ASPHERICAL OPHTHALMOSCOPY LENSES FROM JAPAN

Determination of the Commission in Investigation No. 731–TA–518 (Preliminary) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigation

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Washington, DC 20436

UNITED STATES INTERNATIONAL TRADE COMMISSION

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UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-518 (Preliminary)

ASPHERICAL OPHTHALMOSCOPY LENSES FROM JAPAN

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of aspherical ophthalmoscopy lenses,[2] provided for in subheading 9018.50.00 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 30, 1991, a petition was filed with the Commission and the Department of Commerce by Volk Optical, Inc., Mentor, Ohio, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of aspherical ophthalmoscopy lenses from Japan. Accordingly, effective April 30, 1991, the Commission instituted preliminary antidumping investigation No. 731-TA-518 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade

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

[2] For purposes of this investigation, aspheric ophthalmoscopy lenses are single element non-contact ophthalmoscopic lenses, whether mounted or unmounted, framed or unframed, of which one or both surfaces are aspherical in shape.

Commission, Washington, DC, and by publishing the notice in the Federal Register of May 7, 1991 (56 F.R. 21173). The conference was held in Washington, DC, on May 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

On the basis of the information obtained in this preliminary investigation, we determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of aspheric ophthalmoscopy lenses from Japan that are alleged to be sold at less than fair value (LTFV) in the United States.

The standard for preliminary determinations

Section 733(a) of the Tariff Act of 1930 [1] requires the Commission to determine whether, based upon the best information available at the time of the preliminary determination, there is a reasonable indication that a domestic industry is materially injured or threatened with material injury, or its establishment is materially retarded by the articles subject to investigation. The definition of "material injury" is the same in both preliminary and final investigations, but in preliminary investigations an affirmative determination is based on a "reasonable indication" of material injury, in contrast to the finding of actual material injury or threat required in a final determination. [2]

In American Lamb Co. v. United States, [3] the Federal Circuit addressed the Commission's standard for preliminary determinations. The Court stated that the purpose of preliminary investigations is to avoid the cost and

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[1] 19 U.S.C. § 1673b(a).

[2] Compare 19 U.S.C. §§ 1671b(a) and 1673b(a) with 19 U.S.C. §§ 1671d(b)(1) and 1673d(b)(1).

[3] 785 F.2d 994 (Fed. Cir. 1986).

disruption to trade caused by unnecessary investigations.[4] Accordingly, the Court held that an affirmative preliminary determination requires more than a finding that there is a "possibility" of material injury, and that the Commission is to weigh the evidence it has obtained to determine if that evidence demonstrates that a reasonable indication exists. The Court also sustained the Commission's practice of making a negative preliminary determination if "(1) the record as whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation." [5]

We base our preliminary determination on the fact that we cannot characterize the evidence as "clear and convincing" in support of a negative determination. We intend to carefully consider whether the data obtained in the final investigation warrant an affirmative determination under the less lenient standard used in final determinations.

Like product and domestic industry

A. General legal principles

In making its determinations, the Commission must first define a "like product" and the "domestic industry." Section 771(4)(a) of the Tariff Act of 1930 defines the relevant domestic industry as the "domestic producers as a whole of the like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of the product." [6] The statute defines "like product" as a "product which is

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[4] 785 F.2d at 1004.

[5] 785 F.2d at 1001-04.

[6] 19 U.S.C. § 1677(4)(A).

like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ." [7]

The Department of Commerce (Commerce) has defined the products covered in this investigation as:

> aspheric ophthalmoscopy lenses, which are single element non-contact ophthalmoscopic lenses, whether mounted or unmounted, framed or unframed, of which one or both surfaces are aspherical in shape. [8]

Our decision regarding the appropriate like product or products in an investigation is a factual determination, and we have applied the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. [9] In analyzing like product issues, the Commission generally considers a number of factors including: (1) physical characteristics and uses, (2) interchangeability of the products, (3) channels of distribution, (4) customer and producer perceptions of the products, (5) the use of common manufacturing facilities and production employees, and (6), where appropriate,

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[7] 19 U.S.C. §1677(10) (1982).

[8] 56 Fed. Reg. 24056 (May 28, 1991), Report at B-3. We note that the Commerce description of scope differs slightly from the Commission's description of the articles subject to investigation in its notice of institution of this preliminary investigation. For example, the Commission's notice refers to "hand-held" and "indirect" lenses but does not refer to "framed or unframed" or "mounted or unmounted" lenses. The slightly different language has no practical consequence. Of course, we have conformed our preliminary determination to the scope of investigation as initiated by Commerce. See generally, Algoma Steel Corp. Ltd. v. United States, 12 CIT ___, 688 F. Supp. 639, 644 (1988), aff'd, 865 F.2d 240, (Fed. Cir. 1989); Torrington v. United States, ___ CIT ___, 747 F. Supp. 744 (1990), appeal pending, Appeal No. 91-1084 (Fed. Cir. 1991).

[9] Asociacion Colombiana de Exportadores de Flores v. United States, 12 CIT ___, 693 F. Supp. 1165, 1168, n.4 (1988) (Asocoflores); Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 (January 1989).

price. [10] No single factor is dispositive, and we may consider other factors relevant to a particular investigation. The class of domestically produced like products may be broader than class of articles Commerce describes, [11] or it may be divided into two or more like products. [12] We look for clear dividing lines among possible like products, and disregard minor variations. [13]

B. **Arguments of the parties**

The parties's only disagreement on this issue is whether the like product should include contact ophthalmoscopy lenses. While the Commission is not limited to the proposals of the parties in defining the like product, we see no alternatives that merit extended discussion. [14] [15]

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[10] E.g., Fresh and Chilled Atlantic Salmon From Norway, Invs. Nos. 701-TA-302, 731-TA-454 (Final) USITC Pub. 2371 (April 1991); Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (March 1989).

[11] See, e.g., Chrome-Plated Lug Nuts from the People's Republic of China, Invs. Nos. 731-TA-474-475 (Preliminary) USITC Pub. 2342 (Dec. 1990); Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (Aug. 1989); Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil, Inv. No. 731-TA-421 (Preliminary), USITC Pub. 2128 (Sept. 1988); Natural Bristle Paint Brushes from the People's Republic of China, Inv. No. 731-TA-244 (Final), USITC Pub. 1805 (Jan. 1986).

[12] See, e.g., American NTN Bearing Manufacturing Corp. v. United States, 739 F. Supp. 1555, 1560, n.6 (Ct. Int'l Trade 1990).

[13] E.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom, Inv. Nos. 303-TA-19 and 20, 731-TA-391-399 (Final), USITC Pub. 2185 (May 1989).

[14] For example, respondents argue that the Commission should focus on two different market segments, the 14-40 diopter range and the 60-90 diopter range lenses, in analyzing causation of material injury, e.g., Tr. at 79; Nikon Postconference Brief at 11. They do not urge us to find two different like products corresponding to these segments, Tr. at 79, and we note that any such like product definition would be inappropriate, due, for example, to the generally similar characteristics and uses of the products and the similar production processes for these ranges of lenses.

Respondents Nikon Corporation and Nikon, Inc. (Nikon) argue that the like product should include both indirect (noncontact) ophthalmoscopy aspheric lenses and contact ophthalmoscopy lenses used for the diagnosis and treatment of the ocular fundus. [16] [17] This would define the like product somewhat more broadly than the merchandise subject to investigation. As a practical consequence, three other lenses produced by petitioner Volk Optical, Inc. (Volk), together with similar contact lenses produced by other U.S. producers, would be included in the like product. [18] Nikon does not specifically define the extent of this "contact lens" category. [19] Nikon argues that no clear

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[15] Acting Chairman Brunsdale notes that the record shows that lenses in the two diopter ranges are what she called "production substitutable" in her recent opinion in Polyethylene Terepthalate Film Sheet and Strip from Japan and Korea, Inv. Nos. 731-TA-458 and 459 (Final), USITC Pub. ---- (----). She finds it reasonable to expect lenses in each range would be directly affected by any dumping of the articles subject to investigation.

[16] The "fundus" is the posterior portion of the eye. See, e.g., Petition at 3, Transcript of Preliminary Conference at 82 ("the rear inside portion of the eye").

[17] See, e.g., Nikon Postconference Brief at 2-3.

[18] Nikon Postconference Brief at 3. Nikon identifies "at least one other U.S. producer" of contact lenses of this type, Ocular Instruments, Inc. of Belleview, Washington. See Nikon Postconference Brief at 2, n. 2. Petitioner's expert witness, Dr. Barker, also alluded to a "pan-funduscope by Rhodenstock and . . . a Mainster Retina Lens" as being similar in principle to Volk's contact lenses but "clearly different and used for different purposes." Tr. at 35.

[19] For example, some of the literature attached to Volk's Postconference Brief compares some of Volk's contact lenses, such as the Quadraspheric fundus contact lens, to other contact lenses, such as a "Goldmann" lens, the "Rodenstock Panfunduscope" and the "Mainster retinal lens." See Volk Postconference Brief at Exhibit A. Nikon does not indicate whether these contact lenses, which appear to be used for many of the same purposes as Volk's contact aspheric lenses, should be included in the like product.

dividing line separates contact from noncontact aspheric lenses, [20] since both share the same basic physical characteristics, end uses, channels of distribution, and are substantially interchangeable. Nikon also contends they are made by somewhat similar production processes using somewhat similar machinery, equipment and employees, and are perceived by customers---medical practitioners--as being similar. [21]

Nikon concedes that prices are substantially higher for contact-type lenses, though it characterizes this as the result of Volk's "choice" to price the lenses in this fashion. [22] Nikon does not explain why, if the contact and noncontact lenses are as similar as they assert, the market allows Volk to "choose" to charge and collect a substantially higher price for the contact lenses, particularly in light of the alleged existence of other producers of contact lenses, such as Ocular Instruments, or the alleged substantial interchangeability and similarities perceived by consumers of the lenses.

Petitioner Volk argues that a single like product co-extensive with the scope of the investigation, and so excluding contact lenses, is the proper like product. Volk stresses various factors indicating that contact lenses should not be included in the like product, such as the additional components of contact lenses that allow them to be placed on the surface of the eye, and different uses contact lenses have. Contact lenses are used for specialized examination or treatment, such as laser surgery. The consequent lack of ready interchangeability between the types of lens as well as the substantially more complex production process required to manufacture and assemble the additional

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[20] Nikon Postconference Brief at 10.

[21] Nikon Postconference Brief at 3-9.

[22] Nikon Postconference Brief at 9-10.

components are reflected, in Volk's view, in great differences in price, production processes and facilities. [23]

C. **Analysis**

Of the six factors typically considered by the Commission in making its like product determination, it is clear that one, the channels of distribution, are the same for contact and noncontact lenses and, to that extent, favors inclusion of contact lenses in the like product. However, it is also clear that the prices for contact lenses are substantially higher than are prices for noncontact lenses of this type, [24] which supports not including contact lenses in the like product. Of course, neither channels of distribution [25] nor price [26] are dispositive on the question of defining the like product. [27] The evidence on the other four factors, (1) physical characteristics and uses, (2) interchangeability of the products, (3) customer and producer perceptions of the products, and (4) the use of common

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[23] Volk Postconference Brief at 9-15 (though noting channels of distribution are the same).

