Engineered Process Gas Turbo-Compressor Systems From Japan

Investigation No. 731-TA-748 (Final)

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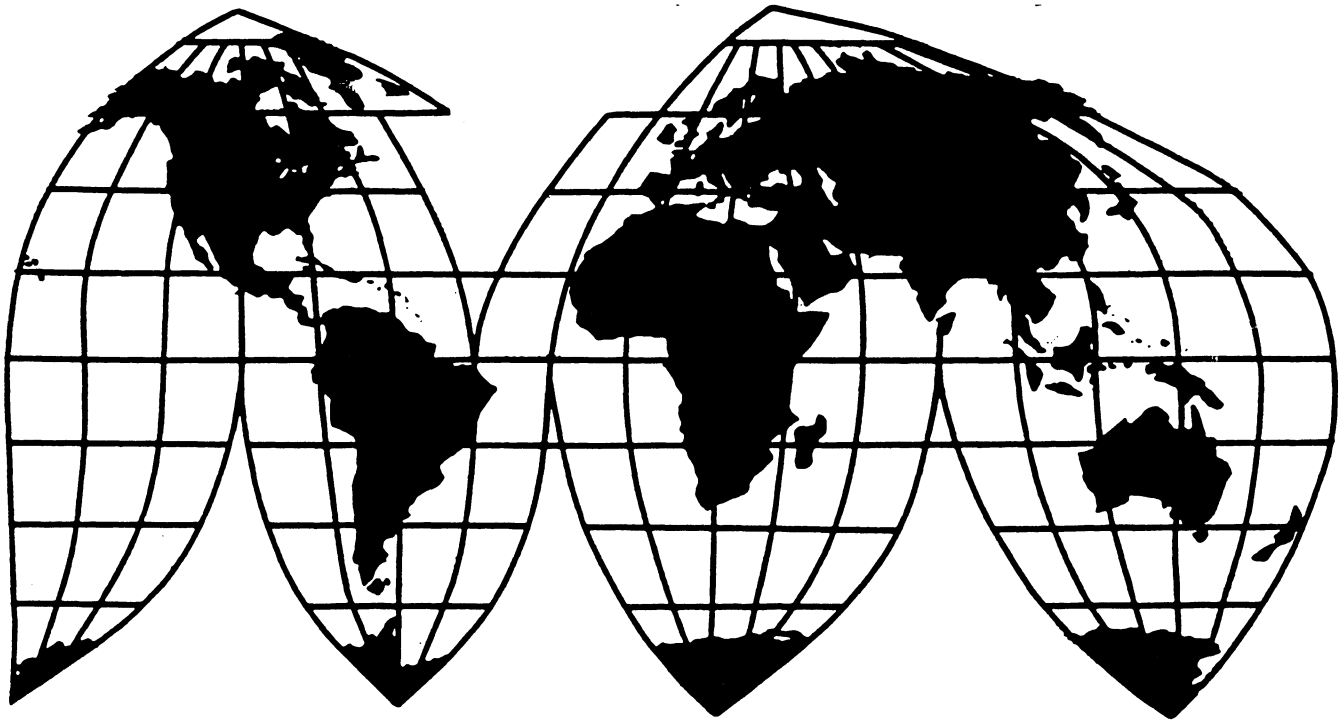

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U.S. International Trade Commission

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Note.--Information that would reveal operations of individual concerns may not be published and therefore has been deleted from this report.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-748 (Final)

ENGINEERED PROCESS GAS TURBO-COMPRESSOR SYSTEMS FROM JAPAN

DETERMINATION

On the basis of the record[1] developed in the subject investigation, the United States International Trade 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 Japan of engineered process gas turbo-compressor systems, whether assembled or unassembled, and whether complete or incomplete, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The subject imports are provided for in subheadings 8414.80.20, 8414.90.40, 8419.60.50, 8406.81.10, 8406.82.10, 8406.90.20 through 8406.90.45, 8483.40.50, 8501.53.40, 8501.53.60, 8501.53.80, and 9032.89.60 of the Harmonized Tariff Schedule of the United States.

BACKGROUND

The Commission instituted this investigation effective May 8, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by Dresser-Rand Company, Corning, NY. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of engineered process gas turbo-compressor systems, whether assembled or unassembled, and whether complete or incomplete, from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of December 26, 1996 (61 FR 68053). The hearing was held in Washington, DC, on April 24, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

[2] Commissioner Crawford dissenting.

VIEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is materially injured by reason of imports of engineered process gas turbo-compressor systems ("EPGTCs") from Japan that have been found by the Department of Commerce ("Commerce") to be sold in the United States at less than fair value ("LTFV").[1]

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

To determine whether an industry in the United States is materially injured or threatened with material injury by reason of the subject imports, the Commission first defines the "domestic like product" and the "industry."[2] Section 771(4)(A) of the Tariff Act of 1930 as amended ("the Act") defines the relevant industry as the "producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[3] In turn, the Act defines "domestic 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."[4]

Our decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis.[5] No single factor is dispositive, and the Commission may consider other factors it

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[1] Commissioner Crawford determines that an industry in the United States is not materially injured or threatened with material injury by reason of imports of engineered process gas turbo-compressor systems from Japan that have been found by Commerce to be sold in the United States at LTFV. Because she finds that there were no imports of subject merchandise during the twelve month period preceding the filing of the petition, she finds that subject imports are negligible, which, by operation of law, precludes an affirmative determination of present material injury by reason of the subject imports. She further finds that the domestic industry is not threatened with material injury by reason of subject imports. *See* Dissenting Views of Commissioner Carol T. Crawford. She joins sections I and II of these Views.

[2] 19 U.S.C. § 1677(4)(A).

[3] *Id.*

[4] 19 U.S.C. § 1677(10).

[5] *See, e.g.,* Nippon Steel Corp. v. United States, Slip Op. 95-57 at 11 (Ct. Int'l Trade Apr. 3, 1995). The Commission generally considers a number of factors including: (1) physical characteristics and uses;

(continued...)

deems relevant based on the facts of a particular investigation.[6] The Commission looks for clear dividing lines among possible like products, and disregards minor variations.[7] Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.[8]

In its final determination, the Department of Commerce has defined the imported articles subject to this investigation as follows:

> [T]urbocompressor systems (i.e., one or more "assemblies" or "trains") which are comprised of various configurations of process gas compressors, drivers (i.e., steam turbines or motor-gear systems designed to drive such compressors), and auxiliary control and lubrication systems for use with such compressors and compressor drivers, whether assembled or unassembled, and whether complete or incomplete. One or more of these turbo-compressor assemblies or trains may be combined. The systems covered are only those used in the petrochemical and fertilizer industries, in the production of ethylene, propylene, ammonia, urea, methanol, refinery and other petrochemical products. This investigation does not encompass turbocompressor systems incorporating gas turbine drivers, which are typically used in pipeline transmission, injection, gas processing, and liquid natural gas service.
>
> Compressors are machines used to increase the pressure of a gas or vapor, or mixture of gases and vapors. Compressors are commonly classified as reciprocating, rotary, jet, centrifugal, or axial (classified by the mechanical means of compressing the fluid), or as positive-displacement or dynamic-type (classified by the manner in which the mechanical elements act on the fluid to be compressed). Subject compressors include only centrifugal compressors engineered for process gas compression, e.g., ammonia, urea, methanol, propylene, or ethylene service.
>
> Turbines are classified (1) as steam or gas; (2) by mechanical arrangement as single-casing, multiple shaft, or tandem-compound (more than one casing with a single shaft); (3) by flow direction (axial or radial); (4) by steam cycle, whether condensing, non-condensing, automatic extraction, or reheat; and (5) by number of exhaust flows of a condensing unit. Steam and gas turbines are used in various applications. Only steam turbines dedicated for a turbocompressor system are subject to investigation.
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> A motor and gear box may used as a compressor driver in lieu of a steam turbine. A control system is used to monitor and control the operation of a turbo-compressor system.

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[5] (...continued)
(2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. *See id.* at n.4, 18; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int'l Trade 1996).

[6] *See, e.g.,* S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

[7] 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).

[8] Hosiden Corp. v. Advanced Display Manufacturers, 85 F.3d 1561, 1567-68 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-752 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

A lubrication system is engineered to support a subject compressor and steam turbine (or motor/gear box).

A typical EPGTS[9] consists of one or more compressors driven by a turbine (or in some cases a motor drive). A compressor is usually installed on a base plate and the drive is installed on a separate base plate. The turbine (or motor drive) base plate will typically also include any governing or safety systems, couplings, and a gearbox, if any. The lube and oil seal systems for the turbine and compressor(s) are usually mounted on a separate base plate.

The scope of this investigation covers both assembled and unassembled EPGTS from Japan. Because of their large size, EPGTS and their constituent parts are typically shipped partially assembled (or unassembled) to their destination where they are assembled and/or completed prior to their commissioning.

The scope of this investigation also covers "complete and incomplete" EPGTS from Japan. A "complete" EPGTS covered by the scope consists of all of the components of an EPGTS (*i.e.*, process gas compressor(s), driver(s), auxiliary control system(s) and lubrication system(s)) and their constituent parts, which are imported from Japan in assembled or unassembled form, individually or in combination, pursuant to a contract for a complete EPGTS system in the United States. An "incomplete" EPGTS covered by the scope of this investigation consists of parts of an EPGTS imported from Japan pursuant to a contract for a complete EPGTS in the United States, which taken altogether, constitute at least 50 percent of the cost of manufacture of the complete EPGTS of which they are a part.

Specifically excluded from the scope of the investigation are spare parts that are sold separately from a contract for an EPGTS. Parts or components imported for the revamp or repair of an existing EPGTS, or otherwise not included in the original contract of sale for the EPGTS of which they are intended to be a part, are expressly excluded from the scope of the investigation.[10]

EPGTC systems are integral components in the production of ethylene, propylene, ammonia, urea, and methanol. In the production stream of these products, EPGTC systems provide necessary pressure at certain points in the production stream to remove unwanted substances and at other points to temporarily refrigerate certain substances that loop in and out of the process. The systems, or "trains" as they are known in the industry, are large in scale and consist of at least one compressor (sometimes two or more are in the same train), a driver (a steam turbine or motor to run the compressor(s)), and auxiliary components

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[9] Commerce has used the acronym "EPGTS" to define the subject merchandise. Throughout the Commission Report and Preliminary Determination, the subject merchandise was referred to as "EPGTCs". Unless specifically discussing the Commerce notice, we continue to refer to the systems as EPGTCs.

[10] 62 Fed. Reg. 24394-95 (May 5, 1997).

(chiefly a lubrication system and electronic control system), all of which are custom engineered to the specific parameters and needs of the plant producing the chemical product.[11]

B. **Domestic Like Product Issues**

In the preliminary phase of this investigation, the Commission examined two domestic like product issues: (1) whether the domestic like product should be defined more broadly than the subject merchandise to include specially engineered transport gas systems; and (2) whether incomplete and/or unassembled EPGTC systems constituted a separate like product. The Commission found that given the differences in general physical characteristics, end uses, and the complete lack of interchangeability between specially engineered transport gas systems and the engineered process gas systems, transport gas systems should not be included in the domestic like product. Additionally, the Commission employed a semi-finished products analysis and determined that unfinished and/or unassembled systems were part of the same domestic like product as the finished systems because the unassembled or incomplete systems were dedicated for use in the finished system, and there is no independent market or uses for the unfinished or incomplete systems.[12] No party has argued in the final phase of this investigation that engineered transport gas systems should be included in the domestic like product or that incomplete and/or unfinished systems should be a separate like product. No additional evidence has been uncovered in this final phase of this investigation which would indicate that we should revisit either of these domestic like product issues.[13]

In the preliminary phase of this investigation, the Commission requested that the parties comment in any final phase of the investigation concerning whether replacement parts or "revamps" should be

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[11] Confidential Report ("CR") at I-3, Public Report ("PR") at I-3.

[12] *Engineered Process Gas Turbo-Compressor Systems from Japan*, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 at 5-7. ("Preliminary Determination").

[13] The scope has been clarified by Commerce in its final determination to indicate that "incomplete" EPGTS covered by the scope of the investigation consist of parts of an EPGTS imported from Japan pursuant to a contract for a complete EPGTS, which taken together, constitute at least 50 percent of the cost of manufacture of the complete EPGTC system of which they are a part. 62 Fed. Reg. 24395 (May 5, 1997).

included in the domestic like product.[14] Petitioner argues that revamps and replacement parts are not part of the domestic like product. Respondent has taken no consistent position on this issue. [15] We decline to include revamps, replacement parts, and repairs in the domestic like product for the reasons set forth below.

We do not find that the six factor test supports expanding the like product to include such revamps and replacement parts.[16] First, the physical characteristics and end uses of EPGTC systems are distinct from those of replacement parts or revamps.[17] While the components may share some characteristics with the system, they are by definition only part of the system. Second, there is also some distinction in end use between an EPGTC system and its component parts. Replacement parts and revamps are used to enable the system to operate (or in the case of revamps, increase efficiency and performance), whereas the end use of the complete system is to compress gas. Third, with respect to customer perceptions, purchasers reported only limited competition between EPGTC systems and aftermarket products (*e.g.* consideration of used, rebuilt, or salvaged compressor systems).[18] EPGTC systems are not interchangeable with parts of that system.

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[14] Preliminary Determination at 7, n.32.

[15] In the preliminary phase of this investigation, respondent did not argue for a different domestic like product. Only in an attachment to its posthearing brief in response to Commissioner questions concerning the domestic like product considerations did respondent argue that revamps, replacement parts, and repairs ("aftermarket products") are within the domestic like product, using either the traditional factors that the Commission generally examines or using a semifinished product analysis. Respondent's Posthearing Brief at I-8.

[16] Respondent's analysis compares the components of a revamp or replacement part with the corresponding components in an EPGTC system. Respondent's Posthearing Brief at I-8. We believe, however, that the appropriate analytical framework is a comparison of revamps or replacement parts with the finished systems. Additionally, respondent's argument that the like product should be expanded to include revamps, repairs and replacement parts appears to seek inclusion of the process of repairing an EPGTC system, or the process of revamping an EPGTC system, in addition to any "replacement parts" used in a revamp or repairs. As defined by the statute, "domestic like products" include products, not processes or services. *See generally* 19 U.S.C. § 1677(10). Services are not covered under the antidumping statute. While the alternative semifinished analysis proffered by respondents may be appropriate in cases involving parts and components, we do not believe that it is appropriate to use for inclusion of services, and we decline to do so here.

[17] CR at I-9, PR at I-6-7.

[18] CR at I-10, PR at I-7.

Fourth, EPGTC systems and revamps or replacement parts also are sold through different channels of distribution. EPGTC systems are sold generally to engineering construction contractors who contract for the design and building of the required EPGTC system for plant operators. Conversely, plant operators typically purchase revamps or replacement parts directly from original equipment manufacturers ("OEMs") or parts replicators.[19]

Fifth, there is an overlap in manufacturing facilities and production employees that manufacture EPGTCs and aftermarket products. OEMs responding to the Commission's questionnaires reported that they manufacture EPGTC systems, revamps, and replacement parts in the same production facilities with the same production workers.[20] This factor thus provides some support for including revamps and replacement parts in the domestic like product. In addition to OEMs, however, additional firms known as parts replicators manufacture replacement parts for EPGTCs.

Finally, there is little overlap in price between revamps and replacements and EPGTC systems. The record indicates that sales of EPGTC systems ranged from approximately ***, whereas the average unit value of EPGTC revamps/replacements ranged from ***.[21]

On balance, based on differences in physical characteristics, lack of interchangeability, purchaser perceptions, differing channels of distribution, and significant price differentials, we do not include revamps, repairs, and replacement parts in the domestic like product. Accordingly, we find the domestic like product to be EPGTC systems, coextensive with the scope of this investigation.

C. Domestic Industry and Related Parties

In considering the effect of the subject imports on a domestic industry, the Commission's general practice is to include all domestic production, whether toll-produced, captively consumed, or sold in the

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[19] CR at I-10, PR at I-7.
[20] CR at I-10, PR at I-7.
[21] CR at I-12, PR at I-7.

merchant market.[22] Based on our definition of the domestic like product, the domestic industry consists of all producers of EPGTC systems.[23] [24]

We must further determine whether certain producers of the domestic like product should be excluded from the domestic industry as related parties. The related parties provision allows for the exclusion of certain domestic producers from the domestic industry for the purposes of an injury determination. We must first determine whether a domestic producer meets the definition of a related party.[25] If it does, we must then determine whether appropriate circumstances exist to exclude that

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[22] 19 U.S.C. § 1677(4)(A); *see, e.g.*, United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int'l Trade 1994), *aff'd*, 96 F.2d 1352 (Fed. Cir. 1996).

[23] As noted in the preliminary determination, there is some outsourcing of components of the EPGTC systems. However, all of the producers engage in bidding for contracts for a particular EPGTC system, designing of the specific EPGTC system, manufacturing of the compressor (the essential component of the EPGTC system), and final assembly, testing and delivery of the EPGTC system. Preliminary Determination at 7, n.34. The Commission found that all of the manufacturers of the complete EPGTC systems engage in sufficient domestic activity to be included in the domestic industry producing EPGTC systems. No party has argued for, nor does the record indicate that a different conclusion should be reached in the final phase of this investigation.

[24] In the preliminary phase of the investigation, there were four known producers of EPGTC systems in the United States: the petitioner Dresser-Rand; Elliott Turbomachinery Co.; Demag Delaval Turbomachinery Corp.; and A-C Compressor Corp. In this final phase of the investigation, a number of additional small producers were identified by purchasers and the firms were sent the Commission's producer's questionnaire. These include *** CR at III-2, PR at III-2.

[25] The term "related parties" is defined at 19 U.S.C. § 1677(4)(B) in terms of direct or indirect control or importation of the subject merchandise.

producer from the domestic industry.[26] Exclusion of a related party is within our discretion based upon the facts presented in each case [27]

In the preliminary phase of the investigation, the Commission identified two domestic producers, Elliott and Dresser-Rand, who are or have been affiliated with Japanese manufacturers of EPGTC systems. The Commission found, however, that they were not "related" parties under the statute. Additional evidence uncovered in the final phase of this investigation pertaining to importations by *** and ***, Elliott's affiliate, requires us to revisit our preliminary analysis with respect to whether or not Elliott and Dresser-Rand are "related " parties, and whether appropriate circumstances exist to exclude them from the domestic EPGTC industry. We find that both of these domestic producers are "related" parties, but that appropriate circumstances do not exist to exclude them from the domestic industry producing EPGTCs.

a. Elliott/Ebara

In this investigation Elliott Turbomachinery Co. ("Elliott") is affiliated with a producer of the subject merchandise in Japan, Ebara Corporation, which owns *** of Elliott.[28] Information received by the Commission during the preliminary investigation indicated that Elliott's affiliation with Ebara included a

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[26] 19 U.S.C. § 1677(4)(B). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

(1) the percentage of domestic production attributable to the importing producer;

(2) the reason the U.S. producer has decided to import the product subject to investigation, *i.e.*, whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market, and

(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.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), *aff'd without opinion*, 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interest of the related producer lies in domestic production or importation. *See, e.g.*, Sebacic Acid from the People's Republic of China, Inv. No. 731-TA-653 (Final), USITC Pub. 2793 at I-7-8 (July 1994).

[27] *See* Torrington Co. v. United States, 790 F. Supp. at 1168.

[28] A producer in Germany, Man GuteHuffnangghuette, AG also owns *** percent of Elliott. CR at III-4, PR at III-3.

reciprocal licensing agreement that restricted Ebara from providing EPGTC systems to the U.S. market and Elliott from providing such systems to the Asian market.[29] In its preliminary determination, the Commission found that based on the nature of this agreement, the Elliott/Ebara relationship did not appear to fit the statutory criteria defining a related party, since Ebara did not appear to be an exporter of the subject merchandise.[30] [31] However, information received during this final phase of the investigation indicates that ***[32]

We find that Ebara appears to exert at least some indirect control over Elliott[33] based on the terms of the reciprocal licensing agreement.[34] Further, there is evidence in the record that ***.[35] We view this as sufficient evidence of indirect control to treat Elliott as a related party.

We next examine whether appropriate circumstances exist to exclude Elliott from the domestic EPGTC industry. It is clear from the record that Elliott's interests lie in domestic production. In fact, Elliott (and the rest of the domestic producers) may benefit in the U.S. market from its foreign affiliation, because it excludes Ebara from the market. Moreover, the only *** import occurred in 1995, and there is no record evidence that Elliott was in any way involved in that transaction, *** to the rest of the domestic industry.[36] In the preliminary phase of this investigation, both petitioner and respondent agreed that appropriate circumstances did not exist to exclude Elliott from the domestic industry even if it were deemed a related party and no party has argued in the final phase of this investigation that appropriate

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[29] CR at III-6, PR at III-4.

[30] Preliminary Determination at 8.

[31] CR at III-6-7, PR at III-5. Commissioner Crawford does not join in the remainder of the discussion regarding the Elliott/Ebara relationship and continues to agree with the Commission's treatment of this issue in the preliminary investigation.

[32] As discussed in the negligibility section, *infra*, counsel for respondent argued initially that these imports are not covered by the scope of this proceeding, but later referred to them as "subject imports" in its Comments on the ITC Final Staff Report and Other Information Released Under the Administrative Protective Order at p. 4, n.7.

[33] In cases of partial ownership, a producer is a related party if the partial owner directly or indirectly controls its operations. Neither the statute nor the legislative history establishes a numerical percentage requirement for determining control.

[34] We note, however, that ***. *See also* CR at V-17, PR at V-8.

[35] CR at V-20, PR at V-9.

[36] Table VI-3; CR at VI-5-6, PR at V-1.

circumstances exist to exclude Elliott from the domestic industry.[37] Accordingly, we do not find that appropriate circumstances exist to exclude Elliott from the domestic industry.

b. Dresser-Rand/MHI Joint Venture

Petitioner Dresser-Rand and respondent MHI entered into a joint venture agreement in 1990, which was terminated by mutual consent in February 1994. In its preliminary determination, the Commission found that ***, it did not fit the statutory criteria defining a related party.[38] Information received during the final phase of this investigation indicates that ***. By the nature of its ***. Based on this ***, we find Dresser-Rand to be a related party.

We next examine whether appropriate circumstances exist to exclude Dresser-Rand from the domestic EPGTC industry. Dresser-Rand accounted for *** percent by value of U.S. produced systems shipped in 1996.[39] Its financial performance *** that of the other domestic producers.[40] It is clear both from its filing of this petition and from the general nature of its relationship with MHI that Dresser-Rand's interests lie in domestic production. It is also clear by the filing of this petition that Dresser-Rand's interests no longer lie in its terminated relationship with MHI. Moreover, it does not appear that the single importation constitutes a significant interest in importation of the subject merchandise. Accordingly, we do not find that appropriate circumstances exist to exclude Dresser-Rand from the domestic industry.

II. CONDITION OF THE DOMESTIC INDUSTRY

In assessing whether a domestic industry is materially injured or threatened with material injury by reason of LTFV imports, we consider all relevant economic factors that bear on the state of the industry in the United States.[41] These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and

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[37] Petitioner's Postconference Brief at 45; Respondent's Post-Conference Brief at Exhibit B, p. 2-3.
[38] Preliminary Determination at 9. *** CR at III-5, PR at III-4.
[39] CR at III-3, PR at III-3.
[40] Table VI-3; CR at VI-5-6, PR at VI-1.
[41] 19 U.S.C. § 1677(7)(C)(iii).

research and development. No single factor is dispositive and all relevant factors are considered "within the context of the business cycle and conditions of competition that are distinctive to the affected industry."[42]

Several conditions of competition are pertinent to our analysis of the U.S. EPGTC industry.[43] The market for EPGTC systems is global in scope, with a small number of large firms competing worldwide for projects.[44] All U.S. producers exported a significant percentage of their production over the investigative period.[45] Thus, all producers of EPGTC compete with one another for projects not just in the United States, but throughout the world. Non-subject imports are also present in the U.S. market along with domestic and subject products.[46] [47] Based on the responses of U.S. producers and engineering contractors, it appears that even in closed bids, the competitors are usually known due to the small number of acceptable bidders for this product. Similarly, end users indicate that the identity of the bidders is often common knowledge.[48]

The U.S. market for EPGTC systems is characterized by a small number of sporadic, but high value sales each year.[49] Because the number and value of sales fluctuate from year to year, changes in industry performance on a year-to year basis may be of limited utility; thus, we have viewed data concerning trends over the period of investigation with some caution.

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[42] *Id.*

[43] Commissioner Crawford joins her colleagues in this investigation in a discussion of the "condition of the industry" even though she does not make her determination based on industry trends. Rather she views the discussion as a factual recitation of the data collected concerning the statutory impact factors.

[44] CR at II-1, PR at II-1.

[45] Table III-3, CR at III-11, PR at III-8.

[46] Table C-1; CR at C-4, PR at C-4.

[47] Commissioner Crawford notes that the presence of nonsubject imports in the domestic market represents a condition of competition and demonstrates the global scope of the EPGTC market. Nonsubject imports actually captured a larger share of the domestic market than subject imports, whether measured by value, or quantity, in every year of the period of investigation. Table C-1; CR at C-4, PR at C-4.

[48] CR at V-4, PR at V-3.

[49] Table IV-3; CR at IV-10-11, PR at IV-6.

EPGTC systems are highly engineered products that are specifically designed by the producer to meet the individual plant owner's needs.[50] Because of the customized nature of the product for each purchaser, EPGTC systems vary significantly in terms of size, value, and specifications from sale to sale. Because of these variations, we find it useful to rely on total value, rather than quantity-based data, to assess market share, sales, shipments, and other volume indicators.[51]

The demand for EPGTC systems is dependent on new process gas plants and plant expansions. The downstream products of plants using EPGTC systems are primarily petrochemicals, such as ethylene, propylene, ammonia, urea, and methane.[52] Demand for EPGTC systems, both in the U.S. and worldwide, increased over the period of investigation.[53] In the U.S. market, for example, ethylene manufacturing capacity increased and there was growing pressure from environmentalists on process gas manufacturers to reduce pollution. According to one industry representative, however, demand for EPGTC systems is currently declining. Although U.S. petrochemical producers have announced plans to add 5.9 million metric tons per year to existing ethylene capacity by the year 2000, another industry representative indicated that the ethylene capacity boom is over in the United States.[54] Demand for ammonia and urea as fertilizers is growing, but capacity for the production of urea is not expected to expand in the United States, and U.S. capacity for the production of ammonia is expected to decline through 1998.[55]

EPGTC systems in the United States are sold primarily to engineering construction firms that incorporate the systems in new process gas plants or expansion projects.[56] The engineering construction

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[50] CR at I-3, PR at I-3.

[51] For example, we collected quantity data on the number of trains. There were *** trains contracted for from Japan in 1994 and 1995. The corresponding value for the same number of trains was *** in 1994 and *** million in 1995. Similarly, apparent consumption was six trains in both interim (January-March) periods. The value of the domestic consumption for the same number of trains differed significantly, with values of $13.6 million in interim 1997 compared with $32.8 million in interim 1996. Table IV-3; CR at IV-10, PR at IV-6.

[52] CR at II-6, PR at II-4.

[53] CR at II-6, PR at II-4.

[54] CR at II-6, PR at II-4.

[55] CR at II-7, PR at II-4-5.

[56] CR at II-1, PR at II-1.

firm may solicit bids from suppliers of EPGTC systems, or may contract on a sole-source basis with a particular supplier. The construction firm, which itself generally bids for the plant construction or expansion projects, may solicit bids for the EPGTC system from qualified suppliers as part of its own bid preparation as well as after being awarded a contract.[57]

The engineering contract for the construction of a plant is generally awarded either as a fixed-cost (one agreed price for the entire plant) or "cost-plus" (contractor cost plus profit) contract.[58] Although the cost of an EPGTC system typically is less than 15 percent of the cost of a plant, the system is nevertheless crucial to plant operations.[55] On fixed-cost contracts for the construction or expansion of a plant, the plant owner is not generally involved in price negotiations on individual components such as EPGTC systems.[60] However, the plant owner may either review the technical specifications of suppliers, or reserve the right to select the supplier of the EPGTC system.[61] For the plant owner, the price of an EPGTC system may not be of primary concern, since the owner often accepts a proposal for an entire plant on a fixed-price basis.[62] By contrast, although one contractor pointed out that price is not the only consideration when assessing total cost, five of seven responding contractors indicated that the lowest-cost technically-feasible EPGTC system will win the sale unless the plant owner makes another choice.[63] If a plant owner currently uses EPGTC systems from a given supplier, it may be more cost effective to use the same machinery in an expansion or replacement since components and spare parts are interchangeable.[64] According to several

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[57] CR at II-1, PR at II-1.
[58] CR at II-2, PR at II-2.
[59] CR at II-3, PR at II-2.
[60] CR at II-3, PR at II-2.
[61] CR at II-3, PR at II-2.
[62] CR at II-8, PR at II-5.
[63] CR at II-8, PR at II-5.
[64] CR at II-8-9, PR at II-5-6. Although 2 of 5 responding contractors and 9 of 15 end users reported giving preference to suppliers in the bidding process based on past favorable experience, no contractors or end users reported excluding a supplier from the bidding process due to any type of "alliance." CR at II-1-2, n.3, PR at II-2, n.3.

engineering construction contractors, however, the plant owner in a fixed cost contract may have to pay a premium if the lowest-priced, qualified supplier is not selected.[65]

The preparation of a bid on an EPGTC system is a complex and lengthy process with costs for a single bid ranging from a few thousand dollars to $100,000.[66] Therefore, EPGTC manufacturers carefully assess their potential for securing a contract before deciding to bid on a particular job. All four responding U.S. producers indicated that the outcome of a bid to a particular purchaser affects their strategy for future bids.[67]

Producers generally have more than one chance to bid on a particular sales agreement, because changes in the specifications of the project often prompt a re-bid.[68] However, initial bids are important in the process because they may be used to determine a short list of EPGTC manufacturers which appear to meet the technical requirements of the project in a cost-effective manner. Therefore, bidders must make their most technically attractive and cost-effective proposal in the initial bid in order to ensure participation in later negotiations.[69] After an EPGTC system has been installed, the manufacturer of that system has the opportunity to supply replacement parts and revamps. Some domestic producers indicate that they factor possible revenues from these potential sales into the bid.[70] Although a manufacturer has an advantage in providing a revamp of its own equipment, a revamp of an existing compressor train will not occur for years after an EPGTC system is installed, if it happens at all.[71]

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[65] CR at II-3, PR at II-2.
[66] CR at II-2, PR at II-1.
[67] CR at V-3, PR at V-2.
[68] CR at V-4, PR at V-3.
[69] CR at V-4, PR at V-3.
[70] CR at V-2, PR at V-2.
[71] CR at V-3, PR at V-2.

After finalization of a sales contract, completion and installation of an EPGTC system typically takes between one year and eighteen months.[72] Because producers usually require progress payments,[73] the full financial impact of a sale (or its loss) may not be reflected in a producer's financial records for up to eighteen months after the date of the sale.

Apparent domestic consumption, by contract date, increased overall throughout the full-year period of investigation. Apparent domestic consumption by contract date was lower in interim 1997 compared with interim 1996.[74] The domestic industry's share of the value of U.S. consumption by contract date declined overall throughout the period of investigation.[75]

While the value of apparent U.S. consumption by date of shipment followed similar trends to that based on date of contract,[76] the domestic industry's share of the value of U.S. consumption when considered by date of shipment followed a somewhat different trend than that based on contract date, declining from 1993 to 1994, increasing in 1995, and then declining in 1996 to its lowest level in the investigative period. The domestic producers' share of the value of U.S. consumption in the interim periods was 100 percent.[77]

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[72] CR at II-3, PR at II-2.

[73] CR at II-2, PR at II-2.

[74] Apparent domestic consumption by contract date declined from $76.3 million in 1993 to $64.1 million in 1994; increased to 91.6 million in 1995, and then to $97.3 million in 1996. Apparent domestic consumption by contract date was $13.6 million in interim 1997 compared with $32.8 million in interim 1996. Table IV-3; CR at IV-10, PR at IV-6.

[75] Table IV-3; CR at IV-11, PR at IV- 7. U.S. producers' share of the value of domestic consumption based on contract date increased from 68.8 percent in 1993 to 73.6 percent in 1994, and then declined to 55.8 percent in 1995, and further declined to 50.9 percent in 1996. U.S. producers' share of the value of domestic consumption was 24.6 percent in interim 1997 compared with 69.1 percent in interim 1996. *Id.*

[76] The value of apparent domestic consumption based on date of shipment increased from $68.6 million in 1993 to $78.0 million in 1994; declined to $75.7 million in 1995, and then increased to $98.3 million in 1996. The value of domestic consumption based on date of shipment was $11.2 million in interim 1997 compared with $19.8 million in interim 1996. Table IV-4, CR at IV-13, PR at IV-8.

[77] The U.S. producers' share of the value of domestic consumption based on date of shipment was 72.0 percent in 1993; 71.3 percent in 1994; 85.1 percent in 1995; and 53.8 percent in 1996. Table IV-4; CR at IV-13, PR at IV-8.

The value of domestic shipments increased from 1993 to 1995, and then declined in 1996. The value of domestic shipments was lower in interim 1997 compared with interim 1996.[78]

The unique design and production demands for each system and the wide variation in time and resources necessary for production preclude any meaningful assessment of the domestic industry's capacity in terms of production units. However, an assessment of the capacity in terms of man-hours reflects that capacity *** from *** man-hours in 1993 to *** man-hours in 1994; and then *** to *** man-hours in 1995. Capacity *** in 1996 to *** man-hours. Capacity was *** man-hours in interim (January-March) 1997 compared with *** man-hours in interim 1996.[79] Production followed similar trends. [80] Capacity utilization *** from *** percent in 1993 to *** percent in 1994, *** to *** percent in 1995, and *** to *** percent in 1996. Capacity utilization was *** percent in interim 1997 compared with *** percent in interim 1996.[81] We also collected information pertaining to U.S. producers' backlog of orders for which contracts have been received as of the first day of each quarter through June 1997. While the backlog fluctuated somewhat, overall it *** through the third quarter of *** and has since ***. By ***, the backlog is *** than it has been since 1994 levels.[82]

The number of production and related workers *** from 1993 to 1994, and then *** slightly in 1995 before *** in 1996. The number of production and related workers was *** in interim 1997 compared with interim 1996.[83]

The financial data for the industry indicate that the domestic producers had aggregate operating losses in every period examined. Increased sales did little to diminish the extent of the losses, and

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[78] Table III-3, CR at III-11, PR at III-6. The value of domestic shipments increased from $49.4 million in 1993 to $55.6 million in 1994, and further increased to $64.5 million in 1995, and then declined to $52.9 million in 1996. The value of domestic shipments was $11.2 million in interim 1997 compared with $19.8 million in interim 1996.

[79] Table III-2; CR at III-8, PR at III-5.

[80] Production *** from *** man-hours in 1993 to *** man-hours in 1994; *** to *** man-hours in 1995; and then *** to *** man-hours in 1996. Production was *** man-hours in interim 1997 compared with *** man-hours in interim 1996. Table III-2; CR at III-8, PR at III-5.

[81] Table III-2; CR at III-8, PR at III-5.

[82] Table IV-2; CR at IV-7, PR at IV-4.

[83] Table III-4, CR at III-12, PR at III-7.

decreased sales deepened them. Net sales increased from $101.7 million in 1993 to $174.6 million in 1994, declined to $133.4 million in 1995, and then increased to $160.1 million in 1996. Net sales were *** in interim 1997 compared with $44.7 million in interim 1996. Operating losses increased from $15.8 million in 1993 to $17.8 million in 1994, and further increased to $26.3 million in 1995. Operating losses declined slightly to $23.3 million in 1996. Operating losses were *** in interim 1997 compared with $6.3 million in interim 1996. The cost of goods sold as a ratio to net sales declined from 100.0 percent in 1993 to 92.8 percent in 1994, increased to 103.1 percent in 1995, and then declined slightly to 100.8 percent in 1996. The cost of goods sold as a ratio to net sales was *** percent in interim 1997 compared with 100.4 percent in interim 1996.[84] Variable margins (revenues less variable costs) declined steadily, decreasing from *** in 1993 to *** in 1996.[85]

Capital expenditures *** from 1993 to 1994, *** in 1995, and *** slightly in 1996. Capital expenditures were *** in interim 1997 compared with interim 1996.[86] Research and development expenditures *** from 1993 to 1994 and then *** through 1996. Research and development expenditures were *** in interim 1997 compared with interim 1996.[87] [88]

III. NEGLIGIBLE IMPORTS

The Uruguay Round Agreements Act ("URAA")[89] amends the statutory provisions pertaining to antidumping duty determinations to require that investigations terminate by operation of law without an

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[84] Table VI-2; CR at VI-4, PR at VI-3.

[85] CR at VI-15, PR at VI-7.

[86] Capital expenditures *** from *** in 1993 to *** in 1994, *** to *** in 1995, and then *** to *** in 1996. Capital expenditures were *** in interim 1997 compared with *** in interim 1996. Table VI-5; CR at VI-13, PR at VI-6.

[87] Research and development expenditures *** from *** in 1993 to *** in 1994, *** to *** in 1995, and *** to *** in 1996. Research and development expenditures were *** in interim 1997 compared with *** in interim 1996. Table VI-5; CR at VI-13, PR at VI-6.

[88] Based on the foregoing, Commissioner Newquist concludes that the domestic industry producing EPGTC systems is experiencing material injury.

[89] P.L. 103-463, approved Dec. 8, 1994.

injury determination if the Commission finds that the subject imports are negligible.[90] The provision defining "negligibility", 19 U.S.C. § 1677(24), provides that imports from a subject country that are less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition or self-initiation, as the case may be, shall be deemed negligible. The statute provides, however, that the Commission shall not treat imports as negligible if it determines that there is a potential that imports from a country will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, or that the aggregate volume of imports from all countries described in clause (ii) will imminently exceed 7 percent of the volume of all such merchandise imported into the United States. However, in these circumstances the statute also expressly requires that such imports "be considered only for the purpose of determining threat of material injury."[91]

In the preliminary phase of this investigation, the Commission found that there had been no imports of EPGTC systems from Japan during the period of investigation. However, there had been a significant *** sale by MHI to Kellogg (a U.S. engineering firm) for an Exxon] facility, for which delivery had not yet occurred. [92] The system accounted for *** of the value of total U.S. consumption in 1995.[93] Based on the fact that there were no imports of subject merchandise in the twelve month period for which data are available that precedes the filing of the petition, the Commission determined that the plain language of the negligibility provision of the statute precluded it from considering whether there was a reasonable indication that the allegedly LTFV imports were materially injuring the domestic industry.[94] It considered whether there was a reasonable indication that the alleged LTFV imports from Japan

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[90] 19 U.S.C. § § 1673b(a), 1673d(b).
[91] 19 U.S.C. § 1677(24)(A)(iv).
[92] Delivery of the system occurred in ***. Respondent's Prehearing Brief at 57.
[93] Preliminary Report at Table IV-1.
[94] Commissioner Newquist did not join this interpretation in the preliminary determination.

threatened the domestic industry, finding that the system scheduled for delivery constituted "potential imports" under § 1677(24)(iv).

Since the vote in the preliminary phase of this investigation, new evidence discovered in the final phase of this investigation indicates that for the period May 1995 through April 1996, the 12-month period preceding the filing of the petition, *** were imported from Japan, accounting for *** percent of total imports of EPGTC systems during the May 1995-June 1996 period.[95] This is sufficient to render imports non-negligible. We note that there has been a question in the final phase of the investigation as to whether this import is "subject merchandise" covered by the scope of this investigation.

Respondent argued initially that this importation is not covered by the scope of this proceeding because the system was part of an entry for an entire petrochemical plant. [96] In the absence of specific formal guidance by the Commerce Department, we find that this import is "subject merchandise" for purposes of our injury analysis. Contrary to respondent's assertions, the Commerce Department has not ruled that this importation is not subject merchandise because it is part of an entry for an entire plant. [97]

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[95] CR at IV-5, PR at IV-3. The share of total imports of EPGTC systems represented by imports from Japan for the 12-month period may be understated, as monthly data for imports were not reported by questionnaire respondents. Data for imports during the period May 1995-April 1996 were estimated by adding total imports during 1995-1996 and deducting those imports for which monthly information was available. CR at IV-5, n.7, PR at IV-3.

[96] Respondent asserted that Commerce ***, and urged the Commission to obtain all the facts regarding the transaction and consult with the Department of Commerce as to the application of the facts to the Department's definition of the scope of the proceeding. Respondent's Prehearing Brief at 32-33. Upon further questioning at the hearing, respondent clarified that the Commission should not include these imports as subject because there is nothing in Commerce's final determination that shows any intention by Commerce to include within the scope of its investigation an EPGTC system imported as part of a petrochemical plant. Additionally, respondent argues that Commerce *** thereby inferring that Commerce did not consider the sale of a plant incorporating an EPGTC system to be within the scope of this proceeding. Finally, respondent asserts that Commerce's position is supported by its precedent on a similar scope issue raised in an administrative review of large power transformers from Japan, *citing Fuji Electric Co. v. United States*, 689 F. Supp. 1217 (CIT 1988). Respondent's Posthearing Brief at Exhibit 6, p.1-3.

[97] Based on the facts that were gathered, Commission staff (as suggested by respondent) provided Commerce staff with a hypothetical fact pattern (because of the statutory prohibition against the Commission's release of BPI to other government agencies, *Compare* 19 U.S.C. § 1677d(c)(1)(a) with 19 U.S.C. § 1677f(b)(1)(a)) and a summary of the parties' arguments, and asked whether the products described would be covered by the scope of this proceeding. See CR at E, Attachment 3, PR at E-7. Included with the request was respondent's argument that Commerce did not consider the sale of a plant incorporating an EPGTC system as a sale within the scope of the proceeding. ***,

(continued...)

No party has questioned that if imported alone, the system imported would be within the scope of the investigation.[98] Further, in addition to the importation in question, EPGTC systems purchased and imported from countries other than Japan, pursuant to procurement contracts for services, equipment, and material have been reported as imports by a questionnaire respondent in two separate situations.[99] Moreover, most of the domestic EPGTC contracts which were analyzed in this investigation were part of a larger plant project, which arguably would not be included in the like product if the scope were limited as respondent suggests.[100] Accordingly, we include the 1995 importation for the *** contract in our analysis of subject imports.

III. MATERIAL INJURY BY REASON OF EPGTC SYSTEMS FROM JAPAN

In the final phase of antidumping investigations, the Commission determines whether an industry in the United States is materially injured by reason of the LTFV imports under investigation.[101] In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.[102] Although the Commission may consider causes of injury to the industry other than the LTFV imports,[103] it is not to weigh causes.[104] [105]

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[97] (...continued)
AD/CVD Enforcement, at Commerce indicated that it appeared that the EPGTC system described would be within the scope of this investigation. CR at E-5, PR at E-4.

[98] In its final comments in the final phase of this investigation, respondents refer to this import as "subject merchandise," apparently conceding that it is appropriate to consider the entry as subject merchandise. *See* Comments of Mitsubishi Heavy Industries, Ltd. on the ITC Final Staff Report and Other Information Released Under the Administrative Protective Order, p. 4, n.7, stating that there was a 1995 import of *subject merchandise.* (emphasis supplied).

[99] CR at E-5, PR at E-4.

[100] For example, the ***.

[101] 19 U.S.C. § 1673b(a). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

[102] 19 U.S.C. § 1677(7)(B)(I). The Commission "may consider such other economic factors as are relevant to the determination," but shall "identify each [such] factor . . . and explain in full its relevance to the determination." 19 U.S.C. § 1677(7)(B).

[103] Alternative causes may include the following:

(continued...)

For the reasons below, we determine that the domestic EPGTC industry is materially injured by reason of LTFV imports from Japan.

