

# UNITED STATES INTERNATIONAL TRADE COMMISSION

## AUTOMOTIVE REPLACEMENT GLASS WINDSHIELDS FROM CHINA

Investigation No. 731-TA-922 (Preliminary)

### DETERMINATION AND VIEWS OF THE COMMISSION (USITC Publication No. 3414, April 2001)

#### DETERMINATION

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade 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 materially injured by reason of imports from China of automotive replacement glass windshields, provided for in subheading 7007.21.10 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).

#### COMMENCEMENT OF FINAL PHASE INVESTIGATION

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

#### BACKGROUND

On February 28, 2001, a petition was filed with the Commission and the Department of Commerce by PPG Industries, Inc. (PPG), Pittsburgh, PA; Safelite Glass Corp. (Safelite), Columbus, OH; and Apogee Enterprises, Inc. (Apogee), Minneapolis, MN, alleging that an industry in the United States is materially injured, and threatened with further material injury, by reason of LTFV imports of automotive replacement glass windshields from China. Accordingly, effective February 28, 2001, the Commission instituted antidumping duty investigation No. 731-TA-922 (Preliminary).

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

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 March 8, 2001 (66 FR 13962). The conference was held in Washington, DC, on March 21, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

## IEWS OF THE COMMISSION

Based on the record in this investigation, we find that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of automotive replacement glass (“ARG”) windshields from China that are allegedly sold in the United States at less than fair value (“LTFV”).

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard in a preliminary antidumping investigation requires the Commission to find, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured or is threatened with material injury, or that the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>1</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>2</sup>

### II. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. In General

In determining whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”<sup>3</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic 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.”<sup>4</sup> 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.”<sup>5</sup>

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.<sup>6</sup> No single factor is dispositive, and the Commission

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<sup>1</sup> 19 U.S.C. § 1673b(a); see also American Lamb Co. v. United States, 785 F.2d 994, 1001-1004 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996).

<sup>2</sup> American Lamb, 785 F.2d at 1001 (Fed. Cir. 1986); see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

<sup>3</sup> 19 U.S.C. § 1677(4)(A).

<sup>4</sup> 19 U.S.C. § 1677(4)(A).

<sup>5</sup> 19 U.S.C. § 1677(10).

<sup>6</sup> See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4)

(continued...)

may consider other factors it deems relevant based on the facts of a particular investigation.<sup>7</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>8</sup> Although the Commission must accept the determination of the Department of Commerce (“Commerce”) as to the scope of the imported merchandise allegedly subsidized or sold at LTFV, the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>9</sup>

## **B. Product Description**

In its notice of initiation, Commerce defined the imported merchandise from China within the scope of this investigation as:

imports of ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*e.g.* passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged . . . Specifically excluded from the scope of this investigation are automotive windshields sold for original equipment manufacturers (OEM) (*i.e.*, automobile manufacturers).<sup>10</sup>

## **C. Domestic Like Product**

### **1. Arguments of the Parties**

The one domestic like product issue in this investigation is whether the like product should be expanded beyond ARG windshields. Petitioners contend that the like product should not be expanded beyond the scope to include OEM windshields.<sup>11</sup> Two groups of respondents – Fuyao Glass Industry Co., Ltd. and Greenville Glass Industries, Inc. (collectively “FYG”) and Diamond Triumph Auto Glass, Inc.,

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<sup>6</sup> (...continued)

customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

<sup>7</sup> See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

<sup>8</sup> Nippon Steel, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49. See also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

<sup>9</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find 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).

<sup>10</sup> 66 F.R. 16651 (Mar. 27, 2001).

<sup>11</sup> Petitioners’ Postconference Brief at 7-21.

TCG International Inc., Shenzhen Benxun Auto-Glass Co., Ltd., Shenzhen Xinyi Auto-Glass Co., Ltd., and Elite Auto Glass (collectively “the Diamond Respondents”) – argue that the domestic like product should be defined to include both ARG and OEM windshields.<sup>12</sup>

