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NEPHELINE SYENITE FROM CANADA

Determination of the Commission in Investigation No. 731–TA–525 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation

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NEPHELINE SYENITE FROM CANADA

UNITED STATES INTERNATIONAL TRADE COMMISSION

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

DETERMINATION AND VIEWS OF THE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-525 (Final)

NEPHELINE SYENITE FROM CANADA

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of nepheline syenite,[2] provided for in subheading 2529.30.00 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 December 27, 1991, following a preliminary determination by the Department of Commerce that imports of nepheline syenite from Canada 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

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

[2] The product covered by this investigation is nepheline syenite, which is a coarse crystalline rock consisting principally of feldspathic minerals (i.e., sodium-potassium feldspars and nepheline), with little or no free quartz, and whose typical mean value passing through ASTM E-11 mesh sieve No. 40 and retained on ASTM E-11 mesh sieve No. 200 (when solely said two sieves are used) is no less than 70 percent by weight.

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 January 15, 1992 (57 F.R. 1756). The hearing was held in Washington, DC, on March 19, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

VIEWS OF VICE CHAIRMAN BRUNSDALE, COMMISSIONER CRAWFORD, COMMISSIONER NUZUM AND COMMISSIONER WATSON

Based on the record in this final investigation, we determine that an industry in the United States is not materially injured, or threatened with material injury, by reason of imports of nepheline syenite from Canada that have been found by the Department of Commerce ("Commerce") to be sold at less than fair value (LTFV).[1]

I. Like Product/Domestic Industry

In determining whether an industry in the United States is materially injured or is threatened with material injury by reason of the subject imports, the Commission must first define the "like product" and the "industry." Section 771(4)(A) of the Tariff Act of 1930 (the "Act") defines the relevant 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 total domestic production of that product . . . ."[2] In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[3]

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[1] Material retardation is not an issue in this investigation.

[2] 19 U.S.C. § 1677(4)(A).

[3] 19 U.S.C. § 1677(10). The Commission's determination of what is the appropriate like product or products in an investigation is a factual determination, to which 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 where appropriate, (6) price. No single factor

(continued...)

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

> [N]epheline syenite, which is a coarse crystalline rock consisting principally of feldspathic minerals (i.e., sodium-potassium feldspars and nepheline), with little or no free quartz, and whose typical mean value passing through ASTM E-11 mesh sieve no. 40 and retained on ASTM E-11 mesh sieve no. 200 (when solely said two sieves are used) is no less than 70 percent by weight.[4]

This definition of the imported merchandise effectively limits the product subject to investigation to glass-grade nepheline syenite.[5]

Glass-grade nepheline syenite is a primary source of alumina for the glassmaking industry. Alumina is valuable to glass production because of the beneficial qualities it contributes to glass composition, including increased resistance to scratching and breakage, improved thermal endurance and increased chemical durability.[6] All of the nepheline syenite consumed in the

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[3](...continued)
is dispositive, and the Commission may consider other factors relevant to its like product determination in 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, 1169, 1170, n.5 and n.8 (CIT 1988); Sony Corporation of America v. United States, 712 F. Supp. 978, 983 (CIT 1989); see also Certain All-Terrain Vehicles from Japan, Inv. No. 731-TA-388 (Final), USITC Pub. 2163 (March 1989).

[4] 57 Fed. Reg. 9237, 9238 (March 17, 1992). See also Report at A-6 and A-7. We note that Commerce clarified its original scope description during its final investigation. The Commission's description of the articles subject to investigation was changed accordingly. The slightly different language between the original definition and the clarified version has no practical consequences since both Commerce and the Commission investigations cover the same products. See, e.g., Algoma Steel Corp. v. United States, 688 F. Supp. 639 (CIT 1988), 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).

[5] Glass-grade nepheline syenite is nepheline syenite whose typical mean value passing through ASTM E-11 mesh sieve no. 40 and retained on ASTM E-11 mesh sieve no. 200 (when solely said two sieves are used) is no less than 70 percent by weight.

[6] Ceramic Industry, January 1991, at 51; Report at I-8.

United States is imported from Ontario, Canada.[7]

There is no domestic production of nepheline syenite.[8] There are, however, domestic products which are potential sources of alumina for the glassmaking industry.[9] Examples include glass-grade feldspar, aplite, feldspathic sand, blast furnace slag, cullet, kaolin clay, lithospar, talc, pyrophyllite and Cornwall stone.[10] While there are several products which are potential alumina sources, the feldspathic materials -- glass-grade nepheline syenite, glass-grade feldspar and aplite -- provide the most economical way to introduce alumina into the production of glass.[11] In identifying the appropriate like product, the Commission is to find the product most similar to glass-grade nepheline syenite.[12] In the preliminary investigation, the Commission[13] concluded that "glass-grade feldspar and aplite . . . are most similar to glass-grade nepheline syenite; and . . . define[d] both of them as

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[7] U.S. Department of the Interior, Bureau of Mines, Feldspar, Nepheline Syenite, and Aplite Minerals Yearbook -- 1989, at 2 (September 1990) ("Bureau of Mines Report"); Respondent's Prehearing Brief at 2; Report at I-31 and Table 17, I-32 (regarding questionnaire responses).

[8] In Lime Oil from Peru, the Commission determined that, although domestic lime oil was not "like" the imported lime oil from Peru, it was the product that is "most similar in characteristics and uses." The Commission determined that there cannot be a finding of "no like product" as such a finding "runs counter to the statute's definition of 'like product' as 'a product like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation.'" Inv. No. 303-TA-16 (Preliminary), USITC Pub. 1723 at 5 (July 1985). See also 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 at 36 (May 1989).

[9] Report at I-34. Bureau of Mines Report at 2.

[10] Report at I-34.

[11] Report at I-8.

[12] 19 U.S.C. § 1677(10).

[13] Commissioner Crawford, Commissioner Nuzum and Commissioner Watson did not participate in the preliminary determination because they were not members of the Commission at that time.

'like' the product subject to investigation."[14] [15] In the final investigation, both parties sought refinements to the definition of the like product.

Glass-grade feldspar encompasses glass-grade soda feldspar and glass-grade potash feldspar. Petitioner proposed that glass-grade potash feldspar should not be included in the like product definition.[16] In determining whether to include potash feldspar in the definition of the like product, we considered the following facts. In terms of physical characteristics, glass-

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[14] Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Preliminary), USITC Pub. 2415 at 9 (August 1991). In the preliminary determination, the Commission decided not to include feldspathic sand and ceramic-grade feldspar in the like product. Id. at 10 and 14.

[15] In Polyethylene Terephthalate Film, Sheet, and Strip from Japan and the Republic of Korea, Inv. Nos. 731-TA-458 and 459 (Final) USITC Pub. 2383 (May 1991) ("PET Film"), Vice Chairman Brunsdale refined the usual multipart test the Commission uses so as to focus on whether dumping would induce significant substitution between the potential like products by either producers or consumers. In defining the like product in this way, she seeks to identify logically the products that may be injured by any dumping of the articles subject to investigation. This final investigation revealed that the only difference among ceramic-, filler- and glass-grade feldspar was a costly grinding operation. It would therefore be easy for producers of ceramic- or filler-grade feldspar to switch production and make glass-grade feldspar. The effects of dumping glass-grade nepheline syenite into the U.S. market would seem at first glance, therefore, likely to spill over into the ceramic- and filler-grade feldspar markets as producers shift from making one grade to making another. But the ease of switching production from one grade of feldspar to another turns out in this case not to be a sign that ceramic- and filler-grade feldspar should be included in the like product. Glass-grade feldspar is an input into the finer grades, but even if the dumping of nepheline syenite reduced its price, the marginal cost of producing the finer grades of alumina sources would not be affected unless glass-grade nepheline syenite became so cheap as to displace glass-grade feldspar as an input. Even if this did occur, it could not harm producers of the finer grades, because their cost of producing the finer grades could only decline. Including the finer grades in the like product could only mask, and not reveal, the full extent of any injury caused by the dumped imports. They should therefore not be included in the like product.

[16] Petitioner's Prehearing Brief at 7 and 8. Feldspar containing a high potash-to-soda ratio is characterized as potash feldspar. Potash feldspar is produced by the petitioner, TFC, in Georgia, and by KMG Minerals, Inc. in North Carolina. The other four feldspar operations, TFC's Connecticut plant and North Carolina plant, K-T Feldspar in North Carolina and Unimin's North Carolina plant, produce soda feldspar. Report at I-7 and I-17.

grade potash feldspar is almost identical to glass-grade nepheline syenite, glass-grade soda feldspar, and aplite. In terms of chemical composition, potash feldspar has a high potash content, a low sodium content and an alumina content which is substantially equivalent to glass-grade soda feldspar and slightly less than nepheline syenite and aplite.[17] Glass-grade potash feldspar is used in specialty glass applications rather than container glass production, for which glass-grade soda feldspar is used. Glass-grade nepheline syenite is also used by the specialty glass industry for the production of television glass, electrical insulators and chinaware.[18] In addition, potash feldspar, similar to nepheline syenite and to a more limited degree soda feldspar, is further processed to a ceramic-grade product. While potash feldspar has different qualities and some different uses than soda feldspar, the record indicates that it competes directly with the subject import among glassmakers. The production and distribution process for potash feldspar is similar to that for nepheline syenite, soda feldspar and aplite, i.e., it is mined from open pits, ground, beneficiated and sold directly to end-users. Finally, the price of potash feldspar is significantly higher than that of the other feldspathic materials.[19]

We determine that the similarities in physical characteristics, uses, interchangeability, perception of customers and producers, production processes and channels of distribution outweigh the large difference in price with glass-grade nepheline syenite. Therefore, we include glass-grade potash feldspar in the definition of the like product.

Respondent argued in this investigation that under the Act "the most

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[17] Report at Table 1, I-9.
[18] Report at I-7.
[19] Report at I-38 - I-40.

similar product must be a single product -- not a basket of products," and proposed that aplite is the sole like product because it is most similar to nepheline syenite.[20] In the alternative, respondent argued that all feldspathic materials, including other materials used as sources of alumina, such as blast furnace slag and cullet, should be included in the like product definition.[21]

Despite the use of the phrase "a product" in the Act,[22] the courts have repeatedly upheld[23] the Commission's practice of defining a single like product which includes a number of articles that may well not be identical. Our like product determination takes into account Commerce's definition of the import product in its scope of investigation.[24] [25] In this investigation, we have identified those articles of domestic commerce sufficiently similar to

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[20] Respondent's Prehearing Brief at 3 and 6-14.

[21] Respondent's Prehearing Brief at 8.

[22] Section 771(10) of the Act defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation...." 19 U.S.C. § 1677(10).

[23] In Algoma Steel Corp., the Court of International Trade (CIT) held that the Commission "determines what domestic industry produces products like the one in the class defined by ITA and whether that industry is injured by the relevant imports" (emphasis added). Algoma Steel Corp., Ltd. v. United States, 688 F. Supp. 639, 644 (CIT 1988), aff'd, 865 F.2d 240 (Fed. Cir. 1989). Further, in Sony Corp. of America, the CIT held that:

> the fact that there are certain differences between the Trinitron tube and other CPTs [color picture tubes] does not mean that the Trinitron is not "like" other CPTs within the meaning of the relevant statutes. Nor is it disputed that the end use, i.e., television viewing sets, is the same for Trinitron CPTs as for other CPTs.

Sony Corporation of America v. United States, 712 F. Supp. 978, 983 (CIT 1989).

[24] In this investigation, for example, the respondent exports its own "product," glass-grade nepheline syenite, in several, slightly different sizes for use in different types of glass.