[24] See, e.g., Report at A-3.

[25] See, e.g., Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Preliminary), USITC Pub. 2143 (December 1988) at 8, n. 20 (differences in channels of distribution or different end-users alone an insufficient basis for distinguishing like products), Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989) at 6, n. 14.

[26] See generally, Chrome-Plated Lug Nuts from the People's Republic of China and Taiwan, Invs. Nos. 731-TA-474-475 (Preliminary), USITC Pub. 2342 (December 1990) at 14, n. 43 ("The Commission has not found price to be a controlling factor, in and of itself, creating a sharp dividing line between products.")

[27] We have routinely indicated that no one of the factors we consider in defining the like product is itself dispositive. See, e.g., Salmon, USITC Pub. 2371 (April 1991) at 3.

manufacturing facilities and production employees, is mixed and merits further discussion.

(1) physical characteristics and uses

In a general sense, contact and noncontact lenses have the same characteristics and uses. They are both optical devices used by optometrists or ophthalmologists in the examination, diagnosis and/or treatment of the eye. [28] However, contact lenses have a second component that allows contact with the cornea, that is not part of a noncontact lens. [29]

Uses differ as well. Even Nikon's expert witness testified that he prefers using a noncontact lens in routine examinations, because, like many doctors (and patients) he "find[s] that the use of a fundus contact lens is not an especially appealing procedure, because of the gooey residue of [the fluid used with contact lenses] and the anesthetic which is left in the eye after the contract [sic] process." [30] Volk asserts that "generally," noncontact lenses of this type are used for routine eye examinations while contact lenses are used "when a more detailed examination is required or where the practitioner desires to perform laser surgery." [31] Nikon contends that "this choice is not made because these latter lenses are incapable of

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[28] E.g., Transcript of May 21, 1991 Preliminary Conference (Tr.) at 15 (describing noncontact lenses); at 87 (Dr. Augsburger); Nikon Postconference Brief at 3-4; Senior Review version of the Report at A-2.

[29] See, e.g., Tr. at 20-21, 23, 25 (Mr. Volk); Volk Postconference Brief at 9-10; Report at A-3.

[30] Tr. at 87.

[31] Volk Postconference Brief at 10. But see Tr. at 33 ("Contact lenses can also be used.") (Dr. Barker). Nikon points out that certain types of treatment can be carried out with noncontact lenses as well because Volk "offers its entire line of non-contact lenses with a special coating that permits their use with lasers." Nikon Postconference Brief at 6.

performing the same substantive functions." [32] However, the difference in use appears widespread, and does stem from a different physical characteristic, viz., the "contact" aspect of contact lenses.

(2) interchangeability of the products

Petitioner Volk stresses that practitioners do not use contact and noncontact lenses interchangeably, [33] while Nikon notes they **could**. [34] Volk's interpretation of this factor is shaded by what Volk views as the differing uses and end-user perceptions, while Nikon's is shaded by what Nikon considers to be the generally similar characteristics and uses. We have in the past given more weight to actual, rather than merely potential, interchangeability in considering whether to expand the like product beyond those articles described as subject to investigation. [35] That the lenses could be used

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[32] Nikon Postconference Brief at 6 (emphasis added).

[33] Volk Postconference Brief at 12 ("Clearly, practitioners do not feel that the two lenses are interchangeable; non-contact lenses are used in a practitioner's everyday practice, while contact lenses are used for more specialized purposes.").

[34] Nikon Postconference Brief at 6-7 ("Practitioners and patients may prefer to use non-contact lenses where possible to avoid the complications and discomfort caused by the contact-type lenses, but this choice is not made because these latter lenses are incapable of performing the same substantive functions . . . While eye doctors may prefer certain lenses for particular applications or for reasons of personal preference, no real dividing line exists between the contact and the non-contact lens with respect to their end-uses . . . Each lens may not serve every purpose with equal facility, but the lenses do exhibit significant degrees of overlap in their potential applications.").

[35] See, e.g., Salmon, USITC Pub. 2371 (April 1991) at 6 ("The fact that most Pacific salmon is not sold in the fresh market suggests limited interchangeability between Pacific salmon, as a whole, and Atlantic salmon.") (emphasis added); Coated Groundwood Paper from Austria, Belgium, Finland, France, Germany, Italy, the Netherlands, Sweden, and the United Kingdon, Invs. Nos. 731-TA-486 through 494 (Preliminary), USITC Pub. 2359 (February 1991) at 8 ("Coated groundwood paper is not generally interchangeable . . . Thus, purchasers reported that they did not substitute either supercalendared paper or coated free sheet for coated groundwood paper.") (emphasis added); Certain

interchangeably is of at least some relevance. Although we note that Court of International Trade has noted that consumer preference alone "would seem to be a poor choice" on which to base a like product determination, [36] we nonetheless find that the lack of actual substitutability supports excluding contact lenses from the like product. Evidence of record indicates that a contact lens "often supplements, but rarely replaces the subject product in examinations." [37]

(3) customer and producer perceptions of the products

As noted above, Nikon asserts that practitioners perceive the different contact and non-contact lenses to be varieties of a single type of product. [38] Generally, practitioners dislike using contact lenses unless necessary, thus which indicates that customers perceive them to be different products, and not as actual substitutes for each other. [39] As noted above, Volk does not view

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Gene Amplification Thermal Cyclers and Subassemblies Thereof from the United Kingdom, Inv. No. 731-TA-485 (Preliminary), USITC 2346 (December 1990) at 8-9 (end-users perceive the different types of thermal cyclers to be interchangeable); Certain Personal Word Processors from Japan and Singapore, Invs. Nos. 731-TA-483 and 484 (Preliminary), USITC Pub. 2344 (December 1990) at 11 (not include personal computers in like product despite some degree of interchangeability, differences in some characteristics and different perceptions of the products by consumers warranted not including them in the like product); Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan, Invs. Nos. 731-TA-448-450 (Final), USITC Pub. 2312 (September 1990) at 12-16 (viewing the question of interchangeability in the broad sense of encompassing both customer preferences as well as end use, ultimately finding that natural fiber sweaters should not be included in the like product).

[36] Asocoflores, 693 F.Supp. at 1168.

[37] Report at A-3.

[38] Nikon Postconference Brief at 8.

[39] See generally, Report at A-3.

the two types of lenses as the same, arguing that contact lenses should not be included in the like product.

(4) the use of common manufacturing facilities and production employees

Only one U.S. producer, Volk, produces both contact and noncontact lenses. Volk indicates that while there is some common manufacturing equipment, [40] a substantial amount of the production equipment or facilities are dedicated to the production of contact lenses. [41] To a large degree common manufacturing employees are used by Volk to manufacture each type of lens. [42] Nikon argues that while there are subsequent manufacturing steps necessary to produce a contact lens that have no parallel in the production of noncontact lens, these additional steps are not significant because of "the main aspheric optic element contained in both contact and noncontact lenses that defines the functional essence of these instruments." [43] On balance, we believe this factor favors not including contact lenses in the like product.

Conclusion

We do not include contact lenses in the like product. [44] The

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[40] Tr. at 66 (Mr. Volk).

[41] Tr. at 66 (referring to a "clean room"), Tr. at 22-25; Volk Postconference Brief at 12-13, 15.

[42] See Report at A-5 (Volk's employees are not dedicated to producing a given product.).

[43] Nikon Postconference Brief at 8.

[44] Acting Chairman Brunsdale notes that in her recent opinion on Polyethylene Terephthalate Film, she refined the usual multipart test discussed here to focus on the ability of buyers and producers to substitute among the potential kinds of like products. Her intent was to identify the types of products that it was reasonable to expect would be directly affected by any dumping of the articles subject to investigation. She notes that the preliminary record indicates that contact lenses include as a component a noncontact lens, but that the remaining parts require "a more complicated and exacting production process . . . [with] separate equipment and facilities for

differences between contact and noncontact lenses, particularly in production processes, pricing, producer and customer perceptions, as well as physical characteristics and actual uses, warrant limiting the like product to only noncontact lenses. We also note the unclear boundary of what would be defined as a contact aspheric fundus lens of this type. [45] Thus, the domestic industry consists of the only U.S. producer of noncontact, aspherical ophthalmoscopy lenses, Volk, the petitioner.

Condition of the Domestic Industry [46]

In assessing the condition of the domestic industry, we considered, among other factors, U.S. production, shipments, capacity, capacity utilization, employment, wages, financial performance, capital investment, and research and development expenditures. [47] No single factor is dispositive, and in each investigation we consider the particular nature of the industry

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this purpose; and it is 2 to 3 times more expensive." A-3. Because the discussion above shows that purchasers of the lenses do not view them as ready substitutes, and because this discussion does show that producers do not view them as ready substitutes, contact lenses should not be included in the like product. However, she urges the Commission staff and interested parties to address the issue, in the final investigation, of whether there has been a shift in the domestic industry toward the increased production of contact lenses as a result of the dumping. Such a shift may mask some of the effect of the dumping of noncontact lenses.

[45] Acting Chairman Brunsdale does not join this statement.

[46] Acting Chairman Brunsdale joins in this discussion of the condition of the domestic industry, except as otherwise noted below. However, she does not reach a separate legal conclusion regarding the presence or absence of material injury based on this information. While she believes an independent determination of the condition of the domestic industry is neither required by the statute nor useful, she does find the condition of the domestic industry helpful in deciding whether there is a reasonable indication that any injury resulting from allegedly dumped imports is material.

[47] See 19 U.S.C. § 1677(7)(C)(iii).

involved and the relevant economic factors which have a bearing on the state of the industry.

Because much of the information describing the condition of the industry is business proprietary information, our discussion will necessarily be in very general terms only.

Capacity remained steady over the period of investigation, but increased in the first quarter of 1991. [48] Capacity utilization fluctuated, though the decline in capacity utilization in the first quarter of 1991 relative to the first quarter of 1990 is due to the increase in capacity. [49] Production and shipments fluctuated over the period, with an increase in the first quarter of 1991 compared to the first quarter of 1990 due to the filling of a backlog of previous orders. [50] While inventory levels have fluctuated, they have generally increased. [51]

We have considered Volk's financial data with respect to its noncontact aspheric lens operations with caution, due to Volk's difficulties with inventory valuation and cost allocations of this data. [52] Accordingly, we have placed some reliance on overall establishment data as well, in which we

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[48] Report at A-5.

[49] Report at A-5. (in toto?)

[50] Report at A-5.

[51] Report at A-5, A-6. Employment data is generally mixed, and due to the lack of dedicated employees to production of a certain product, as well as the small size of the work force, we give less weight to the employment data then we normally would have. Report at A-5, A-6.

