, Smith Corona, and Dr. Colin Blaydon on behalf of Smith Corona. Hearing TR, p. 104 and p. 128, respectively.

⁸⁹ Posthearing brief of BIUSA, p. 7.

⁹⁰ Prehearing and posthearing brief of BIUSA, pp. 28-30 and p. 13, fn. 41, respectively.

⁹¹ Posthearing brief of Smith Corona, Responses to Commissioner's questions, pp. 95-97.

U.S. Production, Capacity, and Capacity Utilization

PETs

U.S. production of PETs dropped from 1988 to 1991, declining by *** percent, before increasing by *** percent from 1991 to 1992 (table 3). The sharpest portion of the overall decline in production took place from 1989 to 1990 and reflects Smith Corona's sourcing of the major portion of its PET models from its Singapore operations. The increase in production in 1992 is almost entirely attributable to ***.

Capacity utilization experienced an irregular decline from 1988 to 1992, going from *** to *** percent. Smith Corona indicated that its Cortland, NY, facility is designed to run ***.⁹² Smith Corona also indicated that in 1988 it increased the plant capacity allocated to personal word processors (including PEWPs) at the expense of typewriters which, for the most part, were shifted to Singapore. Smith Corona, BIUSA, and ***.

BIUSA runs three assembly lines capable of producing PETs and PEWPs, as well as other word processing equipment. Since 1991, the firm has been operating ***.

According to the parties to the investigation, production of PETs and PEWPs or other personal word processors cannot be said to be unduly affected by seasonal factors. While sales promotions may center around Christmas, other holidays, graduation (May-June), and the beginning of school (August-September), due to ***.⁹³

PETs/PEWPs

Combined PET/PEWP production declined irregularly from 1988 to 1992, going up from 1988 to 1989, down from 1989 to 1990, then up again from 1990 to 1992. The overall decline from 1988 to 1992 was *** percent. BIUSA, Smith Corona, and ***. Combined capacity utilization rose to *** percent in 1989, then dropped irregularly to *** percent in 1992. PEWP capacity increased nearly *** from 1988 to 1992, largely offsetting the drop in PET capacity. Production increased at a slightly faster clip over the same period, thereby leading to an irregular, albeit small, increase in PEWP capacity utilization from 1988 to 1992.

Table 3

PETs/PEWPs: U.S. producers' capacity, production, and capacity utilization, by products and by firms, 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

⁹² ***.

⁹³ ***.

U.S. Producers' Shipments

Data on U.S. producers' total U.S. shipments of PETs and PEWPs, as well as combined PET/PEWP shipments, are presented in table 4.

PETs

U.S. shipments of PETs dropped each year from 1988 to 1992 on both a quantity and value basis. By quantity, shipments declined *** percent, and, by value, they dropped *** percent. Unit values over the same period were off by *** percent.

PETs/PEWPs

Combined PET/PEWP shipments declined irregularly from 1988 to 1992 on a quantity basis, and each year from 1989 to 1992 on a value basis. However, the declines were not as pronounced as those of PETs as increased shipments of PEWPs partially offset decreases in PET shipments. From 1988 to 1992, combined shipments were down *** percent by quantity, and *** percent by value. Unit values of combined shipments fell irregularly, by *** percent, from 1988 to 1992.

Table 4

PETs/PEWPs: U.S. producers' U.S. shipments, by products and by firms, 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

U.S. Producers' Inventories

U.S. producers' inventory data for PETs, PEWPs, and PETs/PEWPs combined are presented in table 5.

PETs

Inventory levels fluctuated from 1988 to 1992. As a share of U.S. shipments, inventories rose from *** percent in 1988 to *** percent in 1989, then dropped through 1991 to *** percent, before rising to *** percent in 1992. ***. ***.

Parties to the proceeding generally agree that in the market for consumer products such as typewriters and personal word processors, reliable, quick delivery is essential. Smith Corona reported that it achieves its goal of 7 to 10-day delivery between 94 and 95 percent of the time,⁹⁴ while ***.⁹⁵

⁹⁴ Staff conversation with Smith Corona, June 1993. ***.

Table 5

PETs/PEWPs: End-of-period inventories of U.S. producers, by products and by firms, 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Thus, maintenance of relatively high levels of inventories, at least in relation to shipments, may be advisable under normal conditions.

Smith Corona estimated that it ***.⁹⁶ Smith Corona indicated that it changes model designations and features annually, and generally does not carry models over from season to season. BIUSA does ***. Usually, new models are announced at the Consumer Electronics Show held each August.

PETs/PEWPs

Combined inventory levels exhibited the same trends as those of PETs. As a share of U.S. shipments, inventories rose from *** percent in 1988 to *** percent in 1989, then dropped through 1991 to *** percent, before rising to *** percent in 1992.

U.S. Producers' Employment and Wages

Data on U.S. producers' employment and wages for their operations producing PETs and PEWPs are presented in table 6. Producers reported data on the number of production and related workers producing PETs and PEWPs, the total hours worked by such workers, and the wages and total compensation paid to such workers during the period for which data were collected.

PETs

For PETs, throughout the period for which data were collected all four indicators demonstrated sharp declines, reflecting, in large part, Smith Corona's shift of much of its PET production to Singapore, as well as the shifting of a number of its Cortland, NY, workers to production of personal word processors (including PEWPs). Employment hit its low point in 1991 and the low point for wages paid was 1990, while hours worked and total compensation hit lows in 1992. In each instance, the 1992 figures for all four categories were less than half of what they were in 1988.

Labor productivity for PETs increased from 1988 to 1992, rising from *** to *** units per hour. ***. Unit labor costs fell irregularly from 1988 to 1992, declining *** percent. ***.

⁹⁵(...continued)

⁹⁵ Staff conversation with BIUSA, May 1993. ***.

⁹⁶ Smith Corona noted that ***.

Table 6

Average number of production and related workers producing PETs/PEWPs, hours worked, wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs, by products and by firms, 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

BIUSA and Smith Corona indicated that their workforces are readily transferable between production of PETs, PEWPs, and other personal word processors.⁹⁷ Smith Corona reported that its workforce engaged in typewriter and personal word processor manufacture is ***.⁹⁸ Unskilled labor accounts for ***. None of the producers reporting employment data indicated that their workers are represented by unions.

BIUSA and Smith Corona characterized ***.⁹⁹

BIUSA and Smith Corona reported information on reductions in the number of production and related workers producing PETs and PEWPs, if such reductions involved at least 5 percent of the workforce, or 50 workers. BIUSA characterized its layoffs as reductions in force, stating that "employment for the production of PETs and PATs have stagnated over the past two fiscal years (1989 and 1990)."¹⁰⁰ Smith Corona characterized the reason for most of its reported employment reductions as "reduced sales." The reported reductions are shown in the following tabulation:¹⁰¹

| <u>Firm</u> | <u>Date</u> | <u>Number of workers</u> | <u>Duration</u> | <u>Reason</u> |
|-------------|-------------|------------------------------|-----------------|---------------|
| | * | * | * | * |

PETs/PEWPs

As was the case for PETs, combined PET/PEWP numbers for production and related workers, the total hours worked by such workers, and the wages and total compensation paid to such workers showed sharp declines for the period for which data were collected. Although there were irregular increases for PEWP operations during 1988-92 for each of the four indicators, they were not sufficient to offset the decline in PET numbers.

⁹⁷ As noted, ***.

⁹⁸ ***.

⁹⁹ Staff discussions with BIUSA and Smith Corona, May 1991 and June 1993.

¹⁰⁰ Conference TR, p. 48.

¹⁰¹ ***.

Like PETs, labor productivity for combined operations increased from 1988 to 1992, rising from *** to *** units per hour. Unit labor costs fell irregularly from 1988 to 1992, dropping from *** in 1988 to *** in 1992.

Financial Experience of U.S. Producers

All four U.S. PET producers--BIUSA,¹⁰² Smith Corona, Nakajima, and Canon--supplied financial data on their overall establishment operations and on their PET operations. BIUSA and Smith Corona also supplied financial data on their PEWP operations. Although the producers all have different fiscal year ends,¹⁰³ the year ends of the two dominant producers are only 3 months apart.

The data of BIUSA and Smith Corona were both verified. ***.

Overall Establishment Operations

Profit-and-loss data for the overall establishment operations of the producers are shown in table 7. Net sales ***.

Despite increased sales, all levels of profitability declined from 1988 to 1990 before weak recoveries in 1991-92. The major reason for the decline was diminishing gross profit margins. ***.

As a percentage of overall establishment net sales, PET sales decreased from *** percent of sales in 1988 to *** percent in 1992, while PEWP sales ***.

Table 7

Income and loss experience of U.S. producers on the overall operations of their establishments wherein PETs and PEWPs are produced, fiscal years 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

PET Operations

Profit-and-loss data for the PET operations of the producers are shown in table 8. Sales quantities peaked in 1989 before continually declining through 1992. The 1992 sales volume was ***, and was *** percent less than the 1988 figure. At the same time, unit sales values were falling from about *** to ***. After 1989, the combined decrease in sales volume and unit sales value resulted in a sharp decrease in sales value. The decline in profitability was even more pronounced.

¹⁰² ***.

¹⁰³ BIUSA's fiscal year ends Sept. 30, Smith Corona's ends June 30, Nakajima's ends July 31, and Canon's ends Dec. 31.

Table 8

Income and loss experience of U.S. producers on their PET operations, fiscal years 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Even though the unit cost of goods sold (COGS) decreased from *** in 1988 to *** in 1992, the *** decrease was *** decrease in unit sales value. Gross profits therefore decreased by *** on an absolute basis. SG&A expenses declined, both on an absolute and per-unit basis, from 1988 to 1992. However, these decreased costs could not compensate for the large decrease in gross profits. As a result, by 1990 there was a net loss, and operating income and cash flow were only about 10 percent of 1989 levels. Profitability levels continued to deteriorate in 1991 and 1992.

*** (table 9).

***.

***.

Table 9

Income and loss experience of U.S. producers on their PET operations, by firms, fiscal years 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

PEWP Operations

Profit-and-loss data for the PEWP operations of the producers providing useable data are shown in table 10. Sales quantities and values have both shown ***.

***.

BIUSA's PEWP sales volume and value *** (table 11).

Smith Corona's PEWP sales volume and value ***.

***.

Table 10

Income and loss experience of U.S. producers on their PEWP operations, fiscal years 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Table 11

Income and loss experience of U.S. producers on their PEWP operations, by firms, fiscal years 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Operations on PETs/PEWPs

Profit-and-loss data for the combined PET/PEWP operations of the U.S. producers are shown in table 12, and company-by-company data are in table 13.

Table 12

Income and loss experience of U.S. producers on their combined PET/PEWP operations, fiscal years 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Table 13

Income and loss experience of U.S. producers on their combined PET/PEWP operations, by firms, fiscal years 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Investment in Productive Facilities and Return on Assets

Data on investment in productive facilities and return on assets are shown in table 14. Until 1991, ***.

Table 14

Value of assets and return on assets of U.S. producers' establishments wherein PETs and PEWPs are produced, by products, fiscal years 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Capital Expenditures

Data on U.S. producers' capital expenditures are shown in table 15. ***.

Table 15

Capital expenditures of U.S. producers of PETs/PEWPs, by products, fiscal years 1988-92

(In thousands of dollars)

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Research and Development Expenses

Data on U.S. producers' research and development expenses are shown in table 16. ***.

Table 16

Research and development expenses of U.S. producers of PETs/PEWPs, by products, fiscal years 1988-92

| (In thousands of dollars) | | | | | |
|---------------------------|------|------|------|------|------|
| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
| | * | * | * | * | * |

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

Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of PETs and or PEWPs from Singapore on their firms' growth, investment, ability to raise capital, and/or development and production efforts. Their responses are shown in appendix C.

Nature of U.S. Production Operations--Costs and Sources

The producers supplied data on the nature of their U.S. production operations (value added), and the source(s) of the parts used to produce PETs and PEWPs. BIUSA supplied data on ***, while Smith Corona supplied data on ***. The data are presented in appendix D, along with a computation of domestic value added, both with and without SG&A expenses. There is no computation involving sourcing of parts, since foreign and domestic content are presented separately. "All other components," which is often the single largest component in terms of cost, primarily consists of the monitor. In addition to presenting weight-averaged totals for BIUSA's and Smith Corona's PETs and PEWPs, appendix D also presents samples of their upper-end and lower-end (in terms of price) products.

CONSIDERATION OF THE QUESTION OF
THREAT OF MATERIAL INJURY

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant economic factors¹⁰⁴--

(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,

¹⁰⁴ 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 736, are also used to produce the merchandise under investigation,

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

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.¹⁰⁵

The available data on foreign producers' operations (items (II) and (VI)) and the potential for "product-shifting" (item (VIII)) are presented in the section entitled "Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other Than the United States," and information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV)), and any other threat indicators, if applicable (item (VII)), is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury." 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 C. Item (I), regarding subsidies, and item (IX), regarding agricultural products, are not relevant in this investigation. Parties are unaware of any dumping findings in third countries concerning PETs from Singapore. Available data on U.S. inventories of PETs and/or PEWPs (item (V)) from Singapore and other countries follow.

U.S. Importers' Inventories

The three firms reporting imports from Singapore of PETs subject to this investigation also reported end-of-period inventories of those imports. These data are presented in table 17.

¹⁰⁵ 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

PETs/PEWPs: End-of-period inventories of U.S. importers, by products and by sources, 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

End-of-period inventories of PETs from Singapore¹⁰⁶ increased irregularly from 1988 to 1992, mirroring trends in imports from Singapore. Inventories grew from *** units in 1988 to *** units in 1989, then fell each year thereafter to *** units in 1992. The ratio of inventories to U.S. shipments of imports from Singapore peaked in 1989 at *** percent, then dropped irregularly to *** percent in 1992.

As noted earlier, Smith Corona accounted for the major portion of imports from Singapore. Its production and shipments of product are ***. In response to a request for information with respect to its operations in Singapore, Smith Corona projected it would ship ***.

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other Than the United States

Information in this section was provided by counsel for Smith Corona and counsel for Olivetti Singapore PTE, Ltd. The data are presented in table 18.

Smith Corona Singapore is, by far, the largest producer in Singapore, having begun operations there in 1974. Production of basic PETs was moved there from Cortland, NY, beginning in 1987 and part of its production of PETs with text memory (automatics) followed in 1988. ***. Otherwise, the operation in Singapore is patterned after the Cortland facility in terms of subassembly fabrication and manufacture, final assembly, and testing. Smith Corona has *** in Singapore since 1988. During the preliminary investigation, counsel for BIUSA made repeated reference to this as evidence of Smith Corona's intentions to shift more and more production from Cortland to Singapore. In response to this allegation, Mr. G. Lee Thompson of Smith Corona noted that expansion took place at both Cortland, NY, and Singapore. He further noted that the expansion took place at a time the market was growing, having nearly doubled from 1985 until the economic slowdown in 1989, a time when Smith Corona was "at full capacity in both Cortland and Singapore."¹⁰⁷

As noted earlier, Smith Corona has approved a plan to phase out its manufacturing operations in Cortland and move them to a new facility in

¹⁰⁶ There were no imports of PEWPs from Singapore during 1988-92.

¹⁰⁷ Conference TR, p. 152.

Table 18

PETs: Singapore's production, capacity, end-of-period inventories, home-market shipments, and exports to the United States and to all other countries, 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

Source: Compiled from information supplied by counsel for Smith Corona Singapore and Olivetti Singapore PTE, Ltd.

Tijuana, Mexico. In its response to information concerning its operations in Singapore, Smith Corona stated:

***. ¹⁰⁸

The share of Smith Corona Singapore's exports going to the United States ***.

