

ASPHERICAL OPHTHALMOSCOPY LENSES FROM JAPAN

Determination of the Commission in
Investigation No. 731-TA-518
(Final) Under the Tariff Act
of 1930, Together With the
Information Obtained in the
Investigation

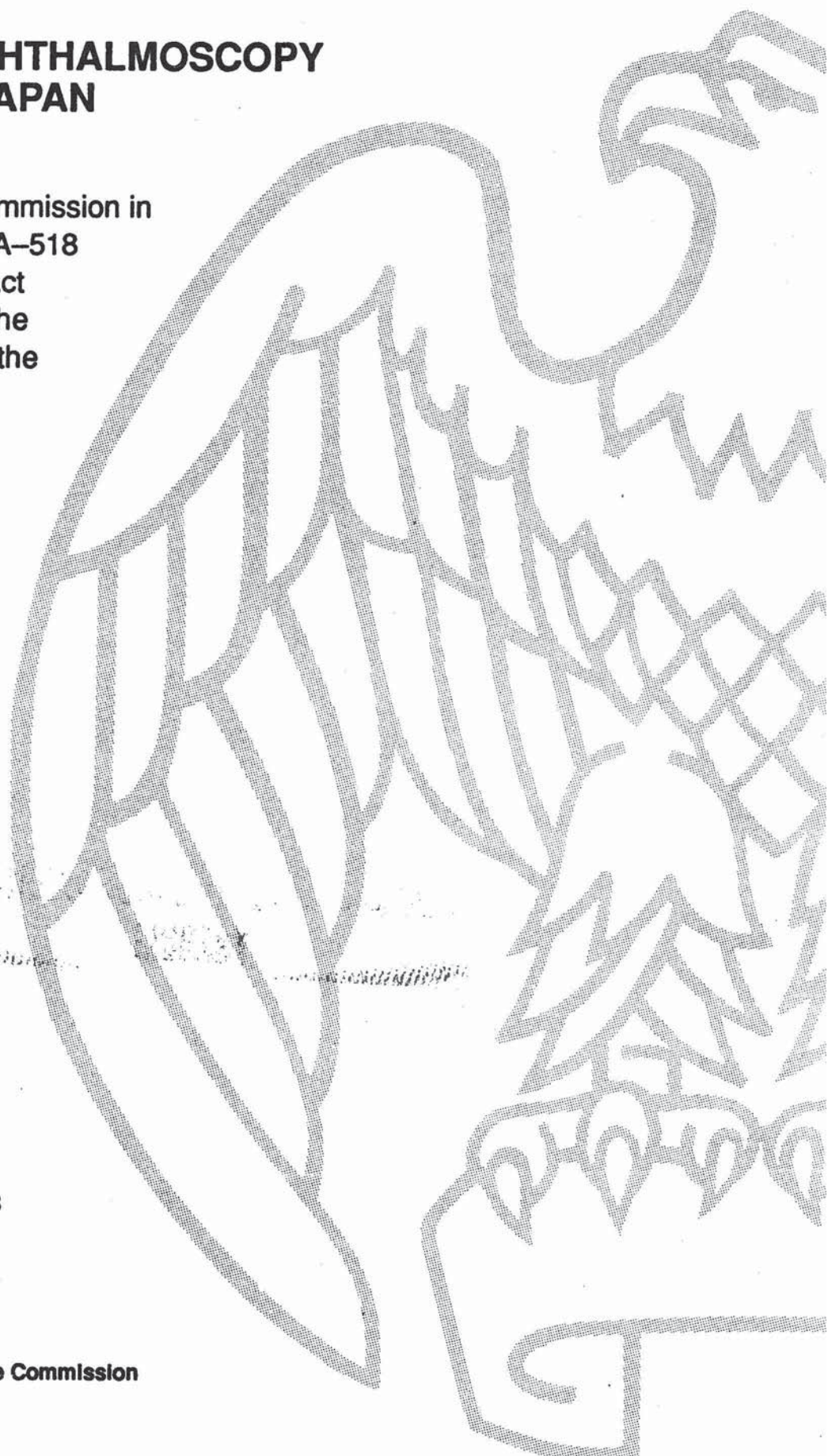
USITC PUBLICATION 2498

APRIL 1992

**United States International Trade Commission
Washington, DC 20436**

ASPHERICAL OPHTHALMOSCOPY LENSES FROM JAPAN

U.S. DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436
APR 1992



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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-518 (Final)

ASPHERICAL OPHTHALMOSCOPY LENSES FROM JAPAN

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is threatened with material injury 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, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective October 15, 1991, following a preliminary determination by the Department of Commerce that imports of aspherical ophthalmoscopy lenses from Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of

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 Vice Chairman Brunsdale and Commissioner Crawford also find that there is present material injury by reason of the subject imports.

November 6, 1991 (56 F.R. 56660). The hearing was held in Washington, DC, on February 26, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF THE COMMISSION

Based on the record in this final investigation, we determine that an industry in the United States is threatened with material injury by reason of imports of aspherical ophthalmoscopy lenses from Japan that have been found by the Department of Commerce ("Commerce") to be sold at less than fair value (LTFV).¹ We further determine that the industry would not have been experiencing material injury but for the suspension of liquidation following Commerce's preliminary determination.²

I. Domestic Industry/Like Product

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, we first must determine the "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 a like product, or those producers whose collective output of the like product constitutes a major proportion of the whole domestic production of that product"³ The term "like product" is defined as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation"⁴

¹ Material retardation is not an issue in this investigation and will not be discussed further.

² 19 U.S.C. § 1673d(b)(4)(B).

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(10). Our determination of what is the appropriate like product or products in an investigation is a factual determination, to which

(continued...)

The Commerce Department has defined the imported products found to be sold at LTFV as:

aspheric ophthalmoscopy lenses, which are single element, non-contact ophthalmoscopy lenses, whether mounted or unmounted, both framed or unframed, of which one or both surfaces are aspherical in shape.⁵

Aspherical ophthalmoscopy lenses are glass optical devices used by optometrists and ophthalmologists in the examination, diagnosis and treatment of the fundus, or posterior portion, of the human eye.⁶ They are designed to be used in conjunction with the two viewing devices -- either a slit lamp biomicroscope or an indirect ophthalmoscope -- which direct a beam of light

⁴(...continued)

we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. 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, price. No single factor is dispositive, and the Commission may consider other factors relevant to a particular investigation. The Commission looks for clear dividing lines among possible like products, and disregards minor variations. See e.g., Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1168, 1170, n.4 and n.8 (CIT 1988); Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (March 1989); 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).

⁵ See 57 Fed. Reg. 6703, 6704 (February 27, 1992). Report at A-6 and A-7. 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 final investigation. The Commission's notice refers to "hand-held" and "indirect" lenses and does not contain the references in Commerce's notice to "framed or unframed" and "mounted or unmounted." The slightly differing text has no practical consequences since the same products are covered in both investigations. See e.g., Algoma Steel Corp. v. United States, 688 F. Supp. 639 (CIT 1988), ("ITC does not look behind ITA's determination, but accepts ITA's determination as to which merchandise is in the class of merchandise sold at LTFV."), aff'd, 865 F.2d 240 (Fed. Cir. 1989); Torrington v. United States, 747 F. Supp. 744 (CIT 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991).

⁶ Report at I-4.

through the lens into the eye for better illumination and variable magnification.⁷

In the preliminary investigation the Commission⁸ concluded that the like product was noncontact aspherical ophthalmoscopy lenses ("AO lenses").⁹ No party has contested the preliminary like product determination in the final investigation, nor is there any evidence in the record of this final investigation that suggests a different conclusion. Therefore, we determine that the like product is noncontact AO lenses, and that the domestic industry consists of the only domestic producer of noncontact AO lenses, Volk Optical, Inc. ("Volk"), the petitioner.

II. Condition of the Domestic Industry

The Commission obtained extensive information concerning the condition of the domestic industry during the period of investigation. Much of this information, however, is business proprietary, as there is only one domestic producer. Therefore, our discussion of the condition of the industry must necessarily be in general terms.

In evaluating the condition of the domestic industry, we consider, among other factors, domestic consumption, domestic production, capacity, capacity utilization, shipments, inventories, employment, market share, factors affecting domestic prices,¹⁰ financial performance, the ability to raise

⁷ Report at I-4.

⁸ Commissioner Crawford, Commissioner Nuzum, and Commissioner Watson did not participate in the preliminary investigation because they were not on the Commission at that time.

⁹ Aspherical Ophthalmoscopy Lenses from Japan, Inv. No. 731-TA-518 (Preliminary), USITC Pub. 2396 at 13 and 14 (June 1991).

¹⁰ Commissioner Rohr notes that price is a factor that affects the condition but is not an indicator of condition itself. Therefore, he does not believe it is appropriate to discuss it at this point in the opinion.

capital, and investment.¹¹ The Commission considers all of these factors in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."¹²

We note that the domestic industry consists of a single, small, family-owned producer devoted exclusively to the production and sale of ophthalmic goods, for whom the like product comprises a substantial portion of its overall business. Therefore, we have considered conditions of competition that are distinctive to a small firm competing in a specialized, relatively high technology field. These conditions include higher risk and a corresponding need for higher rates of return on investment. In particular, we concur with the petitioner's contention that its "financial performance should not be compared to the financial performance of large, publicly held companies."¹³

The U.S. AO lenses market has historically been dominated by imports from Japan (the vast majority of which were Nikon lenses).¹⁴ In the mid-1980s, the U.S. market expanded substantially as government regulations barring optometrists from dilating patients' pupils were lifted, thereby opening up a vast new customer base for AO lenses.¹⁵ Volk's introduction of several new lenses, especially the 90-diopter ("90D") lens in 1985,¹⁶ also

¹¹ 19 U.S.C. § 1677(7)(C)(iii).

¹² 19 U.S.C. § 1677(7)(C)(iii). The issue of a business cycle distinctive to this industry was not raised by any of the parties to this investigation, nor did the Commission receive any information that would indicate the existence of such a cycle.

¹³ Petitioner's Prehearing Brief at 46.

¹⁴ Report at I-7.

¹⁵ Report at I-7. Previously, examinations of the eye by dilating the pupil could be performed only by ophthalmologists.

¹⁶ Dioptric (D) size is an indication of refractive power (magnification) and field of view. Report at I-4.

appears to have expanded the U.S. market.¹⁷ Volk's aggressive marketing of the 90D lens began to erode Nikon's market share¹⁸ and enabled Volk to dominate the large diopter segment of the market. Volk's sales into the other segments of the market also increased, resulting in a significant share of the total market for 1989.¹⁹ After 1989, however, Volk's market share declined.²⁰

From 1988 to 1990, overall apparent U.S. consumption of AO lenses declined by both quantity and value.²¹ Apparent consumption increased significantly in the interim 1991 period (January - September) compared with the interim 1990 period.²² ²³ In contrast, Volk's production of AO lenses increased moderately from 1988 to 1990, but declined in the 1991 interim period when compared to the same period in 1990.²⁴

While domestic production increased slightly from 1988 to 1989, Volk's production capacity remained level, resulting in a marginal increase in

¹⁷ Report at I-7. Several new lenses, particularly larger diopter lenses such as the 60D, 78D and 90D lenses, were introduced to the market for use with the slit lamp biomicroscope. The Pan-Retinal 2.2 and 78D lenses were introduced to the market during the period of investigation.

