

CERTAIN UNFINISHED MIRRORS FROM BELGIUM

**Determination of the Commission in
Investigation No. 731-TA-320
(Final) Under the Tariff Act of
1930, Together With the
Information Obtained in the
Investigation**

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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C O N T E N T S

	<u>Page</u>
Determination.....	1
Views of the Commission.....	3
Chairman Liebeler's additional views.....	13
Commissioner Eckes' separate views.....	27
Commissioner Rohr's additional views.....	35
Information obtained in the investigation:	
Introduction.....	A-1
Background.....	A-2
Discussion of report format.....	A-3
Nature and extent of sales at LTFV.....	A-3
The foreign industry.....	A-3
Appendix A. Commerce's final LTFV determination.....	A-7
Appendix B. Commerce's notice of postponement.....	A-11
Appendix C. Commission's notice of investigation.....	A-15
Appendix D. Calendar of witnesses.....	A-19
Appendix E. Statistical tables.....	A-23
Appendix F. Commerce's notice of amendment to final determination.....	A-27

Tables

1.	Unfinished mirrors 15 square feet and over: Glaverbel's production, capacity, capacity utilization, end-of-period inventories, and shipments, 1983-85, January-June 1985, and January-June 1986.....	A-4
E-1.	Unfinished mirrors 15 square feet and over: U.S. producers' shipments, imports for consumption, and apparent consumption, 1983-85, January-June 1985, and January-June 1986.....	A-24
E-2.	Unfinished mirrors 15 square feet and over: Value of U.S. producers' shipments, imports for consumption, and apparent consumption, 1983-85, January-June 1985, and January-June 1986....	A-24
E-3.	Unfinished mirrors 15 square feet and over: U.S. imports from specified countries, 1983-85, January-June 1985, and January-June 1986.....	A-25
E-4.	Unfinished mirrors 15 square feet and over: U.S. producers' domestic shipments, imports, apparent consumption, and ratio of imports to consumption, by specified countries, 1983-85, January-June 1985, and January-June 1986.....	A-26

Note.--Information that would reveal the confidential operations of individual concerns may not be published and, therefore, has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC

Investigation No. 731-TA-320 (Final)
CERTAIN UNFINISHED MIRRORS FROM BELGIUM

Determination

On the basis of the record 1/ developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium of unfinished glass mirrors, 2/ 15 square feet or larger in reflecting area, provided for in item 544.54 of the Tariff Schedules of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective September 12, 1986, following a preliminary determination by the Department of Commerce that imports of the above-referenced mirrors from Belgium were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of October 1, 1986 (51 F.R. 35059). The hearing was held in Washington, DC, on December 2, 1986, 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(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

2/ Mirrors which have not been subjected to any finishing operations such as¹ beveling, etching, edging, or framing.

VIEWS OF THE COMMISSION

We determine that an industry in the United States is not materially injured or threatened with material injury by reason of less than fair value (LTFV) imports of certain unfinished mirrors from Belgium. ^{1/} Our negative determination is based on the preponderance of positive indicators of the domestic industry's performance, from which we have concluded that the domestic industry is not experiencing material injury. ^{2/ 3/ 4/}

Like product and the domestic industry

As a prerequisite to its material injury analysis, the Commission must define the relevant domestic industry. The term "industry" is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product" ^{5/} "Like product" is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses

^{1/} Because there is an existing industry, material retardation of the establishment of an industry in the United States is not an issue in this investigation.

^{2/} Chairman Liebler joins in the majority definition of like product/domestic industry and in the majority discussion of the condition of the domestic industry and threat. For her views on cumulation and causation, see her Additional Views.

^{3/} Commissioner Eckes joins in the discussion of like product/domestic industry. See his Separate Views on condition of the domestic industry, cumulation, causation, and threat.

^{4/} See Commissioner Rohr's Additional Views on causation and cumulation. He notes that there is no causal nexus between the condition of the domestic industry and the subject imports.

^{5/} 19 U.S.C § 1677(4)(A).

with, the article subject to an investigation." ^{6/}

The Commission's like product determination is essentially factual and is based on an analysis made on a case-by-case basis and designed to identify clear dividing lines among products. ^{7/} We examine factors relating to the characteristics and uses of the subject merchandise, including common manufacturing facilities and production employees, physical appearance, and substitutability between products.

The articles subject to this investigation are unfinished glass mirrors having reflective surfaces of 15 square feet or more. ^{8/} In the preliminary phase of this investigation the Commission found one like product, unfinished flat glass mirrors 15 sq. ft. and over, and one domestic industry, the producers of such mirrors. ^{9/} Petitioners support this finding and

^{6/} 19 U.S.C. § 1677(10). The "article subject to an investigation" is defined by the scope of the investigation initiated by the Department of Commerce (Commerce).

^{7/} "The requirement that a product be 'like' the imported article should not be interpreted in such a narrow fashion as to permit minor differences in physical characteristics and 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 investigation." S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).

^{8/} 52 Fed. Reg. 3156 (February 2, 1987).

^{9/} Certain Unfinished Mirrors from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, Turkey, and the United Kingdom, Invs. Nos. 701-TA-273 and 731-TA-320-325 (Preliminary), USITC Pub. No. 1850 at 6 (May 1986).

respondent did not oppose it in this final investigation. ^{10/}

No information was received in this final investigation that would lead us to change our earlier determinations. We therefore find one like product, unfinished flat glass mirrors 15 sq. ft. and over, and one domestic industry, the producers of such mirrors. ^{11/}

Condition of the Domestic Industry

In assessing the condition of the domestic industry the Commission considers, among other indicators of an industry's performance, U.S. domestic consumption, production, capacity, capacity utilization, shipments,

^{10/} In the preliminary investigation an issue was raised as to whether the Commission should include in the like product finished and unfinished flat glass mirrors with less than 15 sq. ft. of reflective surface, collectively called "cut mirrors." We decided not to do so, while noting we would re-examine the issue in any final investigations. Id. at 6, n. 15. In Certain Unfinished Mirrors from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom, Invs. Nos. 731-TA-321-325 (Final), USITC Pub. No. 1938 (January 1987) ("Mirrors I"), the Commission did examine this issue and concluded that cut mirrors and unfinished flat glass mirrors 15 sq. ft. and more differ significantly. In particular, the mirrors subject to investigation are mass produced in a limited number of standard sizes and are frequently used without further processing in large projects such as hotel lobbies. Cut mirrors are generally made to order in a wide range of sizes and styles, are invariably subject to finishing such as edging, beveling, etching, and/or framing, and are sold primarily to furniture manufacturers and retailers. Id. at 5.

^{11/} Chairman Liebler and Vice Chairman Brunsdale have concerns about the like product definition adopted in this case. They note that domestic production facilities can easily switch from producing large mirrors (i.e., over 15 square feet) to small mirrors. Memorandum from Office of Economics, EC-K-097 (March 4, 1987) at 3. This suggests there is a high degree of substitutability in supply between large and small mirrors, in which case the like product adopted by the Commission in this case may be defined too narrowly. However, their decisions in this case would not have been affected by using a broader definition of like product. See Certain Welded Carbon Steel Pipes and Tubes from Turkey and Thailand, Invs. Nos. 701-TA-253 and 731-TA-252 (Final), USITC Pub. 1810 (February 1986) (Additional Views of Commissioner Brunsdale at 49).

inventories, employment and financial performance. ^{12/} ^{13/}

Many of the most significant of these indicators show growth and expansion. As consumption rose during the period of investigation, two new firms entered the market, one existing firm installed a more efficient silvering line, and other existing firms expanded. ^{14/} Employment increased and wage rates rose. As the industry expanded, costs increased and profits decreased, but the industry as a whole remained profitable.

Domestic consumption rose by 21 percent from 1983 through 1985, and by 3 percent in the January-June 1986 period. ^{15/} Domestic capacity grew by 27 percent in the 1983-1985 period and by 3 percent in the interim period. ^{16/} Production also increased substantially in the 1983-1985 period and again

^{12/} 19 U.S.C. § 1677(7)(C)(iii). We recently made determinations concerning certain unfinished mirrors from five countries. Mirrors I. No new information has been received concerning the condition of the domestic industry since those determinations. Accordingly, citations are to the published report in Mirrors I, USITC Pub. No. 1938 (January 1987).

^{13/} Chairman Liebelier and Vice-Chairman Brunsdale believe that it may be appropriate in this case to use a product line analysis pursuant to 19 U.S.C. § 1677(4)(D) to assess the condition of the domestic industry. They are concerned that the available data may not permit separate identification of production in terms of such criteria as the production process or producer's profits. For example, the record indicates that the same equipment and labor can readily shift from producing large mirrors (i.e., over 15 square feet) to small mirrors. Memorandum from Office of Economics, EC-K-097 (March 4, 1987) at 3. Because the same production inputs are common to both large and small mirrors, the cross elasticity of supply between the two categories of mirrors must be very high. As a consequence, there would not be a separate identity for the production of large mirrors in terms of the production process. While the Chairman and Vice-Chairman do not use product line analysis in this case, had they done so their determinations would have been the same. See Certain Welded Carbon Steel Pipes and Tubes from the Phillipines and Singapore, 731-TA-293, 294, and 296 (Final), USITC Pub. 1907 (November 1986) (Views of Chairman Liebelier at 19).

^{14/} Mirrors I at A-10.

^{15/} Id. at A-8. The January-June 1986 period is hereinafter referred to as "the interim period." Statements which describe conditions in the interim period are to be understood as comparisons with conditions in and for the comparable portion (i.e., January-June) of 1985.

^{16/} Mirrors I at A-10.

slightly in the interim period. ^{17/} Because the overall increase in production was smaller than the increase in capacity, capacity utilization fell.