A. Volume of Subject Imports

For the reasons discussed in Section II above, we rely primarily on data reflecting the value (rather than the quantity) of the subject imports when analyzing the volume of imports. When considered by contract date, there were *** in 1993; *** of contracts for subject imports entered into in 1994; and *** of contracts for subject imports entered into in 1995; and *** in 1996 and in the interim periods. These contracts were *** percent of the value of domestic consumption in 1994 and *** of the value of domestic consumption in 1995.[106]

When considered by date of shipment, subject import volume accounted for *** in 1993, *** in 1994; increased to *** in 1995; and further increased to *** in 1996. There were *** in the interim periods. These shipments accounted for *** percent of the value of domestic consumption (by shipments) in 1993; *** percent in 1995, and *** percent in 1996.[107]

Although there were few transactions involving subject imports during the period of investigation, we find that the volume of imports involved in those transactions was significant. This is particularly true

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[103] (...continued)

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

S. Rep. No. 249, 96th Cong., 1st Sess. 74 (1979). Similar language is contained in the House Report. H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

[104] *See, e.g.,* Gerald Metals, Inc. v. United States, 937 F. Supp. 930, 936 (Ct. Int'l Trade 1996); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1101 (Ct. Int'l Trade 1988).

[105] Commissioner Newquist further notes that the Commission need not determine that imports are "the principal, a substantial, or a significant cause of material injury." S. Rep. No. 249, at 57, 74. Rather, a finding that imports are a cause of material injury is sufficient. *See, e.g.*, Metallverken Nederland B.V. v. United States, 728 F. Supp. 730, 741 (Ct. Int'l Trade 1989); Citrosuco Paulista, 704 F. Supp. at 1101.

[106] Table IV-3; CR at IV-10-11; PR at IV-6-7.

[107] Table IV-4; CR at IV-13, PR at IV-8.

for the *** sale which was contracted for in 1995 and shipped in 1996, and accounted for over *** of the value of domestic consumption, whether considered in terms of contract date or shipment date. [108]

We reiterate that we have viewed trends exhibited by imports during the period of investigation with caution, given the fluctuations in the market, and the relatively small number of transactions involved. Nevertheless, we find that there has been a significant increase in the volume of imports during the latter part of the period of investigation. While the imports involved only two transactions, we note that these two transactions accounted for over *** percent of the value of the contracts for which there was competitive bidding in the U.S. market during the period of investigation.[109] In light of the foregoing, we find that the absolute volume of imports in terms of value and share of the value of domestic consumption during the period of investigation to be significant.

B. Price Effects of Imports

Our pricing analysis in this investigation is influenced by the conditions of competition in this market, including the fact that EPGTC systems are customized to the specifications of the individual purchaser, and then purchased through an extensive bidding process. We have examined carefully the impact that subject imports have had on the price of domestically produced EPGTC systems in individual transactions. This analysis is based on detailed information concerning the competition among producers for many of the individual bids that occurred during the period of investigation. As noted above, because of the highly technical nature of the systems, system providers are selective in their contract proposals, and contractors are equally selective in their solicitations.[110] While purchasers and contractors did not rate "price" as the most important factor in their purchasing decision,[111] the record shows that once EPGTC producers bid on a project in which there is a "technical fit," price is a significant factor in a purchaser's

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[108] We have given little weight in our analysis of import volume to the shipment valued at *** in 1993, which as discussed above, was imported by ***.

[109] Table V-1; CR at V-7, PR at V-4.

[110] CR at V-1, PR at V-1.

[111] CR at II-9-10, PR at II-6-7.

decision to choose among systems that meet the performance specifications. Of the *** transactions for which there was competitive bidding, all but *** were awarded to the lowest bidder.[112] Thus, the record demonstrates the importance of price in most purchasing decisions once a technical fit is established.

With these considerations in mind, we find that the subject imports have had a significant adverse effect on the price of domestic EPGTC system prices. All four of the responding U.S. producers indicated that the outcome of a bid to a particular purchaser affects their strategy for future bids.[113] Thus, because of import price competition, even when the domestic producers win a sale, it will be with a depressed or suppressed price. A supplier of subject imports was the low bidder on *** of *** projects underbidding the next technically acceptable bidder by between *** percent.[114] Moreover, there is some evidence on the record that *** employs aggressive pricing strategies when making bids.[115] The record reflects that it focussed its efforts in the U.S. market on the highest-value projects during the period of investigation.[116] [117] Additionally, according to two engineering contractors, the Japanese also are known for generous payment terms.[118]

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[112] CR at V-6, PR at V-4. We note that even in cases where the low bid did not win the sale, the winning bid was close to the low bid in a number of instances. For two contracts, involving ***, the successful bids were *** above the lowest bids, and for another two projects, *** and ***, the successful bids were less that *** above the lowest bid. CR at V-10-11, PR at V-5-6. In addition, as discussed below, although *** was not the lowest bidder in the U.S. on the *** in the U.S., the record indicates that the plant owner obtained more favorable pricing obtaining the system through *** in Japan. Moreover, five of seven responding contractors indicated that the lowest cost technically-feasible EPGTC system will win the sale unless the end user makes another choice. CR at II-8, PR at II-5.

[113] CR at V-3, PR at V-2.

[114] CR at V-13, PR at V-7. In addition, in the case of ***, *** was not the low bidder to ***, CR at Table V-6, CR at V-15, PR at V-7, but, as discussed infra, later provided the system through another contractor at a lower price.

[115] One domestic competitor referred to *** "scorched earth" bidding strategy. *** Report at page 8.

[116] Table V-6; CR at V-15, PR at V-7.

[117] In the case of a contract for the *** project, which is now on indefinite hold, as noted in the preliminary determination, ***. Preliminary Determination, (Conf. Version) at 26, *citing* Confidential Preliminary Report at V-8. The evidence indicates that ***. Table V-6; PR at V-15, CR at V-7. ***. CR at V-19, PR at V-9.

[118] CR at II-11-12, PR at II-7-8. Responses to the questionnaire show Dresser-Rand requiring at least *** percent of the value of the contract before shipment on the *** projects for which it provided detailed progress payment information, while MHI/MIC required between *** percent on the *** projects for which it gave information. *Id.*

We therefore find that the subject imports have had significant price suppressing effects. As import price competition increased during the latter period of the investigation, the cost of goods sold as a ratio to net sales increased significantly, indicating that the domestic industry was unable to recover its costs.[119] Other evidence in the record indicates that the subject imports depressed or suppressed domestic prices during contract negotiations. For example, in the case of a project for ***, the evidence indicates that *** was awarded the contract only when it offered to match MHI's substantially lower price.[120]

A major lost sale and lost revenue allegation in this investigation centers around a contract which was awarded to MHI for an Exxon facility in Baytown, Texas. Two domestic producers, Dresser-Rand and *** allege that this sale was lost due to the lower price of the subject EPGTC system. According to the engineering contractor and the purchaser, *** of the contract. While the record indicates that *** lost the Exxon contract largely ***,[121] we find it significant that *** lost at least part of the sale on the basis of price. Exxon had considered ***.[122]

The domestic industry lost another sale to subject imports due to the price competition in a contract for the construction of a *** developed the specifications for the project and solicited bids for the EPGTC systems to be used in the project from ***. *** selected *** as the winning firm and made the recommendation to ***. The *** reported to the Commission that "***." ***.[123]

On the whole, we find that the evidence in this investigation indicates that the subject imports have had a significant price suppressing or depressing effect on the price of domestic merchandise.

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[119] The cost of goods sold as a ratio of net sales was over 100 percent in 1995-1996, and in the interim periods. This increase corresponds with the presence of import price competition.

[120] There is some dispute in the record as to whether *** had been awarded the contract prior to the engineering contractor inviting MHI to bid on the contract. The engineering contractor, ***. CR at V-19, PR at V-8.

[121] CR at V-13-16, PR at V-7.

[122] CR at V-16, PR at V-7.

[123] CR at E-4, n.5, PR at E-3. *** Other than "savings," the resulting differences cannot be explained with information on the administrative record.

C. Impact of Subject Imports [124] [125] [126] [127]

We find that the subject imports have had an adverse impact on the domestic industry producing EPGTC systems. The record reflects a worsening of the condition of the domestic industry, particularly in the latter period of the investigation, coincident with MHI's entry into the domestic market following the break-up of its joint venture with Dresser-Rand, and the large volume of subject imports present in the market in 1996.

Despite the large increase in net sales values for the domestic producers from 1993 to 1996, its profitability declined, and losses became larger during the latter period of the investigation, the time during

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[124] As part of our consideration of the impact of imports, the statute specifies that the Commission is to consider in an antidumping proceeding, "the magnitude of the dumping margin." 19 U.S.C. § 1677(7)(C)(iii)(V). The URAA Statement of Administrative Action (SAA) indicates that the amendment "does not alter the requirement in current law that none of the factors which the Commission considers is necessarily dispositive of the Commission's material injury analysis." SAA, H.R. Rep. 316. 103d Cong., 2d Sess., vol. 1 at 850. The statute defines the "magnitude of the margin of dumping" to be used by the Commission in a final determination as "the dumping margin or margins most recently published by [Commerce] prior to the closing of the Commission's administrative record." 19 U.S.C. § 1677(35)(C). The margin of dumping found by the Department of Commerce is 38.32 percent.

[125] In evaluating the magnitude of the margin of dumping, Chairman Miller notes several distinguishing factors in this investigation. For example, EPGTC systems are sold by bid on individual projects, with bid prices taking into account differences in proprietary technologies and designs. Notwithstanding these differences in competing bids, however, the record clearly establishes that price is a decisive factor in the purchaser's selection among final bids. Secondly, the market is limited to a small number of sales each year; thus, each sale is important, with sales of the larger systems taking on particular importance. In that connection, Commerce's analysis was based on one large transaction that occurred during the period of investigation. The dumping margin from that sale -- 38.32 percent -- is large, and exceeded by far the price differential between the losing domestic bids and the winning subject import bid on that particular contract. Given the well-established importance of price in the purchaser's final selection, Chairman Miller concludes that the magnitude of the margin of dumping contributed to the subject import's success in winning a large sale from the domestic industry, and thus, in light of the characteristics of this industry, had an adverse impact on the domestic industry.

[126] Vice Chairman Bragg notes that, as the statute directs, she has considered the margin of dumping in this investigation. In Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996), she explained that margin of dumping typically does little to illuminate either the nature of competition in the U.S. market between subject imports and the domestic like product, or the extent of any injury caused to domestic producers by such imports. Because these are the fundamental questions that the Commission must examine, her initial approach is to accord significant weight to the magnitude of the margin of dumping only where it has a bearing on these issues. Nevertheless, this case is unusual in that the number of transactions is quite small and the Commission has obtained detailed information regarding the bidding for specific contracts. Analysis of this information indicates that in these particular transactions, dumped imports did cause material injury to the domestic industry. Therefore she has accorded more weight to the margin of dumping in this case than she has in other investigations.

[127] Commissioner Newquist notes that, in his analytical framework, "evaluation of the magnitude of the margin of dumping" is not generally helpful in answering the questions posed by the statute: whether the domestic industry is materially injured, and, if so, whether such material injury is by reason of the dumped subject imports.

which competition with subject imports was most apparent (1995-1996).[128] These increasing losses contributed greatly to a decline in the variable margin.[129] The variable margins for *** and ***[130] combined declined steadily from *** percent in 1993 to *** percent in 1996.[131] [132]

Industry backlog of orders are currently at their lowest level since mid-1994, a decline coincident with increased competition with and lost sales to the subject imports.[133] At the same time, U.S. producers' domestic market share has declined overall, whether considered in terms of contracts or shipments.[134] Additionally, domestic shipments declined in 1996.[135]

Finally, evidence collected in this final investigation indicates that one large domestic producer, ***, reduced its capital investments by at least *** as a result of competition from imports of EPGTC

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[128] Table VI-2; CR at VI-4, PR at VI-3.

[129] Because of the customized nature of EPGTC systems, analysis of unit costs are of little value. We find an appropriate alternative is the assessment of the changes in the variable profit margins (revenues less variable costs). Variable costs are costs directly incurred to produce the goods, and therefore will go to zero if the producer ceases production of the systems.

[130] *** was unable to break out its variable and fixed costs. CR at VI-14, PR at VI-7. Although we therefore only have data on *** variable margins, we find that they are representative of the industry since they accounted for *** percent of net sales value during every period, and averaged *** percent of the total over the period of investigation. Table VI-3, CR at VI-5-6, PR at VI-1.

[131] CR at VI-15, PR at VI-7. The same phenomenon is observed when individual contract transactions with a value of $1 million or more are considered. *** of the *** contracts delivered by *** and *** in 1994 had a negative variable margin, whereas in 1996, when faced with increased subject import competition, *** of the *** contracts delivered had a negative variable margin. Tables F-3 and F-4; CR at F-5-11, PR at F-3.

[132] Respondent argues that the Commission should take into account the profitability of the revamps and replacement parts in assessing the condition of the domestic industry. However, 19 U.S.C. § 1677(D) states that the effect of dumped imports shall be assessed in relation to the United States production of a domestic like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. As noted above, revamps and replacement parts are not part of the domestic like product. Moreover, even when aftermarket revenues and costs are included with EPGTC systems revenues and costs, domestic producers "combined" data show *** at the latter part of the period of the investigation. Despite a *** percent increase in net sales value from 1993 to 1996, the *** percent operating income margin declined to *** percent during the period. Table VI-4, CR at VI-12, PR at VI-6.

[133] Table IV-2; CR at IV-7, PR at IV-6.

[134] Table IV-3, CR at IV-11, PR at IV-8: Table IV-4, CR at IV-13, PR at IV-11.

[135] Table IV-4, CR at IV-13, PR at IV-11.

systems from Japan. They also anticipated further negative effects due to subject imports.[136] Additionally, a second domestic producer, ***.[137]

Based on the declining financial trends, declining shipments and back orders, significant import volumes and adverse price effects, we find that the dumped imports have had an adverse impact on the domestic industry producing EPGTC systems.

CONCLUSION

For the foregoing reasons, we determine that the domestic EPGTC industry is materially injured by reason of LTFV imports from Japan.

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[136] CR at VI-15-16, PR at VI-7.
[137] CR at VI-15, PR at VI-7.

DISSENTING VIEWS OF COMMISSIONER CAROL T. CRAWFORD

On the basis of information obtained in this investigation, I determine that the industry in the United States producing EPGTC systems is not materially injured or threatened with material injury by reason of imports of EPGTC systems from Japan that the Department of Commerce ("Commerce") has found to be sold at less-than-fair-value ("LTFV"). I join my colleagues in the findings with respect to like product and the domestic industry. I also join the discussion of the condition of the domestic industry. However, I do not concur in the determination that the domestic industry is materially injured by reason of the subject imports. Rather, I determine that the domestic industry is not materially injured or threatened with material injury by reason of subject imports from Japan.

My analysis of the facts and application of the controlling law support a conclusion that the "negligibility" provision of the statute, 19 U.S.C. Section 1677(24), applies in this investigation. Imports of EPGTC systems from Japan are negligible under the terms of the statute. I therefore determine that the domestic industry is not materially injured by reason of the subject imports. I further determine that the domestic industry is not threatened with material injury by reason of the subject imports. My analysis and conclusions are set forth fully below.

I. SUBJECT IMPORTS ARE NEGLIGIBLE AND THEREFORE THERE IS NO MATERIAL INJURY BY REASON OF LTFV IMPORTS OF EPGTC SYSTEMS FROM JAPAN

I determine that the domestic industry is not materially injured by reason of the subject imports. My determination is based on my finding that subject imports are negligible, which, by operation of law, precludes an affirmative determination of "present" material injury by reason of the subject imports. My analysis follows.

A. Negligible Imports

The Uruguay Round Agreements Act ("URAA") amended the provisions of the law that govern how the Commission is to consider negligible imports in consideration of "present" material injury by reason of the subject imports. The statute now directs that subject imports are "negligible" if such imports

"account for less than 3 percent of the volume of all such merchandise imported into the United States during the most recent 12-month period for which data are available" that precedes the filing of the petition.[1] If subject imports are found to be negligible, the statute terminates the investigation with respect to those imports by operation of law.[2]

The statute provides further guidance regarding negligible imports in the determination of threat of material injury by reason of the subject imports. The new law states that "the Commission shall not treat imports as negligible if it determines that there is a potential that imports . . . will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States . . . The Commission shall consider such imports only for purposes of determining threat of material injury."[3]

B. Definition of Subject Imports

Commerce is charged by law with the responsibility to determine the scope of imported merchandise subject to investigation. The scope of the investigation defined by Commerce is the legal definition of the imports subject to investigation. This legal definition limits the imports on which duties legally can be imposed. That is, if an antidumping order is issued, only products within the scope defined by Commerce are subject to antidumping duties. In its final determination, Commerce defined the subject imports as follows:

> [T]urbocompression systems . . . which are comprised of various configurations of process gas compressors, drivers, . . . and auxiliary control and lubrication systems for use with such compressors and compressor drivers, whether assembled or unassembled, and whether complete or incomplete . . . A "complete" EPGTS covered by the scope consists of all the components of an EPGTS . . . *which are imported* from Japan in assembled or unassembled form, individually or in combination, *pursuant to a contract for a complete EPGTS system in the United States*.[4] (Emphasis added.)

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[1] 19 U.S.C. § 1677(24)(A)(I).
[2] 19 U.S.C. § 1673d(b)(1).
[3] 19 U.S.C. § 1677(24)(A)(iv).
[4] 62 Fed. Reg. 24,395 (May 5, 1997).

The Commission's role is to evaluate the volume of the subject imports, their effect on domestic prices, and their impact on the domestic industry.[5] Therefore, our evaluation requires us to know what imports constitute subject imports. From the inception of a Commission investigation, the Commission derives its definition of subject imports from Commerce's scope language. For example, if the scope describes automobile engines of a certain size, the Commission defines subject imports, seeks data on and conducts its evaluation of the volume of those engines, the price effects of those engines, and the impact of those engines on the domestic industry. It does not seek data for or otherwise evaluate engines in imported automobiles, unless they are included in the scope language.

In this investigation the Commission is presented with the question whether an EPGTC system that enters not as an EPGTC, but rather as part of a much larger, entire plant, should still be considered a subject import. For my analysis, I turn first to Commerce's scope language, quoted above. Two aspects of the language are particularly instructive. First, all references to EPGTC systems in Commerce's scope are to self-contained systems, *i.e.*, complete or incomplete, assembled or unassembled EPGTC systems. Second, the scope makes no reference to EPGTC systems that are part of, or incorporated into, an entire plant. Commerce could have included such systems in the scope, but did not do so. Therefore, on its face, the definition applies only to individual EPGTC systems, and thus systems that are part of, or incorporated into, an entire plant are not included in the scope.

By its plain language, Commerce has defined the scope by reference to a specific contractual relationship. Commerce's scope refers to EPGTC systems that are imported "pursuant to a contract for a complete EPGTC system in the United States." The scope makes no reference to systems imported pursuant to a contract for an entire plant. Therefore, it is clear on its face that the scope includes only EPGTC systems that are imported pursuant to a contract for a complete EPGTC system, and thus does not include EPGTC systems that are imported pursuant to a contract for an entire plant.

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[5] 19 U.S.C. § 1677(7)(B)(I).

The contractual limitation is entirely consistent with evidence on the record of the products intended to be covered by the scope. In its final determination, Commerce stated that "The petitioner asserts that the intent of the petition was to cover turbo-compressor 'systems' engineered (custom made) for a particular process, and typically *sold as a single unit at a single negotiated price. . . .*"[6] (Emphasis added.) On the other hand, the record is devoid of any evidence or indication that EPGTC systems that are part of, or incorporated into, entire imported plants were intended to be included in Commerce's scope. In light of the lack of any reference to EPGTC systems imported as part of an entire plant, the extensive references only to self-contained EPGTC systems, and the language that limits the contractual relationship covered, it is clear that EPGTC systems that enter the United States as a part of an entire imported plant are not subject imports.

C. Facts

Whether subject imports are negligible under the law in this case turns on one transaction. That transaction involves an EPGTC system purchased in Japan by a Japanese company. The Japanese purchaser contracted with a joint venture for the acquisition of an entire *** plant for shipment to the joint venture. The issue is whether the EPGTC system that entered as part of the entire imported plant ("the joint-venture's system") should be considered a subject import. The facts concerning the joint-venture's system follow.

In 1993 *** entered into a joint venture that selected *** as the general contractor for the construction of a *** plant in the United States. The general contractor developed specifications for the project and received specific bids for an EPGTC system from domestic producers and a Japanese producer. The general contractor recommended in July 1993 that a domestic producer supply the EPGTC system. However, the joint venture chose not to award a contract for the EPGTC system. Rather, in July 1994, the

[6] 62 Fed. Reg. 24,396 (May 5, 1997).

joint venture entered into a contract with a Japanese engineering company,[7] to act as a general contractor to acquire *an entire plant*, using *** specifications. *** remained as part of the "project team." The acquisition of the plant did not include a separate price for the EPGTC system. Neither the Japanese engineering company nor the joint venture entered into a separate contract for the EPGTC system at a single negotiated price. Rather, the Japanese engineering company acquired the entire plant.[8] Thus, acquisition of the plant was pursuant to *** specifications, but negotiations and contracting for the individual parts of the plant were the responsibility of the Japanese engineering company. The Japanese company contracted to deliver the plant, in its entirety, not in separate pieces or parts, to the joint venture. The plant was shipped as a plant, entered as a plant and classified by U.S. Customs as a plant.[9]

The contract for the entire plant was entered into in 1994. The plant, which included a Japanese EPGTC system, was imported in 1995, during the 12-month period prior to the petition filing. There were no other imports that could be considered subject imports during that 12-month period. Therefore, if the system that entered pursuant to the contract for the entire plant is properly considered a subject import, it is the only subject import during that period. However, if it is properly considered *not* to be a subject import, then there are no subject imports in the 12-month period, and consequently subject imports are negligible.

D. Analysis

Commerce's scope clearly limits subject imports to EPGTC systems imported "pursuant to a contract for a complete [sic] EPGTC system." The scope language does not include EPGTC systems imported pursuant to a contract for an entire *plant*. The petitioner, Commerce, or both could have included such systems in the scope but, for whatever reasons, chose not to do so. Here the joint venture contracted

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[7] The Japanese engineering firm is related to the Japanese partner in the joint venture.

[8] C.R. at E-3 and E-4; P.R. at E-3.

[9] Staff Memorandum INV-U-044 Attachment 2. There is no evidence that the joint venture contracted separately for the EPGTC system or that this EPGTC system was sold to the joint venture as a "single unit at a single negotiated price." Based on Customs documents, staff calculates that the EPGTC system accounts for *** of the contract price for the entire plant. Thus, even though the EPGTC system is essential to a plant, it represents significantly less than a quarter of the cost.

for, purchased and imported a plant. The EPGTC system in that plant was not purchased, acquired or imported pursuant to a contract for an EPGTC system. Thus it is not within Commerce's scope. Consequently, the joint-venture system is not a subject import. Assertions to the contrary and other information in the record do not change this result.

An assertion that the domestic industry lost a sale for the joint-venture's system puts the proverbial cart before the horse.[10] First the Commission must decide if the joint-venture's EPGTC system is a subject import. Lost sale allegations have no relevance to this issue.

Similarly, an assertion that it is common practice to import EPGTC systems as part of plants has no bearing on the question of whether the joint-venture's system is a subject import. There is no substantial evidence on the record to support this assertion. Rather, the record demonstrates that, for the single sale of subject imports that took place during the entire period of investigation, the single sale arose from a contract for an EPGTC system, not a contract for a plant.[11]

Assertions that it is necessary or appropriate to include systems imported as part of a plant to prevent circumvention of an order are not warranted under the statute. Specific statutory provisions address circumvention of antidumping and countervailing duty orders.[12] The statutory scheme provides a limited, advisory role for the Commission in circumvention inquiries. The Commission's role is not only limited substantively, but it follows--rather than precedes--the issuance of an order. Consequently, any Commission attempt to prevent circumvention of a potential order at this stage of the legal proceedings is not warranted.

The record includes informal comments by a Commerce employee who expressed his opinion that EPGTC systems imported as part of an entire plant would be within the scope. However, informal

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[10] It may be true that the domestic industry lost a sale to the joint-venture's system. However, the fact that the domestic industry lost sales for the joint-venture system has no relevance to whether that system is within Commerce's scope, *i.e.*, a subject import.

[11] See the discussion of the *** sale. C.R. at V-13 and V-16; P.R. at V-7.

[12] 19 U.S.C. § 1677j.

opinions by Commerce employees are not agency decisions and thus are not binding on Commerce, the Commission, or the parties. Therefore, the employee's opinion provides no legal basis to conclude that the joint-venture's system is a subject import. In addition, if Commerce were to decide that the joint-venture's system is in its scope, such a decision likely would be inconsistent with the Court of International Trade ruling in *Fuji Electric Co. v. United States*.[13]

Finally, a plant that includes an EPGTC system clearly is a separate class or kind of merchandise entitled to its own Commerce investigation. It seems highly questionable that duties could be imposed on only a relatively small part (*i.e.*, the EPGTC system) of a different class or kind of merchandise (*i.e.*, the plant) without a separate investigation.[14] Consequently, any prediction of what Commerce might do is speculation, not evidence.[15]

The only Japanese EPGTC system imported during the 12-month period was the one acquired by the joint venture pursuant to a contract for an entire plant. As its final determination makes clear, Commerce's scope only covers EPGTC systems imported pursuant to a contract for EPGTC systems. The joint-venture system is not within the definition of covered products, and so there were no subject imports

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[13] 689 F. Supp. 1217 (Ct. Int'l Trade 1988). In *Fuji*, the Court held that Commerce's expansion of the scope was not according to law. There, products that were not "integrated" had been excluded from the scope. Subsequently, Commerce sought to limit the exclusion of those products to only those that were "integrated," even though the scope contained no "integration" language. In effect, Commerce improperly added an integration requirement to its decision of whether or not products were in the scope. In the instant case, the scope makes no reference to EPGTC systems that are part of, or incorporated, *i.e.*, "integrated," into an entire plant. Therefore, in order to include in the scope systems that are part of an entire plant, Commerce would have to necessarily add an integration requirement, either explicitly or implicitly, to its definition of the scope. Doing so would appear to be inconsistent with the Court's holding in *Fuji*.

[14] Analogous is the case where Commerce's scope language includes imported engines. Engines that enter on imported cars are part of a different class or kind of merchandise (*i.e.*, imported cars) than the class or kind of merchandise subject to Commerce's scope (*i.e.*, imported engines). The fact that they are the same product is not determinative. The limitations and inclusions in the scope are determining factors. Because the class or kind of merchandise (*i.e.*, imported cars) is not under investigation, it would seem impermissible to impose duties on all or part of that class or kind, unless part of it (*i.e.*, the engines) is specifically included in the scope of the class or kind of merchandise (*i.e.*, imported engines) that *is* under investigation.

[15] To suggest that Respondent conceded that the joint venture's system was a subject import is not supported by the record. Note 7 in Respondent's Comments on Final Staff Report merely describes information as it was characterized in the staff report. Furthermore, it is the Commission, not the parties, that is charged with determining whether the system is a subject import.

during the 12 months preceding the filing of the petition. Therefore, subject imports are negligible, and an affirmative determination of material injury by reason of the subject imports is precluded as a matter of law. Consequently, I determine that the domestic industry is not materially injured by reason of LTFV imports of EPGTC systems from Japan.

II. NO THREAT OF MATERIAL INJURY BY REASON OF LTFV IMPORTS OF EPGTC SYSTEMS FROM JAPAN

The statute requires us to determine whether an industry in the United States is threatened with material injury by reason of the subject imports. For the reasons set forth below, I determine that the industry in the United States producing EPGTC systems is not threatened with material injury by reason of LTFV imports of EPGTC systems from Japan.

In the preliminary investigation, I determined that the record contained evidence that there was a reasonable indication[16] that the domestic industry was threatened with material injury by reason of the subject imports from Japan. In support of that preliminary determination, I examined outstanding bids where subject imports were competing with domestic producers to supply contracts for EPGTC systems. By focusing on the future sale, *i.e.*, the award of the contract, as the point of competition, I concluded that there was a reasonable indication that future demand would shift to subject imports to such a degree as to have a material impact on the domestic industry.

In this final investigation, the statute's different legal standard when applied to the record does not support an affirmative determination. In a final investigation the Commission must determine "whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order issued . . . ."[17] The Commission may not make an affirmative determination "on the basis of mere conjecture or supposition."[18]

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[16] 19 U.S.C. § 1673b(a)(1). *Engineered Process Gas Turbo-Compressor Systems From Japan*, Inv. No. 731-TA-748 (Preliminary) USITC Pub. 2976 (July 1996) at note 96.

[17] 19 U.S.C. § 1677(7)(F)(ii).

[18] *Id.*

The statute lists nine factors the Commission is to consider in determining whether a domestic industry is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise.[19] I consider these factors by focusing on the point in time when competition between subject imports and the domestic product occurs, that is, when a contract is awarded to the winning bid.[20] I have considered the relevant factors in this investigation and determine that the domestic industry producing EPGTC systems is not threatened with material injury by reason of the subject imports from Japan.

Consideration of the statutory factors indicates that the Japanese have little, if any, unused capacity available to increase imports to the United States.[21] A single sale in 1996 does not represent substantial evidence to indicate the likelihood of substantially increased imports or that subject imports are likely to have a significant depressing or suppressing effect on domestic prices. Because of the highly specialized characteristics of EPGTC systems, neither domestic producers nor Japanese producers maintain inventories.[22] There is no evidence of the potential for product-shifting by the Japanese producers, or that the domestic industry has been prevented, or will be prevented, from developing advanced versions of the like product.[23] On the contrary, Petitioner's marketing of its new DATUM compressors during the period of investigation is an example of innovations to the like product.

Nor does the record in this final investigation contain substantial evidence that further dumped imports are imminent. My analysis focuses on the contract award as the point at which competition occurs. I have therefore examined evidence regarding projects where contracts have not yet been awarded. For each identified outstanding bid I have considered the degree of substitutability between the domestic

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[19] 19 U.S.C. § 1677(7)(F)(i).

[20] *See Engineered Processed Gas Turbo-Compressor Systems From Japan*, Inv. No. 731-TA-748 (Preliminary) USITC Pub. 2976 (July 1996) at notes 65, 85, and 96. *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan*, Inv. Nos. 731-TA-736 and 737 (Final) USITC Pub. 2988 (August 1996) at note 114.

[21] Japanese reported capacity utilization is in excess of *** in ***. C.R. Table VII-1 at VII-4; P.R. at VII-3.

[22] C.R. at VII-6; P.R. at VII-4.

[23] C.R. at VI-15 and 16; P.R. at VI-7 and 8 .

product and subject imports. As discussed in *Large Newspaper Printing Presses*,[24] I find that in negotiations for large highly specialized equipment like EPGTC systems, the degree of substitutability between or among bidders increases as the bid process continues, as purchasers become satisfied that competing bidders meet the necessary technical and other requirements.

Five outstanding bids are described at Table V-6. I have examined each.

The *** project has been canceled. The *** project has proceeded only to the budget estimate stage, an early stage in such negotiations, and is on indefinite hold.[25] In the *** project, a Japanese and a domestic producer had each submitted bids to ***, which was seeking to become general contractor. The plant owner did not select *** as the general contractor. The record does not provide information about the general contractor selection or the status or identity of bids for the EPGTC system on this project. The *** project is still at a preliminary stage. The owner has not yet even selected a general contractor.[26] In the *** project, bids are still undergoing review for technical compliance and thus are far from final competition. The only domestic producer's bid was for a component in a Japanese producer's full bid package.[27]

No pending projects are even approaching the final award of a contract for the sale of an EPGTC system. Thus, purchasers have not completed their evaluations to determine if competing bids satisfy their technical requirements, and producers are commonly disqualified during the bidding process for technical reasons. There is no evidence to suggest that any of the outstanding projects is likely to be awarded to a subject import. Even if there were, the final bidding process must precede the award of a contract, which must precede a sale, which must precede production and import of a subject import. Therefore, there is no evidence to support a conclusion that further imports are imminent. To the contrary, the record indicates

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[24] *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany and Japan*, Inv. Nos. 731-TA-736 and 737 (Final) USITC Pub. 2988 (August 1996) at 46-47.

[25] C.R. at V-19; P.R. at V-8.

[26] C.R. at V-19; P.R. at V-8 and 9.

[27] C.R. at V-20; P.R. at V-8 and 9.

that no contract for sale of even a single EPGTC system is even nearing the final bidding stage. Additional sales of subject imports are not imminent, and it would be mere conjecture to conclude that future contracts are likely to be awarded to producers of subject imports.

Thus, I determine that the domestic industry is not threatened with material injury by reason of LTFV imports (or sales for importation) of EPGTC systems from Japan.

III. CONCLUSION

For the reasons stated above, I determine that the industry in the United States producing EPGTC systems is not materially injured or threatened with material injury by reason of LTFV imports of EPGTC systems from Japan.

PART I: INTRODUCTION

BACKGROUND

This investigation results from a petition filed on May 8, 1996, by Dresser-Rand Company, Corning, NY,[1] alleging that an industry in the United States is materially injured and threatened with material injury by reason of less-than-fair-value (LTFV) imports of engineered process gas turbo-compressor (EPGTC) systems[2] from Japan. Information relating to the background of the investigation is provided below.[3]

Effective Date	*Action*
May 8, 1996	Petition filed with Commerce and the Commission; institution of Commission investigation (61 FR 24952, May 17, 1996)
May 28	Commerce's notice of initiation (61 FR 28164, June 4, 1996)
July 1	Commission's preliminary determination (61 FR 36080, July 9, 1996)
December 10	Commerce's preliminary determination and postponement of final determination (61 FR 65013)
December 9	Scheduling of final phase of the Commission's investigation (61 FR 68053, December 26, 1996)
May 5, 1997	Commerce's final determination (62 FR 24394)
April 24	Commission's public hearing[4]
May 30	Commission's vote
June 9	Commission determination transmitted to Commerce

[1] The United Steelworkers of America (USWA), Pittsburgh, PA, which represents the production workers at the petitioner's and two other U.S. producers' facilities, filed a letter with the Commission and the U.S. Department of Commerce on May 24, 1996, indicating that it supports the petition and joins Dresser-Rand as a co-petitioner. In addition, on May 11, 1997, the USWA filed "Comments in Support of Petition."

[2] The systems covered by this investigation are only those used in the petrochemical and fertilizer industries, in the production of ethylene, propylene, ammonia, urea, methanol, and refinery and other petrochemical products. The subject imports are provided for in subheadings 8406.81.10, 8406.82.10, 8406.90.20 through 8406.90.45, 8414.80.20, 8414.90.40, 8419.60.50, 8483.40.50, 8501.53.40, 8501.53.60, 8501.53.80, and 9032.89.60 of the Harmonized Tariff Schedule of the United States (HTS). A complete description of the imported products subject to this investigation is presented in the section of this report entitled *The Product*.

[3] *Federal Register* notices cited in the tabulation since Commerce's initiation are presented in app. A.

[4] A list of witnesses that appeared at the hearing is presented in app. B.

SALES AT LTFV

Commerce determined that the subject products from Japan are being, or are likely to be, sold in the United States at LTFV. The following tabulation provides the preliminary and final weighted-average dumping margins (in percent ad valorem) determined by Commerce for companies subject to this investigation:

Company	Dumping margins-- Preliminary	Final (Revised)
Mitsubishi Heavy Industries (MHI)	34.37	38.32 [1] [2]
All others [3]	34.37	38.32 [1]

[1] Commerce amended its final dumping margins on May 26, 1997, pursuant to ministerial error allegations.

[2] The period of investigation was April 1, 1995, through May 31, 1996. Commerce compared constructed export price (CEP) to normal value (NV) based on constructed value (CV). Although, the home market was viable, Commerce used CV for NV because it determined that the merchandise sold in the home market was not sufficiently similar to that sold in the United States to permit proper price-to-price product comparisons.

[3] The petition identified five producers of the subject products in Japan. In addition, the U.S. Embassy in Tokyo identified several Japanese producers other than MHI, only one of which, Ebara Corp., may have exported to the United States (see the *Foreign Producers' Operations* section in part VII of this report for further discussion). On July 22, 1996, Ebara Corp. sent a letter to Commerce stating that it made no sales or shipments of the subject merchandise to the United States during Commerce's period of investigation (see 61 FR 65014).

SUMMARY DATA

Summary data are presented in appendix C. Except as noted, U.S. industry data are based on questionnaire responses of four firms that accounted for all known U.S. production of EPGTC systems during the period for which data were collected (January 1993-March 1997). U.S. import data are based on questionnaire responses of seven firms whose U.S. imports, or purchases of imports, are believed to account for virtually all of the subject imports, and all known imports of EPGTC systems from other countries, during the same period.

THE PRODUCT

This section of the report presents information on both imported and domestically produced EPGTC systems, as well as information related to the Commission's "domestic like product" determination.

Product Description

EPGTC systems are integral components in the production, both directly and indirectly,[5] of ethylene, propylene, ammonia, urea, and methanol--widely traded chemical products that are heavily consumed for a variety of purposes worldwide. In the production stream for these products, compression is needed at some points to remove unwanted substances and at other points to temporarily refrigerate certain substances that loop in and out of the process. EPGTC systems provide the necessary pressure. These systems, or "trains" as they are known in the industry, are large in scale and consist of at least one compressor (sometimes two or more are in the same train), a driver (a steam turbine or motor to run the compressor(s)), and auxiliary components (chiefly a lubrication system and electronic control system), which are custom engineered to the specific parameters and needs of the plant producing the chemical product.[6] (See figure 1 for a graphic presentation of an EPGTC system.) The plants incorporating EPGTC systems are capital intensive and individually unique in many respects, often incorporating proprietary and patented phases in their respective processes. As an integral component, the EPGTC system must be tailored to maximize the plant's overall efficiency. Each train is specific to the plant for which it was built, and each of the major components, with the exception of the motor if a relatively small motor drive is used, is specific to the train. Steam turbines are most often used to drive these systems because the plants they are built for already generate steam in the course of producing the chemicals, thus providing a built-in power source.

Figure I-1
Process gas compressor system (three case train)

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Only one other type of large-scale compressor system is individually engineered to users' needs. It also has petrochemical applications, but is made for even more upstream types of products (mainly crude oil and natural gas), serves to transport and store these products rather than produce them, and, because of the availability of gas fuels at these sites, utilizes gas-driven turbines instead of steam turbines or motors. Like EPGTC systems, they are made to order under contract and require significant time and investment to design, build, and deliver. Their different product applications and function, however, require different design considerations. Unlike EPGTC systems, these transport systems are not integral components in a production process: they serve only to transport or store products--in most cases oil and natural gas--by pushing them through pipelines or pressuring them into liquids for storage. Their design, therefore, need not take into account their integration into a larger "operational" system--they are the only operational systems at the point of installation. Virtually all other common compressor systems, both large and small,

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[5] Directly, by being components of plants producing ethylene, propylene, ammonia, urea, and methanol; indirectly, by being components of oil refineries producing as by-products feedstocks for these chemicals.

[6] Many individual components within the EPGTC system are subject to licensing and certification standards established by the American Petroleum Institute (API). **API Standard 617** applies to **Centrifugal Compressors for Petroleum, Chemical and Gas Service Industries** and covers the minimum requirements for centrifugal compressors used in petroleum, chemical, and gas industry services that handle air or gas. Other API standards apply to other system components within the system train.

are made to standard specifications and, while sometimes built to order, need not be individually designed around the specific parameters of the user.

Scope of Products Subject to Investigation

As defined by Commerce, the imported products subject to this investigation are described below.

EPGTC System

An EPGTC system is one or more "assemblies" or "trains" which are comprised of various configurations of process gas compressors, drivers (i.e., steam turbines or motor-gear systems designed to drive the compressors), and auxiliary control systems and lubrication systems for use with such compressors and compressor drivers, whether assembled or unassembled, and whether complete or incomplete. The systems covered by this investigation are only those used in the petrochemical and fertilizer industries in the production of ethylene, propylene, ammonia, urea, methanol, and refinery and other petrochemical products.

Components of an EPGTC System

The major components of an EPGTC system are compressors, drivers, control systems, and lubrication systems, and are defined below.

Compressors.--Compressors are machines used to increase the pressure of a gas or vapor, or mixture of gases and vapors. Compressors are commonly classified as reciprocating, rotary, jet, centrifugal, or axial (classified by the mechanical means of compressing the fluid), or as positive-displacement or dynamic-type (classified by the manner in which the mechanical elements act on the fluid to be compressed). The investigation covers only centrifugal compressors engineered for process gas compression. They are usually installed on a base plate, with the driver installed on a separate base plate.

Drivers.--The drivers covered in this investigation include steam turbines or motor-gear systems designed to drive the above compressors. Turbines are classified (1) as steam or gas; (2) by mechanical arrangement as single-casing, multiple shaft, or tandem-compound (more than one casing with a single shaft); (3) by flow direction (axial or radial); (4) by steam cycle (whether condensing, non-condensing, automatic extraction, or reheat); and (5) by the number of exhaust flows of a condensing unit. Steam and gas turbines are used in various applications. Only steam turbines dedicated for a turbo-compressor system are subject to this investigation. A motor and gear box may be used as a compressor driver in lieu of a steam turbine. The turbine (or motor drive) base plate will typically include any governing or safety systems, couplings, and a gearbox, if any.

Control system.--The subject control systems are used to monitor and control the operation of an EPGTC system.

Lubrication system.--The subject lubrication systems are engineered to support a subject compressor and steam turbine (or motor/gear box). The lube and oil seal systems for the turbine and compressor(s) are usually mounted on a separate skid.

Complete EPGTC System

A complete EPGTC system consists of all of the components defined above when manufactured/ imported in assembled or unassembled form, individually or in combination, pursuant to a contract for a complete EPGTC system.

Incomplete EPGTC System

An incomplete EPGTC system consists of parts of an EPGTC system manufactured/imported pursuant to a contract for a complete EPGTC system which, taken altogether, constitute at least 50 percent of the cost of manufacture[7] of the complete EPGTC system of which they are a part.

Exclusions

The imports subject to investigation do not encompass turbo-compressor systems incorporating gas turbine drivers, which are typically used in pipeline transmission, injection, gas processing, and liquid natural gas service. The scope of imports subject to investigation also excludes spare parts that are sold separately from a contract for an EPGTC system. Parts or components imported for the revamp or repair of an existing EPGTC system, or otherwise not included in the original contract of sale for the EPGTC system of which they are intended to be a part, are expressly excluded from the scope.[8]

DOMESTIC LIKE PRODUCT

During the preliminary phase of this investigation the Commission considered a number of like product[9] issues, including: (1) whether specially engineered transport gas systems should be included in the domestic like product and (2) whether incomplete and/or unassembled EPGTC systems constitute a separate domestic like product. The Commission found that "(g)iven the differences in general physical characteristics, end uses, and the complete lack of interchangeability, we do not include transport gas systems in the domestic like product," and "based on the fact that unassembled or incomplete systems are dedicated for use in the finished EPGTC system, and that there are no independent markets or uses for the unfinished or incomplete systems, we find that incomplete or unassembled systems are part of the same like product as the finished EPGTC system." Therefore, for purposes of the preliminary investigation, the

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[7] For purposes of this investigation, cost of manufacture includes raw material costs, direct labor, and factory overhead for each component of the EPGTC system, as well as assembly labor and design and testing costs for the overall system. Cost of manufacture does not include SG&A expenses.

[8] Although manufactured/imported parts or components that are sold separately from an original contract for an EPGTC system (for the revamp, replacement, or repair of an existing EPGTC system) are not subject to the possible imposition of antidumping duties, data for these products were requested in the Commission's questionnaires for purposes of like product analysis.