Olivetti Singapore began producing PETs in ***. During 1988-92, its PET exports to the United States went to only two customers: its related U.S. company, Olivetti USA, and AT&T. The Olivetti facility also produced word processor models of a type subject to investigation in PWPs from Japan. It stopped producing these models in December 1989 and, according to Olivetti USA, the last shipments were made in January 1990. ***. In October 1990, AT&T, which marketed several Olivetti products, including PETs and word processors, indicated that it would no longer market any of the products in the United States.¹⁰⁹ As a result, Olivetti Singapore's share of its exports going to the United States ***. *** in the United States. As noted earlier, Olivetti USA, which ***, accounted for *** percent of PET imports from Singapore in 1992 and *** percent of imports from all sources.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN IMPORTS OF THE SUBJECT MERCHANDISE AND THE ALLEGED MATERIAL INJURY

Imports

As noted earlier, PETs enter under a discrete HTS subheading, item 8469.21.00, while imports of PEWPs and other personal word processors (subject to PWPs from Japan) are provided for in a basket category (HTS item 8469.10.00). Given the latter and because the Commission received complete responses from importers accounting for all of the subject products from Singapore and nearly all of the imports from other countries, import data presented in this section are based on responses to Commission questionnaires.

¹⁰⁸ ***.

¹⁰⁹ See letter from ***.

Imports of PETs from Singapore¹¹⁰ increased irregularly from 1988 to 1992, growing by *** percent (table 19). The value of imports from Singapore followed the same pattern, but at a slightly slower rate of *** percent over the period. Consequently, unit values of PETs from Singapore declined by *** percent from 1988 to 1992. The quantity of PET imports from other countries decreased irregularly from 1988 to 1992, with the latter year being *** percent down from 1988 levels. The value of imports from other countries dropped at a greater rate, *** percent, from 1988 to 1992, although unit values for these imports remained above those of imports from Singapore.

Table 19

PETs/PEWPs: U.S. imports, by products and by sources, 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Market Penetration by Imports

As the Commission received usable data from the four U.S. producers of PETs and PEWPs,¹¹¹ reported U.S. shipments constitute 100 percent of U.S. shipments of such merchandise during the period of investigation. Similarly, the Commission received data from nearly all of the known importers of PETs and PEWPs, including importers accounting for all shipments of imports from Singapore.¹¹² Thus, consumption figures for PETs and PEWPs are relatively complete. As a result, consumption data in this report consist of reported U.S. shipments of PETs and PEWPs, combined with reported shipments of imports of those products.

On a quantity basis, imports of the subject PETs from Singapore as a share of the U.S. market grew irregularly from *** percent in 1988 to *** percent in 1992 (table 20). Losses in market share by U.S. producers primarily reflect Smith Corona's shift of PET production to Singapore. When Smith Corona's import shipments are combined with its U.S.-produced shipments, its share of the market was *** percent for 1992. On a value basis, imports of subject PETs from Singapore increased market share from *** percent in 1988 to *** percent in 1992.

¹¹⁰ As noted earlier, there were no imports of PEWPs from Singapore during 1988-92.

¹¹¹ As noted earlier, ***.

¹¹² As noted earlier, there were no imports of PEWPs from Singapore during 1988-92.

Table 20

PETs/PEWPs: U.S. shipments of domestic product, U.S. shipments of imports, and apparent U.S. consumption, by products, 1988-92

| Item | 1988 | 1989 | 1990 | 1991 | 1992 |
|------|------|------|------|------|------|
| | * | * | * | * | * |

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

Prices

Market Characteristics

U.S. producers and importers generally agree that demand for PETs during January 1990-March 1993 declined sharply.¹¹³ However, due to their relatively low prices, simplicity of use, and long-standing consumer familiarity, PETs continue to appeal to both home and office users.¹¹⁴ Nevertheless, *** believes that such appeal will continue to decline if prices of portable personal word processors move closer to high-end PETs.¹¹⁵ Questionnaire responses indicate that the market for PETs tends to peak during the fall as purchasers attempt to meet back-to-school demand and increased retail demand during the Christmas season.¹¹⁶

BIUSA, Smith Corona, and Olivetti provided information relevant to their selling practices for the subject products in the U.S. market.¹¹⁷ These firms accounted for *** percent of apparent consumption of PETs during 1992. Smith Corona and Olivetti accounted for *** percent of the subject imports.

***.¹¹⁸

*** of the reporting firms indicated that freight was not an important factor in purchasers' sourcing decisions, with such costs ranging from 1 to 4 percent of the U.S. f.o.b. price. *** responding firms indicated that they generally arrange the transportation to their customers' locations. Reported lead times for *** are *** days. *** and *** reported lead times of *** days from their U.S. shipping point and *** days from their foreign shipping point.

Sales terms varied between suppliers, with ***.

¹¹³ ***.

¹¹⁴ Typing on preprinted forms, envelopes, etc., is less difficult with PETs than with more complex machines.

¹¹⁵ *** indicated in its questionnaire response submitted in conjunction with the preliminary investigation that some sales of its high-end PETs have slowed due to available price points on word processors.

¹¹⁶ ***, indicated increased purchases of PETs in June and July for introduction of its Fall catalog.

¹¹⁷ ***.

¹¹⁸ Smith Corona's marketing practices apply to both its U.S.-produced and imported Singaporean PETs.

*** responding firms uses price lists, but ***.¹¹⁹ BIUSA and Smith Corona reported offering post-invoice sales incentive programs. BIUSA reported that post-invoice allowances consist of quantity discounts, co-op advertising allowances, and key city funds.¹²⁰ ¹²¹ Smith Corona's available post-invoice allowances are as follows: cash discounts, key city allowances, promotional allowances, target quantity rebates, f.o.b. credits, sales allowances, advertising credits, advertising accrual rebates, and price protection.¹²² ¹²³ BIUSA and Smith Corona reported total annual expenditures during 1990-92 for post-invoice allowances associated with their sales of PETs, as shown in the following tabulation on a per-unit basis, by customer type.¹²⁴

| <u>U.S.-produced PETs</u> | <u>1990</u> | <u>1991</u> | <u>1992</u> |
|----------------------------|-------------|-------------|-------------|
| BIUSA: ¹ | | | |
| National retail chains.... | *** | *** | *** |
| Mass merchandisers..... | *** | *** | *** |
| Department stores..... | *** | *** | *** |
| Catalog stores..... | *** | *** | *** |
| Electronic discount stores | *** | *** | *** |
| Office equipment dealers.. | *** | *** | *** |
| Office superstores..... | *** | *** | *** |
| AVERAGE..... | *** | *** | *** |

Footnotes at end of tabulation.

¹¹⁹ ***.

¹²⁰ BIUSA reported that key city funds are ***. Customers may use these funds at their discretion to promote one or more of the various BIUSA product lines. (BIUSA submission, Aug. 4, 1993, p. 4.)

¹²¹ BIUSA's posthearing brief, app. F, p. 5.

¹²² BIUSA reported offering price protection ***. (BIUSA's posthearing brief, app. F, p. 5.)

¹²³ F.o.b. credits, sales allowances, advertising credits, and some key city funds are deducted directly from the invoice. (Smith Corona's posthearing brief, pp. 73-75.)

¹²⁴ BIUSA reported that post-invoice allowances ***. (BIUSA's posthearing brief, app. E, p. 13.)

Imported Singapore PETs

| | <u>1990</u> | <u>1991</u> | <u>1992</u> |
|---|-------------|-------------|-------------|
| Smith Corona: ² | | | |
| National retail chains.... | *** | *** | *** |
| Mass merchandisers..... | *** | *** | *** |
| Department stores..... | *** | *** | *** |
| Catalog stores..... | *** | *** | *** |
| Electronic discount stores | *** | *** | *** |
| Office equipment dealers ³ . | *** | *** | *** |
| Office superstores..... | *** | *** | *** |
| AVERAGE..... | *** | *** | *** |

¹ ***.

² ***.

³ ***.

As shown in the tabulation, each reporting company's per unit promotional expenditures for PETs generally declined during the 1990-92 period. BIUSA's promotional expenditures averaged ***, ***, and ***, respectively, per unit for its domestic PETs. Smith Corona's promotional expenditures for PETs averaged ***, ***, and, *** per unit for its imported Singapore machines.

Retail prices for PETs depend on a model's particular features, such as correction system, dictionary system, display/memory capability, automatic functions, paper handling capability, and to some extent the model's brand name. Generally, prices reflect the quality and type of features associated with each machine model.¹²⁵ In addition, the wholesale price sometimes also varies by market segment, with upscaled styling¹²⁶ and somewhat lower list prices offered to the office equipment segment compared to the mass merchandiser segment. Competition between these two segments can frequently reduce or eliminate intended wholesale price distinctions.¹²⁷

Purchaser Information

Twenty purchasers responded to the Commission's request for product information and purchasing practices for domestic and imported PETs.¹²⁸ Purchasers were requested to address quality differences between the domestic and imported subject products, the ability to use substitute products in PET applications, factors in their PET sourcing decisions, and general price comparisons of the subject domestic and imported products.

¹²⁵ *** reported in its questionnaire response that consumer expectations concerning PETs are generally based on price/feature and brand/price comparisons. Also, opening price point (OPP) models (basic PETs) are very similar in functionality, allowing consumers to easily substitute between brands of OPP PETs. Thus, price and quality perceptions drive consumer purchasing decisions at the OPP level.

¹²⁶ The machines with upscale styling generally have the same keyboard functions as those sold to the mass merchandiser market.

¹²⁷ Marketing personnel at BIUSA explained to Commission staff that ***.

¹²⁸ These firms did not necessarily respond to all questions.

More than half of the responding purchasers indicated an awareness of and/or interest in the country of origin of the PETs they purchase, while most firms reported that their customers generally are not aware of and/or interested in the country of origin of PETs. According to questionnaire responses, the majority of purchasers purchase PETs on a weekly or monthly basis, contacting two to five suppliers.

Purchasers most frequently ranked traditional supplier, price, and availability, in order of importance, as the three major factors in their PET sourcing decisions. Only one purchaser listed price as the most important sourcing factor. Twelve firms ranked price as the second most important factor.

In response to an additional question concerning sourcing factors, 8 of 10 purchasers indicated that both product quality and price were "very important," while 2 indicated quality and price as "somewhat important." Eight of 11 purchasers indicated model features as "very important," while the remaining 3 indicated model features as "somewhat important." Service, speed of delivery, and discounts were also designated as "very important" by several purchasers.¹²⁹ Maintaining several sources of supply was ranked "somewhat important" by 7 of 11 responding firms. In addition, nearly all purchasers indicated that U.S.-produced PETs and the subject imports are of "comparable" quality. One firm reported that the U.S.-produced PETs are of superior quality vis-a-vis the subject imports. Conversely, another firm reported the U.S. product was of inferior quality.

Purchasers were requested to indicate if PETs from Singapore were generally available at a lower price than the domestic product. Ten of 17 responding purchasers reported that the imported product was not available at a lower price. Conversely, purchasers were requested to indicate whether the domestically-produced PETs were available at a lower price than the Singaporean subject product. Ten out of 18 purchasers reported that the domestic product was available at a price lower than PETs from Singapore. Seven firms reported purchasing the Singaporean PETs although a comparable U.S.-produced product was available at a lower price.¹³⁰ Eight firms, many of which reported purchasing higher-priced imports, reported purchasing U.S.-produced PETs although a product from Singapore was available at a lower price.^{131 132}

¹²⁹ *** firms reported brand name and *** firms reported maintaining several sources of supply as "very important" in their PET sourcing decisions.

¹³⁰ *** reported reliability of supply, a superior correction system, and overall product quality, while *** and *** indicated the supplier's market share, product quality, and product availability as factors in purchasing the higher-priced PETs from Singapore. *** and *** reported purchasing Singaporean PETs due to strong brand recognition. And *** reported that Singaporean PETs offered a full product line.

¹³¹ ***, reported that in addition to price, its sourcing decision took into account delivery reliability and lead times. *** reported purchasing the U.S. product to avoid dependence on a sole supplier and obtain brand assortment. The remaining firms reported such factors as quality, features, brand preference, availability, and product assortment.

Purchasers most frequently reported PEWPs as possible substitutes for PETs in their intended applications. Thirteen of 19 purchasers indicated that PEWPs could substitute for PETs. However, three of these firms indicated that PEWPs serve a different customer and are more expensive than PETs, and two other firms reported separately that PEWPs are not easy to use, and that when low cost is important there are no alternatives to PETs. One firm indicated that personal computers perform typewriter functions, but at a higher cost.

Questionnaire Price Data

The Commission requested U.S. producers and importers to report net U.S. f.o.b. selling prices for sales of basic PETs, dictionary PETs, and PETs with extra text memory and LCD display (automatics) to unrelated U.S. purchasers, as well as the total quantity shipped and the total net f.o.b. value shipped in each quarter to all unrelated U.S. purchasers. The price data were requested for the largest single sale and for total sales of the products specified, by purchaser type,¹³³ by quarters from January 1990 through March 1993. Importers were requested to report selling prices for these products imported from Singapore. Purchasers were requested to provide data on their net f.o.b. purchase prices from U.S. producers and importers for basic PETs, dictionary PETs, and dictionary PETs with extra memory and LCD. The specific products for which pricing data were requested are as follows:

PRODUCT 1: BASIC PET--PETs that are most similar to the BIC models AX22, AX250, AX300, Model 320, GX6000, and GX6500; Smith Corona models SL 500, SL 460, SL 470, SL 480, XL 1500, XL 1700, XL 1800, XL 1900, XE 1950, 235 DLE, 240 DLE, 250 DLE, 300 DLE, Mark VI (M-W), Mark VIII (M-W), Mark 100 (M-W), SR 1000C (Sears), DX 2600 (Sears), Deville 410 (K-Mart), Deville 450 (K-Mart), Deville 470 (K-Mart), CXL 4200 (JC Penney), CXL 4210 (JC Penney), Premier 100 (Wal-Mart). Such PETs include one-line memory correction, but NO spell-check, additional memory, or display (LCD).

PRODUCT 2: DICTIONARY PET--PETs that are most similar to the BIC models AX24, AX350, AX400, Model 340, GX7000, and GX7500; Smith Corona models SL 560, SL 570, SL 580, XL 2700, XL 2800, XL 2900, 335 DLE, 340 DLE, 350 DLE, Mark IX (M-W), Mark 200 (M-W), Mark 225 (M-W), DX 3400 (Sears), DX 3500 (Sears), DX 3600 (Sears), Deville 510 (K-Mart), Deville 580 (K-Mart), CXL 4300 (JC Penney). Such PETs include one-line memory correction and spell-check, but NO additional memory or LCD.

¹³² (...continued)

¹³² See app. F for additional price competition information as supplied by Smith Corona.

¹³³ Based on information submitted by the petitioner and respondent, the pricing information was requested for the following channels of distribution for PETs: national retail chains, mass merchandisers, department stores, catalog stores, electronic discount stores, office equipment dealers, office superstores, and other purchasers.

PRODUCT 3: DICTIONARY PET WITH EXTRA MEMORY AND LCD--PETs that are most similar to the BIC models AX 25, AX450, AX500, Model 355, GX8000, and GX 8500; Smith Corona models SD 650, SD 660, SD 670, SD 680, XD 4600, XD 4700, XD 4800, XD 4900, 400 DLD, 435 DLD, 440 DLD, 450 DLD, Mark XII (M-W), Mark XVI (M-W), Mark 290 (M-W), Mark 300 (M-W), Mark 325 (M-W), DX 4000 (Sears), DX 4500 (Sears), DX 4600 (Sears), CXL 5100 (JC Penney). Such PETs include one-line memory correction, spell-check, additional memory, and LCD.