[52] See Report at A-7, n. 13.

have more confidence. [53] In general, financial data are somewhat mixed. Net sales of the like product rose from 1988 to 1989, declined in 1990 and then exhibited an increase in interim 1991 relative to interim 1990. Operating income, and cash flow declined throughout the period of investigation then rose in interim 1991 relative to interim 1990. The operating income margin declined for every period for which we have data. [54]

Financial data for the industry's overall establishment operations show a rise in net sales, while operating income and cash flow declined from 1988 to 1989, then rose in 1990 and in the interim period of 1991 relative to the same period in 1990. The overall establishment operating margin declined from 1988 to 1989, rose from 1989 to 1990, but declined again in the first quarter of 1991 relative to the first quarter of 1990. [55]

One factor not supporting our affirmative determination is the strong liquidity and financial strength of the industry as indicated by the industry's financial ratios, such as the quick ratio and current ratio. [56] We intend to give careful consideration to these factors in any final investigation.

Capital expenditures for both the like product and all products increased over the period of investigation, while research and development expenses increased for overall operations, but declined for the like product

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[53] Report at A-7, n. 13. Section 771(4)(D) of the statute, 19 U.S.C. § 1677(4)(D) permits us to examine overall establishment data when financial data with respect to the production of the like product only is of little intrinsic value because such data have no "separate identity" in terms of the domestic like product.

[54] Report at Table 3, A-9.

[55] Report at Table 2, A-8.

[56] See Report at A-14--A-16.

over the period of investigation. [57] Volk has characterized its diversion of research and development expenditures into areas other than the like product as a "survival tactic." [58]

Accordingly, we find a reasonable indication of material injury. [59] The more positive picture of the industry given by the more reliable overall establishment data calls into question whether the industry is materially injured, but for the purpose of this preliminary investigation, we find that the general increase in inventories, and declines in net sales, operating income and cash flow from operations producing the like product do not indicate "clear and convincing" evidence of a lack of material injury for this

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[57] See Report at A-13, Tables 6 and 7. See also Tr. at 58 (limitations on R.& D.).

[58] Tr. at 68.

[59] We reject the argument made by Nikon that the mere existence of a recent upturn mandates a negative determination because the recent decision of the Federal Circuit in Chaparral Steel Co. v. United States, 901 F.2d 1097, 1103-04 (Fed. Cir. 1990) indicates that the statute is written in the present tense ("is materially injured"). Chaparral dealt with the question of what imports were "subject to investigation" for purposes of cumulation, and cannot be read to preclude the Commission from considering events occurring during the Commission's period of investigation or from considering all relevant economic factors specified in the statute "within the context of the business cycle and conditions of competition" for that industry, to the extent they show present material injury or the threat of material injury. See 19 U.S.C. § 1677(7)(C)(iii).

For example, even after the Chaparral decision, we have found the fact that firms have left the industry during the period of investigation to be relevant to our determination notwithstanding the occurrence of these departures significantly before "vote day." See, e.g., Fresh and Chilled Atlantic Salmon from Norway, Inv. No. 701-TA-302 (Final) and Inv. No. 731-TA-454 (Final), USITC Pub. 2371 (April 1991) at 14; High-Information Content Flat Panel Displays and Subassemblies Thereof from Japan, Inv. No. 731-TA-469 (Preliminary), USITC Pub. 2311 (September 1990) at 20. We also note that even if the Commission found no reasonable indication of material injury, we could not simply issue a negative determination because we would also have to consider the issue of whether there was a reasonable indication of threat of material injury.

industry. [60] We intend, however, to closely scrutinize the data pertinent to the condition of the industry in any final investigation.

Reasonable Indication of Material Injury By Reason of Allegedly LTFV Imports [61]

In making a preliminary determination in an antidumping or countervailing duty investigation, we must determine whether there is a reasonable indication that an industry in the United States is materially injured "by reason of" the imports under investigation. [62] Material injury is "harm which is not inconsequential, immaterial or unimportant." [63] The Commission may consider alternative causes of injury, but it is not to weigh causes. [64] The imports need not be the principal or a substantial cause of material injury. [65] Rather, we are to determine whether imports are a cause

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[60] We also caution that we make this conclusion based on the unique facts of this investigation.

[61] Acting Chairman Brunsdale does not join the rest of these views. See her Additional Views.

[62] 19 U.S.C. § 1673b(a).

[63] 19 U.S.C. § 1677(7)(A).

[64] E.g., Citrosuco Paulista S.A. v. United States, 12 CIT ___, 704 F. Supp. 1075, 1101 (1988). Alternative causes may include:

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

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

[65] "Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources, industries that are often the most vulnerable to less-than-fair-value imports." S. Rep. No. 249, at 74-75.

of material injury, [66] or whether factors other than the dumped imports have made the industry more vulnerable to the effects of the dumped imports. [67]

The volume of imports from Japan declined from 1988 to 1990, and then increased in interim 1991 compared to interim 1990. [68] As a share of domestic consumption, imports from Japan declined from 1988 to 1989, but increased from 1989 to 1990, before declining in January-March 1991 relative to the same period in 1990. [69] While both the import volume and market share have not increased substantially over the period of investigation, we find the significant market share of the subject imports to be an important factor in our preliminary affirmative determination. [70]

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[66] E.g., Granges Metallverken AB v. United States, 716 F.Supp. 17, 25 (Ct. Int'l Trade 1989) ("contribute, even minimally"); LMI-La Metalli Industriale, S.p.A. v. United States, 712 F. Supp. 959, 971 (Ct. Int'l Trade 1989), citing, British Steel Corp. v. United States, 8 CIT 86, 593 F. Supp. 405, 413 (1984)), aff'd in part and rev'd in part on other grounds, 912 F.2d 455 (Fed. Cir. 1990) (dealing only with the Commerce portion of the CIT opinion); Citrosuco Paulista, S.A. v. United States, 704 F.Supp. 1075, 1101 (Ct. Int'l Trade 1988) ("contribute, even minimally, to conditions of the domestic industry"); USX Corp. v. United States, 682 F.Supp. 60, 67 (Ct. Int'l Trade 1988); Hercules, Inc. v. United States, 11 CIT 710, 673 F. Supp. 454, 481 (1987) ("even slight contribution from imports"); Gifford-Hill Cement Co. v. United States, 615 F.Supp. 577, 586 (Ct. Int'l Trade 1985). See also Maine Potato Council v. United States, 9 CIT 293, 613 F. Supp. 1237, 1244 (1985) (The Commission must reach an affirmative determination if it finds that imports are more than a "de minimis" cause of injury.)

[67] See generally Iwatsu Elec. Co. Ltd. v. United States, 758 F. Supp. 1506, 1512 (Ct. Int'l Trade 1991) ("the woes of the domestic industry were exacerbated by LTFV imports.") (emphasis deleted).

[68] See Report at A-20.

[69] See Report at A-21.

[70] Compare Iwatsu, 758 F.Supp. at 1514 (substantial market penetration showing no signs of substantial decline).

We find no significant price underselling by the subject imports. [71] Prices for the Japanese product were higher than the U.S. product in 55 of 69 possible quarterly comparisons. [72] Even focussing on the period after August 1989, which petitioner has alleged is a "watershed" date due to Nikon's lowering of its prices at that time, [73] does not affect this conclusion. However, we note that prices for six of the eight U.S. products surveyed declined during the period of investigation, indicating that prices have been depressed. [74] While prices generally have risen most recently, particularly in the first quarter of 1991, they remain, with one exception, below the level

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[71] We reject Nikon's argument that lack of underselling mandates a negative determination as "technical dumping." In Electrolytic Manganese Dioxide from Greece and Japan, Invs. Nos. 731-TA-406 and 408 (Final), USITC Pub. 2177 (April 1989) at 21-22 and at 48, the Commission rejected the doctrine of "technical dumping" in light of the explicit language of the statute as enacted in 1979. Even without underselling, import pricing may be a cause of price suppression or depression. See 19 U.S.C. § 1677(7)(C)(ii)(II) ("the effect of imports of that merchandise **otherwise** depresses prices to a significant degree or prevents price increases, which would otherwise have occurred, to a significant degree.") (emphasis added); Florex v. United States, 705 F.Supp. 582, 593 (Ct. Int'l Trade 1989) ("injury need not be based on a finding of injury by specific price underselling. ITC may consider, as it did, the suppressive effects of the unfairly traded imports."); Maine Potato Council v. United States, 613 F.Supp. 1237, 1245 (Ct. Int'l Trade 1985) ("the Canadian imports, notwithstanding their higher price, could theoretically have had a price suppressing effect on domestic prices . . ."). See also, Iwatsu Electric Co. v. United States, 758 F.Supp. 1506, 1515 (Ct. Int'l Trade 1991) ("Difficulties with, or even impossibility of, direct price comparison do not mandate a negative determination.").

[72] See Report at A-29.

[73] E.g., Tr. at 68-69.

[74] Also, we note that the cost of goods sold, with respect to the industry operations producing the like product, increased both on a per-unit basis and as a share of net sales over the period of investigation while net sales decreased on a per-unit basis, suggesting that prices may have been suppressed relative to costs. See Report at A-9, Table 3. This trend is not as true for overall costs as a share of overall net sales, however. See Report at A-8, Table 2. We intend to scrutinize possible price suppression more closely in any final investigation.

that prevailed at the beginning of the period of investigation. [75] We note that prices of the imports from Japan sharply declined in mid-1989 and have generally remained at that much lower level. [76] This fact, together with the significant import volume and the generally depressed prices of the domestic like product, lead us to conclude that there is a reasonable indication of material injury by reason of the allegedly LTFV imports from Japan. [77]

We intend in any final investigation to more closely consider any price suppressing or depressing effect of the subject imports. For the reasons stated above, however, we find a reasonable indication of material injury by reason of the imports subject to investigation.

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[75] See Report at A-24--A-28.

[76] See Report at A-24-28.

[77] Compare Iwatsu, 758 F.Supp. at 1515.

CONCURRING VIEWS OF ACTING CHAIRMAN ANNE E. BRUNSDALE
Aspherical Ophthalmoscopy Lenses From Japan

Inv. No. 731-TA-518 (Preliminary)

I agree with my colleagues in their determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of lenses imported from Japan. My conclusion rests on the large market share Nikon currently holds, and the large dumping margins the petitioner, Volk, alleges. While the margins are unweighted and are little more than petitioner's allegation now, they are the best information currently available concerning the level of the dumping and suggest that the price of the imported lenses may be significantly less than "fair". The evidence also suggests that the lenses are of roughly equal quality and that buyers make their choices (within each market segment) largely on the basis of price. Moreover, the lenses are essential to the business of ophthalmologists and optometrists, but are only a tiny part of the cost of their business. This means that if Nikon's U.S. prices suddenly rose by anything approaching the high end of the range of alleged dumping margins, Volk's sales would probably increase immensely.