[9] The Commission's decision regarding the appropriate domestic products that are "like" the subject imported products is based on a number of factors including (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions; (5) common manufacturing facilities and production employees; and where appropriate, (6) price.

Commission determined that there is one like product consisting of EPGTC systems, whether complete or incomplete.[10] [11]

However, the Commission also noted that it was interested in comments from the parties in the final investigation concerning whether replacement parts or revamps should be included in the domestic like product.[12] Counsel for petitioner argues that revamps and repair parts which are not part of an original contract for an EPGTC system are a different like product. Counsel argues that repair and revamp components are: (a) by definition, far less than a complete EPGTC system; (b) generally sold to end users directly, rather than through engineering contractors; (c) much lower in cost; and (d) not in competition with new equipment.[13] Counsel for MHI testified that he "blow(s) hot and cold" on whether to expand the like product to encompass some or all aftermarket operations,[14] but in written responses to questions concerning the Commission's like-product considerations, counsel stated that "revamps, replacement parts, and repairs (aftermarket products) are within the domestic like product."[15] Counsel argues that: (a) there are no physical differences between the products made for the original machine and those used for revamps and repairs; (b) original and aftermarket equipment generally are made in the same manufacturing facilities with the same equipment by the same employees; (c) producers think of the original equipment and the aftermarket as one unit; and (d) there is significant overlap in the price ranges between aftermarket products and original systems.[16] [17]

In addition to party comments, the Commission's questionnaires in this final investigation sought information from producers, importers, and purchasers/end users regarding the comparison of EPGTC systems and EPGTC aftermarket products. A discussion of questionnaire comments is incorporated in the sections presented below.[18]

Physical Characteristics and Uses

EPGTC systems are engineered to operate in a specific application and, as such, are unique to the original manufacturer of that system. Typically, EPGTC revamps will involve only components of the system and will use the original compressor casing. Revamps may be processed on site, with new

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[10] See, Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 (July 1996), pp. 6 and 7.

[11] No party in the final investigation raised these two like product issues in their comments on the draft questionnaires for the final investigation (see, Jan. 17, 1997, and Jan. 24, 1997, party comments on questionnaires).

[12] See, Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 (July 1996), p. 7, n. 32.

[13] Apr. 17, 1997, prehearing brief of Stewart and Stewart, p. 11.

[14] Transcript of the hearing (TR), p. 124.

[15] May 1, 1997, posthearing brief of Steptoe & Johnson, exh. 6, p. 24.

[16] May 1, 1997, posthearing brief of Steptoe & Johnson, exh. 6, pp. 24-27.

[17] Counsel argues further that "even if aftermarket products are not within the like product, the Commission has authority to consider production and sales of these products as a 'relevant economic factor' in its threat analysis." Id, p. 24.

[18] See app. D for a compilation of questionnaire comments.

components brought to the plant and installed,[19] or compressor casings may be sent to original equipment manufacturers (OEMs)/service shops for reworking during plant turnarounds.[20] A revamp functions to improve the efficiency and performance of the original EPGTC system. Aftermarket parts are reported to be dimensionally similar to new apparatus parts.

Interchangeability and Customer and Producer Perceptions

With respect to the extent to which components of alternative suppliers of EPGTC systems are interchangeable, questionnaire respondents report "little to non-existent" interchangeability. Regarding the interchangeability and competitiveness of EPGTC systems and EPGTC aftermarket products, purchasers reported limited competition, e.g., consideration of used, rebuilt, or salvaged compressor systems. In addition, purchasers have reported competition between original equipment manufacturers and alternative parts manufacturers (parts replicators) for replacement parts and repairs to EPGTC systems.

Channels of Distribution

EPGTC systems are sold generally to engineering construction contractors who contract for the design and building of the required EPGTC system for plant operators (end users). With respect to revamps or replacement parts, plant operators typically will purchase from either OEMs or parts replicators.

Common Manufacturing Facilities and Production Employees

Typically, EPGTC systems manufacturers require from 1 to 2 years to engineer, build, and deliver the system. In building the EPGTC system, the manufacturer may subcontract to unrelated firms certain processing operations (e.g., machining, steam turbines, etc.). Before delivery, the manufacturer will assemble the complete system for testing (see figure 2 for a photograph of an EPGTC system assembled for testing), then disassemble it for shipment, and finally reassemble it at the end user's site.

OEMs responding to the Commission's questionnaires have reported that they manufacture EPGTC systems, revamps, and replacement parts in the same production facilities with the same production workers. Regarding replacement parts, firms have reported the existence of additional manufacturers, or parts replicators.[21]

Price

Sales of EPGTC systems, as reported in part V of this report, ranged from approximately $***. The average unit value of EPGTC revamps/replacements ranged from $***. Price ranges reflect differences in the application of the systems, size, and specifications.

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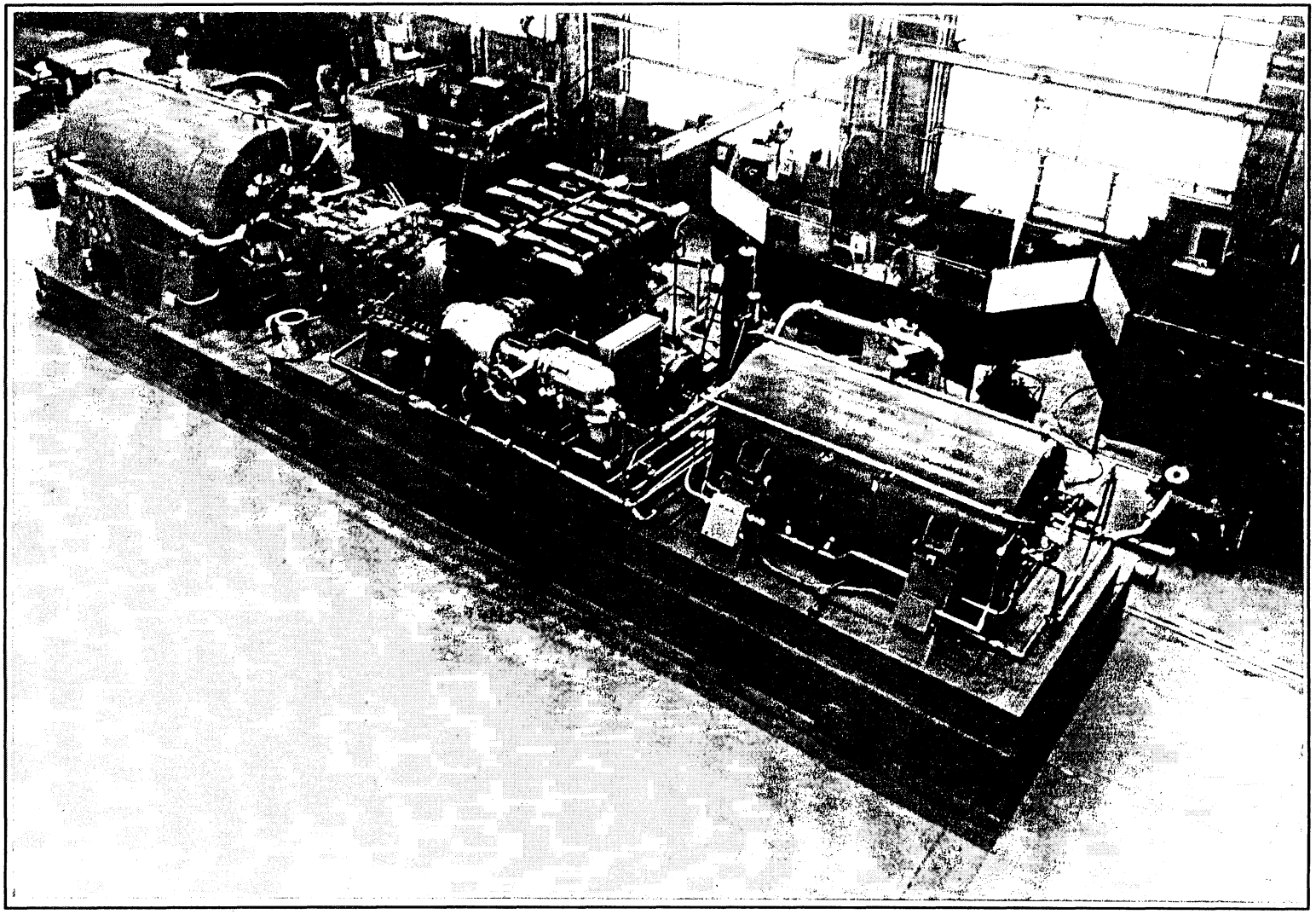
[19] Comments of ***, app. D, p. D-3.

[20] See questionnaire response (QR) of ***, section III.C.5, p. 15.

[21] Service shops identified by questionnaire respondents included Turbo Care (service shop for Demag Delaval) and Hickam (service shop for Sulzer). (See app. D, p. D-8). In addition to these service shops, petitioner has identified Conmec, Inc., Elliott Co., and Revak Turbomachinery Services as competitors for revamp business (May 1, 1997, posthearing brief of Stewart and Stewart, exh. 18).

Figure 2
Process gas compressor system assembled for testing



Source: Dresser-Rand Company, Turbo Products Division.

U.S. TARIFF TREATMENT

The imported EPGTC systems, whether complete or incomplete, that are subject to this investigation are classified in the following subheadings of the HTS, and have the below-listed 1997 column 1-general rates of duty (in percent ad valorem) for products of Japan:

Subheading	Duty
8414.80.20	1.4
8419.60.50	1.7
8414.90.40	1.4
8406.81.10	7.2
8406.82.10	7.2
8406.90.20-45 ...	7.2

EPGTC control systems and other auxiliary systems (including equipment and/or software), motors and gear boxes, gear speed changers, and lubrication systems may enter under these HTS subheadings and 1997 rates (in percent ad valorem):

9032.89.60	3.0
8501.53.40	Free
8501.53.60	4.2
8501.53.80	3.4
8483.40.50	2.5
8414.90.40	1.4

PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET[1]

MARKETING CONSIDERATIONS

The industry that produces EPGTC systems is global in scope and comprised of a small number of large firms. According to the petitioner, all suppliers target the United States in their marketing efforts due to its relative size, stability, and financing attractiveness.[2] Leaders in the industry include Dresser-Rand, Demag Delaval, Pignone, Elliott, Sulzer, and MHI. One responding end user listed MHI as a leader for technical reasons and one listed MHI, along with Demag Delaval, Elliott, and Pignone, as price leaders. In addition, one contractor listed MHI, along with Dresser-Rand, Elliott, and Pignone, as leaders in overall costs. In other cases, the above companies were said to be leaders in product line, technology, and/or experience.

EPGTC systems in the United States are primarily sold by U.S. producers and importers to engineering construction firms that incorporate the systems in new process gas plants or expansion projects, although the end user may procure the system directly. If the bidding is conducted by the engineering construction firm, it will solicit bids for the EPGTC system from qualified suppliers, either while preparing its bid or after being awarded a construction contract for a gas process plant. Alternatively, the EPGTC system may be purchased on a sole-source basis. Requests for quotation are issued to between one and six suppliers chosen on the basis of the experience and the reputation of the supplier for the particular application. Some end users maintain lists of approved suppliers developed by technical personnel at the firm.[3]

It is common practice for the manufacturer of the EPGTC system to take exception to certain specifications contained in the request for proposal. These exceptions are part of the negotiation process and the plant owner may either accept them or insist that the specific technical requirements be met in order for the proposal to be accepted. The preparation of bids is an involved process and costs to prepare an individual bid can range from a few thousand dollars to $100,000.[4] Therefore, system providers carefully assess their potential for securing a contract before investing in bid preparation. All four domestic producers and three of four importers reported that they will sometimes decline to bid on a

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[1] The COMPAS model has not been used to analyze the effect of imports on domestic firms' revenues for EPGTC systems. This is because the ability of both buyers and sellers to influence the price through their behavior contradicts the competitive assumptions of the COMPAS model. In addition, the COMPAS model would be less applicable because of the lack of comparable price data; the small number of sales; and the separation between the timing of the transactions and the payments.

[2] Apr. 17, 1997, prehearing brief of Stewart and Stewart, p. 59.

[3] According to counsel for MHI, suppliers of EPGTC systems have relationships with some purchasers referred to as "vendor alliances," "supplier alliances," etc. End users in these relationships allegedly have one or more preferred suppliers from which they ordinarily solicit bids. According to counsel, Dow Chemical, Shell, and Mobil have such "alliances," although documentation was provided only for Dow Chemical. In addition, counsel alleges engineering contractors, including Brown & Root and Fluor Daniel, have similar arrangements. The petitioner asserts that even where alliances exist, suppliers must still meet the competitive price level set for similar EPGTC systems. In Dresser-Rand's alliance with ***, the price level is set to meet the margin on the past three competitive bids. Although 2 of 5 responding contractors and 9 of 15 end users reported giving preference to suppliers in the bidding process based on past favorable experience, no responding contractors or end users reported excluding a supplier from the bidding process due to any type of "alliance."

[4] Preliminary conference transcript, p. 64.

particular job. Factors reported to influence this decision include lack of a technical fit, competitors having a material advantage due to previously installed machinery in the plant, and resource limitations. After the initial bids are evaluated, purchasers of EPGTC systems may exclude a supplier from the bid process due to lack of experience, poor equipment fit, technical limitations, delivery schedule, or non-competitive pricing. Multiple rounds of bidding are usually motivated by clarifications or changes in the technical specifications, although negotiated price reductions can also occur.

Contracts for the construction of plants that incorporate EPGTC systems can be made on a fixed-price or cost-plus basis. The respondent estimates that *** of contracts for the construction of these plants are fixed-price contracts, with the balance made on a cost-plus basis.[5] The petitioner estimates that approximately one-half of all contracts are fixed-price between the end user and the plant engineering firm.[6] Most of the responding end users indicated that the construction contracts are fixed-price, although three indicated using a combination of contract types. The contractors indicated that both contract types are used, although one indicated that the trend is toward fixed price. If the ultimate purchaser of the system, the plant owner, awards a fixed-price contract for the construction of the plant, he is generally not involved in price negotiations on individual components such as the EPGTC system. ***, an engineering construction firm that purchases EPGTC systems, reports that there is generally a clause in contracts which allows the contractor to raise the price of a lump-sum contract if the plant owner does not choose the lowest-priced, qualified supplier. ***, another engineering construction firm, indicates that although the contract usually does not have a specific clause included, negotiations operate such that if the contractor selects the lowest cost supplier from the group of qualified suppliers and the plant owner chooses a different supplier, the plant owner may be forced to increase its payment in order to change.[7] The lead time between the award of a contract and delivery of the equipment will typically be between 1 year and 18 months, and progress payments are usually required.[8]

The EPGTC system typically comprises less than 15 percent of the cost of the plant,[9] but it is crucial in the operation of the plant. Therefore, the plant owner often retains control over the selection of the EPGTC system manufacturer. The plant owner will either review the technical proposals of suppliers and allow the engineering construction firm to make the final decision from a list of vendors that are determined to be qualified, will reserve the right to select the supplier of the EPGTC system, or will be given the opportunity to approve the contractor's recommendation.

SUPPLY AND DEMAND CONSIDERATIONS

U.S. Supply

Domestic Production

Based on the available information, staff believes that U.S. producers of EPGTC systems are likely to respond to changes in demand in the U.S. market with changes in shipments of U.S.-produced EPGTC systems to the U.S. market, and smaller changes in prices. Factors contributing to the responsiveness of supply include pricing policies based on cost-plus methods, the availability of production alternatives, and

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[5] June 5, 1996, postconference brief of Steptoe & Johnson, app. B, pp. 19-20.
[6] June 5, 1996, postconference brief of Stewart and Stewart, p. 45.
[7] Conversations with *** and *** on June 6 and June 7, 1996, respectively.
[8] Preliminary conference transcript, p. 31.
[9] Ibid, p. 86, and responses to Commission questionnaires.

the availability of export markets. One factor limiting the responsiveness of supply is that EPGTC manufacturers need to maintain a variety of capital-intensive production facilities which are associated with high fixed costs in order to produce the product. Hence, a certain production volume is required in order to exceed these fixed costs and secure a profitable operation.[10]

Capacity in the U.S. industry, inventory levels, and production alternatives

For a discussion of capacity in the U.S. industry, see the section in part III entitled *U.S. Production, Capacity, and Capacity Utilization*. Since EPGTC systems are custom designed for each project, no inventories are maintained.

All of the responding domestic producers reported producing a variety of other products using the same equipment, machinery, and workers that are used to produce EPGTC systems. Other products include steam turbines, pipeline compressors, axial compressors, electric motors and generators, air compressors, and hot gas expanders.

Export markets

The market for EPGTC systems is global in scope. All responding U.S. producers export a significant percentage of their production. ***'s domestic shipments were less than half of its total sales during the period 1993 through 1996. Sales in North America represent only about one-fourth of EPGTC sales worldwide. The largest market is the Asia-Pacific market, with one-third of all sales in 1995. Other large emerging markets include China, Russia and the former Soviet Republics, and India.[11] World ethylene capacity is expected to increase by more than 30 percent by the year 2000, with the Asia/Pacific region receiving most of the new capacity.[12] World urea capacity is expected to grow by more than 15 percent in the 1993 to 1998 period, with most of the new capacity to be built in the developing countries of Asia.[13] Global capacity for the production of ammonia is expected to increase by 1.2 percent per year through 1998, with capacity increases occurring in Asia and the Middle-East.[14] Petitioner argues that opportunities to expand into export markets are limited by global competition from Japanese suppliers, which has already caused it to lose sales and reduce prices.[15]

Subject Imports: Export Markets and Capacity Utilization

According to MHI, its sales are global and only a small portion are for projects in the United States. On the basis of contract value for 1993 through 1996, the Asian-Pacific region accounted for ***.[16] In addition, MHI claims to operate at a high rate of capacity utilization. For a discussion of the export shipments and capacity utilization of Japanese producers, see section entitled *Foreign Producers' Operations* in part VII.

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[10] Preliminary conference transcript, p. 33.
[11] Ibid., pp. 22-23.
[12] "World Ethylene Capacity Increased Marginally in 1995," *Oil & Gas Journal*, May 13, 1996, p. 50.
[13] Chemical Economics Handbook - SRI International, May 1995, p. 758.8000 F.
[14] Ibid., September 1995, p. 756.6000 N.
[15] Preliminary conference transcript, p. 28, and TR, p. 73.
[16] Apr. 17, 1997, prehearing brief of Steptoe & Johnson, p. 54.

U.S. Demand

Based on available information, staff believes that demand for EPGTC systems will not change significantly with changes in their price. The main factors limiting the price sensitivity of overall demand for EPGTC systems are the lack of substitute products, the necessity of EPGTC systems in the production of process gasses, and the small cost share accounted for by EPGTC systems in the construction of a process gas plant.

According to Walter Nye of Dresser-Rand, demand for EPGTC systems increased in 1994 and 1995, although it is now headed back down.[17] In the U.S. market, U.S. ethylene manufacturing capacity increased and environmental pressures to reduce pollution led to increased capital expenditures by process gas manufacturers, although *** indicates that the ethylene capacity boom is over in the United States.[18] Demand for the systems was stimulated by increased worldwide demand for fertilizers (ammonia and urea) and plastics (which use ethylene and polyethylene as inputs) that require EPGTC systems in the production process. Ten of 23 responding end users indicated that demand for their various end products has increased over the past 3 years, while 7 indicated that this change has led to investment in capacity, either through purchases of new systems or revamps of existing systems. Thirteen end users expect demand for their end products to increase over the next 5 years, while one expects demand in the United States to decrease. Twelve end users indicated that they may expand capacity and purchase EPGTC systems over the next 5 years, while 3 indicated that they may revamp existing machinery.

The downstream products of plants using EPGTC systems are numerous petrochemicals including ethylene, propylene, ammonia, urea, and methane. Petrochemical demand in the United States and other developed countries should increase at or above average economic growth forecasts well into the next century, and annual growth rates in developing East Asian countries could be 8 to 10 percent annually.[19] Global consumption of ethylene and propylene are forecast to grow at an annual rate of 4.9 and 5.4 percent, respectively, through the year 2000.[20] Global annual growth in ethylene capacity is forecast to be 5.1 percent for the period 1995 through 2005[21] and U.S. producers have announced plans to add 5.9 million metric tons per year to existing capacity by the year 2000.[22] Global propylene capacity is forecast to grow by at least 20 million tons over the period 1995 to 2000, with the majority of the new capacity derived from steam cracking, in which propylene is co-produced with ethylene.[23] Worldwide planned expansions in capacity for polyethylene and polypropylene between 1996 and 1999 represent 24 and 37 percent, respectively, of 1995 capacity. One-third or more of these planned expansions are for Asia.[24]

Demand for ammonia and urea as fertilizers is growing as crop acreage increases and the need for fertilizer increases for soil where nutrients are washed away by rain and flooding. In addition, demand for ammonia in industrial applications is strong. Future growth in both ammonia and urea is expected to be 4

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[17] TR, p. 24. Also, respondent states that the ***. May 1, 1997, posthearing brief of Steptoe & Johnson, p. 11.
[18] Staff verification report of ***, p. 8.
[19] "U.S. Petrochemical Demand Could Outpace GDP Growth," *Chemical Marketing Reporter*, Feb. 3, 1997, p. 7.
[20] "World Ethylene Capacity Increased Marginally in 1995," *Oil and Gas Journal*, May 13, 1996, pp. 50, 54.
[21] "U.S. Petrochemical Demand Could Outpace GDP Growth," *Chemical Marketing Reporter*, Feb. 3, 1997, p.7.
[22] "World Ethylene Capacity Increased Marginally in 1995," *Oil & Gas Journal*, May 13, 1996, pp. 49-50.
[23] "Ethylene, Propylene to Grow at Same Rate through 2000," *Chemical Marketing Reporter*, Feb. 6, 1995, p. 12.
[24] "Asia-Pacific: Slowing Economies Mean Less Growth for Chemicals," *Chemical and Engineering News*, Dec. 16, 1996, p. 56.

percent annually through 1998, while growth from 1984 through 1993 was only 2 percent.[25] [26] However, capacity for the production of urea is not expected to expand in the United States, and U.S. capacity for the production of ammonia is expected to decline through 1998.[27] [28]

Substitute Products

There are no substitute products for EPGTC systems. Each EPGTC system is individually designed to meet the technical requirements of a particular manufacturer of process gasses and the system is required for the production of such gasses.

Cost Share

EPGTC systems are used in plants to produce process gasses such as ethylene and ammonia. The cost of the system relative to the total cost of the plant is estimated to be less than 15 percent.[29]

Factors Affecting Purchasing Decisions

The engineering construction contractor and/or plant owner evaluate several factors in addition to price when considering a proposal for an EPGTC system. Compliance with the technical specifications of the project is the most important consideration since the EPGTC system will be integral in the production process for which the plant is being built. Although suppliers often have exceptions to the technical specifications, failure to meet certain key technical requirements can result in elimination from competition regardless of the bid price.[30] For the plant owner, the price of an individual component such as the EPGTC system may not be of primary concern, since the plant owner often accepts a proposal for an entire plant on a fixed-price basis. Only 1 of 16 responding end users indicated that the lowest price offered among technically-acceptable EPGTC systems will always win the contract or sale. However, five of seven responding contractors indicated that the lowest-cost technically-feasible EPGTC system will win the sale unless the end user makes another choice, although one contractor pointed out that price is not the only consideration when assessing total cost. Two contractors indicated that the low-price supplier may not win a contract due to factors such as scheduling, efficiency, relative experience, the standardization of spares, and turndown flexibility.[31] Reasons given for selecting a given EPGTC system even though another technically acceptable system was available at a lower price include reliability, prior experience with supplier, spare parts, after sales service, and delivery time. Seven of 16 responding end users indicated that they give preference to suppliers due to past favorable experience. If a plant owner currently uses EPGTC systems from a given supplier, it is more cost effective to use the same machinery in an expansion

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[25] "Chemical Profile: Urea," *Chemical Marketing Reporter*, Sept. 12, 1994, pp. 41, 12.

[26] "Chemical Profile: Ammonia," *Chemical Marketing Reporter*, Sept. 19, 1994, pp. 37, 14.

[27] Chemical Economics Handbook -SRI International, May 1995, p. 758.8000 L.

[28] Ibid., September 1995, p. 756.6000 N.

[29] Preliminary conference transcript, p. 86, and responses to Commission questionnaires.

[30] According to the petitioner, price competition includes only bidders with acceptable technical proposals. Preliminary conference transcript, pp. 20 and 21.

[31] The majority of end users and contractors rated price as "very important" in their purchase decisions, but the majority of end users rated most factors as "very important," including delivery time, product quality, product reliability, efficiency, and technology/design, providing no useful information as to which factors are most important.

so that components and spare parts are interchangeable.[32] Risk is also reduced as the reliability of the system is proven, and the workers are familiar with the maintenance and operation of the system.[33]

End users and construction contractors were asked to list the four major factors considered by their firm in deciding from whom to purchase EPGTC systems. The results are shown in tables II-1 and II-2.

Table II-1
Major factors affecting purchasing decisions as ranked by end users in the United States

	Number of firms ranking factor as:			
Factor	**No. 1**	**No. 2**	**No. 3**	**No. 4**
Technical specifications	9	4	0	0
Quality[1]	4	3	3	3
Price[2]	1	2	5	5
Delivery	1	0	4	2
Prior experience/reputation	1	3	4	6
Efficiency[2]	0	2	1	0
Installed base	0	1	0	0
Other	0	1	1	2

[1] Quality includes reliability and performance.
[2] Price as a factor may include considerations of life-cycle costs/efficiency.

Source: Responses to the Commission's purchaser/end-user questionnaire.

[32] June 5, 1996, postconference brief of Steptoe & Johnson, p. 31.
[33] Ibid., p. 41.

Table II-2
Major factors affecting purchasing decisions as ranked by engineering contractors

Factor	Number of firms ranking factor as:			
	No. 1	**No. 2**	**No. 3**	**No. 4**
Technical specifications	4	1	0	0
Prior experience/reputation	3	1	0	1
Price[1]	0	1	6	0
Delivery	0	3	0	3
Country of origin	0	0	0	1
Service	0	0	0	1
Quality[2]	0	1	1	0

[1] Price as a factor may include considerations of life-cycle costs/efficiency, progress payments, etc.
[2] Quality considerations include performance.

Source: Responses to the Commission's purchaser/end-user questionnaire

Comparison of Products from Different Countries

Manufacturers from Japan, the United States, Italy, and Germany have all successfully competed to supply EPGTC systems to the U.S. market during the period of investigation. Although the equipment proposed by a given supplier is unique in its design, responses by the end users and engineering contractors when asked to compare various characteristics[34] of EPGTC systems/suppliers from each country for which they have marketing/pricing knowledge, suggest that the EPGTC systems/suppliers from Japan, the United States, and non-subject countries (Italy, Germany, and Switzerland) are considered comparable in most aspects. In comparisons between the United States and Japan, Japan was ranked inferior by the majority of respondents for technical support/service. Other areas where some respondents ranked Japan as inferior include warranty, price, efficiency, training, and size of installed base. The United States was ranked inferior by one end user in efficiency and delivery time. According to ***, there is not much difference in technical offerings among producers and end users find most technical offerings to be comparable when they review bid proposals.[35]

Although the systems/suppliers are generally considered comparable by the purchasers of the equipment, in individual bid situations certain suppliers may not be competitive, either technically or

[34] Characteristics examined were: delivery terms, delivery time, warranty, reputation of supplier, price, product quality, product reliability, reliability of supply, technical support/service, technology/design, efficiency, training, prior experience with supplier, workmanship, technical requirements, and the size of installed base.
[35] May 1, 1997, posthearing brief of Stewart & Stewart, exh. 13.

commercially due to the unique specifications of the project. For example, according to the respondent, ***.[36] For the ***.[37] As another example, for the ***[38] ***.

The petitioner claims that Japanese suppliers offer generous payment terms relative to the domestic producers. According to the petitioner, the Japanese suppliers typically require only 10 to 15 percent of the total value of a contract to be paid before shipment, while domestic producers require 60 percent or more.[39] According to ***, the Japanese are known for generous payment terms.[40] *** indicates that Japanese suppliers can offer more generous terms, for example net 30 days after shipment, and that the terms of payment are negotiated.[41] Responses to the questionnaire show Dresser-Rand requiring at least *** percent of the value of the contract before shipment on the *** projects for which it provided detailed progress payment information, while MHI/MIC required between *** percent on the *** projects for which it gave information.

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[36] June 5, 1996, postconference brief of Steptoe & Johnson, exhibit B, pp. 5 and 18.

[37] TR, p. 177.

[38] Mitsubishi International Corporation (MIC), reported that it is not related to MHI, and serves as MHI's sales representative in the United States. All bids within the United States are prepared by MIC.

[39] May 1, 1997, posthearing brief of Stewart and Stewart, p. 2.

[40] Telephone conversation with ***, May 6, 1997.

[41] Fax from ***, May 8, 1997.

PART III: CONDITION OF THE U.S. INDUSTRY

Section 771(7)(B) of the Act (19 U.S.C. § 1677(7)(B)) provides that in making its determinations in this investigation the Commission--

> shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and may. . . consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

> In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States is significant.
> . . .
> In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.
> . . .
> In examining the impact required to be considered under subparagraph (B)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to, (I) actual and potential decline in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) 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 domestic like product, and (V) in an antidumping investigation, the magnitude of the margin of dumping.

Information on the margin of dumping was presented earlier in this report and information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V. Information on the other factors specified is presented in this section and/or part VI and (except as noted) is based on the questionnaire responses of four firms that accounted for all known U.S. production of EPGTC systems,

whether complete or incomplete. The data presented in the body of the report are, unless otherwise noted, for EPGTC systems, whether complete or incomplete.

U.S. PRODUCERS

EPGTC Systems Producers

A list of the major U.S. producers of EPGTC systems, their shares of the value of reported shipments in 1995, and the firms' positions with respect to the petition are presented in table III-1. During this final investigation, a number of additional EPGTC suppliers were identified by purchasers and the firms were sent the Commission's producer's questionnaire. The limited information received from these additional suppliers is as follows:

Firm	Estimated 1996 sales	Response
*	*	*
*	*	*
*	*	*
*	*	*

[1] May 14, 1997, telephone conversation with ***.

[2] ***. For further discussion of the *** bid see the *Bid Competition for Sales to Domestic Purchasers* section in part V of this report. Sales data include non-subject turbo-compressor systems; e.g., for ***. May 15, 1997, telephone conversation with ***.

[3] May 13, 1997, telephone conversation with ***.

[4] April 4, 1997, QR.

Descriptions of the four major U.S. producers of EPGTC systems are presented below.

Company Profiles

Dresser-Rand

Dresser-Rand, the petitioner, is jointly held by Dresser Industries, Inc. (51 percent ownership) and Ingersoll-Rand Co. (49 percent ownership), and produces EPGTC systems at its Turbo Products Division in Olean, NY. Dresser-Rand reported that it also produces EPGTC systems at its related firm in Le Havre, France. Dresser-Rand is also related to the EPGTC systems engineering contractor, M.W. Kellogg Co. (Kellogg), as Kellogg is a wholly-owned subsidiary of Dresser Industries.[1] Dresser-Rand's operations producing EPGTC systems accounted for *** percent of its establishment's total net sales in FY 1996 (FY ending October 31), with the remainder accounted for by air, axial, and pipeline compressors; expanders; and gas turbines.

[1] Notwithstanding their common parent, Dresser-Rand and Kellogg are believed to operate independently of each other in the market.

Table III-1
EPGTC systems: U.S. producers, locations of corporate offices, reported total (domestic and export) shipments in 1996, and positions on the petition

Firm	Firm location	Shipments-- Value	Share	Position on petition
		$1,000	*Percent*	
Dresser-Rand	Olean, NY	***	***	Petitioner
A-C Compressor	Appleton, WI	***	***	***
Demag Delaval	Trenton, NJ	***	***	Supports [1]
Elliott Turbomachinery	Jeannette, PA	***	***	***
		***	100.0	

[1] During the Commission's public hearing the firm changed its position on the petition from a "neutral position" to "supportive" (testimony of Donal P. Maloney at TR, p. 33).

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

A-C Compressor

A-C Compressor Corp. is a wholly-owned subsidiary of Dover Diversified Industries, and produces single- and multistage centrifugal compressors at its facility in Appleton, WI. In addition to EPGTC systems, A-C Compressor also produces ***. A-C Compressor has provided limited data in response to repeated requests for information during this final investigation.

Demag Delaval

Demag Delaval Turbomachinery Corp. is a wholly-owned subsidiary of Mannesmann Capital Corp. (New York, NY), which is wholly-owned by Mannesmann AG in Germany. Demag Delaval has produced EPGTC systems at its facility in Trenton, NJ, since January 1995. Prior to 1995 Demag Delaval's Trenton facility was operated by Delaval Co., a division of IMO Industries, and the predecessor company was known as IMO Delaval. Since January 1995 Demag Delaval has also been related to Mannesmann Demag, a manufacturer/exporter of EPGTC systems in Germany, through their common parent, Mannesmann AG. Demag Delaval also reported a joint venture with Delaval Stork in the Netherlands. Demag Delaval's operations producing EPGTC systems accounted for *** percent of its establishment's total net sales in 1996, with the remainder accounted for by ***.

Elliott Turbomachinery

Elliott Turbomachinery Co., Inc., produces EPGTC systems at its facility in Jeannette, PA. Ownership interests in Elliott are held by Ebara Corp., Tokyo, Japan ***, and MAN Gutehuffnungghuette, AG, Oberhause, Germany ***. Elliott's operations producing EPGTC systems accounted for *** percent of its establishment's total net sales in FY 1996 (FY ending May 31), with the remainder accounted for by ***.

Question of Domestic Producer and Related Party Status

During the preliminary investigation, the Commission reviewed the question of whether any producers should be excluded from the domestic industry producing EPGTC systems as related parties.[2] In addition, in determining whether a firm is a domestic producer of the subject product, the Commission considers six factors relating to the overall nature of a firm's production-related activities in the United States.[3] A discussion of certain company relationships is presented below.

Dresser-Rand/MHI Joint Venture

Dresser-Rand and MHI entered into a joint venture agreement in 1990. ***, the agreement was terminated by mutual consent in February 1994. In its preliminary determination, the Commission found that ***, this joint venture did not fit the statutory criteria defining a related party.[4]

Information received by the Commission during this final investigation indicates that ***.[5] ***.[6]

Elliott/Ebara

Information provided during the preliminary investigation indicated that Elliott's affiliation with Ebara included a reciprocal licensing arrangement that restricted Ebara from providing EPGTC systems to the U.S. market and Elliott from providing such systems to the Asian market.[7] In its preliminary determination, the Commission found that based on the nature of their agreement, it did not appear that the Elliott/Ebara relationship fit the statutory criteria defining a related party, since Ebara did not appear to be an exporter of the subject merchandise.[8]

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[2] By statute, a producer and an exporter or importer shall be considered related parties, if: (1) the producer directly or indirectly controls the exporter or importer; (2) the exporter or importer directly or indirectly controls the producer; (3) a third party directly or indirectly controls the producer and the exporter or importer; or (4) the producer and the exporter or importer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

[3] The six factors are: (1) source and extent of the firm's capital investment; (2) technical expertise involved in U.S. production activities; (3) value added to the product in the United States; (4) employment levels; (5) quantity and type of parts sourced in the United States; and (6) any other costs and activities in the United States directly leading to production of the like product.

[4] See, Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 (July 1996), at 9.

[5] See Apr. 7, 1997, supplemental foreign producer's QR of MHI, pp. 1 and 2; and Apr. 8, 1997 supplemental producer's QR of Dresser-Rand, pp. 1 and 2.

[6] See Apr. 8, 1997, supplemental producer's QR of Dresser-Rand, p. 2.

[7] See, Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 (July 1996), p. III-1; June 3, 1996, supplemental producer's QR of Dresser-Rand, at second Barnett affadavit, exh. 7; and Apr. 7, 1997, supplemental QR of Elliott, excerpts from ***.

[8] See, Engineered Process Gas Turbo-Compressor Systems from Japan, Inv. No. 731-TA-748 (Preliminary), USITC Pub. 2976 (July 1996), at 8.

Information received by the Commission one week after its vote in the preliminary investigation and during this final investigation indicates that ***.[9] ***. Counsel for MHI argues that these imports of EPGTC systems are not covered by the scope of this proceeding. For further discussion of this issue, see *The Issue of Negligible Imports* section in part IV of this report.

Demag Delaval/Mannesmann Demag

During this final investigation Demag Delaval reported ***.[10]

U.S. PRODUCTION, CAPACITY, AND CAPACITY UTILIZATION

Data on U.S. production, capacity, and capacity utilization for EPGTC system manufacturers are presented in table III-2 and figure III-1. The data for 1993-96 show a stable level of capacity, with capacity utilization holding at *** percent during the period.

Table III-2
EPGTC systems: U.S. capacity, production, and capacity utilization, by firms, 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

* * * * * * *

Figure III-1
EPGTC systems: U.S. capacity, production and capacity utilization, 1993-96

* * * * * * *

U.S. PRODUCERS' DOMESTIC AND EXPORT SHIPMENTS

Company-specific data regarding total shipments, based on value, by U.S. EPGTC systems producers are presented in table III-3 and figure III-2.[11] The data for 1993-96 demonstrate the significance of exports to the U.S. industry, with exports accounting for *** percent of total shipments during the period.

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[9] ***.

[10] See, Mar. 17, 1997, importer's QR of Demag Delaval, sec. II.3-4, p. 5.

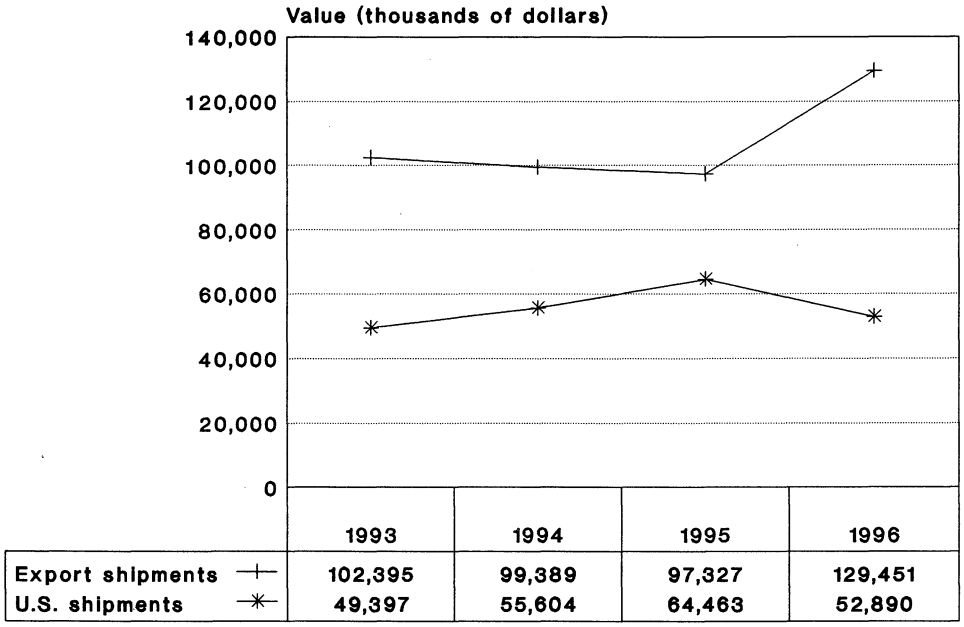
[11] Shipment data for Dresser-Rand may not reconcile with data presented in part VI of this report due to differences between fiscal years and calendar years, as well as differences in accounting for payments received vs. revenue recognized.

Table III-3
EPGTC systems: U.S. producers' shipments, by firms, 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

Item	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
	Shipment value ($1,000)					
Purchases for use in the U.S. from:						
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Total	49,397	55,604	64,463	52,890	19,828	11,235
Exports:						
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Total	102,395	99,389	97,327	129,451	36,662	55,737
Total shipments:						
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Total	151,792	154,993	161,790	182,341	56,490	66,972
	Ratio of exports to total shipments (percent)					
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Average	67.5	64.1	60.2	71.0	64.9	83.2

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

Figure III-2
EPGTC systems: U.S. producers' shipments, 1993-96



	1993	1994	1995	1996
Export shipments	102,395	99,389	97,327	129,451
U.S. shipments	49,397	55,604	64,463	52,890

Source: Table III-3.

U.S. PRODUCERS' INVENTORIES

EPGTC systems, whether complete or incomplete, are produced in response to bids for specific projects. Therefore-, finished systems are not held in inventory but are shipped to the customers' site for installation after testing.

U.S. EMPLOYMENT, WAGES, AND PRODUCTIVITY

Data relating to the number of production and related workers (PRWs) producing EPGTC systems, hours worked by and wages paid to such employees, hourly wages, and productivity are presented in table III-4, by firms.

Table III-4
EPGTC systems: Average number of production and related workers producing EPGTC systems, hours worked, wages paid to such employees, and hourly wages and productivity, by firms, 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

* * * * * * * *

PART IV: U.S. IMPORTS, APPARENT CONSUMPTION, AND MARKET SHARES

U.S. IMPORTERS AND IMPORTS

In addition to Japan, the only known sources of EPGTC systems are Germany, Italy, and Switzerland. U.S. imports of EPGTC systems, accounting for all known imports of the subject products, are presented in table IV and figure IV-1; the data were compiled from the QRs of seven importers.

Japan

Imports of EPGTC systems from Japan occurred in ***, and 1996, accounting for *** percent of total imports, respectively. The principal importer of EPGTC systems from Japan is Mitsubishi International Corporation (MIC), York, PA. MIC reported that it is a wholly-owned subsidiary of Mitsubishi Corporation (MC), Tokyo, and neither MIC nor MC are related firms of MHI.[1] MIC serves as MHI's sales representative in the United States, while MC serves as its exporter. The arrangement, made in concert with the purchaser, allows for MHI's EPGTC systems to be successively sold first to MC and then to MIC at the contract price plus a commission for each. MIC reported imports of EPGTC systems only during 1996, and such imports accounted for all known imports from Japan during 1996. MIC has reported that it:

"***."[2]

With respect to the sale of EPGTC systems to Kellogg for the Exxon/Baytown project, MIC reported that:

"***[3]."[4]

---

[1] May 29, 1996, importer's QR if MIC, note 1, p. 2b. In its final determination of sales at LTFV Commerce determined that, based on examination of sales documentation and finding at verification, MC and its U.S. subsidiary, MIC, acted as MHI's selling agents in the U.S. transaction (Kellogg/Exxon) under investigation. Commerce found that MHI made this transaction through MC and MIC acting on its behalf and thus subject to its control. (See, Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete from Japan, 62 FR 24395, May 5, 1997). This determination was based on the role of the parties in the sales transaction and not on the basis of the corporate relationship between the parties. (See, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete from Japan, 61 FR 65016, Dec. 10, 1996).

[2] Mar. 7, 1997, importer's QR of MIC, note to sec. II.3, p. 5.

[3] As an example, MIC reported that ***.

[4] Ibid, note to section I.6, p. 3. In addition, MHI has reported that "***" (May 29, 1996, foreign producer's QR of MHI, note, p. 4).

Table IV-1
EPGTC systems: U.S. imports, by sources, 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

Item	1993	1994	1995 (1)	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
	Value ($1,000)					
Japan:						
Complete systems.....						
Incomplete systems (1)..						
Subtotal.....						
All other:	*	*	*	*	*	*
Complete systems.....						
Incomplete systems.....						
Subtotal.....						
Total imports.....	19,198	22,358	11,259	42,688	0	0
	Share of value (percent)					
Japan:						
Complete systems.....						
Incomplete systems (1)..						
Subtotal.....						
All other:	*	*	*	*	*	*
Complete systems.....						
Incomplete systems.....						
Subtotal.....						
Total imports.....	100.0	100.0	100.0	100.0	(2)	(2)

(1) Data for 1995 for Japan includes imports of EPGTC systems that have been questioned by counsel for MHI. If such imports were excluded as not subject to the scope of this investigation, there were no subject imports from Japan during 1995, and all other imports accounted for total imports during that year.
(2) Not applicable.