Discussion of price comparisons and trends in the U.S. PET market is complicated by post-invoice allowances prevalent in the industry and shifts in suppliers' product mix. In order to establish appropriate price comparisons, U.S. producers, importers, and purchasers were specifically requested to report selling or purchase prices net of any post-invoice allowances. ***.¹³⁴ Consequently, ***.¹³⁵

Price comparisons may also be tenuous because within each product definition, each supplier sells various models of PETs for which prices vary by model. Therefore, changes in prices may not necessarily represent price trends, but rather a shift in the product mix sold by the supplier during different quarters.¹³⁶ In addition, Smith Corona introduces new models of its PETs on an annual basis, which in turn may affect the selling price of prior-year models.^{137 138}

U.S. Producers' and Importers' Prices

The ***¹³⁴, and ***¹³⁵, *** and *** provided pricing data for sales of the three requested products in the U.S. market, although not necessarily for all three products or all quarters over the period examined. The U.S. producer's weighted-average prices for all products and nearly all customer types declined during January 1990-March 1993. Price declines ranged from *** to *** percent. Importers' prices of product 1 to six of the eight customer types generally declined, prices of product 2 to four of the eight customer types declined, and prices of product 3 to seven of the eight customer types declined. Price declines ranged from *** to *** percent, while price increases ranged between *** and *** percent during the period examined.

National Retail Chains.--Prices for U.S.-produced product 1 sold to national retail chains were reported for only 2 quarters,^{139 140} while prices

¹³⁴ ***.

¹³⁵ Staff verification, BIUSA, July 20 and 22, 1993.

¹³⁶ For example, there may appear to be changes in the prices of a product for a given supplier during the period; however, these "trends" may be the result of the supplier reporting sales of certain models in one quarter and other models in another quarter. Because PET prices differ depending on the model's features, an apparent change in a supplier's prices for a given product category may actually be the result of variations in the product mix.

¹³⁷ Smith Corona's prehearing brief, p. 10.

¹³⁸ See app. E for discussion of average unit value selling prices and margins of underselling/overselling for the U.S. producer and importers of Singaporean PETs.

¹³⁹ ***.

for products 2 and 3 ***, over the period examined (tables 21-23). Prices for Singaporean products *** for products 2 and 3, respectively.

Purchase price comparisons were possible between domestic and Singaporean PETs sold to national retail chains in 27 of the 39 quarters for products 1-3 during the period examined. In 17 out of the 27 instances the Singaporean product was priced below the domestic product, by margins ranging between *** and *** percent. Margins of overselling ranging between *** percent were reported in 10 quarters.

Mass Merchandisers.--Prices for U.S.-produced products 1-3 sold to mass merchandisers ***, ***, and *** percent, respectively, during the period examined. Products 1 and 3 from Singapore showed *** price trends, of *** and *** percent, respectively, during the period examined, while prices for product 2 *** percent, from *** to *** per unit.

Price comparisons were possible between domestic and Singaporean PETs sold to mass merchandisers in 38 of the 39 quarters for products 1-3 during the period examined. In 17 instances the Singaporean product was priced below the domestic product, by margins ranging from *** percent to *** percent. Margins of overselling of between *** and *** percent were reported in 21 quarters.

Department Stores.--Prices for U.S.-produced products 1-3 sold to department stores ***, ***, and *** percent, respectively, during the period examined. Similarly, although ***, prices for products 1-3 from Singapore showed *** price trends of ***, ***, and *** percent, respectively, during the period examined.

Price comparisons were possible between domestic and Singaporean PETs sold to department stores in 38 of the 39 quarters for products 1-3 during the period examined. Margins of underselling for products 1-3 ranged between *** and *** percent, occurring in 25 of the 38 instances. In 13 instances, the Singaporean product was priced above the domestic product with margins ranging from *** to *** percent.

Catalog Stores.--The U.S. producer's prices to catalog stores for PET products 1-3 showed *** price trends during January 1990-March 1993, ***, ***, and *** percent, respectively. Importers' prices of products 1 and 3 from Singapore generally *** and *** percent, respectively, during the period examined. Conversely, prices for product 2 from Singapore *** per unit, *** percent overall between July-September 1990 and January-March 1993.^{141 142}

In 17 of the 37 possible price comparisons for products 1-3 sold to catalog stores, the Singaporean product was priced below the domestic product with margins ranging from *** to *** percent. Margins of overselling, occurring in 20 instances, ranged between *** and *** percent.

¹⁴⁰ (...continued)

¹⁴⁰ ***.

¹⁴¹ Singaporean prices during *** and *** per unit, respectively, and reflected sales ***.

¹⁴² ***.

Table 21

U.S. net f.o.b. selling prices of Basic PETs (product 1) produced in the United States and imported from Singapore, and margins of under/(over) selling, by customer types and by quarters, January 1990-March 1993

* * * * * * *

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

Table 22

U.S. net f.o.b. selling prices of Dictionary PETs (product 2) produced in the United States and imported from Singapore, and margins of under/(over) selling, by customer types and by quarters, January 1990-March 1993

* * * * * * *

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

Table 23

U.S. net f.o.b. selling prices of Dictionary PETs with Extra Memory and LCD (product 3) produced in the United States and imported from Singapore, and margins of under/(over)selling, by customer types and by quarters, January 1990-March 1993

* * * * * * *

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

Electronic Discount Stores.--Prices for U.S.-produced PET products 1-3 sold to electronic discount stores ***, ***, and *** percent, respectively, during the period examined. Prices for Singaporean products 1 and 3 *** of *** and *** percent during the period examined. U.S. importers' prices for product 2 *** between *** and *** per unit, but *** percent overall between July-September 1990 and January-March 1993.¹⁴³

Price comparisons were possible between domestic and Singaporean PETs sold to electronic discount stores in 37 of the 39 quarters for products 1-3 during the period examined. In 17 out of the 37 instances the Singaporean product was priced below the domestic product, by margins ranging from *** percent to *** percent. Margins of overselling, between *** and *** percent, were reported in 20 quarters.

Office Equipment Dealers.--Prices for U.S.-produced products 1-3 sold to office equipment dealers ***, ***, and *** percent, respectively, during the

¹⁴³ ***.

period examined. Prices for product 1 *** per unit, *** percent over the period examined. Product 2 from Singapore showed a *** price trend of *** percent during the period examined.¹⁴⁴ Product 3 prices *** percent, from *** per unit *** per unit during the final quarter of the period examined.¹⁴⁵

Price comparisons were possible between domestic and Singaporean PETs sold to office equipment dealers in 37 of the 39 quarters for products 1-3 during the period examined. In 18 out of the 37 instances the Singaporean product was priced below the domestic product, by margins ranging from *** percent to *** percent. Margins of overselling ranging between *** and *** percent were reported in 18 quarters. In one instance the prices of the domestic and imported product were the same.

Office Superstores. -- Prices for U.S.-produced products 1-3 sold to office superstores *** ***, and *** percent, respectively, during the period examined. Products 1 and 3 from Singapore showed *** price trends of *** and *** percent, respectively, during the period examined, while prices for product 2 *** and *** per unit. Overall, prices *** percent from *** to *** per unit during the period examined.

Price comparisons were possible between domestic and Singaporean PETs sold to office superstores in 38 of the 39 quarters for products 1-3 during the period examined. Margins of underselling ranged between *** and *** percent, occurring in 24 of the 38 instances. In 14 instances, the Singaporean product was priced above the domestic product, with margins ranging from *** to *** percent.

Other Purchasers. -- The U.S. producer's prices to other purchasers for PET products 1-3 showed *** price trends during January 1990-March 1993, ***, ***, and *** percent, respectively. Importers' prices of products 1-3 from Singapore also showed overall ***, ***, and *** percent, respectively, during the period examined.

In 29 of the 37 possible price comparisons for products 1-3 sold to other purchasers, the Singaporean product was priced below the domestic product, with margins ranging from *** to *** percent. Margins of overselling, occurring in 8 instances, ranged between *** and *** percent.

Purchaser Price Data

Purchase prices for the domestically-produced and imported PETs from Singapore were based on net f.o.b. prices reported by purchasers in questionnaire responses. Eleven purchasers provided usable price data for their purchases of domestic and Singaporean-produced PETs for January 1990-March 1993, but not necessarily for each product or for each quarter of the period.¹⁴⁶

National Retail Chains. -- *** reporting purchase prices for U.S.-produced products 1 and 2, reported *** for product 1.^{147 148} The *** purchase prices

¹⁴⁴ Prices for Singaporean product 2 during *** reflect sales of ***.

¹⁴⁵ Prices for Singaporean product 3 during *** reflect sales of prior-year models.

¹⁴⁶ The 11 purchasers reporting price data by type are as follows: 4 national retail chains, 1 mass merchandiser, 2 catalog stores, 1 office equipment dealer, and 3 electronic discount stores.

¹⁴⁷ ***.

for domestic product 2 *** per unit during 1990-92. Prices for product 3 *** percent during the period examined (tables 24-26). Purchase prices for Singaporean products 1 and 3 *** and *** during January 1990-March 1993 and January 1991-March 1993, respectively. Prices for Singaporean product 2 *** and *** per unit between April-June 1990 and January-March 1993. Overall, prices *** percent during the 12 quarters for which prices were reported.

Purchase price comparisons were possible between domestic and Singaporean PETs sold to national retail chains in 21 of the 39 quarters for products 1-3 during the period examined. In 17 of the 21 instances the Singaporean product was priced below the domestic product, by margins ranging between *** and *** percent. Margins of overselling of between *** and *** percent were reported in 4 quarters.

*Mass Merchandisers.*¹⁴⁹--Purchase prices for U.S.-produced products 1 and 2 sold to mass merchandisers *** percent during the period examined.¹⁵⁰ Prices for products 1 and 2 from Singapore *** and *** per unit during the *** and *** respective quarters for which prices were reported.¹⁵¹

Price comparisons were possible between domestic and Singaporean PETs sold to mass merchandisers in 10 of the 26 quarters for products 1 and 2 during the period examined. In 2 of the 10 instances the Singaporean product was priced below the domestic product, by margins of *** percent. Margins of overselling between *** and percent were reported in 8 quarters.

Catalog Stores.--Purchase prices for PET products 1-3 sold to catalog stores showed that the U.S. producer's price *** percent for product 1; prices for product 2 *** percent overall during April 1990-March 1993; and prices for product 3 *** per unit for the *** quarters for which prices were reported. Prices of Singaporean PET product 1 *** percent during the period examined. Prices for products 2 and 3 from Singapore *** percent during *** and *** , respectively.

In 7 of the 16 possible price comparisons for products 1-3, the Singaporean product was priced below the domestic product, with margins ranging from *** to *** percent. Margins of overselling, occurring in 9 instances, ranged between *** and *** percent.

Electronic Discount Stores.--Purchase prices for U.S.-produced PET product 1 sold to electronic discount stores *** percent during *** , while product 2 prices *** during *** . Prices for product 3 were *** per unit during April-June 1992, then declined to *** per unit during the following quarter, remaining at this level throughout the remainder of the period examined. Prices for Singaporean product 1 *** percent during *** , while prices for product 2 *** percent overall during *** . Prices for product 3 from Singapore *** per unit, but *** percent during April 1991-March 1993.

Price comparisons were possible between domestic and Singaporean PETs sold to electronic discount stores in 13 of the 39 quarters for products 1-3 during the period examined. In 8 out of 13 instances for the specified products, the Singaporean product was priced below the domestic product by margins ranging between *** and *** percent. Margins of overselling ranged between *** and *** percent, occurring in 5 instances.

¹⁴⁸ (...continued)

¹⁴⁸ ***.

¹⁴⁹ ***.

¹⁵⁰ Purchase prices were not reported for domestic product 3.

¹⁵¹ ***.

Table 24

U.S. net f.o.b. purchase prices of Basic PETs (product 1) produced in the United States and imported from Singapore, and margins of under/(over) selling, by customer types and by quarters, January 1990-March 1993

* * * * * * *

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

Table 25

U.S. net f.o.b. purchase prices of Dictionary PETs (product 2) produced in the United States and imported from Singapore, and margins of under/(over) selling, by customer types and by quarters, January 1990-March 1993

* * * * * * *

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

Table 26

U.S. net f.o.b. purchase prices of Dictionary PETs with Extra Memory and LCD (product 3) produced in the United States and imported from Singapore, and margins of under/(over) selling, by customer types and by quarters, January 1990-March 1993

* * * * * * *

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

Other Purchasers. --No purchaser prices for domestic products 1-3 or Singaporean products 2-3 from other purchasers were reported. Purchase prices of product 1 from Singapore *** between *** and *** per unit, *** during ***.

Exchange Rates

Quarterly data reported by the International Monetary Fund for Singapore indicate that during January 1990-March 1993, the nominal value of the Singapore dollar fluctuated but appreciated 13.8 percent relative to the U.S. dollar by the end of this period (table 27). Adjusted for movements in producer price indexes in the United States and Singapore, the real value of the Singapore dollar appreciated against the U.S. dollar by 4.0 percent during 1990-92 and by 1.8 percent during January 1990-March 1993.¹⁵²

¹⁵² Derived from Singapore price data reported for January and February only.

Table 27

Exchange rates:¹ Indexes of the nominal and real exchange rates between the U.S. dollar and the currency of Singapore, and indexes of producer prices in Singapore and the United States,² by quarters, January 1990-March 1993

| Period | Singapore | | Real exchange- rate index ³ | U.S. producer price index |
|----------------|---------------------------------------|----------------------------|---|------------------------------------|
| | Nominal exchange- rate index | Producer price index | | |
| 1990: | | | | |
| Jan.-Mar..... | 100.0 | 100.0 | 100.0 | 100.0 |
| Apr.-June..... | 100.9 | 96.5 | 97.5 | 99.8 |
| July-Sept..... | 104.7 | 103.4 | 106.6 | 101.6 |
| Oct.-Dec..... | 109.1 | 109.3 | 113.9 | 104.7 |
| 1991: | | | | |
| Jan.-Mar..... | 107.9 | 101.1 | 106.4 | 102.5 |
| Apr.-June..... | 105.9 | 95.6 | 99.8 | 101.5 |
| July-Sept..... | 108.6 | 94.9 | 101.6 | 101.4 |
| Oct.-Dec..... | 112.4 | 94.4 | 104.5 | 101.5 |
| 1992: | | | | |
| Jan.-Mar..... | 114.2 | 91.6 | 103.3 | 101.3 |
| Apr.-June..... | 114.4 | 93.2 | 104.2 | 102.3 |
| July-Sept..... | 116.8 | 93.1 | 105.8 | 102.8 |
| Oct.-Dec..... | 115.4 | 92.7 | 104.0 | 102.9 |
| 1993: | | | | |
| Jan.-Mar..... | 113.8 | 92.3 ⁴ | 101.8 ⁴ | 103.2 |

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

² The producer price indexes are aggregate measures of inflation at the wholesale level in the United States and the above foreign country. Quarterly producer prices in the United States generally rose, by 3.2 percent, during January 1990-March 1993. Although producer prices in Singapore fluctuated somewhat during this period, they declined by 7.7 percent by the end of the period.

³ The real values of the Singapore dollar are the nominal values adjusted for the difference between inflation rates as measured by the producer price indexes in Singapore and the United States.

⁴ Derived from Singapore price data reported for January and February only.

Note.--January-March 1990=100.0

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

Lost Sales

*** allegations of lost sales were reported to the Commission by the petitioner, BIUSA, during the final investigation. These allegations involved *** PET models imported from Singapore and *** different purchasers during the period ***. *** alleged total lost sales of ***. The following are reports of the conversations between Commission staff and those purchasers who could be reached and were willing to discuss their buying practices in this final investigation.¹⁵³

***.

***.

Lost Revenues

*** specific allegations of lost revenues were reported to the Commission by the petitioner, BIUSA, during the final investigation. These allegations involved *** purchasers of *** PETs during ***, totaling *** in lost revenues. The following are reports of the conversations between Commission staff and those purchasers who could be reached and were willing to discuss their buying practices in this final investigation.

***.

***.

***.

***.

¹⁵³ Several firms were unable to specifically comment on alleged lost sales since buyers during the time in question were no longer available.