## 2. Whether OEM Windshields Are Part of the Same Like Product as ARG Windshields

*Physical Characteristics and Uses.* Many physical characteristics of ARG and OEM windshields are the same. Both are made of the same raw material, laminated glass (usually “float” glass), and, for a given part number, have the same basic dimensions. Both are produced corresponding to part numbers published by National Auto Glass Specifications, and both must satisfy the same federal safety regulations.<sup>13</sup> Both ARG and OEM windshields have the same uses, broadly speaking, *i.e.*, to fill the opening in the vehicle and to protect the vehicle and its occupants from the elements. However, virtually all OEM windshields are used in the production of new vehicles, with the exception of a small volume of OEM windshields sent to dealers for use in warranty replacement work. ARG windshields are used exclusively in the replacement market to replace damaged windshields and are not used in the production of new vehicles.<sup>14</sup>

The physical differences between ARG and OEM windshields are generally not discernible to the average consumer (or perhaps even to auto glass experts).<sup>15</sup> While the differences are not especially significant in the windshield replacement aftermarket, they can be significant in the OEM market.<sup>16</sup> OEM windshields are manufactured to precise proprietary specifications and tight tolerances specified by the vehicle manufacturer. By contrast, many ARG windshields are generally made without access to the vehicle manufacturers’ proprietary specifications. As such, these so-called “reverse-engineered” windshields generally encompass a wider tolerance range than OEM windshields and therefore allow for more product variation.<sup>17</sup> The automated assembly lines used by vehicle manufacturers require OEM windshields produced according to those precise specifications, whereas the use of ARG windshields deviating from those specifications can jam the robotic equipment and shut down the entire assembly line.<sup>18</sup> While producers of ARG windshields generally try to match the colors of the original equipment windshield, they have the latitude of offering colors not offered on an OEM basis, so the ARG counterpart to an OEM windshield can also be visibly different.<sup>19</sup>

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<sup>12</sup> FYG’s Postconference Brief at 2-23; Diamond Respondents’ Postconference Brief at 3-19.

<sup>13</sup> Confidential Report (“CR”) at I-3 to I-4; Public Report (“PR”) at I-2 to I-3; Petitioners’ Postconference Brief at 12 n.33; Conference Transcript (“Tr.”) at 70 (Fennell); 83 (Carino).

<sup>14</sup> CR at I-3; PR at I-2 to I-3; Tr. at 35-36 (Chimka).

<sup>15</sup> CR at I-3 to I-5; PR at I-2 to I-3; Tr. at 135 (Harris).

<sup>16</sup> CR at I-5; PR at I-3; Tr. at 29-30, 51 (Dumbris).

<sup>17</sup> CR at I-5, I-8; PR at I-3 to I-4, I-7; Tr. at 28-30 (Dumbris); 35-36 (Chimka).

<sup>18</sup> CR at I-3 to I-5; PR at I-2 to I-4; Tr. at 29-30 (Dumbris); see Petitioners’ Postconference Brief, Exh. 3, affidavit of \*\*\*.

<sup>19</sup> CR at I-5; PR at I-4; Tr. at 47 (Miner); 48 (Jungbluth).

*Manufacturing Facilities and Employees.* Production of OEM windshields involves the same basic procedures and raw materials as production of ARG windshields.<sup>20</sup> However, there can be differences.

Production facilities for OEM windshields are typically designed for high-volume runs and maximum yields to minimize the per-unit cost to the OEM customer, with production of a limited number of OEM parts and limited flexibility to make pattern changes.<sup>21</sup> By contrast, facilities producing only ARG windshields are typically designed for flexibility, to produce large numbers of different parts with short- to medium-volume runs, and frequent pattern changes.<sup>22</sup>

Product development is considerably more lengthy and costly for OEM windshields than it is for ARG windshields because OEM windshields are produced to meet the strict proprietary specifications of vehicle manufacturers. It can take 14 months to two years before the OEM windshield is ready for production and shipment, while the ARG windshield product development process can require three months or less. The OEM product development process requires numerous engineers and technicians to work with the customer on its specifications, and can cost ten times more than the ARG product development process.<sup>23</sup>

Of the seven reporting domestic ARG windshield producers, five also produce OEM windshields. While some domestic producers produce both ARG and OEM windshields using the same facilities and the same workers, the limited information in the record suggests that the apparent majority of ARG and OEM windshields are produced in different facilities using different workers.<sup>24</sup>

*Interchangeability.* In general, OEM windshields can be used interchangeably with ARG windshields in the aftermarket, although the use of OEM windshields in the aftermarket tends to be limited to replacement by automobile dealers pursuant to a warranty.<sup>25</sup> Reverse-engineered ARG windshields, however, cannot be used in the OEM market because they are not designed to the vehicle manufacturers' precise proprietary specifications.<sup>26</sup>

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<sup>20</sup> CR at I-6 to I-7; PR at I-5 to I-6; Petitioners' Postconference Brief at 15; Tr. at 23-27 (Dumbris); 69-70 (Fennell); 83 (Carino).