[25] See, e.g., Generic Cephalexin Capsules from Canada, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 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 (Final), USITC Pub. 2185 (May 1989); PET Film (Final), USITC Pub. 2383 (May 1991).

the subject imports to warrant their inclusion in the like product. Congress has indicated that the like product standard should not be interpreted in "such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not 'like' each other."[26]

We also find that respondent's alternative proposal to include all sources of alumina in the definition of the like product is not warranted. Unlike glass-grade nepheline syenite, glass-grade feldspar and aplite, these other materials are not primary sources of alumina for the glass industry.[27] Moreover, the non-feldspathic materials are for the most part not used by the glass industry as complete substitutes for primary sources.[28]

Based on the record in this final investigation, we find that the like product consists of glass-grade feldspar (both soda and potash) and aplite. Further, we determine that the domestic industry consists of the domestic producers of glass-grade feldspar and aplite.

II. Appropriateness of Regional Industry Analysis

Petitioner requested that the Commission undertake a regional industry analysis in this investigation, with the region to consist "of the producers and customers of aplite and glass-grade feldspar located in the following states and territories . . . Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Rhode Island, Wisconsin, Virginia and West Virginia."[29] For purposes of this investigation we define this region as the

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[26] S. Rep. No. 249, 96th Cong., 1st Sess. 90-91 (1979).
[27] Report at I-34.
[28] Report at I-34.
[29] Petition at 6 and 10; Petitioner's Prehearing Brief at 10.

"northeastern/northcentral region and Puerto Rico" (the "NEC region"). Respondent indicated that it "does not contest Petitioner's contention that there is a regional industry . . . comprised of Petitioner's Connecticut feldspar plant and its Virginia aplite plant."[30]

While the Commission concluded for the purposes of the preliminary determination that a regional analysis is appropriate using the NEC region, the Commission indicated that it would "examine more closely in any final investigation whether a national industry analysis for the domestic producers of the like product as defined in this preliminary determination is more appropriate."[31]

With respect to the use of a regional industry analysis, section 771(4)(C) of the Act provides that:

> In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if--
>
> (i) the producers within such market sell all or almost all of their production of the like product in question in that market, and
>
> (ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.
>
> In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of

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[30] Respondent's Prehearing Brief at 22.

[31] Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Preliminary), USITC Pub. 2415 at 22 (August 1991).

the subsidized or dumped imports.[32] [33]

The Commission has used a two-step approach in determining whether "appropriate circumstances" exist to undertake a regional analysis.[34] Under this approach, the Commission first determines whether a regional market exists based on the two "market isolation" factors identified in subsections 771(4)(C)(i) and (ii) of the Act. As a second step, the Commission then considers whether imports are concentrated in any regional market as defined under the first step. Effectively, import concentration is a condition precedent to analysis of material injury (or threat thereof) to a regional industry.

The Commission previously has found "appropriate circumstances" to exist for a regional industry analysis where a product had a low value-to-weight ratio and where high transportation costs made the area in which the product is produced necessarily isolated and insular.[35] While these prior findings are not binding on this investigation, we note that the like product in this

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[32] 19 U.S.C. § 1677(4)(C); see also Cemex, S.A. v. United States, Slip Op. 92-52 at 6, n.1 (CIT, April 1992) ("Cemex").

[33] We note that the Commission has considered the application of a regional industry analysis as within its discretion in light of use of the language "appropriate circumstances" and "may be" in the statute. 19 U.S.C. § 1677(4)(C). See, e.g., Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Final), USITC Pub. 2305 at 15 (August 1990) ("Mexico Cement"); Fall-Harvested Round White Potatoes from Canada, Inv. No. 731-TA-124 (Final), USITC Pub. 1463 at 7 (December 1983) ("Round White Potatoes"); Rock Salt (Final), USITC Pub. 1798 at 5. The Court of International Trade has upheld this interpretation of the statute, but has cautioned against "[a]rbitrary or free handed sculpting of regional markets." See, e.g., Atlantic Sugar, Ltd. v. United States, 519 F. Supp. 916, 920 (CIT 1981).

[34] See, e.g., Gray Portland Cement and Cement Clinker from Venezuela, Inv. No. 731-TA-519 (Preliminary), USITC Pub. 2400 (July 1991) ("Venezuela Cement"); Japan Cement (Final), USITC Pub. 2376 (April 1991); Gray Portland Cement and Cement Clicker from Mexico, Inv. No. 731-TA-451 (Preliminary), USITC Pub. 2235 (November 1989) at 5 and 6 ("Mexico Cement (Preliminary)").

[35] See, e.g., Venezuela Cement, USITC Pub. 2400 at 6 and 7; Japan Cement, USITC Pub. 2376 at 16 and 17; Mexico Cement, USITC Pub. 2305.

investigation is characterized by the same factors. U.S. manufacturers of the like product indicated that transportation costs are an important part of the final delivered price to customers and tend to limit the marketing of the like product to end-users located within 500 miles of the manufacturers' production facilities.[36]

A. Market Isolation Criteria

We note that during the period of investigation shipments within the NEC region by regional producers of glass-grade feldspar and aplite ("shipments out")[37] are in the range that previously the Commission has considered to satisfy the statutory isolation criterion under section 771(4)(C)(i).[38] [39] Moreover, shipments originating in the NEC region that remained within the region increased and then remained at a high level.[40] The CIT has held that

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[36] Report at I-36. See also Report at I-11 and I-12.

[37] Report at Table 2, I-13.

[38] 19 U.S.C. § 1677(7)(4)(C)(i). See, e.g., Venezuela Cement, USITC Pub. 2400 at 7 and 27 (over 95 percent found to be sufficient); Japan Cement, USITC Pub. 2376 at 18, 44 (82.6 percent found to be sufficient); Operators for Jalousie and Awning Windows from El Salvador, Inv. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. 1934 at 9 (January 1987) (over 80 percent found to be sufficient); Round White Potatoes, USITC Pub. 1463 at 7 (December 1983) (84 percent found to be sufficient); Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Final), USITC Pub. 1310 at 5 (October 1983) (92 percent found to be sufficient); Frozen French Fried Potatoes, USITC Pub. 1259 at 7 (66 percent found not to be sufficient).

[39] Vice Chairman Brunsdale notes that Section 1677(4)(C)(i) does not use the Commission's traditional phrase "shipments out." Instead, the statute orders us to consider whether the producers within the region "sell all or almost all of their production of the like product" within the region. "Shipments out" is a term of art at the Commission, and is used to mean sales plus intracompany transfers within the region. It would make sense, in defining a regional market, to look at shipments, rather than sales. But the statute does not say "shipments." In this case, the distinction does not make a difference in deciding whether a regional market analysis is called for. The Vice Chairman, however, reserves for a future investigation the question of whether the Commission should look anew at how it calculates this ratio.

[40] Report at Table 2, I-13. Percentages for market isolation criteria and concentration of imports in this investigation are business proprietary information.

"there is nothing in the statute, case law, or administrative practice to indicate Congressional intent to bind the ITC to a precise numerical percentage" regarding the sale in the region of all or almost all the production in the region.[41]

The percentage of consumption in the NEC region that was supplied by U.S. producers of glass-grade feldspar and aplite from outside the NEC region ("shipments in") remained constant at a low level.[42] While the precise percentage of "shipments in" is confidential in this investigation, we find that this percentage falls within the range we find sufficient to treat the NEC region as an isolated market.[43] We emphasize that there is no precise numerical cutoff for "shipments in" above which an area is disqualified from regional industry status.[44]

B. Concentration of Imports

In the second step of the regional industry analysis, we determine

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[41] Cemex, S.A. v. United States, Slip Op. 92-52 at 9 and 10 (CIT, April 1992) ("Cemex"). See also S. Rep. No. 249, 96th Cong., 1st Sess. at 83 (1979) ("[w]hat constitutes a major proportion of total domestic production will vary from case to case depending on the facts, and no standard minimum proportion is required in each case"); H. Rep. No. 317, 96th Cong., 1st Sess. at 73 (1979) ("phrase 'major proportion of total domestic production' cannot be defined with mathematical precision, and the application of the phrase will therefore vary from case to case").

[42] Report at Table 2, I-13.

[43] The Commission has found in the past that an average of 10.5 percent was acceptable and on several occasions that percentages of outside supply of less than 10 percent were acceptable. See, e.g., Venezuela Cement, USITC Pub. 2400 at 8-10 (10.5 percent); Mexico Cement, USITC Pub. 2305 at 15 (between 8 and 8.5 percent acceptable); Sugars and Syrups Final, USITC Pub. at 4, 14 (5.5 percent acceptable); Portland Hydraulic Cement, USITC Pub. 1310 at 9 (less than 10 percent acceptable). It determined in one case that 30 percent was too large, and in a second case that percentages that ranged between 25 and 50 percent were too large. See also Frozen French Fried Potatoes, USITC Pub. 1259 at 7; 12-Volt Lead-Acid Type Automotive Storage Batteries from the Republic of Korea, Inv. No. 731-TA-261 (Preliminary), USITC Pub. 1710 at 8 (June 1985).

[44] See, e.g., Cut-to-Length Carbon Steel Plate from Germany, Inv. No. 731-TA-147 (Preliminary-Remand), USITC Pub. 1550 at 9, n.11 (July 1984).

whether there is a requisite concentration of imports within the relevant region. There is no precise numerical limit for determining when import concentration within the relevant region is sufficient. The Commission generally has found percentages higher than 80 percent of total imports subject to investigation (on a volume basis) to be sufficient.[45] The Commission also, however, has found the requisite concentration at levels as low as 68 percent.[46] For example, in Japan Cement the Commission found an import concentration level between 61.2 percent and 73.7 percent to be sufficient.[47]

For the purposes of this investigation, we find that the Canadian imports of glass-grade nepheline syenite are sufficiently concentrated within the NEC region to warrant consideration of material injury or threat of material injury to a regional industry composed of the domestic producers of glass-grade feldspar and aplite in the NEC region.[48]

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[45] See, e.g., Portland Hydraulic Cement, USITC Pub. 1310 at 10 (99 percent); Offshore Platform Jacket, USITC Pub. 1848 at 10 (100 percent); Sugars and Syrups from Canada, Inv. No. 731-TA-3 (Final), USITC Pub. 1047 (March 1980) (96 percent).

[46] See Round White Potatoes, USITC Pub. 1463 at 7.

[47] Japan Cement, USITC Pub. 2376 at 20 and 21, 48-50. See also Venezuela Cement, USITC Pub. 2400 at 10 and 11 (63.5 percent to 100 percent found to be sufficient). Compare Certain Welded Carbon Steel Pipes and Tubes from Taiwan, Inv. No. 731-TA-349 (Final), USITC Pub. 1994 (July 1987) (questioned whether the concentration was sufficient when the percentages of imports ranged from 66.3 percent to 79.2 percent); Certain Welded Carbon Steel Pipes and Tubes from the Philippines and Singapore, Inv. Nos. 731-TA-293, 294, 296 (Final), USITC Pub. 1907 at 6 and 7, n.19 (November 1986) (found insufficient concentration when the imports into the region ranged from 69.2 percent to 80.1 percent).

[48] Vice Chairman Brunsdale and Commissioner Crawford do not regard import concentration as a condition precedent to analysis of material injury to a regional industry. Instead, following the plain language of the statute, they regard import concentration as a condition precedent to an affirmative determination that a domestic industry is being materially injured or threatened with material injury by LTFV imports. They note that the key paragraph in section 1677(4)(C) begins with the phrase "[i]n such appropriate

(continued...)

III. Regional Industry Analysis

In a regional industry analysis, unlike a national industry analysis, the Commission must determine whether producers of "all, or almost all," of the production within the region are materially injured by reason of the subject imports.[49] The regional industry in this investigation consists of a single domestic firm, TFC, which has two production facilities in the NEC region. TFC's Connecticut plant produced glass-grade feldspar from the 1950s until its closure in December 1991. TFC's Virginia plant began production of aplite in the 1960s. TFC accounts for 100 percent of production within the region.[50]

A. Condition of the Regional Industry

The Commission obtained extensive information concerning the condition of the regional industry during the period of investigation. Much of this information is business proprietary, as the regional industry consists of a single producer, and so our discussion necessarily must be in general terms.