APPENDIX A

**FEDERAL REGISTER NOTICES
OF THE COMMISSION AND COMMERCE
AND PUBLIC HEARING WITNESS LIST**

[Investigations No. 731-TA-515 (Final)]

**Portable Electric Typewriters from
Singapore**

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-515 (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 reasons of imports from Singapore of portable electric typewriters, provided for in subheadings 8469.10.00 and 8469.21.00 of the Harmonized Tariff Schedule of the United States (HTS).¹

¹ For purposes of this investigation, portable electric typewriters are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria. They must: (1) be easily portable, with a handle and/or carrying case, or similar mechanism to facilitate their portability; (2) be electric, regardless of source of power; (3) be comprised of a single, integrated unit (e.g., not in two or more pieces); (4) have a

Continued

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

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT:

Jim McClure (202-205-3191), 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 certain portable electric typewriters from Singapore 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 April 18, 1991, by Brother Industries (USA), Bartlett, TN.

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 section 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 June 8, 1993, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on June 25, 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 June 17, 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 9:30 a.m. on June 18, 1993, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 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 section 207.22 of the Commission's rules; the deadline for filing is June 18, 1993. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for

filing posthearing briefs is July 6, 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 July 6, 1993. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.8, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 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 section 207.20 of the Commission's rules.

Issued: March 17, 1993.

By order of the Commission.

Paul R. Barden,

Acting Secretary.

[FR Doc. 93-6779 Filed 3-24-93; 8:45 am]

BILLING CODE 7030-02-01

keyboard embedded in the chassis or frame of the machine; (5) have a built-in printer; (6) have a platen (roller) to accommodate paper; and (7) only accommodate their own dedicated or captive software, if any. The portable electric typewriters subject to this investigation are those provided for in HTS subheading 8469.21.00 and those with text memory (automatics) provided for in HTS subheading 8469.10.00.

[A-559-806]

Final Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore

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

EFFECTIVE DATE: August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ross L. Cotjanle or Larry Sullivan, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-3534 or 482-0114, respectively.

Final Determination

We determine that imports of certain portable electric typewriters from Singapore 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"). The final estimated margins are shown in the "Suspension of Liquidation" section of this notice. Also, the Department determines that critical circumstances do not exist.

Case History

Since the publication of our preliminary determination (58 FR 7534, February 8, 1993), the following events have occurred: On March 2, 1993, the Department postponed the date of its final determination to June 23, 1993 in response to a request from Smith Corona (58 FR 12025). We received timely requests for a public hearing from the respondent, Smith Corona Corporation ("Smith Corona"), and the petitioner, Brother Industries (USA), Inc. ("Brother"). Case and rebuttal briefs were submitted on May 5 and 12, 1993, respectively.

The Department initialed a proposed suspension agreement with Smith Corona on May 21, 1993, and received comments regarding the proposed suspension agreement from Brother on June 14 and 16, 1993. On June 22, 1993, the Department, having determined that the agreement was in the public interest and that effective monitoring of the agreement was practicable, signed an agreement with Smith Corona suspending this investigation.

On June 25, 1993, the U.S. Court of International Trade ("CIT") issued a temporary restraining order preventing the Department from administering the suspension agreement between it and Smith Corona. On July 12, 1993, the temporary restraining order was partially lifted by the CIT allowing the

Department to publish the suspension agreement in the Federal Register (see, 58 FR 39786, July 26, 1993).

Pursuant to Smith Corona's and Brother's requests of June 23 and July 27, 1993, respectively, the Department is continuing this investigation in accordance with 19 U.S.C. 1673c(g).

Scope of Investigation

The merchandise covered by this investigation consists of certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria:

- (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability;
- (2) Electric, regardless of source of power;
- (3) Comprised of a single, integrated unit;
- (4) Having a keyboard embedded in the chassis or frame of the machine;
- (5) Having a built-in printer;
- (6) Having a platen to accommodate paper; and
- (7) Only accommodating its own dedicated or captive software, if any.

Based on petitioner's request, the Department has decided not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (see 55 FR 47358, November 13, 1990). PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) Seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are currently classifiable under subheadings 8469.21.00 and 8469.10.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are classifiable under subheading 8469.10.00.) Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is November 1, 1990, through April 30, 1991.

Standing

We received several submissions from Smith Corona during the period April 29 through July 22, 1991, challenging Brother's standing to file the petition and requesting rescission of the initiation in this investigation. Smith Corona raised two standing issues: (1) Whether Brother is an interested party within the meaning of section 771(9)(C) of the Act and (2) whether Brother filed the petition on behalf of the domestic industry.

With respect to Brother's status as an interested party, on September 3, 1992, the CIT, in Slip. Op. 92-152, reversed the Department's determination of September 25, 1991, that Brother was not an interested party and did not have standing to file a petition against PETs from Singapore. The Department has been directed to determine whether the petition in this proceeding was filed "on behalf of" the domestic industry and, if so, to proceed with the investigation (Slip. Op. 92-211, Nov. 30, 1992). For the reasons discussed below, we determine that Brother has filed its petition on behalf of the U.S. industry.

On April 29, 1991, Smith Corona identified itself as a domestic producer of PETs in opposition to the petition filed by Brother. Where a domestic industry member opposing a petition provides a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing party, or parties, do, in fact, represent a majority of the domestic industry. *Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19005 (May 3, 1989) ("Antifriction Bearings"). Therefore, on May 17, 1991, we issued a standing questionnaire to Smith Corona to ascertain: (1) The extent of Smith Corona's relationship with the exporter of the subject merchandise; (2) the extent to which Smith Corona is an importer of the allegedly dumped merchandise; and, (3) the share of domestic production and sales accounted for by Smith Corona.

After our review of Smith Corona's June 6, 1991 response to the standing questionnaire, we determined that more information was needed to complete our analysis. Therefore, on August 14, 1991, we asked both Smith Corona and Brother to submit to the Department the same U.S. production and sales data which they had submitted to the U.S. International Trade Commission ("ITC"). The ITC format was instructive

because it required the parties to report production and sales data separately for both PETs/portable automatic typewriters ("PATs") and portable electronic word processors ("PEWPs").

Based on the production and sales data submitted, we computed the respective shares of U.S. production and sales held by Smith Corona and Brother. These calculations show that the opponent of the petition, Smith Corona, does not represent a majority of U.S. production or sales (measured by volume or value). Therefore, consistent with the policy articulated in *Antifriction Bearings*, we determine that the petition was filed on behalf of the U.S. industry.

In *Antifriction Bearings*, the Department went on to discuss whether the domestic industry should be defined to exclude related parties or importers for standing purposes, as permitted by section 771(4)(B). In previous investigations, the Department has excluded such firms from the industry. See, for example, *Fabricated Automotive Glass from Mexico: Final Determination of Sales at Less than Fair Value*, 50 FR 1906 (January 14, 1985). The Department pointed out in *Antifriction Bearings* that the firms in opposition were wholly-owned subsidiaries of the responding companies.

In this proceeding, we note that the exporter is a wholly-owned subsidiary of Smith Corona. We further note that imports of the subject merchandise account for more than fifty percent of Smith Corona's sales of this product. Smith Corona, however, argues in its case briefs that it believes that its status as an importer or the fact that it has overseas operations, does not exclude it from the domestic industry. Smith Corona asserts that both it and Brother rely on imports to some extent. Citing *Digital Readout Systems*, 53 FR 47844, 47845 (November 28, 1988) and *3.5" Microdisks and Media Thereof from Japan*, 54 FR 6433 (February 10, 1989), Smith Corona claims that the Act allows producers of inputs, offshore assemblers, and U.S. producers with some foreign production functions to be included in the domestic industry.

We do not agree with Smith Corona's assertions. Under the test applied in *Frozen Concentrated Orange Juice from Brazil: Final Determination of Sales at Less than Fair Value*, 52 FR 8324 (March 17, 1987), the high level of Smith Corona's imports leads us to conclude that, while Smith Corona is a U.S. manufacturer of PETs, its interests in this investigation are closely tied to imports of the allegedly dumped PETs, and thus run counter to the imposition

of antidumping duties on imports of PETs from Singapore. Therefore, we do not consider Smith Corona to be a member of the domestic industry in this proceeding.

In its case briefs, Smith Corona also argues that the Department improperly focused on domestic products rather than the nature and extent of petitioner's U.S. operations. To determine whether a majority of the domestic industry supports a petition, Smith Corona states that the Department should analyze PET production in terms of actual U.S. content, not on the total number of units sold. Smith Corona argues that this type of analysis is preferred over a simple count of the typewriters produced. While the Department may not find this method warranted in all cases, Smith Corona asserts that it should implement it in cases, like this one, where a product is assembled from globally-sourced parts and where the petitioner's own U.S. content is low.

Brother argues that Smith Corona has failed to show the uniqueness of this case. Therefore, Brother contends that the Department should not be required to adopt a new approach to analyze standing. Further, Brother argues that the approach proposed by Smith Corona has no legal support in the statute, its legislative history, the Department's regulations, or any other legal precedent.

We are not persuaded that we should make the novel adjustment requested by Smith Corona, i.e., weight the production figures according to the percentage of U.S. value-added. Smith Corona has not cited, nor can we find, any precedent for defining a U.S. industry in terms of the U.S. value added to its product. Nor do we find any statutory basis for doing so. Indeed, the legislative history indicates that the criteria by which we determine Brother's standing should be applied "to provide an opportunity for relief for an adversely affected industry and to prohibit petitions filed by persons with no stake in the result of the investigation" S. Rep. No. 249, 96th Cong., 1st Sess., 63. In this instance, Brother is a U.S. producer representing a substantial share of the industry's output and Brother clearly has a "stake" in the outcome of the proceeding. Hence, the standing criteria may not be used to defeat Brother's claim for protection from imports that are alleged to be unfairly traded.

Such or Similar Comparisons

We established one such or similar category of merchandise in accordance with section 771(16) of the Act: portable

electric typewriters. For all PETs, comparisons were made solely on the basis of: (1) Type of PET; (2) memory capacity; (3) display screen; (4) display capacity; (5) printing mechanism; and (6) dictionary features. We used third country sales as the basis for foreign market value ("FMV") for Smith Corona, as described below in the "Foreign Market Value" section of this notice.

Because there was no identical merchandise sold in the third country market to compare to sales of merchandise in the United States, sales of the most similar merchandise based on the characteristics described above were used. In determining which merchandise was similar, we limited our comparisons to products sold in the third country that had difference in merchandise adjustments which were less than 20 percent of the total cost of manufacturing for the U.S. merchandise.

Finally, we compared merchandise at the same level of trade. In both the U.S. and U.K. markets, we determined that there were two levels of trade, i.e., retail and wholesale. We also determined that there were sufficient sales in the U.K. market at both levels of trade on which to base our analysis.

Fair Value Comparisons

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

United States Price

In calculating USP, the Department determined that it was appropriate to use exporter's sales price ("ESP") methodology for all sales in accordance with section 772(c) of the Act. For a further discussion of this issue, see *DOC Position to Comment 4 in the Interested Party Comments* section of this notice.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, containerization, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, U.S. inland freight (U.S. warehouse to customer), U.S. handling, freight credits, cash discounts, rebates, key city allowances, direct from invoice advertising credits, and sales allowances in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for credit, advertising accrual rebates, promotional allowances, prep allowances,

warranties, commissions, and indirect selling expenses, including warehousing, product liability premiums, corporate advertising, inventory carrying costs, and U.S. indirect selling expenses in accordance with section 772(e) of the Act.

We added to USP the amount of value-added tax which was incurred on "ESP" sales made in the market in which we determined foreign market value (i.e., the U.K.). The Department's policy is to add to U.S. price the absolute amount of tax, if any, on the merchandise sold in the market chosen for product comparison purposes. By adding the amount of tax in the comparison market 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. See, e.g., *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 25803 (April 28, 1993).

We have included in our USP calculations certain sales transactions reported by Smith Corona in a separate database as "exceptions." Those transactions include closeout sales, sales of discontinued models, employee sales, consignment sales, and free goods. We included closeout sales and sales of discontinued models in our calculation of USP because the Department does not ignore U.S. sales on the basis of obsolescence. See, e.g., *Portable Electric Typewriters from Japan: Final Results of Antidumping Duty Administrative Review*; 56 FR 14072 (April 5, 1991). Although Smith Corona argued that "employee sales" are sales to related parties and should not be included in the USP analysis, the Department's practice is to include this type of transaction in our analysis. See, *Television Receiving Sets, Monochrome and Color, From Japan: Final Results of Administrative Review of Antidumping Finding* 46 FR 30163 (June 5, 1981). In addition, sales made to Puerto Rico were included in the U.S. sales data base.

During verification we found minor clerical errors in Smith Corona's reported U.S. data base. These errors were not of the magnitude to draw into question the overall validity of the data reported. Therefore, we have determined it appropriate to use the data as verified, with the following minor adjustments.

For those U.S. sales reported by Smith Corona as purchase price transactions, but reclassified by the Department as ESP transactions, data for various indirect selling expenses were missing. Based on the indirect selling expenses

reported for Smith Corona's other ESP sales, we have assigned indirect selling expenses to these transactions.

For certain U.S. sales, Smith Corona did not report movement expenses. For these transactions, as best information available, we have used the highest per unit movement expenses incurred by Smith Corona for sales from the same warehouse.

Finally, we have adjusted Smith Corona's U.S. database for other minor discrepancies found on verification, e.g., prep allowance and warranty expenses (for those sales without reported service allowances). For a detailed explanation of the above adjustments made to U.S. price, as well as those which were denied, see Memorandum to Management from Team, dated July 29, 1993, on file in the Central Records Unit, B-099, of the Department of Commerce.

Foreign Market Value

In order to determine whether there were sufficient sales of such or similar merchandise in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of such or similar merchandise to the volume of third country sales of such or similar merchandise. Smith Corona's home market sales were less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with § 353.48 of the Department's regulations. In accordance with section 773(a)(1)(B) of the Act, we calculated FMV based on third country sales.

In selecting which third country market to use for comparison purposes, we followed 19 CFR 353.49(b). Accordingly, we selected the U.K. because (1) it had the largest volume of sales to any third country, and (2) the market, in terms of organization and development, is most like the United States. The Department did not base its selection of the U.K. on the first factor listed in the regulation, because the Department had no information with which to compare the similarity of the merchandise sold to other third country markets to the merchandise sold in the United States. Furthermore, we determined that the volume of sales to the U.K. market was adequate within the meaning of 19 CFR 353.49(b)(1) because the sales of such or similar merchandise exceeded five percent of the volume sold to the United States.

We calculated FMV based on packed, delivered prices to unrelated customers in the U.K. We made deductions, where

appropriate, for foreign brokerage, foreign inland freight, containerization, ocean freight, marine insurance, U.K. inland freight (U.K. warehouse to customer), rebates, other allowances, cash discounts, a customer-specific discount, and commissions. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

We made further deductions for third country indirect selling expenses, including warehousing, inventory carrying costs, product liability premiums, corporate advertising, U.S. indirect selling expenses incurred on behalf of U.K. sales, and U.K. indirect selling expenses, capped by the amount of indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

We have excluded sample sales in calculating FMV because Section 773 of the Tariff Act of 1930, as amended, requires that FMV be based on sales made in the ordinary course of trade. These sample sales in the U.K. were transferred free of charge. Therefore, we consider these sample sales not to be in the ordinary course of trade and have disregarded them in the calculation of FMV. See, e.g., *Antifriction Bearings*, at 19087.

During verification we found minor clerical errors in Smith Corona's reported U.K. data base. These errors were not of the magnitude to draw into question the overall validity of the data reported. Therefore, we have determined it appropriate to use the data as verified, with the following minor adjustments.

We have deleted the expense category for U.K. forwarder's fees from the U.K. data base because we found on verification that this expense had also been reported as part of U.K. indirect selling expenses. We have also adjusted the period used to calculate inventory carrying costs for air freight shipments based on verified information.