* * *

Given the facts of this case, it would have been fairly simple to attach a footnote to the Opinion of the Commission briefly explaining my views. Unfortunately, the majority has once again decided not to exchange sections of its draft Opinion that discuss areas where our analyses might disagree. Indeed,

with this case it has gone a step further by withholding its causation analysis in spite of my stated interest in joining the conclusion, perhaps with a footnote or two. Why the majority adopts this approach is unclear, and I note it to highlight for those who practice before the Commission that we do not follow the customary practice of multimember courts or other multimember administrative agencies in trying to search out common ground and focus our disagreements more clearly. One hopes this is a temporary situation.

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

On April 30, 1991, a petition was filed with the U.S. International Trade Commission and the U.S. Department of Commerce by Volk Optical, Inc., Mentor, OH, alleging that imports of hand-held aspherical indirect ophthalmoscopy lenses from Japan are being sold in the United States at less than fair value (LTFV) and that an industry in the United States is materially injured and threatened with material injury by reason of such imports. Accordingly, effective April 30, 1991, the Commission instituted antidumping investigation No. 731-TA-518 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of such imports.[1]

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on May 7, 1991 (56 F.R. 21173).[2] The public conference was held in Washington, DC, on May 21, 1991,[3] and the vote was held on June 11. Aspherical ophthalmoscopy lenses have not been the subject of any other investigation conducted by the Commission.

NATURE AND EXTENT OF THE ALLEGED SALES AT LTFV

There is no information relating to the nature and extent of the alleged LTFV sales other than the allegations of the petitioner. The petitioner identified two producers in Japan, Nikon Corp. (Nikon) and Topcon Instrument Corp. (Topcon), which manufacture and export the subject product to the United States. Only Nikon, however, is alleged to be selling at LTFV.[4] On the basis of Nikon's wholesale price list for home-market sales as of October 1, 1990, and a similar list for sales in the United States dated June 7, 1990, the petitioner calculated dumping margins ranging from nil to 158 percent, the specific margin depending on the size of the lens sold and whether the quantity sold was 1 to 10 units or over 100.[5] Because none of the alleged margins was calculated on the basis of actual sales, a weighted-average margin for Nikon is not available.

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[1] In its notice of institution, Commerce refers to the subject product more simply as "aspherical ophthalmoscopy lenses"--the qualifiers "hand-held" and "indirect" are not requisite to the product's identification. The phrase, "aspherical ophthalmoscopy lenses," or simply, "the subject product," will be used throughout the remainder of this report.

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

[3] A list of witnesses appearing at the conference is presented in app B.

[4] The petitioner claims to have no evidence that Topcon either is or is not selling in the United States at LTFV. In any case Nikon accounts for the overwhelming bulk of Japan's exports of this product to the United States.

[5] See the petition, table 4, p. 20, for a summary of the petitioner's derivation and listing of the respective margins.

THE PRODUCT

Description and Uses

The imported articles subject to the petitioner's complaint--aspherical ophthalmoscopy lenses--are single glass lenses, one or both sides aspherical in shape,[6] mounted or unmounted in a frame (usually of aluminum),[7] and made for purposes of examining and treating the fundus, or posterior portion, of the human eye. They are designed to be used in conjunction with two viewing devices--either a slit lamp biomicroscope or an indirect ophthalmoscope--which direct a beam of light through the lens into the eye for better illumination, and also allow for focus adjustment and variable magnification. (A slit lamp biomicroscope (slit lamp) is a relatively small tabletop apparatus; the indirect ophthalmoscope (head set) is an even smaller device that mounts on the examiner's head. The slit lamp allows for more variation in magnification and in the shape and size of the light beam; the head set allows for more speed and mobility in use--both facilitate depth perception by allowing the examiner to view the eye with binocularity, i.e., with both eyes simultaneously). While the subject lens is held close to the patient's eye, either by hand or other devices, the slit lamp or head set projects light through the lens and through the pupil of the eye to illuminate the fundus. The light rays reflect back through the pupil and lens to form an image in space (an aerial image) that is viewed by the examiner through the slit lamp or head set. Movement of the lens and/or viewing device allows the examiner to scan the fundus image and observe the peripheral area.[8] Although a spherical lens could also be used for this purpose, the use of an aspherical lens results in better clarity and far less distortion.

Aspherical ophthalmoscopy lenses are primarily classified according to dioptric (D) size, an indication of refractive power (magnification) and field of view. Magnification varies indirectly and field of view varies directly with dioptric size. The subject lenses are sold in several dioptric sizes ranging from 15D to 40D for use with the head set[9] and from 60D to 90D for use with the slit lamp.[10] Volk's lenses differ from Nikon's in having both surfaces, as opposed to one surface, aspherical in shape. The exception is Nikon's 90D lens, which is similar in this respect to Volk's. (Volk claims that a lens with both surfaces aspherical in shape results in additional clarity, albeit marginal, in the higher dioptric ranges). Also unlike Nikon, the petitioner produces each of its lenses in two diameter sizes (the smaller

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[6] Aspherical surfaces have a variable radius of curvature, as opposed to spherical surfaces, which have a constant radius of curvature.

[7] All of the subject imports to date have been mounted in aluminum frames, the largest being about 2 inches in diameter.

[8] See app. C for a schematic diagram of the subject product's function and use.

[9] The lenses manufactured by Volk for the head set are 15D, 20D, 24D (also known as the Pan Retinal 2.2), 25D, 30D, and 40D. The lenses manufactured by Nikon (and available in the United States) are 14D, 16D, 20D, 24D, and 28D.

[10] The lenses manufactured by Volk for the slit lamp are 60D, 78D, and 90D. Nikon manufactures a 90D lens only.

diameter allows for less field of view but more ease in handling) and in two lens shades, clear and yellow (the yellow filters out blue, violet, and ultraviolet wave lengths from the light being projected into the patient's eye). Nikon provides a separate yellow-glass filter that screws onto its lenses for this purpose. All of these lenses are coated with thin layers of substances that allow for increased light transmission and reduced surface reflection.

To produce aspherical ophthalmoscopy lenses, molded glass blanks are first edged and shaped, then precision ground and polished by specially designed computer-controlled equipment. At the same time, in a separate production process, housing rings are fabricated from specially alloyed aluminum tubing, then painted, sealed, and engraved. Inspection, testing, washing, and drying occurs frequently throughout both processes. After the lenses are sent to an outside firm to be coated and returned, they are assembled into the housing rings, put into individual cases, and packaged for shipment. (A more detailed description of the petitioner's production process is presented in appendix D).

Aspherical ophthalmoscopy lenses, in combination with the slit lamp or head set, are generally regarded as state-of-the-art equipment for fundus examination. Only one other type of lens, known as a contact fundus lens, is used with the slit lamp and head set for this purpose. Unlike the subject product, it consists of at least two glass elements; it is designed to come in direct contact with the eye (having a built-in cup for this purpose) and is thus more tedious to use; it requires a more complicated and exacting production process (Volk dedicates separate equipment and facilities for this purpose); and it is two to three times more expensive. It is, however, more appropriate for more detailed or specialized evaluations or when laser treatment is required. For this reason it often supplements, but rarely replaces, the subject product in examinations.

U.S. Tariff Treatment

Aspherical ophthalmoscopy lenses are provided for in subheading 9018.50.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 709.0500 of the Tariff Schedules of the United States Annotated), a subheading that provides for ophthalmic instruments and accessories in general. The column 1-general (most-favored-nation) rate of duty for this subheading, applicable to imports from Japan, is 10 percent ad valorem.

U.S. PRODUCERS

The petitioner, Volk Optical, is the only firm in the United States to have produced the subject product in at least 17 years.[11] Dr. David Volk, who

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[11] One other firm in addition to the petitioner--Ocular Instruments, Inc., Bellview, WA--produces contact fundus lenses in the United States.

established a company in 1974 that was to become Volk Optical, designed an example of the subject product in the 1950s. Later in that decade and on into the 1960s, this product was manufactured under a licensing agreement by the American Bifocal Company, Cleveland, Ohio, a firm that went out of business in 1970. Volk began producing the product in his own firm in 1974.

Volk is a relatively small firm with one plant location that produces other types of glass lenses (including contact fundus lenses) in addition to the subject product. Of the firm's overall sales in the last 3 years, sales of aspherical ophthalmoscopy lenses accounted for about *** percent.

U.S. IMPORTERS

Three firms import the subject product into the United States: Nikon Inc. (Nikon USA), Melville, NY, a subsidiary of Nikon;[12] Topcon Instrument Corp. of America (Topcon America), Paramus, NJ, which imports lenses manufactured by its parent company, Topcon; and Carl Zeiss, Inc., Thornwood, NY, which imports lenses manufactured by its parent company, Carl Zeiss, GMbH, Oberkochen, Germany. Most lenses are imported in response to customer orders, and no value is added to the imported product.

U.S. MARKET AND CHANNELS OF DISTRIBUTION

At least 95 percent of the aspherical ophthalmoscopy lenses manufactured or imported in the United States are sold to ophthalmic instrument distributors, which in turn sell to ophthalmologists, optometrists, and students of these disciplines located throughout the country. For the most part, U.S. and foreign manufacturers produce to order. Typically ophthalmologists and optometrists will purchase and use a lens of only one dioptric size each for the slit lamp and/or head set. The actual size used varies from eye specialist to eye specialist, depending on individual preferences. If handled and cleaned properly, so as to avoid breakage and surface scratches, the lenses will remain useful and usually stay in service for many years.

CONSIDERATION OF THE ALLEGED MATERIAL INJURY

All of the data in the following sections reflect the operations of Volk from January 1988 through March 1991 and represent 100 percent of U.S. production during this period.

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[12] Imports of the subject product are received at their facility in Torrance, CA.

U.S. Production, Capacity, Capacity Utilization, Shipments, Inventories, and Employment

The machinery and equipment Volk uses to produce aspherical ophthalmoscopy lenses are for the most part dedicated to that purpose, although this does not preclude their use in the production of other types of lenses. Shifting to the production of other lenses, however, is by no means automatic. Virtually all the equipment used in the handling, shaping, and polishing of the glass blanks would first need to be reset, retooled, reprogrammed, and, in some cases, reaccessorized--the length of time required depending on the nature of the new lens. It should be noted that the cost of capital equipment used to produce aspherical lenses is far in excess of that used to produce spherical lenses. Grinding and polishing spherical lenses are relatively easy because the equipment does not have to create and follow a surface of variable curvature.

Selected data on Volk's subject product operations are shown in table 1. Based on operating 50 hours per week, 52 weeks per year (less holidays), Volk's annual capacity remained at nearly *** subject lenses from 1988 through 1990. Capacity increased by *** percent in January-March 1991 following the purchase and installation of a ***. Production levels were more irregular. After increasing by *** percent from 1988 to 1989, production declined in 1990 to a level *** percent below that in 1988. ***. A part of the ***-percent increase in production in January-March 1991 compared to January-March 1990 reflects the company's efforts to fill these previous orders. Except in January-March 1991, changes in capacity utilization reflect changes in production. In January-March 1991 capacity increased more than production, resulting in a decline in capacity utilization of about *** percentage points from the corresponding period of the previous year. The company reported no production losses due to employment-related problems, sourcing problems, transitions, power shortages, natural disasters, or any other unusual circumstances.