In assessing whether there is material injury to a regional industry by reason of dumped imports, the Commission is instructed to consider all the

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[48](...continued)
circumstances . . . ." These circumstances are defined by the preceding paragraph to be two criteria, not three. When these criteria are met, the paragraph continues, "material injury, . . . may be found to exist with respect to an industry even if the domestic industry as a whole . . . is not injured, if there is a concentration of . . . dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured . . . ."

In this case, the Commission as a whole finds that the producer of all the production within the regional market is not being materially injured. Vice Chairman Brunsdale and Commissioner Crawford do not find it necessary to determine whether the import concentration test is met and so do not join in this discussion.

[49] 19 U.S.C. § 1677(4)(C). See, e.g., Cemex, S.A. v. United States, Slip Op. 92-52 (CIT, April 1992).

[50] Report at I-18.

"relevant economic factors which have a bearing on the state of the industry in the United States . . . ."[51] In undertaking that assessment, we consider, among other relevant factors, U.S. consumption, production, shipments, capacity utilization, employment, wages, financial performance, capital investment, and research and development expenses.[52] No single factor is considered dispositive in evaluating the condition of the regional industry. In each investigation, the Commission considers the particular nature of the industry under investigation[53] in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."[54]

Apparent U.S. consumption of feldspathic materials in the region declined steadily from 1989 to 1991.[55] Similarly, TFC's production of the like product in the region declined over the three-year period with only a slight increase from 1989 to 1990.[56] The consumption of feldspathic materials is driven by the demand for the end products in which the materials are used, mainly glass containers and fiberglass, with a large part of the materials marketed to the container glass industry.[57] Competition from non-glass containers, such as aluminum, paper and plastic containers, has been a principal factor adversely affecting the demand for container glass, and led to glass plant closures and the consolidation of the glass industry during the

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[51] 19 U.S.C. § 1677(7)(C)(iii).
[52] See 19 U.S.C. § 1677(7)(C)(iii).
[53] See 19 U.S.C. § 1677(7)(C)(iii). See also H.R. Rep. No. 317, 96th Cong., 1st Sess. 36; S. Rep. No. 249, 96th Cong., 1st Sess. 88.
[54] 19 U.S.C. § 1677(7)(C)(iii). These issues were not raised by any of the parties to this investigation, nor did the Commission receive any information relevant to business cycle considerations.
[55] Report at Table 18, I-32.
[56] Report at Table 6, I-20.
[57] Report at I-35.

1980s.[58] The increased use of non-glass containers, together with "lightweighting" and the increased use of recycled glass (cullet) by the glass industry, substantially reduced the demand for feldspathic materials.[59] While glass container shipments have increased slightly since 1989, the demand for the raw materials, such as primary alumina sources, continues to be weak.[60]

While production capacity remained level from 1989 to 1991, the overall decrease in production resulted in an overall decline in capacity utilization for the regional industry.[61] Capacity utilization rates remained high for TFC's Virginia aplite facility, despite a small overall decline. The rates for TFC's Connecticut feldspar facility, however, decreased dramatically from 1990 to 1991.[62]

U.S. shipments by plants in the region declined overall from 1989 to 1991.[63] While shipments originating and remaining in the NEC region increased from 1989 to 1990, these intra-regional shipments declined during the period of investigation.[64] Shipments outside the region by NEC region plants declined during the period of investigation.[65] There was a small volume of export shipments by NEC region facilities in 1990 and 1991.[66] Regional inventory holdings were not significant in volume; they fluctuated and experienced an overall decline from 1989 to 1991.[67]

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[58] Report at I-14 and I-35. See also Peter Harben, "Glass Raw Materials," No. 286, Industrial Minerals, July 1991 at 31.
[59] Lightweighting is the altering of the geometric shape of a container to reduce the amount of glass required to hold a given volume. Report at I-14.
[60] Report at I-35.
[61] Report at Table 6, I-20.
[62] Report at Table 6, I-20.
[63] Report at Table 7, I-20.
[64] Report at Table 7, I-20.
[65] Report at Table 7, I-20.
[66] Report at I-21.
[67] Report at Table 8, I-21.

Employment is not an important indicator of the condition of this regional industry because there are relatively few employees in the production of feldspathic material. During the period of investigation, employment, hours worked and total compensation declined while hourly compensation and unit labor costs increased.[68] Productivity remained level throughout the period of investigation.[69]

While overall profitability for the regional industry declined from 1989 to 1991, the financial performance of the two plants was markedly different. The feldspar plant experienced a slight decline in net sales in 1989 - 1990, and a significant decline in 1990 - 1991.[70] Further, the cost of goods sold as a share of net sales increased, resulting in a decrease in gross profits in both absolute terms and as a share of net sales over the period of investigation.[71] Even though selling, general and administrative expenses (SG&A) for this plant declined, operating income in absolute terms and as a share of net sales declined slightly in 1990 and sharply in 1991.[72] Net income before taxes, and cash flow, also declined for the 1989 to 1991 period.[73]

The regional aplite facility, on the other hand, experienced only a slight decrease in net sales from 1989 to 1991.[74] Moderate increases in costs of goods sold during the period of investigation, however, resulted in decreases in gross profits and operating income in both absolute terms and as

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[68] Report at Table 9, I-21 and I-22.
[69] Report at Table 9, I-22.
[70] Report at Table 10, I-24.
[71] Report at Table 10, I-24.
[72] Report at Table 10, I-24.
[73] Report at Table 10, I-24.
[74] Report at Table 11, I-24.

a share of net sales.[75] SG&A as a share of net sales remained relatively level overall, with a slight decline in 1990.[76] Cash flow declined from 1989 to 1991.[77]

Net return on fixed assets for the NEC region production facilities on an aggregated basis declined sharply during the period of investigation.[78] TFC's Connecticut feldspar facility recorded a slight increase in net return on fixed assets in 1990, but experienced a sharp drop in its net return in 1991.[79] The net return on fixed assets for TFC's Virginia aplite facility declined from 1989 to 1991.[80]

Capital expenditures for regional plants also dropped both overall and by production facility from 1989 to 1991.[81] While aggregate research and development expenditures increased over the period of investigation, the total expenditure was extremely small.[82]

B. No Material Injury to the Regional Industry by Reason of LTFV Imports

In determining whether the domestic industry is materially injured by reason of the imports under investigation, the statute directs the Commission to consider:

> (I) the volume of imports of the merchandise which is the subject of the investigation,
> (II) the effect of imports of that merchandise on prices in the United States for like products, and
> (III) the impact of imports of such merchandise on domestic producers of like products, but only in the context of production operations

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[75] Report at Table 11, I-24.
[76] Report at Table 11, I-24.
[77] Report at Table 11, I-24.
[78] Report at Table 14, I-27.
[79] Report at Table 14, I-27.
[80] Report at Table 14, I-27.
[81] Report at Table 15, I-27.
[82] Report at I-28.

within the United States . . . .[83]

In making this determination, the Commission may consider "such other economic factors as are relevant to the determination . . . ."[84] Although we may consider information that indicates that injury to the industry is caused by factors other than the LTFV imports, we do not weigh causes.[85] [86] For the reasons discussed below, we find that there is no material injury to the regional industry by reason of LTFV imports of nepheline syenite from Canada.

We note again that much of the information on which we base our decision is business proprietary because there is only one Canadian producer (and exporter to the United States) of the subject imports. Therefore, our discussion of their effects necessarily must be in general terms.

Volume. Regional imports of nepheline syenite historically have been large in absolute terms and as a share of the regional market. During the period of investigation, the volume of imports, like the volume of domestic shipments, declined.[87] The regional market share held by the subject imports also declined slightly between 1989 and 1991.[88]

Prices. The extensive pricing data in the record show that import

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[83] 19 U.S.C. § 1677(7)(B)(i).
[84] 19 U.S.C. § 1677(7)(B)(ii).
[85] E.g., Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (CIT 1988). See also S. Rep. No. 249, 96th Cong., 1st Sess. 57 (1979); H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).
[86] Commissioner Nuzum further notes that the Commission need not determine that imports are the principal or a substantial cause of material injury. Rather, the Commission need only determine whether imports are a cause of material injury. See S. Rep. No. 249, 96th Cong., 1st Sess. 74-75 (1979). See also Iwatsu Electric Co. v. United States, 758 F. Supp. 1506 (CIT 1991); United Engineering & Forging v. United States, 779 F. Supp. 1375 (CIT 1991); LMI-La Metalli Industriale, S.p.A. v. United States, 712 F. Supp. 959 (CIT 1989).
[87] Report at Table 17, I-32.
[88] Report at Table 18, I-32.

prices increased throughout the period of investigation.[89] They also show that domestic prices in the region have increased moderately.[90] Nepheline syenite, aplite and feldspar prices, however, are not easily compared because of the different chemical compositions among these products and varying, but substantial, transportation costs.[91] We, therefore, found price information to be of limited value in making our determination.

Impact. Glass-grade nepheline syenite, glass-grade feldspar and aplite are not readily substitutable for several reasons. First, their chemical compositions are different. In addition to higher alumina content, nepheline syenite has a higher percentage of alkalis (potassium and sodium) than glass-grade feldspar and aplite, which allows it to replace a greater amount of the more costly ingredients in the glass batch, such as soda ash.[92] Both nepheline syenite and feldspar have lower levels of iron (an undesirable element in glassmaking) than aplite.[93] Also, the slightly different particle sizes and particle size consistency among nepheline syenite, aplite and feldspar affect the melting and blending of the other materials in a glass batch. The combined effect of these differences is that some glass makers simply cannot use aplite or feldspar, and others simply cannot use nepheline syenite.[94]

Second, although nepheline syenite, feldspar and aplite are sometimes offered for sale within the NEC region on an f.o.b. basis, transportation

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[89] Report at I-40. We note that Unimin stated that, when it bought Indusmin's nepheline syenite operation in September 1990, it increased prices on all products effective January 1, 1991 and continued to raise prices during 1991, and for 1992 (by over 10 percent for some customers). Tr. at 135.
[90] Report at I-37 - I-40.
[91] Report at I-36 and I-40.
[92] Report at I-33.
[93] Report at I-34.
[94] Report at I-42 and I-43.

costs, whether included in the price of the product or separately arranged by the purchaser, are a very large part of the overall cost of a glass batch's components. Differences in the cost of transportation can affect the total cost of switching from one source of alumina to another. The cost of transporting other important glass ingredients, such as silica, soda ash, and limestone, to a particular plant can also affect the relative substitutability of alumina sources at that plant.[95] Furthermore, in response to the importance of transportation costs, certain sellers of raw materials differentiate their products by including in the sales price the cost benefits of attractive transportation packages arranged with carriers.[96]

Finally, although purchasers generally have the option of switching feldspathic materials, such a switch may entail other significant costs. Due to their chemical composition differences, a glass batch must be reformulated whenever an alumina source is changed.[97] The potential production and quality problems that might result from the use of a different alumina source, such as alumina knots, glass defects, improper melting of materials and iron discoloration, reduce the incentive to switch.[98] Indeed, some purchasers reported that the annual savings required to justify a shift in alumina sources ranged from $10,000 to $50,000.[99] Minor price differences do not appear to be a strong incentive to shift alumina sources.