In addition, we have adjusted Smith Corona's U.K. database for other minor errors found on verification, e.g., U.K. warehousing expenses, U.K. freight expenses, and U.K. rebate amounts. For a detailed explanation of the above adjustments made to U.K. prices, as well as those which were denied, see Memorandum to Management from Team, dated July 29, 1993, on file in the Central Records Unit.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of PETs from Singapore. Section 735(a)(3) of the Act provides that there is a reasonable basis to believe or suspect 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 fair value, and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

With respect to section 735(a)(3)(A)(i) of the Act regarding a history of dumping, petitioner cites the Department's outstanding antidumping order on *Portable Electric Typewriters from Japan*. However, as discussed in our preliminary determination, an outstanding dumping determination involving a class or kind of merchandise from another country does not show a history of dumping of the merchandise subject to this investigation.

In order to impute knowledge pursuant to section 735(a)(3)(A)(ii) of the Act, the Department examines the magnitude of the dumping margins in the investigation. It is the Department's standard practice to impute knowledge of dumping when the margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, when dealing with exporter's sales price sales, margins of 15 percent or greater are sufficient to impute knowledge of dumping. Because the final dumping margin for Smith Corona exceeds 15 percent, we find that the importers knew or should have known that this company was selling the subject merchandise at less than fair value.

To determine whether imports have been massive over a short period of time pursuant to section 733(e)(1)(B) of the Act, we generally consider the following factors: (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., *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Belgium*, 58 FR 37083 (July 9, 1993), and *Final Determination of Sales at Less Than*

Fair Value: Certain Internal-Combustion Industrial Forklift Trucks from Japan, 53 FR 12552 (April 15, 1988). Normally, to determine whether imports have been massive we 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.

We have determined that our normal methodology is inappropriate in this proceeding. The purpose of the critical circumstances provision is to deter exporters whose merchandise is subject to an investigation from circumventing the imposition of antidumping duties by increasing exports to the United States during the period immediately prior to suspension of liquidation of entries. This deterrence is effected through a retroactive suspension of liquidation for 90 days prior to the preliminary determination. Thus, in a "normal" investigation the base period is roughly contemporaneous with the period covered by the retroactive suspension of liquidation.

Unlike the normal investigation, in this investigation 21 months elapsed between the initiation and the preliminary determination. Therefore, the period around the time of initiation is in no way contemporaneous with the period that would be covered by a retroactive suspension of liquidation; and is not just prior to suspension of liquidation. For these reasons, we have decided to use as our base period for determining whether critical circumstances exist, the period following the CIT's September 3, 1992 decision (Slip Op. 92-152). The CIT's decision served as notice of the eventual resumption of the antidumping proceeding and the possibility that future entries may be subject to antidumping duties. Therefore, in terms of the expectations of the parties subject to this investigation, the CIT's decision was similar to the filing of a petition.

Because we were able to obtain and verify data for the five-month period between the court's decision and our preliminary determination, we compared the volume of imports between September 1992 and January 1993 (the month of our preliminary determination), with a commensurate period prior to the court's decision. On this basis, we find that imports have not been massive. Therefore, we determine that critical circumstances do not exist with respect to imports of the subject merchandise from Singapore.

Currency Conversions

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

Verification

As provided in section 776(b) of the Act, we verified the information provided by Smith Corona by using our standard verification procedures, including the examination of relevant sales and financial records and selection of original source documentation containing relevant information.

Interested Party Comments**Comment 1**

Smith Corona argues that the fluctuation in the U.S. dollar—U.K. pound exchange rate should not be the cause of an affirmative determination of LTFV sales. It asserts that the appreciation of the dollar-pound exchange rate during the Gulf War, which coincided with the POI, was recognized as a short-lived phenomena after which the exchange rate returned to its pre-war level. Smith Corona states that because the fluctuation in exchange rates was a short-term phenomena and the exchange rates were returning to "normal," it did not believe it was necessary to adjust its prices during the POI or for the next fiscal year.

Smith Corona argues that the Court of Appeals for the Federal Circuit ("CAFC") and the Department's regulations provide that the Department will not take into account dumping margins resulting solely from temporary exchange rate fluctuations. *Melamine Chemicals, Inc. v. United States*, 732 F.2d 924, 932 (1984); 19 CFR 353.60(b). Smith Corona states that if the exchange rates in effect prior to the Gulf War are used, all or almost all of the dumping margin is eliminated. It suggests that the Department use an average exchange rate which excludes the aberrational rates in effect during the Gulf War.

Brother argues that Smith Corona is not entitled to any adjustment for a fluctuation in the exchange rate whether the exchange is considered "sustained" or "temporary." Citing *Coated Groundwood Paper from the United Kingdom; Final Determination of Sales at Less Than Fair Value*, 56 FR 56403 (November 4, 1991) ("*Groundwood Paper from the U.K.*"), Brother notes that the Department considered the impact of the Gulf War and decided that the exchange rate fluctuation during the period of investigation was sustained rather than temporary.

Brother argues that the Department should continue to find the fluctuation

in the U.S. dollar—U.K. pound exchange rate during the POI to be sustained and conclude that Smith Corona is not entitled to any special currency conversions because it did not act to change any of their pricing practices. If, however, the Department determines that the exchange rate fluctuation was temporary, Smith Corona is not entitled to any exchange rate adjustment because, as admitted to by Smith Corona, the antidumping margin does not result solely from such exchange rate fluctuation, as required by the regulations.

DOC Position

The special rule for investigations outlined in 19 CFR 353.60(b) provides:

For purposes of investigations, producers, resellers, and importers will be expected to act within a reasonable period of time to take into account price differences resulting from sustained changes in prevailing exchange rates. When the price of the merchandise is affected by temporary exchange rate fluctuations, the Secretary will not take into account in fair value comparisons any differences between United States price and foreign market value resulting solely from such exchange rate fluctuation.

We interpret 19 CFR 353.60(b) to mean that if there has been a sustained change in the exchange rate, and respondents can demonstrate that they revised their prices within a reasonable period of time to reflect that change, then we will use an appropriate lag period to convert foreign currency. (See, e.g., *Final Determination of Sales at Less Than Fair Value; Malleable Cast Iron Pipe Fittings From Japan* 52 FR 13855 (April 27, 1987).)

We will also adjust the methodology we employ, if we determine that temporary exchange rate fluctuations have occurred during the POI (i.e., the daily rate varies from the quarterly average rate by more than five percent). (See, e.g., *Final Determination of Sales at Less Than Fair Value; Brass Sheet and Strip from the Federal Republic of Germany* 52 FR 822 (January 9, 1987).) However, we do not interpret the special rule outlined in 19 CFR 353.60(b) as envisioning the treatment of an entire POI as a temporary fluctuation (see, e.g., *Groundwood Paper from the U.K.*).

In *Groundwood Paper from the U.K.*, the exchange rate fluctuation during the Gulf War was examined to determine whether it was of a temporary nature. In that case we determined that the "movement of exchange rates during the POI can be characterized as a non-volatile continuation of a sustained depreciation of the U.S. dollar against the pound that, while not entirely

steady, (i.e., on occasion the daily rate varied from the quarterly rate by more than five percent), began up to two years before the POI." Upon examination of the data in the present case, we have reached the same conclusion as in *Groundwood Paper from the U.K.* Since Smith Corona did not make price adjustments in response to this sustained change in exchange rates, no special treatment under the provision of the regulations is warranted.

Comment 2

Smith Corona asserts that the Department improperly compared such or similar merchandise. In addition to the seven "matching" criteria used by the Department, respondent argues, that the Department should consider additional factors such as model year and channel of distribution. Smith Corona provided the Department with three criteria which it contends would enable the Department to ensure that the comparison merchandise is "approximately equal in commercial value" in accordance with 19 U.S.C. 1677(16)(B)(iii).

Smith Corona argues that in determining whether merchandise is approximately equal in commercial value, the Department considers commercial and physical interchangeability (see *Malleable Cast Iron Pipe Fittings from Brazil*, 51 FR 10897 (1986)). For example, while production of the private label machines does not involve any difference in costs, there is significant commercial difference between the private label machines and the other product lines. Thus, they are not "approximately equal in commercial value." Smith Corona asserts that price comparisons should also be made between machines which are of the same product line (i.e., which is synonymous with channel of distribution).

Brother argues that the Department should continue to apply the matching criteria used in the preliminary determination and not use as additional criteria the trivial characteristics advocated by Smith Corona (i.e., model year, size of jacket, and product line). Brother contends that the minor product characteristics cited by Smith Corona are properly adjusted for via a difference-in-merchandise adjustment. Brother asserts that the difference in manufacturing costs does not render these machines non-comparable to other machines which fall into the same basic PET category. Furthermore, Brother contends that the Department's practice is to make its such or similar merchandise selections on differences in physical characteristics, not on

differences in prices. Brother claims that the Department stat. in *Certain Forced Steel Crankshafts from the United Kingdom; Final Results of Antidumping Duty Administrative Review*, ("Crankshafts from the U.K."), 56 FR 5975 (February 14, 1991) that "under section 771(16)(c), the Department has the discretion to make reasonable comparisons without regard to commercial value."

Lastly, Brother claims that in *Stainless Steel Hollow Products from Sweden; Final Administrative Review*, 57 FR 21389 (May 20, 1992), the Department rejected the argument that channel of distribution be added as a criteria in matching such or similar merchandise. It stated that "there is no regulatory basis for comparing identical channels of distribution."

DOC Position

We agree with petitioner. Colors, labels, and jacket sizes are "cosmetic" characteristics and, thus, were not included in the Department's product concordances. To the extent that these characteristics may have resulted in slight differences in cost of production, a difference in merchandise adjustment, rather than a change in matching criteria, would be appropriate.

The commercial value of these characteristics is not relevant to our product comparisons. The Department has previously rejected claims that "such or similar" comparisons should be adjusted to take into account differences in commercial value. As the Department noted in *Crankshafts from the U.K.*,

We also note that although the statute makes reference to commercial value in section 771(16)(B), we disagree with UEF's argument that this requires the Department to consider differences in prices in making such or similar comparisons. There are many reasons why prices may differ, including the existence of dumping . . .

The CIT has affirmed the Department's policy of not considering commercial value in selecting comparison merchandise. *United Engineering and Forging v. United States*, 779 F. Supp. 1375, 1381 (1991).

Furthermore, channel of distribution is not a proper merchandise comparison criterion. The Department has, as Brother notes, stated that "there is no regulatory basis for comparing identical channels of distribution." See, e.g., *Stainless Steel Hollow Products from Sweden; Final Results of Administrative Review*, 57 FR 21389 (May 20, 1992).

Comment 3

Smith Corona argues that the Department should take into account

the different levels of trade in making its sales comparisons. It states that the levels of trade can be broken into three groupings: small office equipment dealers, national retail chains, and those in between. These levels purchase different quantities of machines and should be segregated for purposes of product comparison.

Smith Corona contends that the Department's regulations and past precedent require the Department to compare merchandise at a comparable level of trade (see 19 CFR 353.58; and, e.g., *NTN Bearing Corp. v. United States*, 747 F. Supp. 726, 743 (CIT 1990)). A review of the prices reveals a distinction directly related to the level of trade.

Brother claims that where the Department has distinguished between levels of trade, those distinctions have been between wholesalers and retailers. The distinction requested by Smith Corona is between types of retailers. In *Television Receiving Sets, (Monochrome and Color), from Japan: Final Results of Administrative Review of Antidumping Finding*, 46 FR 30163 (June 5, 1981), Brother asserts that the Department stated that it generally considers all retail outlets to be at the same level of trade because they serve the same sector of the population—end-users. Brother requests that the Department continue to consider all sales to be at the same level of trade.

DOC Position

The Department's regulations at 19 CFR 353.58 state that "[t]he Secretary normally will calculate foreign market value and the United States price based on sales at the same commercial level of trade." The Department's policy and practice, as outlined in *Import Administration Policy Bulletin Number 92/1: Matching at Levels of Trade*, is to match at the same level of trade, provided that the respondent reports levels of trade with distinct, discernible functions.

Based on these guidelines, we have determined that Smith Corona's U.S. sales occur at two levels of trade, i.e., retail and wholesale. While Smith Corona's selling practices may vary in certain aspects based on the type of retailer, all the retailers have the same function which is to sell to end-users. In the U.K., we also have determined that there are two levels of trade, i.e., wholesale and retail. In addition, we have established that there were sufficient U.K. sales at each of these levels made during the POI to allow us to match all U.S. sales to retailers with U.K. sales to retailers and all U.S. sales to wholesalers with U.K. sales to

wholesalers. We have determined that no further distinction based on level of trade is appropriate here.

Comment 4

Brother contends that the purchase price sales reported by Smith Corona are misclassified. Brother asserts that because of their misclassification, none of the expenses specifically incurred for these sales are captured or allocated to such sales. These sales should be treated by the Department as ESP transactions and all expenses related to these sales should be accounted for in the Department's calculations.

DOC Position

We agree with petitioner. At verification, it became clear that all activities directly and indirectly related to the sales of PETs in the United States were conducted by Smith Corona's related U.S. company. We also verified that Smith Corona Private, Ltd. in Singapore did not incur any selling expenses related to its sales in the United States. Given that Smith Corona's related U.S. company acted as much more than a processor of sales-related documentation, we believe that the use of ESP to determine U.S. price is appropriate. (See, e.g., *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937 (May 26, 1992).)

Comment 5

Petitioner contends that the Department improperly determined that critical circumstances do not exist with respect to imports of PETs from Singapore. Petitioner argues that to impute knowledge in a particular case it is not appropriate to weight-average the purchase price and ESP sales but to examine which is the predominant type of sale. Whichever type of sale is predominant, the Department should presume knowledge based on the margin associated with that type of transaction.

DOC Position

Based on our reclassification of all purchase price sales as ESP, this issue has become moot. We are using the 15 percent benchmark normally applied to ESP transactions in order to determine a presumption of knowledge of dumping.

Continuation of Suspension of Liquidation

The U.S. Customs Service will continue to suspend liquidation of all entries of PETs from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered,

or withdrawn from warehouse, for consumption, until instructions are issued by the Department liquidating entries pursuant to the suspension agreement. If the suspension agreement is terminated in the future, we will then instruct the U.S. Customs Service to require a cash deposit equal to the estimated amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price, as shown below. The weighted-average dumping margins are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|--------------------------------|------------------------------------|
| Smith Corona PTE Ltd | 15.51 |
| All others | 15.51 |

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning 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 and 19 CFR 353.20(a)(4).

Dated: August 6, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-19720 Filed 8-13-93; 8:45 am]

SELLING CODE 3510-00-0

SUPPLEMENTARY INFORMATION:**Case History**

Since the publication of our notice announcing the resumption of this proceeding (57 FR 60796, December 22, 1992), the following events have occurred:

On December 30, 1992, the United States Court of International Trade ("CIT") in Slip. Op. 92-232 denied Smith Corona's Application for a Stay Pending Appeal. On January 8, 1993, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise, within the meaning of section 733(e) of the Act. On January 12, and January 26, 1993, respondent and petitioner, respectively, filed submissions regarding whether the petition in this proceeding was filed "on behalf of" the relevant U.S. industry.

Regarding petitioner's allegation of critical circumstances, the Department found no history of dumping of the subject merchandise and no reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. Therefore, the Department did not consider whether imports had been massive and determined that critical circumstances did not exist with respect to imports of the subject merchandise from Singapore.

The Department also determined that the petitioner is a U.S. producer representing a substantial share of the industry's output and, therefore, that the petition was filed on behalf of the U.S. industry. In its preliminary determination, the Department also determined that PETs from Singapore were being, or were likely to be, sold in the United States at less than fair value. The estimated margin was 16.02 percent (see 58 FR 7534, February 8, 1993).

Scope of Investigation

The merchandise covered by this investigation consists of certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only

accommodating its own dedicated or captive software, if any.