<sup>21</sup> CR at I-8 to I-9; PR at I-7; Tr. at 27, 30, 32-34 (Dumbris).

<sup>22</sup> CR at I-8; PR at I-7; Tr. at 27, 30-34 (Dumbris).

<sup>23</sup> CR at I-6, I-8 to I-9; PR at I-5, I-7; Tr. at 27-29 (Dumbris).

<sup>24</sup> CR at I-9; PR at I-7. See Tr. at 70 (Fennell); 83-84 (Carino); 107 (Harris); 133 (Skidmore). \*\*\*, accounting for \*\*\* percent of domestic ARG production in 2000, do not produce OEM windshields on the equipment they use to produce ARG windshields. Four ARG producers, reflecting 27 percent of domestic ARG production, stated that they produced their OEM windshields on the same equipment they used in the production of ARG windshields. PPG, reflecting \*\*\* percent of domestic ARG production, produces \*\*\* of its ARG windshields at its OEM windshield facilities. Thus, the record in this preliminary investigation indicates that slightly less than half of ARG windshields may be produced in common facilities. CR at I-9; PR at I-7; Tr. at 51-52 (Dumbris; Stewart). In any final phase investigation, we will seek to determine with more accuracy the overlap in production between ARG and OEM windshields.

<sup>25</sup> CR at I-3 n.9, I-10; PR at I-3 n.9, I-8; Tr. at 35-36 (Chimka).

<sup>26</sup> Tr. at 35-36 (Chimka).

*Channels of Distribution.* windshields are primarily sold to vehicle manufacturers, with a small volume sold by the vehicle manufacturers to car dealerships for use in warranty replacement.<sup>27</sup> By contrast, ARG windshields are generally sold to distributors and auto glass installation shops.<sup>28</sup>

*Customer and Producer Perceptions.* The record is incomplete as to customer and producer perceptions, because of the absence of questionnaire data from purchasers and from producers that make OEM windshields exclusively. The available information in the record is mixed. The evidence presented by petitioners indicates that the domestic producers who are petitioners, as well as some original equipment automobile manufacturers that use OEM windshields, view the two as different products.<sup>29</sup> The evidence presented by respondents suggests that many ARG distributors and customers, and in particular automobile owners, the ultimate end users, perceive no difference between the OEM windshields and the ARG windshields. To these consumers, they are one product.<sup>30</sup>

*Price.* The Commission has not collected data comparing prices of ARG and OEM windshields. Despite the larger development and engineering costs for OEM windshields, the cost per unit of an OEM windshield tends to be lower than that for an ARG windshield because of the much larger volume production runs of OEM windshields. There is some evidence that prices reflect this difference in unit costs.<sup>31</sup> However, OEM windshields purchased through a dealer in the aftermarket tend to be considerably more expensive than ARG windshields purchased through a distributor or retail shop.<sup>32</sup>

*Conclusion.* Although there are factors supporting both proposed like products, and recognizing that the record is incomplete, we find, for purposes of this preliminary determination, that there is one domestic like product consisting of all ARG windshields, and not including OEM windshields. While the physical characteristics and uses of ARG and OEM windshields are very similar, the differences, particularly with respect to OEM windshields being produced to manufacturers' proprietary specifications with strict tolerances, are significant in the OEM market, and prevent ARG windshields from being interchangeable for OEM end uses. Moreover, there appear to be largely different channels of distribution for ARG and OEM windshields; that is, no OEM automobile consumers purchase ARG windshields for production. While the manufacturing process for OEM and ARG windshields is basically the same, and some domestic producers produce both OEM and ARG windshields using the same facilities and workers, the limited information in the record suggests that the apparent majority of ARG and OEM windshields are produced in separate facilities with separate workers.<sup>33</sup> In any final phase of these investigations, we will obtain additional information, especially from purchasers and producers of OEM windshields, and we will re-examine our like product determination.

#### **D. Domestic Industry**

The domestic industry is defined as “the producers as a [w]hole of a domestic like

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<sup>27</sup> CR at I-10 to I-11; PR at I-8; Tr. at 34-36 (Chimka).