In terms of changes from period to period, Volk's shipments were similar to its production. The ***-percent increase in domestic shipments in January-March 1991 compared to January-March 1990 was in part a response to filling a backlog of previous orders. Orders actually received in these two periods (*** in January-March 1990 and *** in January-March 1991) increased by *** percent. Volk's exports of the subject product were substantial, accounting for *** percent of its total shipments of aspherical ophthalmoscopy lenses during the period for which data were collected. Inventory levels generally increased, as shown in table 1.

Volk's employment is not as dedicated as its equipment to the production of a certain product. The average worker's time may be divided between several products during the course of a year or even a day. The figures for the average number of production and related workers shown in table 1 were calculated on the basis of the proportional amount of time all workers at the plant worked on the subject product. In any case, Volk's employment is small, and the changes from period to period by and large reflect shifts from product to product rather than absolute decreases or increases.

Table 1
Aspherical ophthalmoscopy lenses: Volk's production, average capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of production and related workers, and hours worked by, productivity of, and total compensation paid to such workers, 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March-- 1990	1991
Production (units)[1]					
Average capacity (units)[2]					
Ratio of production to capacity (percent)					
Domestic shipments:					
Quantity (units)					
Value					
Unit value					
Export shipments:					
Quantity (units)					
Value					
Unit value					
Inventories (units)					
Ratio of inventories to total shipments during the period (percent)					
Average number of production and related workers producing the subject product	*	*	*	*	*	*	*
Hours worked by production and related workers producing the subject product					
Units of the subject product produced per hour worked					
Total compensation paid to production and related workers producing the subject product					
Hourly compensation paid to production and related workers producing the subject product					

[1] Company estimates.

[2] The capacity reported is based on operating 50 hours per week, 52 weeks per year (less holidays).

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

Financial Experience of Volk

Volk, the sole U.S. producer of aspherical ophthalmoscopy lenses, supplied financial information on its overall establishment operations and on its operations producing aspherical ophthalmoscopy lenses. Volk has a fiscal year ending March 31; data for its fiscal years ending March 31, 1989, 1990, and 1991 are presented as 1988, 1989, and 1990 data, respectively.

OVERALL ESTABLISHMENT OPERATIONS

Income-and-loss data on Volk's overall establishment operations are presented in table 2. Net sales increased about *** percent from *** in 1988 to *** in 1989 and then another *** percent to *** in 1990. Volk's net sales also rose *** percent during the first 3 months of 1991 relative to the same period in 1990.

* * * * * * *

OPERATIONS ON ASPHERICAL OPHTHALMOSCOPY LENSES[13]

Income-and-loss data on Volk's operations producing aspherical ophthalmoscopy lenses are presented in table 3 and 4. As a percentage of establishment net sales, the lenses represented *** percent, *** percent, *** percent, *** percent, and *** percent for fiscal years 1988, 1989, 1990, interim 1990, and interim 1991, respectively.

Net sales increased from *** (*** units) in 1988 to *** (*** units) in 1989 before decreasing to *** (*** units) in 1990. Net sales (value and quantities) for interim 1991 were sharply higher than in interim 1990, however, reversing the previous trend.

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[13] The staff cautions the Commission not to place a great deal of reliance upon the profit-and-loss information in this section. Whereas costs for Volk's overall operations can be tied to financial statements and appear to be reasonable, it is apparent to staff that Volk had difficulties valuing inventories and allocating costs to its product lines. As a result, costs for aspherical ophthalmoscopy lenses are out of line with costs for the other products Volk produces. For example, the reported cost of goods sold for aspherical ophthalmoscopy lenses accounted for ***, ***, and *** percent of the overall establishment cost of goods sold in 1988, 1989, and 1990, respectively, far exceeding the product's shares of establishment sales. However, counsel for Volk maintains that the gross margin for its other products--between *** and *** percent--is appropriate.

Table 2
Income-and-loss experience of Volk on the overall operations of its establishment within which aspherical ophthalmoscopy lenses are produced, fiscal years 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March-- 1990	1991
	Value				
Net sales					
Cost of goods sold					
Gross profit					
Selling, general, and administrative expenses					
Operating income	*	*	*	*	*	*	*
Other income, net					
Net income before income taxes					
Depreciation and amortization included above					
Cash flow[1]					
	Share of net sales (percent)				
Cost of goods sold					
Gross profit					
Selling, general, and administrative expenses	*	*	*	*	*	*	*
Operating income					
Net income before income taxes					

[1] Cash flow is defined as net income or loss plus depreciation and amortization.

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

In cases where there is only one U.S. producer and that producer is a closely-held corporation, the total compensation paid to the owner(s) in the form of salaries, bonuses, rents, dividends, etc., is relevant to the overall income determination. The following tabulation details compensation paid to all shareholders in the form of salaries, rent, and dividends:

Item	1988	1989	1990
Salaries	***	***	***
Rent	***	***	***
Dividends	***	***	***
Total compensation	***	***	***

Table 3
Income-and-loss experience of Volk on its operations producing aspherical ophthalmoscopy lenses, fiscal years 1988-90,[1] January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March-- 1990	1991
	Quantity (lenses)				
Net sales:					
Domestic					
Foreign	*	*	*	*	*
Total					
	Value				
Net sales:					
Domestic					
Foreign					
Total					
Cost of goods sold					
Gross profit					
Selling, general, and administrative expenses					
Operating income	*	*	*	*	*
Other income, net					
Net income before income taxes					
Depreciation and amortization included above					
Cash flow[2]					
	Share of net sales (percent)				
Cost of goods sold					
Gross profit					
Selling, general, and administrative expenses					
Operating income	*	*	*	*	*
Net income before income taxes					

(table continued on next page)

Table 3--Continued
Income-and-loss experience of Volk on its operations producing aspherical ophthalmoscopy lenses, fiscal years 1988-90,[1] January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March-- 1990	1991
	Per lens[3]				
Net sales:					
Domestic net sales.....					
Foreign net sales.....					
Average.....					
Cost of goods sold.....					
Gross profit.....	*	*	*	*	*	*	*
Selling, general, and administrative expenses.					
Operating income.....					
Net income before income taxes.....					

[1] While net sales quantities are on a fiscal year basis for 1990, they are on a calendar year basis for 1988 and 1989. All financial data are on a fiscal year basis. Therefore, financial information on a per-lens basis for 1988 and 1989 may be overstated or understated and trends may be misleading.
[2] Cash flow is defined as net income or loss plus depreciation and amortization.
[3] Because of rounding, figures may not add to the totals shown.

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

INVESTMENT IN PRODUCTIVE FACILITIES

The value of Volk's property, plant, and equipment and total assets are presented in table 5.

CAPITAL EXPENDITURES

Volk's capital expenditures are shown in table 6.

RESEARCH AND DEVELOPMENT (R&D) EXPENSES

Volk's R&D expenses are shown in table 7.

Table 4
Volk's manufacturing costs per unit on its operations producing aspherical ophthalmoscopy lenses, fiscal years 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March-- 1990	1991
	Quantity (lenses)				
Production	***	***	***	***	***
	Value (per lens)				
Direct materials[2]	*	*	*	*	*
Direct labor[3]					
Fixed overhead costs[4]					
Variable overhead costs[5]					
Total costs					
	Share of total manufacturing costs (percent)[6]				
Direct materials	*	*	*	*	*
Direct labor					
Fixed overhead costs					
Variable overhead costs					
Total costs					

[1] While production data are on a fiscal year basis for 1990, they are on a calendar year basis for 1988 and 1989. All financial data are on a fiscal year basis. Therefore, all per-lens values for 1988 and 1989 may be overstated or understated and trends may be misleading.
[2] Comparable to raw materials in cost of goods sold.
[3] Comparable to direct labor in cost of goods sold.
[4] Costs that do not change with varying levels of production, such as rent, insurance, property taxes, etc.
[5] Costs that will change with varying levels of production, such as utilities and supplies.
[6] Note: Because of rounding, figures may not add to totals shown.

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

CAPITAL AND INVESTMENT

The Commission requested Volk to describe any actual or potential negative effects of imports of aspherical ophthalmoscopy lenses from Japan on its existing development and production efforts, growth, investment, and ability to raise capital. Its responses are shown in appendix E.

Table 5
Volk's value of assets and return on assets in the establishment wherein aspherical ophthalmoscopy lenses are produced, as of the end of fiscal years 1988-90

Item	As of end of fiscal year-- 1988	1989	1990
	Value		
All products:			
Fixed assets:			
Original cost			
Book value			
Total assets			
Aspherical ophthalmoscopy lenses:	*	*	*
Fixed assets:			
Original cost			
Book value			
Total assets[1]			
	Return on book value of fixed assets (percent)		
All products:			
Operating return			
Net return			
Aspherical ophthalmoscopy lenses:	*	*	*
Operating return			
Net return			
	Return on total assets (percent)		
All products:			
Operating return			
Net return			
Aspherical ophthalmoscopy lenses:	*	*	*
Operating return			
Net return			

[1] Allocated from total establishment assets on the basis of the respective book values of fixed assets.

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

Table 6
Capital expenditures by Volk, fiscal years 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March-- 1990	1991
All products:					
Land and land improvements.....					
Building and leasehold improvements.....					
Machinery, equipment, and fixtures.....					
Total.....					
Aspherical ophthalmoscopy lenses:	*	*	*	*	*	*	*
Land and land improvements.....					
Building and leasehold improvements.....					
Machinery, equipment, and fixtures.....					
Total.....					

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

Table 7
Research and development expenses by Volk, fiscal years 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March-- 1990	1991
All products.....					
Aspherical ophthalmoscopy lenses.....	*	*	*	*	*	*	*

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

FINANCIAL CONDITION OF VOLK

The balance sheets for Volk for its past 3 fiscal years are presented in table 8. As the table indicates, Volk's overall financial condition improved measurably from 1988 to 1990.

* * * * * * *

In order to analyze the financial condition of Volk, selected financial ratios of the company are presented below:

	1988	1989	1990
Current ratio.....	***	***	***

The current ratio is computed by dividing total current assets by total current liabilities. The ratio is a rough indicator of a company's ability to service its current obligations with its current assets. However, the composition and quality of current assets (i.e., whether receivables are readily collectible, whether inventory is obsolete, and whether prepaid expenses can be turned into cash) is critical in the analysis of a company's liquidity. A current ratio of at least 2 is normally desirable; Volk's can be considered outstanding.[14]

	1988	1989	1990
Quick ratio.....	***	***	***

The quick ratio (also referred to as the "acid test") is computed by dividing the sum of cash and cash equivalents, short-term investments, and trade receivables by total current liabilities. The ratio is a more conservative measure of liquidity than the current ratio. A quick ratio of at least 1 is normally desirable. As with the current ratio, Volk's quick ratio can be considered outstanding.[15]

	1988	1989	1990
Receivable turnover.....	***	***	***
Days.....	***	***	***

The receivable turnover is computed by dividing net sales by trade receivables. This ratio measures the number of times trade receivables turn over during the year. The higher the turnover of receivables, the shorter the

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[14] For comparison purposes, the norms for Volk's industry (manufacturing of optical instruments and lenses) from Dun & Bradstreet's publication Industry Norms and Key Business Ratios for 1988, 1989, and 1990 were 3.1, 2.4, and 2.2, respectively. During the same respective time periods, current ratios of firms in the upper quartile were 4.3, 4.1, and 3.7.