Based on petitioner's request, the Department has decided not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (see 55 FR 47358, November 13, 1990). PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) Seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are currently classifiable under subheadings 8469.10.00 and 8469.21.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are classifiable under subheading 8469.10.00.) Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is November 1, 1990, through April 30, 1991.

Suspension of Investigation

The Department consulted with the parties to the proceeding and has considered the comments submitted with respect to the proposed suspension agreement. We have determined that the agreement will eliminate sales of this merchandise to the United States at less than fair value, that the agreement can be monitored effectively, and that the agreement is in the public interest. We find, therefore, that the criteria for suspension of an investigation pursuant to section 734 of the Act have been met. The terms and conditions of the agreement, signed June 22, 1993, are set forth in Annex 1 to this notice.

Pursuant to section 734(f)(2)(A) of the Act, effective July 26, 1993, the suspension of liquidation of all entries entered or withdrawn from warehouse, for consumption of PETs from Singapore as directed in our notice of "Antidumping Preliminary Determination of Sales at Less than Fair Value, Certain Portable Electric Typewriters from Singapore" is hereby terminated. Any cash deposits on entries of PETs from Singapore pursuant to that suspension of liquidation shall be refunded and any bonds shall be released.

[A-559-906]

Certain Portable Electric Typewriters From Singapore; Suspension of Investigation

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

ACTION: Notice.

SUMMARY: The Department of Commerce has decided to suspend the antidumping investigation involving certain portable electric typewriters from Singapore. The basis for the suspension is an agreement by the Singaporean producers/exporters, which account for substantially all of the known imports of these products from Singapore, to revise their prices to eliminate sales of this merchandise to the United States at less than fair value. **EFFECTIVE DATE:** July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Steven Pressing or Cherie Rusnak, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3793.

The Department intends to conduct an administrative review within twelve months of the anniversary date of the publication of this suspension agreement as provided in section 751 of the Act.

Notwithstanding the suspension agreement, the Department will continue the investigation if we receive such a request in accordance with section 734(g) of the Act within 20 days after the date of publication of this notice. This notice is published pursuant to section 734(f)(1)(A) of the Act.

Dated: June 25, 1993.

Joseph A. Spectral,

Acting Assistant Secretary for Import Administration.

Note: Suspension of Liquidation and Refund of Security

Pursuant to the orders of the Court of International Trade entered on June 25, 1993 and July 12, 1993, the Department will not, until permitted to do so by the Court, instruct Customs to: (a) liquidate entries of portable electric typewriters from Singapore which are or have been the subject of administrative proceedings resulting in *Preliminary Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters from Singapore*, 58 FR 7534 (Feb. 6, 1993); or (b) refund any cash deposit or release any bond or other security collected pursuant to 19 U.S.C. 1673b(d)(2).

Dated: July 20, 1993.

Joseph A. Spectral,

Acting Assistant Secretary for Import Administration.

Annex 1: Suspension Agreement—Certain Portable Electric Typewriters from Singapore

Under section 734 of the Tariff Act of 1930, as amended (19 U.S.C. 1673c) ("the Act"), and 19 CFR 353.18, the U.S. Department of Commerce ("the Department") and the signatory producers/exporters of portable electric typewriters from Singapore enter into this suspension agreement ("the Agreement"). On the basis of this suspension agreement, the Department shall suspend its antidumping investigation initiated on May 14, 1992, (56 FR 22150) with respect to portable electric typewriters from Singapore, subject to the terms and provisions set out below.

A. Product Coverage

The merchandise subject to this Agreement is the following merchandise of Singaporean origin:

(1) Certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single,

integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating its own dedicated or captive software, if any.

PETs which meet all of the following criteria are excluded from the scope of this Agreement: (1) Seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of this Agreement.

(2) The PETs subject to this Agreement are classifiable under subheadings 8469.10.00 and 8469.29.00 of the Harmonized Tariff Schedule of the United States (HTSUS) (Note that personal word processors are also provided for under subheading 8469.10.00).

B. U.S. Import Coverage

The signatory producers/exporters collectively are the producers and exporters in Singapore which, during the antidumping investigation on the merchandise subject to this Agreement, accounted for substantially all (not less than 85 percent) of the subject merchandise imported into the United States, as provided in the regulations. The Department may at any time during the period of this Agreement require additional producers/exporters in Singapore to sign this Agreement in order to ensure that not less than substantially all imports into the United States are covered by this Agreement.

In reviewing the operation of this Agreement for the purpose of determining whether this Agreement has been violated or is no longer in the public interest, the Department will consider imports into the United States from all sources of the merchandise described in Section A of this Agreement. For this purpose, the Department will consider factors including, but not limited to, the following: Volume of trade, pattern of trade, whether or not the reseller is an original equipment manufacturer, and the reseller's purchase price.

C. Basis of the Agreement

On and after the effective date of this Agreement, each signatory producer/exporter individually agrees to make any necessary price revisions to eliminate completely any amount by which the foreign market value of this merchandise exceeds the United States price of its merchandise subject to this Agreement. For this purpose, the Department will determine the foreign market value in accordance with section 773(e) of the Act and U.S. price in accordance with section 772 of the Act.

(1) For all sales occurring between the effective date of this Agreement and September 30, 1993, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement to unrelated purchasers in the United States at prices that are less than its foreign market value, as determined by the Department based on cost information for the period July 1, 1992, through March 31, 1993, and provided to parties not later than June 22, 1993.

(2) For all sales occurring on or after October 1, 1993, each signatory producer/exporter agrees not to sell its merchandise subject to this Agreement to any unrelated purchaser in the United States at prices that are less than its foreign market value of the merchandise, as determined by the Department on the basis of information submitted to the Department not later than the dates specified in section D of this Agreement and provided to parties not later than September 20, December 20, March 20, and June 20 of each year. This foreign market value shall apply to sales occurring during the calendar quarter beginning on the first day of the month following the date the Department provides the foreign market value, as stated in this paragraph.

D. Monitoring

Each signatory producer/exporter will supply to the Department all information that the Department deems necessary to ensure that the producer/exporter is in full compliance with the terms of this Agreement. As explained below, the Department will provide each signatory producer/exporter a detailed request for information and prescribe a required format and method of data compilation, not later than the beginning of each reporting period.

(1) Sales Information

The Department will require each producer/exporter to report, on computer tape in the prescribed format and using the prescribed method of data compilation, each sale of the merchandise subject to this Agreement, either directly or indirectly to unrelated purchasers in the United States, including each adjustment applicable to each sale, as specified by the Department.

The first report of sales data shall be submitted to the Department, on computer tape in the prescribed format and using the prescribed method of data compilation, not later than October 31, 1993, and shall contain the specified sales information covering the period June 22, 1993 to September 30, 1993. Subsequent reports of sales data shall be submitted to the Department not later than January 31, April 30, July 31, and October 31 of each year and each report shall contain the specified sales information for the quarter ending one month prior to the due date, except that if the Department receives information that a possible violation of the Agreement may have occurred, the Department may request sales data on a monthly, rather than quarterly basis.

(2) Cost Information

The Department will require Smith Corona Corporation and Smith Corona (PTE) Ltd., (the respondent in the original investigation) to report their actual cost of production and profit data on a quarterly basis, in the prescribed format and using the prescribed method of data compilation. Each such producer/exporter also must report anticipated increases in production costs and any report anticipated decreases in production costs in the quarter in which the information is submitted resulting from factors such as anticipated changes in production yield, changes in production process, changes in production quantities or changes in production facilities.

The first report of cost data shall be submitted to the Department not later than July 31, 1993 and shall contain the specified cost data covering the period April 1, 1993, through June 30, 1993. Each subsequent report shall be submitted to the Department not later than October 31, January 31, April 30, and July 31, of each year and each report shall contain specified information for the quarter ending one month prior to the due date.

(3) Special Adjustment of Foreign Market Value

If the Department determines that the foreign market value it determined for a previous quarter was erroneous because the reported costs for that period were inaccurate or incomplete, or for any other reason, the Department may adjust foreign market value in a subsequent period or periods, unless the Department determines that Section F of this Agreement applies.

(4) Verification

Each producer/exporter agrees to permit full verification of all cost and sales information semi-annually, or more frequently, as the Department deems necessary.

(5) Rejection of Submissions

The Department may reject any information submitted after the deadlines set forth in this section or any information which it is unable to verify to its satisfaction. If information is not submitted in a complete and timely fashion or is not fully verifiable, the Department may calculate foreign market value and/or U.S. price based on best information available, as it determines appropriate, unless the Department determines that section F applies.

E. Disclosure and Comment

(1) The Department may make available to representatives of each domestic party to the proceeding, under appropriately drawn administrative protective orders, business proprietary information submitted to the Department during each quarter as well as the results of its calculations of foreign market value.

(2) Not later than September 1, December 1, March 1, and June 1 of each year, the Department will disclose to each producer/exporter the results and the methodology of the Department's calculations of its foreign market value. At that time, the Department may also make available such information to the domestic parties to the proceeding, in accordance with paragraph E(1).

(3) Not later than seven days after the date of disclosure under paragraph E(2), the parties to the proceeding may submit written comments to the Department, not to exceed 10 pages. After reviewing these submissions, the Department will provide to each producer/exporter its foreign market value as provided in paragraph C(2). In addition, the Department may provide such information to domestic interested parties as specified in paragraph E(1).

F. Violations of the Agreement

If the Department determines that this Agreement is being or has been violated or

no longer meets the requirements of section 734 (b) or (d) of the Act, the Department shall take action it determines appropriate under section 734(f) of the Act and the regulations.

G. Other Provision

In entering into this Agreement, the signatory producers/exporters do not admit that any sales of the merchandise subject to this Agreement have been made at less than fair value.

H. Termination

The Department will not consider requests for termination of this suspended investigation prior to July, 1998. Termination will be conducted in accordance with section 353.25 of the Department's regulations.

Any producer/exporter may terminate this Agreement at any time upon notice to the Department. Termination shall be effective 60 days after such notice is given to the Department. Upon termination, the Department shall follow the procedures outlined in section 734(f)(1) of the Act.

I. Definitions

For purposes of this Agreement, the following definitions apply:

1. U.S. Price—means the price at which merchandise is sold by the producer or exporter to the first unrelated party in the United States, including the amount of any discounts, rebates, price protection or ship and debit adjustments, and other adjustments affecting the net amount paid or to be paid by the unrelated purchaser, as determined by the Department under section 772 of the Act.

2. Foreign Market Value—means the constructed value of the merchandise, as determined by the Department under section 773(e) of the Act and the corresponding sections of the Department's regulations, as determined by the Department.

3. Producer/Exporter—means (1) the foreign manufacturer or producer, (2) the foreign producer or reseller which also exports, and (3) the related person by whom or for whose account the merchandise is imported into the United States, as defined in section 771(13) of the Act.

4. Date of Sale—means the date on which the essential terms of the contract, including price, are agreed and determinable, normally the date of confirmation of sale.

The effective date of this Agreement is June 22, 1993.

For Singaporean Producers/Exporters
Smith Corona Corporation and Smith Corona (PTE) Ltd.

Terence P. Stewart, Esq.
Stewart and Stewart,

For U.S. Department of Commerce

Date: _____

Joseph A. Spertal,
Acting Assistant Secretary for Import
Administration.

Date: _____

[A-559-906]

Preliminary Determination of Sales at Less Than Fair Value: Certain Portable Electric Typewriters From Singapore

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

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager, Ross L. Cotjanle, or Carole Showers, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. 20230; telephone (202) 482-5055, 482-3534, 482-3217, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine, in accordance with section 733 of the Tariff Act of 1930, as amended ("the Act"), that imports of certain portable electric typewriters ("PETs") from Singapore are being, or are likely to be, sold in the United States at less than fair value. The estimated margin is shown in the "Suspension of Liquidation" section of this notice. Also, the Department preliminarily determines that critical circumstances do not exist. If this investigation proceeds normally, we will make our final determination by April 14, 1993.

Case History

Since the publication of our notice announcing the resumption of this proceeding (57 FR 60796, December 22, 1992), the following events have occurred:

On December 30, 1992, the United States Court of International Trade ("CIT") in Slip. Op. 92-232 denied Smith Corona's Application for a Stay Pending Appeal. On January 8, 1993, petitioner alleged that critical circumstances exist with respect to imports of the subject merchandise, within the meaning of section 733(e) of the Act. On January 12, and January 26, 1993, respondent and petitioner, respectively, filed submissions regarding whether the petition in this proceeding was filed "on behalf of" the relevant U.S. industry.

Scope of Investigation

The merchandise covered by this investigation consists of certain portable electric typewriters (PETs) from Singapore which are defined as machines that produce letters and characters in sequence directly on a piece of paper or other media from a keyboard input and meeting the following criteria: (1) Easily portable, with a handle and/or carrying case, or similar mechanism to facilitate its portability; (2) electric, regardless of source of power; (3) comprised of a single, integrated unit; (4) having a keyboard embedded in the chassis or frame of the machine; (5) having a built-in printer; (6) having a platen to accommodate paper; and (7) only accommodating its own dedicated or captive software, if any.

Based on petitioner's request, the Department has decided not to include all types of PETs which were determined to be within the scope of the antidumping order on PETs from Japan in the Department's final scope ruling signed on November 2, 1990 (see 55 FR 47358, November 13, 1990). PETs which meet all of the following criteria are excluded from the scope of this investigation: (1) seven lines or more of display; (2) more than 32K of text memory; (3) the ability to perform "block move"; and (4) a "search and replace" function. A machine having some, but not all, of these four characteristics is included within the scope of the investigation.

The PETs subject to this investigation are currently classifiable under subheadings 8469.21.00 and 8469.10.00 of the Harmonized Tariff Schedule ("HTS"). (Note that personal word processors also are classifiable under subheading 8469.10.00.) Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The POI is November 1, 1990, through April 30, 1991.

Standing

We received several submissions from Smith Corona during the period April 29 through July 22, 1991, challenging Brother's standing to file the petition and requesting rescission of the initiation in this investigation. Smith Corona raised two standing issues: (1) Whether Brother is an interested party within the meaning of section 771(9)(C) of the Act and (2) whether Brother has filed on behalf of the domestic industry.

With respect to Brother's status as an interested party, on September 3, 1992,

the CIT, in Slip. Op. 92-152, reversed the Department's determination of September 25, 1991, that Brother was not an interested party and did not have standing to file a petition against PETs from Singapore. The CIT's decision has been appealed, but while the appeal is being decided, the Department has been directed to determine whether the petition in this proceeding was filed "on behalf of" the domestic industry and, if so, to proceed with the investigation (Slip. Op. 92-211, Nov. 30, 1992). For the reasons discussed below, we determine that Brother has filed its petition on behalf of the U.S. industry.

On April 29, 1991, Smith Corona identified itself as a domestic producer of PETs in opposition to the petition filed by Brother. Where a domestic industry member opposing a petition provides a clear indication that there are grounds to doubt a petitioner's standing, the Department will evaluate the opposition to determine whether the opposing party, or parties, do, in fact, represent a majority of the domestic industry. Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19005 (May 3, 1989) ("Antifriction Bearings"). Therefore, on May 17, 1991, we issued a standing questionnaire to Smith Corona to ascertain: (1) the extent of Smith Corona's relationship with the exporter of the subject merchandise; (2) the extent to which Smith Corona is an importer of the allegedly dumped merchandise; and, (3) the share of domestic production and sales accounted for by Smith Corona.

After our review of Smith Corona's June 6, 1991 response to the standing questionnaire, we determined that more information was needed to complete our analysis. Therefore, on August 14, 1991, we asked both Smith Corona and Brother to submit to the Department the same U.S. production and sales data which they had submitted to the ITC. The ITC format was instructive because it required the parties to report production and sales data separately for both PETs/portable automatic typewriters ("PATs") and portable electronic word processors ("PEWPs").