<sup>28</sup> CR at I-10 to I-11; PR at I-8; Tr. at 13 (Jungbluth); 34-35 (Chimka).

<sup>29</sup> CR at I-10; PR at I-8; Tr. at 36 (Chimka).

<sup>30</sup> CR at I-10; PR at I-8; Tr. at 135 (Harris).

<sup>31</sup> CR at I-11; PR at I-9; Tr at 33 (Dumbris), 50 (Chimka).

<sup>32</sup> CR at I-11; PR at I-9; Tr. at 136 (Harris).

<sup>33</sup> CR at I-9; PR at I-7.

product . . . .”<sup>34</sup> In defining the domestic industry, the Commission’s general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.<sup>35</sup> Based on our definition of the domestic like product determination, we define the domestic industry to include all U.S. producers of ARG windshields.

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.<sup>36</sup> Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.<sup>37</sup> No party has argued that any domestic producer should be excluded as a related party.

Two domestic producers of ARG windshields, \*\*\* and \*\*\*, directly imported subject merchandise during the period of investigation.<sup>38</sup> Consequently, these two firms are related parties.

We next consider whether appropriate circumstances exist to exclude either of the related party producers from the domestic industry. \*\*\* ratio of subject imports to domestic production was \*\*\* percent in 1999 and \*\*\* percent in 2000.<sup>39</sup> Accordingly, we do not find that \*\*\* primary interest lies in importation of subject merchandise rather than in domestic production. Moreover, \*\*\* financial performance during the period examined, in terms of its ratio of operating income to net sales value, was \*\*\* for the producers in the domestic industry, and there is no evidence that it derived any significant unique benefit from its importation.<sup>40</sup> Accordingly, we find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry as a related party.

\*\*\* ratio of subject imports to domestic production was \*\*\* percent in 1998, \*\*\* percent in 1999, and \*\*\* percent in 2000.<sup>41</sup> We do not find that \*\*\* primary interest lies in importation of subject merchandise rather than in domestic production. Moreover, given that \*\*\* had the \*\*\* financial performance of any domestic ARG producer in 1998 and 2000, and the \*\*\* in 1999, we find no evidence

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<sup>34</sup> 19 U.S.C. § 1677(4)(A).

<sup>35</sup> See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir.1996).

<sup>36</sup> 19 U.S.C. § 1677(4)(B).

<sup>37</sup> Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), aff’d without opinion, 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties include: (1) the percentage of domestic production attributable to 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 producers vis-a-vis the rest of the industry, *i.e.*, whether inclusion or exclusion of the related party will skew the data for the rest of the industry. See, *e.g.*, Torrington Co. v. United States, 790 F. Supp. 1161, 1168 (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 interests of the related producers lie in domestic production or in importation. See, *e.g.*, Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Inv. Nos. 731-TA-741-743 (Final), USITC Pub. 3016 (Feb. 1997) at 14, n.81.

<sup>38</sup> CR and PR at IV-1, n.1. \*\*\* . See Foreign Producer Questionnaire responses of \*\*\*.

<sup>39</sup> CR at IV-1, n.1; PR at IV-1, n.1.

<sup>40</sup> CR and PR at Table VI-2.

<sup>41</sup> CR at IV-1, n.1; PR at IV-1, n.1.

that it has been shielded from the effects of any unfairly traded imports as a result of its own importation.<sup>42</sup> Accordingly, we find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry as a related party.

### **III. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF ALLEGEDLY LTFV IMPORTS FROM CHINA**

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>43</sup> In making this determination, the Commission must consider the volume of subject 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.<sup>44</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>45</sup> In assessing whether there is a reasonable indication that the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>46</sup> 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.”<sup>47</sup>

For the reasons discussed below, we determine that there is a reasonable indication that the domestic industry is materially injured by reason of subject imports from China.

#### **A. Conditions of Competition**

The following conditions of competition are pertinent to our analysis.

Subject imports from China and the domestic like product are viewed by domestic producers and importers as highly interchangeable and substitutable in the U.S. ARG market.<sup>48</sup> While in the past Chinese ARG windshields were perceived to be of lower quality than domestically produced ARG windshields, in recent years this perception of lower quality has largely been eliminated, and subject imports from China are now viewed as highly substitutable for the domestic like product.<sup>49</sup>

In addition, the ARG market is price-competitive, and the available information in the record suggests that purchasing decisions are made largely on the basis of price.<sup>50</sup>

During the period of investigation, U.S. apparent consumption increased in quantity, increasing by 8.6 percent from 11,071,143 units in 1998 to 12,024,511 units in 1999, and then by 9.6 percent to

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<sup>42</sup> CR and PR at Table VI-2.