[15] From Industry Norms and Key Business Ratios, the norms for Volk's industry for 1988, 1989, and 1990 were 1.7, 1.4, and 1.2, respectively. During the same respective time periods, quick ratios of firms in the upper quartile were 3.2, 2.5, and 2.9.

Table 8
Assets, liabilities, and stockholders' equity of Volk as of the end of fiscal years 1988-90

Item	As of the end of fiscal years-- 1988	1989	1990
ASSETS:			
Current assets:			
Cash and equivalents			
Investments			
Trade accounts receivable			
Other receivables			
Inventories-			
Aspherical ophthalmoscopy lenses			
Other inventory			
Sub-total, inventory			
Prepaid expenses and taxes			
Total current assets			
Property, plant, and equipment, at cost			
Less: accumulated depreciation			
Property, plant, and equipment, net			
Other assets, net	*	*	*
Total assets			
LIABILITIES AND STOCKHOLDERS' EQUITY:			
Current liabilities:			
Accounts payable			
Accrued taxes payable			
Total current liabilities			
Other liabilities:			
Deferred income			
Total liabilities			
Stockholders' equity:			
Capital stock			
Retained earnings			
Total stockholders' equity			
Total liabilities and stockholders' equity			

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

time between the sale and the cash collection. Volk's rate improved from 1988 to 1989 and then declined in 1990.

The days' sales in receivables are computed by dividing 365 by the receivable turnover. This figure expresses the average time in days that receivables are outstanding. Generally, the greater number of days outstanding, the greater the probability of delinquencies in accounts receivable.

	1988	1989	1990
For aspherical ophthalmoscopy lenses:			
Inventory turnover.....	***	***	***
Days.....	***	***	***
For the overall establishment:			
Inventory turnover.....	***	***	***
Days.....	***	***	***

The inventory turnover is computed by dividing the cost of goods sold by the yearend inventory, and it measures the number of times inventory is turned over during the year. Decreasing values may indicate sluggish sales or increasing inventory on hand. Volk's turnover rate increased from 1988 to 1989 because its increase in sales was greater than its increase in production, leading to a drop in inventory. On the other hand, its turnover rate decreased from 1989 to 1990 because its decrease in sales was greater than its decrease in production, leading to an increase in inventory. The division of the inventory ratio into 365 yields the average number of days an item is in inventory.

In summary, Volk's financial ratios indicate strong liquidity and financial strength.

CONSIDERATION OF THE ALLEGED THREAT OF MATERIAL INJURY

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors[16]--

(I) If a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (Particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement).

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

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

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

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

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

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.[17]

Available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between the Alleged LTFV Imports and the Alleged Material Injury;" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in appendix E. Available information on U.S. inventories of the subject product (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); and any other threat indicators, if applicable (item (VII) above), follows.

Because the market for aspherical ophthalmoscopy lenses is relatively small and well defined, large quantities of lenses are generally not imported for inventory. Traditionally, they have been imported on the basis of expected or previous orders, and many were committed prior to entering the United States. In recent periods, however, inventories have increased despite a decline in shipments. As Nikon USA's shipments in the United States declined by *** percent from *** lenses in 1988 to *** lenses in 1990, its inventories increased by *** percent from *** lenses to *** lenses. In spite of a further decline in reported domestic shipments from January-March 1990 to January-March 1991, its inventories of the subject lenses increased by nearly *** percent. Topcon America's inventories fell along with its shipments throughout the period. Of a total of *** Japanese lenses sold in the United States from January 1988 to March 1991, however, Topcon accounted for only *** percent.

Nikon accounts for the overwhelming bulk of the aspherical ophthalmoscopy lenses exported to the United States from Japan. Its production, capacity, and shipments are shown in table 9. In 1989 it

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

Table 9
Aspherical ophthalmoscopy lenses: Nikon's production, capacity, and shipments, 1988-90, January-March 1990, and January-March 1991

Item	1988	1989	1990	January-March-- 1990	1991
Production (units).....					
Capacity[1] (units).....					
Capacity utilization (percent).....					
Shipments:					
Domestic (units).....					
Exports to--					
United States (units).....	*	*	*	*	*	*	*
All others (units).....					
Total exports (units)...					
Total shipments (units).					
Ratio of exports to total shipments (percent).....					
Share of total exports exported to the United States (percent).....					

[1] The capacity reported is based on operating 40 hours per week, 35 weeks per year.

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

purchased ***, which effectively *** its capacity from over *** lenses to over *** lenses per year. Utilization rates remained between *** percent and *** percent from 1989 to January-March 1991. After remaining relatively constant from 1988 to 1990, its total shipments declined by *** percent from January-March 1990 to January-March 1991. Total exports, ***, declined throughout the period for which data were collected. The United States, however, accounted for an increasing share of those exports, as shown in table 9. Nikon reports that it has no current plans to add, expand, curtail, or shut down capacity in the foreseeable future.

No other antidumping cases on the subject product from Japan are known to be pending or to have been previously conducted worldwide.

CONSIDERATION OF THE CAUSAL RELATIONSHIP BETWEEN THE ALLEGED LTFV IMPORTS AND THE ALLEGED MATERIAL INJURY

Imports

Japan and Germany are the United States' only known suppliers of foreign-made aspherical ophthalmoscopy lenses (table 10). Japan is by far the predominant source. Germany's share of total imports was less than *** percent during the period for which data were collected. From 1988 to 1990, imports from Japan declined by *** percent from *** units, valued at ***, to *** units, valued at ***.[18] From January-March 1990 to January-March 1991, however, the subject imports increased by *** percent.[19]

Table 10
Aspherical ophthalmoscopy lenses: U.S. imports, by sources, 1988-90, January-March 1990, and January-March 1991

Source	1988	1989	1990	January-March-- 1990	1991
			Quantity (units)		
Japan.....					
Germany.....	*	*	*	*	*	*	*
Total.....					
			Value, landed, duty-paid		
Japan.....					
Germany.....	*	*	*	*	*	*	*
Total.....					
			Unit value		
Japan.....					
Germany.....	*	*	*	*	*	*	*
Average.....					

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

[18] Of the *** lenses imported from Japan in 1988-90, Nikon USA accounted for over *** percent. Topcon America accounted for the remainder. ***.

[19] Import quantities for January-March 1990 and January-March 1991 shown in table 10 are about twice the quantities for exports to the United States in these periods shown in table 9. The difference is due to a time lag in recording: Nikon records exports at the time they are sent to its freight forwarder; Nikon USA records imports when the shipments from Japan arrive at a U.S. port.

U.S. Consumption and Market Penetration

After increasing by 4.4 percent from 1988 to 1989, apparent U.S. consumption declined in 1990 to a level that was 16.6 percent below that in 1988 (table 11). It is generally agreed that despite the decline, the market for the subject product, i.e., the number of ophthalmologists, optometrists, and optometry-school students, is expanding. It is possible that the downturn in 1990 reflected a national cutback in spending affecting the U.S. economy in general. From January-March 1990 to January-March 1991, consumption increased by 10.0 percent.

As a share of consumption, imports from Japan increased, albeit irregularly, from *** percent in 1988 to *** percent in 1990. Its share in January-March 1991, however, was nearly 13 percentage points less than in January-March 1990.

Table 11
Aspherical ophthalmoscopy lenses: Apparent U.S. consumption and ratio of domestic shipments of imports to consumption, 1988-90, January-March 1990, and January-March 1991

(Quantity in units; value in dollars)

Period	Apparent U.S. consumption[1]	Ratio (percent) of domestic shipments of imports to consumption: For Japan	For Germany	Total
	Quantity			
1988				
1989				
1990				
Jan.-Mar.--	*	*	*	*
1990				
1991				
	Value			
1988				
1989				
1990	*	*	*	*
Jan.-Mar.--				
1990				
1991				

[1] Domestic shipments of U.S. production and imports.

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

Prices

MARKET CHARACTERISTICS

The sole U.S. producer, Volk, and the primary importer, Nikon USA, both sell aspherical ophthalmoscopy lenses on the basis of published price lists. The prices shown on the lists are subject to quantity discounts. Volk and Nikon USA both sell lenses at the prices stipulated by the discount schedules and do not generally negotiate prices with buyers.[20]

Volk sells the vast majority of its lenses to distributors at prices specified on its price lists.[21] Quantity discounts that are available to distributors are based upon the quantity of lenses purchased by the distributor during the previous calendar year. The distributors are classified according to the five categories listed below.

Category	Quantity of lenses purchased during the previous year
A.....	***
B.....	***
C.....	***
D.....	***
E.....	***

For example, if a distributor purchased *** lenses during year 1, it would be classified as a category A buyer during year 2. If, however, that distributor's purchases during year 2 exceeded ***, the lenses purchased beyond *** during year 2 would be bought at the next price level. The quantity discounts to the distributor price list that correspond to these five buyer categories are listed below.[22]

Category	Quantity discounts from distributor price list
A	***
B	***
C	***
D	***
E	***

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[20] Telephone conversation with Donald Volk, President of Volk, May 28, 1991.

[21] During 1988-90, Volk sold, on average, *** percent of its lenses to distributors. The remainder were sold to end users such as medical students and residents, and convention attendees.

[22] Volk's distributor price list effective Sept. 1, 1989. Attachment V-B.1 of Volk's producer questionnaire response.

During the period of investigation, the majority of Volk's lens sales to distributors were to category *** buyers.[23]

Nikon USA also sells most of its lenses to distributors.[24] However, unlike Volk, Nikon USA's quantity discounts correspond to current quantities purchased and are not related to the quantity of lenses purchased during the previous year. Nikon USA publishes three price lists. One list contains Nikon USA's suggested list prices for dealers' retail sales to end users for all Nikon USA ophthalmic products, including the subject lenses. The second price list specifies the quantity discounts from Nikon USA's suggested retail list price that an authorized Nikon USA ophthalmic dealer would receive. An example of the quantity discount schedule offered to Nikon USA's dealers on June 7, 1990, for sales of Nikon USA aspherical lenses is presented below.

Quantity (lenses)	Quantity discounts from distributor price lists
1 - 10	***
11 - 20	***
21 - 49	***
50 - 99	***
100 +	***

The third price list is a special Nikon USA dealer and retail price list for sales to students and medical residents. The discount schedules shown on all of the lists were generally followed.