¹⁸ Report at I-7; Tr. at 12-13, 28, 40, and 42-43. Volk's domestic and export shipments of lenses increased dramatically from 1984 to 1989.

¹⁹ Report at I-7.

²⁰ Report at Table 14, I-19.

²¹ Report at Table 14, I-19.

²² Report at Table 14, I-19.

²³ Chairman Newquist, Commissioner Rohr and Commissioner Crawford note that, under the circumstances of this particular investigation, the interim 1991 data are problematic. Respondent accelerated its end of year shipments into the month of September, thus biasing upwards the 3rd quarter and interim shipment, consumption and market share numbers. Petitioner, on the other hand, made large shipments in October, just outside of the interim period, biasing downward, among other indicators, its production, capacity utilization, shipments, market share, and financial figures relative to its annual performance. Further, the initiation of this investigation in April, and the Department of Commerce's preliminary determination and suspension of liquidation in mid-October, clearly had an effect on the market behavior of the two principal participants in this market, Volk and Nikon. In such circumstances, we do not believe the interim data provide a true measure of the performance of this industry.

²⁴ Report at Table 1, I-9.

capacity utilization from 1988 to 1990.²⁵ Overall, capacity utilization rates remained high for the 1988 to 1990 period.²⁶ With the acquisition of an additional piece of production machinery, however, capacity increased in interim period 1991.²⁷ Both production and capacity utilization declined between interim period 1990 and interim period 1991.²⁸

Domestic shipments increased in 1989 and declined in 1990 to a level below that in 1989.²⁹ However, there was an increase in domestic shipments between interim 1990 and 1991.³⁰ Export shipments followed the same trend.³¹

Domestic inventory holdings were significant in volume and fluctuated with an overall increase from 1988 to 1990.³² Inventories declined, however, between interim periods 1990 and 1991.³³

There are relatively few workers employed in this industry and they are not dedicated to the production of AO lenses. Employment-related data are mixed and we do not accord them great weight.³⁴

While Volk remained profitable overall, its financial performance has declined due to such factors as increasing costs, declining domestic prices,

²⁵ Report at Table 1, I-9.

²⁶ Report at Table 1, I-9.

²⁷ Report at Table 1, I-9. Petitioner explained that "[t]he increase in Volk's non-contact lens capacity indirectly resulted from investment in a lathe for the contact lens business This investment allowed a lathe to be dedicated to non-contact lenses, which significantly reduced 'switchover' downtime, thus increasing effective capacity." Petitioner's Posthearing Brief at 4, n.11.

²⁸ Report at Table 1, I-9.

²⁹ Report at Table 1, I-9.

³⁰ Report at Table 1, I-9.

³¹ Report at Table 1, I-9.

³² Report at Table 1, I-9.

³³ Report at Table 1, I-9.

³⁴ Report at Table 1, I-9.

and declining sales, particularly during 1990.³⁵ ³⁶ For the 1988-1989 period, net sales for the domestic industry increased.³⁷ However, because increases in cost of goods sold and in selling, general and administrative expenses (SG&A) outpaced the net sales increase, both the gross profit and operating income margins declined.³⁸ Net income before taxes, and cash flow, were very positive, however, for the 1988-1989 period.³⁹

Net sales for the domestic industry declined from 1989 to 1990, while the costs of goods sold and SG&A expenses increased as a share of net sales.⁴⁰ ⁴¹

³⁵ Chairman Newquist and Commissioner Rohr note that it is precisely these factors, the volume of sales, prices, and costs, and most importantly the relationships between them, that are the subject of the variance analysis provided in INV-P-041, dated March 26, 1992. They believe that the variance analysis establishes directly the conclusions that the Commission draws inferentially from its analysis of the various profitability margins it has used. In particular, it shows, for the year 1990, a significant negative sales variance, composed of significant negative price and volume variances. It shows that this was offset to a small degree by a positive cost-of-good sold variance, both in costs and volume (noting however, that the small positive cost variance was only half of the preceding year's negative cost variance). The overall negative gross profit variance was significant. This negative gross variance, which was significant in itself, was added to by increased SG&A expenses, reflected in a negative significant SG&A variance, for an overall negative operating income variance.

³⁶ Vice Chairman Brunsdale, Commissioner Crawford, Commissioner Nuzum and Commissioner Watson note that during 1988 and much of 1989, Volk's prices were considerably lower than Nikon's, and the former's market share expanded at the expense of the latter. The financial data for Volk show sustained strong performance for these years. In the third quarter of 1989, however, Nikon brought its prices down to the level of Volk's. Volk subsequently increased its advertising expenditures and marginally decreased its prices in order to maintain market share. Despite these efforts, Volk's market share declined through the remainder of the period of investigation. The strong declines in almost all of Volk's financial performance indicators from 1989 to 1990 reflect the combined price and volume effects of Nikon's substantial price cut. The lower prices and increasing advertising costs contributed to further declines in financial performance from January-September 1990 to January-September 1991.

³⁷ Report at Table 3, I-10.

³⁸ Report at Table 3, I-10.

³⁹ Report at Table 3, I-10.

⁴⁰ Report at Table 3, I-10.

As a result, operating income declined sharply both in absolute terms and as a share of net sales.⁴² While net sales increased between interim periods 1990 and 1991, increases in costs of goods sold and SG&A expenses for that period outpaced increases in net sales, resulting in absolute and relative declines in operating income.⁴³ Although operating income for the domestic industry declined, it has remained positive throughout the period of investigation.⁴⁴

Capital expenditures for machinery and equipment were significant in 1989, and other capital expenditures increased from 1989 to 1990 but declined between the interim periods.⁴⁵ Research and development expenditures declined dramatically between 1988 and 1989, with further decreases for the 1989-1990 period and between interim periods 1990 and 1991.⁴⁶

In sum, the domestic aspherical ophthalmoscopy lenses industry has experienced significant declines but has continued to operate profitably, albeit at declining profit levels. We conclude that such factors as the increases in costs, declining domestic prices, and declines in sales, make this industry vulnerable to the effects of the LTFV imports.^{47 48}

⁴¹(...continued)

⁴¹ Vice Chairman Brunsdale and Commissioner Crawford note that the investigation showed that Nikon's and Volk's lenses of equivalent diopters are largely substitutable, although there is some brand loyalty among the ultimate purchasers of AO lenses. It is hardly surprising then, that the drop in Nikon's price in late 1989 caused the domestic industry's share of the domestic market to decline and to decline most in the market segments where Volk and Nikon produce lenses of identical diopters. See n. 58 *infra*. Volk's reaction to Nikon's move -- to cut its own prices and increase advertising -- led to a decline in its net sales.

⁴² Report at Table 3, I-10.

⁴³ Report at Table 3, I-10.

⁴⁴ Report at Table 3, I-10.

⁴⁵ Report at Table 10, I-15.

⁴⁶ Report at Table 11, I-15.

⁴⁷ Vice Chairman Brunsdale concurs with her colleagues in finding a threat of material injury by reason of LTFV imports, but also finds that it is now being materially injured by the LTFV imports. Her conclusion rests on the large market share Nikon currently holds, and the 158 percent dumping margin the
(continued...)

III. Threat of Material Injury

Section 771(7)(F) of the Tariff Act of 1930 directs the Commission to determine whether a U.S. industry is threatened with material injury by reason of imports "on the basis of evidence that threat of material injury is real and that actual injury is imminent."⁴⁹ The Commission considers as many of

⁴⁷(...continued)

Commerce Department calculated. In her view, the evidence shows that the lenses are of roughly equal quality and that buyers make their choices between lenses of equivalent diopters to a significant degree on the basis of price. She notes that the staff did lower its estimate of the elasticity of substitution between the imported and domestic lenses to about 2. This correlates reasonably well with the actual prices and volumes observed during the period of investigation. She finds Nikon's argument, though made as persuasively as possible, rebutted in the end by the evidence of significant shifts in market share in response to Nikon's 1989 price cut. Nikon's position that lens users are so extraordinarily brand loyal as to ignore relative shifts in lens price and similarities in lens quality is belied as well by the movement of customers between Nikon and Volk even within the market segments each dominates. AO lenses are not perfect commodities, but a major increase in the price of Nikon lenses to what Commerce would consider a fair value would materially benefit Volk. Because Volk is the sole producer of AO lenses in the United States, however, she cannot estimate whether that material benefit would be more likely to come in the form of increased volume or increased price or some combination of the two.

⁴⁸ Commissioner Crawford concurs with her colleagues in finding a threat of material injury by reason of LTFV imports, but also determines that there is current material injury to the domestic industry by reason of LTFV imports from Japan. This present injury determination finds support principally in the declines in market share and profitability for the domestic industry immediately following Nikon's decision in 1989 to lower prices in the United States. As a result of the lower prices for Nikon's lenses, which were sold in the United States at 158 percent dumping margins as calculated by the Commerce Department, a significant number of domestic purchasers shifted from Volk lenses to Nikon lenses in 1990 and 1991. In her view, the magnitude of this shift, and its consequent effect of the financial condition of the domestic industry through loss of sales or profits or both, are sufficient to constitute material injury. The statutory tests for a finding that the industry is threatened with material injury are also met in this case.

⁴⁹ 19 U.S.C. § 1677(7)(F)(ii). While an analysis of the statutory threat factors necessarily involves projection of future events, our determination is not made based on supposition, speculation, or conjecture, but on the statutory directive of real and imminent injury. See e.g., S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); Hannibal Industries Inc. v. United States, 712 F. Supp. 332, 338 (CIT 1989); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1095 (CIT 1988).

the ten statutory factors as are relevant to the particular facts of the investigation.⁵⁰

These factors include: increases in production capacity or existing unused or underutilized capacity in the exporting country that might lead to a significant increase in imports; any rapid increase in U.S. market penetration and the likelihood that the penetration will reach an injurious level; the probability that imports will enter the United States at prices that will have a depressing or suppressing effect on domestic prices; whether there are substantial increases in inventories of the imported products in the United States; and any other demonstrable adverse trends that indicate the probability that the imported products will be a cause of actual injury.⁵¹ The presence or absence of any single threat factor shall not necessarily be dispositive.⁵²

Based on our analysis of the record and these statutory factors, we find that, in light of its vulnerable condition, the domestic industry is threatened with material injury by reason of the LTFV imports. As in our analysis of the condition of the domestic industry, we note that much of the information on the condition and behavior of the foreign producers is business

⁵⁰ 19 U.S.C. § 1677(7)(F)(i).

⁵¹ See 19 U.S.C. § 1677(7)(F)(i)(I)-(X). Several of the statutory threat factors have no relevance to this investigation. Since there are no subsidy allegations, factor I regarding subsidies is not applicable. Also, factor VIII, regarding potential product-shifting from other products covered by antidumping orders to AO lenses, and factor IX, regarding raw and processed agriculture products, are not applicable to the facts of this case. We also must consider whether dumping findings or antidumping remedies in markets of foreign countries against the same class or merchandise suggest a threat of material injury to the domestic industry. 19 U.S.C. § 1677(7)(F)(iii)(I). We received no information about dumping findings against the subject products in foreign markets for us to consider in this investigation.