<sup>43</sup> 19 U.S.C. § 1671b(a) and 1673b(a).

<sup>44</sup> 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 . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B). See also Angus Chemical Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>45</sup> 19 U.S.C. § 1677(7)(A).

<sup>46</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>47</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>48</sup> CR at II-8 to II-9; PR at II-5; Tr. at 43 (Chimka).

<sup>49</sup> Tr. at 38-39 (Chimka); 62-63 (Tann); 63 (Jungbluth); 72 (Anderson).

<sup>50</sup> Tr. at 14 (Jungbluth); 23 (Tann); 37-41 (Chimka); 148 (Dunnegan).

13,174,596 units in 2000.<sup>51</sup> Thus, the statements by some market participants that U.S. demand has been flat or has increased only minimally are not borne out by the Commission's available consumption data.<sup>52</sup> Similarly, while there is evidence in the record that some domestic producers have advertised windshield repair as an alternative to windshield replacement, the increase in U.S. consumption does not support the conclusion that windshield repair has significantly diminished demand for windshield replacement.<sup>53</sup>

A major segment of ARG windshield market sales (possibly as much as 50 to 70 percent) is related to claims by insured motorists for windshield replacement.<sup>54</sup> Some or all of the petitioners act as third-party administrators for certain property and casualty insurance companies in the United States with respect to such claims for windshield replacement.<sup>55</sup>

There has been increasing vertical integration in the domestic industry. As a result of recent mergers and acquisitions, some domestic producers now operate at several levels of the ARG windshield production and distribution system, including wholesale distribution and glass retail installation shops. Thus, some domestic producers supply and compete with independent distributors for sales at both the wholesale and retail level.<sup>56</sup>

Finally, nonsubject imports increased during the period examined, both by quantity and by value. Nonsubject imports increased in quantity from 4,440,847 units in 1998 to 5,168,183 units in 1999, and then to 5,695,681 units in 2000. By value, nonsubject imports declined slightly from \$237,251,000 in 1998 to \$236,537,000 in 1999, but then increased to \$247,355,000 in 2000.<sup>57</sup> By quantity, the market share of nonsubject imports increased from 40.1 percent in 1998 to 43.2 percent in 2000. By value, the market share of nonsubject imports increased from 34.9 percent in 1998 to 37.9 percent in 2000.<sup>58</sup>

## **B. Volume of Subject Imports**

Section 771(7)(C)(i) of the Act provides that 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."<sup>59</sup>

The quantity and value of subject imports from China rose steadily over the period examined, as did subject import market share. Between 1998 and 2000, subject imports increased by 275.7 percent in quantity, and by 162.0 percent in value.<sup>60</sup> The quantity of subject imports increased from 481,393 units in 1998 to 1,089,278 units in 1999, then increased further to 1,808,630 units in 2000. The value of subject

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<sup>51</sup> CR at II-7; PR at II-4; CR and PR at Table IV-3. However, on a value basis, apparent U.S. consumption declined from \$680,417,000 in 1998 to \$640,476,000 in 1999, and then increased to \$653,434,000 in 2000. CR and PR at Table IV-3.

<sup>52</sup> CR at II-6 to II-7; PR at II-4.

<sup>53</sup> CR at II-8; PR at II-4; Tr. at 54 (Tann).

<sup>54</sup> CR at II-2, II-7; PR at II-1 to II-2, II-4.

<sup>55</sup> Tr. at 54-55 (Tann); 103-104, 108-109 (Harris).

<sup>56</sup> CR at I-11, II-1 to II-2; PR at I-8, II-1; Conf. Tr. at 13-14, 15-16 (Jungbluth); 77-79 (Wiley); Petition at 30-32.

<sup>57</sup> CR and PR at Table IV-3.

<sup>58</sup> CR and PR at Table IV-3.