Nevertheless, petitioner contended that its customers are price

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[95] Report at I-36.
[96] Report at I-13 and I-36. The respondent alleged that "Unimin's strategic emphasis has been to negotiate freight rates on our customers' behalf" to obtain the lowest delivered cost without Unimin lowering the price of its product. Tr. at 158-160; Respondent's posthearing brief at App. 1, 13 - 18 and App. 8 and 9.
[97] Report at I-33 and I-34.
[98] Report at I-34, I-42 and I-43.
[99] Report at I-34.

sensitive, i.e., that price is the most important "changeable" factor a glassmaker considers when thinking of switching alumina sources.[100] In particular, TFC argued that it was forced to close its Connecticut feldspar operation during the period of investigation (December 1991) because the unfair competition from LTFV nepheline syenite caused it to lose customers and to lower prices. We disagree, and believe TFC closed the plant because of declining consumption, particularly in the geographic area which it serves, and the increasingly higher costs of production at the facility.[101] The willingness of any TFC, or Unimin, customer to switch from one alumina source to another is limited by any or all the factors we have described. It is not surprising, then, that the evidence in the record does not substantiate the allegations of either lost sales or lost revenue within the region.

Since these products have limited price sensitivity, the 9.36 percent dumping margin found by Commerce[102] would have at most a limited effect on purchasers' choices between the like product and the subject import.[103] The effect is further attenuated by the high cost of transportation relative to the total delivered price. We note that Commerce factors out the cost of transportation in calculating the dumping margin.[104] This is something purchasers cannot do. For some buyers, the transportation costs may account

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[100] Petitioner's Prehearing Brief at 29.
[101] Report at I-17, I-18 and I-44.
[102] See 57 Fed. Reg. 9237, 9242 (March 17, 1992)(Commerce derived the dumping margin by comparing the U.S. price of nepheline syenite to the foreign market value of identical or similar nepheline syenite in Canada.). Report at A-6 to A-11.
[103] Commissioner Nuzum does not join in the discussion in this paragraph. Commissioner Nuzum takes note of the particular margin of dumping found by the Commerce Department, but draws no specific conclusion on its effect, or the method of calculating such margin.
[104] See 57 Fed. Reg. 9237, 9238 (March 17, 1992). Report at A-6 and A-7.

for more than 50 percent of the total delivered price.[105] For them, the effects of the dumping margin would be more than halved.

In sum, despite the volume of imports into the NEC region, there is no indication that LTFV imports' prices are depressing or suppressing domestic prices or reducing domestic volume. After considering the impact of these imports on domestic producers, we find that the regional industry is not materially injured by reason of LTFV imports.

C. No Threat of Material Injury to the Regional Industry

When the Commission finds no present material injury by reason of LTFV imports, the Commission must then proceed to consider whether a U.S. industry is threatened with material injury by reason of imports. Section 771(7)(F) of the Act directs the Commission to make its determination "on the basis of evidence that threat of material injury is real and that actual injury is imminent."[106] The Commission considers as many of the ten statutory factors as are relevant to the particular facts of the investigation.[107]

In this investigation, the relevant 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

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[105] Report at I-36.

[106] 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).

[107] 19 U.S.C. § 1677(7)(F)(i).

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.[108] The presence or absence of any single threat factor shall not necessarily be dispositive.[109]

Based on our analysis of the record in the context of these statutory factors, we find that the regional industry is not threatened with material injury by reason of the LTFV imports.[110]

The volume of respondent's exports to the U.S. market has been large throughout the period of investigation.[111] Despite the large import volume, however, there has not been a rapid increase in market penetration in the NEC region.[112] In fact, market share held by nepheline syenite in the region declined overall, in spite of a moderate increase from 1990 to 1991.[113]

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[108] See 19 U.S.C. § 1677(7)(F)(i)(I)-(X). 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. 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 nepheline syenite, is not applicable to this case because there are no antidumping orders on products in which production could potentially be shifted to produce nepheline syenite. Finally, factor IX, regarding raw and processed agricultural products, is not applicable to the facts of this case.

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

[110] As in our analysis of the condition of the regional industry, we note that much of the information on the condition and behavior of the foreign producer is business proprietary, as Unimin is the single Canadian producer (and exporter to the United States) of the subject product. Therefore, our discussion of the effects of the subject imports necessarily must be in very general terms.

[111] Report at Table 18, I-32.

[112] Report at Table 18, I-32.

[113] Report at Table 18, I-32.

While the NEC regional market is important to respondent, Unimin, since it accounts for a substantially larger share of Unimin's shipments than its home or other markets, regional shipments as a share of respondent's total shipments have declined.[114] Based on the evidence, Unimin's exports to non-U.S. markets rather than U.S. markets appear to account for an increasingly larger share of its shipments.[115] There is nothing in the record to indicate that there will be a change in these consistent patterns of trade in the near future, much less "evidence that threat . . . is real and that actual injury is imminent."[116]

Unimin's production capacity remained level from 1989 to 1990, and increased slightly between 1990 and 1991.[117] In contrast, respondent's production declined over the period of investigation resulting in a decline in its capacity utilization rates.[118] [119] The NEC region plants experienced a similar declining trend in capacity utilization rates during the period of investigation.[120] Further, foreign capacity utilization rates remain high.[121]

Inventory levels, which historically have been insignificant because the cost of storage is high relative to the mineral's value, were nearly non-existent throughout the period of investigation.[122] These factors do not support an affirmative threat determination.[123]

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[114] Report at Table 16, I-30.
[115] Report at Table 16, I-30.
[116] 19 U.S.C. § 1677(7)(F)(ii).
[117] Report at Table 16, I-30.
[118] Report at Table 16, I-30.
[119] The "mere fact of increased capacity does not ipso facto imply increased imports to the United States." American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (CIT 1984) aff'd sub nom, Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985).
[120] Report at Table 6, I-20.
[121] Report at Table 16, I-30.
[122] Report at Table 16, I-30.
[123] See 19 U.S.C. § 1677(7)(F)(i)(V).

Imports have not had a discernible adverse impact on domestic prices. In fact, both prices of domestic products and prices of subject imports have increased during the period of investigation.[124] There is no indication that future imports would be any more likely to affect prices in the near future than they do now.[125]

There are no "other demonstrable adverse trends" that indicate that imports will be the cause of actual injury, nor are there "actual and potential negative effects on existing development and production efforts of the domestic industry."[126] Based on these facts, we find that the regional industry is not threatened with material injury by reason of the LTFV imports.

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[124] Report at I-37 - I-40.
[125] See 19 U.S.C. § 1677 (7)(F)(i)(IV).
[126] 19 U.S.C. § 1677(7)(F)(i)(VII) and (X).

ADDITIONAL VIEWS OF COMMISSIONER JANET A. NUZUM

As indicated in the majority opinion, I determine that an industry in the United States is neither materially injured nor threatened with material injury by reason of LTFV imports of nepheline syenite from Canada. In arriving at this negative determination, I analyzed the effects of the subject imports on both the regional industry (in the NEC region) and the national industry. The following additional views set forth my analysis based on a national industry.

I join my colleagues in finding that appropriate circumstances exist to justify a regional industry analysis in this investigation. The Commission, however, is not required to adopt a regional analysis here, and I found it useful to examine the record on both a regional and national basis. I note that, in most respects, the national market mirrors the regional market. Specifically, with respect to import volumes, market share, and pricing, the national and regional trends are very similar. My analysis below discusses national trends and notes regional trends in corresponding footnotes.

Related parties

In this final investigation, the petitioner, The Feldspar Corp. (TFC), contended that if the Commission examined injury to a national industry it should exclude Unimin's feldspar operation in North Carolina because it is a party related to the importer.[1] Under section 771(4)(B) of the Tariff Act of 1930, producers who are related to exporters or importers, or who are themselves importers of allegedly dumped or subsidized merchandise, may be excluded from the domestic industry.[2] Unimin Canada Ltd., which commercially

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[1] Petitioner's Prehearing Brief at 17-21.
[2] 19 U.S.C. § 1677(4)(B).

mines nepheline syenite in Ontario, Canada, and accounts for 100 percent of the imports from Canada, is a wholly owned subsidiary of the respondent, Unimin Corp.[3] Unimin Corp. also directly owns Unimin-NC, a feldspar plant in North Carolina.[4]

Application of the related parties provision is within the discretion of the Commission based upon the facts presented in each investigation.[5] If a company qualifies as a related party under section 771(4)(B), the Commission determines whether "appropriate circumstances" exist for excluding the company in question from the domestic industry.[6] The related parties provision is employed to reduce any distortion in the aggregate data bearing on the condition of the domestic industry that might result from including related parties whose operations may be shielded from the effects of the subject imports.[7] The primary factors the Commission examines in deciding whether "appropriate circumstances" exist to exclude a related party include:

> (1) the percentage of domestic production attributable to related producers;
>
> (2) the reason why importing producers choose to import the articles under investigation -- to benefit from the unfair trade practice or to enable them to continue production and compete in the domestic market; and
>
> (3) the competitive position of the related domestic producer vis-a-vis other domestic producers.[8]

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[3] Transcript (Tr.) at 190 and 191. Respondent's Prehearing Brief at 2.

[4] Tr. at 190 and 191.

[5] Torrington v. United States, Slip. Op. 92-49 at 12 (CIT, April 3, 1992); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (CIT, 1987).

[6] See, e.g., Empire Plow Co. v. United States, 675 F. Supp. at 1353 (CIT, 1987) and Digital Readout Systems and Subassemblies Thereof from Japan, Inv. No. 731-TA-390 (Final), USITC Pub. 2150 at 15 (January 1989).

[7] Heavy Forged Handtools from the People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357 at 18 (February 1991).

[8] See, e.g., Torrington v. United States, Slip Op. 92-49 at 10 and 11 (CIT, April 3, 1992) (Court upheld the Commission's practice of examining these factors in determining that appropriate circumstances did not exist to exclude a related party); Thermostatically Controlled Appliance Plugs and Internal Probe

The Commission also considers whether each company's books are kept separately from those of related companies and whether the primary interests of the related producers lie in domestic production or in importation.[9]

I have reviewed the relationship of Unimin-NC to the respondent under section 771(4)(B) and find that Unimin-NC is a related party. I then considered whether "appropriate circumstances" exist to exclude Unimin-NC from the domestic industry. First, the percentage of domestic production attributable to Unimin-NC is small.[10] Second, the confidential record suggests that the domestic operations of Unimin have been shielded from competition with the LTFV imports, and that Unimin-NC's financial performance is significantly stronger than that of the other domestic producers.[11] Third, with regard to bookkeeping, an official of Unimin testified at the hearing that "Unimin's Connecticut headquarters does keep the financial records for both the North Carolina operation and the Canadian operation."[12] Further, regarding the marketing for both operations, Unimin's witness responded that "all our people whose area of responsibility is marketing are located in Connecticut and their responsibilities include marketing of all our Canadian products . . . and our North Carolina products."[13]

Therefore, I conclude that appropriate circumstances exist to exclude

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Thermostats Therefor from Canada, Japan, Malaysia and Taiwan, Inv. Nos. 701-TA-292 and 731-TA-400, 402-404 (Final), USITC Pub. 2152 (January 1989); Granular Polytetrafluoroethylene Resin from Italy and Japan, Inv. No. 731-TA-385 and 386 (Final), USITC Pub. 2112 (August 1988); Rock Salt from Canada, Inv. No. 731-TA-239 (Final), USITC Pub. 1798 (January 1986).

[9] See, e.g., Rock Salt from Canada, USITC Pub. 1798 at 12. PET Film, Inv. Nos. 731-TA-458-459 (Final), USITC Pub. 2383 at 17-18 (May 1991).

[10] Report at I-18.

[11] Report at I-18, I-26, I-33, C-3, D-3, and D-3.

[12] Tr. at 190.

[13] Tr. at 191.

Unimin-NC operations from the definition of domestic industry and, therefore, from my analysis based on a national domestic industry.

Condition of the Industry

In considering the condition of the industry I looked to the factors enumerated in the statute, the nature of the industry, and the conditions of competition that are distinctive to this industry.[14] I note at the outset that much of the information on the domestic industry, as well as information relating to the imports, is confidential; my discussion, therefore, will be general in nature.