⁵² See e.g., Rhone Poulenc, S.A. v. United States, 592 F. Supp. 1318, 1324 n. 18 (CIT 1984).

proprietary, as Nikon is the dominant manufacturer of the subject product. Therefore, our discussion of the effects of the subject imports must necessarily be in very general terms.

The volume of Nikon's exports to the U.S. market has been large throughout the period of investigation.⁵³ The U.S. market is extremely important to Nikon since it accounts for a substantially larger share of Nikon shipments than its home or other markets.⁵⁴ While Nikon's shipments in quantity to the U.S. market remained level for the 1988-1990 period, these shipments as a share of U.S. apparent consumption have increased since 1989.⁵⁵ Between interim periods 1990 and 1991, market penetration by Nikon's exports has increased even more substantially both in market share and in quantity.^{56 57 58}

⁵³ Report at Table 12, I-18.

⁵⁴ Report at Table 12, I-18.

⁵⁵ Report at Tables 12 and 14, I-18 and I-19.

⁵⁶ Report at Tables 12 and 14, I-18 and I-19.

⁵⁷ Chairman Newquist, Commissioner Rohr and Commissioner Crawford note that similar to the domestic data, they do not place any great reliance on the overall interim data.

⁵⁸ Any analysis of market share in this industry must also take into consideration the introduction of new products which appear to have significantly affected the market. Some products were directed to new market niches, but may have displaced sales of existing lenses from both companies while also creating entirely new demand of their own.

In the large diopter market, which included the 60D, 78D, and 90D lenses, Volk consistently lost market share to Nikon, particularly after Nikon's 1989 price decrease. The declines were even greater when one examines head-to-head competition in 60D and 90D lenses, compared to Volk's 78D lenses, which faced no direct competition from Nikon.

In the smaller diopter markets, market shares followed a pattern more similar to the overall market shares. Aggregating all small diopter products, Volk recorded substantial market share gains from 1988 to 1989 and then lost almost as much between 1989 and 1990. The most important of the small diopter products is the 20D lenses. At least two new Volk products also compete to some extent with the 20D lenses, in particular the 24D and Pan-Retinal 2.2. In overall competition, including the new products, Volk gained significant market share between 1988 and 1989 before losing most of that increased share in 1990. In head-to-head competition between 20D lenses, Volk gained little

(continued...)

At the same time, Nikon increased production capacity substantially in 1989.⁵⁹ This increase in capacity combined with declines in shipments to home and non-U.S. markets has resulted in substantially declining capacity utilization rates.⁶⁰ Thus, Nikon has a strong incentive, because of high and increasing excess capacity, to export a large and increasing share of output to the U.S. market. With respect to the ability and likelihood of Nikon's increasing its exports to the United States, we note that between interim periods 1990 and 1991, Japanese home market shipments have significantly decreased.⁶¹ In addition, Nikon's exports to non-U.S. markets, which were considerably smaller than even home market shipments, declined for the 1988-1990 period and between interim periods 1990 and 1991.⁶²

Since AO lenses have been imported for specific orders, inventory levels for imports traditionally have been low. However, during the 1988-1990 period, inventories of imports in the United States have increased substantially despite an overall decline in shipments by quantity.⁶³ U.S. inventories of the subject imports decreased between interim periods 1990 and 1991 but import shipments increased.⁶⁴ Nikon's inventories in Japan are significantly higher than its home market shipments. In short, Nikon has the capacity to make and ship substantially more lenses to the United States.

⁵⁸(...continued)

market share between 1988 and 1989 before losing a substantial share in 1990.

The market share analysis clearly demonstrates that the Nikon price decrease had a substantial effect on Volk's sales. It also highlights the importance to Volk of being able to introduce new products, an ability that is undermined by declining profitability on existing product lines.

⁵⁹ Report at Table 12, I-18.

⁶⁰ Report at Table 12, I-18.

⁶¹ Report at Table 12, I-18.

⁶² Report at Table 12, I-18.

⁶³ Report at I-17.

⁶⁴ Report at I-17.

In the third quarter of 1989, Nikon drastically cut prices of its products sold in the U.S. market.⁶⁵ This increased its share of the market at the expense of Volk. We note that overall demand for AO lenses does not increase very much in response to a decrease in price. Further, although brand loyalty does exist, the record shows that a significant fraction of AO lens buyers switched from one company to another when Nikon's price decrease narrowed the difference between the two companies' prices. Nikon's price reduction also depressed or suppressed domestic prices as Volk cut its prices for the remainder of the period of investigation.⁶⁶ There also is evidence on the record that the domestic industry cancelled planned price increases.⁶⁷ Thus, we conclude that, despite a lack of significant underselling by imports, the presence of Nikon's LTFV imports has, and without an antidumping order will continue to have, a negative effect on Volk's ability to sell more lenses or charge higher prices or both.^{68 69}

⁶⁵ Report at Tables 15-17, I-22.

⁶⁶ Report at Tables 15-17, I-22. Volk and Nikon both sell AO lenses on the basis of published price lists, subject to quantity discounts. Report at I-19. At the hearing, a U.S. distributor of both Volk's and Nikon's AO lenses described Nikon's discount pricing policies as follows:

While Nikon initially imposed quantity requirements when it dropped its prices in August of '89, the company has on occasion done away with this requirement in order to encourage smaller dealers to purchase Nikon lenses. In addition, dealers were permitted to purchase lenses at the best discount price level by staging deliveries over a five- to six-month period with payment remitted upon delivery. Thus, many Nikon dealers can purchase a Nikon product at the lowest price offered. As a result, Nikon has a significant price advantage over Volk on sales to smaller dealers.

Tr. at 44.

⁶⁷ Petitioner's Postconference Brief at Appendix 2.

⁶⁸ 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."); Florex v. United States, 705 F. Supp. 582, 593 (CIT 1989) ("injury (continued...)

Volk contended that its loss in market share to date has resulted in a drastic drop in Volk's research and development expenditures for the non-contact lenses and that "all other investment in the non-contact lens business," including investment in derivative products, has been postponed.⁷⁰ Volk argues that a further drop in price or loss of market share will cause it material injury.⁷¹

We agree. Given the relative size of the demand for lenses in the Japanese and third country markets, there is a strong incentive for Japanese producers to export to the United States. There is also a real prospect that the volume of Japanese shipments to the United States will increase even from their already high historic levels. The only way this could happen is by

⁶⁸(...continued)

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 (CIT 1985) ("the Canadian imports, notwithstanding their higher price, could theoretically have had a price suppressing effect on domestic prices. . .").

⁶⁹ In the preliminary determination, the Commission rejected Nikon's argument that the doctrine of technical dumping was an absolute defense. Also despite respondent's contentions in this investigation, the Commission did not reject price underselling as a factor considered by the Commission in making a determination. In Electrolytic Manganese Dioxide from Greece and Japan, the Commission rejected the doctrine of "technical dumping" as an absolute defense in light of the explicit language of the statute as enacted in 1979. The Commission indicated that the lack of underselling by importers does not by itself mandate a negative determination because the statute indicates that price suppression or depression may exist even without underselling, and that "volume effects and impact factors, even without significant price undercutting or significant price suppression or depression" may provide adequate support for an affirmative determination. Electrolytic Manganese Dioxide from Greece and Japan, Inv. Nos. 731-TA-406 and 408 (Final), USITC Pub. 2177 at 21-22 and at 48 (April 1989).

⁷⁰ Petitioner's Prehearing Brief at 68 and 69.

⁷¹ Petitioner's Prehearing Brief at 64. We note that, the replacement market is significant and, given the degree of brand loyalty on the part of some customers, the loss of market share by Volk in 1990 and in interim 1991 suggests that the petitioner will also lose a portion of future replacement sales. Also, Nikon's price cuts threaten Volk's sales to ophthalmology and optometry students, whose purchasing decisions are particularly sensitive to price.

continued price-cutting. As we have already discussed, the depressed domestic prices combined with increased costs have made the domestic industry particularly vulnerable to the threat posed by LTFV imports. The domestic industry's research and development expenditures have already declined drastically. Capital expenditures on machinery and equipment have already stopped. The industry has already suffered declining cash flows in 1990 and between the interim periods of 1990 and 1991.⁷² We find that the price and volume effects of future LTFV imports would be to severely erode domestic sales, thereby impeding the industry's ability to fund capital expenditures and research and development. Based on our analysis of the statutory factors, we therefore have concluded that the domestic industry is threatened with material injury by reason of LTFV imports from Japan.

IV. Effect of Suspension of Liquidation of Entries

In accordance with 19 U.S.C. § 1673d(b)(4)(B), we must make an additional finding as to whether material injury by reason of subject imports would have been found but for the suspension of liquidation of entries of such imports. The but for finding is required so that Commerce may impose dumping duties as of the appropriate date. Suspension of liquidation occurred in this investigation as of October 15, 1991, the date of Commerce's preliminary affirmative determination.⁷³ There was an insignificant volume of imports after the date of suspension of liquidation. We do not find that, had there not been suspension of liquidation, the domestic industry would be materially injured by reason of subject imports.

⁷² Volk contended that the return on investment necessary to remain competitive in this industry "has to be over 20 percent." Tr. at 49.

⁷³ 56 Fed. Reg. 51680 (October 15, 1991).

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

Following a preliminary determination by the U.S. Department of Commerce (Commerce) that imports of aspherical ophthalmoscopy lenses¹ from Japan are being, or are likely to be, sold in the United States at less than fair value (LTFV) (56 F.R. 51680), the U.S. International Trade Commission (Commission), effective October 15, 1991, instituted investigation No. 731-TA-518 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's investigation and of a public hearing 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 November 6, 1991 (56 F.R. 56660) and on January 23, 1992 (57 F.R. 2783).² The hearing was held in Washington, DC, on February 26, 1992.³

Commerce's final LTFV determination was published on February 27, 1992 (57 F.R. 6703). The Commission voted on this investigation on March 31, 1992, and transmitted its final injury determination to Commerce on April 6, 1992.

BACKGROUND

This investigation results from a petition filed by Volk Optical, Inc., Mentor, OH, on April 30, 1991, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of aspherical ophthalmoscopy lenses from Japan. In response to that petition the Commission instituted investigation No. 731-TA-518 (Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) and, on June 14, 1991, determined that there was a reasonable indication of such material injury. Aspherical ophthalmoscopy lenses have not been the subject of any other investigation conducted by the Commission.

NATURE AND EXTENT OF THE SALES AT LTFV

On October 15, 1991, the Department of Commerce published in the Federal Register its preliminary determination that imports of aspherical ophthalmoscopy lenses are being, or are likely to be, sold at LTFV. Commerce made its final determination that imports of the subject product are being, or are likely to be, sold at LTFV, effective February 27, 1992.

¹ Aspherical ophthalmoscopy lenses are single-element non-contact ophthalmoscopy lenses, whether mounted or unmounted, framed or unframed, of which one or both surfaces are aspherical in shape, as provided for in subheading 9018.50.00 of the Harmonized Tariff Schedule of the United States (HTS).

² Copies of cited Federal Register notices are presented in app. A.

³ A list of witnesses who appeared at the hearing is presented in app. B.

Commerce determined that the questionnaire responses of Nikon provided an inadequate basis for estimating dumping margins. Accordingly, Commerce used the best information available (the highest margin alleged in the petition) to estimate the amount by which the foreign market value of the subject merchandise exceeded the U.S. price, which was 158 percent for Nikon and for all other manufacturers/producers/exporters (including Topcon).