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

Figure IV-1
EPGTC systems: U.S. imports, by sources, 1993-96

* * * * * * *

Regarding other importations of EPGTC systems during 1993-95, ***.[5] ***.

Importers of EPGTC Systems From All Other Countries

Twelve firms provided questionnaire responses for imports of EPGTC systems from ***, Germany, Italy, and Switzerland,[6] and account for all known imports from countries other than Japan during the period for which data were collected. Imports from these countries accounted for *** percent during 1996.

The Issue of Negligible Imports

The Uruguay Round Agreements Act (URAA) amended the statutory provisions pertaining to negligibility. The provision defining negligibility provides that imports from a subject country corresponding to the domestic like product are negligible if such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes the filing of the petition. Based on information developed during the preliminary investigation, the Commission found that there were no such imports of subject merchandise, and that the plain language of the negligibility provision of the statute precluded it from consideration of the question of material injury.

However, as previously noted, information received by the Commission after its vote in the preliminary investigation and during this final investigation indicates that for the period May 1995 through April 1996, the 12-month period preceding the filing of the petition, $*** were imported from Japan. These imports accounted for *** percent of total imports of EPGTC systems during the May 1995-June 1996 period.[7] Counsel for MHI has questioned whether this importation was covered by the scope of this proceeding, because the EPGTC systems were part of an entry for an entire petrochemical plant.[8] While acknowledging that Commerce determines the scope of the proceeding, counsel argues that the Commission should not include these imports as subject merchandise because: (a) nothing in its final determination shows any intention by Commerce to include within the scope of investigation an EPGTC system imported as part of an entire petrochemical plant; (b) during its investigation, Commerce did not consider the *** sale of a plant incorporating an EPGTC system as a sale within the scope of this proceeding; and (c) Commerce's position is supported by its precedent on a similar scope issued raised in an administrative review of large power transformers from Japan.[9]

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[5] ***.

[6] Imports from ***; imports from Germany were reported by ***; imports from Italy were reported by ***; imports from Switzerland were reported by ***.

[7] The share of total imports of EPGTC systems represented by imports from Japan for the 12-month period may be understated, as monthly data for imports were not reported by questionnaire respondents. Data for imports during the period May 1995-April 1996 were estimated by adding total imports during 1995-96 ($36.6 million) and deducting those imports for which monthly information was available ($17.8 million).

[8] Apr. 17, 1997, prehearing brief of Steptoe & Johnson, pp. 32-33 and exh. 7.

[9] May 1, 1997, posthearing brief of Steptoe & Johnson, exh. 6, pp. 1-3

Counsel for petitioner has argued that a scope decision is the jurisdiction of Commerce, and that petitioner has not been invited to talk to Commerce regarding this scope issue.[10] Counsel has urged the Commission to apply the provisions of the antidumping law that are in its jurisdiction; e.g., the causal relationship of imports of EPGTC systems from Japan to any reports of lost sales due to such imports, and consideration of injury on the basis of sales or offers to sell, even without actual physical imports.[11] A discussion of information obtained by the Commission regarding this import of EPGTC systems from Japan is presented in appendix E.

Orders

The Commission's questionnaires requested firms to report their backlog of production and import orders for which contracts have been received for EPGTC systems, as of the first day of each quarter since January 1993. Data submitted in response to that question by U.S. producers and importers are presented in table IV-2 and figure IV-2.

Table IV-2
EPGTC systems: U.S. producers' and importers' backlog of orders for which contracts have been received, as of the first day of each quarter, 1993-96, and Jan.-Mar. 1996, and Jan.-Mar. And Apr.-June 1997

* * * * * * *

Figure IV-2
EPGTC systems: U.S. producers' and importers' backlog of orders for which contracts have been received, as of the first day of each quarter, January 1993 through June 1997

* * * * * * *

APPARENT U.S. CONSUMPTION

The data on apparent U.S. consumption of EPGTC systems are composed of U.S. producers' U.S. shipments reported in response to the Commission's producers' questionnaires plus shipments of U.S. imports reported in response to the Commission's importers' questionnaires.

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[10] Testimony of James Cannon of Stewart and Stewart, confidential TR, p. 186.
[11] Id, and May 1, 1997, posthearing brief of Stewart and Stewart, response to questions from Chairman Miller, p. 1.

U.S. Market Shares

Data relating to U.S. market shares are presented in figure IV-3 and tables IV-3 (sales contract date basis) and IV-4 (shipments basis).

Figure IV-3
EPGTC systems: U.S. purchases/shipments of domestic product, U.S. import purchases/shipments, by sources, and apparent consumption, 1993-96

* * * * * * *

Table IV-3
EPGTC systems: U.S. purchases of domestic product, by firms, U.S. purchases of imports, by sources, and apparent U.S. consumption, by CONTRACT DATE, 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

Item	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
	Quantity (number of trains)					
Purchases for use in the U.S. from:						
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Total U.S. producers	19	25	20	13	5	2
Japan:						
Complete systems						
Incomplete systems						
Subtotal, Japan						
All other countries:	*	*	*	*	*	*
Complete systems						
Incomplete systems						
Subtotal, other countries						
Total imports	6	8	9	15	1	4
Apparent consumption	25	33	29	28	6	6
	Value ($1,000)					
Purchases for use in the U.S. from:						
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Total U.S. producers	52,512	47,253	51,131	49,510	22,642	3,348
Japan:						
Complete systems						
Incomplete systems						
Subtotal, Japan						
All other countries:	*	*	*	*	*	*
Complete systems						
Incomplete systems						
Subtotal, other countries						
Total imports	23,778	16,907	40,467	47,781	10,140	10,275
Apparent consumption	76,290	64,160	91,598	97,291	32,782	13,623

Continued on next page.

Table IV-3--continued.
EPGTC systems: U.S. purchases of domestic product, by firms, U.S. purchases of imports, by sources, and apparent U.S. consumption, by CONTRACT DATE, 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

Item	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
	Share of quantity (percent)					
Purchases for use in the U.S. from:						
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Total U.S. producers	76.0	75.8	69.0	46.4	83.3	33.3
Japan:						
Complete systems						
Incomplete systems						
Subtotal, Japan						
All other countries:	*	*	*	*	*	*
Complete systems						
Incomplete systems						
Subtotal, other countries						
Total imports	24.0	24.2	31.0	53.6	16.7	66.7
	Share of value (percent)					
Purchases for use in the U.S. from:						
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Total U.S. producers	68.8	73.6	55.8	50.9	69.1	24.6
Japan:						
Complete systems						
Incomplete systems						
Subtotal, Japan						
All other countries:	*	*	*	*	*	*
Complete systems						
Incomplete systems						
Subtotal, other countries						
Total imports	31.2	26.4	44.2	49.1	30.9	75.4

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

Table IV-4
EPGTC systems: U.S. producers' shipments of domestic product, by firms, U.S. imports, by sources, and apparent U.S. consumption, BY DATE OF SHIPMENT, 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

Item	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
	Value ($1,000)					
U.S. shipments:						
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Total U.S. producers	49,397	55,604	64,463	52,890	19,828	11,235
Japan:						
Complete systems						
Incomplete systems						
Subtotal, Japan						
All other countries:	*	*	*	*	*	*
Complete systems						
Incomplete systems						
Subtotal, other countries						
Total imports	19,198	22,358	11,259	45,425	0	0
Apparent consumption	68,595	77,962	75,722	98,315	19,828	11,235
	Share of value (percent)					
U.S. shipments:						
A-C Compressor						
Demag Delaval	*	*	*	*	*	*
Dresser-Rand						
Elliott						
Total U.S. producers	72.0	71.3	85.1	53.8	100.0	100.0
Japan:						
Complete systems						
Incomplete systems						
Subtotal, Japan						
All other countries:	*	*	*	*	*	*
Complete systems						
Incomplete systems						
Subtotal, other countries						
Total imports	28.0	28.7	14.9	46.2	0.0	0.0

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

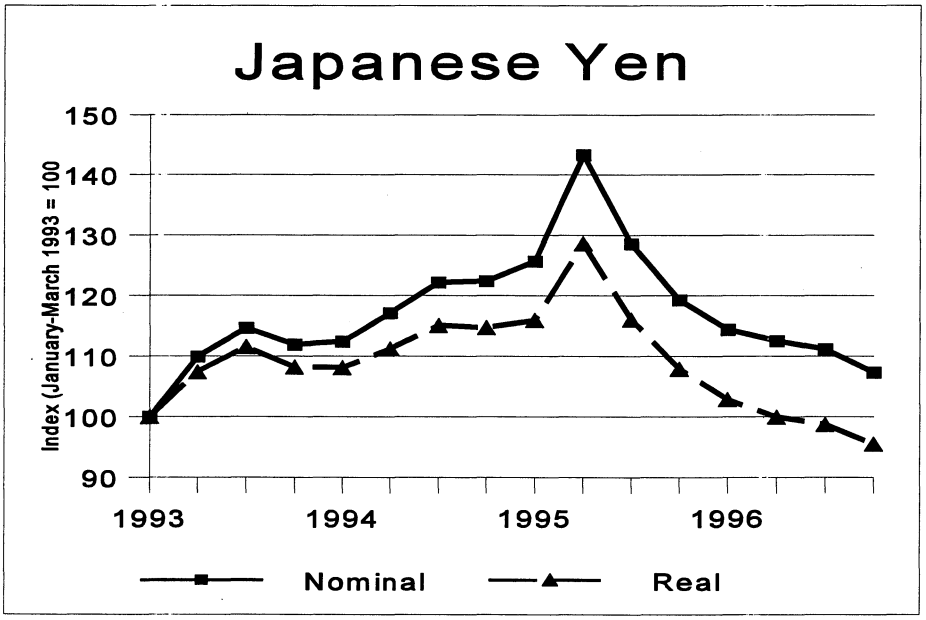
PART V: PRICING AND RELATED DATA

FACTORS AFFECTING PRICING

Exchange Rates

Quarterly data reported by the International Monetary fund indicate that the real value of the Japanese yen depreciated by 4.5 percent in relation to the U.S. dollar during the period January-March 1993 through October-December 1996 (figure V-1). The nominal value appreciated by 7.3 percent during the same period. Both indices reached their highs in April-June 1995, then fell through the end of the period.

Figure V-1
Exchange rates: Indices of the nominal and real exchange rates between the U.S. dollar and Japanese yen, by quarters, Jan. 1993-Dec. 1996



Source: International Monetary Fund, *International Financial Statistics*, March 1997.

PRICING PRACTICES

Bids for contracts to provide EPGTC systems include both technical and commercial proposals. The technical proposal includes detailed engineering specifications for the entire installation and is prepared to meet the specifications contained in the request for proposal (RFP). The commercial proposal contains the bid price. *** report setting prices to cover all costs plus a level of profit. Costs include materials, labor, overhead, freight, service warranties, engineering costs (which can add 20 percent to the

cost of the product), and research and development expenditures.[1] Other factors taken into consideration in preparing initial bids include: shop loading, the competition or customer involved, competitive position with equipment, and the status of a project. According to Bill Barnett of Dresser-Rand, a manufacturer may still bid on a project even if the price level drops below its full cost in order to recover at least some fixed costs as well as its variable costs.[2] The technical proposal from each supplier will have its own unique technical and design characteristics that may affect the price of the system or the cost of construction for the plant. For example, for the ***.

Prior to the issuance of a formal RFP, purchasers of EPGTC systems may request a budget proposal in order to prepare the overall budget for a plant. According to ***, this usually takes place 1 to 2 years before issuing an RFP and does not include a full technical proposal. *** states that they are usually included among the suppliers invited to formally bid on projects for which they provide a budget proposal. Four of 15 responding end users indicated that suppliers may be consulted for input into the development of bid specifications. In addition to direct input into a project's specifications, suppliers influence the technical specifications through input into industry standards and exceptions to the bid specifications.

After an EPGTC system has been installed, the manufacturer of that system has the opportunity to supply replacement parts and upgrades (revamps). Expected future revenues based on these potential sales may be factored into the bid preparation.[3] According to Vincent Volpe of Dresser-Rand, historical data is used to estimate what revenue will be generated by repairs and revamps over the five years after the sale of an EPGTC system and that information is factored into the bid preparation.[4][5] ***.[6] *** states that although sales of EPGTC systems generate little to no profit, they provide the opportunity to generate revenue from aftermarket sales which provide the greatest margins.[7] Although a manufacturer has an advantage in providing a revamp on its own equipment, a revamp of an existing compressor train will not occur for years after an EPGTC system is installed, if it happens at all.[8] According to responding engineering contractors, revamps are performed due to a change in process operation conditions or technological advance, not wear or failure. The end users indicated that they procure revamps to provide increased efficiency or capacity. Major maintenance is performed more often than revamps, and the timing depends on the usage.

All four of the responding U.S. producers indicated that the outcome of a bid to a particular purchaser affects their strategy for future bids, although *** indicated that this only occurs in the rare case where price is the sole reason for losing the bid. *** stated that price negotiations are less flexible when its backlog is strong, while *** indicated that the winning bid establishes an expected price level for future projects with similar equipment. For three of five responding importers, past bid competition does not

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[1] Preliminary conference transcript, pp. 33-34.

[2] Ibid, p. 36.

[3] Ibid, pp. 38, 39.

[4] TR, pp. 75, 76.

[5] In its posthearing brief, the petitioner claims that it "makes no provision in its cost estimating or pricing for anticipated future revenues from revamp work," ***. ***. May 1, 1997, posthearing brief of Stewart and Stewart, responses to Chairman Miller's questions, p. 24.

[6] Per phone conversation with Mark Herlach, attorney for Demag Delaval, June 7, 1996.

[7] *** QR, attachment to p. 9.

[8] Preliminary conference transcript, pp. 50-52.

affect bid strategy. *** reported that it is rare to know the price outcome of bids, so such information cannot affect future bids, although efforts are made to acquire information that might prevent technical errors on future bids. *** report that they do not alter their bidding strategy based on the outcome of past bids. *** indicates that its bids are based solely on costs and *** reports that ***.

Based on the responses of the U.S. producers and engineering contractors, it appears that bids are sometimes open, sometimes closed, but the competitors may be known due to the small number of acceptable bidders for this product. *** states that bids are normally closed, although it has bid on a job where the bidders were invited to a pre-bid meeting. According to end users, bids for purchases of EPGTC systems are generally closed, and the end users generally do not reveal to the bidders the identity of their competitors, although this information is often common knowledge.

Initial bids are important in the process because they may be used to determine a short list of providers which appear to have an EPGTC system that meets the technical requirements of the project in a cost effective manner, and thus bidders must make their most technically attractive and cost-effective proposal in the initial bid in order to ensure participation in later negotiations. *** indicates that a ranking among qualified suppliers based on commercial considerations is used to determine the success of a proposal or inclusion in subsequent re-bidding. *** indicates that bidders may be eliminated from competition based on their initial price quote even before their technical proposal is evaluated.[9] There is generally more than one chance to bid on a particular sales agreement, with changes in the specifications of the project often prompting a re-bid. Two U.S. producers indicate in their questionnaire responses that changes in bids may be prompted by commercial considerations such as competitive feedback or customer pressure. Donal Maloney of Demag Delaval testified that pricing does change due to clarifications of the specifications, and that this provides bidders the opportunity to react to any competitive feedback.[10]

*** indicate that competitors' bids are not revealed during the bidding process, while *** indicates that competing bids may be used in negotiations in order to apply pricing pressure. *** states that commercial bids are sometimes made known through public openings and that ***.[11] According to ***, the purchaser will use other bids to influence the negotiations, although the actual bid amounts are seldom revealed. *** indicates that U.S. purchasers never disclose the pricing of competing suppliers or use the price of another supplier as leverage for a lower price. Only 1 of the 12 responding end users indicated that they would discuss competing bids with suppliers in order to obtain lower quotes. Two firms indicated that they considered this practice unethical or unacceptable. None of the responding engineering contractors reveals the position of competing suppliers during the bidding process. *** stated that the companies in the industry usually know their position in the bidding based on past experience in bidding competition.[12] ***, another construction contractor, indicates that it is rare to reveal the actual bid prices, but attempts are made to obtain lower prices by giving indications of where a supplier stands.

During the evaluation of the commercial proposal, purchasers develop an estimate of the total cost of the system. This involves analysis of such factors as system efficiency and differences in payment terms, as well as the quoted price. Efficiency of the proposed machinery is important and proposals for less efficient systems may be penalized. According to the petitioner, for every horsepower saved on a

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[9] Affidavit of ***, Apr. 17, 1997, prehearing brief of Stewart and Stewart, exh. 2, p. 5.
[10] TR, pp. 35-36.
[11] May 1, 1997, posthearing brief of Stewart and Stewart, pp. 5, 6.
[12] Telephone conversation, June 6, 1996.

motor drive, the system is worth approximately $1,000 more.[13] Also, each EPGTC system, even if designed for the same project, will have unique technology and design characteristics that may affect costs for other equipment to be used in the plant.[14]

BID COMPETITION FOR SALES TO DOMESTIC PURCHASERS

Domestic producers, importers, end users, and engineering contractors were requested to report in their questionnaire responses the details of bid competition for EPGTC systems.[15] Four producers, 4 importers, 17 end users, and 7 contractors that either submitted or solicited bids for EPGTC systems or purchased EPGTC systems indirectly during January 1993-April 1997 provided at least some information on bids for EPGTC systems in the final investigation. Information on bid competition gathered from end users and/or contractors in responses to the Commissions questionnaires is summarized in table V-1 and details are presented in table V-2.[16] A summary of the coverage of the data is presented in table V-3.

Table V-1
Summary of contracts awarded on EPGTC systems from January 1993 through April 1997 reported by engineering contractors and end users

* * * * * * *

Table V-2
Bids for contracts awarded on EPGTC systems from January 1993 through April 1997 reported by engineering contractors and end users

* * * * * * *

Usable bid information was obtained for 57 transactions from end users and contractors. *** of these contracts were awarded on a sole-source basis, in 3 cases no selection has yet been made, and 2 projects have either been cancelled or placed on indefinite hold. The total value of the 52 contracts awarded is *** million. The total value of contracts awarded on a sole-source basis was ***, or *** percent of the value of all 52 contracts awarded. Reasons given for procuring on a sole-source basis included prior experience with equipment from the supplier, time constraints, utilization of an existing surplus component owned by the end user, and a "key supplier" alliance between a contractor, ***, and a supplier, ***.

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[13] Preliminary conference transcript, p. 59.

[14] Ibid., p. 96.

[15] Comparison of the price level of a given bid for an EPGTC system with another bid, even for the same project, is problematic. Each bid is for a unique system with its own design characteristics and technology, which may affect the value. In addition, the price alone may not accurately reflect the true cost to the purchaser. Design characteristics unique to the proposal may affect costs elsewhere in the construction of the plant.

[16] Unless otherwise noted, bid information presented is from contractors/end users. These are the only respondents to the Commission's questionnaires with complete information on individual bid situations. Since bid prices presented by individual suppliers may differ in their scope, information from contractors/end users is more reliable in terms of comparing bids from different suppliers, since it is more likely that all bids presented will cover an equivalent scope.

Table V-3
Coverage of bid data provided by engineering contractors and end users January 1993 through April 1997

Year	Apparent consumption [1] (1,000 dollars)	Value of contracts reported by end users/contractors (1,000 dollars)[2]	Coverage
1993	76,290	20,942	27.45%
1994	64,160	31,109	48.49%
1995	91,598	61,420	67.05%
1996	97,291	51,125	52.55%
1997	***[3]	***	59.26%

[1] From table IV-3s and F-2.
[2] These numbers do not include the *** did not provide shipment information. In addition, the figures above do not include the *** project since the winning bidder supplied revamped equipment.
[3] Includes the April 1997 *** contract, which is not included in table IV-3.

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

Of the remaining *** transactions, *** have bid price information available for all technically acceptable competitors. In *** of these cases, the successful bidder did not have the lowest price. For the ***, although bid prices were not given for all competitors, *** indicated that the lowest cost supplier was chosen. The *** awards which were not granted to the lowest cost supplier account for *** percent of the value of all competitively awarded contracts where it can be determined whether the low cost supplier won the contract. For both the ***, the successful bid price was *** above the lowest bid, and for the second ***, the ***, and the *** projects, the successful bid prices were less than *** above the lowest bid. According to ***, *** was selected due to superior past experience with the purchaser. Although specifics were not given as to why the low bid did not win the ***, *** indicated that the "best value" bid package, taking into consideration both the technical and commercial evaluations, is always chosen. In addition, *** indicated that the ***, and thus the award may have been based on scheduling. For the *** contract, the contractor noted that the low bidder's proposal had technical differences from the winning proposal. *** was chosen over ***, the low price bidder, in the *** project due to favorable past experience by *** and the expectation that the plant owner could negotiate a better price with *** since it was procuring additional equipment from the supplier. In the other two cases, the successful bid price was significantly above the low bid. In one of the ***'s successful bid was *** percent above the low bid from ***. According to *** could not meet the delivery schedule and proposed less efficient equipment.[17] For the final situation where the low price bidder was not selected, the successful bid was *** percent higher than

[17] Telephone conversation, Mar. 27, 1997.

Table V-4
Additional bid information supplied by purchasers/end users
(Values represent the number of transactions in each category)

Type/status of award	Was/will a contractor be used to solicit or procure the EPGTC system?		Basis of Construction Contract [1]			Did owner contract separately for spares? (if contractor used)[2]			Were specifications prepared with the assistance of a supplier?	
	Yes	No	Fixed Price	Cost Plus	Mixed	No	Yes	If yes, did it affect contract award?	Yes	No
Competitive Awards	32	8	19	12	1	13	16	No, for all respondents	0	40
Sole-Source Awards	5	7	2	2	1	2	3	No, for all respondents	1	11
Not yet awarded	3	1	Not yet awarded: 2 Fixed Price: 1			N/A			0	4

[1] For the *** project, although a contractor was used for engineering and procurement of the system, there was no construction contract.

[2] This information was obtained for only 28 of the 31 projects for which the EPGTC system was procured by a contractor. For the *** project, although *** solicted bids for the system, it did not procure the system.

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

the low bid. According to the engineering contractor, ***, the client, ***, preferred ***, which was awarded the contract. For additional bid information gathered from purchasers/end users, see table V-4.

Competition Involving Japanese Suppliers

Japanese suppliers competed for the award of *** contracts for EPGTC systems, of which they won ***.[18] *** of the projects involved were either canceled or put on indefinite hold and *** contract awards are still pending. In one case, the contractor to whom the Japanese supplier bid lost the contract, so no award was made based on the bid competition. *** reported involvement in *** bids for EPGTC systems in the United States. In addition, they reported being invited to bid on an *** project, but declined because they could not meet the required delivery schedule. ***, two construction contractors, reported that *** submitted bids on two additional projects, one for *** and one for ***. *** was listed as a participant in three transactions and was awarded the contract for one project. *** was also listed as a participant in the *** project. The bid competition for the transactions where a Japanese producer

[18] For a discussion of the relevance of one of these transactions, the *** project, to this investigation, refer to part IV of this report under the section entitled *The Issue of Negligible Imports.*

submitted a bid is summarized in tables V-5 and V-6 and details on the individual transactions are given below.[19]

Table V-5
Bids on U.S. projects involving competition with imports from Japan

* * * * * * *

Table V-6
Comparison of bids on U.S. projects involving competition with imports from Japan

* * * * * * *

The Japanese suppliers had the low bid on *** of the *** projects, underbidding the next highest technically acceptable bidder by between *** percent. In *** cases, the Japanese supplier was eliminated due to technical problems, so a comparison of price is not appropriate since there are significant non-price differences to consider. In the remaining *** bid competitions, the low bid was between *** percent below the Japanese bid.

Kellogg Projects

In March of 1995, Kellogg solicited bids from *** to provide an EPGTC system for ***. ***. The EPGTC system consisted of ***. Kellogg received bids from ***. *** to supply the EPGTC system, with a final bid price of ***.

* * * * * * *

[19] As noted in part II of this report, Japanese suppliers may offer more generous payment terms. Petitioner suggests an adjustment to all of the Japanese bids of 2.6 percent based on a comparison of payment terms for one project, the Exxon Baytown project. For the Exxon Baytown project, MHI/MIC's payment terms required only *** percent of the total value of the contract be paid before shipment, but MHI/MIC required *** percent before shipment on other projects, therefore this adjustment is not appropriate for all projects. In addition, according to ***, the payment terms for all competitors for the *** project were comparable, including MHI/MIC, so no adjustment would be appropriate in this case. Based on lack of information on the other projects in question or on the timing of the progress payments required, no accurate adjustments can be made.

***.[20] The equipment ***. ***.[21] ***.[22] ***'s delivery terms were ***. ***. Payment terms offered by *** were more attractive than those offered by ***.[23] ***.[24] ***.[25]

In December 1995, *** submitted initial bids for EPGTC systems to be used in the ***. The EPGTC system to be provided per *** specifications for the ***. ***. During the bid process, ***. ***. ***. ***.

According to *** submitted a bid for an *** project. *** also bid. ***, the low bidder, won the contract.

For the *** project, *** conducted bidding and made a recommendation on the EPGTC supplier. *** submitted bids. No penalties were assessed for differences in the payment terms. *** was the low bidder, and was recommended by ***. Both *** had exceptions to the specifications, and *** proposal was not technically acceptable. *** passed their evaluation on to the plant owners. ***. *** was hired to negotiate for and acquire the Japanese equipment.

ABB Lummus Projects

In mid-1995, *** solicited bids from *** for an EPGTC system *** project. All three manufacturers responded and were judged to be technically competent, although each had some exceptions to the specifications. ***. ***. *** was chosen as the EPGTC system supplier, ***.

According to ***, it solicited bids for an EPGTC system ***. *** submitted bids. *** was eliminated from the competition due to a combination of non-competitive pricing and technical problems[26] and *** was selected as the nominated supplier. After *** secured the construction contract the technical specifications were changed and it further investigated the market for EPGTC systems to insure that the best system was chosen for the job, both commercially and technically. *** was also concerned about how the process changes would affect the ***. *** was invited to bid. *** recommended MHI/MIC equipment, but ***. According to ***, ***.[27] [28] [29] *** had more favorable terms of payment, but according to ***, this did not affect the contract award which was based on client preference.

Budget estimates for an EPGTC system to be used in an ethylene plant were obtained by two contractors, ***, who were competing for the construction contract from ***. In the fall of 1995, ***

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[20] ***.

[21] Confidential TR, p. 177.

[22] Ibid, p. 168.

[23] According to ***.

[24] Confidential TR, p. 169.

[25] Ibid, p. 170.

[26] Telephone conversation with ***, May 6, 1997.

[27] Written response of *** to staff questions, June 11, 1996, and telephone conversation with ***, June 12, 1996.

[28] According to ***'s QR, ***.

[29] According to ***'s QR and the June 5, 1996, postconference brief of Steptoe & Johnson, ***.

obtained budget estimates from ***. Payment terms were not considered. ***.[30] ***.[31] The EPGTC system to be provided consisted of a ***. ***.[32]

*** also submitted a budget estimate for *** to *** for use in a *** project. *** has not yet awarded the construction contract and according to ***. The project is still open and under discussion. Payment terms are similar among the competitors, and are therefore not a factor.

Other Projects

In December 1995, MHI/MIC submitted a bid proposal for ***. The EPGTC system consisted of ***. *** were invited to bid for the project. ***. ***. ***.[33] *** were short listed for final review and *** was awarded the contract based on low evaluated net cost.

In the first quarter of 1996, *** solicited bids from all qualified vendors for an EPGTC system for ***. Bids were submitted by ***. ***. The EPGTC system to be provided consisted of ***. ***.[34] ***.[35]

According to ***, *** submitted bids to it for *** project. Other bidders were ***. According to ***, there were no significant differences in the payment terms offered by the bidders and no penalties were calculated for any supplier since it would not have any significant effect on the award of the contract.[36] ***, the lowest bidder without technical problems, was awarded the contract.

LOST SALES AND LOST REVENUES

Dresser-Rand alleged one lost sale, Exxon's Baytown expansion project, and three instances of lost revenues, ***. ***, in its questionnaire response, also alleged a lost sale/lost revenues in the case of the Exxon project. *** each alleged one lost sale, ***. In addition, Dresser-Rand stated that the low quotes given by MHI/MIC may influence whether to continue in the bid process for the *** project since the costs of bid preparation are high and it cannot compete with MHI/MIC. Details of the bid competition for all of these transactions are given above.

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[30] Telephone conversation with ***, May 6, 1997.
[31] Fax from James Cannon of Stewart and Stewart, June 14, 1996.
[32] Telephone conversation with ***, Mar. 19, 1997.
[33] Staff verification report of ***, p. 8.
[34] Ibid.
[35] Voice mail message from ***, April 8, 1997.
[36] Fax from ***, May 8, 1997.

For the Exxon project,[37] Dresser-Rand alleges that it ***, but still lost the contract to MHI/MIC. ***[38] ***. ***.[39] ***.[40] *** also alleged that the Exxon project was a lost sale due to competiton from Japan and ***.[41]

*** claims that competition with MHI/MIC for the *** project forced it to lower prices to a level that will not cover the full costs of production or ensure an adequate return on investment. In response to ***'s quote, ***. According to ***, during negotiations, ***. *** also indicated that ***.

For the *** project, *** claims that after its initial bid was submitted, ***, and in response, *** submitted a lower formal bid ***. ***. *** won the contract with a final price of ***.

In the case of the *** project, ***. ***. ***[42] ***. According to ***[43] ***.[44]

*** claims that it is not bidding on the *** project because it cannot compete with MHI/MIC's low prices. ***.[45] ***. No award has been made for the EPGTC system to be used in this project and ***.

*** alleged a lost sale in the case of the *** project. ***. As discussed in the section *Competition involving Japanese suppliers*, *** recommended the low bidder, ***, but the plant owners chose *** as the supplier and hired *** to procure the EPGTC system. According to *** was not the low bidder, their equipment was the most efficient among the proposals.

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[37] The respondent contends that the price quoted by Dresser-Rand is a transfer price since the engineering construction firm, Kellogg, is owned by Dresser Industries, the petitioner's majority parent company. Preliminary conference transcript, p. 99.

[38] According to ***.

[39] Confidential TR, p. 174.

[40] May 1, 1997, posthearing brief of Stewart and Stewart, pp. 6, 7.

[41] Confidential TR, pp. 172, 173.

[42] According to Dresser-Rand, ***.

[43] According to internal correspondence of ***. Apr. 17, 1997, prehearing brief of Steptoe & Johnson, exh. 4.

[44] Telephone conversation with ***, June 12, 1996.

[45] June 5, 1996, postconference brief of Steptoe & Johnson, p. 34.

PART VI: FINANCIAL CONDITION OF THE U.S. INDUSTRY

BACKGROUND

All four U.S. producers of EPGTC systems--A-C Compressor, Demag Delaval, Dresser-Rand, and Elliott--provided financial data on their operations producing EPGTC systems. Additionally, Demag Delaval, Dresser-Rand, and Elliott provided contract-by-contract data on their EPGTC systems, and data on their operations revamping, replacing, and repairing EPGTC systems. Dresser-Rand's fiscal year ends October 31, Elliott's ends on or about May 31, and A-C Compressor's and Demag Delaval's end December 31. Based on shipment data, about two-thirds of sales every period were exports. There were ***.[1]

Staff verified both Dresser-Rand's and Elliott's data. While there were numerous changes to their employment, backlog, and EPGTC financial data, their data were not fundamentally altered.

OVERALL ESTABLISHMENT OPERATIONS

The results of the producers' overall establishment operations are presented in table VI-1. ***.

OPERATIONS ON EPGTC SYSTEMS

Profit-and-loss data on the producers' sales of EPGTC systems are shown in table VI-2. Their results were ***.

Because of the limited number of systems produced and sold each year and the large variation in product specifications from contract to contract, per-unit and variance analysis are both of limited relevance in this particular case and are not being presented.

Selected financial data on a company-by-company basis are shown in table VI-3. A-C Compressor, ***.

Demag Delaval, which reported ***.

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[1] *** M.W. Kellogg Company (Kellogg), an engineering firm that installs EPGTC systems for end users. According to *** for EPGTC systems. Instead, ***.

Table VI-1
Income-and-loss experience of U.S. producers[1] on their overall establishment operations wherein EPGTC systems are produced, fiscal years 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

Item					Jan.-Mar.	
	1993	1994	1995	1996	1996	1997
	Value (*$1,000*)					
Net sales	515,216	557,540	541,626	644,821	125,741	* * *
Cost of goods sold	419,938	466,312	473,621	553,852	110,812	* * *
Gross profit	95,278	91,228	68,005	90,969	14,929	* * *
SG&A expenses	68,904	72,185	75,801	78,517	18,166	* * *
Operating profit or (loss)	26,374	19,043	(7,796)	12,452	(3,237)	* * *
Interest expense	6,059	4,817	6,025	5,429	1,302	* * *
Other expense items	0	73	603	371	52	* * *
Other income items	13,381	16,001	11,815	10,498	937	* * *
Net income	33,696	30,154	(2,609)	17,150	(3,654)	* * *
Depreciation/amortization	13,263	14,561	14,329	16,276	3,473	* * *
Cash flow	46,959	44,715	11,720	33,426	(181)	* * *
	Ratio to net sales (*percent*)					
Cost of goods sold	81.5	83.6	87.4	85.9	88.1	* * *
Gross profit	18.5	16.4	12.6	14.1	11.9	* * *
SG&A expenses	13.4	12.9	14.0	12.2	14.4	* * *
Operating profit or (loss)	5.1	3.4	(1.4)	1.9	(2.6)	* * *
Net income	6.5	5.4	(0.5)	2.7	(2.9)	* * *
	Number of firms reporting					
Operating losses	* * *	* * *	* * *	* * *	* * *	* * *
Net losses	* * *	* * *	* * *	* * *	* * *	* * *
Data	3	3	3	3	3	3

[1] The producers and their fiscal year ends are Demag Delaval (12/31), Dresser Rand (10/31), and Elliott (5/31).

Note: The operating margin for Jan.-Mar. 1997 was ***.

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-2
Income-and-loss experience of U.S. producers on their operations producing EPGTC systems, fiscal years 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

Item					Jan.-Mar.	
	1993	1994	1995	1996	1996	1997
	Value (*$1,000*)					
Net sales	101,670	174,609	133,394	160,052	44,702	* * *
Cost of goods sold	101,690	162,035	137,465	161,393	44,869	* * *
Gross profit or (loss)	(20)	12,574	(4,071)	(1,341)	(167)	* * *
SG&A expenses	15,744	30,365	22,237	21,943	6,151	* * *
Operating (loss)	(15,764)	(17,791)	(26,308)	(23,284)	(6,318)	* * *
Interest expense	0	1,391	1,729	513	137	* * *
Other expense items	419	382	136	195	86	* * *
Other income items	1,060	2,060	2,247	860	221	* * *
Net income	(15,123)	(17,504)	(25,926)	(23,132)	(6,320)	* * *
Depreciation/amortization	2,454	4,451	5,087	5,134	1,386	* * *
Cash flow	(12,669)	(13,053)	(20,839)	(17,998)	(4,934)	* * *
	Ratio to net sales (*percent*)					
Cost of goods sold	100.0	92.8	103.1	100.8	100.4	* * *
Gross profit or (loss) (note 1)	(0.0)	7.2	(3.1)	(0.8)	(0.4)	* * *
SG&A expenses	15.5	17.4	16.7	13.7	13.8	* * *
Operating (loss)	(15.5)	(10.2)	(19.7)	(14.5)	(14.1)	* * *
Net income	(14.9)	(10.0)	(19.4)	(14.5)	(14.1)	* * *
	Number of firms reporting					
Operating losses	* * *	* * *	* * *	* * *	* * *	* * *
Net losses	* * *	* * *	* * *	* * *	* * *	* * *
Data	4	4	4	4	4	4

Note 1: The gross margin for 1993 was ***.

Source: Compiled from data submitted in response to Commission questionnaires.

Table VI-3
Selected financial data of U.S. producers on their operations producing EPGTC systems, by firms, fiscal years 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

* * * * * * *

*** when Demag Delaval's aftermarket (combined revamp, replacement, and repair) revenues and costs are added to its EPGTC system revenues and costs, as summarized below (values in thousands of dollars):

	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
Combined EPGTC system and aftermarket:						
Net sales values	***	***	***	***	***	***
Operating income (loss)	***	***	***	***	***	***
Operating income (loss) as a percent of net sales values	***	***	***	***	***	***

When compared to the data in table VI-3, it can be seen ***.

Dresser-Rand's sales of EPGTC systems ***. The effects of these two types of costs on Dresser-Rand's profitability are shown below (values in thousands of dollars; net sales value less variable COGS equals variable margin, and variable margin less fixed COGS equals gross margin):

	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
Net sales value	***	***	***	***	***	***
Variable COGS	***	***	***	***	***	***
Variable margin:						
Value	***	***	***	***	***	***
% of sales	***	***	***	***	***	***
Fixed COGS	***	***	***	***	***	***
Gross margin:						
Value	***	***	***	***	***	***
% of sales	***	***	***	***	***	***

The effects of the changes in these two cost components are ***.

Also shown is the "fixed" portion of Dresser-Rand's costs. These costs ***. ***, respectively.

According to the company, *** into the bid preparation.[2] The tabulation below illustrates the revenues and costs of Dresser-Rand's combined aftermarket (combined revamp, replacement, and repair) and EPGTC system operations (values in thousands of dollars):

	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
Combined EPGTC system and aftermarket:						
Net sales values	***	***	***	***	***	***
Operating income (loss)	***	***	***	***	***	***
Operating income (loss) as a percent of net sales values	***	***	***	***	***	***

The company's ***.

Elliott's net sales ***. The following tabulation[3] illustrates the components of Elliott's cost of goods sold (values in thousands of dollars):

	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
Net sales values	***	***	***	***	***	***
Variable COGS	***	***	***	***	***	***
Variable margin:						
Value	***	***	***	***	***	***
% of sales	***	***	***	***	***	***
Fixed COGS	***	***	***	***	***	***
Gross margin:						
Value	***	***	***	***	***	***
% of sales	***	***	***	***	***	***

Elliott's data, or at least its trends, are ***.

According to Elliott, ***.[4] The tabulation below illustrates the revenues and costs of Elliott's combined aftermarket (combined revamp, replacement, and repair) and EPGTC system operations (values in thousands of dollars):

---

[2] Hearing transcript, pp. 75-76.

[3] These data differ to a limited extent from the data in table VI-3 because the data in that table *** while these data do not.

[4] Elliott's QR, attachment to p. 9.

	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
Combined EPGTC system and aftermarket:						
Net sales values	***	***	***	***	***	***
Operating income (loss)	***	***	***	***	***	***
Operating income (loss) as a percent of net sales values	***	***	***	***	***	***

While Elliott's aftermarket operations ***.

AFTERMARKET OPERATIONS ON REVAMPING, REPLACING, AND REPAIRING EPGTC SYSTEMS

The producers' aftermarket operations revamping, replacing, and repairing EPGTC systems, along with their combined EPGTC system/aftermarket operations, are presented in table VI-4. Aftermarket services' revenues ***.

Table VI-4
Income-and-loss experience of U.S. producers on their aftermarket operations revamping, replacing, and repairing EPGTC systems, and on their combined EPGTC system/aftermarket operations, fiscal years 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

* * * * * * *

Not included in table VI-4 is ***.

INVESTMENT IN PRODUCTIVE FACILITIES, CAPITAL EXPENDITURES, AND RESEARCH AND DEVELOPMENT EXPENSES

The value of the producers' property, plant, and equipment; capital expenditures; and research and development expenditures are shown in table VI-5. *** categories.

Table VI-5
Value of assets, capital expenditures, and research and development expenses of U.S. producers of EPGTC systems, fiscal years 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

* * * * * * *

EPGTC SYSTEM CONTRACT-BY-CONTRACT DATA

Demag Delaval's, Dresser-Rand's, and Elliott's contract-by-contract data on their EPGTC systems are presented in appendix F (A-C Compressor did not supply data). The data are presented in a manner similar to the data in table VI-3 (net sales, cost of goods sold, gross profit, SG&A expenses, operating profit) with a few exceptions. First, ***. Next, ***. Lastly, ***.

Dresser-Rand's data are in table F-3. The company's variable profit margins on its export sales were ***.

Elliott's trends (table F-4) were ***.

The tabulation below traces the *** (*** to all contracts that year) :

	1993	1994	1995	1996	Jan.-Mar. 1996	Jan.-Mar. 1997
Contracts with variable profit margins of:						
40% + ...	***	***	***	***	***	***
30% to 39.9% . .	***	***	***	***	***	***
20% to 29.9% . .	***	***	***	***	***	***
10% to 19.9% . .	***	***	***	***	***	***
0% to 9.9%	***	***	***	***	***	***
less than 0% . . .	***	***	***	***	***	***
Average variable profit margin (%) .	***	***	***	***	***	***

After ***.

CAPITAL AND INVESTMENT

The producers were asked if their firms' experienced any actual negative effects on their return on investment or growth, investment, ability to raise capital, existing development and production efforts (including efforts to develop a derivative or more advanced version of the product), or the scale of capital investments as a result of imports of EPGTC systems from Japan since January 1, 1992. *** are as follows:

***--

***.

***--

*** as follows (in thousands of dollars):

* * * * * * *

The producers were also asked if they anticipated any negative effects. ***. *** as follows:

* * * * * * *

PART VII: THREAT CONSIDERATIONS

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors[1]--

> (I) if a countervailable 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 countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,
>
> (II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,
>
> (III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,
>
> (IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,
>
> (V) inventories of the subject merchandise,
>
> (VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,
>
> (VII) 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

---

[1] Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that "The Commission shall consider [these factors] . . . as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition."

705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) 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 domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).[2]

Subsidies have not been alleged in this investigation; information on the volume and pricing of imports of the subject merchandise is presented in parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

FOREIGN PRODUCERS OPERATIONS

The petition identified five producers of the subject products in Japan. Other than MHI, the U.S. Embassy in Tokyo reported the following information regarding the identified Japanese producers:[3]

Ebara Corp.--"Firm sold three units of small stage gas turbo-compressors (valued at 210 million yen {approximately $2.2 million}) for the petrochemical industry to Sumitomo Chemical in August 1995. Sumitomo Chemical sent these compressors to a joint venture company in the U.S." . . . "the final destination of three units of small gas turbo-compressor systems sold from Ebara Corporation to Sumitomo Chemical Engineering in Japan is as follows: Phillips Sumika Polypropylene Company . . . Houston, TX."[4]

---

[2] 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 WTO 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."

[3] June 26, 1996, and July 5, 1996, cables from the U.S. Embassy in Tokyo, to the U.S. Department of Commerce, International Trade Adminstration.

[4] ***. Nonetheless, Ebara Corp. sent a letter to Commerce stating that it made no sales or shipments of the subject merchandise to the United States (or to intermediate parties with the ultimate destination of the United States) during Commerce's period of investigation (July 22, 1996, letter to Lou Apple, ASDIC-ITA, from Y. Aroma, General Manager, Aero Products Marketing and Sales, Ebara Corp.) It is unclear whether this apparent inconsistency relating to the question of Ebara's status is due to its interpretation of the scope of the investigation prior to Commerce's clarification, sales of the subject merchandise during Commerce's period of investigation (Apr. 1, 1995

(continued...)

Hitachi, Ltd.--"Firm has participated in tenders for gas turbo-compressor systems to the U.S., but claims to have never won a bid to date."