Prices for U.S.-produced and imported Japanese lenses are usually quoted on an f.o.b. plant or warehouse basis. Transportation costs account for only a very small percentage of the total delivered cost of a lens, generally less than 0.5 percent. The suppliers generally arrange the transportation to the customer's location, and most buyers are located 100 miles or more from the point of shipment. Both Volk and Nikon USA reported similar lead times between a customer's order and the date of delivery for their sales of lenses. Volk reported that its average lead time is approximately *** days, whereas Nikon USA reported that the average lead time for its sales of lenses from stock was between *** and *** days.

Both Volk and Nikon USA reported that the U.S.-produced and imported Japanese products are used interchangeably, and that differences in quality between U.S.- and Japanese-produced lenses are not significant. However, Volk produces only double aspherical lenses, whereas Nikon USA sells only one double aspherical lens, the 90D. Nikon USA reported that the double aspherical lenses produce less spherical aberration and are more costly to manufacture than the single aspherical lenses.

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[23] Attachment V-D of Volk's questionnaire response.

[24] Nikon reported that *** percent of its U.S. sales of Japanese lenses are to distributors.

QUESTIONNAIRE PRICE DATA

Volk and the importers of Japanese-produced lenses were requested to report U.S. f.o.b. prices before and after discounting, and total quantities and values of all models of the subject lenses sold. For each product listed below, price data for the largest sale of the specified product to distributors were requested for each quarter during January 1988-March 1991.[25] Volk and Nikon USA both reported usable price data. Nikon USA accounted for over *** percent of U.S. imports of Japanese lenses in 1988-90.[26] The shipments reported by Volk along with the price data accounted for *** percent of total reported U.S. producer's shipments in 1990. The shipments reported by Nikon USA along with the price data accounted for *** percent of total reported shipments from Japan in 1990.

Product 1: 15 diopter aspherical lens.

Product 2: 20 diopter aspherical lens.

Product 3: 25 diopter aspherical lens.

Product 4: 30 diopter aspherical lens.

Product 5: 40 diopter aspherical lens.

Product 6: 60 diopter aspherical lens.

Product 7: 78 diopter aspherical lens.

Product 8: 90 diopter aspherical lens.

Price trends

F.o.b. prices of U.S. products 1-8 and imported Japanese products 1, 2, 3, 4, 6, and 8 sold to distributors during January 1988-March 1991 are shown in tables 12-15 and figures 1-4. Prices for six of the eight specified U.S. products declined during the period of investigation. Prices for the specified Japanese products tended to rise until the third quarter of 1989, when, in all cases, they fell sharply to *** per lens, where they generally remained during the remainder of the investigation period.

***. Prices for Volk products 1 and 2 showed little evidence of price

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[25] Volk reported price data for its largest sale to its 10 largest distributors. During 1988-90 Volk sold, on average, to *** distributors each year (attachment V-D of Volk's questionnaire response).

[26] Another importer, Topcon, accounting for less than *** percent of U.S. imports of Japanese lenses, did not report usable f.o.b. pricing data for the specified products.

Table 12
Aspherical ophthalmoscopy lenses: Discounted f.o.b. prices of U.S.-produced and imported Japanese lens products 1 and 2 sold to distributors, by quarters, January 1988-March 1991

Period of shipment	Product 1				Product 2			
	United States		Japan		United States		Japan	
	Price[1] Per lens	Quantity[2] Lenses	Price Per lens	Quantity Lenses	Price[1] Per lens	Quantity[2] Lenses	Price Per lens	Quantity Lenses
1988:								
Jan.-Mar....								
Apr.-June...								
July-Sept...								
Oct.-Dec....								
1989:								
Jan.-Mar....								
Apr.-June...								
July-Sept...	*	*	*	*	*	*	*	
Oct.-Dec....								
1990:								
Jan.-Mar....								
Apr.-June...								
July-Sept...								
Oct.-Dec....								
1991:								
Jan.-Mar....								

[1] Volk reported the f.o.b. values received for the largest quantities sold. The f.o.b. prices per lens were obtained by dividing the f.o.b. values by the quantities of lenses sold.
[2] The figures reported for quarterly total quantity shipped are estimates; they were obtained by determining the total quantity and value of lenses shipped during the year and dividing by four.

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

Table 13
Aspherical ophthalmoscopy lenses: Discounted f.o.b. prices of U.S.-produced and imported Japanese lens products 3 and 4 sold to distributors, by quarters, January 1988-March 1991

Period of shipment	Product 3				Product 4			
	United States		Japan		United States		Japan	
	Price[1] Per lens	Quantity[2] Lenses	Price Per lens	Quantity Lenses	Price[1] Per lens	Quantity[2] Lenses	Price Per lens	Quantity Lenses
1988:								
Jan.-Mar....								
Apr.-June...								
July-Sept...								
Oct.-Dec....								
1989:								
Jan.-Mar....								
Apr.-June...								
July-Sept...								
Oct.-Dec....	*	*	*	*	*	*	*	
1990:								
Jan.-Mar....								
Apr.-June...								
July-Sept...								
Oct.-Dec....								
1991:								
Jan.-Mar....								

[1] Volk reported the f.o.b. values received for the largest quantities sold. The f.o.b. prices per lens were obtained by dividing the f.o.b. values by the quantities of lenses sold.
[2] The figures reported for quarterly total quantity shipped are estimates; they were obtained by determining the total quantity and value of lenses shipped during the year and dividing by four.

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

Table 14
Aspherical ophthalmoscopy lenses: Discounted f.o.b. prices of U.S.-produced lens products 5 and 6 and imported Japanese lens product 6 sold to distributors, by quarters, January 1988-March 1991

Period of shipment	Product 5		Product 6			
	United States		United States		Japan	
	Price[1] Per lens	Quantity[2] Lenses	Price[1] Per lens	Quantity[2] Lenses	Price Per lens	Quantity Lenses
1988:						
Jan.-Mar....						
Apr.-June...						
July-Sept...						
Oct.-Dec....						
1989:						
Jan.-Mar....						
Apr.-June...						
July-Sept...						
Oct.-Dec....	*	*	*	*	*	*
1990:						
Jan.-Mar....						
Apr.-June...						
July-Sept...						
Oct.-Dec....						
1991:						
Jan.-Mar....						

[1] Volk reported the f.o.b. values received for the largest quantities sold. The f.o.b. prices per lens were obtained by dividing the f.o.b. values by the quantities of lenses sold.

[2] The figures reported for quarterly total quantity shipped are estimates; they were obtained by determining the total quantity and value of lenses shipped during the year and dividing by four.

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

trends, fluctuating within a relatively narrow band of prices during the period of investigation. Prices for products 3-8 decreased. Prices for product 3 fluctuated between *** and *** per lens during 1988, fell from *** in the first quarter of 1989 to *** in the fourth quarter of 1990, and then increased to *** in the first quarter of 1991. Movements in prices for product 4 were similar to those of product 3, fluctuating between *** and *** per lens during 1988, and then falling from *** in the first quarter of 1989 to *** in the fourth quarter of 1990, before increasing to *** in the first quarter of 1991. Prices for product 5 fluctuated between *** and *** per lens during 1988, then fell from *** in the first quarter of 1989 to *** in the first quarter of 1991. Similarly, prices for product 6 fluctuated between *** and *** per lens during 1988, then fell from *** in the first quarter of 1989 to *** in the first quarter of 1991. Prices for products 7 and 8 showed some evidence of downward movement; however, the very low prices shown for these products in the third quarter of 1990 and in the fourth quarter of 1990 for

Table 15
Aspherical ophthalmoscopy lenses: Discounted f.o.b. prices of U.S.-produced lens products 7 and 8 and imported Japanese lens product 8 sold to distributors, by quarters, January 1988-March 1991

Period of shipment	Product 7		Product 8			
	United States		United States		Japan	
	Price[1]	Quantity[2]	Price[1]	Quantity[2]	Price	Quantity
	Per lens	Lenses	Per lens	Lenses	Per lens	Lenses
1988:						
Jan.-Mar....						
Apr.-June...						
July-Sept...						
Oct.-Dec....						
1989:						
Jan.-Mar....						
Apr.-June...						
July-Sept...						
Oct.-Dec....	*	*	*	*	*	*
1990:						
Jan.-Mar....						
Apr.-June...						
July-Sept...						
Oct.-Dec....						
1991:						
Jan.-Mar....						

[1] Volk reported the f.o.b. values received for the largest quantities sold. The f.o.b. prices per lens were obtained by dividing the f.o.b. values by the quantities of lenses sold.

[2] The figures reported for quarterly total quantity shipped are estimates; they were obtained by determining the total quantity and value of lenses shipped during the year and dividing by four.

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

product 8 reflect sales made as a result of a special promotion offered by Volk to attendees of the American Academy of Ophthalmology.

F.o.b. prices for the specified Japanese products tended to rise until the third quarter of 1989, when, in all cases, they fell sharply to *** per lens, where they generally remained during the remainder of the investigation period. Prices for products 1, 2, and 3 increased to ***, ***, and *** per lens, respectively, in the second quarter of 1989, then fell sharply to *** in the third quarter of 1989. Prices for products 4 and 8 increased during 1988, fell slightly during the first and second quarters of 1989 to *** and ***, respectively, and then fell to *** in the third quarter of 1989. Nikon USA sold product 6 only during 1990 and in the first quarter of 1991; prices for product 6 remained at *** during this period.

Figures 1-4: * * * * * * *

Price comparisons

Comparisons of U.S. f.o.b. prices to distributors for U.S.-produced and imported Japanese lens products are presented in table 16. As noted earlier, the U.S. and Japanese products are not perfectly comparable since the specified U.S. products are double aspherical lenses, whereas the specified imported Japanese lenses, with the exception of product 8, are single aspherical lenses. Furthermore, Nikon USA's reported prices for products 1, 2, 4, and 6 are for lenses that do not exactly meet the product specifications; in these cases Nikon USA's reported products have slightly different magnification.

Allowing for these product differences, 69 quarterly price comparisons were possible for sales of products 1, 2, 3, 4, 6, and 8. During those quarters for which price comparisons were possible, prices for the Japanese product were below prices for the U.S. product in 11 quarters, were higher in 55 quarters, and were equal in 3 quarters. During 1988 and the first and second quarters of 1989, available price comparisons show that prices for the Japanese products were always above prices for the U.S. products and that the margins of overselling were very high (between *** and *** percent). In the third quarter of 1989, Japanese prices fell to *** per lens in all cases, or to approximately the same price level as Volk.

Prices for Japanese product 1 were below prices for U.S. product 1 in 6 quarters and were higher in 6 quarters. Prices for Japanese product 2 were below prices for U.S. product 2 in 1 quarter and were higher in 12 quarters. Prices for Japanese product 3 were also below prices for U.S. product 3 in 1 quarter and were higher in 10 quarters. Prices for Japanese product 4 were below prices for U.S. product 4 in 2 quarters and were higher in 11 quarters. Prices for Japanese product 6 were below prices for U.S. product 6 in 1 quarter and were higher in 3 quarters. Prices for Japanese product 8 were higher than prices for U.S. product 8 during all 13 quarters.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January 1988-March 1991 the nominal value of the Japanese yen fluctuated, depreciating 4.4 percent overall relative to the U.S. dollar (table 17).[27] Adjusted for movements in producer price indexes in the United States and Japan, the real value of the Japanese currency showed an overall depreciation of 10.4 percent against the dollar for the period January 1988 through March 1991.