A limited number of producers supplied the U.S. market throughout the period of investigation. Four firms with a total of seven plants produced aplite and glass-grade feldspar in the United States.[15] The Canadian industry, which consists of one firm, has traditionally supplied a substantial share of the U.S. market.[16] On September 25, 1990, Indusmin, Inc., sold the Canadian facilities to Unimin Corp.

As discussed in the "like product" section of the majority opinion, aplite, feldspar, and nepheline syenite (feldspathic materials) are primary alumina-source materials for the glass industry, which includes producers of container glass (bottles, jars, etc.), fiberglass, flat glass, and specialty glass products (television screens, electric insulators, etc.). The container glass industry is the largest consumer of feldspathic materials.[17] Various changes in container glass production, including increased competition from other packaging materials, increased use of recycled glass (cullet), and the

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[14] 19 U.S.C. § 1677(7)(C)(iii).

[15] This includes Unimin's North Carolina plant. TFC's Connecticut plant ceased operations towards the end of the period of investigation.

[16] Report at Table 18. Canadian product has likewise accounted for a substantial share of the NEC market. Id.

[17] Report at I-14.

practice of "lightweighting" have all resulted in decreased demand for feldspathic materials.[18] Apparent U.S. consumption of feldspathic materials declined steadily from 1989 to 1991.[19]

Aggregate U.S. capacity to produce aplite and glass-grade feldspar remained stable during 1989-91.[20] In response to declining demand, production and capacity utilization both declined steadily.[21] Shipments trends paralleled production trends, in terms of both quantity and value.[22] Despite declining demand, however, the unit value of U.S. shipments increased marginally.[23] Minimal inventories were held.[24] The number of production and related workers employed in the industry declined steadily, as did hours worked.[25] Wages and total compensation declined very slightly overall, although hourly wages and hourly compensation rose steadily.[26] Productivity remained unchanged from 1989 to 1990, and increased slightly from 1990 to 1991.[27] Unit labor costs declined from 1990 to 1991, but rose overall.[28] Net

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[18] Report at I-14 and petitioner's posthearing brief at Ex. 7 and Ex. 16. I note that plants within the NEC region ship a somewhat greater percent of their production to container glass producers than do U.S. producers on the whole. Memoranda INV-P-050 at 12 and INV-P-054 at 1.

[19] Report at Table 5. Apparent consumption in the NEC region declined somewhat more strongly. Id.

[20] Report at Table 6. Regional capacity also remained unchanged. Id.

[21] Report at Table 6. Within the NEC region, production and capacity utilization increased from 1989 to 1990, and then declined in 1991. Id.

[22] Report at Table 7. This same relationship applies to regional trends. Id.

[23] Report at Table 7. In contrast, the unit value of U.S. shipments within the region declined marginally. Id.

[24] Report at Table 8. The same is true for inventories within the NEC region. Id.

[25] Report at Table 9. Within the NEC region, the number of workers also declined steadily; hours worked, however, declined overall but not steadily. Id.

[26] Report at Table 9. The same trends were observed within the NEC region. Id.

[27] Report at Table 9. Within the region, productivity likewise remained unchanged in the first period of comparison but declined in the second. Id.

[28] Report at Table 9. Within the NEC region, unit labor costs rose steadily. Id.

sales for the industry were essentially unchanged from 1989 to 1990, and declined in 1991.[29] Costs of goods sold increased steadily as a share of net sales, and operating profitability deteriorated correspondingly.[30] Selling, general, and administrative expenses (SG&A), as a share of net sales, remained steady; thus, operating profitability mirrored gross profitability.[31] Capital expenditures fell sharply from 1989 to 1990, but recovered in 1991 for an overall slight decline.[32] Research and development expenses (R&D), which remained small in absolute terms, increased strongly.[33]

Material injury by reason of the subject imports

The volume of subject imports was significant; however, it declined steadily during the period of investigation.[34] The volume of such imports relative to U.S. consumption was also significant throughout the period of investigation.[35] The market share of the subject imports, measured by quantity, declined very slightly from 1989 to 1990 as shipments of Canadian product declined more sharply than did U.S. producers' shipments. The reverse occurred in 1991, and Canadian market share rose to a level that remained marginally under the level reached in 1989.[36] Although the Canadian market share was significant, increases in that share were not. Furthermore, trends

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[29] Report at Table 13. In comparison, regional net sales declined steadily and somewhat more strongly. Report at Tables 10 and 11.

[30] Report at Table 13. The same trends were observed for each of the regional plants. Report at Tables 10 and 11.

[31] Report at Table 13. The same overall trends were observed for both the regional plants. However, SG&A at both declined from 1989 to 1990, before increasing in 1991; thus, declines at the operating profit (loss) level were strongest from 1989 to 1990. Report at Tables 10 and 11.

[32] Report at Table 15. In contrast, capital expenditures within the region fell strongly throughout the period of investigation. Id.

[33] Report at I-28. On a regional basis, R&D increased similarly. Id.

[34] Report at Table 17. The same trend was observed within the region. Id.

[35] Due to the concentration of imports within the NEC region, their share of that market was greater.

[36] Report at Table 18. Canadian market share by quantity within the region fluctuated more strongly. Id.

relating to the value of imports during the period of investigation were also very relevant to my determination; however, these trends are confidential and therefore may not be discussed.

The Commission obtained pricing data for both the domestic and imported products. These data were extensive but of limited usefulness in making direct price comparisons. Due to the fact that differences in the chemical composition of nepheline syenite, aplite, and glass-grade feldspar lead to somewhat different prices, it is not possible to draw any conclusions on possible underselling by the imported product.[37] Price trends for U.S. producers indicate a pattern of small increases for most customers.[38] The record, therefore, does not support a finding of significant price depression. The petitioner specifically alleged price suppression.[39] I note that U.S. producers' cost increases outpaced their price increases;[40] however, the prices of imports rose more steeply than did the prices of domestic products.[41] I am not persuaded, therefore, that import pricing significantly suppressed U.S. prices. Finally, there were no verified instances of lost sales and minimal evidence of lost revenues.[42]

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[37] It is well-established that the Commission has broad discretion to analyze and assess the significance of the evidence on price underselling. See Copperweld Corp. v. United States, 682 F.Supp. 552, 565 (CIT 1988).

[38] Report, Tables 19-24. This statement also applies specifically to NEC region prices. Report, Tables 19-20.

[39] Petitioner's prehearing brief at 29-83.

[40] Compare Report at Table 13 with Report at Tables 19-24. This is equally true within the region. Compare Report at Tables 11-12 with Report at Tables 19-20.

[41] Compare Report at Tables 19-24 with Report at Table 25. This is also true within the region. Compare Report at Tables 19-20 with Report at Table 25.

[42] Report, pp. I-43-I-45. I note that information on lost sales and lost revenues is anecdotal in nature. Purchasers are frequently either reluctant or unable to comment on the allegations made, and it is generally difficult to verify whether the information provided is accurate. In this investigation, I note that the information on lost sales and lost revenues is consistent with certain statements made in party briefs and in testimony regarding the nature of the market for these products.

There has been no discernible adverse impact of the subject imports on the U.S. industry producing aplite and glass-grade feldspar, even though the Canadian industry had, and maintained, a significant share of the overall U.S. market. In fact, the U.S. market was generally characterized by stability in purchaser-supplier relationships; most purchasers' plants for which data was provided to the Commission relied on one supplier throughout the period of investigation.[43] This stability is due to several factors, including proximity, product preference, and relative price insensitivity on the part of the purchasers of feldspathic materials.

Proximity is important in this industry because of the high cost of transporting the product. Feldspathic materials have a relatively low value-to-weight ratio, which means that transportation accounts for a substantial share of the overall delivered cost to the consumer.[44] Differences in f.o.b. prices can be easily outweighed by transportation cost factors. Thus, Canadian nepheline syenite has a competitive advantage on a delivered price basis in much of the northeast and northcentral United States as compared with U.S.-produced aplite and glass-grade feldspar. Even within a certain geographic area, however, other factors--such as the availability of rail facilities--further affect the delivered cost advantage of various suppliers. Evidence on the record suggests that Unimin negotiated advantageous freight rates for some customers. Attractive transportation costs, whether based purely on location or on negotiated freight rates, significantly affect purchasing decisions.[45]

In addition, product preference, whether due to quality concerns or a

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[43] Report at Tables 19-25 and I-42.
[44] Report at I-13.
[45] Report at I-36 and I-42-I-45.

reluctance to switch alumina sources, plays a role in sourcing patterns. Some end users, at certain facilities and for particular end uses, report that one or another feldspathic material is not acceptable because of quality concerns.[46] Most end users acknowledged that any of the three feldspathic materials are capable of being used in their production processes. The risks and potential costs associated with switching materials, however, effectively limit switches. According to some purchasers, a change in materials may cause production problems; thus, they require a substantial economic incentive to justify a switch. Several purchasers acknowledged that they pay a "premium" for the feldspathic material they use.[47]

End users base their decision to purchase feldspathic material on quality (including chemical properties) and total batch cost.[48] Total batch cost, in turn, includes the total delivered cost of all the required input materials. Feldspathic materials generally account for less than 10 percent of the batch cost.[49] Where total cost was the factor cited in making a switch of material, it is not possible to identify the exact role that the price of the feldspathic material played in the decision.[50] In fact, it appears that purchasers do not base a decision to switch on any given input material cost.[51] Rather, such a decision is based on overall batch cost, balanced against the risk of costly production delays that could occur if the switch

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[46] Report at I-34 and I-44, and Memorandum INV-P-050 at 12-13.

[47] Report at I-41.

[48] Changing from one alumina source to another requires reformulation of the entire glass batch (raw materials mix); thus, the costs of other materials will also vary.

[49] Report at I-33.

[50] Report at Table 26. A greater number of switches were due to disruptions either in supply or in supplier-purchaser relationships. Id.

[51] When asked to comment on the comparative price trends of feldspathic materials, many purchasers were unable to respond because they buy only one product from a single supplier and do not normally seek out other suppliers. Report at I-42.

leads to quality problems. Purchasers have estimated the switch incentive at a value of $10,000 to $50,000.[52]

The record does not show any evidence of switches that occurred because of price competition from LTFV imports.[53] There is evidence, however, that certain purchasers have been successful at negotiating price reductions from domestic producers without a competing bid from another supplier.[54] Also, certain purchasers who received competitive delivered price quotes from Unimin did not switch suppliers, despite possible cost savings.[55] In sum, evidence in the record does not support the view that declines in domestic shipments and revenues were due to price competition from LTFV imports.[56] I find there is not sufficient evidence on the record to support an affirmative determination with respect to material injury to the national industry by reason of the LTFV imports.

No threat of material injury to national industry

When the Commission's present material injury determination is negative, the Commission is then required 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."[57]

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[52] Report at I-34.

[53] I base this conclusion not only on lost sales information presented in the staff report but also on reported switches to nepheline syenite from either glass-grade feldspar or aplite.

[54] Report at I-44.

[55] Id.

[56] My views on the closure of the petitioner's Connecticut plant are contained in the majority opinion; these views apply equally to both my regional and national industry analyses.

[57] 19 U.S.C. § 1677(7)(F)(ii). While an analysis of the statutory threat factors necessarily involves projection of future events, my 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).

Based on an analysis of the record in the context of the relevant statutory factors,[58] I find that the national industry is not threatened with material injury by reason of the LTFV imports. While much of the information on the condition and behavior of the foreign producer is business proprietary, I note that the volume of Unimin's exports to the U.S. market has been large throughout the period of investigation.[59] Despite the import volume, however, there has not been a rapid increase in U.S. market penetration.[60] In fact, U.S. market share held by imports of nepheline syenite from Canada remained about level throughout the period of investigation, with a slight decline in 1990.[61]

While the U.S. market is important to Unimin since it accounts for a substantially larger share of Unimin's shipments than its home or other markets, U.S. shipments as a share of Unimin's total shipments have remained level throughout the period of investigation, with a moderate decline in 1990.[62] Moreover, Unimin's exports to non-U.S. markets rather than U.S. markets account for an increasingly larger share of its shipments.[63] There is no indication that there will be a change in these consistent patterns of trade in the near future.