<sup>59</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>60</sup> CR and PR at Table C-1.

imports increased from \$20,003,000 in 1998 to \$30,057,000 in 1999, then increased further to \$52,407,000 in 2000.<sup>61</sup>

Subject import market share of U.S. apparent consumption, measured by quantity, increased from 4.3 percent in 1998 to 9.1 percent in 1999, then increased to 13.7 percent in 2000. Subject import market share, measured by value, increased from 2.9 percent in 1998 to 4.7 percent in 1999, and then to 8.0 percent in 2000.<sup>62</sup>

At the same time, U.S. producers' market share declined. U.S. producers' shipments as a percentage of total U.S. consumption by quantity declined from 55.5 percent in 1998 to 48.0 percent in 1999, and then to 43.0 percent in 2000. By value, the U.S. producers' market share declined from 62.2 percent in 1998 to 58.4 percent in 1999, and then to 54.1 percent in 2000. Thus, subject imports gained market share at the expense of the domestic producers.

For purposes of this preliminary determination, we find the volume and increase in volume of subject imports, both in absolute terms and relative to apparent consumption, to be significant.

### **C. Price Effects of the Subject Imports**

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, 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.<sup>63</sup>

As stated above, price is an important factor in purchasing decisions.<sup>64</sup> Domestically produced ARG windshields and subject imports are generally highly substitutable.<sup>65</sup>

We note that the pricing data collected by the Commission in the preliminary phase of the investigation cover only a small share of both U.S. producers' and importers' shipments because the large number of different ARG windshields makes it difficult to obtain a high rate of product coverage.<sup>66</sup> We further note that the Commission's available pricing comparisons do reflect comparable levels of distribution.

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<sup>61</sup> CR and PR at Table IV-2. We note that a relatively small volume of U.S. imports from Hong Kong (equivalent to about 3 to 5 percent of total imports from China) are not included in these totals of subject imports from China, but are nevertheless believed to be ARG windshields produced in China and shipped through Hong Kong. CR at IV-2; PR at IV-1 to IV-2; Tr. at 158 (Chan).

<sup>62</sup> CR and PR at Table IV-4.

<sup>63</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>64</sup> Tr. at 14 (Jungbluth); 23 (Tann); 37-41 (Chimka); 148 (Dunnegan).

<sup>65</sup> CR at II-8 to II-9; PR at II-5; Tr. at 38-39, 43 (Chimka); 62-63 (Tann); 63 (Jungbluth); 72 (Anderson).

<sup>66</sup> We will expand the range of products on which we seek pricing information in any final phase investigation, and will seek input from the parties regarding appropriate products. See 19 C.F.R. § 207.20(b).

Although the data are limited at this stage of the proceedings, the Commission's pricing comparisons indicate significant underselling by subject imports. The pricing data reported on an f.o.b. basis showed underselling by subject imports from China in all 56 comparisons, with margins of underselling ranging from 5.4 percent to 72.5 percent. The f.o.b. pricing data reflected no instances of overselling by subject imports.<sup>67</sup>

The pricing data reported on a delivered basis showed 26 instances of underselling by subject imports and 12 instances of overselling.<sup>68</sup> Margins of underselling ranged from 5.1 to 31.5 percent, and margins of overselling ranged from 5.1 percent to 83.6 percent.<sup>69</sup>

The Commission's pricing data for the domestic like product showed no clear trend during the period examined, with prices rising for some products and declining for others.<sup>70</sup> Moreover, there is limited apparent correlation between domestic prices and subject import volumes and prices. Thus, factors besides subject imports may be at work in determining domestic prices, and we will explore such pricing issues in any final phase investigation.<sup>71 72</sup>

As noted, a major portion of the ARG windshield market allegedly relates to insured motorist windshield replacement claims.<sup>73</sup> Respondents contend that because of the relationship between the petitioners and certain property and casualty insurance companies in the United States, under which petitioners act as third-party administrators for those insurance companies with respect to claims for windshield replacement, this large segment of the ARG market is effectively insulated from price competition from subject imports.<sup>74</sup> We intend to seek more information in any final phase investigation regarding this portion of the market and its relationship to the pricing effects of subject imports.

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<sup>67</sup> The pricing data reported on an f.o.b. basis showed underselling by subject imports from China in eight of eight comparisons for product 1, twelve of twelve comparisons for product 2, twelve of twelve comparisons for product 3, twelve of twelve comparisons for product 4, and twelve of twelve comparisons for product 5. CR at V-14; PR at V-6; CR and PR at Tables V-6 to V-10.