The volume and total value of domestic shipments to the open market rose throughout the period of this investigation. Open market shipments increased 13 percent in volume from 1983 to 1984 and again by 3 percent in 1985. Data for the interim period reflect a decline of less than 0.5 percent in such shipments. Total shipments declined in volume from 1984 to 1985 despite increases in open market shipments because intracompany shipments fell off by 31 percent in this period. ^{18/} Inventories declined by 9 percent from 1983 through 1985 but remained stable in the interim period. The ratio of inventories to total shipments declined from 6.3 percent in 1983 to 4.9 percent in 1985. ^{19/}

The average number of workers producing unfinished mirrors 15 sq. ft. and more rose by 6 percent from 1983 through 1985, and increased again in the interim period. Hours worked increased by 7 percent in 1983-1985, while hourly wages paid increased by 16 percent, total hourly compensation by 19 percent, and output per hour by 11 percent. These indicators also increased in the interim period. ^{20/}

Domestic producer sales of unfinished mirrors 15 sq. ft. and more apparently increased in 1984 and continued to increase gradually for the

^{17/} Id.

^{18/} Id. at A-11-12.

^{19/} Id. at A-13, Table 8.

^{20/} Id. at A-14.

balance of the period of the investigation. ^{21/} Operating income apparently rose in 1984, but then dropped in 1985, the year in which the general, selling, and administrative (GS&A), labor, and interest costs of the industry rose substantially. We note that this is the year in which the costs of the industry's biggest expansion during the period of investigation were reflected in its financial data. As a share of net sales, both the cost of goods sold and GS&A increased in 1984-1985. While the GS&A/net sales ratio declined slightly in the interim period, the cost of goods sold/net sales ratio continued to rise. ^{22/ 23/}

As noted above, new entrants and improvements by existing firms increased the industry's capacity and upgraded its production facilities during the period of investigation. Capital expenditures and investment both rose, with capital expenditures posting a particularly sharp rise in 1985. ^{24/}

We therefore conclude that the domestic industry is not currently

^{21/} Id. at A-19, Table 13. Commissioner Rohr notes that while the overall increase of 39 percent reflected in the Commission's data may not be totally accurate due to the Commission's problems in collecting data from the domestic industry, the increase was clearly substantial. He further notes that net sales figures substantially understate industry performance because only one company reported its intracompany transfers as sales. Intracompany transfers generally account for over 10 percent of total industry shipments.

^{22/} Mirrors I at A-19.

^{23/} We note that certain domestic producers did not provide complete financial data. This may throw some doubt on their effect on the financial performance reported by the domestic industry; however, we find the available data sufficient to make our determination.

^{24/} Mirrors I at A-21-22.

experiencing material injury. 25/ 26/

No Threat of Material Injury by Reason of LTFV Imports

In determining whether there is threat of material injury, the Commission considers, among other factors, (1) any rapid increase in market penetration of the imports and the likelihood that such penetration will reach an injurious level, (2) any substantial increase in inventories of the imported product, (3) the likelihood of increased imports in the future because of increased capacity or existing underutilized capacity in the foreign country, and (4) the probability that future imports will have a price depressing or suppressing effect in the domestic market. 27/ The Commission must also find that the threat is real and injury is imminent. 28/

The producer of the subject mirrors in Belgium is operating at a high rate of capacity utilization and there is no evidence that it plans to

25/ Vice-Chairman Brunsdale does not consider the issue of causation. She concludes that domestic producers of unfinished mirrors are not experiencing material injury and notes that this conclusion is sufficient to support a negative determination in this case. See American Spring Wire Corp. v. United States, 8 C.I.T. 20, 590 F.Supp. 1273, 1276 (1984), aff'd sub nom., Armco, Inc. v. United States, 760 F.2d 249, 250 (Fed. Cir. 1985) (affirming based on the reasoning of the lower court); Badger-Powhatan v. United States, 9 C.I.T. ___, 608 F.Supp. 653, 657 (1985). The Vice-Chairman therefore does not reach the hypothetical question of whether, if the domestic industry were materially injured, that injury would be by reason of dumped imports from Belgium.

26/ See Additional Views of Chairman Liebelier and Additional Views of Commissioner Rohr. Commissioner Lodwick, finding no material injury, does not consider the issue of causation.

27/ 19 U.S.C. § 1677(7)(F)(i).

28/ 19 U.S.C. § 1677(7)(F)(ii); see also H.R. Rep. No. 1156, 98th Cong., 2d Sess. 174 (1984).

increase production capacity significantly. ^{29/ 30/} The market share of the imports from Belgium declined from 1984 to 1985. Although the market share rose in the interim period, we find that the increase was not rapid. Moreover, the market share accounted for by imports from Belgium is and has been minuscule compared with the growing market share of other imports. ^{31/} Because all imports are produced to order, the importer does not hold inventories. ^{32/} Although imports from Belgium have undersold the domestic product, we note that domestic producers' prices have risen or remained stable during the period of investigation. ^{33/ 34/} Considering the small market penetration of imports from Belgium, we find that there is little probability that future imports will have a price depressing or suppressing effect in the

^{29/} Report of the Commission (Report) at A-4, Transcript of the Hearing (Tr.) at 130-131.

^{30/} Commissioner Rohr notes that, based upon his analysis of Belgian production data, the capability of the Belgian producer to significantly increase its exports to the United States to an injurious level is limited unless there were to be a radical shift in its production or sales to its traditional markets. He notes that, on the basis of the information, to posit any such shift would be impermissible speculation.

^{31/} Report at A-26

^{32/} Mirrors I at A-22.

^{33/} Mirrors I at A-32-36.

^{34/} Chairman Liebel and Vice-Chairman Brunsdale do not base their decisions in this case on evidence of underselling by imported products. They believe that evidence of underselling or overselling ordinarily is not probative on the issues of causation and threat. See Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 at 11 n.25 (1986).

domestic market. 35/

We conclude that the domestic industry is not threatened with material injury by reason of the subject imports.

35/ Commissioner Rohr notes that, based upon his analysis of the information gathered with respect to the trends in the volume and price of imports and from the Belgian producer, there is no evidence of an intention to increase Belgian market presence to a level that would be injurious to the domestic industry. See also his additional views with respect to his conclusion that the market is not one in which the price underselling by imports will have a price suppressive effect.

ADDITIONAL VIEWS OF CHAIRMAN LIEBELER

Inv. No. 731 TA-320 (Final)
 Certain Unfinished Mirrors from
 Belgium

I determine that an industry in the United States is not materially injured, or threatened with material injury, by reason of certain unfinished mirrors from Belgium which the Department of Commerce has determined are being sold at less-than-fair-value.¹ I concur in the majority definitions of like product and domestic industry, and discussions of the condition of the industry and threat of material injury. Since I determine that the (domestic industry is not experiencing material injury, I am not required to reach the issue of causation. However, assuming arguendo that the domestic industry is materially injured, I proceed to a discussion of cumulation and causation.² Since my views on cumulation and causation

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Since there is an established domestic industry producing unfinished mirrors, material retardation of the establishment of an industry is not an issue in this investigation and will not be discussed further.

2

My determination in this investigation is based on the
 (Footnote continued on next page)

differ from those of other members of the majority, I offer these additional views.

Material Injury by Reason of Imports

In order for a domestic industry to prevail in a final investigation, the Commission must determine that the dumped or subsidized imports cause or threaten to cause material injury to the domestic industry producing the like product. First, the Commission must determine whether the domestic industry producing the like product is materially injured or is threatened with material injury. Second, the Commission must determine whether any injury or threat thereof is by reason of the dumped or subsidized imports. Only if the Commission answers both questions in the affirmative, will it make an affirmative determination in the investigation.

(Footnote continued from previous page)
same factors as in Certain Unfinished Mirrors from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom, Invs. Nos. 731-TA-321-325, (Final), USITC Pub. 1938 (January 1987) (hereinafter Mirrors I). As no new information has been received concerning the condition of the industry since those determinations, citations are to the published staff report from Mirrors I.

Before analyzing the data, however, the first question is whether the statute is clear or whether one must resort to the legislative history in order to interpret the relevant sections of the antidumping law. The accepted rule of statutory construction is that a statute, clear and unambiguous on its face, need not and cannot be interpreted using secondary sources. Only statutes that are of doubtful meaning are subject to such statutory interpretation.³

The statutory language used for both parts of the two-part analysis is ambiguous. "Material injury" is defined as "harm which is not inconsequential, immaterial, or unimportant."⁴ This definition leaves unclear what is meant by harm. As for the causation test, "by reason of" lends itself to no easy interpretation, and has been the subject of much debate by past and present commissioners. Clearly, well-informed persons may differ as to the interpretation of the causation and material injury sections of title VII. Therefore, the legislative history becomes helpful in interpreting title VII.

3

C. Sands, Sutherland Statutory Construction, § 45.02 (4th ed. 1985).

4

19 U.S.C. § 1677(7)(A) (1980).

The ambiguity arises in part because it is clear that the presence in the United States of additional foreign supply will always make the domestic industry worse off. Any time a foreign producer exports products to the United States, the increase in supply, ceteris paribus, must result in a lower price of the product than would otherwise prevail. If a downward effect on price, accompanied by a Department of Commerce dumping or subsidy finding and a Commission finding that financial indicators were down were all that were required for an affirmative determination, there would be no need to inquire further into causation.

But the legislative history shows that the mere presence of LTFV imports is not sufficient to establish causation. In the legislative history to the Trade Agreements Acts of 1979, Congress stated:

[T]he ITC will consider information which indicates that harm is caused by factors other⁵ than the less-than-fair-value imports.

5

Report on the Trade Agreements Act of 1979, S. Rep. No. 249, 96th Cong. 1st Sess. 75 (1979).

The Senate Finance Committee emphasized the need for an exhaustive causation analysis, stating, "the Commission must satisfy itself that, in light of all the information presented, there is a sufficient causal link between the less-than-fair-value imports and the requisite injury."⁶

The Finance Committee acknowledged that the causation analysis would not be easy: "The determination of the ITC with respect to causation, is under current law, and will be, under section 735, complex and difficult, and is a matter for the judgment of the ITC."⁷ Since the domestic industry is no doubt worse off by the presence of any imports (whether LTFV or fairly traded) and Congress has directed that this is not enough upon which to base an affirmative determination, the Commission must delve further to find what condition Congress has attempted to remedy.

In the legislative history to the 1974 Act, the Senate Finance Committee stated:

⁶
Id.

⁷
Id.

This Act is not a 'protectionist' statute designed to bar or restrict U.S. imports; rather, it is a statute designed to free U.S. imports from unfair price discrimination practices. * * * The Antidumping Act is designed to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States

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industry.