Unimin's production capacity remained level from 1989 to 1990, and increased only slightly from 1990 to 1991.[64] Respondent's capacity utilization rates remained high, despite a moderate decline in such rates over the period of investigation.[65] Inventory levels, which historically have been

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[58] See 19 U.S.C. § 1677(7)(F)(i).
[59] Report at Table 18.
[60] Id.
[61] Id.
[62] Report at Table 16.
[63] Id.
[64] Id.
[65] Id.

insignificant because the cost of storage is high relative to the mineral's value, were nearly non-existent throughout the period of investigation.[66]

In considering any probability of price effects,[67] I note that the subject imports have not had a discernible adverse impact on domestic prices. In fact, for the most part prices of domestic products and prices of subject imports have increased during the period of investigation.[68] There is no indication that future imports would be any more likely to affect domestic prices in the near future than they do now.

There are no "other demonstrable adverse trends" that indicate that imports will be the cause of actual injury, nor are there "actual and potential negative effects on existing development and production efforts of the domestic industry."[69] Based on these facts, I find that the national industry is not threatened with material injury by reason of the LTFV imports.

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[66] Id.
[67] See 19 U.S.C. § 1677 (7)(F)(i)(IV).
[68] Report at I-37-I-40.
[69] 19 U.S.C. § 1677(7)(F)(i)(VII) and (X).

VIEWS OF CHAIRMAN DON NEWQUIST AND COMMISSIONER DAVID B. ROHR

Based on the record in this final investigation, we determine that the United States domestic industry is not materially injured, nor is it threatened with material injury, by reason of imports of nepheline syenite from Canada that have been found by the Department of Commerce ("Commerce") to be sold at less than fair value (LTFV).[1]

Like Product/Domestic Industry

As in any title VII investigation, the definition of the like product and domestic industry is the first step in our examination of whether a domestic industry is being materially injured or threatened with material injury by reason of LTFV imports. Section 771(4)(A) of the Tariff Act of 1930 defines the relevant 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."[2] In turn, the statute defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation."[3]

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

[2] 19 U.S.C. § 1677(4)(A).

[3] 19 U.S.C. § 1677(10). Our determination of the appropriate like product is a factual determination, to which we apply the statutory standard of "like" or "most similar in characteristics and uses" on a case-by-case basis. We consider 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 we may consider other factors relevant to a particular investigation. We look for clear dividing lines among possible like products. See e.g., Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169, 1170, n.5 and n.8 (CIT 1988); Sony Corporation of America v. United States, 712 F. Supp. 978, 983 (CIT 1989); see also 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).

The Department of Commerce ("Commerce") has defined the imported LTFV product as:

> [N]epheline syenite, which is a coarse crystalline rock consisting principally of feldspathic minerals (i.e., sodium-potassium feldspars and nepheline), with little or no free quartz, and whose typical mean value passing through ASTM E-11 mesh sieve no. 40 and retained on ASTM E-11 mesh sieve no. 200 (when solely said two sieves are used) is no less than 70 percent by weight.[4]

The Commerce definition effectively limits the product subject to investigation to glass-grade nepheline syenite.[5]

There is no domestic production of glass-grade nepheline syenite.[6] There are, however, domestic products which are sources of alumina for the glassmaking industry and which have some of the attributes of nepheline syenite.[7] In the preliminary investigation, the Commission concluded that "glass-grade feldspar and aplite are most similar to glass-grade nepheline

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[4] See 57 Fed. Reg. 9237, 9238 (March 17, 1992). Report at A-6 and A-7. We note that Commerce clarified its original scope description during its final investigation. The Commission's description of the articles subject to investigation was changed accordingly. The slightly different language between the original definition and the clarified version has no practical consequences since both investigations cover the same products. 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).

[5] Glass-grade nepheline syenite is a primary source of alumina for the glassmaking industry. Report at I-8.

[6] In Lime Oil from Peru, the Commission determined that, although domestic lime oil was not "like" the imported lime oil from Peru, it was the product that is "most similar in characteristics and uses." The Commission determined that there cannot be a finding of "no like product" as such a finding "runs counter to the statute's definition of 'like product' as 'a product like, or in the absence of like, most similar in characteristics and uses with, the article subject to investigation.'" Inv. No. 303-TA-16 (Preliminary), USITC Pub. 1723 at 5 (July 1985). See also 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, USITC Pub. 2185 at 36 (May 1989). There is in fact no domestic production of any nepheline syenite.

[7] Report at I-34. Bureau of Mines Report, p. 2. There are several other products which are alumina sources. However, the feldspathic materials -- glass-grade nepheline syenite, glass-grade feldspar, aplite, and glass-grade feldspathic sand -- reportedly provide the most economical way to introduce alumina in the production of glass. Report at I-8.

syenite."[8] While both parties sought some refinements of the like product definition in the final investigation, they did not contest the Commission's basic parameters for its preliminary like product determination.[9] Because there is no new evidence in the record in this final investigation that warrants changing the Commission's preliminary like product determination, we find that the like product consists of glass-grade feldspar (both soda and potash) and aplite. Further, we determine that the domestic industry consists of the domestic producers of glass-grade feldspar and aplite.

Domestic Industry

In general, the domestic industry is defined as that group of domestic producers who produce the like product, in this investigation, glass grade feldspar and aplite. During the period of the investigation, these producers were located in the eastern portion of the United States, specifically in Connecticut, Virginia, North Carolina, and Georgia. Petitioner requested

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[8] Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Preliminary), USITC Pub. 2415 at 9 (August 1991). In the preliminary determination, the Commission concluded that feldspathic sand and ceramic-grade feldspar were not included in the definition of the like product. Id. at 10 and 14.

[9] Petitioner proposed that glass-grade potash feldspar should not be included in the like product definition. We determine that the similarities in physical characteristics, uses, interchangeability, perception of customers and producers, production processes and channels of distribution outweigh the slight difference in chemical composition and the large difference in price with glass-grade nepheline syenite. Based on these facts, we conclude that glass-grade potash feldspar is included in the definition of the like product.

Respondent argued in this investigation that under the Tariff Act of 1930, "the most similar product must be a single product -- not a basket of products," and proposes that aplite is the sole like product because it is most similar to nepheline syenite. Despite the use of the language "a product" in the statute, there is no indication that the intention of Congress was to limit the definition of a like product to a single product. Further, the Courts have repeatedly upheld the Commission practice of defining one like product which includes a number of similar products.

that the Commission undertake a regional industry analysis in this investigation.[10] [11] Further, respondent indicated that it "does not contest Petitioner's contention that there is a regional industry . . . comprised of Petitioner's Connecticut feldspar plant and its Virginia aplite plant."[12] In its preliminary determination, the Commission concluded that it was appropriate to apply the regional industry provisions to this investigation."[13]

Regional Industry

Section 771(4)(C) of the Tariff Act of 1930 provides that:

> In appropriate circumstances, the United States, for a particular product market, may be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if--
>
> (i) the producers within such market sell all or almost all of their production of the like product in question in that market, and
>
> (ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.
>
> In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of subsidized or dumped imports into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the subsidized or dumped imports.[14]

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[10] Petitioner's Prehearing Brief at 10.

[11] Petition at 6. Petitioner proposed a regional industry which consists of the producers and customers of aplite and glass-grade feldspar located in the following states and territories --Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, West Virginia, Wisconsin, and the Commonwealth of Puerto Rico. Petition at 6 and 10. For purposes of this investigation we define this region as the "northeastern/northcentral region and Puerto Rico" ("region").

[12] Respondent's Prehearing Brief at 22. The issue of whether appropriate circumstances existed for a regional industry analysis was one of the most contested and fully developed issues in the preliminary investigation.

[13] Nepheline Syenite from Canada, Inv. No. 731-TA-525 (Preliminary), USITC Pub. 2415 at 22 (August 1991).

[14] 19 U.S.C. § 1677(4)(C). *See also* Cemex, S.A. v. United States, Slip Op. 92-52 at 6, n.1 (CIT, April 1992).

Regional industry analysis is discretionary, based on the language "appropriate circumstances" and "may be treated" found in the statute.[15] Obviously, we seek to avoid any "[a]rbitrary or free handed sculpting of regional markets."[16]

The Commission has defined "appropriate circumstances" on numerous occasions, focusing on such issues as the nature of the products, whether a separate geographic market exists, and whether the market is isolated and insular.[17] The fundamental question is whether the reality of the market makes a regional analysis appropriate.

In several of the recent investigations in which the Commission considered the regional industry provisions of title VII, the principal issue of concern to the Commission was determining the appropriate boundaries of the "region" in the context of several possible alternatives. In this context, various rather elaborate theories have been derived to describe the relationship between the various data that the Commission looks at, in particular "shipments into the region from outside the region," "shipments from the regional producers that remain within the region," and the "import concentration." The order and manner in which these factors are considered is of limited importance as long as the overarching goal is to define a region that is consistent with market realities.[18]

We find that during the period of investigation shipments within the region by regional producers of glass-grade feldspar and aplite satisfy the statutory isolation criterion for

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[15] 19 U.S.C. § 1677(4)(C). See, e.g., Gray Portland Cement and Cement Clinker from Mexico, Inv. No. 731-TA-451 (Final), USITC Pub. 2305 at 15 (August 1990) ("Mexico Cement"); Frozen French Fried Potatoes from Canada, Inv. No. 731-TA-93 (Preliminary), USITC Pub. 1259 at 6 (June 1982) ("Frozen French Fried Potatoes"); Fall-Harvested Round White Potatoes from Canada, Inv. No. 731-TA-124 (Final), USITC Pub. 1463 at 7 (December 1983) ("Round White Potatoes"); Rock Salt (Final), USITC Pub. 1798 at 5.

[16] See, e.g., Atlantic Sugar, Ltd. v. United States, 519 F. Supp. 916, 920 (CIT 1981); see also Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Preliminary), USITC Pub. 1310 at 11, n.30 (November 1982).

[17] See, e.g., Rock Salt, USITC Pub. 1798 at 5 (January 1986); Cut-to-Length Carbon Steel Plate from the Federal Republic of Germany, Inv. No. 731-TA-147 (Preliminary Remand), USITC Pub. 1550 at 8 (July 1984).

[18] Nepheline Syenite from Canada, Inv. no. 731-TA-525 (Preliminary) USITC Pub. 2415 (August 1991), Views of the Commission at 15-22, Additional Views of Commissioner David B. Rohr Concerning Regional Industry and Condition of the Industry at 29-31.

"shipments out."[19] Further, during the period of investigation, shipments originating in the region, and remaining within the region, increased and then stayed at a high level.[20] We also conclude that the percentage of consumption in the region supplied by U.S. producers of glass-grade feldspar and aplite from outside the region ("shipments in") remained constant at a low level.[21] [22] We further conclude that the Canadian imports of glass-grade nepheline syenite entering the region are sufficiently concentrated to warrant consideration of material injury or threat of material injury to a regional industry composed of the domestic producers of glass-grade feldspar and aplite in the region.