Lost Sales and Lost Revenues

Volk reported that it has lost sales of lenses to imports of Japanese lenses since January 1, 1988. Volk also reported that it has consistently lost revenues since September 1989 because it has had to lower prices on

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[27] International Financial Statistics, May 1991.

Table 16
Aspherical ophthalmology lenses: Margins of underselling (overselling) by the subject imports from Japan, by quarters, January 1988-March 1991[1]

(In percent)

Period	Product 1	Product 2	Product 3	Product 4	Product 6	Product 8
1988:						
Jan.-Mar...						
Apr.-June..						
July-Sept..						
Oct.-Dec...						
1989:						
Jan.-Mar...						
Apr.-June..						
July-Sept..						
Oct.-Dec...	*	*	*	*	*	*
1990:						
Jan.-Mar...						
Apr.-June..						
July-Sept..						
Oct.-Dec...						
1991:						
Jan.-Mar...						

[1] Price comparisons are based on discounted U.S. f.o.b. prices reported by Volk and Nikon USA.

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

certain lenses in response to Nikon USA's lower prices on these lenses and has not been able to increase prices on any of its lenses since that date. However, Volk was unable to report any specific instances of lost sales or lost revenues either in its questionnaire response or in its petition. Since Volk generally sells lenses through published price lists and does not negotiate sales on a transaction-by-transaction basis, Volk usually is not aware of specific lost sales or lost revenues.

Table 17
Exchange rates:[1] Indexes of nominal and real exchange rates of the Japanese yen and indexes of producer prices in the United States and Japan,[2] by quarters, January 1988-March 1991

Period	U.S. producer price index	Japanese producer price index	Nominal exchange rate index	Real exchange rate index[3]
1988:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	101.6	99.7	101.9	100.0
July-September.....	103.1	100.6	95.7	93.4
October-December....	103.5	99.8	102.2	98.4
1989:				
January-March.....	105.8	100.2	99.6	94.4
April-June.....	107.7	102.9	92.7	88.6
July-September.....	107.3	103.7	90.0	86.9
October-December....	107.7	103.5	89.5	86.0
1990:				
January-March.....	109.3	103.9	86.5	82.3
April-June.....	109.1	104.7	82.4	79.2
July-September.....	111.0	104.7	88.1	83.1
October-December....	114.4	105.4	97.9	90.2
1991:				
January-March.....	112.7[4]	105.5	95.6	89.6

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

Note.--January-March 1988 = 100.

Source: International Monetary Fund, International Financial Statistics, May 1991.

APPENDIX A

COMMERCE'S AND COMMISSION'S FEDERAL REGISTER NOTICES

International Trade Administration

[A-588-819]

Initiation of Antidumping Duty Investigation: Aspheric Ophthalmoscopy Lenses From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether aspheric ophthalmoscopy lenses from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is being materially retarded, by reason of imports from Japan of aspheric ophthalmoscopy lenses. The ITC will make its preliminary determination on or before June 14, 1991. If that determination is affirmative, we will make a preliminary determination on or before October 7, 1991.

EFFECTIVE DATE: May 28, 1991.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or James Terpstra, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-8330 or 377-3965, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On April 30, 1991, we received a petition filed in proper form on behalf of Volk Optical, Inc., a manufacturer of aspheric ophthalmoscopy lenses in the United States. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of ophthalmoscopy lenses 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 Tariff Act of 1930, as amended (the Act), and that there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the

United States is being materially retarded, by reason of imports from Japan of aspheric ophthalmoscopy lenses.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(E) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

U.S. Price and Foreign Market Value

Petitioner based its estimates of U.S. price on actual prices offered to U.S. distributors for several types of aspheric ophthalmoscopy lenses. Petitioner made no adjustments to the F.O.B. factory prices.

Petitioner's estimate of foreign market value is based on actual retail prices offered in Japan for several aspheric ophthalmoscopy lenses. Petitioner reduced the retail price by 25 percent to arrive at the price offered to Japanese distributors. The terms of the Japanese prices were F.O.B. factory; therefore, no deductions were made to the wholesale price.

Based on a comparison of U.S. price and foreign market value, petitioner alleges dumping margins ranging from 0.5 to 158 percent.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of aspheric ophthalmoscopy lenses from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 7, 1991.

Scope of Investigation

The products covered in this investigation are aspheric ophthalmoscopy lenses, which are single element non-contact ophthalmoscopic lenses, whether mounted or unmounted, framed or unframed, of which one or both surfaces are aspherical in shape. The subject merchandise is classifiable under subheading 9018.50.00 of the *Harmonized Tariff Schedule* (HTS). HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by June 14, 1991, whether there is a reasonable indication that an industry in the United States is being materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of aspheric ophthalmoscopy lenses. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: May 20, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-12539 Filed 5-24-91; 8:45 am]

BILLING CODE 3510-DS-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-518 (Preliminary)]

Hand-held Aspherical Indirect Opthalmoscopy Lenses from Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-518 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of hand-held aspherical indirect ophthalmoscopy lenses, provided for in subheading 9018.50.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by June 14, 1991.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and B (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: April 30, 1991.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-252-1185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-251-1000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on April 30, 1991, by Volk Optical, Inc., Mentor, Ohio.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an

entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 21, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–252–1185) not later than May 17, 1991, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 24, 1991, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

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

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 1, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–10853 Filed 5–6–91; 8:45 am]

BILLING CODE 7020–02–M

APPENDIX B

LIST OF PARTICIPANTS IN THE PUBLIC CONFERENCE

CALENDAR OF PUBLIC CONFERENCE

Investigation No. 731-TA-518 (Preliminary)

ASPHERICAL OPHTHALMOSCOPY LENSES FROM JAPAN

Those listed below appeared at the United States International Trade Commission's conference held in connection with the subject investigation at 9:30 a.m. on May 21, 1991, in the Hearing Room (room 101) of the USITC Building, 500 E Street, SW., Washington, DC.

In support of the imposition of antidumping duties

Ulmer & Berne--Counsel
Cleveland, OH, and
Milgrim Thomajan & Lee P.C.--Counsel
Washington, DC
on behalf of

Volk Optical, Inc.

Donald Volk, President, Volk Optical, Inc.
Joan Volk, Vice President, Volk Optical, Inc.
Dr. Felix Barker, Associate Professor, Pennsylvania College of Optometry
Marion Porter, Owner, Progressive Ophthalmic Instruments

Debra R. Shpigler, Esq.--OF COUNSEL
Don Zarin, Esq.--OF COUNSEL

In opposition to the imposition of antidumping duties

Hughes Hubbard & Reed--Counsel
Washington, DC
on behalf of

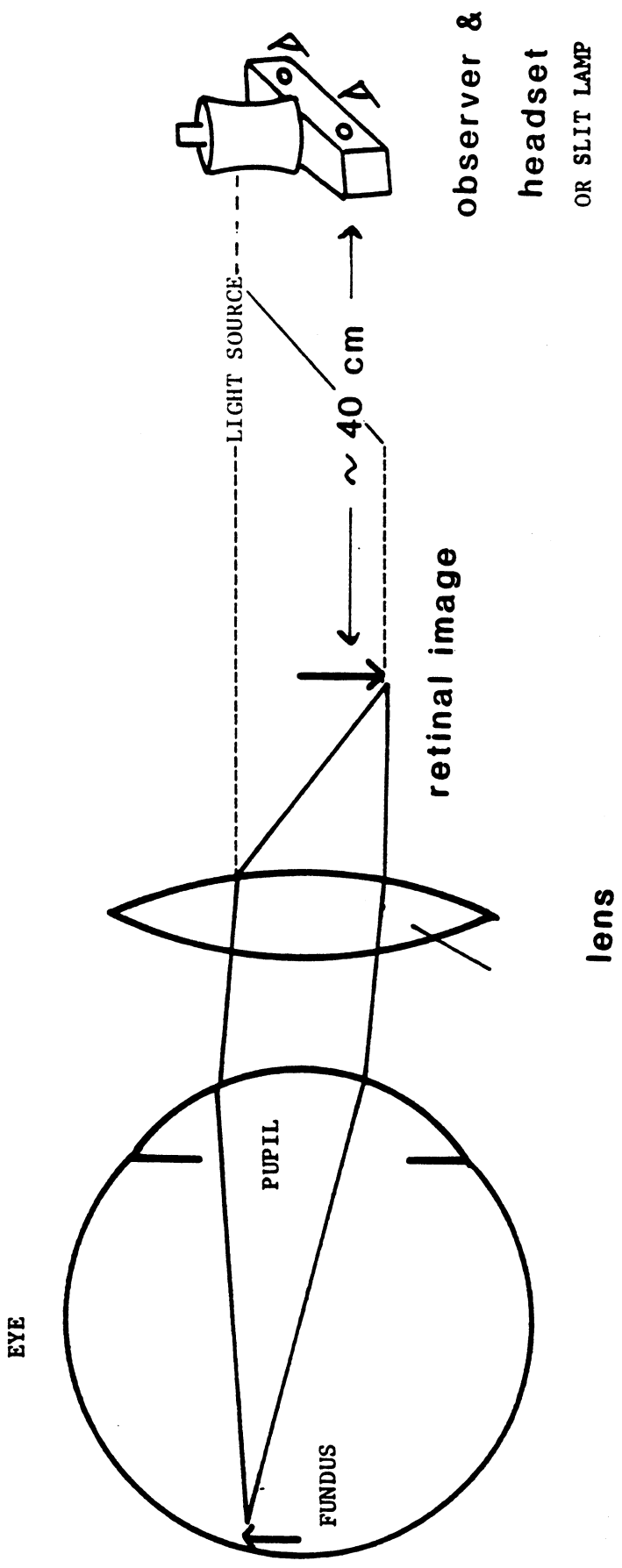
Nikon Corp.

David Henderson, Marketing Manager, Nikon Corp.
Dr. Arol Augsburger, Professor of Clinical Optometry, Ohio State University, College of Optometry

Alan Kashdan, Esq.--OF COUNSEL

APPENDIX C

SCHEMATIC DIAGRAM OF THE SUBJECT PRODUCT'S FUNCTION AND USE


observer &
headset
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lens
EYE
PUPIL
FUNDUS

APPENDIX D
DETAILS OF VOLK'S PRODUCTION PROCESS

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APPENDIX E

COMMENTS RECEIVED FROM VOLK ON THE IMPACT OF IMPORTS OF ASPHERICAL OPHTHALMOSCOPY LENSES FROM JAPAN ON ITS GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, OR EXISTING DEVELOPMENT AND PRODUCTION EFFORTS

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