Thus, the focus of the analysis must be on what constitutes unfair price discrimination and what harm results therefrom:

[T]he Antidumping Act does not proscribe transactions which involve selling an imported product at a price which is not lower than that needed to make the product competitive in the U.S. market, even though the price of the imported product is lower than its home market
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price.

This "complex and difficult" judgment by the Commission is aided greatly by the use of economic and financial analysis. One of the most important assumptions of traditional microeconomic theory is that firms attempt
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to maximize profits. Congress was obviously familiar

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Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

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Id.

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See, e.g., P. Samuelson & W. Nordhaus, Economics 42-45
(Footnote continued on next page)

with the economist's tools: ¹⁹ "[I]mporters as prudent businessmen dealing fairly would be interested in maximizing profits by selling at prices as high as the U.S. market would bear."¹¹

An assertion of unfair price discrimination should be accompanied by a factual record that can support such a conclusion. In accord with economic theory and the legislative history, foreign firms should be presumed to behave rationally. Therefore, if the factual setting in which the unfair imports occur does not support any gain to be had by unfair price discrimination, it is reasonable to conclude that any injury or threat of injury to the domestic industry is not "by reason of" such imports.

In many cases unfair price discrimination by a competitor would be irrational. In general, it is not rational to charge a price below that necessary to sell one's product. In certain circumstances, a firm may try

(Footnote continued from previous page)
(12th ed. 1985); W. Nicholson, Intermediate Microeconomics and Its Application 7 (3rd ed. 1983).

¹¹

Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

to capture a sufficient market share to be able to raise its price in the future. To move from a position where the firm has no market power to a position where the firm has such power, the firm may lower its price below that which is necessary to meet competition. It is this condition which Congress must have meant when it charged us "to discourage and prevent foreign suppliers from using unfair price discrimination practices to the detriment of a United States industry."¹²

In Certain Red Raspberries from Canada, I set forth a framework for examining what factual setting would merit an affirmative finding under the law interpreted in light¹³ of the cited legislative history.

The stronger the evidence of the following . . . the more likely that an affirmative determination will be made: (1) large and increasing market share, (2) high dumping margins, (3) homogeneous products, (4) declining prices and (5) barriers to entry to other foreign producers (low¹⁴ elasticity of supply of other imports).

12

Trade Reform Act of 1974, S. Rep. 1298, 93rd Cong. 2d Sess. 179.

13

Inv. No. 731-TA-196 (Final), USITC Pub. 1680, at 11-19 (1985) (Additional Views of Vice Chairman Liebelser).

14

Id. at 16.

The statute requires the Commission to examine the volume of imports, the effect of imports on prices, and the general impact of imports on domestic producers.¹⁵ The legislative history provides some guidance for applying these criteria. The factors incorporate both the statutory criteria and the guidance provided by the legislative history. Each of these factors is evaluated in turn, after a discussion of cumulation.

Cumulation

I do not cumulate the imports of certain unfinished mirrors from Belgium with those from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom.¹⁶ The cumulation provision requires that the "imports compete with each other as well as with the like

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19 U.S.C. § 1677(7)(B)-(C) (1980 & cum. supp. 1985).

¹⁶

For a discussion of my views on cumulation, See Oil Country Tubular Goods from Canada and Taiwan, Invs. Nos. 701-TA-255, 731-TA-276-277 (Final), USITC Pub. 1865 (1986); Certain Carbon Steel Products from Austria, Czechoslovakia, East Germany, Hungary, Norway, Poland, Romania, Sweden, and Venezuela, Invs. Nos. 701-TA-225-234, 731-TA-213-217, 219, 221-226, and 228-235 (Preliminary), USITC Pub. 1642 (1985).

product of the domestic industry",¹⁸ and be "subject to investigation".¹⁹ Although the investigations involving all six countries were instituted together, imports from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom are no longer subject to investigation because they were the subject of recent Commission final negative determinations.²⁰ The investigation concerning Belgium was extended upon request of the respondents. I conclude that cumulation is not appropriate in this case because the Commission made negative determinations in the final investigations involving the other five countries.

Causation analysis

Examining import penetration data is relevant because unfair price discrimination has as its goal, and cannot

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19 U.S.C. § 1677(7)(C)(iv) (1980).

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Id.

19

See Mirrors I.

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See Certain Butt-Weld Pipe Fittings from Japan, Inv. No. 731-TA-309 (Final), USITC Pub. 1936, January 1987. I note that in Mirrors I, I cumulated the imports of certain
(Footnote continued on next page)

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take place in the absence of, market power. Imports from Belgium accounted for one percent or less of apparent U.S. consumption during the entire period of

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investigation. The market penetration of Belgian imports is very small and not consistent with a finding of unfair price discrimination.

The second factor is a high margin of dumping or subsidy. The higher the margin, ceteris paribus, the more likely it is that the product is being sold below the competitive price²² and the more likely it is that the

domestic producers will be adversely affected. The Department of Commerce calculated a dumping margin of 0.97 percent.²³ This margin is extremely small and does not support a finding of unfair price discrimination.

The third factor is the homogeneity of the products. The more homogeneous the products are, the greater will be

(Footnote continued from previous page)
unfinished mirrors from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom with those from Belgium. Mirrors I at 19.

21
Mirrors I, Report at Table 19.

22
See text accompanying note 9, supra.

23
Report at appendix F.

24

the effect of any allegedly unfair practice on domestic producers. As in the previous investigations,²⁴ I find the imported and domestic products are generally similar. I find the imported and domestic product to be substitutable, although they are not perfect substitutes.

As to the fourth factor, domestic producers might choose to lower their prices to prevent loss of market share. Domestic prices exhibited an upward trend for clear and tinted glass mirrors²⁵ from 1983 through 1985. Although prices for the tinted glass mirrors fell from the last quarter of 1985 to the first quarter of 1986, the prices recovered in the second quarter of 1986.²⁶ Although prices for the 3 millimeter glass mirrors fell from the last quarter of 1983 to the first quarter of 1985, the prices recovered through the second quarter of

²⁴
See Mirrors I.

²⁵
The Commission gathered price data for weighted average delivered prices reported by U.S. producers and importers of the foreign-made product for sales to wholesale distributors of clear glass mirrors 6, 5 and 3 millimeters thick and tinted glass mirrors, 6 millimeters thick. Id. at Tables 20-23.

²⁶
Id.

²⁷ 1986. These pricing data are not consistent with a finding of unfair price discrimination.

The fifth factor is barriers to entry (foreign supply elasticity). If there are barriers to entry (or low foreign elasticity of supply) it is more likely that a producer can gain market power. Imports from Belgium accounted for a very small portion of total imports into the United States over the period of investigation. Imports from countries not subject to dumping investigation accounted for a small but increasing percentage of imports relative to consumption of certain unfinished mirrors into the United States over the entire period of investigation, increasing from more than 7 percent of apparent U.S. consumption in 1983 to more than 13 percent in 1985. During interim 1986, imports from third-party countries accounted for more than 15 percent of apparent U.S. consumption, up from 12 percent in the ²⁸ corresponding period of the previous year. Since imports from other countries account for such a large portion of total imports, I conclude that barriers to entry are low.

²⁷ Id.

²⁸ Id. at A-40.

These factors must be balanced in each case to reach a sound determination. The domestic and imported products are very substitutable. Barriers to entry are low which is consistent with a negative determination. Moreover, the dumping margins are extremely small, market share is low, domestic prices are not decreasing, strongly suggesting the absence of unfair price discrimination. The factors tending toward a negative determination clearly outweigh those pointing toward an affirmative determination.

Conclusion

Therefore, I conclude that an industry in the United States is not materially injured or threatened with material injury by reason of dumped imports of certain unfinished mirrors from Belgium.

SEPARATE VIEWS OF COMMISSIONER ECKES

Although I join with my colleagues in making a negative determination in this investigation, the bases for our determinations differ. They find that the domestic industry producing unfinished mirrors 15 square feet and over is not experiencing material injury or threat of material injury. On the other hand, I find that the domestic industry is experiencing material injury, but that Belgian imports alone are not a cause of that injury. If the imports from Belgium could be cumulated with the imports from other countries which entered the United States in the same time period and were found by the Commerce Department to be unfairly traded, my vote in this investigation would be affirmative.

In January, I voted affirmatively in investigations involving the less than fair value (LTFV) imports from five other countries -- the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom -- after assessing the effect of the cumulated imports from those countries and from Belgium. However, my colleagues made negative determinations in the earlier investigations. The General Counsel therefore advises that the imports from the five countries are no longer subject to investigation, and that while an individual Commissioner may vote to dissent from the Commission majority in a given investigation, once the investigation is completed,

that Commissioner should defer to the majority's determination. Because of this, the General Counsel advises that " In view of the negative determinations made in the other investigations . . . the Commission may not cumulate imports from Belgium with those of any other country." 1/

The petitioner filed against imports from Belgium at the same time the other five investigations were filed. However, a postponement of the Commerce Department's determination regarding LTFV Belgian imports at the request of the respondent had the effect of delaying and isolating the Commission consideration of Belgium. In this particular set of investigations, I believe that the Commerce extension affected only my vote in the investigation of imports from Belgium; the majority probably would have voted negatively anyway as they made negative determinations in the earlier investigations. However, one can visualize possible future investigations where isolating a country or group of countries through Commerce extensions could alter the vote of a Commission majority. Certainly Congress did not foresee this distortion of the determinative process when it directed the Commission to assess the cumulative effect of unfairly traded imports.

Condition of the industry

In my Dissenting Views on the earlier investigations (2/) I

1/ Memorandum GC-K-038, February 19, 1987, page 1.

2/ Certain Unfinished Mirrors From the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom, Inv. Nos. 731-TA-321 - 325 (Final). USITC Pub. No. 1938. January 1987. Pages 35-50.

pointed out that despite a substantial increase in domestic consumption of unfinished mirrors 15 square feet and over during the period of investigation, the domestic industry is not prospering. Increasing consumption encouraged new entrants to the industry as well as expansion on the part of several established producers. However imports, particularly those from the six countries subject to investigation, captured an increasing percentage of the expanding market. Although the value of sales by domestic producers (excluding inter- and intracompany transfers) rose sharply from 1983 to 1984, there was a relatively small increase in 1985, and sales actually turned down slightly in the 1986 interim compared to January - June 1985.