THE PRODUCT

Description and Uses

The imported articles subject to the petitioner's complaint--aspherical ophthalmoscopy lenses--are single glass non-contact lenses, one or both sides aspherical in shape,⁴ mounted or unmounted in a frame (usually of aluminum),⁵ and made for purposes of examining and treating the fundus, or posterior portion, of the human eye.⁶ 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 table-top 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 binocularly, i.e., with both eyes simultaneously. While the subject lens is held close to the patient's eye, either by hand or by a mounting device, 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.⁷ 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

⁴ Aspherical surfaces have a variable radius of curvature, as opposed to spherical surfaces, which have a constant radius of curvature.

⁵ All of the subject imports to date have been mounted in aluminum frames, the largest being about 2 inches in diameter.

⁶ The Commerce description of scope differs slightly from the Commission's description of the articles subject to investigation. The Commission's notice of institution of this final investigation describes the subject product as: "hand-held aspherical indirect ophthalmoscopy lenses." The slightly different language has no practical consequences since both investigations cover the same products.

⁷ See app. C for a schematic diagram of the subject product's function and use.

ranging from 14D to 40D for use with the head set⁸ and from 60D to 90D for use with the slit lamp.⁹ 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 diameter allows for less field of view but more ease in handling) and its 60D and 90D lenses in two 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 60D and 90D lenses for this purpose. Volk also produces a separate yellow filter to be used with the slit lamp. 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 occur 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. In the preliminary investigation, the Commission decided not to include contact lenses in the like product.¹⁰ Unlike the subject product, contact lenses consist of two lens elements, a plastic contact element and a glass non-contact element, both of which are aspherical in shape. The plastic contact element is convex on one surface and concave on the other surface. It is designed to come into direct contact with the eye and is thus more tedious to use. Contact fundus lenses require a more complicated and exacting production process; Volk dedicates separate equipment and facilities for this purpose. The contact lenses utilize glass elements that are denser and have different optical characteristics than those of the aspherical ophthalmoscopy lenses, and they are 2 to 3 times more expensive. Contact lenses are more appropriate for more detailed or specialized evaluations or when laser treatment is required. For this reason they often supplement, but rarely replace, the subject product in

⁸ 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.

⁹ The lenses manufactured by Volk for the slit lamp are 60D, 78D, and 90D. Nikon manufactures 60D and 90D lenses only.

¹⁰ Aspherical Ophthalmoscopy Lenses from Japan, Inv. No. 731-TA-518 (Preliminary), USITC Pub. 2396 at p. 13 (June 1991).

examinations. Data collected on contact lens production, shipments, employment, and profitability are presented at appendix E.¹¹

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 under item 709.05 of the former Tariff Schedules of the United States, a subheading covering ophthalmic instruments and accessories. 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.¹² Dr. David Volk, who 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. The share of non-subject product lenses has accounted for an increasing share of Volk's total lens production during the last 3 years.

U.S. IMPORTERS

Three firms import the subject product into the United States: Nikon Inc. (Nikon USA), Melville, NY, a subsidiary of Nikon;¹³ Topcon Instrument Corp. of America (Topcon America), Paramus, NJ, which imports lenses manufactured by its parent company, Topcon, Ltd., Japan; and Carl Zeiss, Inc., Thornwood, NY, which imports lenses manufactured by its parent company, Carl

¹¹ Given Commerce's definition of aspherical ophthalmoscopy lenses subject to investigation, an importer raised some concern with Commerce about whether the glass elements used to manufacture contact lenses are included in the subject merchandise. Commerce has not yet ruled on whether to include such glass elements in the scope of the subject imports' definition. This issue has not been raised by any importer regarding the like product definition in the Commission's investigation. However, data regarding the production, shipments, employment, and imports of these glass elements are shown in app. F.

¹² One other firm in addition to the petitioner--Ocular Instruments, Inc., Bellevue, WA--produces contact fundus lenses in the United States. It purchases its glass elements for contact lens manufacture from ***.

¹³ Imports of the subject product are received at their facility in Torrance, CA.

Zeiss, GmbH, Oberkochen, Germany.¹⁴ Nikon accounts for the vast majority of imported lenses, which are usually imported in response to customer orders, and to which no value is added.

U.S. MARKET AND CHANNELS OF DISTRIBUTION

Over *** of the aspherical ophthalmoscopy lenses manufactured in or imported into the United States are sold to ophthalmic instrument distributors; however, the portion of sales to distributors and end users varies slightly with supplier. ***.

The distributors sell to ophthalmologists, optometrists, and students of these disciplines located throughout the country. Student purchases account for about 10 to 20 percent of the U.S. market, and the replacement market for lenses is small.¹⁵ 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.

The U.S. market appears to have expanded substantially in the mid-1980s, as regulations relaxed to allow optometrists to dilate patient's pupils, thereby opening up a vast new customer base for aspherical ophthalmoscopy lenses. In addition, the introduction of the 90D lens to be used with the slit lamp in the mid-80s appears to have expanded the U.S. market.¹⁶

Petitioner alleges that from the 1960s to mid-1980s, Nikon dominated the U.S. market for lenses. Beginning in 1985, Volk began an aggressive marketing campaign for its new 90D lens, and steadily gained market dominance from Nikon.¹⁷ From 1990 to 1991, however, Nikon's market share increased at the expense of Volk's.

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. The market for the lower diopter ranges has generally been dominated by Nikon. Volk has mainly concentrated its sales in higher diopter ranges. The following tabulation of the distribution of shipments during the period of investigation illustrates this point:

* * * * * * *

Whereas the number of yellow lenses sold declined during the period of investigation, the number of yellow filters sold increased during the same

¹⁴ The glass elements for manufacturing contact lenses are imported by ***.

¹⁵ Transcript of hearing, pp. 210-211.

¹⁶ Transcript of hearing, p. 204.

¹⁷ Transcript of hearing, pp. 12-13, 28, 40, and 42-43. Volk's domestic and export shipments of lenses increased dramatically from 1984 to 1989. Its total shipments for each year were: ***. Volk's posthearing brief, Appendix 1, p. 14.

period. Yellow lenses accounted for ***. Volk's sales of yellow filters (to be used on the slit lamp itself) ***.

CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

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

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 *** (less holidays), Volk's annual capacity remained at nearly *** subject lenses from 1988 through 1990. Reported capacity increased by almost *** from January-September 1990 to January-September 1991 ***. Production levels increased by *** from 1988 to 1990, reflecting an increase in orders and shipments in 1989, but decreased by *** between the interim periods, allowing for a decline in inventories as shipments increased.

Except in January-September 1991, changes in capacity utilization reflect changes in production. In January-September 1991 capacity increased while production declined, resulting in a decline in capacity utilization of about *** from the corresponding period of the previous year. The company reported ***.

The trends in Volk's domestic shipments were irregular, increasing from 1988 to 1989, then decreasing from 1989 to 1990, for an overall decrease during 1988-90. The *** increase in domestic shipments in January-September 1991 compared to January-September 1990 was in part a response to filling a backlog of previous orders, and resulted in inventory declines. Volk's exports of the subject product were substantial, accounting for *** of its total shipments of aspherical ophthalmoscopy lenses during 1990. Inventory levels fluctuated inversely with shipment levels, as shown in table 1.

Table 1

Aspherical ophthalmoscopy lenses: Volk's production, average capacity,¹ 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-September 1990, and January-September 1991

* * * * *

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 that 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.

Financial Experience of U.S. Producers

Volk supplied financial information on its overall establishment operations and on its operations producing the subject lenses. The closely-held corporation has a single plant in Mentor, OH, and is effectively owned and operated by Donald and Joan Volk. Besides the subject lenses, it produces other lenses (most notably contact fundus lenses introduced in 1988) and lens accessories.

Volk's fiscal year ends March 31; data for fiscal years ending March 31, 1989, 1990, and 1991 are presented as 1988, 1989, and 1990 data, respectively. ***.

The company's data were verified by the Commission. ***.

Overall Establishment Operations

Income-and-loss data on Volk's overall establishment operations are presented in table 2. Net sales value increased about *** from *** in 1988 to *** in 1989, primarily because of increased sales of the subject lenses. *** (a detailed discussion of SG&A expenses is included in a subsequent section).

Table 2

Income-and-loss experience of Volk on the overall operations of its establishment wherein aspherical ophthalmoscopy lenses are produced, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * *

Net sales value increased another *** in 1990, *** Volk's gross profit margins increased. Overall SG&A expenses increased *** however, *** and therefore only *** of the ***. Nonetheless, operating and net income levels were up sharply from the previous year.

With respect to interim 1991 as compared to interim 1990, net sales were virtually unchanged ***, resulting in an approximate *** decrease in operating profits.

Other income, which has become an increasingly larger portion of net income, is primarily ***.

Operations on the Subject Lenses

Volk's income-and-loss data on its subject lens operations are presented in table 3. Net sales value increased about *** from *** in 1988 to *** in 1989, driven by a *** increase in sales quantities. ***, SG&A expenses increased ***. As a result, while the dollar value of both operating and net incomes were virtually unchanged, both decreased *** on a per-unit basis.

Table 3

Income-and-loss experience of Volk on its aspherical ophthalmoscopy lens operations, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * *

Net sales decreased *** in 1990 due to the combined effect of a *** decrease in sales quantities and a *** decrease in per-unit sales prices (Volk cuts its prices in late 1989 to stimulate sales, and fiscal 1990 was the first full year the effect was felt). Cost of goods sold remained at about *** per unit, but SG&A expenses increased another ***, and had now *** (both on an absolute and per-unit basis) since 1988. Accordingly, operating and net income declined sharply.

Comparing interim 1991 data to interim 1990 data is much like comparing 1989 data to 1988 data. Net sales increased *** due to a *** increase in sales quantities and a small decrease in per-unit sales prices. Cost of goods sold remained essentially unchanged on a per-unit basis, leading to a *** increase in gross profits. Again, SG&A expense had a large *** increase, and therefore operating profits and net profits decreased *** on a dollar basis and about *** on a per-unit basis.

Export sales represented a substantial and increasing portion of Volk's sales. Based on shipment data, *** of Volk's 1990 sales quantities and *** of its sales value were from export sales. Interim 1991 figures indicate both measures increased by about *** percent. While unit values of domestic sales fell from about *** in 1988 to *** in interim 1991, such values for export sales increased from *** to ***.

SG&A Expenses

As previously discussed, Volk's SG&A expenses have increased substantially. These expenses *** from 1988 to 1990, and increased well over *** from the first nine months of 1990 to the first nine months of 1991. Table 4 breaks out the major components of this expense for Volk's overall

establishment and table 5 does the same for the SG&A expenses allocated to the subject lenses.

Table 4

Volk's SG&A expenses for its overall establishment operations wherein aspherical ophthalmoscopy lenses are produced, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * *

Table 5

Volk's SG&A expenses for its aspherical ophthalmoscopy lens operations, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * *

As shown in table 4, the two categories which had the largest dollar increases from 1988 to 1990 and from interim 1990 to interim 1991 were legal & accounting, and advertising (which includes trade shows and conventions). Legal fees made up the majority of the first category, as accounting fees were ***.