Kobe Steel, Ltd.--"Firm expressed interest in exporting gas turbo-compressor systems to the U.S. but claims that it has not done so to date."

Mitsui Engineering and Shipbuilding Co., Ltd.--"Firm exported gas turbo-compressors to the U.S. some ten to twelve years ago, but claims to have made no exports to the U.S. since then."

The U.S. Embassy in Tokyo also contacted several other known compressor manufacturers in Japan, including:

". . . Kaji Technology, Mikuni Jukogyo, Mikuni Kikai Kogyo, and Tanabe Pneumatic Machinery. None claimed to be manufacturing gas turbo-compressors or systems. Another company, Ishikawajima-Harima Heavy Industries, Ltd., is manufacturing said products but does not export to the U.S."[5]

Requests for information relating to EPGTC systems operations in Japan were sent to Ebara Corp. (through ***) and to counsel for MHI. Data on EPGTC systems operations in Japan were received only from MHI, and are presented in table VII-1.[6]

Table VII-1
EPGTC systems: Reported data for Japanese producers, 1993-96, Jan.-Mar. 1996, Jan.-Mar. 1997, and projected 1997 and 1998

* * * * * * *

MHI reported producing large-scale EPGTC systems at its facilities in Hiroshima, Japan, and ***.[7] Based on capacity and production data reported by MHI, capacity utilization has *** percent since 1994

---

[4] (...continued)
through May 31, 1996), or differences in responses from different divisions within the company (information in the June 26, 1996, cable from the U.S. Embassy in Tokyo was received from Yoshiaki Tanaka, Manager of Marketing and Application Engineering Dept., Sodegaura Factory).

[5] June 26, 1996, cable from U.S. Embassy in Tokyo to ITA.

[6] ***.

[7] The smaller compressor systems produced at the *** operations (Mar. 7, 1997, MHI response to the foreign producer's questionnaire, note to sec. I.3, p. 2).

for the two plants.[8] MHI also reported two critical constraints on its capacity to increase production of EPGTC systems:[9] "***."

During the preliminary phase of this investigation, counsel for petitioner argued that MHI "has continued to invest aggressively in productive capacity, particularly in its Takasago plant . . . (s)ubstantial budgeted amounts for investment in productive capacity remain unspent in both plants". . . that the upward trend in export shipments "coupled with MHI's presence at several U.S. bid negotiations, indicates that MHI does have ample capacity to increase its shipments to this market". . . and that "(b)ecause of its very low prices, MHI has found it necessary to renegotiate subvendor contracts each time, adding delays to the production process."[10]

As presented in table VII-1, MHI reported exports to the United States in ***, which accounted for *** of total MHI shipments of EPGTC systems during those years.[11] For the period 1993-96, MHI contracts for sales to all other export markets accounted for more than *** percent of total EPGTC systems contracts, while its limited home market accounted for less than *** percent of total contracts for the period.

Dresser-Rand/MHI Joint Venture

According to MHI: "***."[12]

U.S. IMPORTERS' INVENTORIES

As previously noted in the section on U.S. producers' inventories, EPGTC systems are custom-designed for individual plants and shipped to customers as produced, so that finished systems are not held in inventory.

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[8] MHI reported capacity based on operating *** (Mar. 7, 1997, MHI response to the foreign producer's questionnaire, note "a" to sec. III.1, p. 4). However, MHI does have *** (June 5, 1996, postconference brief of Steptoe & Johnson, p. 24).

[9] Mar. 7, 1997, MHI response to the foreign producer's questionnaire, sec. III.2, p. 6.

[10] June 5, 1996, postconference brief of Stewart & Stewart, pp. 39-41.

[11] MHI reported that it "***" (Mar. 7, 1997, foreign producer's questionnaire response of MHI, sec. III.5, p. 7).

[12] Mar. 7, 1997, foreign producer's QR of MHI, sec. III.7, p. 7.

APPENDIX A

FEDERAL REGISTER NOTICES

A plat representing the dependent resurvey of a portion of the Fifth Guide Meridian East (east boundary), the subdivision of section 12, a metes-and-bounds survey in section 12 and an Informative Traverse of the Right Bank of the San Francisco River in Section 12, Township 5 South, Range 29 East, Gila and Salt River Meridian, Arizona, was approved May 13, 1996, and officially filed May 21, 1996.

A plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines; and metes-and-bounds surveys in Sections 19 and 30, Township 14 North, Range 11 West, Gila and Salt River Meridian, Arizona, was approved June 26, 1996, and officially filed July 3, 1996.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

Dennis K. McKay,

Acting Chief Cadastral Surveyor of Arizona.

[FR Doc. 96-17399 Filed 7-8-96; 8:45 am]

BILLING CODE 4310-31-M

[ES-960-1420-00; ES-48108, Group 29, Missouri]

Notice of Filing of Plat of Survey; Missouri

The plat of the dependent resurvey of the north, east, and west boundaries; a portion of the south boundary, and a portion of the subdivisional lines, and the subdivision of certain sections, Township 32 North, Range 5 East, Fifth Principal Meridian, Missouri, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., August 12, 1996.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., August 12, 1996.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: June 27, 1996.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 96-17340 Filed 7-8-96; 8:45 am]

BILLING CODE 4310-GS-M

National Park Service

Acadia National Park Bar Harbor, MA; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770, 5 U.S.C. Ap. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, August 5, 1996.

The Commission was established pursuant to Public Law 99-420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park headquarters, Acadia National Park, Rt. 233, Bar Harbor, Maine, at 1:00 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held May 13, 1996.
2. Report of the following subcommittees:
   A. Conservation Easement
   B. Acquisition
   C. Planning
3. Bylaw changes.
4. Superintendent's report: Tour of park facilities; i.e., carriage roads, gatehouse exteriors, Jordan Pond House and trails.
5. Public comments.
6. Proposed agenda and date of next Commission meeting to be held jointly with Friends of Acadia leaders and Board, and League of Towns members.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting to: Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609-0177, tel: (207) 288-3338.

Dated: June 26, 1996.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 96-17424 Filed 7-8-96; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-748 (Preliminary)]

Engineered Process Gas Turbo-Compressor Systems From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of engineered process gas turbo-compressor systems, provided for in subheadings 8414.80.20, 8419.60.50, 8414.90.40, 8406.81.10, 8406.82.10, 8406.90.20 through 8406.90.45, 9032.89.60, 8501.53.40, 8501.53.60, 8501.53.80, and 8483.40.50, of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On May 8, 1996, a petition was filed with the Commission and the Department of Commerce by Dresser-Rand Co., Corning, NY, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of engineered process gas turbo-compressor systems from Japan. Accordingly, effective May 8, 1996, the Commission instituted antidumping investigation No. 731-TA-748 (Preliminary). On May 24, 1996, The United Steelworkers of America (USW), Pittsburgh, PA, which represents the production workers at the petitioner's and two other U.S. producers' facilities, filed a letter with the Commission and Commerce indicating that it was joining Dresser-Rand as a co-petitioner.

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of May 17, 1996 (61 FR 24952). The conference was held in Washington, DC, on May 29, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 24, 1996. The views of the Commission are contained in USITC Publication 2976 (July 1996) entitled "Engineered Process Gas Turbo-Compressor Systems from Japan: Investigation No. 731-TA-748 (Preliminary)."

By order of the Commission.

Issued: July 1, 1996.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-17427 Filed 7-8-96; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-372 Enforcement Proceeding]

Certain Neodymium-Iron-Boron Magnets, Magnet Alloys, and Articles Containing Same; Notice of Referral of Formal Enforcement Proceeding to an Administrative Law Judge for Issuance of a Recommended Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has referred the formal enforcement proceeding instituted on April 25, 1996, in the above-captioned investigation to an administrative law judge for appropriate proceedings and the issuance of a recommended determination.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-3116.

SUPPLEMENTARY INFORMATION: On October 10, 1995, the Commission issued a notice that it had determined not to review an initial determination (Order No. 29) of the presiding administrative law judge in the above-captioned investigation granting a motion to terminate the investigation as to respondents San Huan New Materials High Tech, Inc., Ningbo Konit Industries, Inc., and Tridus International, Inc. (the "San Huan respondents") on the basis of a Consent Order, and subsequently issued the Consent Order. The Consent Order provides that the San Huan respondents:

shall not sell for importation, import into the United States or sell in the United States after importation or knowingly aid, abet, encourage, participate in, or induce the sale for importation, importation into the United States or sale in the United States after importation of neodymium-iron-boron magnets which infringe any of claims 1-3 of the '439 patent, or articles or products which contain such magnets, except under consent or license from Crucible.

On March 4, 1996, complainant Crucible Materials Corporation filed a complaint alleging that the San Huan respondents had violated the Consent Order and seeking institution of a formal enforcement proceeding. Crucible requested that the Commission enforce the Consent Order, impose civil penalties, assess reasonable attorney's fees, and impose such other remedies and sanctions as are appropriate. On March 12 and 28, 1996, the San Huan respondents filed letters objecting, *inter alia*, to a formal enforcement proceeding and requesting that an informal enforcement proceeding instead be instituted.

On April 25, 1996, the Commission issued an Order instituting a formal enforcement proceeding and instructing the Secretary to transmit the enforcement proceeding complaint to the San Huan respondents through counsel for a response. On June 4, 1996, the San Huan respondents filed a response to the complaint, denying violation of the Consent Order and infringement of the patent claims at issue and requesting that the Commission deny all relief sought and terminate the enforcement proceeding with prejudice.

Having examined the San Huan respondents' response to the formal enforcement proceeding complaint filed by Crucible, and having found that issues concerning possible violation of the Commission's Consent Order remain, the Commission determined to refer the enforcement proceeding to Judge Paul J. Luckern for issuance of a recommended determination concerning whether San Huan New Materials High Tech, Inc., Ningbo Konit Industries, Inc., and/or Tridus International, Inc. are in violation of the Commission's Consent Order. The recommended determination is to be issued within six (6) months of the Commission Order referring the enforcement proceeding to the administrative law judge.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.75 of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.75).

Copies of the Commission's Order and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: July 1, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-17426 Filed 7-8-96; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Department of Justice Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that on June 24, 1996, a proposed Consent Decree was lodged with the United States District Court for the Western District of Washington, *United States* v. *ASARCO Inc.*, Civil Action No. C91-5528B. The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency (EPA) for releases of hazardous substances at the Asarco Smelter Operable Unit of the Commencement Bay Nearshore/Tideflats Superfund Site in Ruston and Tacoma, Washington. The defendant in the action is ASARCO Incorporated (Asarco). The claims of the United States on behalf of EPA are based upon contamination of the Asarco Smelter Site. The Asarco Smelter Site is comprised of the Asarco smelter facility, which is approximately sixty-seven acres in size, and the adjacent twenty-three acre slag peninsula.

In its amended complaint, the United States asserted claims against Asarco pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, for injunctive relief to abate an imminent and substantial endangerment to public health or welfare or the environment due to the release or threatened release of hazardous substances at the Asarco Smelter Site. The United States also sought recovery of costs that have been and will be incurred in response to releases and

submissions of the information collection requests to OMB.

The following information is provided for the information collection: (1) title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Technical Training Program Course Effectiveness Evaluation.

OMB Control Number: None.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: State regulatory authority and Tribal employees and their supervisors.

Total Annual Responses: 650.

Total Annual Burden Hours: 110 hours.

Dated: December 27, 1996

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 96–32764 Filed 12–24–96; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Submission for OMB review; Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Agencies are required to publish a Notice in the Federal Register notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first Federal Register Notice on this information collection request on October 17, 1996, in 61 FR 54214, at which time a 60-day comment period was announced. This comment period ended on December 16, 1996. No comments were received in response to this Notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology.

The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this Notice.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Lena Paulsen, Manager, Information Center, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527; 202/336–8565.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, N.W., Washington, DC 20503, 202/395–5871.

Summary of Form Under Review

Type of Request: Revised form.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institutions (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 6 hours per project.

Number of Response: 160 per year.

Federal Cost: $4,000 per year.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: December 19, 1996.

James R. Offutt,

Assistant General Counsel, Department of Legal Affairs.

[FR Doc. 96–32754 Filed 12–24–96; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–748 (Final)]

Engineered Process Gas Turbo-Compressor Systems From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping Investigation No. 731–TA–748 (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 threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Japan of engineered process gas turbo-compressor systems (EPGTS), whether assembled or unassembled, and whether complete or incomplete. The systems covered by this investigation are only those used in the petrochemical and fertilizer industries, in the production of ethylene, propylene, ammonia, urea, methanol, refinery and other petrochemical products. The subject imports are provided for in subheadings 8414.80.20, 8414.90.40, 8419.60.50, 8406.81.10, 8406.82.10, 8406.90.20 through 8406.90.45, 8483.40.50, 8501.53.40, 8501.53.60, 8501.53.80, and 9032.89.60 of the Harmonized Tariff Schedule of the United States. Excluded from this investigation are spare parts, including parts or components for the revamp or repair of an existing EPGTS, that are sold separately from an original contract for an EPGTS.

For further information concerning the conduct of this phase of the 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), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: December 9, 1996.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), 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. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of engineered process gas turbo-compressor systems from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on May 8, 1996, by Dresser-Rand Company, Corning, NY.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

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 the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. 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 the final phase of this investigation will be placed in the nonpublic record on April 10, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on April 24, 1997, 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 April 16, 1997. 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 April 18, 1997, 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 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 17, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 1, 1997; witness testimony must be filed no later than three 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 May 1, 1997. On May 23, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 28, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. 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 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's 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 title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: December 16, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96–32777 Filed 12–24–96; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use; Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of Determination.

EFFECTIVE DATE: December 17, 1996.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act, as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market estimate made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Residential Alterations and Repairs.

Form Number(s): SORAR–705.

Agency Approval Number: 0607–0130.

Type of Request: Extension of a currently approved collection.

Burden: 2,000 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau conducts the Quarterly Survey of Residential Alterations and Repairs to collect information on real–property improvements and repairs from a sample of owners or designated representatives of rental or vacant residential housing units. We mail this survey quarterly to respondents over a one–year period. We use data gathered in this survey as a component to our published estimates of expenditures for residential upkeep and improvement. Data on improvements and repairs to owner occupied housing units are gathered in the Consumer Expenditures Survey and are also incorporated into published estimates. Estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts, and assessments of the construction industry. They also provide all levels of government with a tool to evaluate economic policy and measure progress towards established goals. For example, the Bureau of Economic Analysis uses the improvement statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

Affected Public: Individuals or households, Businesses or other for–profit, State, local or tribal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 2, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–31260 Filed 12–09–96; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 21–95]

Foreign-Trade Zone 168—Dallas-Fort Worth, Texas Withdrawal of Application for Expanded Manufacturing Authority Nokia Mobile Phones Manufacturing (USA), Inc.

Notice is hereby given of the withdrawal of the application submitted by the Foreign-Trade Zone Operating Company of Texas, operator of FTZ 168, requesting authority on behalf of Nokia Mobile Phones Manufacturing (USA), Inc., to expand Nokia's authority to manufacture telecommunications products under zone procedures within FTZ 168. The application was filed on May 8, 1995 (60 FR 26716, 5/18/95).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: November 26, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96–31248 Filed 12–9–96; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–840]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete From Japan

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

EFFECTIVE DATE: December 10, 1996.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta or Howard Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6320 or (202) 482–5193.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

Preliminary Determination

We preliminarily determine that engineered process gas turbo-compressor systems ("EPGTS"), whether assembled or unassembled, and whether complete or incomplete, from Japan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 28, 1996 (*Notice of Initiation of Antidumping Duty Investigation: Engineered Process Gas Turbo-Compressors, Whether Assembled or Unassembled, and Whether Complete or Incomplete from Japan*, 61 FR 28164, June 4, 1996), the following events have occurred.

On July 1, 1996, the United States International Trade Commission ("ITC") notified the Department of Commerce ("the Department") of its affirmative preliminary determination (*see* ITC Investigation No. 731–TA–748). The ITC found that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan of EPGTS.

Also, on July 1, 1996, we presented Section A (Organization, Accounting Practices, Markets and Merchandise) of the Department's questionnaire to Mitsubishi Heavy Industries, Ltd. ("MHI") and its U.S. affiliate Mitsubishi Heavy Industries America Inc. ("MHIA")(collectively "MHI"), the sole respondent in this investigation. *See* the "Respondent Selection" section of this

notice. MHI's response to Section A was received on July 29, 1996.

On August 6, 1996, Dresser-Rand Company, the petitioner in this investigation, alleged that there are reasonable grounds to believe or suspect that MHI's third country sales during the period of investigation ("POI") were made at prices below the cost of production. MHI objected to the petitioner's allegation on August 9, 1996. The petitioner supplemented its allegation with additional information on August 27, 1996. The Department initiated a sales-below-cost investigation with respect to third country sales on August 30, 1996. This issue, however, became moot when MHI reported on October 18, 1996, that it had a viable home market based on the memorandum issued by the Department on October 8, 1996, which clarified the scope of the investigation.

Based on the information received in MHI's Section A response, on August 9, 1996, we issued Sections A–1 (Supplier Affiliations), B (Third Country Sales), C (U.S. Sales) and D (Constructed Value ("CV")) of the Department's questionnaire to MHI. Section D–1 (Cost of Production) of the questionnaire was issued on August 30, 1996. Responses to these sections were received on August 27, September 20, and September 30, 1996. A supplemental questionnaire relevant to Sections A–D was issued on October 15, 1996. MHI's response to Sections A and C of the Department's supplemental questionnaire were received on November 5, 1996.

On September 12, 1996, at the request of the petitioner, we postponed the preliminary determination to December 4, 1996. (*See Notice of Postponement of Preliminary Determination: Antidumping Investigation of Engineered Process Gas Turbo-Compressors, Whether Assembled or Unassembled, and Whether Complete or Incomplete from Japan*, 61 FR 50272, September 25, 1996.)

During the period June 19, 1995, through July 15, 1996, the petitioner and the respondent filed comments requesting clarification of the scope of this investigation with respect to: (1) the end uses of the subject merchandise; (2) the treatment of revamped and repair EPGTS parts and components; and (3) the definition of complete and incomplete EPGTS covered by the scope. On October 8, 1996, the Department clarified the scope of the investigation with respect to end uses and revamped and repair parts and components. *See* October 8, 1996, Memorandum to Jeffrey Bialos from The Team Re: Scope Issues. *See also* "Scope of Investigation" section of this notice. With respect to the definition of complete and incomplete EPGTS, *see* "Scope Issues" section of this notice.

Based on the Department's scope clarification made with respect to the end uses of the subject merchandise, on October 18, 1996, MHI informed the Department that its home market was viable, but that none of MHI's home market sales made during the POI was sufficiently similar to its U.S. sale to serve as the basis for price-to-price comparisons. Based on MHI's representations, subject to verification, the Department notified MHI on October 23, 1996, that it need no longer respond to the questions concerning third country sales contained in Sections B and D of the Department's October 15, 1996 supplemental questionnaire. Subsequently, on October 23, 1996, the Department issued a revised Section D supplemental questionnaire and requested that MHI provide complete home market sales data following the same format as that outlined in the Department's August 9, 1996 Section B questionnaire so that the Department could evaluate adequately its selling practices. MHI's response to the revised supplemental Section D questionnaire was received by the Department on November 12, 1996. Home market sales data was provided to the Department on November 8 and 22, 1996.

MHI sold subject merchandise in the United States during the POI through a Japanese trading company and its U.S. subsidiary. In order to fully investigate the issue of whether MHI and the trading company (and its U.S. subsidiary) are affiliated parties, on October 23 and 28, 1996, the Department issued questionnaires to MHI and the trading company, respectively. Responses to these questionnaires were received on November 8 and 19, 1996, respectively. MHI submitted supplemental responses on November 20 and 22, 1996.

On November 18, 1996, the petitioner filed comments on issues to be resolved and methodologies to be employed in the preliminary determination. MHI filed rebuttal comments on November 25, 1996.

On November 21, 1996, the petitioner filed a home market sales-below-cost allegation, stating that during the POI, MHI sold subject merchandise in the home market below the cost of production and, therefore, should be excluded from the Department's calculation of profit for CV purposes. On November 22, 1996, MHI filed comments in rebuttal to the petitioner's allegation. The Department initiated a home market sales-below-cost investigation on December 4, 1996. *See* Memorandum to Louis Apple from The Team Regarding Initiation of Home Market Sales-Below-Cost Investigation dated December 4, 1996.

Respondent Selection

The petitioner named five Japanese producers of subject merchandise in the petition, and stated that, of these five producers, only MHI sold subject merchandise in the United States during the POI. On June 12, 1996, we sent a letter to the Japanese Embassy in Washington, D.C. requesting whether there were any shipments of the subject merchandise to the United States by any of the companies listed in the petition during the period May 1, 1991 through May 31, 1996. We received no response. On June 17, 1996, we contacted the U.S. Embassy in Tokyo, requesting the identification of Japanese producers or exporters (other than MHI) of EPGTS to the United States, and the quantity and value of subject merchandise they sold to the United States during 1994 and 1995, or the latest available comparable periods in 1993 and 1994. On June 26, 1996, we received a reply cable from the U.S. Embassy which identified several Japanese producers of subject merchandise, only one of which, Ebara Corporation, may have exported to the United States. Based on the petition and the information received from the U.S. Embassy, we issued a Section A questionnaire to MHI on July 1, 1996. We also requested U.S. sales/shipment information during the period April 1, 1995 through May 31, 1996 from Ebara Corporation on July 10, 1996. On July 22, 1996, Ebara Corporation sent a letter stating that it made no sales or shipments of the subject merchandise to the United States during the period specified by the Department. We did not send any additional questionnaires to any other producers (besides MHI), as no evidence on the record suggested that any other Japanese manufacturer sold EPGTS in the United States during the specified period.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2)(A) of the Act, on December 4, 1996, MHI requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the publication of an affirmative preliminary determination in the Federal Register. In accordance with 19 CFR 353.20(b)(1995), inasmuch as our preliminary determination is affirmative, MHI accounts for a significant proportion of exports of the

subject merchandise, and we are not aware of the existence of any compelling reasons for denying this request, we are granting MHI's request and postponing the final determination. Suspension of liquidation will be extended accordingly. *See Preliminary Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan* (61 FR 8029, March 1, 1996).

Scope of Investigation

We have clarified the scope of investigation since our notice of initiation to include EPGTS used in the production of refinery products. Furthermore, we have clarified the scope to exclude repair or revamp parts and components that are not included in the original contract of sale for an EPGTS. *See* October 8, 1996, Decision Memorandum to Jeffrey P. Bialos from The Team Re: Scope Issues. We have also clarified the definition of "incomplete" EPGTS which are covered by the scope. *See* "Scope Issues" section of this notice.

The products covered by this investigation are turbo-compressor systems (*i.e.*, one or more "assemblies" or "trains") which are comprised of various configurations of process gas compressors, drivers (*i.e.*, steam turbines or motor-gear systems designed to drive such compressors), and auxiliary control systems and lubrication systems for use with such compressors and compressor drivers, whether assembled or unassembled. One or more of these turbo-compressor assemblies or trains, may be combined. The systems covered are only those used in the petrochemical and fertilizer industries, in the production of ethylene, propylene, ammonia, urea, methanol, refinery and other petrochemical products. This investigation does not encompass turbo-compressor systems incorporating gas turbine drivers, which are typically used in pipeline transmission, injection, gas processing, and liquid natural gas service.

The scope of this investigation excludes spare parts that are sold separately from a contract for an EPGTS. Parts or components imported for the revamp or repair of an existing EPGTS, or otherwise not included in the original contract of sale for the EPGTS of which they are intended to be a part, are expressly excluded from the scope.

Compressors are machines used to increase the pressure of a gas or vapor, or mixture of gases and vapors. Compressors are commonly classified as reciprocating, rotary, jet, centrifugal, or axial (classified by the mechanical means of compressing the fluid), or as positive-displacement or dynamic-type (classified by the manner in which the mechanical elements act on the fluid to be compressed). Subject compressors include only centrifugal compressors engineered for process gas compression, *e.g.*, ammonia, urea, methanol, propylene, or ethylene service.

Turbines are classified (1) as steam or gas; (2) by mechanical arrangement as single-casing, multiple shaft, or tandem-compound (more than one casing with a single shaft); (3) by flow direction (axial or radial); (4) by steam cycle, whether condensing, non-condensing, automatic extraction, or reheat; and (5) by number of exhaust flows of a condensing unit. Steam and gas turbines are used in various applications. Only steam turbines dedicated for a turbo-compressor system are subject to this investigation.

A motor and gear box is used as a compressor driver in lieu of a steam turbine. A control system is used to monitor and control the operation of a turbo-compressor system. A lubrication system is engineered to support a subject compressor and steam turbine (or motor/gear box).

A typical EPGTS consists of one or more compressors driven by a turbine (or in some cases a motor drive). A compressor is usually installed on a base plate and the drive is installed on a separate base plate. The turbine (or motor drive) base plate will typically also include any governing or safety systems, couplings, and a gearbox, if any. The lube and oil seal systems for the turbine and compressor(s) are usually mounted on a separate skid.

The scope of this investigation covers both "assembled and unassembled" EPGTS from Japan. Because of their large size, EPGTS and their constituent parts are typically shipped partially assembled (or unassembled) to their destination where they are assembled and/or completed prior to their commissioning.

The scope of this investigation also covers "complete and incomplete" EPGTS from Japan. A "complete" EPGTS covered by the scope consists of all of the components of an EPGTS (*i.e.*, process gas compressor(s), driver(s), auxiliary control system(s) and lubrication system(s)) and their constituent parts, which are imported from Japan in assembled or unassembled form, individually or in combination, pursuant to a contract for a complete EPGTS in the United States. An "incomplete" EPGTS covered by the scope of this investigation consists of parts of an EPGTS imported from Japan pursuant to a contract for a complete EPGTS in the United States, which taken altogether, constitute at least 50 percent of the cost of manufacture of the complete EPGTS of which they are a part.

EPGTS imported from Japan as an assembly or train (*i.e.*, including turbines, compressors, motor and gear boxes, control systems and lubrication systems, and auxiliary equipment) may be classified under Harmonized Tariff Schedule of the United States ("HTSUS") subheading 8414.80.2015, which provides for centrifugal and axial compressors. The U.S. Customs Service may view the combination of turbine driver and compressor as "more than" a compressor and, as a result, classify the combination under HTSUS subheading 8419.60.5000.

Compressors for use in EPGTS, if imported separately, may also be classified under HTSUS subheading 8414.80.2015. Parts for such compressors, including rotors or impellers and housing, are classified under HTSUS subheading 8414.90.4045 and 8414.90.4055.

Steam turbines for use in EPGTS, if imported separately, may be classified under the following HTSUS subheadings: 8406.81.1020: steam turbines, other than marine turbines, stationary, condensing type, of an output exceeding 40 MW; 8406.82.1010: steam turbines, other than marine turbines, stationary, condensing type, exceeding 7,460 Kw; 8406.82.1020: steam turbines, other than marine turbines, stationary, condensing type, exceeding 7,460 Kw, but not exceeding 40 MW; 8406.82.1050: steam turbines, other than marine turbines, stationary, other than condensing type, not exceeding 7,460 Kw; 8406.82.1070: steam turbines, other than marine turbines, stationary, other than condensing type, exceeding 7,460 Kw, but not exceeding 40 MW. Parts for such turbines are classified under HTSUS subheading 8406.90.2000 through 8406.90.4580.

Control and other auxiliary systems may be classified under HTSUS 9032.89.6030, "automatic regulating or controlling instruments and apparatus: complete process control systems."

Motor and gear box entries may be classified under HTSUS subheading 8501.53.4080, 8501.53.6000, 8501.53.8040, or 8501.53.8060. Gear speed changers used to match the speed of an electric motor to the shaft speed of a driven compressor, would be classified under HTSUS subheading 8483.40.5010.

Lubrication systems may be classified under HTSUS subheading 8414.90.4075.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Scope Issues

Subsequent to initiation, MHI requested that the Department clarify the definition of an "incomplete" EPGTS covered by the scope of the investigation. As stated above, we have preliminarily determined that an "incomplete" EPGTS covered by the scope of this investigation consists of parts of an EPGTS from Japan pursuant to a contract for a complete EPGTS in the United States, which taken altogether, constitute at least 50 percent of the cost of manufacture of the complete EPGTS of which they are a part.

Because of their large physical size, EPGTS are typically imported into the United States in either partially assembled or disassembled form, perhaps in multiple shipments over an extended period of time, and may require the addition and integration of non-subject parts prior to, or during, the installation process in the United States. The Department is concerned that, because of the great number of parts involved, there is the potential that a party may attempt to exclude its merchandise from the scope of this investigation on the basis of a lack of completion at the time of importation. The Department's concern in this case has also been expressed in past cases with similar fact patterns (*e.g., Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, from Germany and Japan*, 61 FR 38166, 38139, July 23, 1996) ("*LNPPs from Germany and Japan*").

Therefore, for suspension of liquidation purposes, the Department must decide on a reasonable and administrable approach in determining what constitutes a subject incomplete EPGTS.

For purposes of this preliminary determination, we have defined a "complete" and an "incomplete" EPGTS covered by the scope of our investigation. *See* "Scope of Investigation" section of this notice. We have utilized this approach in the past where the nature of the merchandise and its importation lent itself to circumvention. (*See LNPPs from Germany and Japan*).

In order to determine whether the imported merchandise constitutes a subject incomplete EPGTS through performance of this cost-based test, we will have to wait until all of the parts comprising the EPGTS are imported and the complete EPGTS is produced. Thus, we will suspend liquidation on all importations of EPGTS parts from Japan at the preliminary duty rate calculated by the Department unless a certification is provided by both the foreign manufacturer/exporter and U.S. importer that the parts to be imported, when taken altogether, constitute less than 50 percent of the cost of manufacture of the complete EPGTS of which they are a part. For entries which are accompanied by the appropriate certification, we will direct the U.S. Customs Service to suspend liquidation at a zero duty rate, subject to verification by the Department at a later date, if necessary. We will also require the interested parties to provide the following information on the documentation accompanying each entry from Japan of EPGTS parts: (1) the number of the sales contract pursuant to which the parts are imported, (2) a description of the parts included in the entry, (3) the actual cost of the imported parts, (4) the actual or estimated cost (depending on what is available at the time of importation) of the complete EPGTS, and historical cost variance (if the estimated cost is provided), (5) a schedule of parts shipments to be made pursuant to the particular EPGTS contract, if more than one shipment is relevant, and (6) a schedule of EPGTS production completion in the United States. *See* "Suspension of Liquidation" section of this notice.

We are presently soliciting comments from interested parties as to the merits of this approach and/or any other approach that may be relevant for suspension of liquidation purposes in the final determination. Interested party comments on this topic are due no later than February 28, 1997.

Period of Investigation (POI)

The POI is April 1, 1995 through May 31, 1996.

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based normal value ("NV") on CV because we determined that the merchandise sold in the home market during the POI was not sufficiently similar to that sold in the United States to permit proper price-to-price comparisons.

Fair Value Comparisons

To determine whether MHI's sales of EPGTS to the United States were made at less than fair value, we compared Constructed Export Price ("CEP") to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Constructed Export Price

Pursuant to section 772 of the Act, the basis for the fair value comparison is the price at which the merchandise is first sold to an unaffiliated purchaser in the United States or for export to the United States. MHI reported its sale to a Japanese trading company on the grounds that the trading company is an unaffiliated purchaser and, at the time of sale, MHI knew that merchandise was intended for export to the United States. However, based on our examination of the sales documentation provided by MHI, which shows that MHI played an integral role in the sale to the U.S. customer, we have preliminarily determined that the Japanese trading company and its U.S. subsidiary were acting as MHI's U.S. selling agents, not as resellers, in the transaction under investigation. Therefore, the proper basis for the fair value comparison is the sale by MHI, through the Japanese trading company and its U.S. subsidiary, to the U.S. customer. Because MHI made this transaction through a U.S. agent acting on behalf of the producer, we preliminarily determine that the use of CEP is appropriate in this case.

We have preliminarily made this determination (*see* December 4, 1996 Concurrence Memorandum) based on the role of the parties in the sales transaction and not on the basis of the corporate relationship between the parties. However, we are also continuing to examine the nature of the relationship between MHI and the Japanese trading company within the context of section 771(33) (F) and (G) of the Act.

To determine whether sufficient control of one party over another exists pursuant to section 771(33) of the Act, the Department made inquiries on this issue in this case through the issuance of separate questionnaires to both MHI and the Japanese trading company and through a review of public source data. We collected information relevant to the various control indicia set forth in the Statement of Administrative Action ("SAA"), and plan to gather additional information as necessary to complete our analysis and to verify the data submitted. *See* December 4, 1996, Memorandum to Jeffrey Bialos from The Team Regarding Whether the Evidence on the Record of {this} Investigation Supports a Finding that {MHI} and {the Japanese Trading Company} Are Affiliated for Antidumping Purposes, and the Consequences of this Finding in Determining the Appropriate Basis for

U.S. Price. In this case, the Department faces complex issues involving the interpretation of the affiliation definition and the application of that definition to the facts at issue. The central issue is whether MHI and the Japanese trading company are legally or operationally in a position to exercise restraint or direction over the other or are under common control by third parties. The question of control is a particularly complex one where, as in the instant case, it may not involve direct control of one party over another, but may involve control exercised through financial entities which each have debt relationships with the two firms. Issues relevant to this determination include: how to evaluate the relative significance of debt relationships as indicia of control in the country under investigation (and whether any benchmarks are appropriate); when a close supplier relationship exists and its implication; and how to weigh the control indicia set forth in the SAA, especially if the Department finds that no single criterion is a sufficient indication of control.

Given the Department's desire to develop an appropriate analytical framework to take into account all factors which, by themselves, or in combination, may indicate affiliation in this case, we are continuing to investigate the issue for purposes of the final determination. Additionally, we solicit comments from interested parties on the issues enumerated above. Interested party comments on this topic are due no later than February 17, 1997.

In accordance with sections 772 (b) and (c) of the Act, we calculated CEP based on a packed, FOB Japanese port, duty paid price, inclusive of spare parts, to an unaffiliated customer in the United States through an unaffiliated trading company. We excluded from this price any post-POI price amendments, in accordance with our standard practice. *See LNPPs from Germany* (61 FR 38166, 38181–2, July 23, 1996). We made a deduction from the starting price for the value of the non-subject parts which were included in the U.S. sale. We also made deductions for foreign inland freight expense, foreign inland insurance, foreign brokerage and handling, and export insurance.

Pursuant to section 772(d) of the Act, we also made deductions for direct selling expenses, including imputed credit and installation-related expenses, and indirect selling expenses that related to economic activity in the United States. We imputed credit expenses for the U.S. sale using the U.S. short-term interest rate reported for the POI because the sale was denominated in U.S. dollars. *See LNPPs from Japan and Germany and Oil Country Tubular Goods from Austria* (60 FR 33551, 33555 (1995)).

Furthermore, we also deducted an amount for the selling expenses incurred by the Japanese trading company and its U.S. subsidiary based on facts available, as actual expense data was not available. As facts available, we calculated an amount equal to the difference between the price MHI charged the Japanese trading company, and the price the Japanese trading company's U.S. subsidiary charged the U.S. customer (net of the value of the non-subject parts and post-POI price changes) as a surrogate for these expenses. Finally, we made an adjustment for CEP profit in accordance with section 722(d)(3) of the Act.

Normal Value/Constructed Value

For the reasons outlined in the "Product Comparisons" section of this notice, we based NV on CV.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of MHI's cost of materials, fabrication, selling, general, and administrative expenses ("SG&A"), and profit, plus U.S. packing costs as reported in the U.S. sales database.

In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we allocated the reported home market selling expenses over the cost of manufacture ("COM"), and applied the resulting percentage to the COM.

We relied on the respondent's CV data, except in the following specific instances wherein the reported costs were improperly valued:

1. We included the costs associated with performance tests in the COM because based on the respondent's description of the nature of these tests, they did not appear to be "special tests" specifically required by the customer that would go beyond routine quality control tests or which would not otherwise be performed on the subject merchandise during the production process.

2. We adjusted the price of production inputs purchased by MHI from affiliated parties at non-arm's-length prices.

Level of Trade (LOT)

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA at 829–831, to the extent practicable, the Department will calculate NV based on sales (or in this case CV) at the same level of trade as the U.S. sales. When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade.

In its questionnaire responses, MHI did not state that there were differences in its selling activities by customer categories within each market. Therefore, in the absence of information in MHI's questionnaire responses which might lead us to reach a different conclusion, we have determined for purposes of this preliminary determination that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all fair value comparisons are at the same level of trade and no adjustment pursuant to section 773(a)(7)(A) of the Act is warranted.

Price to CV Comparisons

In comparing CEP to CV, we deducted from CV the home market direct selling expenses pursuant to section 773(a)(8) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars based on the official exchange rates in effect on the date of the U.S. sale as certified by the Federal Reserve Bank. The date of sale in this case is the earliest date on which the essential terms of sale were set by the U.S. customer and MHI's sales agent, the U.S. subsidiary of the Japanese trading company. *See* "Constructed Export Price" section of this notice.

Section 773A(a) of the Act directs the Department to convert foreign currencies based on the dollar exchange rate in effect on the date of sale of the subject merchandise, except if it is established that a currency transaction on forward markets is directly linked to an export sale. When a company demonstrates that a sale on forward markets is directly linked to a particular export sale in order to minimize its exposure to exchange rate losses, the Department will use the rate of exchange in the forward currency sale agreement.

Section 773A(a) also directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a fluctuation. It is the

Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation existed, we substitute the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see, Policy Bulletin 96–1: Currency Conversions,* 61 FR 9434, March 8, 1996.) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of an adjustment period was not warranted in this case because the Japanese yen did not undergo a sustained movement, nor were there any currency fluctuations during the POI.

Verification

As provided in section 782(i) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of EPGTS from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. We are also directing the Customs Service to suspend liquidation of all entries of parts of EPGTS imported pursuant to a contract for a complete EPGTS in the United States that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the Federal Register. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the constructed export price as shown below.

The suspension of liquidation with respect to EPGTS parts will remain in effect provided that the sum of such entries represents at least 50 percent of the cost of manufacture of the complete EPGTS of which they are part. This determination will be made only after all entries of parts imported pursuant to an EPGTS contract are made and the complete EPGTS pursuant to that contract is produced, unless a certification is provided by both the foreign manufacturer/exporter and U.S. importer that the parts to be imported, when taken altogether, constitute less than 50 percent of the cost of manufacture of the complete EPGTS of which they are a part. For those entries which are accompanied by this certification, we will direct the U.S. Customs Service to suspend liquidation at a zero duty rate, subject to verification by the Department at a later date if necessary. We will also require the interested parties to provide clearly the following information on the documentation accompanying each entry from Japan of EPGTS parts: (1) the EPGTS contract pursuant to which the parts are imported, (2) a description of the parts included in the entry, (3) the actual cost of the imported parts, (4) the actual or estimated cost (depending on what is available at the time of importation) of the complete EPGTS, and historical cost variance (if the estimated cost is provided), (5) a schedule of parts shipments to be made pursuant to a particular EPGTS contract, if more than one shipment is relevant; and (6) a schedule of EPGTS production completion in the United States.

With respect to entries of EPGTS spare and replacement/repair parts from Japan, we will instruct the Customs Service not to suspend liquidation of these entries if they are not included in the original contract of sale for the EPGTS of which they are intended to be a part.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters and U.S. importers shall be required to provide certification that the imported merchandise would not be used to fulfill an EPGTS contract. We will also request that these parties register with the Customs Service the EPGTS contract numbers pursuant to which subject merchandise is imported. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Mitsubishi Heavy Industries, Ltd. (MHI)	34.37
All others	34.37

The All Others rate applies to all entries of subject merchandise except for entries of merchandise produced by MHI.

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 before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

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 12, 1997, and rebuttal briefs, no later than March 17, 1997. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 20, 1997, time and place to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 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. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by 135 days after the publication of this notice in the Federal Register.

This determination is published pursuant to section 733(f) of the Act.

Dated: December 4, 1996.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 96–31356 Filed 12–09–96; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–840]

Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan

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

EFFECTIVE DATE: May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Louis Apple, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1769, respectively.

THE APPLICABLE STATUTE: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations, published in the **Federal Register** on May 11, 1995 (60 FR 25130).

FINAL DETERMINATION: We determine that engineered process gas turbo-compressor systems ("EPGTS"), whether assembled or unassembled, and whether complete or incomplete, from Japan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Act.

Case History

Since the preliminary determination in this investigation (Notice of Preliminary Determination and Postponement of Final Determination: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete from Japan (61 FR 65013, December 10, 1996) ("Preliminary Determination")), the following events have occurred.

In January 1997, respondents Mitsubishi Heavy Industries, Ltd. ("MHI") and Mitsubishi Corporation ("MC") submitted supplemental questionnaire responses to the Department.

In February 1997, we verified the questionnaire responses of MHI and MC in Tokyo and Hiroshima, Japan, and Houston, Texas. On March 10 and 11, 1997, the Department issued its reports on verification findings.

On February 18, 1997, per the Department's instructions in the preliminary determination, MHI, MC, and the petitioner, Dresser-Rand Company, submitted comments on the issue of "affiliation." On February 21 and 24, 1997, MC and MHI, respectively, requested the Department to strike certain portions of the petitioner's submission on affiliation because it allegedly contained untimely new factual information. After reviewing the petitioner's submission, the Department determined on March 13, 1997, that certain information presented therein constituted new factual information, untimely filed, under section 353.31(a)(1)(i) of the Department's regulations, and informed the petitioner that unless otherwise discussed in the Department's verification reports, the information at issue would not be considered for purposes of the final determination.

On February 28, 1997, per the Department's instructions in the preliminary determination, the petitioner and MHI submitted comments on the scope of the investigation, and suspension of liquidation instructions.

The petitioner, MHI, and MC submitted case briefs on March 18, 1997, and rebuttal briefs on March 24, 1997. The Department held a public hearing for this investigation on April 1, 1997.

Scope of Investigation

The products covered by this investigation are turbo-compressor systems (*i.e.*, one or more "assemblies" or "trains") which are comprised of various configurations of process gas compressors, drivers (*i.e.*, steam turbines or motor-gear systems designed to drive such compressors), and auxiliary control systems and lubrication systems for use with such compressors and compressor drivers, whether assembled or unassembled, and whether complete or incomplete. One or more of these turbo-compressor assemblies or trains, may be combined. The systems covered are only those used in the petrochemical and fertilizer industries, in the production of ethylene, propylene, ammonia, urea, methanol, refinery and other petrochemical products. This investigation does not encompass turbo-compressor systems incorporating gas turbine drivers, which are typically used in pipeline transmission, injection, gas processing, and liquid natural gas service.

The scope of this investigation excludes spare parts that are sold separately from a contract for an EPGTS. Parts or components imported for the revamp or repair of an existing EPGTS, or otherwise not included in the original contract of sale for the EPGTS of which they are intended to be a part, are expressly excluded from the scope.

Compressors are machines used to increase the pressure of a gas or vapor, or mixture of gases and vapors. Compressors are commonly classified as reciprocating, rotary, jet, centrifugal, or axial (classified by the mechanical means of compressing the fluid), or as positive-displacement or dynamic-type (classified by the manner in which the mechanical elements act on the fluid to be compressed). Subject compressors include only centrifugal compressors engineered for process gas compression, *e.g.*, ammonia, urea, methanol, propylene, or ethylene service.

Turbines are classified (1) As steam or gas; (2) by mechanical arrangement as single-casing, multiple shaft, or tandem-compound (more than one casing with a single shaft); (3) by flow direction (axial or radial); (4) by steam cycle, whether condensing, non-condensing, automatic extraction, or reheat; and (5) by number of exhaust flows of a condensing unit. Steam and gas turbines are used in various applications. Only steam turbines dedicated for a turbo-compressor system are subject to this investigation.