We also consider that an evaluation of the market realities makes it appropriate to analyze this investigation on a regional basis. First, we note that the like product has a low value to weight ratio, which limits the distances from producers' facilities in which it can be economically sold. It also involves relatively high transportation costs. We further note that the Canadian producer is jointly owned with the facilities in North Carolina and has consciously segregated the markets it services from Canada from those in North Carolina,

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[19] See, e.g., Venezuela Cement, USITC Pub. 2400 at 7 and 27; (over 95 percent found to be sufficient); Japan Cement, USITC Pub. 2376 at 18, 44 (82.6 percent found to be sufficient); Operators for Jalousie and Awning Windows from El Salvador, Inv. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. 1934 at 9 (January 1987) (over 80 percent found to be sufficient); Round White Potatoes, USITC Pub. 1463 at 7 (December 1983) (84 percent found to be sufficient); Portland Hydraulic Cement from Australia and Japan, Inv. Nos. 731-TA-108 and 109 (Final), USITC Pub. 1310 at 5 (October 1983) (92 percent found to be sufficient); Frozen French Fried Potatoes, USITC Pub. 1259 at 7 (66 percent found not to be sufficient).

[20] Report at Table 2, I-13. We note that percentages for market isolation criteria and concentration of imports in this investigation are business proprietary information.

[21] Report at Table 2, I-13.

[22] The Commission has found that an average of 10.5 percent was acceptable and on several occasions that percentages of outside supply of less than 10 percent were acceptable. See, e.g., Venezuela Cement, USITC Pub. 2400 at 8-10 (10.5 percent); Mexico Cement, USITC Pub. 2305 at 15 (between 8 and 8.5 percent acceptable); Sugars and Sirups Final, USITC Pub. at 4, 14 (5.5 percent acceptable); Portland Hydraulic Cement, USITC Pub. 1310 at 9 (less than 10 percent acceptable). It determined in one case that 30 percent was too large, and in a second that percentages that ranged between 25 and 50 percent were too large. See Frozen French Fried Potatoes, USITC Pub. 1259 at 7; 12-Volt Lead-Acid Type Automotive Storage Batteries from the Republic of Korea, Inv. No. 731-TA-261 (Preliminary), USITC Pub. 1710 at 8 (June 1985).

which is the site of two of the other three nonregional domestic production facilities.[23]

In light of the particular facts of this investigation, we are also making a further determination based on our evaluation of a national industry and the effects of imports on this national industry. In most investigations based on a regional industry, such an evaluation would be unnecessary. We do this, in this investigation, because there are several unique factors applicable to this industry which suggest the consideration of a national industry as well.

First, there are only two facilities producing the like product within the region, both owned by the petitioner. Second, of the four other facilities producing the like product, three are located in North Carolina, just outside the border of the region (one owned by petitioner, one owned by the same owners as the Canadian producer and one other independently owned), and one in Georgia, also owned by petitioner.

Third, while the like product is an essential, critical element in the glassmaking process, it is a small portion of the total cost of that process. As a result, despite the high costs of transportation, the geographic range of shipments is not as clearly confined to a strictly defined region by weight and price determinants as is the case for other products that lend themselves to regional analysis. Fourth, we also note that purchasers of the like product tend to be relatively concentrated in small areas around traditional sources of supply for their processes or around major users of their end products.

We therefore provide our analysis on a regional basis, but also, in footnotes, our views on a national industry basis. We note that the regional and national trends for the condition of the industry are largely similar. With regard to the factors indicating the lack of a causal nexus between imports and the condition of the industry, the analysis is the same for both the regional and national industries. Finally, with regard to the absence of threat, the analysis is largely the same, with differing information noted in footnotes as appropriate.

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[23] Report at I-18, I-26, I-33, C-8, D-8, and D-42; Tr. at 190 and 191.

Condition of the Regional Industry

The Commission obtained extensive information concerning the condition of the regional industry during the period of investigation. Much of this information, however, is business proprietary, as both facilities producing the like product within the region are owned by a single producer. Therefore, our discussion of the condition of the industry must necessarily be in general terms.

In evaluating the condition of the regional industry, we consider, among other factors, domestic consumption, domestic production, capacity, capacity utilization, shipments, inventories, employment, domestic market share, financial performance, the ability to raise capital, and investment.[24] No single factor is dispositive and in each investigation we consider all of these factors in the "context of the business cycle and conditions of competition that are distinctive to the affected industry."[25]

Apparent regional consumption of feldspathic materials declined from 1989 to 1991.[26] Similarly, regional production of feldspathic materials declined over the period of investigation with only a slight increase between 1989 and 1990.[27]

While regional production capacity remained level from 1989 to 1991, the decrease in production resulted in an overall decline in capacity utilization for the regional industry

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[24] 19 U.S.C. § 1677(7)(C)(iii).

[25] 19 U.S.C. § 1677(7)(C)(iii). The most distinguishing feature of the conditions of competition facing the domestic industry is the relationship between consumption of the like product and conditions in the glassmaking industry which is its principal consumer. The record indicates that several factors, including principally the move to lighter weight bottles and the use of "cullet", that is recycling of old bottles, are having a long term impact on the consumption of the ingredients of glass, including feldspathic material.

[26] Report at Table 18, I-32. Apparent U.S. consumption of feldspathic materials declined from 1989 to 1991.

[27] Report at Table 6, I-20. Similarly, domestic production of the like product declined only slightly over the period of investigation.

during the period of investigation.[28] Capacity utilization rates remained at acceptable levels for the aplite facility, despite a small overall decline; however, the rates for TFC's glass grade feldspar facility in the region decreased dramatically between 1990 and 1991.[29]

Total U.S. shipments by production facilities located in the region declined between 1989 and 1991.[30] While their shipments originating and remaining in the region increased from 1989 to 1990, such regional shipments declined over the period of investigation.[31] Shipments outside the region by the regional producer declined throughout the period of investigation.[32] There was a small volume of export shipments originating with the regional producer in 1990 and 1991.[33] Regional inventory holdings were not significant in volume and fluctuated with an overall decline from 1989 to 1991.[34]

Employment is not a major indicator of the condition of the regional feldspathic material industry because there are relatively few employees in the production process. Even so, during the period of investigation, the number of workers, hours worked and total compensation declined while hourly compensation and unit labor costs increased.[35]

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[28] Report at Table 6, I-20. While production capacity remained level for the national industry during the period of investigation, the slight decrease in production resulted in an overall decline in capacity utilization from 1989 to 1991.

[29] Report at Table 6, I-20. Capacity utilization rates for the national industry remained high throughout the period of investigation.

[30] Report at Table 7, I-20. U.S. shipments by national producers of the like product declined between 1989 and 1991.

[31] Report at Table 7, I-20.

[32] Report at Table 7, I-20.

[33] Report at I-21. Export shipments accounted for an extremely small share of U.S. shipments in 1990 and 1991.

[34] Report at Table 8, I-21. Inventory holdings on a nation-wide basis were not significant in volume and fluctuated with an overall decline from 1989 to 1991.

[35] Report at Table 9, I-21 - I-23. During the period of investigation, employment, hours worked and total compensation declined, while hourly compensation and unit labor costs increased for the national industry.

Productivity remained level throughout the period of investigation.[36]

While overall profitability for the regional producer declined from 1989 to 1991, the financial performance for the two plants was distinctly different.[37] The regional feldspar plant experienced a slight decline in net sales from 1989 to 1990, and a drastic decrease from 1990 to 1991.[38] Further, the cost of goods sold (COGS) as a percentage of net sales increased resulting in a sharp decrease in gross profit margin over the period of investigation.[39] While selling, general, and administrative expenses (SG&A) for the regional feldspar plant declined, the operating income in absolute terms and as a share of net sales declined slightly in 1990 and sharply in 1991 for a significant decline throughout the period of investigation.[40] Net income before taxes, and cash flow, also were declining for the 1989 to 1991 period.[41]

Net sales for the regional aplite producer decreased slightly from 1989 to 1991.[42] Moderate increases in costs of goods sold during the period of investigation, however, resulted in decreases in gross profits and operating income in both absolute terms and as a share of net sales.[43] SG&A expenses remained relatively level overall, with a slight decline in 1990.[44] Cash

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[36] Report at Table 9, I-22. Productivity for the national industry remained level throughout the period of investigation.

[37] Report at Table 13, I-26. Overall profitability for the national producers declined from 1989 to 1991.

[38] Report at Table 10, I-24. We note that the regional feldspar plant ceased operations in December of 1991.

[39] Report at Table 10, I-24.

[40] Report at Table 10, I-24.

[41] Report at Table 10, I-24.

[42] Report at Table 11, I-24. Net sales for the national industry declined overall during the period of investigation, despite a slight increase between 1989 and 1990. Report at Table 13, I-26.

[43] Report at Table 11, I-24. For the national industry, increases in COGS during the period of investigation, however, resulted in decreases in gross profits and operating income in both absolute terms and as a share of net sales. Report at Table 13, I-26.

[44] Report at Table 11, I-24. SG&A expenses of the national producers decreased only slightly for the 1989 to 1991 period. Report at Table 13, I-26.

flow declined from 1989 to 1991.[45]

Net return on fixed assets for the regional production facilities dramatically declined overall during the period of investigation.[46] The regional feldspar facility had a slight decrease in both operating and net return on fixed assets in 1990, but experienced a severe drop in both returns in 1991.[47] The operating and net return on fixed assets for the aplite plant declined from 1989 to 1991.[48]

Capital expenditures by regional producers also dropped both overall and by production facility from 1989 to 1991.[49] While research and development expenditures increased over the period of investigation, the total expenditure was extremely small.[50]

In sum, both the national and the regional producers have experienced overall declines in production, shipments, consumption and profitability in the face of increases in costs of goods. We also note the distinctive conditions of the two regional plants. The regional feldspar plant has closed. The aplite facility while not as severely injured, is experiencing declines in profitability and other key indicators. Based on such factors as the increases in costs and declines in sales, we conclude that this regional industry is currently experiencing material injury, and we reach the same conclusion regarding the national industry.

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[45] Report at Table 11, I-24. For the national industry, net income before taxes, and cash flow, also declined from 1989 to 1991. Report at Table 13, I-26.

[46] Report at Table 14, I-27. For the national producers, net return on fixed assets for the domestic production facilities declined sharply over the period of investigation. Report at Table 14, I-27.

[47] Report at Table 14, I-27.

[48] Report at Table 14, I-27.

[49] Report at Table 15, I-27. Capital expenditures by the national producers declined overall during the period of investigation with an significant decline in 1990 and an increase in 1991. Report at Table 15, I-27.

[50] Report at I-28. For the national industry, research and development expenditures increased over the period of investigation, but the total expenditure was extremely small. Report at I-28.

The Lack of a Causal Nexus

In determining whether an industry in the United States is materially injured "by reason of" the imports under investigation,[51] the statute directs us to consider the volume of imports, their effect on prices for the like product, and their impact on domestic producers.[52] In making this determination, we consider whether import volumes or increases in volume are significant, whether there has been significant underselling by imports, whether imports significantly depress or suppress prices for the like product, and such factors as domestic production, sales, capacity utilization, inventories, employment, and profits.[53]

Although we may consider information that indicates that injury to the industry is caused by factors other than the LTFV imports, we do not weigh causes.[54] We do not consider whether imports are the principal or a substantial cause of material injury; rather, the Commission is to determine whether imports are a cause of, that is contribute to, material injury.[55]

As in our analysis of the condition of the regional industry, we note that much of the information on which we base our decision is business proprietary because there is only one Canadian producer (and exporter to the United States) of the product subject to investigation. Therefore, our discussion of the effects of the subject imports must necessarily be in very

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[51] 19 U.S.C. § 1673b(a). The statute defines "material injury" as "harm which is not inconsequential, immaterial, or unimportant." 19 U.S.C. § 1677(7)(A).

[52] 19 U.S.C. § 1677(7)(B)(i).

[53] 19 U.S.C. § 1677(7)(C).