I noted in my Dissenting Views that the clearest evidence for injury appears in 1985, the peak year for the cumulated LTFV imports. Consumption rose over 3 percent in that year compared to 1984 (after a 17 percent jump between 1983 and 1984). However, domestic producers' total shipments dropped from 101,341 square feet to 99,350 square feet. Capacity utilization fell from 58.6 percent in 1984 to 47 percent in 1985, and maintained that low level in interim 1986 although consumption continued to climb. The capacity added to take advantage of the growing U.S. market for mirrors obviously was not being used as the industry had planned. Five of the 13 firms submitting employment data reported layoffs in the investigation period involving at least 5 percent of their

workforce or 50 workers, and the firms attributed these layoffs to decreasing sales.

The financial performance of the domestic industry also supports a finding of material injury. From 1984 to 1985, the cash flow from operations of producers accounting for 96 percent of reported U.S. production of unfinished mirrors 15 square feet and over decreased 60 percent, and the downward trend continued in interim 1986. As a percent of sales, operating income dropped from 3.8 percent in 1983 to 2.2 percent in 1985, and the interim 1985/interim 1986 comparison showed a further decrease in operating margin. Net income before income taxes plunged from 3.3 percent in 1983 to 0.9 percent in 1985, and again the interim period comparison showed additional erosion of net profits in 1986. Fully half of the 14 reporting producers experienced operating losses in 1985, whereas only three out of the 10 producers supplying 1983 data operated at a loss. The deteriorating performance of the domestic industry during the period of investigation clearly indicates that the industry is experiencing material injury.

Causation

In determining whether there is material injury by reason of dumped or subsidized imports, the Commission must consider: (1) the volume of imports of the merchandise subject to investigation; (2) the effect of the imports on prices for the like product in the United States; and (3) the impact of the imports on domestic producers of the like product.

The volume of the subject imports from Belgium increased dramatically in 1984, remained at almost the same level in 1985, and increased in the 1986 interim. However, the imports from Belgium, when not cumulated with the unfair imports from the other countries named in the petition, constituted a very small percentage of domestic consumption.

Imports of the Belgian mirrors for which the Commission received consistent price series from importers over the period of investigation undersold the domestic product in all price comparisons made by the Commission. The domestic prices for the like product of comparable type (thickness, etc.) remained at about the same level during the investigation period despite the significant increase in demand. Therefore, in the earlier investigations, I found that the imports from Belgium, when cumulated with the other LTFV imports subject to investigation, not only reduced the market share of the domestic industry, but also had the effect of suppressing domestic prices. Suppressed prices during a period when producers were faced with expansion and modernization costs resulted in reduced profitability.

Now, however, I must consider the effect of Belgian imports alone. These imports supply only a very small percentage of total domestic consumption. Also, in 1985, the peak year for the cumulated imports subject to investigation, Belgian imports actually declined slightly from 1984 levels, although they increased in the 1985-1986 interim comparison. It is not possible for me to link the price effects of this minuscule

quantity of imports to the material injury experienced by the domestic industry. Therefore I do not find that the domestic industry is experiencing material injury by reason of the LTFV imports from Belgium.

Threat of material injury

In my Dissenting Views on the earlier mirror investigations, I made it clear that even if I had not found current material injury by reason of the cumulated imports, the imports from each of the countries named in the petition threatened future material injury to the domestic industry. For most of the countries, this finding was based primarily upon the recent rapid rise in volume and market share of the LTFV imports. There were limited data available at that time concerning the industry in each country -- its capacity, production, capacity utilization, and the proportion of shipments exported to the United States. Where the respondents did not provide such information as requested, I based my conclusions on the best information available. 3/

At this time, however, the Commission does have additional information concerning Glaverbel, the only Belgian producer supplying the subject imports. This information is confidential as it relates to only one producer. However,

3/ 19 U.S.C 1677e(b) The reviewing courts have held that failure of foreign respondents to furnish information requested by Commerce justifies use of the best information available in an administrative review. Ansaldo v. United States, - CIT -, 628 F. Supp. 198, 205 (1986). See also my discussion in earlier Mirrors opinion (reference footnote 2)

the data, particularly evidence of a high capacity utilization rate and increasing shipments to countries other than the United States, do not indicate that the Belgian producer is likely to substantially increase production and shipments to the United States in the near future. Therefore, I do not find that the domestic industry is threatened with material injury by reason of LTFV imports from Belgium.

Additional Views of Commissioner David B. Rohr on Causation and Cumulation

As I stated in my additional views on cumulation and causation in *Certain Unfinished Mirrors from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom*, Inv. Nos. 731-TA-321 through 325 (Final), USITC Pub. 1938, January 1987 (*Mirrors I*), where I determine that an industry is not experiencing material injury, the question of causation, in the manner in which it is usually considered by the Commission, does not logically arise. However, as I have also stated, because the finding that an industry is not experiencing material injury is a legal conclusion, it is possible to analyze the condition of the domestic industry, *as if* I had found it to warrant the legal conclusion of "material injury" and conclude that the imports under investigation are not a cause of that condition.

In this investigation, had I concluded that the domestic industry was experiencing material injury, I would not have found that imports were a cause of that injury. The following discussion of causation and cumulation is presented in that context. I also note that in *Mirrors I*, my cumulative analysis included Belgian imports. These views supplement those expressed in my earlier views.

Causation

In determining whether the domestic industry is injured "by reason of" LTFV imports, I consider, among other factors, the volume of imports subject to investigation and the effect of such imports on prices in the United States for the like product and on the domestic industry. Because there is only one Belgian exporter of unfinished flat glass mirrors 15 square feet and over to the United States, much of the import data is confidential and can only be discussed in general terms.

First, considering volume, Belgian imports increased substantially between 1983 and

1984, decreased from 1984 to 1985, and increased again in interim 1986. I have also taken into consideration the very small total amounts of mirrors involved in analyzing these increases and decreases. Belgian imports have never accounted for more than one percent of U.S. consumption. Contrary to petitioners data, the Commission's data do not show a steadily increasing pattern of imports.

Considering prices, there appears to have been little absolute overall change over the period of the investigation in the price of either domestic or imported mirrors. There were, however, some changes and these changes and the trends they reveal must be analyzed. It should be emphasized that the prices collected by the Commission reflect, to the best of our ability, the actual prices in the marketplace and the actual competition between the domestic product and the imports.

The domestic prices, for the principal market product, 6mm clear glass mirrors, rose slightly in 1983 and 1984 and remained stable in 1985 and interim 1986 at a level one cent below the highest price in 1984. Prices for other products followed basically similar trends, slightly rising or remaining stable.

I must consider these basic indicators and trends in the context of the condition of the industry in order to draw some conclusion about their effects. I conclude that factors other than LTFV imports, either on a cumulated basis as analyzed in my prior views, or those from Belgium, which are more specifically discussed herein, are responsible for the performance that I see.

Production related indicators all reflect positive performance for this industry with two possible exceptions, capacity utilization and overall shipments. I discussed the reasons for the decline in capacity utilization extensively in my separate views in the preliminary investigation and of shipments in my additional views in *Mirrors I*.

Any negative inferences that may be drawn from capacity utilization figures are unwarranted because of the substantial increases in capacity, both new entrants and expansions by existing companies, that occurred at the same time as these decreases in capacity utilization. It is not reasonable to assume that such capacity increases would

immediately be used to their full extent by additional production. In fact, production did continue to increase. It simply increased by a lesser amount than the additional capacity.

Any negative inferences to be drawn from the shipment data, as well as any causal connection to imports, are also unwarranted. I noted in my prior analysis of shipment data that there was a significant decline in intracompany transfers, which bear no relation to these imports. Open market shipments, those that compete with the imports, continued to rise throughout the period, interim 1986 data being flat. I cannot, in short, find evidence to support a causal link between any negative production indicators and the LTFV imports from Belgium, or LTFV imports in general.

Similarly, employment indicators also reflect the uninjured performance of this industry. While individual firms reported a number of layoffs during the period of the investigation, these layoffs were more than offset by the overall increases in employment. Even giving great weight to the layoffs, most of which were temporary, the hours worked in the industry continued to increase in each year of the investigation and during the interim period. Again, I can find no material injury by reason of imports in these employment indicators.

Analysis of the financial performance of the industry compels the same conclusion. The only negative indicator of financial performance is the operating margin, the ratio of operating income to net sales. This is, of course, only one indicator of financial performance. Although it is important, it must be considered in light of the other indicators that demonstrate very positive performance. Even so, I find no persuasive evidence of a causal nexus between the operating margins and the imports.

A comparison of trends does not indicate a consistent relationship between the volume of imports and the operating margin. Neither can I find a causal connection between the operating margin and the price of the imports. Rather, as I indicated in my prior opinion, the only connection shown by the evidence is between the operating margin and the entry of new firms and increased capacity of the domestic industry.

37

As I stated in my prior views, "The financial data that the domestic industry has

provided the Commission is more consistent with the changes that would be associated with the increased costs of such growth than with negative effects of imports." As expected, the performance of the new capacity in 1985 increased the industry cost of goods sold (COGS) and, consequently, decreased the operating margin for that year. To go further, in looking at interim financial data, this capacity begins to have a positive effect on financial performance.

A further point must also be made with respect to the substantial increases in operating margin in 1984. In that year, the industry sold off a substantial amount of inventory. It thus shows a lower COGS margin and higher operating margin relative to periods in which inventories are held constant. This further decreases the significance of the decline in operating margin in 1985 when inventories were stable.

I made two other points in *Mirrors I* that bear repeating here. First, I noted that LTFV imports declined in the interim period. Use of such data may seem unusual in light of the fact that I did not discuss that, apart from the interim period, imports did consistently increase, and that the import level in the interim period may have been affected by the filing of the investigations themselves. I considered these arguments but did not find them persuasive. I find the interim market share data to be significant in this case because it began to reflect the results of the capacity expansion that occurred in 1984 and 1985.