***.

Advertising expenses (brochures, flyers, publication space) make up the bulk of the second category and accounted for the overwhelming share of the increased expenses within the category. Volk does not expect the sudden increase in sales and profits from the contact fundus lens to continue. The company believes that particular type of lens is more suitable for specialized examinations, and will not supplant sales of the subject lens. The subject lens is Volk's main product, and the company maintains that increased advertising expenditures are simply a necessary business decision to promote it in view of decreasing sales. Hence, it has increased its advertising in brochures and trade publications and increased marketing expenditures.

The remaining categories combined--wages and fringes and all other--experienced large percentage increases from 1988 to 1990 and from interim 1990 to interim 1991. Depreciation expense, officer's wages, and general office expenses made up the bulk of the increases. However, the increased costs of these two categories combined amounted ***.

Relative Financial Condition of Volk

In investigations where there is only one U.S. producer it is often difficult to gauge overall financial results since there are no direct comparisons (i.e., other U.S. producers). It is even more difficult to evaluate large changes in individual cost components, such as, in this case, SG&A expenses. For comparison, table 6 shows profit-and-loss information for manufacturers of ophthalmic goods (SIC 3851) as a percent of net sales. Although exact comparisons are not possible, it is nonetheless informative to compare the data in table 6 with Volk's data in tables 2 and 3. For instance,

the data suggest that Volk has a significantly higher profit margin than comparable firms. The data also suggest that Volk's increased SG&A expenses are now closer to industry norms than they were a few years ago. Perhaps most importantly, Volk's operating and net income levels are considerably higher than those for the larger group of companies.

Table 6

Income-and-loss experience of U.S. manufacturers of ophthalmic goods, fiscal years ended June 30, 1988, to March 31, 1989; June 30, 1989, to March 31, 1990; and April 1, 1990, to March 31, 1991

(In percent of net sales, except as noted)			
Item	Fiscal years ending--		
	6/30/88 to 3/31/89	6/30/89 to 3/31/90	4/1/90 to 3/31/91
Cost of goods sold.....	60.4	55.4	61.2
Gross profit.....	39.6	44.6	38.8
Selling, general, and administrative expenses..	36.1	38.2	32.6
Operating income	3.5	6.4	6.2
Net income before income taxes.....	2.5	5.4	5.3
Number of firms reporting..	45	42	39

Source: Robert Morris and Associates Annual Statements and Studies, 1991 edition.

Volk's manufacturing costs on the subject lenses (table 7) increased and then decreased moderately from 1988 to 1990, mirroring the rise and fall in per-unit cost of goods sold in table 3. On a per-unit basis, these two costs were *** of each other, an indication of low inventory levels and/or stable manufacturing costs. Even though inventory levels approximated *** of production for 1988 and 1990, manufacturing costs have been stable for several years. This cost stability has in turn flowed through to cost of goods sold.

Table 7

Volk's per-unit manufacturing costs for its aspherical ophthalmoscopy lens operations, fiscal years 1988-90

* * * * *

As previously mentioned, Volk is a closely-held corporation. In such a case, the total compensation can take many forms, such as salary, rent, commissions, dividends, etc. The following tabulation details all sums paid to all shareholders for the last 3 full fiscal years:

* * * * *

***.

Financial Condition of Volk

Volk's balance sheets for its overall establishment for the past 3 fiscal years are presented in table 8. As the table indicates, Volk's overall financial condition improved measurably from 1988 to 1990. Assets rose markedly, principally because of large increases in cash and cash equivalents, inventory, and property, plant, and equipment. Volk's liabilities were relatively insignificant during the same period, and therefore its retained earnings increased commensurately with assets. ***.

Table 8

Volk's overall establishment assets, liabilities, and stockholders' equity as of the end of fiscal years 1988-90

* * * * *

In order to analyze the financial condition of Volk, selected financial ratios of the company are being presented. When the firm's performance is compared to "industry norms" and to "upper quartile of industry," it is a reference to data on manufacturers of ophthalmic goods (SIC 3851) in the 1991 edition of Robert Morris Associates' Annual Statement Studies. Industry norms refer to the midpoint of all companies responding to the survey, and upper quartile refers to the midpoint of the upper half of all companies responding.

The current ratio is computed by dividing total current assets by total current liabilities. It 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) are 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, as shown in the following tabulation:

	<u>1988</u>	<u>1989</u>	<u>1990</u>
Volk's current ratio.....	***	***	***
Industry norms.....	1.5	1.6	1.8
Upper quartile of industry..	2.6	2.7	2.8

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. This 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, as shown in the following tabulation:

	<u>1988</u>	<u>1989</u>	<u>1990</u>
Volk's quick ratio.....	***	***	***
Industry norms.....	0.9	0.8	0.9
Upper quartile of industry..	1.4	1.4	1.5

The inventory turnover is computed by dividing the cost of goods sold by the year-end 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 for the subject lenses 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 production increased while sales decreased, 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, as shown in the tabulation below:

	<u>1988</u>	<u>1989</u>	<u>1990</u>
For the subject lenses:			
Volk's inventory turnover.....	***	***	***
Days.....	***	***	***
For the overall establishment:			
Volk's inventory turnover.....	***	***	***
Days.....	***	***	***
Industry norms (turnover).....	4.9	4.5	7.2
Upper quartile of industry.....	9.9	7.9	10.8

Net sales divided by total assets is a general measure of a company's ability to generate sales in relation to total assets. Generally, the higher the ratio the better. As shown in the tabulation below, Volk's ratios are low compared to similar companies, but this may be because of the company's strong balance sheet.

	<u>1988</u>	<u>1989</u>	<u>1990</u>
Volk's ratio of net			
sales to total assets.....	***	***	***
Industry norms.....	2.5	2.4	2.6
Upper quartile of industry..	3.1	3.0	3.2

Pre-tax profit as a percentage of total assets is a key indicator of the profitability of a firm. It matches profits with the assets available to earn a return. Companies efficiently using their assets will have a relatively high return while less well-run businesses will have a relatively low return. Volk's pre-tax profit as a percentage of total assets is shown in the tabulation below:

	<u>1988</u>	<u>1989</u>	<u>1990</u>
Volk's ratio of profits			
before income taxes			
to total assets.....	***	***	***
Industry norms.....	5.1	7.5	9.2
Upper quartile of industry..	11.5	16.1	17.7

In summary, Volk's financial ratios indicate strong liquidity and financial strength for its overall operations.

Investment in Productive Facilities and Return on Assets

Volk's investment in productive facilities and return on assets are shown in table 9.

Table 9

Volk's value of assets and return on assets as of the end of fiscal years 1988-90 and as of September 30, 1990 and 1991

* * * * *

Capital Expenditures

Volk's capital expenditures are shown in table 10. The firm's outlays were up sharply in 1989 and 1990 primarily ***.

Table 10

Volk's capital expenditures, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * *

Research and Development Expenses

The research and development expenditures of Volk are shown in table 11.

Table 11

Volk's research and development expenses, fiscal years 1988-90, January-September 1990, and January-September 1991

* * * * *

Capital and Investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of aspherical ophthalmoscopy lenses from Japan on their firms' growth, investment, ability to raise capital, and/or development and production efforts. Volk's response is shown in appendix G.

CONSIDERATION OF THE QUESTION OF THREAT OF MATERIAL INJURY

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

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant factors¹⁸--

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

¹⁸ 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 title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both), and

(X) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the like product.¹⁹

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 imports of the subject merchandise 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 the section entitled "Consideration of material injury to an industry in the United States." Available information on U.S. inventories of the subject products (item (V)); foreign producers' operations, including the potential for "product-shifting" (items (II), (VI), and (VIII)); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets, follows. Other threat indicators have not been alleged or are otherwise not applicable.

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. During 1988-90, inventories have increased despite an overall decline in shipments. As Nikon USA's shipments in the United States declined by *** from 1988 to 1990, its inventories increased ***. From January-September 1990 to January-September 1991, shipments *** while inventories decreased ***. ***.

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 12. In 1989 *** its

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

capacity from about *** lenses to about *** lenses per year.²⁰ Utilization rates declined steadily throughout the period for which data were gathered. After remaining relatively constant from 1988 to 1990, its total shipments increased by *** from January-September 1990 to January-September 1991. Total exports, which accounted for the bulk of shipments during 1988-90, declined from 1988 to 1990, and increased by *** percent from January-September 1990 to January-September 1991. The United States accounted for a generally increasing share of those exports, as shown in table 12. Nikon's projections for 1991 reveal similar trends as its interim 1991 data. Nikon reports that it has no current plans to add, expand, curtail, or shut down capacity in the foreseeable future.

Table 12

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

* * * * *

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

Imports

Japan and Germany are the United States' only known suppliers of foreign-made aspherical ophthalmoscopy lenses (table 13). Japan is by far the predominant source. Germany's share of total imports was ***. From 1988 to 1990, imports from Japan declined by ***. From January-September 1990 to January-September 1991, however, the subject imports increased by ***.

Table 13

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

* * * * *

U.S. Consumption and Market Penetration

After increasing by *** from 1988 to 1989, apparent U.S. consumption declined in 1990 to a level that was *** below that in 1988 (table 14). From January-September 1990 to January-September 1991, consumption increased ***.

²⁰ Nikon's intent was to increase capacity slightly in 1989; however, the minimum grinding machine capability it could purchase had the result of greatly increasing capacity. Transcript of hearing, p. 220.

Table 14

Aspherical ophthalmoscopy lenses: Apparent U.S. consumption and shares thereof supplied by U.S. producer shipments, shipments of imports from Japan, and shipments of imports from Germany, 1988-90, January-September 1990, and January-September 1991

* * * * * * *

As a share of consumption, imports from Japan increased, albeit irregularly, from *** in 1988 to *** in 1990. Their share in January-September 1991 was *** greater than in January-September 1990.

Prices

Market Characteristics

Volk and the primary importer, Nikon, both sell aspherical ophthalmoscopy lenses on the basis of published price lists, subject to quantity discounts. ***.

* * * * * * *

During January 1989-December 1991, Volk's sales to its 10 largest distributors *** percent of Volk's total aspherical ophthalmoscopy lens sales.²¹

Nikon also sells most of its lenses to distributors at prices specified in its price lists.²² However, unlike Volk, Nikon's quantity discounts only correspond to the size of current individual transactions and are not based on the total quantity of lenses purchased during the previous year.²³ ***.

* * * * * * *

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 a very small percentage of the total delivered cost of a lens ***. Volk and Nikon sell in all regions of the United States, and reported similar lead times between a customer's order and the date of delivery. ***.

The Commission received questionnaire responses from *** purchasers of aspherical ophthalmoscopy lenses. Nearly all of the purchasers are distributors that resell the lenses to ophthalmologists, optometrists, ophthalmic residents, optometry students, teaching institutions, and hospitals. ***.

Nearly all of the reporting purchasers bought lenses both from Volk and Nikon. All of the purchasers reported that domestic and Japanese lenses are used for the same purposes and the quality of the lenses is generally comparable. However, several purchasers reported that Nikon is the leading

²¹ See exhibits H and J of Volk's posthearing brief.

²² ***.

²³ ***.

seller in the 14-40 diopter lens market segment, whereas Volk is the leading seller in the 60-90 diopter lens market segment. Some purchasers also reported slight differences in the available coatings and the quality of the glass used in making the lenses. When asked to list, in order of their importance, the three major factors generally considered by their firm in deciding from whom to purchase, 9 purchasers listed end-user customer preference²⁴ as the most important factor, 5 listed quality, 4 listed price, and the others listed such factors as past experience with the supplier.