<sup>68</sup> For product 1, there were six instances of underselling by subject imports and three instances of overselling. For product 2 there were nine instances of underselling by subject imports and one instance of overselling. For product 3 there were four instances of underselling and five instances of overselling. For product 4 there were four instances of underselling and one instance of overselling. For product 5 there were three instances of underselling and two instances of overselling. CR at V-8, V-14; PR at V-5; CR and PR at Table V-1 to V-5.

<sup>69</sup> CR at V-8, V-14; PR at V-5.

<sup>70</sup> CR at V-6; PR at V-3 to V-4.

<sup>71</sup> In any final phase investigation, we will also consider the effect of the domestic industry's structure, including vertical integration, on prices.

<sup>72</sup> Respondents argue that there is a two-tier ARG windshield market with subject imports competing primarily with Safelite in the lower-priced end of the market, and ARG producers such as PPG, which also produce OEM windshields, receiving a premium price for their ARG windshields in the higher end. The available data do not support this argument. Safelite's prices \*\*\*, and the data show more instances of underselling by subject imports in pricing comparisons with Safelite alone than they do for pricing comparisons with weighted averages of the prices from all reporting domestic producers. CR at V-14, V-20; PR at V-7; CR and PR at Tables D-1 to D-5.

<sup>73</sup> CR at II-2, II-7; PR at II-1 to II-2, II-4.

<sup>74</sup> Tr. at 103-104, 108-109 (Harris); Diamond Respondents' Postconference Brief at 25-28; FYG's Postconference Brief at 43-44.

The Commission takes note that no customer-specific data were provided with respect to lost sales or lost revenue allegations.<sup>75</sup> In any final phase investigation, the Commission will seek such data in order to better assess the impact of underselling.<sup>76</sup>

Although the record is limited at this stage of the proceeding, we find, based primarily on the evidence of significant underselling by subject imports, the high degree of substitutability between the domestic like product and subject imports, and the shift of market share from the domestic like product to subject imports, that subject imports are having significant negative price effects on the domestic like product.

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<sup>75</sup> See CR at V-20 to V-21; PR at V-7 to V-8.

<sup>76</sup> 19 C.F.R. § 207.11(b)(2)(v).

#### **D. Impact of the Subject Imports**

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.<sup>77</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. 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.”<sup>78 79 80</sup>

Virtually all indicators of the condition of the domestic industry worsened during the period of investigation. Domestic production, net sales (by value), and the domestic producers’ market share declined throughout the period, while inventories increased.<sup>81</sup> While capacity utilization and net sales (by quantity) increased from 1998 to 1999, they declined in 2000 to below their 1998 levels.<sup>82</sup>

The financial position of the domestic industry likewise declined during the period examined. Operating income, the ratio of operating income to net sales, and cash flow all declined sharply during the period examined.<sup>83</sup> Employment indicators also declined during the period. The number of production and

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<sup>77</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” *Id.* at 885.).

<sup>78</sup> 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851, 885; Live Cattle from Canada and Mexico, Inv. Nos. 701-TA-386, 731-TA-812-813 (Preliminary), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>79</sup> The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii) (V). In its notice of initiation, Commerce reported that petitioners’ calculated estimated dumping margins, as adjusted by Commerce, for subject imports from China ranged from 9.59 percent to 132.12 percent. 66 F.R. 16651, 16654 (Mar. 27, 2001).

<sup>80</sup> Commissioner Bragg notes that she does not ordinarily consider the magnitude of dumping to be of particular significance in evaluating the effects of subject imports on the domestic products. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Preliminary), USITC Pub. 3345 (Sept. 2000) at 11 n.63.

<sup>81</sup> Domestic production declined from 6,525,089 units in 1998 to 6,333,799 units in 1999, and then to 6,093,724 units in 2000. CR and PR at Table III-1. Total net sales declined in value from \$402,021,000 in 1998 to \$383,739,000 in 1999, and then to \$370,102,000 in 2000. CR and PR at Table IV-2. U.S. producers’ shipments as a percentage of total U.S. consumption by quantity declined from 55.5 percent in 1998 to 48.0 percent in 1999 to 43.0 percent in 2000. By value, the U.S. producers’ market share declined from 62.2 percent in 1998 to 58.4 percent in 1999 to 54.1 percent in 2000. CR and PR at Table IV-3. Inventories increased from 1,939,923 units in 1998 to 2,146,973 units in 1999 to 2,241,802 units in 2000. CR and PR at Table III-1.