Second, I noted that the market did not appear to be one in which the underselling reflected in the Commission's data would exert any significant pressure on price. The effect of the underselling of imports on the domestic price is an important factor in my analysis. In light of my analysis of the performance indicators of this industry, it is particularly important. The only remaining argument supporting a finding of a causal nexus between the imports and the condition of the domestic industry is that, absent price suppression by imports, domestic prices would have increased. Thus, net sales would have been higher, and consequently operating margins would have been higher.

In fact, however, the evidence does not support this chain of conclusions. Purchasers, as a group, appear to have greater power than suppliers in the relevant market. The 38

competition between domestic suppliers is intense. The new entrants and expanded capacity of several traditional suppliers appear to have been the relevant factor in holding the domestic price level steady. In light of these considerations, the connection between the domestic price level and the imports is tenuous at best. I cannot conclude that imports had a price suppressive effect.

I have therefore concluded that the domestic industry is not materially injured by reason of LTFV imports from Belgium. My conclusions regarding the absence of a threat of material injury from Belgian imports is discussed in the majority opinion.

Cumulation

In my recent additional views in *Certain Fresh Cut Flowers from Canada, Chile, Colombia, Costa Rica, Ecuador, Israel, and the Netherlands*, Inv. Nos. 701-TA 275-278, and 731-TA 327-331 (Final) (1987), I discussed problems that arise in the Commission's causation analysis when an overly broad reading (requiring cross-cumulation) of the cumulation provisions of the statute is made. This investigation illustrates the similarly illogical results that can obtain from an overly narrow reading of the cumulation provisions.

The statute requires that cumulation be made only with imports under investigation. The Commission has consistently interpreted this provision to allow cumulation with imports as to which an order imposing duties was recently entered. Just as consistently, the Commission has not cumulated with imports that are no longer under investigation either through a suspension agreement, a withdrawal of a petition, or a negative final determination.

In this case, although imports from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom were under investigation recently, they were subject to a negative final determination by the Commission. Therefore, they are no longer under investigation and there are no recent outstanding orders as to them. Consequently, in this investigation, I did not cumulate them with Belgian imports, even though in *Mirrors I I* I did cumulate Belgian imports with them.

This seems to be an unreasonable and unfair application of the statute. These

investigations were brought at the same time by petitioners. In the preliminary investigations, the Commission recognized the appropriateness of a cumulative analysis. No facts emerged in the final investigations to indicate that a cumulative analysis would not be appropriate. The only new "fact" is that, at the request of the Belgian exporter, the Commerce Department's final determination, and hence the Commission's final investigation, was delayed by approximately two months.

Failure to cumulate imports in this situation, while a proper reading of the statute, has a potential for creating abuses of our unfair trade laws. By staggering extensions of their investigations at the Commerce Department, respondents could take advantage of the technical interpretation of "under investigation" to avoid the cumulation required by Congress and the logic of the marketplace. It could also result in an unfair disadvantage to those exporters who do not take advantage of the opportunity for delay by subjecting them to cumulation which is improper.

In most investigations, the delay of an investigation will not affect the outcome of related investigations before the Commission. Earlier investigations will be cumulated with the later investigations that are delayed. If the Commission makes an affirmative finding in the earlier investigations, they will still be cumulated with the later investigations under the Commission's interpretation that cumulation is appropriate with recent orders. Only if a negative finding is made in the earlier investigations would cumulation not be used in the later investigations. However, because the negative determination in the early investigations would have been made on a cumulated basis, it is reasonable to assert that the later investigations would be negative with or without cumulation.

In several situations, however, failure to permit cumulation could affect the outcome of an investigation. First, although unlikely, Commissioners who had determined cumulation was inappropriate because of certain market conditions in a first set of investigations could determine that cumulation was appropriate after all. In such a situation, they would be precluded from correcting their mistake and cumulating in at least the later investigations.

Less unusual would be the situation in which some Commissioners determined cumulation to

be appropriate for some or all of a set of investigations, while others did not cumulate or cumulated with other subsets of the total investigations. If the first decisions were split, it is possible that Commissioners, applying the same logic of cumulation that they applied in the first investigations, would be precluded from cumulating in the second, thus forcing what would have been affirmative determinations to be negative.

For example, consider a five member Commission dealing with a set of five investigations. Two Commissioners find in the negative; one cumulates all five and finds affirmatively; one cumulates the first, third and fifth investigations and finds affirmatively only in those; and the fifth cumulates the second, fourth, and fifth investigations and finds affirmatively only in those. The first four investigations result in 3-2 negative determinations while the fifth would be a 3-2 affirmative. If, however, the fifth investigation were delayed, it could no longer be cumulated with the first four. Absent such cumulation, the three affirmatives, which were based on a cumulative analysis, would no longer be justified, thus resulting in negative determinations. While such situations would not be common, they are real possibilities.

In yet another situation, delay could yield affirmative results in investigations that should be negative. If the "delayed" investigation involved a large exporting country, all of whose exports were preliminarily determined to be unfair, the total volume would be considered in the cumulative analysis. If, after the delayed Commerce Department final determination, most or all of those exports were found not to be unfairly traded, consideration of those exports for purposes of injury would be inappropriate. Those exports should also not have been considered in the cumulative analysis with the early investigations. Those early cases, therefore, may have properly been negative given the different volumes and price effects. While such a "mistake" could be corrected in a review proceeding, any such proceeding would require a period of time during which fairly traded goods were subject to duties appropriate only for unfairly traded goods.

This investigation does not present any of the latter situations. In *Mirrors I*, I
 41
 found no material injury by reason of the cumulated imports. Had I cumulated in this

investigation, I would have reached the same result. The only practical result of the delay, in this investigation, was that, because of their own actions, Belgian exporters were subject to the suspension of liquidation and provisional duties, resulting from the preliminary affirmative Commerce findings, for two months longer than the other exporters.

INFORMATION OBTAINED IN THE INVESTIGATION

Introduction

As the result of a preliminary determination by the U.S. Department of Commerce (Commerce) that certain unfinished glass mirrors 1/ from Belgium are being, or are likely to be, sold in the United States at less than fair value (LTFV), 2/ the U.S. International Trade Commission instituted investigation No. 731-TA-320 (Final), under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium of such unfinished mirrors. 3/

Notice of the institution of the Commission's final investigation and of the 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

1/ The products covered by Commerce's determination are described as "unfinished glass mirrors, made of any of the glass described in TSUS item numbers 541.11 through 544.41, 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, currently classifiable in the Tariff Schedules of the United States Annotated (TSUSA) under item 544.5400." The Commission's notice did not specify the tariff classifications of the glass used to produce such mirrors.

2/ Commerce published its preliminary determination in the Federal Register of Sept. 12, 1986 (51 F.R. 32505). A copy of Commerce's final determination, as published in the Federal Register of Feb. 2, 1987, is presented in app. A.

3/ Concurrently, the Commission instituted final antidumping investigations concerning imports of such unfinished mirrors from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom subsequent to Commerce's making affirmative preliminary LTFV determinations (51 F.R. 32507 through 32513, Sept. 12, 1986). In its preliminary LTFV determinations, Commerce set Nov. 24, 1986, as the date by which it would make its final determinations. Subsequently, Commerce published notice of the postponement until Jan. 26, 1987, of its determination concerning the subject imports from Belgium. A copy of Commerce's notice of postponement, as published in the Federal Register of Oct. 3, 1986, is presented in app. B.

The Commission made final determinations that an industry in the United States is not materially injured or threatened with material injury (Commissioner Eckes dissenting and Commissioner Stern not participating) by reason of the subject imports from the above cited countries, publishing notice of such in the Federal Register of Jan. 22, 1987 (52 F.R. 2459) and releasing a report (Certain Unfinished Mirrors From the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom: Determinations of the Commission in Investigations Nos. 731-TA-321 Through 325 (Final), Under the Tariff Act of 1930 . . ., USITC Pub. 1938, January 1987).

Register of October 1, 1986 (51 F.R. 35059). 1/ The hearing was held in Washington, DC, on December 2, 1986. 2/ The Commission held the briefing and vote in this investigation on March 6, 1987. The administrative deadline for notifying Commerce of the Commission's determination is March 11, 1987. 3/

Background

This investigation resulted from petitions filed with the Commission and Commerce on April 1, 1986, on behalf of the National Association of Mirror Manufacturers, Potomac, MD, 4/ alleging that mirrors inlehr end and stock sheet sizes, 15 square feet or more in reflecting area, from Belgium are being sold in the United States at LTFV and that an industry in the United States is materially injured and threatened with material injury by reason of the LTFV imports. Concurrently, the petitioners filed antidumping petitions with respect to the subject unfinished mirrors from the Federal Republic of Germany (West Germany), Italy, Japan, Portugal, and the United Kingdom, and a countervailing duty petition with respect to such merchandise from Turkey. Accordingly, the Commission instituted preliminary antidumping investigations Nos. 731-TA-320 through 325 (Preliminary) with respect to allegedly LTFV imports of certain unfinished mirrors from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom, and investigation No. 701-TA-273 (Preliminary) with respect to allegedly subsidized imports of such merchandise from Turkey. On May 16, 1986, the Commission notified Commerce of its affirmative determinations with respect to all of the preliminary antidumping investigations 5/ and its negative determination with respect to the preliminary countervailing duty investigation. 6/

1/ A copy of the Commission's Federal Register notice is presented in app. C.

2/ A list of witnesses who appeared at the Commission's hearing is presented in app. D.

3/ The statutory deadline for notifying Commerce of the Commission's final injury determination is Mar. 18, 1987.

4/ Members of the association include Binswanger Mirror Products, Memphis, TN; Carolina Mirror Corp., North Wilkesboro, NC; Carolina Mirror of Houston, Houston, TX (a subsidiary of Carolina Mirror Corp.); Colonial Mirror and Glass, Brooklyn, NY; Downey Glass Co., Los Angeles, CA; Falconer Glass Industries, Falconer, NY, and Lewistown, PA; Gardner Mirror Corp., North Wilkesboro, NC; Lenoir Mirror Co., Lenoir, NC; Stroupe Mirror Co., Thomasville, NC; Texas Mirror, Inc., Huntsville, TX; Toledo Plate and Window Glass Co., Toledo, OH; Virginia Mirror Co., Inc., Martinsville, VA; and Willard Mirrors, Inc., Fort Smith, AR.