Nearly all of the purchasers reported that there are no other products that could be substituted for aspherical ophthalmoscopy lenses. In particular, purchasers reported that practitioners cannot substitute contact ophthalmoscopy lenses for non-contact ophthalmoscopy lenses, primarily because the lenses are used for different types of procedures. Purchasers also reported that their purchases of non-contact lenses have not been affected by their purchases of contact lenses.

Questionnaire Price Data

Volk and the importers of Japanese-produced lenses were requested to report U.S. f.o.b. prices (i.e., f.o.b. plant or landed duty paid, respectively) before and after discounting, and total quantities and values of six representative models that they sell.²⁵ 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-September 1991.

- Product 1: 15 diopter aspherical lens.
- Product 2: 20 diopter aspherical lens.
- Product 3: 30 diopter aspherical lens.
- Product 4: 60 diopter aspherical lens.
- Product 5: 78 diopter aspherical lens.
- Product 6: 90 diopter aspherical lens.

Volk and Nikon both reported usable price data. During January 1988-September 1991, Volk was the only U.S. producer and Nikon accounted for *** percent of imported Japanese lenses.²⁶ Volk reported price data for its quarterly sales of products 1-6 to its 10 largest distributors. During 1989-90, these 10 distributors accounted for *** percent of Volk's total shipments

²⁴ These distributors indicated that their customers dictate the type of lens that they will buy. The customers' choice of lenses may depend on several factors, including brand name recognition, past experience, and price.

²⁵ Two product models (25 diopter and 40 diopter) which were included in the preliminary investigation were not surveyed in the final investigation. Preliminary investigation responses indicated that sales of 25 diopter lenses were minimal and that there were no imports of 40 diopter lenses.

²⁶ ***.

of products 1-6. Volk's total shipments of products 1-6 accounted for *** percent of the its total reported shipments in 1989-90.

Nikon reported price data for its largest quarterly sales to all distributors. Nikon's shipments of products 1, 2, 3, 4, and 6 accounted for *** percent of its total reported lens shipments from Japan in 1990.

Volk and Nikon also reported their monthly quantities and values of lens products 1-6 sold to distributors and end users during 1988-91. These data, and the corresponding unit values and market shares, are presented in appendix H.

Volk's and Nikon's products 1-6 are differentiated by the available features of the competing products and by differences in the optional equipment offered by the suppliers. For example, Volk's products 1-6 are all double aspherical lenses, whereas only the Nikon product 6 is double aspherical and the rest are single aspherical. Volk also produces each of its lenses in two diameter sizes, whereas Nikon produces its lenses in only one diameter size.²⁷ However, Volk reported that there is no price difference between small and large diameter subject lenses.²⁸

Another features difference is that Volk produces each of its lenses in two lens shades, clear and yellow,²⁹ whereas Nikon sells only clear lenses. Volk reported that there is no price difference between its clear and yellow subject lenses.³⁰ Nikon sells a separate yellow-glass filter that screws onto its lens,³¹ while Volk sells one that is attached to the slit-lamp ophthalmoscope.³² Nikon and Volk reported that, for sales to distributors, their yellow-glass lens attachments cost *** apiece, respectively.³³ Customers that want only a yellow lens may prefer a Volk yellow lens since they would not need to buy a yellow lens attachment. Customers that want only a clear lens would be indifferent, and those that want both the clear and yellow lens capability may prefer to buy the Nikon clear lens and the Nikon yellow lens attachment since the Nikon yellow lens attachment is less expensive than the Volk yellow lens attachment. However, the increase in Volk's sales of attachments appears to indicate customer acceptance of its yellow filter as well.

The Commission received usable purchase price data from 15 distributors. Four of these distributors reported prices for their largest purchases of U.S. products 1-6 as had been requested. Sales to these purchasers accounted for *** percent of Volk's total domestic shipments and *** percent of Nikon's imports of the subject product during 1989-90. The Commission also received

²⁷ The smaller diameter allows for less field of view but more ease in handling.

²⁸ Donald Volk, Transcript of conference, p. 54.

²⁹ During January 1988-December 1991, Volk's sales of yellow lenses accounted for ***.

³⁰ Donald Volk, Transcript of conference, p. 54.

³¹ During January 1988-December 1990, Nikon sold, on average, *** yellow lens filters a year.

³² Volk's posthearing brief, p. 23. ***.

³³ Volk's posthearing brief, p. 23 and Transcript of hearing, p. 55.

price data from 11 other distributors, but there were significant problems with these data. These purchasers reported prices for their largest purchases but did not report by product type. They lumped all types of subject lenses together. Since there are small price differences between some of the different types of subject lenses, these purchaser price data may be adversely affected by the product mix.³⁴ Furthermore, ***. Whenever these discrepancies became apparent, these prices were excluded from the series where possible and the price series were not used if the non-subject prices could not be broken out.

Price trends

Overall, prices for both U.S.-produced and imported Japanese subject lenses declined during January 1988-September 1991. U.S. prices fluctuated, but gradually declined during this period. During 1988 and the first two quarters of 1989, Japanese prices were much higher than U.S. prices. In the third quarter of 1989, Japanese prices for all subject lens products fell sharply to almost the same level as U.S. prices, where they generally remained for the rest of the period.

Producer and importer prices.--F.o.b. prices of U.S. products 1-6 and imported Japanese products 1, 2, 3, 4, and 6 sold to distributors during January 1988-September 1991 are shown in tables 15-17 and figures 1-3. Prices for 5 of the 6 U.S. products declined during the period. Prices for the Japanese products tended to rise through the second quarter of 1989, but afterward fell sharply to *** per lens, where they generally remained during the rest of the period examined.

Table 15

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-September 1991

* * * * *

Table 16

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-September 1991

* * * * *

Table 17

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-September 1991

* * * * *

³⁴ Volk's price data and price lists indicate ***.

Figure 1

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-September 1991

* * * * *

Figure 2

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-September 1991

* * * * *

Figure 3

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-September 1991

* * * * *

F.o.b. prices for U.S. products 1, 3, 4, 5, and 6 fluctuated but declined during the period for which data were collected. Prices for U.S. product 1 ranged between *** per lens during 1988-89, then fell to a lower level in the first quarter of 1990, fluctuating between *** during the rest of the period. Prices for product 3 fluctuated between *** per lens during 1988, increased from *** in the fourth quarter of 1988 to *** in the second quarter of 1989, then fell to *** in the fourth quarter of 1989 and remained at or below that level for the rest of the period. Prices for product 4 fluctuated between *** per lens during 1988, then fell from *** in the fourth quarter of 1988 to *** in the fourth quarter of 1989 and remained at roughly that level for the rest of the period. Prices for product 5 rose from *** per lens in the second quarter of 1988 to *** per lens in the third quarter of 1989, then fell to *** in the first quarter of 1990 and fluctuated between *** and *** during the rest of the period. Prices for product 6 were *** per lens with slight fluctuations from the first quarter of 1988 through the third quarter of 1989. Prices then fell in the fourth quarter of 1989 and fluctuated in a range of *** and *** for the rest of the period.

F.o.b. prices for U.S. product 2 showed little evidence of consistent price movement. Prices for product 2 increased from *** per lens in the first quarter of 1988 to *** in the second quarter of 1988 and remained at this price through the third quarter of 1989. After the third quarter of 1989, prices fluctuated in a range from *** to *** during the rest of the period.

F.o.b. prices for the specified Japanese products tended to rise through the second quarter of 1989, but then fell sharply to *** per lens, where they generally remained during the rest of period examined. Japanese prices ranged between *** per lens during January 1988-June 1989. In the third quarter of 1989, prices for all Japanese subject lens products fell sharply to *** per lens where, in nearly all cases, they remained through the third quarter of 1991.

Purchaser prices.--Prices reported by the four distributors generally show the same trends as prices reported by Volk and Nikon. F.o.b. purchase prices of U.S. products 1-6 and imported Japanese products 1, 2, 3, 4, and 6 during January 1989-September 1991 are shown in tables 18 and 19. ***.

Prices reported by the 11 other purchasers show generally the same trends as the producer, importer, and purchaser prices. ***.

Table 18

Aspherical ophthalmoscopy lenses: Weighted-average discounted f.o.b. prices of U.S.-produced and imported Japanese lens products 1-3 bought by distributors, by quarters, January 1989-September 1991

* * * * *

Table 19

Aspherical ophthalmoscopy lenses: Weighted-average discounted f.o.b. prices of U.S.-produced and imported Japanese lens products 4-6 bought by distributors, by quarters, January 1989-September 1991

* * * * *

Price comparisons

As noted earlier, the U.S. and Japanese products are not exactly comparable because of differences in the available features of the competing products and in the prices of optional equipment offered by the suppliers.

During January 1988-June 1989, all price comparisons of U.S. producer and Japanese importer prices show large margins of overselling ***. In the third quarter of 1989, Japanese importer prices fell to nearly the same level as U.S. producer prices, in most cases remaining slightly above U.S. producer prices during the rest of the period.

Comparisons of the product specific U.S. and Japanese purchaser prices indicate similar margins of overselling. Comparisons of the other purchaser price data for all products combined suggest that there was more underselling than overselling for sales to the small distributors and more overselling than underselling for sales to the large distributors.

Producer and importer prices.--Comparisons of producer and importer prices to distributors for U.S.-produced and imported Japanese lens products are presented in table 20. Although there are product differences, *** quarterly price comparisons were made for the largest quarterly sales of products 1, 2, 3, 4, and 6. During those quarters for which price comparisons were available, prices for the Japanese product were below prices for the U.S. product in 5 quarters, were higher in 59 quarters, and were equal in 2 quarters. During 1988 and the first and second quarters of 1989, available price comparisons show that prices for the Japanese products were always significantly higher than prices for the U.S. products. In the third quarter of 1989, Japanese prices fell to *** per lens in all cases, or to a level at

or slightly above Volk's prices. For the rest of the period, the margins of overselling were significantly lower than they were during January 1988-June 1989.

Table 20

Aspherical ophthalmoscopy lenses: Producer and importer margins of underselling (overselling) by the subject imports from Japan, by quarters, January 1988-September 1991

* * * * *

Purchaser prices.--Comparisons of purchaser prices for the 4 distributors who provided price data for the different products indicate margins of overselling that are similar to the margins of overselling of the producer and importer prices (table 21). Although the data reported by the other 11 distributors are flawed and should be weighed carefully, they are presented because they can be grouped according to the size of the purchaser. Purchaser size and level of discount have been issues in this investigation. ***.

Nikon's pricing appears to be more competitive with Volk's in sales to the smaller distributors (table 22). Price comparisons for purchases by the smaller distributors indicate more instances of underselling than overselling, whereas price comparisons for purchases by the larger distributors indicate the general overselling found in the price comparisons of producers and importers.

Table 21

Aspherical ophthalmoscopy lenses: Purchaser margins of underselling (overselling) for purchase prices for 4 distributors of the subject imports from Japan, by products and by quarters, January 1989-September 1991

* * * * *

Table 22

Aspherical ophthalmoscopy lenses: Purchaser margins of underselling (overselling) by the subject imports from Japan, by small and large distributors and by quarters, January 1989-September 1991

* * * * *

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January 1988-September 1991 the nominal value of the Japanese yen fluctuated, depreciating 6.7 percent overall relative to the U.S. dollar (table 23).³⁵ 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 11.7 percent for the period.