A motor and gear box may be used as a compressor driver in lieu of a steam turbine. A control system is used to monitor and control the operation of a turbo-compressor system. A lubrication system is engineered to support a subject compressor and steam turbine (or motor/gear box).

A typical EPGTS consists of one or more compressors driven by a turbine (or in some cases a motor drive). A compressor is usually installed on a base plate and the drive is installed on a separate base plate. The turbine (or motor drive) base plate will typically also include any governing or safety systems, couplings, and a gearbox, if any. The lube and oil seal systems for the turbine and compressor(s) are usually mounted on a separate base plate.

The scope of this investigation covers both assembled and unassembled EPGTS from Japan. Because of their large size, EPGTS and their constituent parts are typically shipped partially assembled (or unassembled) to their destination where they are assembled and/or completed prior to their commissioning.

The scope of this investigation also covers "complete and incomplete" EPGTS from Japan. A "complete" EPGTS covered by the scope consists of all of the components of an EPGTS (*i.e.*, process gas compressor(s), driver(s), auxiliary control system(s) and lubrication system(s)) and their constituent parts, which are imported from Japan in assembled or unassembled form, individually or in combination, pursuant to a contract for a complete EPGTS in the United States. An "incomplete" EPGTS covered by the scope of this investigation consists of parts of an EPGTS imported from Japan pursuant to a contract for a complete EPGTS in the United States, which taken altogether, constitute at least 50 percent of the cost of manufacture of the complete EPGTS of which they are a part. (*See Comment 1* of the "Interested Party Comments" section of this notice for discussion on the definition of "incomplete EPGTS" covered by the scope of this investigation and the methodology the Department will use to calculate the cost of manufacture.)

EPGTS imported from Japan as an assembly or train (*i.e.*, including turbines, compressors, motor and gear boxes, control systems and lubrication systems, and auxiliary equipment) may be classified under Harmonized Tariff Schedule of the United States ("HTSUS") subheading 8414.80.2015, which provides for centrifugal and axial compressors. The Customs Service may view the combination of turbine driver and compressor as "more than" a compressor and, as a result, classify the combination under HTSUS subheading 8419.60.5000.

Compressors for use in EPGTS, if imported separately, may also be classified under HTSUS subheading 8414.80.2015. Parts for such compressors, including rotors or impellers and housing, are classified under HTSUS subheading 8414.90.4045 and 8414.90.4055.

Steam turbines for use in EPGTS, if imported separately, may be classified under the following HTSUS subheadings: 8406.81.1020 (steam turbines, other than marine turbines, stationary, condensing type, of an output exceeding 40 MW); 8406.82.1010 (steam turbines, other than marine turbines, stationary, condensing type, exceeding 7,460 Kw); 8406.82.1020 (steam turbines, other than marine turbines, stationary, condensing type, exceeding 7,460 Kw, but not exceeding 40 MW); 8406.82.1050 (steam turbines, other than marine turbines, stationary, other than condensing type, not exceeding 7,460 Kw); 8406.82.1070 (steam turbines, other than marine turbines, stationary, other than condensing type, exceeding 7,460 Kw, but not exceeding 40 MW). Parts for such turbines are classified under HTSUS subheading 8406.90.2000 through 8406.90.4580.

Control and other auxiliary systems may be classified under HTSUS 9032.89.6030 ("automatic regulating or controlling instruments and apparatus: complete process control systems").

Motor and gear box entries may be classified under HTSUS subheading 8501.53.4080, 8501.53.6000, 8501.53.8040, or 8501.53.8060. Gear speed changers used to match the speed of an electric motor to the shaft speed of a driven compressor, would be classified under HTSUS subheading 8483.40.5010.

Lubrication systems may be classified under HTSUS subheading 8414.90.4075.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation ("POI")

The POI is April 1, 1995 through May 31, 1996.

Product Comparisons

Although the home market was viable, in accordance with section 773 of the Act, we based normal value ("NV") on constructed value ("CV") because we determined that the merchandise sold in the home market during the POI was not sufficiently similar to that sold in the United States to permit proper price-to-price comparisons.

Fair Value Comparisons

To determine whether MHI's sales of EPGTS to the United States were made at LTFV, we compared constructed export price ("CEP") to NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Constructed Export Price

Pursuant to section 772 of the Act, the basis for the fair value comparison is the price at which the merchandise is first sold to an unaffiliated purchaser in the United States or for export to the United States. MHI reported its sale to MC, a Japanese trading company, as an export price ("EP") sale on the grounds that MC is an unaffiliated purchaser and, at the time of sale, MHI knew that the merchandise was intended for export to the United States. However, based on our examination of the sales documentation provided by MHI and MC and our findings at verification, which demonstrate that MC and its U.S. subsidiary, Mitsubishi International Corporation ("MIC"), acted as MHI's selling agents in the U.S. transaction under investigation, we have determined for purposes of this final determination that the proper basis for the fair value comparison is the sale by MHI, through MC/MIC, to the U.S. customer. Because MHI made this transaction through agents acting on its behalf and thus subject to its control, we determined that MHI and MC/MIC are affiliated within the meaning of section 771(33) of the Act. Because the function of MC/MIC, as U.S. sales agents, is beyond that of a "processor of sales-related documentation" and a "communications link" with the unaffiliated U.S. customer, we determined that the use of CEP is appropriate in the final determination of this case (*see* Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany, 61 FR 38166, 38175–76 (July 23, 1996) ("LNPPs from Germany")). (*See Comment 2* in the "Interested Party Comments" section of this notice for discussion of principal-agency relationship between MHI and MC/MIC.)

In accordance with sections 772(b) and (c) of the Act, we calculated CEP based on a packed, FOB Japanese port, duty paid price, inclusive of spare parts, to an unaffiliated customer in the United States through a Japanese trading company affiliated by virtue of an agency relationship with the Japanese producer. We excluded from this price any post-POI price amendments, in accordance with our standard practice. (*See LNPPs from Germany* 61 FR at 38181–2). We made a deduction from the starting price for MIC's cost of the non-subject parts which were included in the U.S. sale. (*See Comment 5* of the "Interested Party Comments" section of this notice.)

We also made further deductions from CEP pursuant to section 772(c) and (d) of the Act based on the same methodology used in the preliminary determination with the following exceptions:

1. We deducted the product liability expense which was reported in the respondent's January 27, 1997, U.S. sales listing.

2. We deducted performance testing cost as a direct selling expense. We reclassified the reported performance testing cost from a manufacturing cost to a direct selling expense based on verification findings which demonstrated that this type of test was optional and only undertaken at the specific request of the customer in the

contract governing the sale. (*See* March 11, 1997, Report on the Verification in Tokyo, Japan and Houston, Texas of Mitsubishi Heavy Industries, Ltd. ("MHI") and Mitsubishi Heavy Industries America ("MHIA") ("MHI Sales Verification Report") at 31.)

3. We also deducted indirect selling expenses incurred by MHI that related to economic activity in the United States, including certain selling expenses incurred in Japan on the U.S. sale. (*See Comment 6* in the "Interested Party Comments" section of this notice.) (*See* also April 24, 1997, Memorandum to the File Re: Office of Accounting Constructed Value and Constructed Export Price Adjustments for Final Determination) ("Calculation Memorandum").)

4. We also deducted U.S. import duties as well as selling expenses incurred by MC/MIC (see Comment 5 of the "Interested Party Comment" section of this notice).

Normal Value

For the reasons outlined in the "Product Comparisons" section of this notice, we based NV on CV.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of MHI's cost of materials, fabrication, selling, general, and administrative expenses ("SG&A"), and profit, plus U.S. packing costs.

We based CV on the same methodology used in the preliminary determination with the following exceptions:

1. We increased cost of manufacture ("COM") to include the inventory loss related to the U.S. sale.

2. We recalculated the home market direct and indirect selling expense rates based on only the home market sales made in the ordinary course of trade. (*See Comment 6* in the "Interested Party Comments" section of this notice.)

3. We recalculated CV profit based on only the home market sales made in the ordinary course of trade.

4. We increased the COM of not only the U.S. sale, but also that of the home market sales, to account for the excess of affiliated suppliers' COP over the transfer price charged to MHI. (*See Comment 16* in the "Interested Party Comments" section of this notice.)

Price to CV Comparisons

In comparing CEP to CV, we deducted from CV the weighted-average home market direct selling expenses, including imputed credit and installation-related expenses, pursuant to section 773(a)(8) of the Act. (*See Comment 10* in the "Interested Party Comments" section of this notice.)

Currency Conversion

We made currency conversions into U.S. dollars based on the rate applicable on the date of the U.S. sale due to a sustained movement in the exchange rate, as calculated by the Department using the methodology outlined in Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996) ("Policy Bulletin 96–1").

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the rolling average of rates for the past eight weeks. When we determine a fluctuation existed, we substitute the benchmark for the daily rate, in accordance with established practice. Further, section 773A(b) directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this methodology, *see Policy Bulletin 96–1.*) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. The use of such an adjustment period was warranted in this case because the Japanese yen underwent a sustained movement. (*See Comment 15* of the "Interested Party Comments" section of this notice.)

Verification

As provided in section 782(i) of the Act, we verified the information submitted by MHI and MC for use in our final determination. We used standard verification procedures, including examination of relevant accounting and sales/production records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Scope of Investigation.

The scope of this investigation covers EPGTS used in the petrochemical and fertilizer industries, whether assembled or unassembled, and whether complete or incomplete. (See Initiation of Antidumping Investigation of Sales at Less Than Fair Value: EPGTS, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan (61 FR 28164, June 4, 1996) ("Initiation").)

Since the initiation of this investigation, the petitioner and MHI have debated two scope-related issues: (1) The definition of "incomplete" EPGTS, and (2) the end uses of the EPGTS covered by the scope. For purposes of the preliminary determination, we clarified the scope of this investigation to include, among other things: (1) EPGTS used in the production of refinery products, and (2) "incomplete" EPGTS if the EPGTS parts (otherwise referred to as "components" or "subcomponents") imported from Japan pursuant to a contract for a complete EPGTS in the United States, taken altogether, constitute at least 50 percent of the cost of manufacture of the complete EPGTS of which they are a part. (*See* Preliminary Determination at 65015.) Both of these issues, the parties' comments, and the Department's position are summarized below. For a complete discussion and analysis of these issues, *see* April 24, 1997, Memorandum to Jeffrey Bialos, Principal Deputy Assistant Secretary for Import Administration, from The Team Re: Scope Issues ("April 24, 1997, Scope Decision Memorandum").

1. Definition of Incomplete EPGTS

The petitioner asserts that the intent of the petition was to cover turbo-compressor "systems" engineered (custom made) for a particular plant process, and typically sold as a single unit at a single negotiated price, whether complete *or* incomplete. According to the petitioner, the intent of the petition was to include incomplete EPGTS and incomplete components if sold as part of a complete EPGTS. In order to define a subject incomplete EPGTS for purposes of the final determination, the petitioner argues that the Department should combine a "cost-based" test with an "essential components" test. Specifically, the petitioner maintains that the Department should amend its preliminary scope language to indicate that imports of EPGTS compressors, steam turbines, or any collection of components from Japan accounting for at least 50 percent of the total cost of manufacture of the EPGTS are subject merchandise. In the petitioner's opinion, this two-pronged approach is simple to administer, avoids circumvention and is consistent with the intent of the petition and the record throughout this investigation.

The petitioner believes that many of the problems identified by the Department in the final determination of LNPPs from Germany and Japan which discouraged the Department from pursuing an "essence" test and

encouraged it to pursue a "cost-based" test (*e.g.*, the difficulty in identifying the "essence" of a LNPP, given the great number of parts and subcomponents; the insignificant portion of total value of the LNPP represented by many of the critical elements identified by the petitioner) are not present in this case. According to the petitioner, there are four major components (*i.e.*, compressor, driver (steam turbine or motor/gear), control system, and lubrication system); however, the compressor and turbine are the heart of the turbo-compressor system both in terms of both function and manufacturing cost.[1] The petitioner cites several cases where the Department applied essence criteria to define the scope of the investigation where, as here, the essential components were readily identifiable and dedicated for use in the complete product.

On the other hand, if the design and engineering of the turbo-compressor system takes place in Japan, but the compressor is subcontracted to another country, the petitioner maintains that it is appropriate to invoke the 50 percent cost-based test to determine whether the incomplete EPGTS should be covered by the scope of the investigation. This would also address the situation where an incomplete compressor is imported, to be assembled after importation with other components, or where the foreign manufacturer produces and supplies nearly an entire turbo-compressor system, but neither the compressors nor the steam turbines are complete upon importation. Because individual components do not constitute an incomplete EPGTS unless they are used to fulfill an EPGTS contract, the petitioner notes that if the Japanese producer is supplying only individual components to be included in a system manufactured by a U.S. or third country supplier, the system will not be of Japanese origin and the components will not be covered.

According to the petitioner, the purpose for establishing a two-part test is to avoid, whenever possible, the complexity of a cost-based test and to remove any incentive for a foreign manufacturer to circumvent the "essence" test by shipping its compressors or steam turbines in incomplete form. The petitioner notes further that its proposed two-prong approach places no undue burden on the importer to determine whether the components imported from Japan are essential components or account for 50 percent of the cost of manufacture of a system, and prevents the suspension of liquidation of non-scope merchandise unless the foreign producer and U.S. importer do not comply in a timely manner with the Department's certification requirements.

The petitioner also requests that the Department further define the calculation methodology to be applied in the performance of the cost-based test, asserting that all design and engineering costs, overhead, testing costs, installation costs, and other manufacturing expenses incurred in Japan with respect to the complete EPGTS (including the costs of any production assists provided by the Japanese manufacturer to U.S. or third country subcontractors) should be included in the Japan content portion of the cost-based test. Accordingly, the petitioner requests that the certification provided to Customs in the case of merchandise alleged to be outside the scope of any order in this case be amended to include such costs explicitly.

Lastly, while the petitioner acknowledges that the Department's industry support determination was based on the producers of complete turbo-compressor systems, the petitioner asserts that the producers of complete EPGTS also produce incomplete EPGTS, and there is no evidence that there are producers of incomplete EPGTS, including compressors and turbines, in the United States other than those that the Department considered in its industry support determination. The petitioner also claims that complete and incomplete systems constitute a single like product, and hence, support of only producers of complete systems in the Department's industry support analysis is adequate. The petitioner further maintains that it is irrelevant whether supporters of the petition produced incomplete EPGTS, so long as they accounted for an adequate percentage of production of the domestic like product, which includes both complete and incomplete systems.

MHI argues that only complete systems are covered by the scope of this investigation because only complete systems were subject to the Department's industry support determination made prior to initiation, and that determination cannot be revisited. MHI asserts that the Department identified the domestic like product to be a complete system and based its determination of industry support on the conclusion that the petition was filed on behalf of the domestic industry. To the extent that the Department finds that its industry support determination covered something other than complete systems, MHI argues that, at a minimum, the Department should not define a subject incomplete EPGTS in terms of individual components, as suggested by the petitioner's proposed "essential components" test, because this would unlawfully expand the scope of the proceeding to include merchandise (*i.e.*, compressors and steam turbines) for which the Department did not make a determination of industry support.

Further, MHI objects to the Department's use of a cost-based approach to define "incomplete EPGTS" for which liquidation would be suspended and, instead, proposes the adoption of a "merchandise-based" approach whereby an incomplete system would be defined as two or more system components, at least one of which is a compressor and all of which are made in Japan. In MHI's opinion, the use of a cost-based approach is inappropriate and unworkable because: (1) It does not ensure that the order will cover only the merchandise produced by a domestic industry for which the Department made its determination of industry support; (2) it fails to identify subject merchandise in terms of facts known at the time of importation; (3) there is uncertainty with respect to the final cost of manufacture and the types of expenses that should be included when calculating the final cost of manufacture of the complete system; and (4) it is unlikely that the Japanese producer will have available at the time of importation enough information about the final cost of the system to allow it to complete the requisite certification, particularly if the Japanese producer is providing only a portion of a system which will be assembled or completed with non-subject equipment produced by unaffiliated non-Japanese manufacturers. In addition, MHI contends that even though a cash deposit would not be required for EPGTS entries accompanied by a certification that they constitute less than 50 percent of the cost of manufacture of the complete system, the Department unlawfully has directed Customs to suspend liquidation of allegedly non-subject merchandise pending its determination of the final cost of the system. According to MHI, duties may be imposed only on subject merchandise, and the Department does not avoid this issue by waiving the cash deposit requirement for merchandise certified to be outside the scope of the order.

[1] According to the petitioner, the compressor and turbine together account for 80–90 percent of the total system cost.

For these reasons, MHI asserts that the Department must adopt the above-described "merchandise-based" definition of a subject incomplete EPGTS for which liquidation would be suspended. In MHI's view, its approach is more consistent with the Department's methodology in past cases where essence criteria were used to define incomplete merchandise covered by the scope. Also, MHI maintains that a merchandise-based definition eliminates the problems inherent in both the Department's and the petitioner's suggested definition of an "incomplete" system. Under MHI's definition, single components would fall outside the scope, eliminating the possibility that the scope could violate the Department's industry support determination. Further, it would allow foreign manufacturers, U.S. importers, the Department, and the Customs Service to determine at the time of importation whether an entry is subject to the order and, thus, remove unnecessary administrative burdens on all parties.

In addition, MHI contends that the petitioner's concern about circumvention (which, in MHI's opinion, is not a valid concern in this case) does not justify the cost-based test which would unlawfully expand the scope of the investigation. Citing various past cases, MHI points out that the Department has consistently rejected scope expansions based on speculative allegations of circumvention and relied on the circumvention provisions of the antidumping law to provide relief even for petitioners who have direct evidence of circumvention.

DOC Position

We disagree with both the petitioner and respondent. In our Preliminary Determination, we explained that because of their large physical size, EPGTS are typically imported into the United States in either partially assembled or disassembled form, perhaps in multiple shipments over an extended period of time, and may require the addition and integration of non-subject parts prior to, or during, the installation process in the United States. Consequently, we stated that we were concerned that because of the great number of parts involved, there is the potential that the Customs Service may inadvertently liquidate entries of subject merchandise based on its lack of completeness at the time of importation. Therefore, for suspension of liquidation purposes, we preliminarily decided to use the cost-based test described above to determine what constitutes a subject incomplete EPGTS. We noted that this approach has been used in past cases with similar fact patterns. (See, e.g., LNPPs from Germany and Japan, 61 FR 38166, 38139, July 23, 1996).

In order to determine whether the imported merchandise constitutes a subject incomplete EPGTS through the performance of the cost-based test, we stated in our preliminary determination that we would have to wait until all of the parts comprising an EPGTS are imported and the complete EPGTS is produced. Thus, we suspended liquidation of all importations of EPGTS parts from Japan at the preliminary cash deposit/bond rate unless a certification was provided by the foreign manufacturer/exporter that the parts to be imported, when taken altogether, constitute less than 50 percent of the cost of manufacture of the complete EPGTS of which they are a part.

For entries accompanied by the appropriate certification, we directed the Customs Service to suspend liquidation at a zero deposit/bond rate. We also required parties to provide to the Department in advance of the entry with a copy of this certification along with the following information which would be subject to the Department's review and verification at a later date, if necessary: (1) The number of the sales contract pursuant to which the parts are imported, (2) a description of the parts included in the entry, (3) the actual cost of the imported parts, (4) the most recent cost estimate for the complete EPGTS and historical variance between estimated and actual costs, (5) a schedule of parts shipments to be made pursuant to the particular EPGTS contract, if more than one shipment is relevant, and (6) a schedule of EPGTS production completion in the United States. (See Preliminary Determination, 61 FR at 65018; and January 23, 1997, Letter from Louis Apple to James Cannon *et al.* re: Clarification of Preliminary Suspension of Liquidation Instructions * * * ("January 23, 1997, Suspension of Liquidation Instructions Clarification Letter.")

The scope of this investigation unambiguously covers EPGTS, whether assembled or unassembled, and whether complete or incomplete. As stated above, because of their large physical size, EPGTS are typically imported into the United States in either partially assembled or disassembled form, perhaps in multiple shipments over an extended period of time, and may require the addition and integration of non-subject parts prior to, or during, the installation process in the United States. Given this fact, the Department, in its pre-initiation analysis, included "incomplete" EPGTS within the scope of the investigation to avoid creating loopholes for enforcement (including those arising from differing degrees of completeness of the imported merchandise) should an order result from this investigation. (See October 8, 1996, Memorandum to Jeffrey Bialos, Principal Deputy Assistant Secretary from The Team Re: Scope.) We were, and still are, concerned that because of the great number of parts involved, the Customs Service may inadvertently liquidate entries of subject merchandise based on a lack of completeness at the time of importation. The inclusion of the term "incomplete" in the scope, however, raised the issue of how to define the minimum level of incompleteness on which the Customs Service should suspend liquidation in order to maintain the effectiveness of any order that may be issued. For purposes of the preliminary determination, we defined this minimum level to be 50 percent of the cost of manufacture of the complete EPGTS. This approach has been used in past cases with similarly complex merchandise and importation processes (see LNPPs from Germany and Japan).

Further, contrary to MHI's suggestions, we note that from the Department's standpoint, it is not, and never has been, the individual components or subcomponents of the system per se that are at issue, but the combination of these components or subcomponents (*i.e.*, the extent of an "incomplete system") imported pursuant to a contract for a complete EPGTS in the United States that would constitute covered merchandise whether by cost, essence, or some other approach (*i.e.*, the sum of importations pursuant to a contract for a highly engineered and integrated turbo-compressor system, not the individual importations of the components or subcomponents, themselves.)

In formulating our decision for purposes of the final determination, we made the following observations. First, the intent of the petition was to include incomplete EPGTS. (*See, e.g.*, petition at 6 * * * " [T]his petition encompasses turbo-compressor systems, * * * whether assembled or unassembled and whether complete or incomplete at the time of entry" (emphasis added).) In this regard, we note our authority to clarify the scope of an investigation, in general, and in a manner which reflects the intent of the petition, in particular. (See, e.g., LNPPs from Germany 61 FR at 38169 (July 23, 1996); *Minebea Co., Ltd.* v. *United States*, 782 F. Supp. 117, 120 (CIT 1992) (the Department uses its "broad discretion to define and clarify the scope of an antidumping

investigation in a manner which reflects the intent of the petition").)

Second, incomplete EPGTS have been covered by the scope of this investigation since our initiation. (See Initiation at 28165 * * * "The scope of this investigation includes incomplete and unassembled systems."); and Preliminary Determination at 65013, 65015).)

Third, our industry support determination did not preclude us from considering less than complete systems in the scope of the investigation. Our industry support determination was based on the domestic like product which was defined as complete systems, including individual components/subcomponents and combinations of components/subcomponents to the extent they are designed and dedicated to a specific system typically designed to contract specifications. (See Initiation, 61 FR at 28164.) This follows from the fact that specific components per se are not covered by the scope of the investigation unless they are included in the contract for the initial system designed and dedicated for use in the complete system. Therefore, a showing of industry support by U.S. manufacturers of components or subcomponents who do not manufacture or sell complete systems was not necessary. We note further that our definition of like product with respect to our industry support determination is consistent with the International Trade Commission's definition of like product in its preliminary injury determination.[2] (See USITC Publication 2976 (July 1996) at 8–10.)

In order to determine the level of industry support for the petition, the Department contacted five U.S. companies identified by the petitioner as producers of EPGTS, including Dresser-Rand Company, and requested that they provide production data on the number of compressor casings, (*i.e.*, compressor shells which, by definition, are not complete systems), and the number and value of complete systems produced. Based on the information we received from these producers and that contained in the petition, we concluded that the producers who supported the petition accounted for more than 50 percent of the total production of the domestic like product. (See Initiation; May 28, 1996, Memorandum from Mary Jenkins and Howard Smith to The File Re: Industry Support; and May 28, 1997, Initiation Checklist.) We note that there is no evidence on the record indicating that there were U.S. producers of the like product other than the five producers contacted by the Department that should have been considered in its pre-initiation industry support analysis.

Fourth, while both the petitioner and MHI seem to agree that as a practical matter, an incomplete EPGTS must include a compressor (as it is the most critical component which typically accounts for over 50 percent of the manufacturing cost of a complete EPGTS) we do not believe that this 50 percent threshold is reached in a situation where only a compressor is imported pursuant to a contract for a multi-train EPGTS system which includes multiple compressors, turbines, and other components.

Further, there are other difficulties inherent in accepting either the petitioner's or MHI's approach. Because of the large number of parts involved, the disassembly inherent in the importation process, and the potential for multiple shipments, an "essence" approach is difficult to administer by Customs without a comprehensive list of parts (identified at the most minimal level of disassembly realistically possible) comprising the essential complete component(s), which has not been provided by the petitioner or respondent. While the petitioner defines certain parts of a compressor and turbine in its attempt to define "incomplete compressors and turbines" covered by the scope in the petition,[3] the parts identified do not represent such a comprehensive list. Also, respondent's approach does not resolve the question of whether the critical component(s) would constitute subject merchandise if it were incomplete in some minor way.

In addition, we note that MHI's definition of "incomplete," which must include at least a complete compressor, restricts the scope much further than the petition, the Department's initiation, and preliminary determination. It would also allow an exporter to circumvent any order resulting from this investigation, simply by subcontracting the manufacture of the system compressor to another country.

In sum, we believe that the approach pursued in the preliminary determination is reasonable, predictable, administrable, and consistent with our industry support determination. Under this approach, an imported incomplete system is covered by the scope of this investigation to the extent that its parts (imported pursuant to a contract for an EPGTS) comprise a certain minimum percentage of the cost of manufacture of the complete system. In response to MHI's argument that we would not know at the time of importation whether the imported incomplete merchandise was subject to duty, we acknowledge that in order to perform the cost-based test, we will have to wait until all of the parts/components comprising the system are imported and the complete system is produced, and that we will suspend liquidation on all imported EPGTS parts in the meantime. However, in the case of multiple shipments of components and component parts, the necessity for all shipments to be completed before the Department could determine whether or not the imported merchandise was subject to any order that may be issued in this case would also be relevant to the essence approach, in that the identification of the critical component(s) could only take place after all importations have been made.

Further, by suspending liquidation at a zero cash deposit rate if the Japanese producer/exporter provides the appropriate certification and the requisite data substantiating the certification that the cost of the imported parts satisfies the 50 percent test, we believe that the importer would be relieved of the financial burden of posting cash deposits which would otherwise be required and not reimbursed until such time as the Department was able to make a determination as to whether the imported parts constituted subject merchandise (*i.e.*, after the EPGTS is completed in the United States). At the same time, this approach provides sufficient safeguards to protect U.S. firms from potentially dumped subject merchandise.

With respect to the respondent's concern that the Japanese producer may not know the final costs of the system so as to be able to certify accurately that the cost of the parts comprising the incomplete system is less than 50 percent of the cost of manufacture of the

[2] The ITC found preliminarily that complete and incomplete systems are part of the same domestic like product based on application of its semi-finished products analysis. The ITC stated that: (1) there is no independent use for an incomplete system other than to be assembled into a specific and complete system and, therefore, an incomplete system is dedicated for use in that EPGTS system; (2) incomplete and complete systems share many of the same characteristics and functions; and (3) there does not appear to be an established price for incomplete systems because complete systems are manufactured pursuant to a contract; thus, there are no independent sales or markets). *See* USITC Publication 2976 (July 1996) at 8–10.

[3] The petitioner defines incomplete compressors and turbines for purposes of the petition as follows: "An incomplete compressor * * * consists of either half of the casing * * * or the casing and end-caps * * * or * * * the rotor, whether or not mounted * * *." "An "incomplete" steam turbine * * * includes (1) either half of the turbine casing, whether or not mounted on a platform; or (2) the turbine rotor, whether or not mounted in the casing." *See* petition at 7 and 9.

complete system if he is providing only a portion of the complete system, we note that if an affiliate is supplying the additional parts to complete the system pursuant to a contract in the United States, we would naturally require that the Japanese producer/exporter provide, with the assistance of its affiliate, the actual final costs of the complete system. If an unaffiliated party is involved in the completion of the system in the United States, we would require that the Japanese producer/exporter include in its cost calculation the estimated or actual price for the parts supplied by the unaffiliated party. If the Japanese producer were supplying only individual components outside of a contract for a complete system (*i.e.*, not "pursuant to a contract for a complete EPGTS"), then its merchandise would *not* be covered by the scope of the investigation and the issue is moot.

Therefore, for purposes of the final determination, we continue to define "incomplete" EPGTS covered by the scope as we did in our preliminary determination. Further, we appreciate the parties' concerns over the methodology to be used to calculate the cost of manufacture of the incomplete system in order to administer the cost-based test. Consequently, we have determined that it is appropriate to calculate this cost of manufacture inclusive of all costs incurred by the producer in Japan, including design and engineering, materials, overhead, quality control testing, and other manufacturing costs such as engineering assists provided to U.S. or third country subcontractors. In addition, we intend to issue suspension of liquidation instructions pursuant to the final determination similar to those issued in connection with the preliminary determination with some modification. Specifically, we will modify these instructions, as follows: (1) To suspend liquidation of EPGTS parts at a zero cash deposit/bond rate if the interested party (*i.e.*, the Japanese producer/exporter or U.S. importer) provides the requisite data substantiating its claim that the cost of the imported EPGTS parts satisfies the 50 percent test within the context of a scope inquiry proceeding; (2) to require that the requisite data substantiating the interested party's claim, followed by an appropriate certification, be provided to the Department instead of to the Customs Service; (3) to include the cost calculation methodology described above; (4) to require the provision of certain additional information; and (5) to require that if the foreign producer/exporter finds that the costs reported to the Department were understated and that the cost of manufacture of the imported elements will be over 50 percent of the cost of manufacture of the EPGTS of which they are a part, that the party inform the Department immediately. *See* "Suspension of Liquidation" section of this notice for details.

2. EPGTS Used in the Production of Refinery Products

MHI argues that the Department unlawfully expanded the scope of the investigation after initiation to include EPGTS used in the production of refinery and other petrochemical (downstream) products because this expansion included products outside the Department's determination of industry support which cannot be revisited after the initiation phase of an investigation. MHI contends that the record strongly suggests that the Department's industry support determination was made only with respect to the production of EPGTS used in the production of five specific chemicals listed in the petition: ethylene, propylene, ammonia, urea or methanol.

The petitioner contends that the Department properly clarified the scope of the investigation to include EPGTS for use in the production of refinery and other petrochemical products. The petitioner asserts that the petition was intended to cover all EPGTS, not only the five end uses specified in the notice of initiation. The petitioner also asserts that the Department's scope clarification does not conflict with the Department's industry support determination because the producers consulted by the Department in its industry support determination constitute the universe of EPGTS suppliers, including EPGTS used in the production of refinery and other petrochemical products.

DOC Position

We disagree with MHI for the reasons already outlined in our October 8, 1996, decision memorandum on this topic. In that memorandum, we stated that the petition was intended to cover EPGTS used to produce refinery products, as well as the other end uses already specified in the notice of initiation. It was never the Department's intention to revise the scope to exclude merchandise which the petition intended to cover. Rather, in an attempt to draft a clear and concise scope definition, the Department altered the original scope language in the petition, inadvertently limiting the end uses of the subject merchandise beyond what was intended by the petition. We noted that the Department has the discretion to clarify the scope at any time during the investigation in general, and in a manner which reflects the intent of the petition, in particular. (See, e.g., LNPPs from Germany, 61 FR at 38169; and Minebea Co., Ltd. v. United States.)

Accordingly, we clarified the scope to include EPGTS used in the production of refinery products. We noted that this clarification did not conflict with our industry support determination prior to the initiation of this investigation. Our industry support determination related to the production of EPGTS systems used generally in the petrochemical and fertilizer industries, without distinction based on the type of application within these industries (*e.g.*, refinery, ethylene, etc.). (*See* October 8, 1996 Memorandum to Jeffrey Bialos from the Team Re: Scope.) Moreover, there is no evidence on the record to indicate that there were U.S. producers of EPGTS used in the manufacture of refinery products other than those contacted by the Department in its industry support determination that should have been considered in the Department's analysis. As stated in our May 28, 1996 Initiation Checklist, "* * * we contacted all known producers and asked them to provide production data * * *." (See also Initiation, 61 FR at 28164.)

Therefore, for purposes of the final determination, we find no reason to depart from our original decision to clarify the scope of the investigation to include EPGTS used in the production of refinery products.

Comment 2: Agency vs. Reseller.

Throughout this investigation, the petitioner and MHI have argued over whether EP or CEP methodology should be used to establish the basis for the U.S. starting price. In this case, MHI sold subject merchandise to MC (a Japanese trading company) which, in turn, sold merchandise to the U.S. customer through MIC (MC's U.S. subsidiary). MHI reported its sale to MC as an EP transaction on the grounds that MC is allegedly an unaffiliated reseller and, at the time of sale, MHI knew that the merchandise was intended for export to the United States (*i.e.*, the "trading company" rule). In our preliminary determination in this investigation, we determined that MC and MIC were acting as MHI's selling agents, not as independent resellers, in the transaction under investigation. This determination was made based on our preliminary examination of the sales documentation provided by MHI, which showed that MHI played an integral role in the U.S. sale. Accordingly, we determined preliminarily that the

proper basis for the fair value comparison was the sale by MHI, through MC/MIC, to the U.S. customer. Because MHI made this transaction through a U.S. agent which was acting on its behalf, we preliminarily determined that the use of CEP, rather than EP, was appropriate. (See Preliminary Determination, 61 FR at 65013.)

The petitioner, MHI, and MC submitted extensive comments in their case and rebuttal briefs on this topic for purposes of the final determination. These comments and the Department's position are summarized below. For a complete discussion and analysis, see April 24, 1997, Memorandum to Jeffrey Bialos, Principal Deputy Assistant Secretary for Import Administration, from The Team Re: Whether MC and its U.S. Subsidiary, MIC, Acted as Agents of MHI or Independent Resellers in the U.S. Sale Made to (the U.S. Customer), and the Consequences of this Finding in Determining the Appropriate Basis for U.S. Price ("April 24, 1997, Agency Decision Memorandum").

The petitioner argues that the Department should continue to treat the U.S. sale as a CEP sale in the final determination on the grounds that MC/MIC and MHI are "affiliated persons" under section 771(33)(G) of the Act because in the negotiation and sale of MHI's EPGTS to the U.S. customer, MC and MIC acted as sales agents.[4] The petitioner states that the record evidence, augmented by verification findings, establishes that MHI was integrally involved throughout the sales negotiation process and that MC/MIC acted as agents for the producer, not as independent purchasers/resellers. The petitioner points to various facts on the record which reveal that MHI effectively controlled the price and all other material terms of sale which were ultimately agreed upon with the U.S. customer such as: (1) There were both direct and indirect communications between MHI and the U.S. customer throughout the transaction; (2) there were no significant differences between MIC's bid proposals to the U.S. customer for the subject merchandise which were ultimately accepted by the U.S. customer and those prepared by MHI for MC/MIC; (3) inquiries from the U.S. customer on the cost impact of proposed specification changes, both in the pre-and post-sale period, were relayed by MIC directly to MHI and MHI issued cost impact reports to the U.S. customer via MIC, except in one case in which MHI dealt directly with the customer; and (4) MC and MIC do not possess the necessary technical capacity or expertise regarding cost, price, production/delivery schedules and post-sale servicing to negotiate the U.S. sale.

Further, the petitioner asserts that both under pre- and post-URAA antidumping law and practice, MC and MIC would be considered affiliated parties as MHI's agents, and thus their sales would warrant CEP treatment. In addition, the petitioner notes that the "trading company" rule does not apply to transactions between affiliated parties or between agents and principals, such as the transaction at issue in this case.

MHI argues that the Department's decision to treat MHI's U.S. sale as a CEP sale in the preliminary determination based on its finding that MC/MIC acted as MHI's U.S. selling agents, contradicts the statute, Department practice, and the facts of this investigation. MHI contends that the Department's preliminary analysis was flawed for several reasons. First, MHI maintains that MHI's/MC's relationship fails to meet the criteria for establishing an agency relationship and the record establishes that MC was a purchaser of MHI's merchandise. While MHI admits that some of the facts on the record may show that MHI and MC acted cooperatively in making the U.S. sale, MHI asserts that this cooperation does not diminish the fact that MHI and MC were still independent companies, each seeking to maximize its own profit, and does not provide a basis for determining that an agency relationship existed. Citing Restatement (Second) of Agency section 12–14 (1957) ("Restatement"), MHI asserts that a principal/agency relationship is characterized by three criteria, all of which must be met in order for an agency relationship to exist, but none of which are met in this case: (1) The agent must have authority to alter the principal's legal relationship to third parties; (2) the agent must have a fiduciary duty to the principal or must act primarily for the benefit of the principal; and (3) the principal must have the right to control the conduct of the agent with respect to matters entrusted to him. Among other things, MHI points out that the pre- and post-contract correspondence reviewed by the Department confirms that, especially as to commercial matters, the U.S. customer dealt almost exclusively with MIC; no documents on the record establish that MC bound or was able to bind MHI to the U.S. customer or to any other third party. MHI points to other facts on the record to demonstrate that MHI and MC acted as independent companies, each operating on its own behalf and not controlling the other.

Further, MHI explains that if the factors enumerated in section 14J of the Restatement (which assist in distinguishing an agent from a reseller) are applied to the facts of this case, it reveals that MC was a purchaser and reseller of MHI's merchandise. MHI points out: (1) The sales documentation on the record demonstrates that only MIC had direct communication with the customer on commercial matters prior to and after sale, and MHI was involved in post-sale logistical and technical negotiations with the U.S. customer; (2) the sales documentation submitted by MHI established that title and risk of loss was transferred from MHI to MC; (3) MC's scope of supply to the U.S. customer differed from MHI's scope of supply to MC; (4) MC had the right to retain the difference between what it paid to MHI and the revenue it received from the U.S. customer; (5) MC had the right to deal with the goods of persons other than MHI, as evidenced by examples of head-to-head competition between the two companies in sales of subject and non-subject merchandise during the POI; and (6) while MHI's identity was disclosed to the U.S. customer because of the custom-built nature of the goods and the fact that the manufacturers are specified in the customer's request for quotation, MIC dealt directly with the U.S. customer in its own name, and not on MHI's behalf.

Second, MHI contends that the rejection of prices between unaffiliated parties for purposes of calculating CEP contradicts the language and the logic of the Act. MHI asserts that the Department has no legal authority to reject the sale price between two unaffiliated parties and to resort to CEP methodology, even if it finds an agency relationship based on cooperative marketing. MHI explains that under pre-URAA law (section 771(13) of the Act), the Department was permitted to collapse a principal and its agent for purposes of determining U.S. price. According to MHI, the URAA (section 771(33) of the Act, as explained in the Statement of Administrative Action (SAA) at 153) repealed this provision and replaced it with the requirement that prices may be rejected only between affiliated parties. MHI argues that in order for the Department to make a determination of affiliation, it must find that "control," as defined under section 771(33) of the Act, exists outside

[4] The petitioner also argues that MHI and MC/MIC are otherwise affiliated within the meaning of section 771(33)(F) of the Act. That is, even assuming MC and MIC did not act as agents for MHI, the petitioner maintains that the overall corporate relationship between the companies, including equity ownership, common directors, and numerous other ties establish that MC and MIC were, in effect, controlled by MHI.

and independent of the transaction under investigation. According to MHI, "control" must be interpreted as the ability to force another party to act against its own economic interests.

Third, MHI asserts that the Department's departure in its preliminary determination from the "trading company" rule without explanation was improper. MHI states that under normal practice, the Department will treat a respondent's sale to a trading company as a U.S. sale if the foreign manufacturer knows at the time of sale that the merchandise is destined for the United States. While MHI reported its U.S. sale in line with this settled practice, MHI asserts that the Department rejected it without explanation.

Fourth, MHI argues that the U.S. sale meets the requirements of an EP sale in accordance with section 772(a) of the Act and the Department's proposed regulations (19 CFR 351.401). MHI contends that its U.S. sale is an EP sale because: (1) MHI sold the merchandise to MC prior to exportation; no inventorying was required or performed; and (2) MHI's U.S. economic activity for this sale was *de minimis* and its U.S. affiliate, MHIA, at most functioned as a communications link with MHI's head office and Hiroshima plant on technical issues. Because MHI's U.S. sale has none of the characteristics of a CEP sale, MHI concludes that it should be treated as an EP sale.

Finally, MHI maintains that the existence of an agency relationship does not convert a sale to CEP that would otherwise be classified as an EP transaction. MHI argues that nothing in the Act or the Department's proposed regulations support the conclusion that the involvement of an unaffiliated party (even if characterized as an agent) itself, warrants CEP methodology. MHI points out that considering a sale between a principal and end user through an unaffiliated selling agent as a CEP transaction ignores the purpose for distinguishing EP and CEP transactions and results in distortive antidumping analysis. MHI explains that the adjustments to CEP which are not relevant to EP exist to eliminate distortions caused by selling functions and associated profits accruing to the manufacturer by reason of sales activities in the United States. In this case, however, MHI asserts that no U.S. activities or profits accrue to the manufacturer where it does not operate in the United States. Since the sale between the manufacturer and the end user is an arm's-length border price, albeit negotiated through the agent, no purpose is served by treating the transaction as CEP merely based on the agent's involvement. Nothing in the nature of the agency relationship suggests that the agent's commission from the manufacturer would not be at arm's length. MHI states further that under CEP analysis, the agent's commission would not be treated as a circumstance of sale adjustment, but as affiliated party activity that must be deducted, with profit, from CEP to "construct" an EP.

According to MHI, if the Department utilizes CEP methodology for this sale, in effect, it would mandate that commissions *per se* cannot be made at arm's length and would fail to recognize a fundamental distinction between affiliation and agency, namely that agents may be either affiliated or unaffiliated with their principals. According to MHI, this distinction is reflected in the different definitions of control that exist in common law with respect to agents and the antidumping statute's treatment of affiliation. MHI explains that in common law, a principal's "control" over an agent focuses on manifestations of consent between the parties; thus, the agent remains free to engage in arm's-length negotiations with the principal over its compensation and other terms of the agency. MHI explains further that, in contrast, the scope of "control" as it relates to affiliated parties under the Act extends to the very terms of the parties' relationship and whether or not the controlling party can induce the controlled party to accept economic terms that the controlled party would not otherwise accept. MHI points out that in this latter context the Act requires the Department to disregard the price (or commission) established between the parties because that price is assumed not to be at arm's length. Where, however, the principal has no control over the terms of agency the agent accepts, no reason exists for the Department to disregard that commission. Thus, without other indicia of affiliation, MHI contends that applying a CEP methodology to a principal/agent relationship, thereby equating agency with affiliation, violates the intent of the EP/CEP distinction and distorts the antidumping analysis. Accordingly, MHI argues that a sale by a principal through an unaffiliated selling agent to an unaffiliated U.S. end user should be treated as an arm's-length EP transaction where the commission accrued by the agent is accounted for as a circumstance of sales adjustment.

Like MHI, MC contends that MC and MIC acted as resellers and not as sales agents for MHI in the U.S. transaction at issue because: (1) The required characteristics of an agency relationship are not fulfilled, and (2) the parties' commercial behavior, sales documentation and internal accounting records are consistent with a purchase/resale relationship. According to MC, the price between MHI and MC is the relevant U.S. price (pursuant to the "trading company" rule) because MHI knew that the ultimate destination of the merchandise was the United States and MHI and MC are unaffiliated parties.