5/ Chairwoman Stern and Commissioners Eckes and Lodwick made affirmative determinations in all the preliminary antidumping investigations. Vice Chairman Liebel and Commissioners Rohr and Brunsdale made negative determinations. Pursuant to 19 U.S.C. 1677(11), when the Commission voting on a determination by the Commission are evenly divided as to whether the determination should be affirmative or negative, the Commission shall be deemed to have made an affirmative determination.

6/ Commissioners Eckes and Lodwick dissenting.

Discussion of Report Format

This report is designed for use in conjunction with the staff report to the Commission, dated December 23, 1986, on investigations Nos. 731-TA-321 through 325 (Final). That report includes information relevant to this investigation on imports from Belgium (as well as imports from the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom), with respect to the product, its tariff treatment, the domestic market, U.S. producers and importers, the question of material injury, the question of the threat of material injury, and consideration of the causal relationship between the LTFV imports and the alleged material injury. This report includes information only on the nature and extent of sales of the subject LTFV imports from Belgium and the industry in Belgium. Data on apparent consumption, U.S. imports, and market penetration of imports from Belgium are presented in appendix E, tables E-1 through E-4. Copies of the Commission's public report on investigations Nos. 731-TA-321 through 325 (Final), Certain Unfinished Mirrors From the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom . . ., USITC publication 1938, January 1987, may be obtained from the Office of the Secretary, U.S. International Trade Commission, 701 E St., NW., Washington, DC 20436.

Nature and Extent of Sales at LTFV

To determine whether sales of the subject imported merchandise in the United States were made at less than fair value, Commerce compared the United States price with the foreign market value. ^{1/} Commerce made comparisons on all U.S. sales by Glaverbel S.A., the only known producer of the subject mirrors in Belgium that exports to the United States, during the period November 1, 1985, through April 30, 1986, and determined the weighted-average LTFV margin to be 18.82 percent.

On March 5, 1987, Commerce amended its final determination because of clerical errors, lowering the final LTFV margin from 18.82 percent to 0.97 percent. ^{2/}

The Foreign Industry

According to the firm's counsel in this investigation, Glaverbel S.A. operates the only silvering facility in Belgium capable of producing unfinished mirrors inlehr end or stock sheet sizes. Data pertaining to operations by Glaverbel during 1983-85 and January-June 1986 are presented in table 1.

^{1/} Commerce determined that there were insufficient home market sales to be used as a basis for determining foreign-market value. The third-country market with the largest volume of sales of the most similar merchandise is Italy, but Commerce found insufficient sales to Italy above the cost of production to form the basis for comparisons. Therefore, Commerce based the foreign-market value on constructed value.

^{2/} A copy of Commerce's amended LTFV determination is presented in app. F.

Table 1.--Unfinished mirrors 15 square feet and over: Glaverbel's production, capacity, capacity utilization, end-of-period inventories, and shipments, 1983-85, January-June 1985, and January-June 1986

Item	1983	1984	1985	January-June--	
				1985	1986
Production					
1,000 square feet..	***	***	***	***	***
Capacity 1/.....do....	***	***	***	***	***
Capacity utilization					
percent..	***	***	***	***	***
Home-market shipments 2/					
1,000 square feet..	***	***	***	***	***
Ending inventories....do....	***	***	***	***	***
Exports to--					
United States					
1,000 square feet..	***	***	***	***	***
All other countries 3/					
1,000 square feet..	***	***	***	***	***
Total exports....do....	***	***	***	***	***
Exports to the United					
States as a share of--					
Production....percent..	***	***	***	***	***
Total exports....do....	***	***	***	***	***

1/ Glaverbel stated that " * * * ."

2/ Shipments to the Economic Union of Belgium and Luxembourg.

3/ Mainly other countries in the European Community.

Source: Compiled from data submitted to the Commission by counsel for Glaverbel S.A.

Glaverbel's production of unfinished mirrors 15 square feet and over increased by *** percent from *** million square feet in 1983 to *** million square feet in 1985. Production continued to increase in January-June 1986, rising *** percent above production in January-June 1985. Glaverbel's effective capacity increased from *** million square feet in 1983 to *** million square feet in 1985, or by *** percent, and reached *** million square feet (on an annual basis) during January-June 1986. Capacity utilization increased from *** percent in 1983 to *** percent in 1984 and 1985. Counsel reported that " * * * ."

Less than *** percent of Glaverbel's production is sold in Belgium. Home-market shipments 1/ by the firm increased by *** percent from *** million square feet in 1983 to *** million square feet in 1984 but then dropped by *** percent to *** million square feet in 1985. Home-market shipments in January-June 1986 totaled *** million square feet, an increase of *** percent from such shipments in January-June 1985.

1/ Shipments to the Economic Union of Belgium and Luxembourg.

Sales to Western Europe represent approximately 70 percent of total output by Glaverbel; an additional 25 percent is shipped overseas to approximately 60 countries, including the United States. Total exports by the firm increased by *** percent from *** million square feet in 1983 to *** million square feet in 1985. Total exports during January-June 1986 increased by *** percent from exports during January-June 1985.

Exports to the United States rose from *** square feet in 1983 to *** square feet in 1984, an increase of more than *** percent. Exports to the United States in 1985 decreased to *** square feet, a decline of *** percent from those in 1984. Exports to the United States in January-June 1986 totaled *** square feet, an increase of *** percent from exports in January-June 1985. As a share of production by Glaverbel, exports to the United States amounted to *** percent in 1983, *** percent in 1984, *** percent in 1985, and *** percent in January-June 1986. As a share of total exports, those to the United States amounted to *** percent in 1983, *** percent in 1984, *** percent in 1985, and *** percent in January-June 1986. Principal export markets for Glaverbel in 1983-85 included Italy, France, West Germany, Spain, the United Kingdom, Sweden, and the Netherlands.

End-of-period inventories held in Belgium by Glaverbel rose from *** million square feet at yearend 1983 to *** million square feet at yearend 1985 and reached *** million square feet as of June 30, 1986. The firm reported that " * * *." 1/ In its prehearing brief the firm reported that "Glaverbel's sole United States importer is the Sentinel Group of Miami, Florida. Sentinel does not maintain any inventory of Glaverbel mirrors and only enters orders upon their receipt from customers." 2/

1/ Glaverbel reported that its "normal turnaround time" is 6 to 8 weeks. See prehearing brief submitted on behalf of Glaverbel S.A., Nov. 25, 1986, app. H, p .5.

2/ Ibid, app. H, p. 4.

APPENDIX A
COMMERCE'S FINAL LTFV DETERMINATION

suspend liquidation of all entries or mirrors in stock sheet and lehr end sizes from Belgium that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: February 2, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, (202) 377-1769, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that mirrors in stock sheet and lehr end sizes from Belgium are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The weighted-average margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers, on behalf of the U.S. industry producing mirrors in stock sheet and lehr end sizes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Belgium are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. The petition included an allegation that home market sales were made at prices below the cost of production.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on April 21, 1986 (51 FR 15933, April 29, 1986), and notified the ITC of our action.

On May 16, 1986, the ITC found that there is a reasonable indication that imports of mirrors in stock sheet and lehr end sized from Belgium are materially injuring a U.S. industry (U.S. ITC Pub. No. 1850, May, 1986).

On May 20, 1986, we presented a questionnaire to Glaverbel S.A. A

response was received from Glaverbel, S.A. on July 9, 1986. Since Glaverbel had insufficient home market sales on which to base foreign market value, a cost response to the questionnaire was not required. On August 20, 1986, petitioner alleged that sales to third countries were below the cost of production. On September 8, 1986, we issued an affirmative preliminary determination of sales at less than fair value (51 FR 32505, September 12, 1986). On September 11, 1986, Glaverbel requested a postponement of the final determination until not later than the 135th day after the date of publication of our preliminary determination in the Federal Register, pursuant to section 735(a)(2)(A) of the Act. On September 29, 1986 we granted the request (51 FR 35382, October 3, 1986).

The United States International Trade Commission was advised of this postponement, in accordance with section 735(d) of the Act. Our notice of preliminary determination provided interested parties with an opportunity to submit views orally or in writing. Based upon a timely request, a public hearing was held on December 4, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors, made of any of the glass described in TSUS item numbers 541.11 through 544.41, 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA) under item 544.5400.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

We made comparisons on all U.S. sales of the product during the period of investigation.

The period of investigation is November 1, 1985 through April 30, 1986.

United States Price

We based United States price on C.I.F., packed prices and made deductions for ocean freight, inland freight and marine insurance.

Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we determined that there were insufficient home market sales to be used as a basis for determining foreign market value. The

[A-423-601]

Mirrors in Stock Sheet and Lehr End Sizes From Belgium: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration; Import Administration; Commerce.

ACTION: Notice.

SUMMARY: We have determined that mirrors in stock sheet and lehr end sizes from Belgium are being, or are likely to be, sold in the United States at less than fair value. The United States International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or threatening material injury to, a United States industry. We have also directed the U.S. Customs Service to continue to

third country market with the largest volume of sales of the most similar merchandise is Italy (lehr end sizes). On August 20, 1986, petitioner alleged that sales to third countries were at prices below the cost of production. We did not have sufficient time to develop the cost of production data to make a proper comparison for our preliminary determination.

We have now determined the cost of production on the basis of the cost of materials, fabrication and general expenses and have made the following adjustments to Glaverbel's responses. Our adjustments to Glaverbel's original submission, are:

- Research and development expenses were included.
- Depreciation was corrected for furnace depreciation, new equipment and start-up costs.
- Fixed factory overhead expenses were allocated to mirrors on the basis of direct labor hours.
- Total financial expenses were allocated to mirrors on the basis of cost of goods sold.

We found insufficient sales to Italy at prices above the cost of production to form the basis for our comparisons. Therefore, we based foreign market value on constructed value.