Table 23

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-September 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.....	112.0	105.5	95.6	90.1
April-June.....	110.9	105.1	92.5	87.7
July-September.....	110.7	104.7	93.3	88.3

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.

Note.--January-March 1988 = 100.

Source: International Monetary Fund, International Financial Statistics, January 1992.

Lost Sales and Lost Revenues

* * * * *

³⁵ International Financial Statistics, January 1992.

APPENDIX A

COMMERCE'S AND COMMISSION'S FEDERAL REGISTER NOTICES

INTERNATIONAL TRADE COMMISSION

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

Aspherical Ophthalmoscopy Lenses From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-518 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by 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.

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

EFFECTIVE DATE: October 15, 1991.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3102), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of aspherical ophthalmoscopy lenses from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation

was requested in a petition filed on April 30, 1991, by Volk Optical, Inc., Mentor, OH.

Participation in the investigation and public service list. Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in this investigation will be placed in the nonpublic record on January 13, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 28, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 21, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 24, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions. Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the

deadline for filing is January 23, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is February 5, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 5, 1992. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 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 207.20 of the Commission's rules.

Issued: November 1, 1991.

By order of the Commission.

Edward G. Carroll,
Acting Secretary.

[FR Doc. 91-26788 Filed 11-5-91; 8:45 am]

BILLING CODE 7020-02-M

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 19, 1992; the prehearing conference will be held at the U.S. International Trade Commission Building on February 24, 1992; the prehearing staff report will be placed in the nonpublic record on February 14, 1992; the deadline for filing prehearing briefs is February 24, 1992; the hearing will be held at the U.S. International Trade Commission Building on February 26, 1992; and the deadline for filing posthearing briefs is March 5, 1992.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

By order of the Commission.

Dated: January 16, 1992.

Kenneth R. Mason,
Secretary.

[FR Doc. 92-1640 Filed 1-22-92; 8:45 am]

BILLING CODE 7020-02-M

INTERNATIONAL TRADE COMMISSION

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

Aspherical Ophthalmoscopy Lenses From Japan; Investigation

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT:
Olympia DeRosa Hand (202-205-3182),
Office of Investigation, U.S.

International Trade Commission, 500 E
Street SW., Washington, DC 20436.

Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: On October 15, 1991, the Commission instituted the subject investigation and established a schedule for its conduct (56 FR 56660). The Commission is now revising its schedule in the investigation.

Ave., NW., Washington, DC 20230, at (202) 377-1174.

FINAL DETERMINATION: The Department of Commerce (the Department) determines that imports of aspheric ophthalmoscopy lenses (lenses) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

We published an affirmative preliminary determination on October 15, 1991 (56 FR 51680).

On October 15, 1991, respondent, Nikon Corp. and Nikon, Inc. (together referred to as Nikon), requested a postponement of the final determination. On October 28, 1991, the Department published its notice postponing the final determination until January 22, 1991 (56 FR 55491). On December 2, 1991, Nikon requested another postponement of the final determination, and on December 17, 1991, the Department published its notice postponing the final determination until February 21, 1991 (56 FR 65466).

The Department conducted verification of Nikon's responses from October 21 through October 29, 1991, and on November 15, 1991. On October 25, 1991, Ocular Instrument, Inc. (Ocular) submitted a request for a hearing in this investigation. On November 1, 1991, the Department informed Ocular that its October 25, 1991, letter of appearance did not demonstrate that Ocular was an interested party under 19 CFR 353.2(k). On November 6, 1991, Ocular informed the Department that it was withdrawing its letter of appearance as an interested party and, consequently, its request for a hearing in the above-referenced investigation. On November 22, 1991, Ocular submitted a letter formally withdrawing its request for a hearing.

On December 16 and 20, 1991, respondent submitted its case and rebuttal briefs, respectively, and on December 16 and 23, 1991, Volk Optical, Inc. (Volk Optical), the petitioner, submitted its case and rebuttal briefs, respectively. Ocular submitted a position paper on December 16, 1991. Since Ocular did not establish its standing as an interested party in this investigation, the Department returned all copies of the position paper to Ocular on December 18, 1991.

In a January 21, 1992, letter to the Department, Nikon requested a meeting with Department officials to discuss the

International Trade Administration

[A-588-819]

Final Antidumping Duty Determination: Aspheric Ophthalmoscopy Lenses From Japan

AGENCY: Import Administration,
International Trade Administration,
Commerce.

EFFECTIVE DATE: February 27, 1992.

FOR FURTHER INFORMATION CONTACT:
Stefanie Amadeo, Office of Antidumping
Duty Investigations, Import
Administration, International Trade
Administration, U.S. Department of
Commerce, 14th Street and Constitution,

submission of revised computer tapes. Following the requested meeting, which was held on January 24, 1992, Nikon submitted comments on January 27, 1992, and petitioner submitted comments on January 29, 1992.

On January 31, 1992, Nikon and Volk Optical were invited to submit comments on the appropriate best information available (BIA) to use in this investigation. Nikon submitted such comments in a February 7, 1992, letter to the Department. Volk Optical declined further comment.

Scope of Investigation

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

Period of Investigation

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

Fair Value Comparisons

To determine whether Nikon made sales of lenses at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified below.

Although Nikon responded to the Department's questionnaires, in attempting to verify its response, the Department discovered numerous reporting errors and inconsistencies. Therefore, in accordance with section 776(c) of the Act, our results are based on BIA.

United States Price

We based USP on a FOB factory price contained in the petition, which was offered to U.S. distributors for one type of lens. We made no deductions or adjustments to USP.

Foreign Market Value

We based FMV on a retail price contained in the petition, which was offered in Japan, for identical merchandise to that for which petitioner provided a U.S. price. We reduced the retail price by 25 percent to arrive at the price offered to Japanese distributors based on information in the petition. The terms of the Japanese prices were

FOB factory; therefore, no deductions or adjustments to FMV were made.

Currency Conversion

In accordance with 19 CFR 353.60, we converted foreign currency to United States currency using the official exchange rate in effect on the appropriate date.

Best Information Available

We have determined that the questionnaire responses of the respondent provide an inadequate basis for estimating dumping margins. The Department determined that, for the information we examined at verification, the misreporting and inaccuracies in the responses were so material and pervasive as to make the responses inherently unreliable, compelling the Department to use BIA.

On July 11, 1991, Nikon submitted its section A and B responses, and on August 9, 1991, Nikon submitted its section C response. On August 23, 1991, Nikon submitted its response to the Department's August 9, 1991, deficiency letter. This deficiency response contained new and revised information. On September 6, 1991, Nikon submitted a partial response to the Department's August 23, 1991, deficiency letter. The information contained in this response was significantly different from Nikon's previous responses. Then, on September 23, 1991, Nikon submitted another partial response with further new and revised information. Finally, on October 7, 1991, the date of the preliminary determination in this investigation, Nikon submitted yet another response containing substantially revised information.

Even though we used Nikon's July 11, 1991, August 9, 1991, August 23, 1991, and September 6, 1991, responses for the preliminary determination, we accepted Nikon's September 23, 1991, and October 7, 1991, submissions and examined these responses at verification. At verification, we discovered that Nikon's September 23, 1991, and October 7, 1991, responses, as well as the responses used in the preliminary determination, were so flawed, as discussed below, as to render them completely unreliable. At verification, company officials offered to again substantially revise their responses and submit computer tapes containing the new information to the Department. However, given the pattern of ever-changing data and methodology in this investigation, we determined it was inappropriate to accept what would constitute a completely new response after the preliminary determination.

At verification, the following items, among others, were found to have been inaccurately reported either fully, or in part: Home market payment dates; home market sale dates; home market gross unit prices; home market indirect selling expenses; home market inventory carrying expenses; home market advertising; home market sales to a related party (originally reported as unrelated sales); U.S. indirect selling expenses; U.S. foreign inland freight; U.S. sale dates; U.S. inland freight; U.S. brokerage and handling; U.S. marine insurance; U.S. credit; U.S. advertising; and the U.S. sales listing, which failed to report a number of U.S. sales. The deficiencies found are outlined in detail in the public version of our verification report and the public version of our BIA memoranda (dated December 15, 1991, January 31, 1992, and February 14, 1992), which are on file in room B-099 of the Main Commerce building.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents who cooperated in an investigation and rates based on more adverse assumptions for those respondents who did not cooperate in an investigation. In the above-referenced investigation, Nikon attempted to provide the information that the Department requested; however, as noted above, the inaccuracies and discrepancies in Nikon's information are so pervasive as to make the responses inherently unreliable.

According to the Department's two-tiered BIA methodology outlined in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and parts thereof from the Federal Republic of Germany, Italy, Japan, Romania, Sweden, Thailand, and the United Kingdom (AFBs) (54 FR 18992, 19033, May 3, 1989), when a company which is the only producer or exporter of the subject merchandise (as is Nikon) fails to provide the information requested in the form required, it is appropriate for the Department to assign to that company the higher of (1) the estimated margin found for the affected company in the preliminary determination, or (2) the margin alleged in the petition. In the lenses investigation, the margins alleged in the petition range from 0.5 percent to 158.00 percent, with an average petition margin of 56.95 percent. Therefore, if we allow the AFB hierarchy, we should assign Nikon the preliminary determined margin of 112.72 percent.

However, among the discrepancies in Nikon's responses that were identified at verification were unreported movement expenses in the United States and the failure to report as a related party the customer which accounted for the lowest price home market sales during the POI. Due to the nature and magnitude of these discrepancies, it is likely that the correction of such errors would yield a margin higher than the rate estimated in our preliminary determination. Therefore, to assign Nikon 112.72 percent in the final determination would, in essence, be rewarding Nikon for submitting inaccurate and inconsistent responses. Hence, instead of assigning Nikon the preliminary determined margin as dictated by the AFB hierarchy, we assigned Nikon the average of the margins contained in the petition which are above the preliminarily determined margin. Since there is only one margin alleged in the petition which is above 112.72 percent, we assigned Nikon this petition rate of 158.00 percent.

Interested Party Comments

Comment 1

In its January 27, 1992, submission, Nikon contends that the Department should accept revised computer tapes from Nikon. Respondent argues that the deficiencies in Nikon's response found at verification were minor in scope, and that the majority of discrepancies, if corrected based on verification, would result in a decrease in the dumping margins in this investigation. Nikon further contends that because Nikon cooperated with the investigation, the Department should utilize the revised computer tapes because the discrepancies found at verification are not of a scope to warrant the rejection of Nikon's response.

In its January 29, 1992, submission, petitioner argues that Nikon's request to submit revised computer data should be rejected since such a submission would be untimely within the meaning of 19 CFR 353.31. Petitioner contends that Nikon had numerous opportunities to revise its data prior to the Department's verification. Petitioner further argues that Nikon's request would result in the submission of "new" information long after verification.