Specifically, MC asserts that under U.S. law, an agency relationship has several required characteristics which are not present in the transaction under investigation. For example, it cannot exist without an explicit agreement from the principal authorizing the agent to act on his behalf in a specified context, and explicit consent by the agent to act on the principal's behalf and only at the principal's direction; and the agent does not act independently, pursuing his own economic interests, but rather is acting exclusively to promote the interests of the principal. According to MC, in a typical sales agent relationship, the agent's job is to locate potential customers for the principal. The principal makes all commercial decisions and takes whatever profits accrued from the transaction. The agent is compensated based on the principal/agent agreement. By contrast, resellers, while they must cooperate with the seller to conduct business, they are independent in their actions, take on more initiative and responsibility, and bear more risk in the transaction than an agent does. Specifically, resellers (1) Take title to the goods, (2) carry the risk of loss, and (3) are compensated based on the spread or mark-up that they can achieve independently on a resale. Based on the behavior of the parties in the transaction and the documentation on the record, MC maintains that MC and MIC acted as independent resellers in the U.S. sale at issue. MC points out that if MC and MIC had been acting as sales agents in the transaction at issue, MHI would have: (1) Asked MIC or MC to solicit possible customers for MHI; (2) negotiated all commercial terms and entered into the contract with the customer; and (3) received the profit from the transaction, while MC/MIC would have merely received a commission pursuant to the agency agreement. According to MC, the record demonstrates that the sale at issue did not occur in this manner.

Moreover, MC states that the legal documentation and internal accounting records of the transaction at issue likewise confirm that MC/MIC acted as

independent purchasers and resellers. MC asserts that the legal documentation shows that MC and MIC each took title to the MHI turbo-compressor equipment, bore the risk of loss and were fully responsible for the further completion of the sale at issue. MC also asserts that MC's and MIC's internal accounting records reflect purchase and sale transactions, show that the price received from the resale customer is higher than the price paid by MC/MIC to its supplier, and do not report any commission.

Finally, like MHI, MC disagrees with the petitioner's argument that the alleged agency relationship between MHI and MC is grounds for a finding of affiliation. MC maintains that by its nature, a transaction-specific agency relationship could not rise to the level of permanence, significance, and control necessary to support a finding of affiliation that is suggested by the Department's proposed regulations.

DOC Position

We agree with the petitioner. We determine that a principal and agent in a sales transaction, even if unrelated in a broader corporate sense, are "affiliated" within the meaning of section 771(33) of the Act. For the purpose of determining U.S. price, the pre-URAA law (section 771(13)) included an explicit reference to principal-agent relationships in the definition of "exporter" and, in practice, sales agents and their principals were deemed affiliated for the purpose of calculating U.S. price. (See, e.g., Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa, 60 FR 22550 (May 8, 1995) ("Furfuryl Alcohol from South Africa"); Electrolytic Manganese Dioxide from Japan: Final Results of Antidumping Administrative Review, 58 FR 28551 (May 14, 1993) ("Electrolytic Manganese Dioxide from Japan").) In the URAA, Congress repealed this provision and replaced it with the new definition of "affiliated persons" in section 771(33) of the Act. While there is no explicit reference to agents in new section 771(33), we nevertheless interpret the new definition to include agents for several reasons. First, the legislative history is clear that Congress intended to expand, not limit, the definition of "affiliated persons" beyond that which existed under the pre-URAA law. Second, the new law defines an affiliated party to include "any person who controls any other person" or "any person which is legally or operationally in a position to exercise restraint or direction over another person." Thus, this definition covers principal-agent relationships because, by definition, a principal controls its agent. The agent may act only to the extent its actions are consistent with the authority granted by the principal. Thus, control of the principal over its agent is the hallmark of an agency relationship. (See Restatement, section 14.)

While we agree that an agent may negotiate at arm's length the terms of an agency agreement, we disagree with MHI that this leads to the conclusion that there is no control within the meaning of section 771(33). With respect to activities undertaken pursuant to the agency (*e.g.*, the sale of merchandise), the principal unquestionably controls the agent. Further, the very narrow definition of control proffered by MHI (*i.e.*, the ability to force another party to act against its own economic interests) is inconsistent with the Act. The Act defines control as the ability, legally or operationally, to direct or restrain the acts of another. It is irrelevant whether that control is exercised to the benefit or detriment of the controlled party.

In light of this interpretation, we believe that, contrary to the respondents' assertions, the "trading company" rule does not apply in cases where, as here, an agency relationship exists. This rule provides that when a foreign producer sells subject merchandise to an *unaffiliated* trading company in the home market with knowledge that the merchandise will be sold for exportation to the United States, the producer's price to the unaffiliated trading company (and thus EP) is the appropriate basis for U.S. price. (See Forged Steel Crankshafts from Japan, 52 FR 36984, October 2, 1987.) In a case where the trading company acts as the foreign producer's selling agent, however, the foreign producer and trading company would be considered *affiliated* by virtue of their principal-agent relationship. The trading company rule has been rejected in past cases with similar factual patterns where an agency relationship exists between the producer and trading company. (See Color Television Receivers, Except for Video Monitors, from Taiwan, 53 FR 49706, 49711, December 9, 1988.)

Based on our analysis of the facts of record, we find that MC/MIC were acting as agents on MHI's behalf in the U.S. sale at issue. The analysis of whether a relationship constitutes an agency is case-specific and can be quite complex; there is no bright line test. For example, although agency relationships are frequently established by a written contract, this is not essential. Under general principles of agency, the focus of the analysis is whether it is agreed that the agent is to act primarily for the benefit of the principal, not for itself. (*See* Restatement, sections 1 cmt.b. and 26 cmt.a. *See also* sections 14J and 14K.)

The Department has examined allegations of an agency relationship in only a few cases and has focused on a range of criteria including: (1) The foreign producer's role in negotiating price and other terms of sale; (2) the extent of the foreign producer's interaction with the U.S. customer; (3) whether the agent/reseller maintains inventory; (4) whether the agent/reseller takes title to the merchandise and bears the risk of loss; and (5) whether the agent/reseller further processes or otherwise adds value to the merchandise. *See, e.g.*, Furfuryl Alcohol from South Africa, 60 FR 22550; Electrolytic Manganese Dioxide from Japan, 58 FR 28551.

In this case, based on an examination of these and other pertinent criteria outlined in the April 24, 1997, Agency Decision Memorandum, we found that an agency relationship existed between MHI and MC/MIC in the sales transaction at issue. In particular, we note that the record evidence demonstrates that MHI effectively controlled the price, among other terms of sale, in the transaction with the U.S. customer. The evidence also shows that MHI conducted some marketing of its product to the U.S. customer in the pre-sale period, and that its identity was disclosed throughout the sales documentation governing the sale in a manner indicative of a principal-agent relationship. In addition, MC/MIC did not maintain inventory of, or further process, the subject merchandise. Although MC/MIC took title to the merchandise and bore the risk of loss, and that most of MHI's contact with the customer during the pre-sale period was indirect and limited to technical matters, we believe that based on the totality of the circumstances, that MC/MIC was under MHI's control in the transaction at issue and, therefore, an agency relationship existed.

Therefore, we determine that MHI and MC/MIC are "affiliated" within the meaning of section 771(33) of the Act by virtue of their principal-agent relationship, not on the basis of the broader corporate relationship between the parties. Having determined that the parties are affiliated, we then considered whether the EP or CEP methodology was appropriate. Based on the extensive role of MC/MIC in the U.S. sales process, we have used CEP methodology in the final determination.

Comment 3: Corporate Affiliation under Sections 771(33)(F) and (G) of the Act.

The petitioner contends that MHI and MC/MIC are affiliated within the meaning of section 771(33)(F) of the Act. The petitioner contends further that because of their interlocking corporate relationship, MHI and MC are legally or operationally in a position to exercise restraint or direction over the other, and that the record contains sufficient evidence of common control between the two companies. The petitioner urges the Department to evaluate the indicia of control (*i.e.*, corporate grouping, joint venture agreement, debt financing, close-supply relationship) described in the SAA cumulatively within the context of control by a corporate group.

Further, the petitioner believes, contrary to respondents, that "control" within the meaning of section 771(33) of the Act, does not require that one party has the power to coerce another to act against its own interest and that this power extends beyond a particular transaction. The petitioner states that no statutory principle embodies this requirement. The petitioner believes that "control" within a particular transaction is particularly important in cases, such as the instant one, where there are few individual transactions and a producer may have strong influence over the ultimate purchaser by virtue of longstanding relationships.

MHI maintains that MHI and MC do not satisfy the requirements for "control" specified in sections 771(33)(F) and (G) of the Act and, therefore, should not be treated as affiliated parties in the Department's final antidumping analysis. MHI believes that to justify a finding of control, the Department must: (1) Be able to identify the controlling party and the controlled party; (2) examine MHI's and MC's corporate relationship outside the confines of a specific transaction; and (3) find evidence of the ability to exercise economic coercion where one party can force the other party to act against its own interest. MHI asserts that it is unlawful and illogical to conclude, as the petitioner does, that affiliated parties exercise mutual control, or that control can be diffused among a group of companies, the membership of which is not defined legally. According to MHI, the Department must determine that MHI controls MC, or MC controls MHI, or some identifiable third party controls them both. Moreover, MHI states further that this determination must be made in light of business and economic reality, suggesting that the control relationship must be significant and not easily replaced.

Further, MHI maintains that its analysis of the facts in this investigation shows that MHI and MC did not have the ability to exercise restraint or direction under the control indicia enumerated in the SAA.

Like MHI, MC claims that MC and MHI do not qualify as "affiliated" persons under section 771(33) of the Act based on an analysis of their relationship in terms of each of the control indicia enumerated in the SAA. MC asserts that the affiliation issue was already examined in the final determination of LNPPS from Japan (61 FR 38156–38157) where the Department ruled that the potential indicators of control between MHI and MC taken individually were an insufficient basis of finding control, and that the record facts with respect to MC's/MHI's relationship and their relationship with third parties have not changed so as to warrant a reversal of that decision.

MC also repeats many of the same arguments and similar facts stated by MHI regarding the issue.

DOC Position

The Department invited comments on this issue in its preliminary determination and evaluated the relevant facts in this case in the context of the control standard set forth in section 771(33) of the Act and the SAA. (*See* April 24, 1997, Memorandum to Jeffrey P. Bialos, Principal Deputy Assistant Secretary for Import Administration, from Louis Apple Re: Summary of Evidence on the Record of the Investigation Regarding Potential Affiliation of MHI and MC.) In the facts and circumstances of this case, however, we have determined that the Department does not need to render a determination on this issue because we have already found an agency relationship to exist and, on that basis, have found the parties to be affiliated pursuant to section 771(33) of the Act. Accordingly, as noted in *Comment 2* above, the Department used CEP methodology for this sale and has deducted the U.S. import duties and actual selling expenses incurred by MC/MIC pursuant to our practice set forth in Furfuryl Alcohol from South Africa.

Comment 4: Level of Trade ("LOT")/CEP Offset.

The petitioner contends that MHI should not receive either a LOT adjustment or a CEP offset because it did not establish that its U.S. transaction with MC/MIC is at a different LOT from its home market sales. According to the petitioner, the record does not demonstrate that there are any quantitative or qualitative differences between MHI's home market and U.S. selling functions. The petitioner believes that, given the technical complexity of the subject merchandise and the importance of customer specifications to each sale, the same set of selling functions (*e.g.*, bid preparation, warranty, and installation supervision) were performed by MHI for its EPGTS sales in both the home market and the United States. In support of this argument, the petitioner cites to the Notice of Proposed Rulemaking and Request for Public Comment explaining section 351.412(c)(2) of the Department's proposed regulations, which states: "where the selling functions and activities are substantially the same, however, sales normally will be considered to have been made at the same level of trade."

MHI contends that if the Department determines that CEP is the appropriate basis for United States price, and collapses the activities of MHI with those of MC/MIC, the Department should grant MHI a CEP offset. MHI contends that it qualifies for a CEP offset because: (1) Its CV is at a different LOT from its U.S. sale; (2) no data exist to examine the price comparability between different home market LOTs; and (3) the U.S. sale occurs at a less advanced stage of distribution than its home market sales. In the alternative, MHI asks the Department to base the calculation of SG&A and profit for CV upon the home market sale to the trading company (*i.e.*, MC), because that sale is allegedly at a LOT that is comparable to its U.S. sale.

MHI asserts that its home market sales include certain selling functions not found in its sale to MC/MIC (*e.g.*, initial customer contact, sales support operations, and delivery), and that its home market sales occur at a more advanced stage of distribution than its sale to MC/MIC. Citing Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands, 61 FR 51406, 51409 (1996), among other cases, MHI argues that because the adjustments to CEP under section 772(d) of the Act will create a LOT that is at a less advanced stage of distribution than MHI's LOT in the home market. Accordingly, MHI maintains that the Department should calculate a LOT adjustment to MHI's CV in the form of a CEP offset, if it does not base CV selling expenses and profit exclusively on MHI's home market sale to a trading company.

DOC Position

We agree with the petitioner. In accordance with section 773(a)(1)(B)(i) of the Act and the SAA accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. at 829–831 (1994), to the extent practicable, the Department will calculate NV based on sales at the same

LOT as the U.S. sale(s). When the Department is unable to find sale(s) in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the United States to foreign market sales at a different LOT. Pasta from Italy, 61 FR at 30330–30331. The LOT of NV is that of the starting-price sales in the home market. When NV is based on CV, the LOT is that of the sales from which we derive SG&A and profit.

For both EP and CEP, the relevant transaction for LOT is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the EP results in a price that would have been charged if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an independent U.S. customer the expenses specified in section 772(d) of the Act and the profit associated with these expenses. These expenses represent activities undertaken by, or on behalf of, the affiliated importer and, as such, they tend to occur after the transaction between the exporter and importer for which we construct CEP. Because the expenses deducted under section 772(d) of the Act represent selling activities in the United States, the deduction of these expenses normally yields a different LOT for the CEP than for the later resale (which we use for the starting price). Movement charges, duties, and taxes deducted under section 772(c) do not represent activities of the affiliated importer, and we do not remove them to obtain the CEP LOT.

In order to determine whether foreign market sales are at a different LOT than U.S. sales, the Department examines whether the foreign market sales have been made at different stages in the marketing process, or the equivalent, than the U.S. sales. The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user, regardless of whether the final user is an individual consumer or an industrial user. The chain of distribution between the producer and the final user may have many or few links, and the respondent's sales occur somewhere along this chain. In the United States this is generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the foreign market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT. Customer categories or descriptions (such as trading company or end-user) are useful in identifying different LOTs, but are insufficient to establish that there is a difference in the LOT without substantiation. An analysis of the chain of distribution and of the selling functions substantiates or invalidates claimed customer classification levels. If the claimed customer levels are different, the selling functions performed in selling to each level should also be different. Conversely, if customer levels are nominally the same, the selling functions performed should also be the same. Different stages of marketing necessarily involve differences in selling functions, but differences in selling functions (even substantial ones) are not alone sufficient to establish a difference in the LOT. A different LOT is characterized by purchasers at different places in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

When sales in the U.S. and foreign market cannot be compared at the same LOT, an adjustment to NV may be appropriate. Section 773(a)(7)(A) provides that, after making all appropriate adjustments to EP or CEP and NV, the Department will adjust NV to account for differences in these prices that are demonstrated to be attributable to differences in the LOT of the comparison sales in the foreign market.

With respect to the CEP offset, the statute also permits an adjustment to NV if it is compared to U.S. sales at a different LOT, provided the NV is more remote from the factory than the CEP sales, and we are unable to determine whether the difference in LOT between CEP and NV affects the comparability of their prices.

This latter situation can occur where there is no foreign market LOT equivalent to the U.S. sales level, or where there is an equivalent foreign market level, but the data are insufficient to support a conclusion on price effect. Where different functions at different LOTs are established under section 773(a)(7)(A)(i), but the data available do not form an appropriate basis for determining a LOT adjustment under section 773(a)(7)(A)(ii), the Department will make a CEP offset adjustment under section 773(a)(7)(B), which is the lower of: (1) The indirect selling expenses on the foreign market sale; or (2) indirect selling expenses deducted from the CEP starting price under section 772(d)(1)(D).

In applying these principles to the facts in this case, we began by removing from the CEP starting price the expenses specified in section 772(d) of the Act and the profit associated with these expenses. These expenses represent activities undertaken by, or on behalf of, MC/MIC in connection with the first sale to an unaffiliated customer in the United States. In this regard, we identified: direct and indirect selling expenses incurred by MIC for initial customer contacts, sales negotiations, communications, and shipping logistics in the United States to the unaffiliated customer; installation-related expenses incurred by MHI in the United States following shipment of the subject merchandise to the unaffiliated U.S. customer; and, indirect selling expenses incurred by MHIA relating to U.S. office maintenance and technical support.

Next, we sought to compare the distribution systems used by MHI for its U.S. and home market sales, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT. In reviewing the selling functions performed by MHI for both the U.S. and home market sales transactions, we considered all types of selling activities, both claimed and unclaimed, that had been performed. As noted above, it is the Department's preference to examine selling functions on both a qualitative and quantitative basis. While MHI and MC provided information on the nature of the varying selling functions performed for the sales transactions in both the U.S. and home markets, respondents did not provide the Department with data quantifying these selling activities. Further, at verification, such information could not be derived from records and accounting systems maintained by respondents in the ordinary course of business.

When we examined the CEP transaction between MHI and MC/MIC, we identified the following selling functions performed by MHI: sales negotiation and bid preparation; maintenance of sales office; technical specification development and monitoring; parts procurement activities; shipping arrangements; performance testing; and warranty extension. When we reviewed MHI's home market sales during the POI, we did not consider the one sale found to be outside the ordinary course of trade (*i.e.*, below the cost of production). Instead, we focused upon the two remaining sales which were nominally made at different customer levels—that is, trading company and end-user. However, when we analyzed the selling functions at both levels, we found that they were basically the same. Specifically, MHI performed the following selling functions in connection with both home market sales: initial customer contact; sales negotiation and bid preparation; maintenance of sales offices; technical

specification development and monitoring; parts procurement activities; shipping arrangements; and warranty extension. The only selling function that might have been different between the two sales was installation activity. However, we have treated the expense relating to installation activity as a direct selling expense for which we have made a circumstances of sale adjustment pursuant to section 353.56(a) of our regulations. (*See* Memorandum to Case File, April 24, 1997.)

As a result of this analysis, we have determined that an examination of MHI's selling functions in the home market does not validate the claimed customer classification levels. Therefore, we have determined that MHI's home market sales in the ordinary course of trade are not made at different LOTs, and we have based our calculation of SG&A and profit for CV upon these sales. (*See* "Constructed Value" section of this notice for more details.)

Finally, we compared the LOT of the CEP sale to the LOT of CV. Here, again, we found no significant difference. Indeed, with only two exceptions, MHI did perform the same selling functions on its home market sales that it did on its CEP transaction with MC/MIC. These functions, as noted above, included: sales negotiation and bid preparation; maintenance of sales office; technical specification development and monitoring; parts procurement activities; shipping arrangements; and warranty extension. The only exceptions concern (1) Initial customer contact and (2) performance testing. As explained above, initial customer contact for the CEP sale was performed by, or on behalf of, MC/MIC. Therefore, this expense (and the profit associated with it) was deducted from the CEP starting price pursuant to section 772(d) of the Act. In connection with its home market sales, while MHI claimed to have performed initial customer contact functions, the Department was unable to verify the accuracy of this claim.

With respect to performance testing conducted for the CEP transaction, the expense relating to this selling function is insignificant when compared to the total sales value of the CEP transaction (*see* Memorandum to the Case File, dated April 24, 1997). This difference in selling function between the U.S. and home markets is, therefore, not significant for purposes of our LOT analysis.

In conclusion, our analysis of the record evidence regarding the distribution systems in the foreign market and the United States (including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT) does not reveal sufficient differences to justify either a LOT adjustment or a CEP offset. Although there appear to be differences associated with customer categories, these differences are not borne out by an analysis of the selling functions for the home market and CEP sale, which are largely the same. *See Gray Portland Cement and Clinker from Mexico,* 62 FR 17148, 17155–58 (1997).

Comment 5: MC's/MIC's Expenses and Value of Non-Subject Parts.

The petitioner argues that all actual expenses incurred by MC/MIC in the U.S. transaction which were not deducted in the preliminary determination should be deducted in the final determination in accordance with section 772 (c) and (d) of the Act. These expenses include U.S. Customs duties paid by MIC and selling expenses incurred by MC/MIC which are associated with U.S. economic activity. In addition, the petitioner maintains that the Department should continue to deduct the value of non-subject parts from the CEP starting price based on the amount ultimately charged to the U.S. customer, rather than MIC's actual costs because there is no evidence that the former amount was not at arm's length.

MHI argues that the petitioner's suggested adjustments to U.S. price should be rejected because: (1) CEP methodology is not warranted in this case for the reasons it explained in *Comment 2* above; and (2) by using the MHI-to-MC price as the basis for starting price and thus applying EP methodology, the Department would substantively accommodate the adjustments proposed by the petitioner. MHI points out that all of MC's/MIC's expenses for the U.S. sale are included in the difference between the MHI's price to MC and MIC's price to the U.S. customer.

DOC Position

We agree with the petitioner, in part. Based on our decision in *Comment 3* above, we have deducted from CEP all actual expenses incurred by MC/MIC in the transaction, including U.S. import duties, selling expenses associated with U.S. economic activity, and MIC's cost of non-subject parts from the CEP starting price.

Comment 6: U.S. Indirect Selling Expenses Incurred in Country of Manufacture.

The petitioner contends that certain items that were reported as part of MHI's indirect selling expenses were actually directly related with US sales activities and as such should be deducted from CEP. The petitioner identifies those items as pre-bid meetings, travel, and salesman visits. Because the nature of the subject merchandise in this investigation requires technical design to the customer's specifications, the petitioner asserts that the above-noted selling expenses incurred by MHI were necessarily attributable to the commercial activity in the United States and, therefore, should be deducted accordingly. To support this assertion, the petitioner cites Pasta from Italy, 61 FR at 30352. In the absence of information sufficient to identify these expenses as direct expenses, the petitioner argues that the Department should reduce CEP by MHI's corporate indirect selling expense rate, or at a minimum, deduct all of the Japanese indirect selling expenses reported by MHI.

In contrast, MHI asserts that, first, it is improper for the petitioner to base its argument on the assumption that CEP methodology is warranted in this case. Further, MHI asserts that it is the Department's practice to deduct from CEP only those U.S. selling expenses actually incurred in the United States. In support of this assertion, MHI cites to the Department's decisions in Calcium Aluminate Flux from France, 61 FR 40396, 40397 (August 2, 1996) ("Flux from France"), and Certain Internal-Combustion Industrial Forklift Trucks from Japan, 62 FR 5592 (February 6, 1997) ("Forklift Trucks from Japan"). According to MHI, there is no evidence on the record in this investigation which connects MHI's reported indirect selling expenses with U.S. economic activity.

DOC Position

We agree with petitioner that certain of the indirect selling expenses incurred by MHI for the U.S. sale are associated with economic activity that occurred in the United States. Specifically, during verification, we identified certain pre-bid expenses, including travel expenses, that are appropriately included in our deduction of CEP expenses. We have accounted for these expenses in our final CEP calculations. (See Calculation Memorandum.)

Comment 7: Other Unclaimed Expenses.

The petitioner argues that certain other direct selling expenses allegedly related to shipment logistics should be deducted on the grounds that they are necessarily attributable to U.S. economic activity.

MHI disagrees. It contends that the Department verified that the expenses at issue either were not incurred or were

properly reported as part of cost of production for the U.S. sale. Therefore, MHI asserts that no deduction to CEP for these expenses is warranted.

DOC Position

We disagree with the petitioner. As MHI correctly points out, we verified that the expenses at issue either were not incurred or were properly reported as part of cost of production for the U.S. sale. (*See* March 11, 1997 MHI Verification Report at 32.) Therefore, we have not made any adjustments to CEP for the alleged direct selling expenses.

Comment 8: Mitsubishi Heavy Industries America (MHIA Houston) Selling Expenses.

The petitioner asserts that MHI improperly allocated MHIA Houston's reported selling expenses over both U.S. and non-U.S. sales, thereby understating the selling expenses incurred by MHIA Houston for the U.S. sale. The petitioner argues that MHIA Houston's selling expenses should be allocated over total U.S. sales of turbo-machinery given that a significant portion of MHIA expenses were allocated to such sales and MHIA's small size effectively precludes it from servicing sales in non-U.S. markets. Therefore, the petitioner requests that the Department reject MHI's allocation formula and allocate MHIA Houston's selling expenses over U.S. sales only.

MHI disagrees, arguing that the Department verified that MHIA Houston was involved in sales to countries other than the United States. According to MHI, while the market for turbo-machinery is worldwide, Houston is a major center for turbo-compressor manufacturers and plant contractors. Therefore, it is not unusual for meetings to take place in Houston for sales of turbo-machinery to both U.S. and non-U.S. markets. Based on these factors, MHI asserts that its allocation methodology for MHIA Houston's selling expenses is reasonable and accurate, and should be accepted for the final determination.

DOC Position

We agree with MHI. At verification, we reviewed documentation showing that MHIA was involved in technical support activities relevant to both U.S. and non-U.S. sales. We also verified the accuracy and completeness of the indirect selling amount reported by MHI. (*See* March 11, 1997 MHI Verification Report at 30.) Therefore, we have deducted MHIA's indirect selling expenses.

Comment 9: U.S. Credit Expense.

A. General Calculation Methodology

The petitioner asserts that the Department should reject the portion of MHI's claimed U.S. credit expense which reflects credit income for payment received prior to shipment (*i.e.,* progress payment) and, for purposes of the final determination, calculate credit expense equal to the corporate interest rate multiplied by the final payment amounts times the number of days between shipment and payment, divided by the number of days in the calendar year (*i.e.,* 365). According to the petitioner, the progress payments on which MHI's reported credit income is based are improperly characterized by MHI as a negative credit expense; rather, these payments are a form of working capital financing. Further, citing Cellular Mobile Telephones and Subassemblies from Japan, 50 FR 45,447, 45,455 (October 31, 1995), the petitioner argues that the Department does not include progress payments received in its calculation without evidence of interest revenue resulting from these payments. The petitioner notes that only if the Department considers the cost to MHI of financing EPGTS as work-in-process during the period between the dates of sale and shipment should the Department offset that cost with the interest income imputed for progress payments.

MHI and MC request that the Department continue to calculate MHI's credit expense for the U.S. sale inclusive of the pre-shipment credit income at issue. According to MHI, the inclusion of imputed credit benefit for payments received prior to shipment and imputed credit expense for payments received after shipment reflect MHI's total cost of extending credit to its U.S. customer. MHI asserts that if the Department were to calculate credit as the petitioner suggests, it would result in a credit expense adjustment that fails to fairly measure MHI's opportunity cost of extending credit to the U.S. versus home market customers. MHI explains that, in this instance, the payment terms for the U.S. sale require the U.S. customer to make advance payments (or progress payments) prior to the shipment of merchandise while payment terms for home market sales do not require pre-shipment or progress payments. According to MHI, failure to include both payments received before and after shipment of merchandise would ignore the payment terms specific to the U.S. sale. Additionally, MHI points out that the petitioner fails to recognize that MHI's cost of financing production is comparable for both its U.S. and home market sales. Because MHI incurs its production costs for both U.S. and home market sales in yen, MHI asserts that the imputed cost of financing these sales would be comparable. Thus, MHI maintains that the calculation methodology adopted by the Department in the preliminary determination, but for the short-term interest rate used (*see* Comment 9(B) below), correctly measures MHI's opportunity cost of extending credit on behalf of its U.S. sale.

MC also disagrees with the petitioner, arguing that the Department considers production costs in its credit expense analysis only when the terms of sale call for the payment of significant capital outlays (up-front) prior to production and shipment, which did not happen in the case of the U.S. sale. Further, MC takes issue with the petitioner's argument that a credit income adjustment is allowed only if interest revenues on pre-shipment payments were obtained, maintaining that imputed credit expense amounts are calculated regardless of the presence or absence of actual borrowings.

DOC Position

We agree with respondents and have calculated U.S. imputed credit expenses inclusive of the credit income at issue in the final determination.

The intent of making a circumstances of sale adjustment for imputed credit expenses incurred in the U.S. and comparison markets is to adjust for differences in the payment terms extended to customers in the two different markets. In this case, ignoring the imputed credit income in the calculation of U.S. credit expense would result in a credit expense adjustment which would fail to accurately measure MHI's opportunity cost of extending credit to U.S. versus home market customers. We note that the Department has calculated credit using both pre- and post-shipment payments in past cases involving large, customized equipment with relatively long production periods. (See Mechanical Transfer Presses from Japan: Final Results of Administrative Review, 61 FR 52,910, 52,914 (1996).) In certain other past cases such as LNPPS from Japan, the Department has determined it to be appropriate to offset production financing costs with progress payments, as suggested by the petitioner, because there were multiple progress payments relevant to sales in both the U.S. and comparison market and an unusually long production period associated with the subject merchandise. In this case, however, only one progress payment

was made for a relatively small portion of the total contract price, the production period was not unusually long (*i.e.*, approximately one year), and no progress payments are applicable to MHI's home market sales made during the POI.

Therefore, we have determined that there is no need to use an alternative calculation methodology which would offset credit income associated with progress payments with production financing costs or one that would exclude credit income altogether from the calculation.

B. Short-term Interest Rate

MHI argues that in calculating imputed credit expenses for the U.S. sale the Department should use the actual cost of the short-term borrowing reported by MHI. MHI maintains that the Department's decision in the preliminary determination to use a dollar-denominated short-term interest rate appears to be an automatic application of matching the currency of the interest rate used to the currency of the sale. According to MHI, this approach does not conform with economic rationale in this case where most of MHI's short-term debt was denominated in yen. In support of recalculating U.S. credit expense using the interest rate based on yen-denominated borrowings, MHI cites to (1) *LMI–La Metalli Industriale, S.p.A. v. United States*, 912 F.2d. 455 (Fed. Cir. 1990) (*LMI*) in favor of using the interest rate for imputed credit calculations that is in accordance with "commercial" reality, and (2) *United Engineering & Forging v. United States*, 779 F. Supp. 1375 (Ct. Int'l Trade 1991), *aff'd*, 996 F.2d. 1236 (Fed. Cir. 1993) (United Engineering) in favor of using the lowest rate at which the respondent has borrowed or to which respondent has access. Therefore, MHI requests that the Department use the lowest interest rate to which the respondent would have access, *i.e.*, the reported yen-denominated interest rate, in calculating the imputed U.S. credit expense in the final determination.

Further, MHI takes issue with the Department's reliance on the rationale outlined in LNPPs from Japan for using a dollar-denominated short-term interest rate in the preliminary determination of this case. MHI asserts that the Department's reasoning for the use of such a rate captures the value of the credit to the customer, rather than the cost to the seller of extending credit, which is contrary to the calculation of the LTFV margin which is made from the seller's perspective. Specifically, MHI states that if the Department is attempting to measure the value of the theoretical loan from the seller to the buyer during the period between shipment and payment from the buyer's perspective, then the interest rate used should be the rate in which the receivable is denominated. However, because the antidumping law seeks to calculate a dumping margin based on the seller's expenses, MHI maintains that the rate in which the receivable is denominated is irrelevant. Instead, MHI argues that the Department must calculate the cost of this theoretical loan from the seller's perspective. To do so, MHI contends that the Department must examine MHI's actual cost of capital, which in this case is denominated in yen.

The petitioner argues that the Department correctly applied a U.S. dollar-denominated interest rate to compute MHI's imputed credit expense on the U.S. sale. The petitioner asserts that the *LMI* decision on which MHI relies was based on whether the chosen interest rate comports with "usual and reasonable commercial behavior." Therefore, the petitioner argues that it is necessary to consider the circumstances as a whole and not merely conclude that the lowest interest rate should be used. According to the petitioner, the circumstances in this investigation are as follows: (1) The foreign producer has borrowings in U.S. dollars; (2) the U.S. sale is in U.S. dollars; and (3) over one year elapses between the date of shipment and the date of payment. Based on these conditions, the petitioner finds it reasonable to use a U.S. dollar-denominated rate for purposes of calculating U.S. credit expense. In support of its argument, the petitioner cites LNPPs from Japan.

DOC Position

We agree with the petitioner and have calculated U.S. credit expense based on the U.S. dollar-denominated interest rate in the final determination. As noted in the final determination of LNPPs from Japan (61 FR 38160), when sales are made in, and future payments are expected in, a given currency, the measure of a company's extension of credit should generally be based on an interest rate tied to the currency in which its receivables are denominated, as the seller is effectively lending to its purchaser in that currency. (See also Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Austria, 60 FR 33551, 33555 (June 28, 1995).) Indeed, in the present case, the Department verified that MHI had U.S.-denominated short-term borrowings, the existence of which indicates the ability and preparedness of MHI to support its EPGTS activities which result in U.S. dollar-denominated revenues by borrowing in U.S. dollars. Consequently, the Department's approach is consistent with *LMI*. Further, contrary to respondent's suggestion, such an approach does not capture the value of the credit extended to the customer instead of the cost of extending credit to the seller. Rather, the cost calculated is the cost to MHI, matching its dollar-denominated borrowing rate to its dollar-denominated receivables. Whether or not this also reflects the value to the buyer is irrelevant. Therefore, there is no basis to depart from the Department's well-established practice.

Comment 10: Circumstances of Sale Adjustment for Home Market Credit Expenses.

MHI argues that in the preliminary determination, the Department failed to make a circumstances of sale adjustment for home market imputed credit expenses. Specifically, MHI asserts that the Department reduced the CEP by the amount of imputed credit expenses related to MHI's U.S. sale, but did not make a corresponding adjustment for home market credit expenses by subtracting the reported home market credit expense from CV. MHI asserts that CV profit includes all items in the home market price that are not otherwise included in CV. MHI reasons that since imputed credit expense is included in the home market price, it is included in the calculation of CV through a combination of interest expense and home market profit. Therefore, MHI contends that in order to ensure a fair value comparison, the home market credit expense should be subtracted from CV as a circumstance of sale adjustment. MHI cites LNPPS from Japan to support its contention.

The petitioner contends that no such circumstances of sale adjustment is appropriate when NV is based on CV. Citing LNPPS from Japan, the petitioner also argues that because imputed credit is, by its nature, not an actual expense that would be included in the calculation of CV in accordance with section 773(2)(A) of the Act, there is no basis for an adjustment to CV for this imputed expense.

DOC Position

We agree with MHI. While we would not add an amount for imputed credit expenses in the calculation of CV pursuant to section 773(e)(2)(A) of the Act, such expenses are reflected in the calculation of CV profit and interest expense. Under the URAA, for CV, the statute provides that SG&A be based on actual amounts incurred by the exporter

for production and sale of the foreign like product (*see* section 773(e) of the Act). After calculating CV in accordance with the statute, we have, in essence, a NV. Consistent with section 773(a)(8) of the Act, adjustments to NV are appropriate when CV is the basis for NV.

The Department uses imputed credit expenses to measure the effect of specific respondent selling practices in the United States and the comparison market. Therefore, we have deducted from CV home market imputed credit expenses as a circumstances-of-sale adjustment in the calculation of NV. (See Antifriction Bearings (Other Than Tapered Roller Bearings) from France et al.; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2119–2120 (January 15, 1997).) Specifically, we deducted an amount for home market imputed credit expense based on a ratio of imputed credit expenses incurred on home market sales made in the ordinary course of trade to corresponding sales revenue.

Comment 11: Currency Conversion.

The petitioner contends that the exchange rate used in the preliminary margin calculation was erroneously a "sustained movement rate" and not the official exchange rate in effect on the date of the U.S. sale as stated in the Department's preliminary determination notice. According to the petitioner, the Department should not automatically apply the "mechanical formula," as outlined in the Department's Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996) ("Policy Bulletin 96–1"), which results in the sustained movement rate in this case, because the sustained movement rate is not suited for cases where sales are few and sporadic. Rather, according to the petitioner, it is better suited for continuous sales of commodities from a price list or based on periodic price negotiations. In this investigation, the petitioner notes that the subject merchandise is not sold continuously from a price list or annual supply contracts; EPGTS are sold one at a time, and only few sales are made in any given period. Under these circumstances, the petitioner asserts that the parties involved in the transaction of such merchandise are aware of the exchange rates, the currency used in the transaction, and the prospect of hedging in order to reduce the risk of changes in the exchange rate between the date of sale and date of shipment. Therefore, the petitioner urges the Department to revise the currency conversion formula accordingly to reflect the actual exchange rate in effect on the date of the U.S. sale in the final determination.

MHI disagrees with the petitioner, arguing that the petitioner's description of the Department's currency conversion methodology is limited to the Department's method for identifying exchange rate fluctuations. In the case of sustained movement, MHI states that the Department allows at least 60 days for exporters to adjust their prices. Further, MHI notes that neither the Act, the SAA, the legislative history, nor Policy Bulletin 96–1, limits the sustained movement rule to scenarios with high volume sales or numerous transactions.

DOC Position

We agree with MHI, and made all currency conversions into U.S. dollars using the sustained movement rate which resulted from the methodology described in Policy Bulletin 96–1. As explained below, we do not believe that the facts in this case warrant departure from this methodology. We note that the sustained movement rate was also appropriately used in the Department's preliminary calculations, but the Department incorrectly described it as the official exchange rate in effect on the date of the U.S. sale in its notice of preliminary determination.

Section 773(A) of the Act provides that the Department will convert foreign currencies on the date of the U.S. sale, subject to certain exceptions. Those exceptions require the Department to ignore "fluctuations" in the exchange rate and to provide respondent(s) in an investigation at least 60 days to adjust prices after a "sustained movement" in the exchange rate. Because neither the Act, the Antidumping Agreement (Agreement on Implementation of Article VI, GATT 1994) nor the Department's proposed regulations provide detail on defining fluctuations or sustained movements, we designed the exchange rate model described in Policy Bulletin 96–1 in order to: 1) Implement the statutory requirements in a timely fashion; 2) ensure that all exporters, when they set their U.S. prices and whether under order or not, can know with certainty the daily exchange rate the Department will use in a dumping analysis; and 3) capture the model in simple computer code to reduce administrative burdens in monitoring exchange rates. Having used this model for at least one year, it remains our intention now to evaluate it based on our experience and public comments that we have received. However, we will continue to use the current model until our evaluation is complete.

The model classifies each daily rate as "normal" or "fluctuating" based on a "benchmark" rate. The benchmark is a moving average of the actual daily exchange rates for the eight consecutive weeks immediately prior to the date of the actual daily exchange rate to be classified. Whenever the actual daily rate varies from the benchmark rate by more than two-and-a-quarter percent, the actual daily rate is classified as fluctuating. If within two-and-a-quarter percent, the actual daily rate is classified as normal. Actual daily rates classified as normal are the official exchange rate for that day. However, when an actual daily rate is classified as fluctuating, the benchmark rate is the official rate for that day.

Whenever the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks (the recognition period), the model classifies the exchange rate change as a sustained movement. During the eight week recognition period, the model continues to classify each daily rate as normal or fluctuating and to substitute the benchmark rate for the actual daily rate when the daily rate is fluctuating.

When a sustained movement is identified in the Department's exchange rate model, increasing the value of a foreign currency in relation to the dollar, as in the instant case, respondents under an investigation are given 60 calendar days to correct their prices in order to mitigate against distortions to the Department's antidumping analysis that may be caused by sustained movement in the exchange rate. The 60-day grace period is meant to apply to all respondents in a variety of industries, irrespective of the volume or number of their transactions in any given period. This 60-day grace period begins on the first day after the recognition period. During that period, the official rate in effect on the last day of the recognition period will be the official rate in investigations.

In this case, the actual date of the U.S. sale fell within the 60-day adjustment period previously described. On April 26, 1995, all of the Department's criteria for a sustained movement were met, and the Department found that a sustained movement had occurred. As a result, all official exchange rates between April 26, 1995, and June 26, 1995, including the rate on the date of the U.S. sale, were held at the April 26, 1995, rate.

We have no basis on which to depart from our current methodology. Further, the petitioner's suggestion that the model should differentiate the exchange rate used based on a respondent's

volume or number of transactions necessarily implies that the Department would be required to develop an exchange rate model on a case-specific basis. We do not agree that this would be appropriate. In addition, it would unnecessarily increase administrative burdens on the Department and on parties interested in monitoring the exchange rates used by the Department in its antidumping analysis.

Comment 12: Treatment of the Home Market Sale Made at a Below-Cost Price.

MHI contends that section 773(b)(1) of the Act does not permit the Department to conduct a sales-below-cost investigation solely to recalculate CV profit. MHI asserts that such an investigation may be pursued only as a mechanism to reject below-cost home or third country market sales as the basis for a price comparison. MHI allows that while the CV profit calculation may be considered to be part of the "determination of NV," section 773(b)(1) of the Act requires the rejection of below-cost sales before the Department can resort to CV. Moreover, according to MHI, the discussion of NV at section 773(b)(1) of the Act addresses only home and third country market sales, and not CV. Because the Department based its antidumping analysis on CV and not on HM prices, MHI maintains that it was inappropriate for the Department to conduct a sales-below-cost investigation.

Petitioner urges the Department to follow the methodology that it used in the preliminary determination of this case and exclude from the CV profit computation all HM sales made by MHI at below-cost prices. Petitioner asserts that nothing in the statute, SAA, or agency practice suggests that the Department may use below-cost sales as the basis for CV profit. According to petitioner, section 773(a)(4) of the Act establishes CV as a type of NV. In computing CV, the statute directs the Department to include an amount for profit based on the actual amounts realized by the producer in connection with home market sales of the foreign like product. Petitioner notes that where home market sales were made at below-cost prices, section 773(b)(1) of the Act provides that the Department exclude such sales from its determination of NV. Thus, petitioner concludes that because CV is a type of NV and the profit from home market sales is a factor in computing CV, the exclusion of below-cost sales under section 773(b)(1) must apply to home market sales used as the basis for CV profit in the Department's antidumping analysis. Petitioner adds that, under MHI's interpretation of the statute, the Department would be precluded from determining whether home market sales (and the profits from such sales) were made within the ordinary course of trade in all cases where such sales are not sufficiently similar to U.S. sales to allow for a price-based NV.

DOC Position

We agree with the petitioner that the Department has the authority to conduct a sales-below-cost investigation regardless of whether the HM prices are used as the basis for a price-based NV or solely for the CV profit calculation. At the beginning of this case, we determined that each EPGTS sold in the home and U.S. markets during the POI was manufactured to custom specifications for a unique application and, thus, would be too dissimilar to permit a price-to-price comparison between the subject merchandise sold in the United States and the foreign like product sold in Japan. Therefore, we determined that the NV should be based on CV in accordance with section 773(a)(4) of the Act.

Section 773(e)(2)(A) of the Act directs the Department to include in CV an amount for profits earned from sales of the foreign like product in the ordinary course of trade and for consumption in the foreign country. The Act also states, at section 771(15), that below-cost sales made within an extended period of time and in substantial quantities are considered outside the ordinary course of trade. Therefore, in cases where the petitioner provides the Department with reasonable grounds to believe or suspect that the foreign like product forming the basis for CV profit was sold at below-cost prices, we will conduct a cost investigation and will exclude those sales determined to be outside the ordinary course of trade.

Comment 13: Reasonable grounds to believe or suspect that home market sales were made at below-cost prices.

MHI argues that the Department lacked reasonable grounds to believe or suspect that sales were made at prices below their cost of production prior to initiating its sales below-cost investigation. MHI contends that the Department was mistaken in its characterization of MHI's post-cost allegation adjustments as new factual information. MHI insists that its November 22, 1996 rebuttal simply proved that petitioner's analysis was incorrect and that the data used by MHI in the rebuttal was, or could be, supported by reference to its previously submitted questionnaire responses. MHI asserts that it is incumbent upon the Department to specifically and precisely identify the new factual information in MHI's rebuttal. MHI claims that the Department's position that MHI submitted new factual information regarding the aggregate profitability of its HM sales is far to vague for a reviewing court to determine whether the Department correctly applied its own policy.