Since the actual general expenses were above the statutory minimum of 10 percent of materials and fabrication costs, we used the actual expenses. Since profit was below the statutory minimum of eight percent of the foregoing, we used the statutory minimum of eight percent. We added U.S. packing and made adjustments for differences in circumstances of sale for warranty expenses and credit.

We made currency conversions from Belgian francs and Italian lira to U.S. dollars in accordance with section 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York.

Petitioner's Comments

Comment 1: Petitioner claims that, as disclosed in the annual statement, the respondent owns 60% of Maasglas, B.V. and, therefore, Maasglas is considered to be a related party pursuant to section 773(e)(2) of the Act. As such, the intercompany transactions must be tested to determine if such prices represent a "fair value in the country in which the product is manufactured."

DOC Position: Section 773(e)(2) of the Act pertains to the determination of constructed value for the merchandise under investigation. For purposes of determining cost of production, the Department is concerned with

determining if "all costs" for the production of the merchandise have been recovered. The Department reviewed Maasglas' costs to determine if full costs had been captured and to assess the "reasonableness" of these costs. We found that the costs had been captured and were reasonable.

For purposes of determining constructed value in accordance with section 773(e)(2) we compared the price at which Maasglas transferred float glass to Glaverbel to the market value of float glass. We determined that the arms length market value of float glass was less than the transfer price. Therefore, we used the transfer price.

Comment 2: Petitioner contends that the production costs of float glass are unacceptable since general, administrative, and other overhead expenses incurred at the corporate level by Maasglas B.V. or overhead expenses incurred at the divisional level for float glass were not fully included.

DOC Position: We disagree. All applicable divisional overhead and administrative, social and industrial expenses of all appropriate corporate entities were included in the costs.

Comment 3: Petitioner argues that the production costs of float glass should be increased to account for inventory costs incurred by the respondent and Maasglas, B.V.

DOC Position: The inventory carrying costs have been included in the warehouse and interest expenses.

Comment 4: Petitioner claims that the interest expense claimed by the respondent is unacceptable, since the interest cost are less than the ratio of corporate interest costs to corporate cost of goods sold.

DOC Position: The claimed interest costs have been revised to reflect a proportional share of total financial expenses in the cost of production.

Comment 5: Petitioner argues that the Department reject the respondent's cost of production response, since certain costs such as market prices for float glass, divisional GS&A, corporate level GS&A and selling costs were not included.

DOC Position: Although certain costs were not included in the original submission, the relevant information was provided during verification. The Department's position concerning the alleged omissions has been addressed in other comments. Adjustments have been made to the cost of production for omitted costs.

Comment 6: Petitioner argues that claims for certain adjustments to sales to the United Kingdom have not been properly supported or quantified.

DOC Position: Since we did not use sales to the United Kingdom for purposes of our final determination, the issue is moot.

Comment 7: Petitioner contends that the rebates claimed by the respondent should not be deducted from sales prices unless they can be shown to be directly related to the sales under consideration.

DOC Position: We verified that the rebates were granted to satisfy claims for defective merchandise or overinvoicing and were credited against specific sales of the subject mirrors during the period of investigation. In those instances where we did not find evidence that claimed rebates had been granted, we disallowed the claimed adjustments. These rebates formed the basis for the adjustment for differences in circumstances of sale to constructed value.

Respondent's Comments

Comment 1: Respondent argues that the 0.82 percent margin found at the time of the preliminary determination should be considered *de minimis* in the context of this investigation and that our determination should be negative.

DOC Position: Since this determination resulted in an 18.82 percent margin, the issue is moot.

Comment 2: Respondent contends that the lehr end size mirrors sold to Italy are more similar to the stock sheet mirrors sold to the United States than the PB size mirrors sold to the United Kingdom, which were used as the basis for our comparisons in the preliminary determination. Respondent bases its argument on the fact that the lehr end mirrors differ from the stock sheet mirrors in one lateral dimension while the PB size mirrors differ in both lateral dimensions.

DOC Position: We agree and limited our price analysis to lehr end mirrors sold in Italy. Constructed value was based on the material and fabrication costs of the mirrors sold to the United States.

Comment 3: Respondent argues that we should reduce the prices of lehr end mirrors sold to Italy by the amount of commissions paid to related parties, since commissions of equal or greater magnitude are paid to unrelated agents in other third country markets. Respondent claims that if an adjustment is made for these commissions the commission offset adjustment relative to U.S. sales should not be made since the prices to the U.S. importer are net of a markup which exceeds the amount of the commission.

DOC Position: The level of commissions paid to unrelated agents in other markets does not serve as a proper basis for determining that commissions paid to related agents are reflective of arms length transactions. Other factors in the respective markets may also influence the quantification of commissions paid. No evidence has been presented to demonstrate that the related agents are functioning as unrelated agents would. Therefore, we have disallowed the adjustment to constructed value for commissions and the issue of offsets is moot.

Verification

As provided in section 776(a) of the Act, we verified all information provided by Glaverbel by using standard verification procedures, which include on-site inspection of manufacturer's facilities and examination of relevant sales and financial records of the company.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of mirrors in stock sheet and lehr end sizes from Belgium that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Glaverbel, S.A.	18.82
All other manufacturers/producers/exporters	18.82

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written

consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on mirrors in stock sheet and lehr end sizes from Belgium entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

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

Lee W. Mercer,

Acting Assistant Secretary for Trade Administration.

January 27, 1987.

[FR Doc. 87-1991 Filed 1-30-87; 8:45 am]

BILLING CODE 3010-06-0

APPENDIX B

COMMERCE'S NOTICE OF POSTPONEMENT

(A-423-801)

**Postponement of Final Antidumping
Duty Determination; Mirrors in Stock
Sheet and Lehr End Sizes From
Belgium**

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

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of mirrors in stock sheet andlehr end sizes from Belgium have occurred at less than fair value until not later than January 28, 1987.

EFFECTIVE DATE: October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Gregory C. Borden ((202) 377-3003) or Mary S. Clapp, ((202) 377-1780), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On April 21, 1986, we published a notice in the Federal Register (April 29, 1986, 51 FR 15933) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether mirrors in stock sheet andlehr end sizes from Belgium were being, or were likely to be, sold at less than fair value. On May 16, 1986, the International Trade Commission determined that there is a reasonable indication that imports of mirrors in stock sheet andlehr end sizes from Belgium are materially injuring a U.S. industry. On September 12, 1986, we published a preliminary determination of sales at less than fair value with respect to this merchandise (51 FR 32505). The notice stated that if the investigation proceeded normally, we would make our final determination by November 24, 1986.

On September 11, 1986, Glaverbel S.A., the respondent in this investigation requested a postponement of the final determination until not later than the 135th day after the date of publication of our preliminary determination in the Federal Register, pursuant to section 735(a)(2)(A) of the Act. The respondent is qualified to make such a request because it is the only known producer selling the subject merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we grant the request and postpone our final

determination until not later than January 28, 1987.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

September 29, 1986.

[FR Doc. 86-22475 Filed 10-3-86; 8:45 am]

BILLING CODE 3510-06-0

APPENDIX C

COMMISSION'S NOTICE OF INVESTIGATION

[Investigations Nos. 731-TA-320 Through 325 (Final)]

Certain Unfinished Mirrors From Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-320 through 325 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom of unfinished glass mirrors 15 square feet or more in reflecting area, provided for in item 544.54 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before November 24, 1986, and the Commission will make

¹ Mirrors which have not been subjected to any finishing operations such as beveling, etching, edging, or framing.

its final injury determinations by January 9, 1987, (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rule of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 12, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as the result of affirmative preliminary determinations by the Department of Commerce that imports of certain unfinished mirrors from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on April 1, 1986, on behalf of the National Association of Mirror Manufacturers, Potomac, MD. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 19423, May 29, 1986).

Participation in the investigations

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

entry for good cause shown by the person desiring to file the entry.

Service list

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in these investigations will be placed in the public record on November 10, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on December 2, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on November 12, 1986. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on November 17, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is November 24, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 9, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 9, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 24, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22243 Filed 9-30-85, 8:45 am]

BILLING CODE 7020-02-M

APPENDIX D
CALENDAR OF WITNESSES

TENTATIVE CALENDAR OF PUBLIC HEARING

Those listed below appeared as witnesses at the United States International Trade Commission's hearing:

Subject : Certain Unfinished Mirrors from Belgium,
The Federal Republic of Germany, Italy,
Japan, Portugal, and the United Kingdom

Inv. Nos. : 731-TA-320 through 325 (Final)

Date and time: December 2, 1986 - 9:35 a.m.

Sessions were held in connection with the investigation in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., in Washington.

In support of the imposition of antidumping duties:

Stewart and Stewart--Counsel
Washington, D.C.
on behalf of

The National Association of Mirror Manufacturers (NAMM)

George Adelson, Texas Mirror Company

Richard Bauer, Toledo Plate & Window Glass Co.

Christopher Beeler, Virginia Mirror Co.

Ernest Cotton, Gardner Mirror Corp.

Carl Flair, Binswanger Mirror Products

George Johnson, Willard Mirrors

Drew Mayberry, Carolina Mirror Corp.

Robert Stroupe, Stroupe Mirror Co.

Richard Turner, Falconer Glass Industries

James E. Mack, Esq., Executive Secretary &
General Counsel, NAMM

Eugene L. Stewart--OF COUNSEL

In opposition to the imposition of antidumping duties:

Ulmer, Berne, Laronge, Glickman & Curtis--Counsel
Cleveland, Ohio
on behalf of

Glaverbel S.A. - Belgium producer

Guy Marlier, Manaer, Mirrow Marketing Division,
Glaverbel S.A.

Morton L. Stone--OF COUNSEL

Mudge, Rose, Guthrie, Alexander & Ferdon--Counsel
Washington, D.C.
on behalf of

Flabeg GmbH of the Federal Republic of Germany

Laura Baughman, International Business and Research
Corporation

Jim Berrigan, James E. Berrigan, Inc.