Based on the production and sales data submitted, we computed the respective shares of U.S. production and sales held by Smith Corona and Brother. These calculations show that the opponent of the petition, Smith Corona, does not represent a majority of U.S. production or sales (measured by volume or value). Therefore, consistent with the policy articulated in

Artifiction Bearings, we determine that the petition was filed on behalf of the U.S. industry.

In Artifiction Bearings, the Department went on to discuss whether the domestic industry should be defined to exclude related parties or importers for standing purposes, as permitted by section 771(4)(B). On prior occasions, the Department has excluded such firms from the industry. See, for example, *Felicitad Automotive Glass From Mexico: Final Determination of Sales at Less Than Fair Value*, 50 FR 1906 (January 14, 1985). The Department pointed out in *Artifiction Bearings* that the firms in opposition were wholly-owned subsidiaries of the responding companies. In this proceeding, we note that the exporter is a wholly-owned subsidiary of Smith Corona. We further note that imports of the subject merchandise account for more than fifty percent of Smith Corona's sales of this product. Under the test applied in *Frozen Concentrated Orange Juice From Brazil: Final Determination of Sales at Less Than Fair Value*, 52 FR 8324 (March 17, 1987), this would lead us to conclude that, while Smith Corona is a U.S. manufacturer of PETs, its interests in this specific investigation are closely tied to imports of the allegedly dumped PETs, and thus run counter to the imposition of antidumping duties on imports of PETs from Singapore. Therefore, we may not consider Smith Corona a member of the domestic industry in this proceeding.

In its submission of January 12, 1993, Smith Corona has asked the Department to adjust the production figures for Brother and Smith Corona to account for the value added by the two companies in the United States (i.e., to weight the production figures according to the percentage of U.S. value-added). In Smith Corona's view, such an adjustment will reflect the underlying U.S. employment and investment of the two companies and, hence, yield a more accurate measure of domestic production.

We are not persuaded that we should make the novel adjustment requested by Smith Corona. Smith Corona has not cited, nor can we find, any precedent for deflating a U.S. industry in terms of the U.S. value added to its product. Nor do we find any statutory basis for doing so. The legislative history indicates that the standing criteria by which we determine Brother's standing should be applied "to provide an opportunity for relief for an adversely affected industry and to prohibit petitions filed by persons with no stake in the result of the investigation." S. Rep. No. 249, 96th Cong., 1st Sess., 63. In this instance,

Brother is a U.S. producer representing a substantial share of the industry's output and Brother clearly has a "stake" in the outcome of the proceeding. Hence, the standing criteria may not be used to defeat Brother's claim for protection from imports that are alleged to be unfairly traded.

Such as Similar Comparisons

We established one such or similar category of merchandise in accordance with section 771(16) of the Act: portable electric typewriters. For all PETs, comparisons were made on the basis of: (1) Type of PET; (2) memory capacity; (3) display screen; (4) display capacity; (5) printing mechanism; and (6) dictionary features. We used third country sales as the bases for foreign market value ("PMV") for Smith Corona (PTE), Ltd. ("SCPTe"), as described below in the "Foreign Market Value" section of this notice.

In its response, SCPTe based its selection of similar merchandise on the criteria listed above plus three additional factors. SCPTe did not demonstrate, however, that the additional criteria resulted in more appropriate comparisons. Therefore, for purposes of our preliminary determination, we have rejected the additional factors identified by SCPTe and made our selection of similar merchandise solely on the basis of the criteria identified by the Department in its questionnaire. Accordingly, we revised the concordance submitted by SCPTe.

Because there was no identical merchandise sold in the third country market to compare to sales of merchandise in the United States, sales of the most similar merchandise based on the characteristics described above were used. In determining which merchandise was similar, we limited our comparisons to products sold in the third country that had differences in merchandise adjustments which were less than 20 percent of the total cost of manufacturing for the U.S. merchandise.

Fair Value Comparisons

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

United States Price

In calculating USP, the Department used purchase prices, as defined in section 772 of the Act, for certain sales because the subject merchandise was

sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales prices ("ESP") methodology was not indicated by other circumstances. We also based USP on ESP, in accordance with section 772(c) of the Act, for those sales which were made to unrelated parties after importation into the United States.

We calculated purchase prices based on packed, delivered, duty-paid prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, containerization and handling, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, and a sales allowance discount in accordance with section 772(d)(2) of the Act.

Where USP was based on ESP, we calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage, containerization, foreign inland freight, ocean freight, marine insurance, U.S. customs duties, U.S. inland freight (U.S. warehouse to customer), U.S. handling, freight credits, cash discounts, rebates, key city allowances, direct from invoice advertising credits, and sales allowances in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for credit, advertising accrual rebates, promotional allowances, prep allowances, warranties, commissions, and indirect selling expenses, including warehousing, product liability premiums, corporate advertising, inventory carrying costs, and U.S. indirect selling expenses in accordance with section 772(e) of the Act.

We have included in our USP calculations certain sales transactions reported by SCPTe in a separate database as "Exceptions." Those transactions include closeout sales, sales of discontinued models, employee sales, consignment sales, and free goods. Closeout sales and sales of discontinued models are properly included in our calculation of USP because the Department does not ignore U.S. sales on the basis of obsolescence. See *Portable Electric Typewriters From Japan: Final Results of Antidumping Duty Administrative Review*, 56 FR 14072 (April 5, 1991). Although SCPTe argued that "employee sales" are sales to related parties and should not be included in the USP analysis, the Department's practice is to include this type of transaction in our analysis. See, *Television Receiving Sets, Monochromes and Color*, From Japan; *Final Results of Administrative Review of Antidumping*

Finding 46 FR 30163 (June 5, 1981). Furthermore, respondent has not demonstrated that consignment sales and free goods should be excluded from the Department's calculation of USP. Certain U.S. sales transactions with sale dates outside the POI were excluded.

In addition, for certain U.S. sales, SCPTC did not report a payment date or a credit expense. For purposes of this determination, we have assigned to these transactions the original date of the Department's scheduled preliminary determination, September 25, 1991, as the date of payment and have used that date in the calculation of a U.S. credit expense. See Final Determination of Sales at Less Than Fair Value: Gene Amplification Thermal Cyclers and Subassemblies Thereof, From the United Kingdom 56 FR 32172 (July 15, 1991).

Foreign Market Value

In order to determine whether there were sufficient sales of such or similar merchandise in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of such or similar merchandise to the volume of third country sales of such or similar merchandise, in accordance with section 773(a)(1) of the Act. SCPTC's home market sales were less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with section 773.48 of the Department's regulations.

In accordance with section 773(a)(1)(B) of the Act, we calculated FMV based on third country sales. In selecting which third country market to use for comparison purposes, we followed 19 CFR 353.49(b).

Accordingly, we selected the United Kingdom (UK) because (1) it had the largest volume of sales to any third country, and (2) the market, in terms of organization and development, is most like the United States. The Department did not base its selection of the UK on the first factor listed in the regulation, because the Department had no information with which to compare the similarity of the merchandise sold to other third country markets to the merchandise sold in the United States. Furthermore, we determined that the volume of sales to the UK market was adequate within the meaning of 19 CFR 353.49(b)(1) because the sales of such or similar merchandise exceeded five percent of the volume sold to the United States.

We calculated FMV based on packed, delivered prices to unrelated customers

in the UK. We made deductions, where appropriate, for foreign brokerage, foreign inland freight, containerization, ocean freight, marine insurance, UK inland freight (UK warehouse to customer), rebates, other allowances, cash discounts, and a customer specific discount. We deducted third country packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Where USP was based on purchase price, we made adjustments to FMV for differences in circumstances of sale. We adjusted for differences in credit, warranties, co-op advertising, advertising accruals, promotional allowances, and royalties in accordance with 19 CFR 353.56.

For comparisons involving ESP transactions, we made further deductions for third country indirect selling expenses, including warehousing, inventory carrying costs, product liability premiums, corporate advertising, U.S. indirect selling expenses incurred on behalf of UK sales, and UK indirect selling expenses, capped by the sum of commissions paid and indirect selling expenses incurred on ESP sales, in accordance with 19 CFR 353.56(b)(2).

In addition, where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with 19 CFR 353.57.

We have excluded sample sales in calculating FMV because Section 773 of the Tariff Act of 1930, as amended, requires that FMV be based on sales made in the ordinary course of trade. These sample sales in the UK were transferred free of charge. Therefore, we consider these sample sales not to be in the ordinary course of trade and have disregarded them in the calculation of FMV. See, Antifriction Bearings, at 19087.

Currency Conversions

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 will verify the information used in making our final determination.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of PETs from Singapore. Section 773(e)(1) of the Act provides that there is a reasonable basis to believe or suspect 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 fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

With respect to Section 773(e)(1)(A)(i) of the Act regarding a history of dumping, petitioner cites the Department's outstanding antidumping order on Portable Electric Typewriters from Japan. However, an outstanding dumping determination involving a class or kind of merchandise from another country does not show a history of dumping of the merchandise subject to this investigation. If, however, another country had an outstanding order on PETs from Singapore, this could be used to establish a history of dumping in accordance with section 773(e)(1)(A)(i) of the Act. Because the Department has no knowledge that such an order has ever existed, there is no history of dumping of this class or kind of merchandise pursuant to Section 773(e)(1)(A)(i) of the Act.

Under section 773(e)(1)(A)(ii) of the Act, the Department examines the magnitude of the dumping margins in the investigation, since it is the standard practice to impute knowledge of dumping when the margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, in purchase price sales, we consider estimated margins of 25 percent or greater to be sufficient, and in exporter's sales prices sales, margins of 15 percent or greater to be sufficient to impute knowledge of dumping.

In this investigation, there were both purchase price and exporter's sales price sales. Accordingly, we weight-averaged the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales, respectively, to arrive at a benchmark for imputing knowledge. Because the preliminary dumping margin for Smith Corona does not exceed the benchmark, we find no basis for concluding that the importers knew or should have known that this company was selling the subject merchandise at less than fair value.

Since there is no history of dumping of the subject merchandise and no reason to believe or suspect that importers of this product knew or should have known that it was being

sold at less than fair value, the Department does not need to consider whether imports have been massive pursuant to 19 CFR 353.16(a)(2). Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of the subject merchandise from Singapore.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of PETs from Singapore, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The margins are as follows:

| Manufacturer/producer/exporter | Weighted-average margin percentage |
|--------------------------------|------------------------------------|
| Smith Corona PTE Ltd ----- | 16.02 |
| All Others ----- | 16.02 |

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether imports of PETs from Singapore are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 29, 1993, and rebuttal briefs no later than April 5, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held on April 7, 1993, at 2 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: January 29, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-2833 Filed 2-5-93; 8:45 am]

BILLING CODE 2510-08-P

International Trade Administration

[A-558-806]

**Resumption of Antidumping Duty
Proceeding: Portable Electric
Typewriters From Singapore**

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

EFFECTIVE DATE: December 22, 1992.

FOR FURTHER INFORMATION CONTACT:
Stephanie Hager or Ross L. Cotjanle,
Office of Countervailing Investigations,
U.S. Department of Commerce, room
3099, 14th Street and Constitution
Avenue, NW., Washington, DC 20230;
telephone (202) 482-5055 or 482-3534,
respectively.

Resumption of Proceeding

On September 3, 1992, Slip Op. 92-152, the United States Court of International Trade (CIT) reversed the Department's determination that Brother Industries (USA) Inc. (BIUSA) was not an interested party and thus did not have standing to file a petition against portable electric typewriters from Singapore. Both the Smith Corona Corporation (Smith Corona) and the United States Government have filed notices of appeal of Slip Op. 92-152.

On October 13, 1992, BIUSA sought enforcement of the Court's decision. On October 29, 1992, the Department published Portable Electric Typewriters From Singapore: Notice of Court of International Trade Decision (57 FR 49071, October 29, 1992), in accordance with the "publication" requirement in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) ("*Timken*"). The Department stated in the notice that because the decision of the CIT was not a "conclusive" decision, there was no requirement in *Timken* that the Department implement the decision. The Department stated further that "upon a 'conclusive' decision by the Court of Appeals for the Federal Circuit affirming the CIT, the Department will consider whether BIUSA filed the petition 'on behalf of' the domestic

industry; if so, the Department will proceed with the investigation."

The CIT, however, on November 30, 1992, granted BIUSA's Motion to Enforce, and stated that "in the absence of a stay *Timken* requires Commerce to proceed at once with implementation of the court decision, and if the investigation results in a preliminary affirmative determination, to suspend liquidation."

On December 7, 1992, Smith Corona filed an Application for a Stay Pending Appeal. On December 14, 1992, the United States Government agreed with Smith Corona's Application for a Stay Pending Appeal.

As there has been no ruling to date on the Application for a Stay Pending Appeal, the Department is hereby announcing its schedule for the implementation of the Court's decision. On or before January 29, 1993, the Department will determine whether the antidumping petition in this proceeding was filed on behalf of the relevant domestic industry. If the Department's determination is affirmative, it will simultaneously issue its preliminary antidumping determination. Subsequent determinations will be issued in accordance with the procedures and deadlines established in the Department's regulations. The Department will not be requesting additional information from any interested party in this proceeding for either of these determinations.

Dated: December 15, 1992.

Alan M. Dunn,

Assistant Secretary for Import
Administration.

[FR Doc. 92-30143 Filed 12-21-92; 8:45 am]

BILLING CODE 3510-08-M

[A-559-806]

Portable Electric Typewriters From Singapore; Court of International Trade Decision

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

ACTION: Notice of Court of International Trade decision.

SUMMARY: On September 3, 1992, the United States Court of International Trade (CIT) ordered that the Department of Commerce's (the Department's) determination to rescind the investigation in this case should be reversed. On September 14, 1992, Smith Corona Corporation filed a Notice of Appeal of the CIT decision. If the CIT's opinion in this case is affirmed on appeal, then the ITA will, as the CIT has ordered, consider whether Brother Industries (USA) Inc. (BIUSA) filed the petition in this case "on behalf of" the domestic industry; if so, the Department will proceed with the investigation.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie Hager or Ross L. Cotjanle, Office of Countervailing Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482-5055 or 482-3534, respectively.

SUPPLEMENTARY INFORMATION: On April 18, 1991, BIUSA filed a petition with the Department, alleging injury to a domestic industry due to less than fair value sales of portable electric typewriters (PETs) from Singapore. Smith Corona opposed the petition and argued that BIUSA lacked standing to file the petition because BIUSA was not an "interested party" that had filed "on behalf of" a domestic industry. See 19 U.S.C. 1673a(b)(1) (1988). In essence, Smith Corona argued that BIUSA was merely an assembler of PETs, and not a manufacturer or producer. On October 2, 1991, the Department determined that BIUSA was not an interested party and

terminated the investigation. The Department did not reach the issue of whether BIUSA had filed the petition on behalf of the domestic industry.

On September 3, 1992, the CIT held that the Department's determination that BIUSA is not a manufacturer is not supported by substantial evidence and is not in accordance with law. In addition, the Court held that a fair application of the criteria stated in the Department's determination demonstrates that BIUSA is a United States "manufacturer" with a clear stake in the outcome of the antidumping investigation. As such, the CIT reversed the decision of the ITA, and remanded the case to the Department to complete the standing inquiry and, if necessary, to complete the investigation. *Brother Industries (USA) Inc. v. United States et al.*, Court No. 91-11-00794, Slip Op. 92-152 (CIT September 3, 1992).

Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990), is the case in which the Court of Appeals for the Federal Circuit ("CAFC") first articulated a requirement that the Department must publish a notice of a Court Decision which is not "in harmony" with an International Trade Commission or Department of Commerce determination. The CAFC also required that the Department order the suspension of liquidation of entries of investigated merchandise. In *Timken*, the Department published a final determination which was then appealed to the CIT. When the CIT issued a decision adverse to the administrative determination, The Timken Company requested that liquidation take place in accordance with the CIT's decision, i.e., that the CIT decision be implemented. The CAFC rejected that view, requiring instead that liquidation of entries be suspended during the course of the appeal. The CAFC distinguished between a "final decision," i.e., a decision which can be appealed, and a "conclusion decision," i.e., a decision which can no longer be appealed. The CAFC stated that, "... Commerce should suspend liquidation until there is a conclusive court decision which decides the matter, so that subsequent entries can be liquidated in accordance with that conclusive decision." Id. at 342. The only way that liquidation can occur "in accordance with the conclusive decision" of the courts is if there has been a final determination by the Commerce Department. Thus, *Timken's* requirement of suspension of liquidation was based upon the fact that, in *Timken*, a final Commerce Department determination had been published.

In accordance with *Timken*, the Department is publishing this notice of adverse decision. Because the decision of the CIT is not a "conclusive" decision, there is no requirement that the Department implement the decision. As to suspension of liquidation, at the time the CIT action commenced in this case, the Department had not published a final determination; this fact distinguishes this case from the facts of the *Timken* case. Thus, the Department does not have the authority to order a suspension of liquidation of entries of the subject merchandise.

Accordingly, upon a "conclusive" decision by the CAFC affirming the CIT, the Department will consider whether BIUSA filed the petition "on behalf of" the domestic industry; if so, the Department will proceed with the investigation.

Dated: October 21, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-28289 Filed 10-28-92; 8:45 am]

BILLING CODE 3510-06-M

CALENDAR OF PUBLIC HEARING

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

Subject : PORTABLE ELECTRIC
TYPEWRITERS FROM
SINGAPORE

Inv. No. : 731-TA-515 (Final)

Date and Time : June 25, 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.

In support of imposition of
antidumping duties:

Hogan & Hartson
Washington, D.C.
On behalf of

Brother Industries (USA), Inc.

Patrick T. Gilmore, President,
Brother International Corporation

Dean Shulman, Vice President of
Sales and Marketing,
Brother International Corporation

Len Gilley, Vice President, Administration
Brother Industries (U.S.A.) Inc.

Dr. Paula Stern, President,
The Stern Group

Pieter Van Leeuwen,
Law & Economics Consulting Group

Lewis E. Leibowitz)
Steven J. Routh) --OF COUNSEL

In Opposition to the Imposition of
Antidumping Duties:

Stewart & Stewart
Washington, D.C.
On behalf of

Smith Corona Corporation

G. Lee Thompson, Chairman
and Chief Executive Officer,
Smith Corona Corporation

Joan Toffolon, Vice President,
Product Marketing
Smith Corona Corporation

Mark Carlin, Director
National Accounts
Smith Corona Corporation

Dr. Colin Blaydon, Senior Advisor and Director,
Putnam, Hayes & Bartlett, Inc.
Cambridge, MA

Accompanied by:
Julie R. Solomon, Principal
Putnam, Hayes & Bartlett, Inc.
Washington, D.C.

| | | |
|----------------------|---|-----------------------|
| Eugene L. Stewart |) | |
| Terence P. Stewart |) | |
| James R. Cannon, Jr. |) | |
| John M. Breen |) | --OF COUNSEL |
| Julie Chasen Ross |) | |
| Edith A. Eisner |) | |
| Michael T. Kerwin |) | --Economic Consultant |

APPENDIX B
SUMMARY TABLES ON PETS, PEWPS,
AND PETS/PEWPS COMBINED

Table B-1

PETs: Summary data concerning the U.S. market, 1988-92

| (Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted) | | | | | | | | | | |
|---|---------------|------|------|------|------|----------------|---------|---------|---------|---------|
| Item | Reported data | | | | | Period changes | | | | |
| | 1988 | 1989 | 1990 | 1991 | 1992 | 1988-92 | 1988-89 | 1989-90 | 1990-91 | 1991-92 |
| | * | * | * | * | * | * | * | | | |

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

Table B-2

PEWPs: Summary data concerning the U.S. market, 1988-92

| (Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted) | | | | | | | | | | |
|---|---------------|------|------|------|------|----------------|---------|---------|---------|---------|
| Item | Reported data | | | | | Period changes | | | | |
| | 1988 | 1989 | 1990 | 1991 | 1992 | 1988-92 | 1988-89 | 1989-90 | 1990-91 | 1991-92 |
| | * | * | * | * | * | * | * | | | |

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

Table B-3

PETs/PEWPs: Summary data concerning the U.S. market, 1988-92

| (Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted) | | | | | | | | | | |
|---|---------------|------|------|------|------|----------------|---------|---------|---------|---------|
| Item | Reported data | | | | | Period changes | | | | |
| | 1988 | 1989 | 1990 | 1991 | 1992 | 1988-92 | 1988-89 | 1989-90 | 1990-91 | 1991-92 |
| | * | * | * | * | * | * | * | | | |

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

Table B-4

PETs: Summary data concerning the U.S. market (with producers' data for all firms excluding Smith Corona), 1988-92

| (Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted) | | | | | | | | | | |
|---|---------------|------|------|------|------|----------------|---------|---------|---------|---------|
| Item | Reported data | | | | | Period changes | | | | |
| | 1988 | 1989 | 1990 | 1991 | 1992 | 1988-92 | 1988-89 | 1989-90 | 1990-91 | 1991-92 |
| | * | * | * | * | * | * | * | | | |

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

Table B-5

PEWPs: Summary data concerning the U.S. market (with producers' data for all firms excluding Smith Corona), 1988-92

| (Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted) | | | | | | | | | | |
|---|---------------|------|------|------|------|----------------|---------|---------|---------|---------|
| Item | Reported data | | | | | Period changes | | | | |
| | 1988 | 1989 | 1990 | 1991 | 1992 | 1988-92 | 1988-89 | 1989-90 | 1990-91 | 1991-92 |
| | * | * | * | * | * | * | * | | | |

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

Table B-6

PETs/PEWPs: Summary data concerning the U.S. market (with producers' data for all firms excluding Smith Corona), 1988-92

| (Quantity=1,000 units, value=1,000 dollars, period changes=percent, except where noted) | | | | | | | | | | |
|---|---------------|------|------|------|------|----------------|---------|---------|---------|---------|
| Item | Reported data | | | | | Period changes | | | | |
| | 1988 | 1989 | 1990 | 1991 | 1992 | 1988-92 | 1988-89 | 1989-90 | 1990-91 | 1991-92 |
| | * | * | * | * | * | * | * | | | |

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

APPENDIX C

**COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS
OF PORTABLE ELECTRIC TYPEWRITERS FROM SINGAPORE ON THEIR
GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND
DEVELOPMENT AND PRODUCTION EFFORTS, INCLUDING
EFFORTS TO DEVELOP A DERIVATIVE
OR MORE ADVANCED VERSION OF THE PRODUCT**

The Commission requested U.S. producers to describe any actual or anticipated negative effects of portable electric typewriters from Singapore on their growth, investment, ability to raise capital, and development and production efforts, including efforts to develop a derivative or more advanced version of the product. *** replied "no" to all questions. *** responses are as follows:

1. Since January 1, 1988, has your firm experienced any actual negative effects on its 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, as a result of imports of portable electric typewriters from Singapore?

* * * * *

2. Does your firm anticipate any negative impact of imports of portable electric typewriters from Singapore?

* * * * *

3. Has the scale of capital investments undertaken been influenced by the presence of imports of PETs from Singapore?

* * * * *

4. Has your firm obtained financing to cover losses in your operations?

* * * * *

APPENDIX D
U.S. PRODUCTION OPERATIONS—
COSTS AND SOURCES

Type of product--PET
 Producer--BIUSA

Model--All PETs

* * * * *

Type of product--PET
 Producer--BIUSA

Model--AX 250

* * * * *

Type of product--PET
 Producer--BIUSA

Model--GX 9000

* * * * *

Type of product--PEWP
 Producer--BIUSA

Model--All PEWPs

* * * * *

Type of product--PEWP
 Producer--BIUSA

Model--WP 760 D

* * * * *

Type of product--PEWP
 Producer--BIUSA

Model--WP 1400 D

* * * * *

Type of product--PET
 Producer--Smith Corona

Model--All PETs

* * * * *

Type of product--PET
 Producer--Smith Corona

Model--XD 5800

* * * * *

Type of product--PET
 Producer--Smith Corona

Model--XD 7800

* * * * *

Type of product--PEWP
 Producer--Smith Corona

Model--All PEWPs

* * * * *

Type of product--PEWP
 Producer--Smith Corona

Model--PWP ML8X

* * * * *

Type of product--PEWP
 Producer--Smith Corona

Model--PWP 3200

* * * * *

APPENDIX E
AVERAGE UNIT VALUE SELLING PRICES FOR
U.S.-PRODUCED AND SINGAPOREAN PETS

U.S. Producers' and Importers' Average Unit Prices¹

The U.S. producers' average unit prices for all products and all customer types, declined during January 1990-March 1993. Price declines ranged from *** to *** percent.² Importers' average unit prices of product 1 and 3 generally declined, while prices of product 2 to three of the eight customer types declined. Price declines ranged from *** to *** percent, while price increases ranged between *** and *** percent during the period examined.

National Retail Chains.--Average unit prices for U.S.-produced product 1-3 sold to national retail chains *** between *** and *** percent for the periods prices were reported.^{3 4} Prices for Singaporean products also ***, ***, and *** percent for products 1-3, respectively (tables E-1-3).

Purchase price comparisons were possible between domestic and Singaporean PETs sold to national retail chains in 27 of the 39 quarters for products 1-3 during the period examined. In 18 out of the 27 instances the Singaporean product was priced lower than the domestic product by margins ranging between *** and *** percent. Margins of overselling ranging between *** and *** percent were reported in 9 quarters.

Mass Merchandisers.--Prices for U.S.-produced products 1-3 sold to mass merchandisers ***, ***, and *** percent, respectively, during the period examined. Products 1 and 3 from Singapore showed *** price trends, of *** and *** percent, respectively, during the period examined, while prices for product 2 *** percent.

Price comparisons were possible between domestic and Singaporean PETs sold to mass merchandisers in 38 of the 39 quarters for products 1-3 during the period examined. In 15 instances the Singaporean product was priced below the domestic product, by margins ranging from *** percent to *** percent. Margins of overselling of between *** and *** percent were reported in 23 quarters.

Department Stores.--Prices for U.S.-produced products 1-3 sold to department stores ***, ***, and *** percent, respectively, during the period examined. Similarly, although ***, prices for products 1-3 from Singapore showed *** price trends of ***, ***, and *** percent, respectively, during the period examined.

Price comparisons were possible between domestic and Singaporean PETs sold to department stores in 38 of the 39 quarters for products 1-3 during the period examined. Margins of underselling for products 1-3 ranged between ***

¹ The ***, and *** provided pricing data for sales of the 3 requested products in the U.S. market, although not necessarily for all 3 products or all quarters over the period examined.

² ***.

³ ***.

⁴ ***.

Table E-1

U.S. net f.o.b. average unit selling prices of Basic PETs (product 1) produced in the United States and imported from Singapore, and margins of under/(over) selling, by customer types and by quarters, January 1990-March 1993

* * * * * * *

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

Table E-2

U.S. net f.o.b. average unit selling prices of Dictionary PETs (product 2) produced in the United States and imported from Singapore, and margins of under/(over) selling, by customer types and by quarters, January 1990-March 1993

* * * * * * *

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

Table E-3

U.S. net f.o.b. average unit selling prices of Dictionary PETs with Extra Memory and LCD (product 3) produced in the United States and imported from Singapore, and margins of under/(over) selling, by customer types and by quarters, January 1990-March 1993

* * * * * * *

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

and *** percent, occurring in 26 of the 38 instances. In 12 instances, the Singaporean product was priced above the domestic product with margins ranging from *** to *** percent.

Catalog Stores. --The U.S. producer's prices to catalog stores for PET products 1-3 showed *** price trends during January 1990-March 1993, ***, ***, and *** percent, respectively. Importers' prices of products 1 and 3 from Singapore generally *** and *** percent, respectively, during the period examined. Conversely, prices for product 2 from Singapore *** per unit, *** percent overall between July-September 1990 and January-March 1993.⁵

In 16 of the 37 possible price comparisons for products 1-3 sold to catalog stores, the Singaporean product was priced below the domestic product, with margins ranging from *** to *** percent. Margins of overselling, occurring in 21 instances, ranged between *** and *** percent.

⁵ ***.

Electronic Discount Stores.--Average unit prices for U.S.-produced PET products 1-3 sold to electronic discount stores ***, ***, and *** percent, respectively, during the period examined. Prices for Singaporean products 1 and 3 *** of *** and *** percent during the period examined. U.S. importers' prices for product 2 *** percent overall between July-September 1990 and January-March 1993].⁶

Price comparisons were possible between domestic and Singaporean PETs sold to electronic discount stores in 37 of the 39 quarters for products 1-3 during the period examined. In 22 out of the 37 instances the Singaporean product was priced below the domestic product, by margins ranging from *** percent to *** percent. Margins of overselling, between *** and *** percent, were reported in 15 quarters.

Office Equipment Dealers.--Prices for U.S.-produced products 1-3 sold to office equipment dealers ***, *** and *** percent, respectively, during the period examined. Products 1 and 2 from Singapore showed *** price trends of *** and *** percent during the period examined. Prices for product 3 *** percent over the period examined.

Price comparisons were possible between domestic and Singaporean PETs sold to office equipment dealers in 37 of the 39 quarters for products 1-3 during the period examined. In 25 out of the 37 instances the Singaporean product was priced below the domestic product, by margins ranging from *** percent to *** percent. Margins of overselling ranging between *** and *** percent were reported in 12 quarters.

Office Superstores.--Prices for U.S.-produced products 1-3 sold to office superstores ***, ***, and *** percent, respectively, during the period examined. Products 1 and 3 from Singapore showed *** price trends, *** and *** percent, respectively, during the period examined, while prices for product 2 *** percent from *** to *** per unit during the period examined.

Price comparisons were possible between domestic and Singaporean PETs sold to office superstores in 38 of the 39 quarters for products 1-3 during the period examined. Margins of underselling ranged between *** and *** percent, occurring in 19 of the 38 instances. In 19 instances, the Singaporean product was priced above the domestic product, with margins ranging from *** to *** percent.

Other Purchasers.--The U.S. producer's average unit prices to other purchasers for PET products 1-3 showed *** price trends during January 1990-March 1993, ***, ***, and *** percent, respectively. Importers' prices of products 1 and 3 from Singapore also showed overall *** and *** percent, respectively, while prices for product 2 *** percent overall during the period examined.

In 23 of the 37 possible price comparisons for products 1-3 sold to other purchasers, the Singaporean product was priced below the domestic product, with margins ranging from *** to *** percent. Margins of overselling, occurring in 14 instances, ranged between *** and *** percent.

⁶ ***.

APPENDIX F

SMITH CORONA'S PRICE COMPETITION ALLEGATIONS

PRICE COMPETITION

In this investigation the respondent, Smith Corona, has alleged that price competition from [the U.S. producer, BIUSA], has resulted in lost sales and lost revenues during the period January 1990-March 1993.¹ In its importer's questionnaire response, the respondent submitted *** instances of alleged lost sales due to competition from ***, involving *** purchasers, and totaling ***. Allegations of lost revenues were also submitted, involving *** purchasers and totaling *** during the same period. The following are reports of the conversations between Commission staff and those purchasers who could be reached and were willing to discuss price competition between *** and *** in this final investigation.²

Lost Sales³

***.

***.

***.

***.

Lost Revenues

***.

***.

¹ Generally, importers are not requested to identify specific instances of price competition in the form of lost sales or revenues. However, in this final investigation such data was sought and is reported to assist the Commission in understanding price competition in a market dominated by the petitioner and respondent.

² Several firms were unable to specifically comment on alleged lost sales since buyers during the time in question were no longer available.

³ ***.