DOC Position

The Department did not request revised computer tapes from Nikon because, although some of the numerous discrepancies found at verification were minor, others, including home market sales to an unreported related party, incorrect sales prices on some of the

transactions examined, and unreported U.S. movement expenses, were not. Given the discovery at verification that the fourth generation of data submitted by Nikon still contained substantial discrepancies, the Department found that an unverified revised computer tape would contain similarly unreliable data. For example, for certain expenses, we noted four errors out of the ten observations reviewed. Nikon offered to correct these four observed errors; however, we have no way of knowing if the other observations in the database are correct, and, hence, whether a revised computer tape would be accurate. Furthermore, taking into account the sales to an unreported related party and unreported movement expenses, items of greater significance than the multitude of errors addressed in Nikon's January 27, 1992, submission, it is likely that the preliminarily determined margin would increase, rather than decrease. Although Nikon did cooperate with the investigation, given the magnitude and number of material discrepancies found, rejecting Nikon's response *in toto* is warranted.

Comment 2

Petitioner contends that the Department should use BIA in several areas due to Nikon's misreporting and miscalculations. Among other expenses, petitioner argues that BIA should be used for Nikon's home market indirect selling expenses, home market inventory carrying expenses, and U.S. inland freight. Petitioner further contends that the Department should disregard the home market sales to Nikon's related party.

Respondent contends that changes in Nikon's reported home market indirect selling expenses, home market inventory, and U.S. air freight and ocean freight and inland freight expenses based upon verification, would be addressed in revised computer tapes. Respondent further argues that the unreported U.S. sales found at verification would be included in a revised computer tape. As for the home market sales which were discovered at verification to be to a related party, respondent contends that the prices to this customer were based on the historic level of purchases by that customer, rather than its related party status; therefore, respondent argues that the Department should include these sales in the final determination.

In its February 7, 1992, submission, Nikon argues that the adjusted petition margins contained in that submission should be used when calculating BIA for the final determination in this investigation. Nikon adjusted the

alleged U.S. prices contained in the petition for air freight and import duties. Nikon also adjusted the U.S. price for two types of lenses. Nikon, however, stated that it did not adjust the home market prices alleged in the petition because it was not aware of any adjustment that could be made to home market prices based on information contained in the petition. Nikon contends that, as BIA, the Department should use a simple average of these adjusted petition margins.

DOC Position

As noted in the "Best Information Available" section of this notice, the various responses submitted by Nikon are seriously deficient in numerous respects. As the Department stated in the Final Determination of Sales at Less Than Fair Value: Photo Albums and Filler Pages from Korea (50 FR 43754, October 29, 1985), "[i]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to fully analyze the information and other parties are able to review and comment on it. The purpose of verification is to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department." Since verification at Nikon did not establish the accuracy of its responses, the Department is compelled to use BIA. See the "Best Information Available" section of this notice.

According to the Department's two-tiered BIA methodology outlined in AFBs, it would not be consistent with the Departmental policy to assign to Nikon the average of the adjusted petition margins because this average margin is lower than the preliminarily calculated margin. See, "Best Information Available" section of this notice. Furthermore, the Department did not use the alleged petition margins as adjusted by Nikon because, even though these adjusted petition rates lead to margins higher than those alleged in the petition, it is the Department's long-standing practice to rely upon petition rates published in our notice of initiation as BIA rather than on a respondent's unsubstantiated data.

Given the Department's use of BIA, other comments submitted by the parties in their briefs in this investigation are moot, and will not be addressed in this notice.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs

Service to continue to suspend liquidation of all entries of lenses from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of lenses exceeds the United States price as shown below. The suspension of liquidation on lenses will remain in effect until further notice. The dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Nikon Corp. and Nikon Inc.	158.00
All Others	158.00

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. If the ITC determines that material injury, or threat of material injury, does not exist with respect to lenses, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all lenses from Japan, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d) and 19 CFR 353.20).

Dated: February 21, 1992.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 92-4529 Filed 2-26-92; 8:45 am]

BILLING CODE 3510-05-M

APPENDIX B

LIST OF WITNESSES WHO APPEARED AT THE HEARING

CALENDAR OF PUBLIC HEARING

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

Subject	:	ASPHERICAL OPHTHALMOSCOPY LENSES FROM JAPAN
Inv. No.	:	731-TA-518 (Final)
Date and Time	:	February 26, 1992 - 9:30 a.m.

Sessions were held in connection with the investigation in the Main Hearing Room 101 of the United States International Trade Commission, 500 E St., S.W., Washington, D.C.

In Support of Imposition of
Antidumping Duties:

Ulmer & Berne
Washington, D.C.
On behalf of

Volk Optical, Inc.

Donald Volk, President

Joan Volk, Vice President of Administration

Marion Porter, Jr., President,
Progressive Ophthalmic Instruments, Inc.

Felix M. Barker, II, O.D.M.S.,
Associate Professor;
Director, Light and Laser Institute
Pennsylvania College of Optometry

Howard S. Siegel, M.D., Ophthalmologist,
Ophthalmology Associates, Inc.

Daniel W. Klett, Vice President,
International Trade Group
ICF Consulting Associates

Debra R. Shpigler)
)--OF COUNSEL
Charles R. Olsavsky)

In Opposition to Imposition of
Antidumping Duties:

Hughes Hubbard & Reed
Washington, D.C.
On behalf of

Nikon Corporation and Nikon Inc.

John Browne, Counsel

David Henderson, Marketing Manager

Shinji Yamamoto, Product Manager

Trade Resources Company

Seth Kaplan, Director of Economic Research

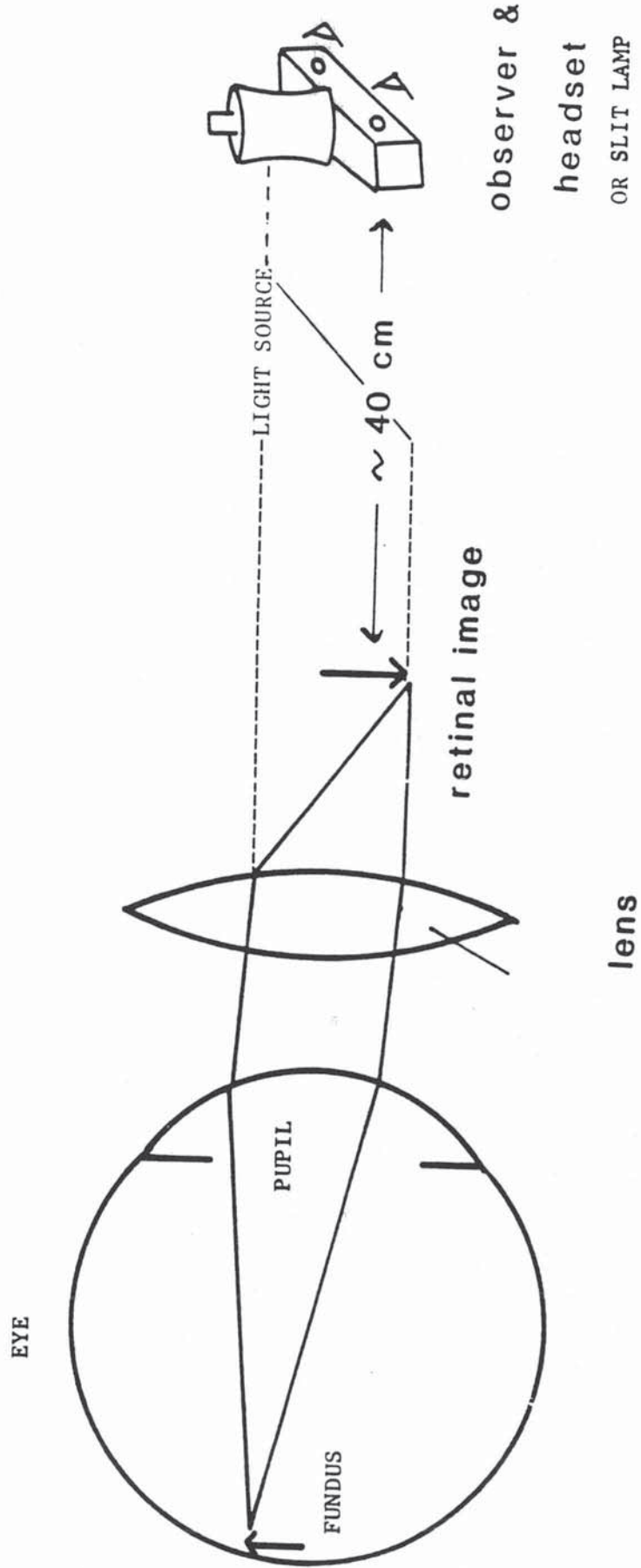
Paul Zucker, Trade consultant

Arol Augsburger, O.D., Professor of Clinical Optometry,
Ohio State University College of Optometry

Alan Kashdan)
)--OF COUNSEL
Richard Coleman)

APPENDIX C

**SCHEMATIC DIAGRAM OF THE SUBJECT PRODUCT'S FUNCTION
AND AN ILLUSTRATION OF ITS USE WITH THE SLIT LAMP**



APPENDIX D
DETAILS OF VOLK'S PRODUCTION PROCESS

* * * * *

APPENDIX E
CONTACT FUNDUS LENS DATA

Table E-1

Contact lenses: U.S. production, average capacity, capacity utilization, domestic shipments, exports, end-of-period inventories, average number of production and related workers, net sales, cost of goods sold, gross profit (loss), SG&A expenses, and operating income (loss), 1988-90, January-September 1990, and January-September 1991

* * * * *

APPENDIX F
DATA ON GLASS ELEMENTS OF CONTACT FUNDUS LENSES

1875
The following is a list of the names of the persons who have been elected to the office of Justice of the Peace for the year 1875.

Table F-1

Glass lens elements: Volk's production, average capacity, capacity utilization, domestic shipments, company transfers, end-of-period inventories, and production and related workers, 1988-90, January-September 1990, and January-September 1991

* * * * *

Table F-2

Glass lens elements: U.S. imports from Japan, 1988-90, January-September 1990, and January-September 1991

* * * * *

APPENDIX G

**COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF
IMPORTS OF ASPHERICAL OPHTHALMOSCOPY LENSES FROM JAPAN
ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND/OR
EXISTING DEVELOPMENT AND PRODUCTION EFFORTS**

The Commission requested Volk to describe any actual or anticipated negative effects of imports of aspherical ophthalmoscopy lenses from Japan on its existing development and production efforts, growth, investment, and/or ability to raise capital. Volk's responses are as below--

* * * * *

APPENDIX H
MONTHLY SHIPMENT DATA FOR VOLK AND NIKON

Table H-1

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 1, by months, January 1988-December 1991

* * * * *

Table H-2

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 2, by months, January 1988-December 1991

* * * * *

Table H-3

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 3, by months, January 1988-December 1991

* * * * *

Table H-4

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 4, by months, January 1988-December 1991

* * * * *

Table H-5

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced lens product 5, by months, January 1988-December 1991

* * * * *

Table H-6

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 6, by months, January 1988-December 1991

* * * * *

Table H-1

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 1, by months, January 1988-December 1991

* * * * *

Table H-2

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 2, by months, January 1988-December 1991

* * * * *

Table H-3

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 3, by months, January 1988-December 1991

* * * * *

Table H-4

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 4, by months, January 1988-December 1991

* * * * *

Table H-5

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced lens product 5, by months, January 1988-December 1991

* * * * *

Table H-6

Aspherical ophthalmoscopy lenses: Total quantity, total value, unit value, and market share of U.S.-produced and imported Japanese lens product 6, by months, January 1988-December 1991

* * * * *