Julie C. Mendoza--OF COUNSEL

Brownstein, Zeidman and Schomer--Counsel
Washington, D.C.
on behalf of

Sun Mirror, Hi Mirror, Mie Glass, Mitsubishi International
Corporation, Mitsui & Co., U.S.A., Inc., Orient Glass Co.
and Sentinel Enterprises, Inc., Japanese manufacturers and
U.S. importers

Burt Hunter, Sentinel Enterprises

Paul Murphy, Orient Glass Company

Roy Andriesse, Asahi Glass Co., Mitsubishi
International Corporation

H. Suzuki, Flat Glass Association of Japan

M. Minamoto, Flat Glass Association of Japan

David R. Amerine)
Irwin P. Altschuler) --OF COUNSEL

Ross & Hardies--Counsel
Washington, D.C.
on behalf of

Bowman Webber, Ltd., United Kingdom

Steven Feldman, Managing Director, Bowman Webber Ltd.

Sam Lamensdorf, Executive Director, Glass Division,
General Glass International Corporation

Dr. Paul Marshall, Marshall, Bartlett, Inc.

Joseph S. Kaplan }--OF COUNSEL
James A. Stenger }

Brownstein, Zeidman and Schomer--Counsel
Washington, D.C.
on behalf of

Solaglas Coventry, Ltd., manufacturer of mirrors of
stock sheet andlehr end sizes in the United Kingdom

Richard Christou, Solaglas Coventry Ltd.

Steven P. Kersner }--OF COUNSEL
Donald S. Stein }

APPENDIX E
STATISTICAL TABLES

Table E-1.--Unfinished mirrors 15 square feet and over: U.S. producers' shipments, imports for consumption, and apparent consumption, 1983-85, January-June 1985, and January-June 1986

Period	Producers'	Imports	Apparent	Ratio to consumption	
	shipments 1/ -----1,000 square feet-----			Shipments 1/ -----Percent-----	Imports
1983.....	89,112	7,204	96,316	92.5	7.5
1984.....	101,341	11,191	112,532	90.1	9.9
1985.....	99,350	16,802	116,152	85.5	14.5
January-June--					
1985.....	50,722	7,969	58,691	86.4	13.6
1986.....	50,814	9,761	60,575	83.9	16.1

1/ Includes intracompany transfers.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce.

Table E-2.--Unfinished mirrors 15 square feet and over: Value of U.S. producers' shipments, imports for consumption, and apparent consumption, 1983-85, January-June 1985, and January-June 1986.

Period	Producers'	Imports 1/2/ -----1,000 dollars-----	Apparent	Ratio to consumption	
	shipments			Shipments 3/ -----Percent-----	Imports
1983.....	101,588	10,518	112,106	90.6	9.4
1984.....	110,462	16,115	126,577	87.3	12.7
1985.....	112,266	18,482	130,748	85.9	14.1
January-June--					
1985.....	56,301	9,085	65,386	86.1	13.9
1986.....	56,404	12,201	68,605	82.2	17.8

1/ Based on the average customs value of imports.

2/ Customs value of LTFV imports (in thousands of dollars) was 10,197 in 1983, 14,750 in 1984, 13,445 in 1985, 7,428 in January-June 1985 and 7,818 in January-June 1986.

3/ LTFV imports from Belgium, the Federal Republic of Germany, Italy, Japan, Portugal, and the United Kingdom share of consumption, based on the above values was 9.1 percent in 1983, 11.6 percent in 1984, 10.3 percent in 1985, 11.4 percent in January-June 1983, and 11.4 percent in January-June 1986.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and estimated from official statistics of the U.S. Department of Commerce.

Table E-3.--Unfinished mirrors 15 square feet and over: U.S. imports from specified countries, 1983-85, January-June 1985, and January-June 1986

Source	1983	1984	1985	January-June--	
				1985	1986
Quantity (1,000 sq. ft.)					
Belgium <u>1/</u>	***	***	***	***	***
Japan.....	5,076	6,721	6,707	3,610	3,723
West Germany <u>2/</u>	***	***	***	***	***
United Kingdom.....	61	284	1,093	362	419
Italy.....	16	67	533	228	128
Portugal <u>3/</u>	***	***	***	***	***
Total.....	6,984	10,243	13,312	6,516	6,250
All other.....	220	948	3,490	1,453	3,511
Grand total.....	7,204	11,191	4/ 16,802	7,969	9,761
Share of total (percent)					
Belgium.....	***	***	***	***	***
Japan.....	70.5	60.0	39.8	45.2	38.1
West Germany.....	***	***	***	***	***
United Kingdom.....	.9	2.5	6.5	4.5	4.3
Italy.....	.2	.6	3.2	2.9	1.3
Portugal.....	***	***	***	***	***
Total.....	97.0	91.5	79.2	81.8	64.0
All other.....	3.0	8.5	20.8	18.2	36.0
Grand total.....	100.0	100.0	100.0	100.0	100.0

1/ Compiled from data submitted by counsel on behalf of Glaverbel.

2/ Compiled from data submitted by counsel on behalf of Flabeg and from imports from Vegla as reported in questionnaires.

3/ Compiled from data obtained from Sobil by the U.S. Department of State.

4/ Official statistics for 1985 included about 1.7 million square feet which are unrelated to imports of any kind of mirrors. These were deducted from the data before the adjustment of 77.5 percent was applied.

Source: Compiled from official statistics of the U.S. Department of Commerce, and from data submitted in response to questionnaires of the U.S. International Trade Commission, except as noted.

Table E-4.--Unfinished mirrors 15 square feet and over: U.S. producers' domestic shipments, imports, apparent consumption, and ratio of imports to consumption, by specified countries, 1983-85, January-June 1985, and January-June 1986

Item	1983	1984	1985	January-June--	
				1985	1986
	Quantity (1,000 square feet)				
U.S. producers' shipments <u>1</u> /....	89,112	101,341	99,350	50,722	50,814
Imports from--					
Belgium <u>2</u> /.....	***	***	***	***	***
Japan.....	5,076	6,721	6,707	3,610	3,723
West Germany <u>3</u> /.....	***	***	***	***	***
United Kingdom.....	61	284	1,093	362	419
Italy.....	16	67	533	228	128
Portugal <u>4</u> /.....	***	***	***	***	***
Subtotal.....	6,984	10,243	13,312	6,516	6,250
All other.....	220	948	3,490	1,453	3,511
Total.....	7,204	11,191	16,802	7,969	9,761
U.S. consumption.....	96,316	112,532	116,152	58,691	60,575
	Share of consumption (percent)				
U.S. producers' shipments <u>1</u> /....	92.5	90.1	85.5	86.4	83.9
Imports from--					
Belgium.....	***	***	***	***	***
Japan.....	5.3	6.0	5.8	6.1	6.1
West Germany.....	***	***	***	***	***
United Kingdom.....	.1	.3	.9	.6	.7
Italy.....	<u>5</u> /	<u>5</u> /	.4	.4	.2
Portugal.....	***	***	***	***	***
Subtotal.....	7.3	9.1	11.5	11.1	10.3
All other.....	.2	.8	3.0	2.5	5.8
Total.....	7.5	9.9	14.5	13.6	16.1
U.S. consumption.....	100.0	100.0	100.0	100.0	100.0

1/ Includes intracompany shipments.

2/ Compiled from data submitted by counsel on behalf of Glaverbel.

3/ Compiled from data submitted by counsel on behalf of Flabeg and from imports from Vegla as reported by questionnaires.

4/ Compiled from data obtained from Sobil by the U.S. Department of State.

5/ Less than 0.05 percent.

Source: Compiled from data submitted in response to questionnaires of the U.S. International Trade Commission and from official statistics of the U.S. Department of Commerce, except as noted.

APPENDIX F

**COMMERCE'S NOTICE OF AMENDMENT TO
FINAL DETERMINATION**

BILLING CODE 3510-DS

DEPARTMENT OF COMMERCE

International Trade Administration

(A-423-601)

Amendment to Final Determination of Sales at Less than Fair Value: Mirrors in Stock Sheet and Lehr End Sizes from Belgium

AGENCY: International Trade Administration, Import
Administration, Commerce

ACTION: Notice

SUMMARY: Because of clerical errors, we are amending our final determination in this investigation and directing the U.S. Customs Service to adjust the cash deposit or bonding rates as follows:

<u>Manufacturer/Producer/Exporter</u>	<u>From</u>	<u>To</u>
Glaverbel, S.A.....	18.82 %	0.97 %
All Others	18.82 %	0.97 %

EFFECTIVE DATE: (Date of Publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, (202) 377-1769,
Office of Investigations, Import Administration, International Trade
Administration, Department of Commerce, 14th Street and
Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

On February 2, 1987, we published a final determination of sales at less than fair value on mirrors in stock sheet and lehr end sizes from Belgium (52 FR 3156).

Subsequent to the publication of the final determination, we discovered certain clerical errors in our calculations. We have corrected these errors and are consequently amending our final determination by changing the weighted-average margins. This correction results in changes in our analysis which are summarized below.

Foreign Market Value

After correcting certain clerical errors in our calculations, we found a sufficient amount of sales to Italy at prices above the cost of production to form the basis for our comparisons. Therefore, we based foreign market value on price to price comparisons.

We based foreign market value on delivered prices. We made deductions, where appropriate, for discounts, insurance and inland freight between Belgium and Italy. We made an adjustment for differences in circumstances of sale for credit terms and warranty expenses, in accordance with section 353.15 of the Commerce Regulations (19 CFR 353.15). We deducted Italian packing costs and added U.S. packing costs.

Respondent's Comment

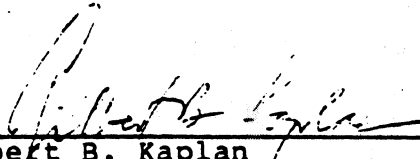
Respondent argues that the 0.82 percent margin found at the time of the preliminary determination should be considered de minimis in the context of this investigation and that our determination should be negative.

DOC Position

We disagree. This amended determination resulted in a 0.97 percent margin, which is sufficient to warrant an affirmative determination.

Accordingly, the cash deposit or bonding rates listed in the "Suspension of Liquidation" section of the final determination are amended to read as follows:

<u>Manufacturer/Producer/Exporter</u>	<u>From</u>	<u>To</u>
Glaverbel, S.A.....	18.82 %	0.97 %
All Others	18.32 %	0.97 %


 Gilbert B. Kaplan
 Deputy Assistant Secretary
 for Import Administration

MAR 5 1987