Petitioner claims that despite MHI's November 22, 1996 rebuttal of petitioner's below-cost sales allegation, the Department had reasonable grounds to suspect a below-cost sale had been made in the HM. Petitioner states that in its rebuttal, MHI maintained that petitioner had committed a "simple methodological error" in its sales-below-cost allegation. Petitioner argues that MHI's rebuttal, rather than establishing that petitioner committed a methodological error, reveals that MHI reallocated production costs among the HM contracts in such a manner that each HM sale was shown to have been made at a profit. Further, petitioner asserts that MHI's subsequent January 1, 1997 reallocation of production costs and concession that the sale in question was below cost, refutes any argument that the Department's rejection of the below-cost sale was unreasonable.

DOC Position

We disagree with MHI. The information provided by petitioner in its sales-below-cost allegation provided reasonable grounds for us to believe or suspect that MHI had sold the foreign like product at a price that was less than the company's cost of production. Moreover, contrary to MHI's claims, the data provided in its November 22, 1996 rebuttal comments constituted new factual information which we do not consider in making our determination to initiate a sales-below-cost investigation. Although the aggregate profitability of all home market sales (reported in the third column of figures of Attachment 1 of MHI's November 22, 1996, rebuttal) had been submitted in MHI's November 12, 1996, submission, the revised aggregate profitability of only home market sales 1 and 2 (reported in the third column of figures of Attachment 1 of MHI's November 22, 1996, rebuttal) included cost adjustments, resulting in revised profits. The data in this column represents new information which was not previously on the record.

Import Administration Policy Bulletin 94.1 sets forth the Department's practice with respect to new factual information submitted by respondents subsequent to the filing of a cost allegation by petitioners or other interested parties. The Bulletin states that the Department disregards any new information regarding the actual costs of production

where such information is used to rebut portions of an allegation. As noted in the Policy Bulletin, the Department's purpose in reviewing the sufficiency of an allegation is not to determine if sales were in fact made at below-cost prices. Instead, the Department must decide whether, based on the information available to the petitioner at the time of the allegation, there is sufficient reason to believe that below-cost sales exist.

Comment 14: Home market sales made outside the ordinary course of trade.

Petitioner claims that the SAA is clear that below-cost sales are outside the ordinary course of trade for purposes of calculating profit for CV. Petitioner cites the SAA and Section 773(e)(2)(A) of the Act as establishing that:

(1) CV profit is to be calculated based on sales in the ordinary course of trade;

(2) The Department may ignore sales that it disregards as a basis for NV, such as below-cost sales; and

(3) Unlike current practice, in most cases, the Department would use profitable sales as the basis for calculating CV profit.

Petitioner argues that section 771(15) of the revised act defines the ordinary course of trade to exclude below-cost HM sales disregarded under section 773(b)(1) and therefore below-cost sales rejected under section 773(b)(1) will also be rejected as a basis for profits. Petitioner maintains that the statute places the burden on MHI to establish that any below-cost sales are ordinary and should not be rejected. Petitioner asserts that therefore, it is clear that the HM below-cost sale in this case should be considered to be outside the ordinary course of trade and excluded from the CV profit computation.

In the alternative, MHI argues that even if one of its HM sales was properly found to be below cost, that does not mean this sale should be "automatically" excluded from the calculation of CV. Citing *FAG U.K.* v. *United States,* 945 F. Supp. 260 (CIT 1996) and a series of other cases, MHI argues that the burden is on petitioner to show that this below-cost sale was "outside the ordinary course of trade" within the meaning of section 771(15) of the Act. This burden, MHI asserts, has not been met and, therefore, all HM sales should be included in the calculation of CV.

MHI also relies upon the SAA. According to MHI, the SAA's reference to profitable sales providing the basis "in most cases" for the calculation of profit in CV "implicitly recognizes that there are situations in which unprofitable sales will also be included in the calculation."

DOC Position

For the most part, we disagree with MHI. As we state above in response to comment 1, section 773(e)(2)(A) of the Act provides that the calculation of profit in CV shall be based upon "the actual amounts incurred and realized by the specific exporter or producer * * * in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country" (emphasis added). Section 771(15) of the Act further states that sales made below their cost of production within the meaning of section 773(b)(1) of the Act are not within the "ordinary course of trade." The cases cited by MHI, including *FAG U.K.* v. *United States,* were decided under the pre-URAA version of the statute. That statutory language, unlike the current language, did "not limit the meaning of 'ordinary course of trade' to sales made above cost." 945 F. Supp at 269.

We also cannot agree with MHI's reading of the SAA. At page 169, the SAA states, in part:

> Commerce will base amounts for SG&A expenses and profit only on amounts incurred and realized in connection with sales *in the ordinary course of trade* of the particular merchandise in question (foreign like product). Commerce may ignore sales that it disregards as a basis for normal value, *such as those disregarded because they are made at below-cost prices* (emphasis added).

It is clear from the record of this case that MHI made a sale in the HM at a price that was below the cost of production, within an extended period of time, and in substantial quantities (*i.e.,* outside the ordinary course of trade). Accordingly, we believe that section 773(e)(2)(A) of the Act supports our decision to exclude this sale from the CV profit computation. Because section 773(e)(2)(A) and its interpretation in the SAA indicate that CV profit should be calculated based on sales in the ordinary course of trade and that in most cases the Department should use profitable sales as the basis for calculating CV profit, it is our opinion that the party claiming that below-cost sales should not be considered outside the ordinary course of trade should generally bear the burden of proving such an assertion.

Comment 15: Valuation of Inputs Purchased From Affiliated Parties.

Petitioner contends that the valuation of affiliated party purchases should reflect arm's length values, including usual profits earned on arm's length transactions. Petitioner asserts that the Department has adjusted MHI's reported costs of inputs purchased from affiliated parties under the "transactions disregarded" clause of section 773(f)(2) of the revised act, rather than the "major inputs" clause of section 773(f)(3), which MHI assumes to be our basis for the adjustment. Petitioner argues that because the "transactions disregarded" clause of Section 773(f)(2) states that the reported costs should "fairly reflect the amount usually reflected", the Department should add a reasonable profit to the affiliated supplier's total cost in order to reflect an arm's length price. Petitioner claims that because MHI did not purchase comparable services from an unaffiliated supplier, and the affiliated supplier did not sell comparable services to an unaffiliated purchaser, the Department must determine an appropriate amount "based on the information available as to what the amount would have been if the transaction was between persons who are not affiliated" per section 773(f)(2). Petitioner asserts that the Department should apply the profit earned by the affiliated party on its sales to MHI pertaining to MHI's third country sales, as reported in an earlier section B submission.

MHI maintains that the Department should not add profit to the inputs received from affiliated parties. MHI contends that although under the "transactions disregarded" and "major input" rules, the Department is authorized to adjust transfer prices to reflect market price or COP, neither of the rules allow the Department to construct a market price. MHI asserts that the Department's options are to substitute other market prices or COP for the transfer prices.

MHI also claims that charging profit on its affiliated supplier purchases would conflict with the purpose of the statute by unfairly inflating MHI's costs. MHI argues that because the affiliated supplier in question is a wholly owned subsidiary of MHI's, by adjusting these inputs to reflect their COP, the Department effectively treats them as if MHI had produced them internally. MHI maintains that petitioner's argument that the Department should add to the affiliated party's COP, the profit that would have been earned by an unaffiliated supplier had it provided the services to MHI would be distortive. Further, MHI claims that petitioner has failed to demonstrate that the profit rate that the affiliated supplier earned, not on sales to an unaffiliated party, but rather on other sales to MHI, fairly reflects the amount usually reflected in sales of merchandise under consideration in the market under consideration", as required by section 773(f)(2).

DOC Position

Under the transactions disregarded rule of section 773(f)(2) of the Act, we requested MHI to submit the transfer prices for a selected sample of inputs that it purchased from affiliated suppliers for use in manufacturing the subject merchandise. In addition, we asked MHI to provide the arm's length prices charged by those affiliates to unaffiliated purchasers for the identical input or the arm's length prices charged by unaffiliated suppliers for sales of the identical input to MHI. Because MHI claimed that there were no such arm's length transactions between unaffiliated parties, the company submitted the transfer prices for its purchases from affiliated suppliers and the affiliated suppliers' corresponding COPs. For those inputs obtained from affiliated suppliers, we compared the transfer price paid by MHI to the affiliates' cost of producing the input. In one instance, we found that the cost of the input was greater than the transfer price between MHI and the affiliated supplier. For this transaction, because there were no comparable transactions of similar inputs between unaffiliated parties on which to base a value for inputs, we followed our practice of using the affiliated supplier's cost of production for that input as the information available as to what the amount would have been if the transaction had occurred between unaffiliated parties (See Antifriction Bearings (other than Tapered Roller Bearings) from France et. al.; Final Results of Antidumping Duty Administrative Reviews, 62 FR 2081, 2115 (January 15, 1997).) We disagree with petitioner that the profit earned on the services provided by the affiliate in connection with MHI's third country sales is representative of the services furnished in connection with the U.S. sale. Notwithstanding the fact that the transaction occurred between the same parties (*i.e.*, MHI and its affiliated supplier), in this case, the input in question consists of services performed by an affiliate. The nature of these services and the unique character of the EPGTS products for which they were performed give us no reason to believe that the services were in any way similar or comparable to one another.

Comment 16: Affiliated Party Input Adjustment.

MHI states that the Department erred by adjusting the transfer prices of not only the major inputs purchased from affiliated suppliers, but also the minor inputs. MHI claims that because the Department has not established that these minor inputs were purchased at below-cost prices, the transfer prices of the minor inputs should not be adjusted.

MHI contends that if the Department chooses to adjust MHI's U.S. sale for all affiliated party purchases (*i.e.*, major and minor inputs), it should make a corresponding adjustment for HM sales.

Petitioner claims that there is no statutory or rational basis for a parallel affiliated party purchases adjustment to HM production costs for purposes of calculating CV profit. Petitioner states that section 773(e)(2) of the revised act indicates that "actual" HM profit earned in the ordinary course of trade should be included in the CV calculation. Petitioner argues that actual HM profits should not be reduced to the extent that the foreign producer's inputs were purchased from affiliated parties at non-arm's-length transfer prices. Petitioner also argues that although sections 773(f)(2) and (3) of the revised act expressly provide for affiliated party cost adjustments for CV calculations, section 773(b)(3), which pertains to COP for HM price comparisons, contains no provision for such adjustments.

DOC Position

As noted above, we adjusted MHI's reported cost of inputs purchased from affiliates under the transactions disregarded rule per section 773(f)(2) of the Act. This section relates to all inputs obtained from affiliates, not just major inputs. Accordingly, we applied the calculated affiliated party adjustment to all inputs obtained from affiliates.

We agree with MHI that the affiliated party adjustment applied to CV should also be applied to the submitted cost of producing the HM sales. Section 773(f) of the Act identifies special rules for the calculation of COP and CV, one of which is the transactions disregarded rule. Since the statute does not direct the Department to treat affiliated party transactions differently for COP and CV, we applied the same affiliated party adjustment to both CV and COP.

Comment 17: Calculation of the G&A Rate.

Petitioner urges the Department to revise its preliminary calculation of MHI's G&A expenses to include all of the G&A expenses incurred by the company at each of its various corporate levels. Petitioner believes that the G&A expense rate used by the Department to compute COP and CV in its preliminary determination failed to include the administrative expenses of MHI's Hiroshima Machinery Works ("HMW"), the facility that produced the subject merchandise, as well as allocable portions of G&A expenses associated with other organizational levels within the company. As evidence of this problem, petitioner points to MHI's internal financial statements which report amounts for "general" and "internal G&A" that petitioner claims were not allocated to the subject merchandise under MHI's normal accounting system and, likewise, were excluded from COP and CV under the company's submission methodology.

MHI argues that it fully accounted for all G&A expenses in the submitted COP and CV figures and that petitioner simply fails to understand the company's normal internal accounting system and its financial reporting methods. MHI claims that adjusting the G&A expense rate as petitioner proposes would result in double-counting both G&A and selling expenses. MHI notes the fact that the Department verified the company's G&A expense calculation and found that all such expenses had been properly included in the MHI's reported COP and CV figures.

DOC Position

We agree with MHI that it properly accounted for all G&A expenses in the reported COP and CV amounts. Under the company's normal accounting system, both G&A and selling expenses are combined and allocated to EPGTS job orders through a factory overhead burden rate. The SG&A amounts to be allocated are reflected in the "general" and "internal G&A" figures in the company's internal financial statements. Because the Department requires respondents to report separately the selling expenses incurred for the merchandise, MHI segregated these expenses for the HMW before allocating G&A expenses to each EPGTS as manufacturing overhead following its normal accounting methodology. Thus, as noted by MHI, basing the G&A expense rate on amounts from the company's internal financial statements would result in double-counting expenses already accounted for as part of either selling expenses or manufacturing overhead. We reviewed MHI's G&A expense calculation as part of our verification of the company's COP and CV submission and found that the reported costs reflected an appropriate amount of G&A expenses incurred by the company at each of its organizational levels.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of EPGTS from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from

warehouse for consumption, on or after December 10, 1996, the date of publication of our preliminary determination in the **Federal Register**. We are also directing the Customs Service to suspend liquidation of all entries of parts of EPGTS imported pursuant to a contract for a complete EPGTS in the United States that are entered, or withdrawn from warehouse for consumption, on or after December 10, 1996. For these entries, the Customs Service will require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the constructed export price as shown below. The suspension of liquidation with respect to EPGTS parts will remain in effect provided that the sum of such entries represents at least 50 percent of the cost of manufacture of the complete EPGTS of which they are part. This determination will be made only after all entries of parts imported pursuant to an EPGTS contract are made and the complete EPGTS pursuant to that contract is produced, unless a request for a scope inquiry is made by an interested party at least 75 calendar days prior to the intended date of entry of the EPGTS parts in which the interested party claims that the parts to be imported, when taken altogether, constitute less than 50 percent of the cost of manufacture of the complete EPGTS of which they are a part. Upon receiving such a request, the Department will initiate a scope inquiry and instruct the Customs Service to suspend liquidation at a zero cash deposit rate/bond rate (depending on which rate, if any, is effective at that time) if the party can establish to the Department's satisfaction, through the submission of the requisite information specified below, that the sum of the EPGTS parts to be imported pursuant to a particular EPGTS contract represents less than 50 percent of the cost of manufacture of the complete EPGTS of which they are a part.

In such a review, we will require that the foreign producer/exporter submit to the Department, where applicable and available, the following information and documentation substantiating its claim that all of the parts to be imported into the United States from Japan pursuant to a particular EPGTS contract constitute less than 50 percent of the cost of manufacture of the complete EPGTS of which they are a part and, thus, are not subject merchandise: (1) The EPGTS sales contract (and any amendments) pursuant to which the parts are imported; (2) a diagram of the complete EPGTS; (3) a description of the parts included in the entry(ies); (4) the actual or estimated cost of the imported parts (depending on what is available prior to the time of importation of the parts into the United States); (5) the most recent cost estimate of the complete EPGTS, and data on historical variances between estimated and actual costs of production of the EPGTS; (6) a financial statement for the business unit that produces EPGTS; (7) a schedule of parts shipments to be made pursuant to a particular EPGTS contract, if more than one shipment is relevant; and (8) a schedule of EPGTS production completion in the United States. The foreign producer/exporter will also be required to serve the submitted materials upon counsel for the petitioner on the earlier of: (i) The same day they are filed with the Department, if an applicable Administrative Protective Order ("APO") is outstanding, or (ii) within one day of the issuance of an applicable APO. Public versions of such materials will be served upon counsel for the petitioner in accordance with section 353.31 of the Department's regulations. The petitioner will have 15 calendar days from the date of receipt of such documents for review and the filing of comments. If, after providing this information to the Department, the foreign producer/exporter finds that the costs reported to the Department were understated and that the cost of manufacture of the imported parts will be over 50 percent of the cost of manufacture of the EPGTS of which they are a part, we will require that the party inform the Department immediately. After the expiration of the 15-day comment period, the Department will conduct its review of the submitted documentation and will, to the extent practicable, make an expedited preliminary ruling as to whether the merchandise falls outside of the scope. If the Department determines preliminarily that such merchandise is outside of the scope, for all such entries made pursuant to the same EPGTS contract, the Department will instruct the Customs Service to suspend liquidation at a zero deposit/bond rate.

Pursuant to the Department's preliminary ruling, the U.S. importer will be able to declare a zero rate for the imported merchandise at issue. Upon entry of the merchandise into the U.S. Customs territory, the U.S. importer and/or foreign manufacturer/exporter will be required to submit an appropriate certification to the Department concerning the contents of the entry. An appropriate certification should read as follows:

I [Name and Title], hereby certify that the cost of the engineered process gas turbo-compressor system parts from Japan contained in entry summary number(s) _____ pursuant to contract number _____, including the cost of design and engineering incurred by, and any assists provided by, the manufacturer or producer with respect to the engineered process gas turbo-compressor system, constitutes less than 50 percent of the cost of manufacture of the complete engineered process gas turbo-compressor system of which they are a part.

The Department will make a final scope ruling within the context of an administrative review, if requested by interested parties. Verification of the submitted information will occur within the context of such review, when appropriate. If the Department finds in its final ruling that the imported merchandise falls below the 50 percent threshold, then the Department will instruct the Customs Service to liquidate the entries at issue without regard to antidumping duties. Conversely, if the Department finds that the imported merchandise falls within the scope (*i.e.*, because the actual total cost of the parts imported pursuant to a contract for a complete EPGTS is 50 percent or more of the cost of manufacture of the complete EPGTS of which they are a part), then the U.S. importer will be subject to the assessment of antidumping duties on the imported parts, together with any applicable interest from the date of entry of such parts, at the rate determined in the administrative review.

With respect to entries of EPGTS spare and replacement/repair parts from Japan, we will instruct the Customs Service not to suspend liquidation of these entries if they are not included in the original contract of sale for the EPGTS of which they are intended to be a part.

In addition, in order to ensure that our suspension of liquidation instructions are not so broad as to cover merchandise imported for non-subject uses, foreign producers/exporters shall be required to provide certification that the imported merchandise would not be used to fulfill an EPGTS contract. An appropriate certification should read as follows:

I, [Name and Title], hereby certify that this entry/shipment does not contain merchandise that is imported from Japan pursuant to a contract for an engineered process gas turbo-compressor system and is, therefore, not subject to antidumping duties.

We will also request that the interested parties register with the Customs Service the EPGTS contract numbers pursuant to which subject merchandise is imported. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Mitsubishi Heavy Industries, Ltd. (MHI)	41.72
All-Others	41.72

International Trade Commission ("ITC") Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act.

Dated: April 24, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–11384 Filed 5–2–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker From Mexico: Amended Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: May 5, 1997.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan or Dorothy Woster, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230; telephone: (202) 482–3793.

Scope of the Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service purposes only. Our written description of the scope of the order remains dispositive.

Amendment of Final Results

On April 9, 1997, the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on Gray Portland Cement and Clinker from Mexico (62 FR 17148). This review covered CEMEX S.A de C.V (CEMEX), and its affiliate, Cementos de Chihuahua (CDC), manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is August 1, 1994 through July 31, 1995.

On April 8, 1997, and April 17, 1997, counsel for the respondent, CEMEX, filed allegations of clerical errors with regard to these final results. On April 18, 1997, counsel for CDC filed allegations of clerical errors with regard to these final results. On April 9, 1997, counsel for petitioners, the Southern Tier Cement Committee, filed a submission agreeing with CEMEX's allegation submitted April 8, 1997; petitioners' submission also contained additional allegations of clerical errors with regard to these final results. On April 10, 1997, CEMEX filed a submission agreeing that the Department should correct the errors noted by petitioners' April 9, 1996 letter. The allegations and rebuttal comments of both parties were filed in a timely fashion. The Department, upon review of the allegations and comments, agrees with respondent and petitioners and is hereby issuing an amended final, based on the corrections of these ministerial errors.

First, respondent CEMEX contended that the Department made an arithmetic error when it converted the value of sales to the United States reported in short tons into metric tons. Respondent alleged that the Department should have divided net price for the product sold in the United States by the short ton/metric ton conversion coefficient rather than multiplying by the coefficient.

Petitioners did not object to respondent's allegation. Petitioners noted, however, that the correct conversion factor is .907194 metric tons per short ton, and that this conversion factor should be incorporated into the Department's amended final results. Respondent did not object to petitioners' allegation, and the Department has used the conversion factor of .907194 metric tons per short ton in the amended final results.

Second, CEMEX alleged that the Department overstated the constructed export price (CEP) profit rate by continuing to use further manufactured sales in the calculation of CEP profit without making any adjustment for those U.S. expenses associated with further manufacturing. CEMEX suggested that the Department correct this inadvertent error by dividing total U.S. expenses and revenue in the CEP profit calculation by the percentage which CEP sales comprise of total U.S. CEP and further manufactured sales. Petitioners have not objected in principle to CEMEX's allegation, however, they have objected to CEMEX's proposed methodology for calculating CEP profit. Petitioners have provided an alternative suggestion which adjusts total U.S. movement expenses (USMOVEH) and total U.S. indirect selling expenses (INDEXPU) to account for those expenses associated with the further manufactured sales.

In the final results of this review, the Department determined that the value added of U.S. further manufactured sales of concrete substantially exceeded the value added of the subject merchandise. The weighted-average CEP for non-further manufactured CEP sales was substituted as the CEP for U.S. further manufactured sales. The Department agrees with CEMEX that the Department overstated the CEP profit rate in the final results by continuing to use further manufactured sales in the calculation of CEP profit without making any adjustment for those U.S. expenses associated with further manufacturing. The Department agrees with CEMEX and petitioners' that this is a ministerial error and has corrected this error for the amended final results by including expenses associated with all CEP sales in the calculation of CEP profit based on petitioners' suggested calculation.

Third, CEMEX claims that the Department erred in excluding home market Type II transactions and sales failing the arm's length test from the

APPENDIX B

LIST OF WITNESSES APPEARING AT HEARING

PUBLIC CALENDAR OF HEARING

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

Subject	:	ENGINEERED PROCESS GAS TURBO-COMPRESSOR SYSTEMS, WHETHER ASSEMBLED OR UNASSEMBLED, AND WHETHER COMPLETE OR INCOMPLETE FROM JAPAN
Inv. No.	:	731-TA-748 (Final)
Date and Time	:	April 24, 1997 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main hearing room 101, 500 E Street, SW, Washington, D.C.

OPENING REMARKS

Petitioner (**Terence P. Stewart**, Stewart and Stewart)
Respondent (**Richard O. Cunningham**, Steptoe & Johnson)

In Support of the Imposition
of Antidumping Duties:

Stewart and Stewart
Washington, D.C.
on behalf of

Dresser Rand Company
M.W. Kellogg
Demag Delaval Turbomachinery Corporation

David P. Norton, President and Chief Executive Officer,
Dresser Rand Company

Eugene H. Moore, General Counsel, Dresser Rand Company

Vincent Volpe, President, Turbo Products Division,
Dresser Rand Company

In Support of the Imposition
of Antidumping Duties--Continued:

Walter J. Nye, CMA, Controller, Turbo Products Division, Dresser Rand Company

William P. Barnett, Vice President of Marketing, Turbo Products Division, Dresser Rand Company

A. J. Harenda, Manager, Product Costs, Turbo Products Division, Dresser Rand Company

Frank McPartland, Senior Commodity Specialist, M.W. Kellogg

Dean R. Quinn, Esq., Counsel to M.W. Kellogg

Donal P. Maloney, Vice President, Demag Delaval Turbomachinery Corporation

Mark D. Herlach, Esq., Sutherland, Asbill & Brennan, LLP, Counsel to Demag Delaval Turbomachinery Corporation

Terence P. Stewart)
)--OF COUNSEL
James R. Cannon, Jr.)

In Opposition to the Imposition of
Antidumping Duties:

Steptoe & Johnson LLP
Washington, D.C.

Gibson, Dunn & Crutcher
Washington, D.C.

and

Economic Consulting Services, Incorporated
Washington, D.C.
on behalf of

Mitsubishi Heavy Industries, Limited

In Opposition to the Imposition of
Antidumping Duties--Continued:

Robert E. Voehringer, Plant Expansion Director for the Exxon Baytown plant, Exxon Chemical Company

Barbara B. Cikut, Counsel to Exxon Chemical Company

Dr. Kenneth R. Button, Consultant, Economic Consulting Services, Incorporated

Richard O. Cunningham, Steptoe & Johnson)
Peter Lichtenbaum, Steptoe & Johnson)--OF COUNSEL
Gracia M. Berg, Gibson, Dunn & Crutcher)

APPENDIX C

SUMMARY TABLES

SUMMARY TABLES

This appendix contains the following summary tables:

C-1 **EPGTC systems: Summary data concerning the U.S. market**.--Presents data reflecting the Commission's preliminary like-product determination; i.e., engineered process gas turbo-compressor systems, whether assembled or unassembled, and whether complete or incomplete.

C-2 Summary data concerning the U.S. market for **EPGTC REVAMPS ONLY**.--Presents data relating to the EPGTC revamp and/or replacement portion of the aftermarket operations of responding firms.

C-3 Summary data concerning the U.S. market for **EPGTC PARTS AND REPAIRS ONLY**.--Presents data relating to the EPGTC parts, repairs, and/or service portion of the aftermarket operations of responding firms.

C-4 Summary data concerning the U.S. market for **EPGTC REVAMPS, AND PARTS AND REPAIRS**.--Presents combined data relating to EPGTC aftermarket operations (revamps/ replacements and service/repairs); i.e., tables C-2 and C-3 combined.

C-5 Summary data concerning the U.S. market for **EPGTC SYSTEMS AND REVAMPS**.--Presents combined data relating to the preliminary like product, EPGTC systems, and revamps/replacements; i.e., tables C-1 and C-2 combined.

C-6 Summary data concerning the U.S. market for **EPGTC SYSTEMS, REVAMPS, AND REPAIRS**.--Presents combined data relating to the preliminary like product, EPGTC systems, and EPGTC aftermarket operations (revamps/replacements and service/repairs); i.e., tables C-1 and C-4 combined.

Table C-1
EPGTC systems: Summary data concerning the U.S. market, 1993-96, Jan.-Mar.1996, and Jan.-Mar. 1997

* * * * * * *

Table C-2
Summary data concerning the U.S. market FOR EPGTC REVAMPS ONLY, 1993-96, Jan.-Mar.1996, and Jan.-Mar. 1997

* * * * * * *

Table C-3
Summary data concerning the U.S. market FOR EPGTC PARTS AND REPAIRS ONLY, 1993-96, Jan.-Mar.1996, and Jan.-Mar. 1997

* * * * * * *

Table C-4
Summary data concerning the U.S. market FOR EPGTC REVAMPS, AND PARTS & REPAIRS, 1993-96, Jan.-Mar.1996, and Jan.-Mar. 1997

* * * * * * *

Table C-5
Summary data concerning the U.S. market FOR EPGTC SYSTEMS AND REVAMPS, 1993-96, Jan.-Mar.1996, and Jan.-Mar. 1997

* * * * * * *

Table C-6
Summary data concerning the U.S. market FOR EPGTC SYSTEMS, REVAMPS, AND REPAIRS, 1993-96, Jan.-Mar.1996, and Jan.-Mar. 1997

* * * * * * *

APPENDIX D

QUESTIONNAIRE COMMENTS ON PRODUCT COMPARISONS

CHARACTERISTICS AND FUNCTIONS COMPARISONS

The Commission's questionnaires in these investigations requested comments regarding the differences and similarities in the physical characteristics and functions of EPGTC systems and EPGTC aftermarket products. The following comments were received:

***

Characteristics.--"Aftermarket products are manufactured to the same engineering/manufacturing standards as complete EPGTC systems. But, aftermarket products are only components of a complete system. A typical revamp, for example, consists of only the rotor and diaphragms of the compressors. The original compressor casing is used and the new components are brought to the plant and installed."

Functions.--"A complete EPGTC system is used in the entire customer process. Aftermarket products are used to maintain or upgrade the EPGTC system as components wear out. A revamp functions to improve the efficiency and performance of the original EPGTC system."

***

Characteristics.--"Each EPGTC system is engineered for the specifications offered by the customer. Each vendor will have a different way of fulfilling the specifications, therefore the aftermarket products will follow each vendor's engineered equipment."

Functions.--"There are some parts that could be exactly the same from vendor to vendor, however, these parts are usually inconsequential."

***

Characteristics.--"The physical characteristics of an installed EPGTC system are unique to the original equipment manufacturer (OEM) of such system. Therefore, the purchaser of an EPGTC system is virtually compelled to buy aftermarket parts from the OEM."

Functions.--"Aftermarket parts function as integral parts of an EPGTC system."

***

Characteristics.--"The components sold in the aftermarket (spare parts) are identical to the ones we sell with the new machines."

Functions.--"Same."

***

Characteristics.--"Physical characteristics of components (size, material, etc) may limit interchangeability."

Functions.--"Functions of aftermarket components are similar, i.e., compressor, driver, lube system, and control system. There is greater interchangeability from a functional standpoint."

***

"EPGTC systems are uniquely engineered by the equipment manufacturer to meet the specific requirements of each individual service. Rotating and stationary components for the maintenance and/or revamp of EPGTC systems must be purchased from the original equipment manufacturer as these components are not physically interchangeable with those of other manufacturers."

***

Characteristics.--"Dimensionally, aftermarket parts are similar to new apparatus parts. It should be noted that due to the custom nature of the equipment there is not a high degree of parts interchangeability."

Functions.--"The performance of the parts may not be the same, due to the aftermarket suppliers' inability to duplicate key performance dimensions and original metallurgy on equipment built by OEMs."

***

"All systems are customized and do not have any common interchangeability. The EPGTC system and its aftermarket products are however, in general, consistent and interchangeable within the system, but not between systems."

MANUFACTURING COMPARISONS

The Commission's questionnaires in these investigations requested comments regarding the differences and similarities in the manufacturing processes used in the production of EPGTC systems and EPGTC aftermarket products. The following comments were received:

***

"Production of a complete EPGTC system requires engineering and design of the major components (compressors, steam turbines, motors). A complete system will progress through the production cost centers: engineering, machine, weld, fabrication, assembly, and test. By comparison, aftermarket production involves the engineering and manufacture of only one or a few components of the system; the complete system is not assembled and tested in our facility; and the components of a revamp or for a repair will typically rely on the engineering and design of the original system."

***

"Manufacturing processes for similar parts will differ from vendor to vendor based on the type of equipment each vendor has in their plants. It is difficult to comment on differences and similarities without knowing the available equipment."

***

"We are not a producer. But, to the best of our knowledge, compressors and turbines are manufactured using similar processes, whether they are manufactured for use in original EPGTC systems or for use as an aftermarket part. In contrast, other aftermarket parts such as lube oil consoles and control systems may be manufactured using processes different than those used in manufacturing such products for use in original EPGTC systems."

***

"No difference."

COMPETITION

The Commission's questionnaires in these investigations requested comments regarding the circumstances, if any, in which EPGTC systems and EPGTC aftermarket products compete for sales with each other. The following comments were received:

***

"The only circumstances in which EPGTC systems compete with aftermarket products is on those occasions when a competitor offers a new EPGTC system, whether complete or incomplete, in competition with a proposal to revamp existing equipment. Because the cost of a new system is so much greater than that of a revamp, this type of competition does not ordinarily occur. "

***

"Repair/replacement parts do not compete with EPGTC systems. The only aftermarket product that can compete with the EPGTC system is the revamp. If the process conditions change enough to warrant an equipment change, sometimes a revamp of the original equipment can satisfy the need. Revamps are usually less expensive than a new EPGTC system and are not usually competitively bid as the original manufacturer would normally supply the revamp for his equipment."

***

"None. Alternative products would be other EPGTC systems."

***

"None, except if a customer considers used compressors as an alternative to new equipment. We experienced 2 instances of this. Used equipment is always less expensive."

***

"Compressor revamps would be done by the compressor supplier/manufacturer. Revamps involving other components (drivers, lube system, control system) would likely consider suppliers other than the original compressor supplier and suppliers other compressor suppliers."

***

"There are some replacement part suppliers that are known as parts replicators. Our experience with purchasing replacement parts from replicators has been mixed to poor. As a result, we generally select the original equipment manufacturer (OEM) to supply replacement parts. We normally only use a parts replicator when the OEM is unable to supply the parts in a specified time period."

***

"Replacement parts are generally offered at a substantial discount if purchased at the same time as the original EPGTC system. Spare rotating elements are usually purchased with the original EPGTC system due to their long delivery times, and to insure their performance and mechanical integrity. There is considerable aftermarket parts competition between original equipment manufacturers, independent parts manufacturers (replicators) and others."

***

"Under normal circumstances, we will go to the OEM for parts, exceptions are where a replicator can match the specifications of material and design. It is at times necessary that verification of warranty is not voided if someone other than OEM is used."

***

"None. Aftermarket products for EPGTC systems are engineered to the same standards as the original equipment. End users of such systems receive proprietary engineering drawings and data from manufacturers in confidence and are not at liberty to divulge this information to third party suppliers."

***

"It is difficult to conceive of any circumstances where aftermarket products compete with EPGTC systems except for the possibility of a purchase of a used, re-built, or salvaged compressor system from a plant which has been shut down competing with a new EPGTC system. In one instance, *** participated in the purchase of a salvaged compressor case. The EPGTC system supplier who made the salvaged compressor case then manufactured new internal parts, which increased capacity and efficiency. He then installed them in this compressor case which he modified to accept them. This unit was installed in a plant on a routine turnaround and the unit it replaced was itself upgraded in the same way and installed in another identical plant. This was done to minimize the duration of the turnaround and reduce attendant production losses. Had the new internal parts been installed during the turnaround, the production outage would have been significantly longer. Of course, another alternative would have been to purchase a completely new compressor. In that respect, the used, but OEM upgraded unit was in competition with a new compressor."

***

"A complete replacement rotor and stationary internals for the refabrication or upgrade of an existing EPGTC system may very well cost more than a complete replacement of that system. Price structure for new machines is very often more attractive than the pricing of spare or replacement parts from the same supplier."

***

"The only competition between aftermarket and OEM exist for rotating assemblies, and this is on a very limited basis."

***

"There is competition between original equipment manufacturers and alternative sources for replacement parts and repairs to EPGTC systems. There are no substitutes for the EPGTC systems within our current technology."

***

"Generally, EPGTC OEM aftermarket products are solicited from competitive bids with other aftermarket suppliers after real or perceived problems are encountered with quality, service, product performance or commercial competitiveness."

***

"Many competitors and/or non-competitive machine shops are able to 'reverse-engineer' parts."

***

"Competition with aftermarket products, components, systems, and services is much the same as new except two issues. First, each vendor's aftermarket group varies in quality, technical support, and costs which differ from new product sales. The primary product with aftermarket groups is service. A revamp, supply of refurbished components, etc., can be obtained from one vendor's model from another vendors aftermarket or service shop. The second point is that in the aftermarket business additional companies besides the OEM enter the arena. To clarify, two aftermarket companies in the U.S.A. specifically Turbo care (service shop for Demag Delaval) and Hickman (service shop for Sulzer) have developed their business because they offer superior services to other OEM service shops and can work on nearly any OEMs systems. These services are: 1) better workmanship, 2) better technical support, 3) less cost, 4) fastest deliveries all with comparable warranties."

INTERCHANGEABILITY

The Commission's questionnaires in these investigations requested comments regarding the extent to which components of alternative suppliers are interchangeable; i.e., the component from one supplier would work just as effectively in an existing system with little or no rework or redesign as the component from another supplier. The following comments were received:

***

"Interchangeability very little to non-existent on base compressors, perhaps could interchange drives, controls, non-compressor manufactured items."

***

"Normally, for EPGTC systems, we would not consider components interchangeable. For the initial purchase, a system would be purchased as bid by the supplier. For a complete revamp of an existing system, the original supplier would be involved. For revamp of a part/component in an existing system, compressor parts (rotor, case, etc.) would be purchased from the compressor supplier; but the driver, lube, and control system components might be purchased elsewhere."

***

"No interchangeability between suppliers."

***

"Normally, there is no interchangeability of such components unless the alternative (foreign) supplier happened to be a licensee of the principal (U.S.) supplier."

***

"Due to the custom nature of the equipment, components could not be replaced on a like for like basis from another supplier easily."

***

"The systems are customized and not interchangeable."

***

"Not interchangeable due to custom design features."

APPENDIX E

DISCUSSION OF 1995 IMPORTS FROM JAPAN

DISCUSSION OF 1995 IMPORTS

As discussed in *The Issue of Negligible Imports* section of part IV of this report, counsel for MHI has questioned whether certain imports of EPGTC systems during 1995 are covered by the scope of this investigation. Available information, with supporting documentation, regarding the history of the 1995 importation of EPGTC systems is described below.

Vendor Selection in the United States

During ***, *** was selected as the engineering contractor for the construction of the ***. *** developed the specifications for the project and solicited bids for EPGTC systems to be used in the project from ***. *** evaluated the bids and selected *** as the winning firm and made the recommendation to ***.[1]

Procurement in Japan

*** indicated that "***."[2] The ***, contract between *** and ***, its related firm in Japan, was valued at $*** and provided for the procurement of *** in accordance with *** specifications.[3]

1995 Importation

In *** 1995, EPGTC systems manufactured by *** in Japan were imported into the United States as part of an importation of *** containers of separately identified and valued "***."[4] The imports of *** were calculated to have a value of $***[5] (landed duty-paid), and accounted for approximately *** percent of the total value of the shipment. Entry documents indicate that "***," and the entire shipment, valued at $*** (landed duty-paid), was classified by Customs as an entirety under HTS subheading 8419.***. (See attachment 2 for *** import documentation). This HTS category provides for other machinery and equipment intended to be used together for processing ***, at a duty rate of *** percent ad valorem.[6] Although this HTS subheading is not among the subheadings that Commerce, for convenience and customs purposes, has identified in its definition of scope, Commerce holds that its written description of the scope of this investigation is dispositive.[7]

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[1] Apr. 22, 1997, supplemental QR of ***, pp. 3-7; and Apr. 30, 1997, supplemental QR of ***, attachment, p. 1.

[2] Apr. 30, 1997, supplemental QR of ***, p. 1.

[3] Id, *** contract agreement, pp. 1-2, and exh. E, p. 1. Payment terms relating to supplies, equipment, and transportation were: ***. Id, contract agreement, p. 3.

[4] Apr. 17, 1997, prehearing brief of Steptoe & Johnson, exh. 7.

[5] The landed, duty-paid value of the *** (see table V-2, p. V-8 and attachment 1 for summary of bids and documentation) ***. ***.

[6] Note 4 to section XVI of the HTS states that "(w)here a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function."

[7] Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete from Japan, 62 FR 24395, (continued...)

Perceptions of Questionnaire Respondents

The following references apply to the 1995 importation. As an engineering contractor/purchaser, *** provided bid information for the manufacturers/suppliers of EPGTC systems that were involved, during 1993, in the bidding process for the EPGTC systems portion of the *** project. In response to the Commission's importer's questionnaire, *** reported these EPGTC systems as imports from Japan. U.S. producers *** reported sales lost as a result of these imports of EPGTC systems from Japan.[8]

In addition to the questioned importation, EPGTC systems purchased and imported from countries other than Japan, pursuant to procurement contracts for services, equipment, and material, have been reported by *** in two separate situations.[9] These EPGTC systems have been included as contracts for imports of the subject product in part IV of this report.

Consultation with Commerce

Based on the foregoing, staff provided Commerce with a hypothetical fact pattern and party arguments, and asked for its interpretation as to whether the products described would be covered by the scope of this proceeding (see attachment 3). Commerce indicated that it appeared that the EPGTC systems described would be within the scope of this investigation.[10]

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[7] (...continued)
May 5, 1997.

[8] May 24, 1996, QR of ***, p. 5, fn. 1; and Mar. 13, 1997, QR of ***, p. 25.

[9] Mar. 4, 1997, purchaser/end user QR of ***, sec. II-1, projects 2 and 3, note 1, p. 3; sections II.2.e and g, pp. 11, 12, and 15.

[10] May 12 and May 15, 1997, telephone conversations with ***, AD/CVD Enforcement, ITA, DOC.

Attachment 1

SUMMARY OF * BIDS AND DOCUMENTATION**

* * * * * * *

Attachment 2

***** IMPORT DOCUMENTATION**

* * * * * * *

SCOPE INQUIRY

Engineered Process Gas Turbo-compressors from Japan
USITC Inv. No. 731-TA-748 (F) and DOC Case No. A-588-840

ISSUE:

Is an EPGTC system imported into the United States as part of a shipment of machinery and equipment intended to be used together as a chemical processing "plant," within the scope of this proceeding?

HYPOTHETICAL FACT PATTERN:

1) An EPGTC system manufactured in Japan is imported into the United States as part of an importation of numerous, separately identified (by manufacturer) containers of machinery and equipment intended to be used together as a chemical processing "plant."
2) The machinery and equipment comprising the "plant" are imported in the same shipment and entered on the same Customs entry. The machinery and equipment (including the EPGTC system) are separately identified (description and manufacturer) and separately valued in entry documents.
3) The "plant," including the EPGTC system, has been purchased pursuant to a contract for itemized pieces of machinery and equipment to be used for a chemical processing plant. The contract is between a U.S. chemical processing firm and a related chemical engineering contractor/exporter in Japan.
4) Pursuant to the contract, the engineering contractor/exporter in Japan has procured the specified machinery and equipment from a number of manufacturers in Japan, including procurement of an EPGTC system from an unrelated manufacturer of such systems in Japan.
5) It is unknown as to whether the Japanese engineering contractor/exporter purchased the EPGTC system pursuant to a contract with the EPGTC system manufacturer in Japan.
6) Because of the customized and proprietary nature of EPGTC systems specifications, it is assumed that the systems manufacturer in Japan had knowledge that the system was destined for use in the United States.

PETITIONER'S ARGUMENTS:

Counsel for petitioner has argued that a scope decision is the jurisdiction of Commerce, and that they have not been invited to talk to Commerce regarding this scope issue. Counsel has urged the Commission to apply the provisions of the antidumping law that are in its jurisdiction; e.g., the causal relationship of imports of EPGTC systems from Japan to any reports of lost sales due to such imports, and consideration of injury on the basis of sales or offers to sell, even without actual physical imports.

RESPONDENT'S ARGUMENTS:

Counsel for MHI, likewise, has acknowledged that Commerce determines the scope of the proceeding. However, counsel argues that: a) nothing in Commerce's final determination shows any intention by Commerce to include within the scope of investigation an EPGTC system imported as part of an entire petrochemical plant; (b) Commerce did not consider the sale of a plant incorporating an EPGTC system as a sale within the scope of this proceeding; and c) Commerce's position is supported by its precedent on a similar scope issued raised in an administrative review of large power transformers from Japan.

APPENDIX F

SELECTED DATA OF U.S. PRODUCERS ON THEIR OPERATIONS PRODUCING EPGTC SYSTEMS

Table F-1
Income-and-loss experience of A-C Compressor on its operations producing EPGTC systems, fiscal years 1993-95

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Table F-2
EPGTC systems: Available trade data of A-C Compressor

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Table F-3
Selected revenue and cost information on Dresser-Rand's operations producing EPGTC systems, on a contract-by-contract basis, fiscal years 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

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Table F-4
Selected revenue and cost information on Elliott's operations producing EPGTC systems, on a contract-by-contract basis, fiscal years 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

* * * * * * *

Table F-5
Selected revenue and cost information on Demag Delaval's operations producing EPGTC systems, on a contract-by-contract basis, fiscal years 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

* * * * * * *

Table F-6
Dresser-Rand's and Elliott's combined contract-by-contract data on their operations producing EPGTC systems, fiscal years 1993-96, Jan.-Mar. 1996, and Jan.-Mar. 1997

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