<sup>82</sup> Capacity utilization increased from 74.5 percent in 1998 to 77.0 percent in 1999, but then declined to 72.0 percent in 2000. CR and PR at Table III-1. Total net sales for U.S. producers increased in quantity from 5,812,144 units in 1998 to 5,915,991 units in 1999, but then declined to 5,616,609 units in 2000. CR and PR at Table VI-2.

<sup>83</sup> Operating income declined from \$43,734,000 in 1998 to \$16,081,000 in 1999 to \$12,945,000 in 2000. The ratio of operating income to net sales declined from 10.9 percent in 1998 to 4.2 percent in 1999 to 3.5 percent in 2000. Cash flow declined from \$44,232,000 in 1998 to \$17,292,000 in 1999 to \$12,266,000 in 2000. CR and PR

(continued...)

related workers (PRWs), hours worked by PRWs, wages paid to PRWs, and hourly wages all declined.<sup>84</sup> Although research and development expenses increased somewhat during the period, capital expenditures were substantially less in 1999 and 2000 than they were in 1998.<sup>85</sup>

In addition \*\*\* and \*\*\* both reported shutting down plants during the period examined.<sup>86</sup> Moreover, Safelite filed for relief under Chapter 11 of the Bankruptcy Code in June 2000.<sup>87</sup>

As previously noted, there was an increasing degree of vertical integration in the domestic industry during the period examined, with domestic ARG windshield producers also operating at the wholesale distribution and retail outlet levels.<sup>88</sup> In any final phase investigation, we will examine these vertical relationships to determine their impact on the market and to ensure that the apparent condition of the domestic industry is not distorted as a result of allocations or transfer pricing between different levels of a vertically integrated domestic producer. Furthermore, in any final phase investigation, we will examine the performance of individual domestic producers to ensure that our assessment of the impact of subject imports on the domestic industry is not distorted by the problems of individual domestic producers unrelated to subject imports.

Based on the record in this preliminary phase of the investigation, we find that the significant and increasing volume of low-priced subject imports from China is having a significant negative impact on the U.S. industry. Accordingly, we determine that there is a reasonable indication of material injury by reason of subject imports from China.<sup>89</sup>

## CONCLUSION

For the foregoing reasons, we determine there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ARG windshields from China that are allegedly sold in the United States at less than fair value.

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<sup>83</sup> (...continued)  
at Table VI-1.

<sup>84</sup> The number of production and related workers (PRWs) declined from 2,187 in 1998 to 2,098 in 1999 to 2,004 in 2000, and hours worked by PRWs declined from 3,213,000 hours in 1998 to 2,983,000 hours in 1999 to 2,842,000 hours in 2000. Wages paid to PRWs declined from \$53,046,000 in 1998 to \$48,872,000 in 1999 to \$43,265,000 in 2000, and hourly wages likewise declined from \$16.51 in 1998 to \$16.39 in 1999 to \$15.22 in 2000. However, productivity increased from 2.03 units produced per hour in 1998 to 2.12 units per hour in 1999, and then to 2.14 units per hour in 2000. CR and PR at Table III-1.

<sup>85</sup> Capital expenditures declined from \$21,837,000 in 1998 to \$14,868,000 in 1999, and then increased slightly to \$15,318,000 in 2000. CR and PR at Table VI-4. Research and development expenses increased from \$\*\*\* in 1998 to \$\*\*\* in 1999, and then to \$\*\*\* in 2000. However, the Commission obtained data on research and development expenses from only \*\*\* domestic producers. CR and PR at Table VI-4.

<sup>86</sup> CR at III-2; PR at III-2.

<sup>87</sup> Petition at 48 and Exh. 35; Tr. at 21 (Tann). Safelite emerged from bankruptcy later in 2000 with a new ownership structure. Petition at 48; Tr. at 21-22 (Tann).

<sup>88</sup> CR at I-11, II-1 to II-2; PR at I-8, II-1; Conf. Tr. at 13-16 (Jungbluth); 77-79 (Wiley); Petition at 30-32.

<sup>89</sup> As discussed earlier, we intend, in any final phase investigation, to reexamine the possible inclusion of OEM windshields and their producers in the like product and domestic industry definitions. We note that any such inclusion would likely have significant implications for our analysis.