[54] E.g., Citrosuco Paulista S.A. v. United States, 704 F. Supp. 1075, 1101 (CIT 1988). "Current law does not . . . contemplate that the effects from the subsidized (or LTFV) imports be weighed against the effects associated with other factors (e.g. the volume and prices of imports sold at fair value, contraction in demand or changes in patterns of consumption, trade, restrictive practices of and competition between the foreign and domestic producers, developments in technology, and the export performance and productivity of the domestic industry) which may be contributing to overall injury to an industry." S. Rep. No. 249, 96th Cong., 1st Sess. 57 (1979). See also H.R. Rep. No. 317, 96th Cong., 1st Sess. 46-47 (1979).

[55] See Iwatsu Electric Co. v. United States, 758 F. Supp. 1506 (CIT 1991); United Engineering & Forging v. United States, 779 F. Supp. 1375 (CIT 1991); LMI-La Metalli Industriale, S.p.A. v. United States, 712 F. Supp. 959 (CIT 1989).

general terms.

Despite the condition of the regional industry, we determine that the injury it is experiencing is not "by reason" of LTFV imports. Imports of nepheline syenite into the region historically have been present in large volume and competed with the regional products. Throughout the period of investigation the volume of imports declined.[56] Overall, the subject imports lost market share in the region during the period of investigation, despite a moderate increase from 1990 to 1991.[57]

While the Commission received extensive pricing data in this investigation, prices of the subject imports and the like product are not readily comparable due to their different chemical compositions and varying, but substantial, transportation costs.[58] This makes direct price comparisons less meaningful in assessing the impact of imports. However, we note that a review of price comparison data collected by the Commission provides no basis for the conclusion that imports are significantly underselling domestic products.

Further, import prices have increased throughout the period of investigation.[59] Domestic prices in the region have also increased moderately throughout the period of investigation.[60] We therefore find that, despite the large market share held by the subject imports in the region, imports have not had a depressing or suppressing effect on domestic prices.

The Commission received a number of lost sales and lost revenue allegations from the regional producers that the Commission staff investigated. Because, as we noted above, the statistical price data was of limited probative value in this investigation, the investigation of these lost sales and lost revenue allegations and the various product switching allegations of

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[56] Report at Table 17, I-32.

[57] Report at Table 18, I-32.

[58] Report at I-36 and I-40.

[59] Report at I-40.

[60] Report at I-38 and I-39.

the parties was a principal source of information on the workings of the market and the role of price and the LTFV imports.

Petitioner asserted that the subject import and like product were price sensitive, and that price was the most important "changeable" factor considered in deciding whether to switch alumina sources.[61] Evidence on the record, however, suggests that while the price sensitivity of individual purchasers varies, the product is, overall, somewhat less price sensitive than petitioner asserts. Feldspathic materials are generally a small percentage of the batch costs of a glassmaking operation. Few purchasers have ever considered switching among types of feldspathic material once they have begun production. Only in the glass container segment of the market is there any indication that such switches occasionally take place. Even in this segment, our investigation indicates that purchasers of alumina sources develop a preference based on the type of furnace in a particular plant, the location of the plant in relation to the batch ingredients and end-users, the type of end-product produced, and the type of alumina source that the plant has used historically.[62] There is no persuasive evidence that price was more than an incidental, much less a significant factor in purchasing decisions.

While some large and sophisticated purchasers may have used the existence of alternative sources of alumina, both domestic and imported, as a bargaining lever in negotiations over price, this appears to be primarily a negotiating tactic rather than the real possibility of a switch in sourcing. The specific instances of switches among the different feldspathic materials are confidential. Our review of the record regarding the few switches between sources of alumina, which occurred during the period of investigation, does not substantiate the allegations of either lost sales or lost revenue within the region due to LTFV imports.

While the record indicates that the regional feldspar operation was closed during the period of investigation (December 1991), we find that LTFV imports were not a cause of its

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[61] Petitioner's Prehearing Brief at 29.

[62] Report at I-35.

closure. We believe that the closure was a result of declining consumption, particularly by the closure of one of its major customers.

Based on the evidence in the record, we find that the regional industry has not been materially injured by reason of LTFV imports. The volume of imports, while large has been predictable and consistent in the marketplace. There is no indication of significant price underselling or that imports' prices have had a significant depressing or suppressing effect on domestic prices. Therefore, there is no indication that LTFV imports are a cause of the material injury being experienced by the regional industry. A review of the evidence regarding the non-regional allegations of lost revenue and the few switches between sources of alumina also does not substantiate the allegations and indicates that any switches among products were not caused by the subject imports. We therefore conclude that LTFV imports are not a cause of injury to the national industry either.

Threat of Material Injury to the Regional Industry

When we make a negative determination with regard to present material injury, we must also determine whether the U.S. industry is threatened with material injury by reason of imports.[63] We consider as many of the ten statutory factors as are relevant to the particular facts of the investigation.[64] These factors include:

> (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,

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[63] 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).

[64] 19 U.S.C. § 1677(7)(F)(i).

> (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 1671 or 1673 of this title or to final orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation,
>
> (IX) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood 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.[65]

The presence or absence of any single threat factor shall not necessarily be dispositive.[66]

Based on our analysis of the record and these statutory factors, we find that, despite its financial condition, neither the regional industry nor the national industry are threatened with material injury by reason of the LTFV imports. As in our analysis of the condition of the regional industry, we note that much of the information on the condition and behavior of

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[65] 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 nepheline syenite, is not applicable to this case because there are no antidumping orders on products in which production could potentially be shifted to produce nepheline syenite; and factor IX, regarding raw and processed agricultural products, is 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.

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

the foreign producer is business proprietary, as Unimin is the single Canadian producer (and exporter to the United States) of the subject product. Therefore, our discussion of the effects of the subject imports must necessarily be in very general terms.

The volume of Unimin's exports to the U.S. market has been large but steadily declining throughout the period of investigation.[67] The evidence on the record indicates that there was no rapid increase in market penetration in the region.[68] In fact, market share held by nepheline syenite in the region declined overall, in spite of a moderate increase from 1990 to 1991.[69]

While the regional market is important to Unimin because it accounts for a substantially larger share of Unimin's shipments than its home or other markets, shipments into the region as a share of Unimin's total shipments have declined.[70] Based on the evidence, Unimin's exports to non-U.S. markets appear to account for an increasingly larger share of its shipments.[71] There is no information on the record that indicates that there will be a change in these consistent patterns of trade in the near future.[72]

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[67] Report at Table 17, I-32.

[68] Report at Table 18, I-32. There also has been no rapid increase in imports into the national market. Report at Table 18, I-32.

[69] Report at Table 18, I-32. The market share held by imports of nepheline syenite from Canada in the national market remained about level throughout the period of investigation, with a slight decline in 1990. Report at Table 18, I-32.

[70] Report at Table 16, I-30. Shipments to the U.S. national market as a share of Unimin's total shipments remained level during the period of investigation with a moderate decline in 1990. Report at Table 16, I-30.

[71] Report at Table 16, I-30.

[72] We note that the closure of the feldspar facility in Connecticut is having some impact on these trends. Unimin has picked up some of the customers of petitioner's closed feldspar facility, which accounts for much of the change in the trends. Tr. at 16. The record reveals that the principal reason for Unimin getting these orders is primarily a matter of the geographical location of these purchasers in relation to the transportation costs of the materials.

Unimin's production capacity remained level from 1989 to 1990, and increased slightly between 1990 and 1991.[73] In contrast, respondent's production declined over the period of investigation resulting in a decline in its capacity utilization rates.[74] [75] Regional producers experienced a similar declining trend in capacity utilization rates during the period of investigation.[76] Further, foreign capacity utilization rates remain high.[77]

Inventory levels, which historically have been insignificant because the cost of storage is high relative to the mineral's value, were nearly non-existent throughout the period of investigation.[78] These factors do not support an affirmative threat determination.[79]

Regarding the price effects of future imports,[80] imports have not had a discernible adverse impact on domestic prices. In fact, both prices of domestic products and prices of subject imports have increased during the period of investigation.[81] There is no indication of evidence in the record that future imports would be any more likely to affect prices in the near future than they do now.

There are no "other demonstrable adverse trends" that indicate that imports will be the cause of actual injury, nor are there "actual and potential negative effects on existing

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[73] Report at Table 16, I-30.

[74] Report at Table 16, I-30.

[75] The "mere fact of increased capacity does not ipso facto imply increased imports to the United States." American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (CIT 1984) aff'd sub nom. Armco, Inc. v. United States, 760 F.2d 249 (Fed. Cir. 1985).

[76] Report at Table 6, I-20. The domestic producers comprising the national industry experienced similar, but slightly smaller declines in capacity utilization rates during the period of investigation. Report at Table 6, I-20.

[77] Report at Table 16, I-30.

[78] Report at Table 16, I-30.

[79] 19 U.S.C. § 1677(7)(F)(i)(V).

[80] See 19 U.S.C. § 1677 (7)(F)(i)(IV).

[81] Report at I-37 to I-40.

development and production efforts of the domestic industry."[82]

Based on these facts, we find that neither the regional industry nor the national industry are threatened with material injury by reason of the LTFV imports.

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[82] 19 U.S.C. § 1677(7)(F)(i)(VII) and (X).

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

Following a preliminary determination by the U.S. Department of Commerce that imports of nepheline syenite[1] [2] from Canada are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective December 27, 1991, instituted investigation No. 731-TA-525 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the Commission's final investigation, and of the public hearing to be held in connection therewith, was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register on January 15, 1992 (57 F.R. 1756).[3] The hearing was held in Washington, DC, on March 19, 1992, at which time all interested parties were allowed to present information and data for consideration by the Commission.[4] The Commission voted on this investigation on April 16, 1992, and transmitted its final determination to Commerce on April 24, 1992.

On January 17, 1992, Commerce published a notice in the Federal Register (57 F.R. 2078) informing the public that it was postponing by one week, to no later than March 10, 1992, its final LTFV determination. The applicable statute directs that the Commission make its final injury determination within 45 days after the final determination by Commerce.[5]

BACKGROUND

This investigation results from a petition filed by counsel on behalf of The Feldspar Corporation (TFC), Asheville, NC, on July 12, 1991. The petition alleges that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of nepheline syenite

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[1] The product covered by this investigation is nepheline syenite, which is a coarse crystalline rock consisting principally of feldspathic minerals (i.e., sodium-potassium feldspars and nepheline), with little or no free quartz, and whose typical mean value passing through ASTM E-11 mesh sieve No. 40 and retained on ASTM E-11 mesh sieve No. 200 (when solely said two sieves are used) is no less than 70 percent by weight. The product nepheline syenite as discussed in this report refers to glass-grade nepheline syenite. Nepheline syenite is provided for in subheading 2529.30.00 of the Harmonized Tariff Schedule of the United States (HTS).

[2] Commerce clarified its description of scope during its final investigation. The Commission's description of the articles subject to investigation was changed accordingly. The different language between the original definition and the clarified version has no practical consequences since both investigations cover the same products.

[3] Copies of cited Federal Register notices are presented in app. A.

[4] A list of witnesses who appeared at the Commission's hearing is presented in app. B.

[5] Commerce published notice in the Federal Register of its final determination on March 17, 1992 (57 F.R. 9237).

from Canada. In response to that petition the Commission instituted investigation No. 731-TA-525 (Preliminary) under section 733 of the Act (19 U.S.C. 1673b(a)) and, on August 26, 1991, determined that there was a reasonable indication of material injury.[6]

PREVIOUS COMMISSION INVESTIGATIONS CONCERNING NEPHELINE SYENITE

There have been two previous Commission investigations (AD-13 and AD-15) concerning nepheline syenite, both of which were antidumping investigations.

On May 27, 1960, the Commission was advised by Treasury that nepheline syenite from Canada was being, or was likely to be, sold in the United States at LTFV. Consequently, the Commission instituted investigation No. AD-13 (25 F.R. 4967, June 4, 1960). On August 26, 1960, the Commission unanimously determined that "an industry in the United States was not being, and was not likely to be, injured, or prevented from being established, by reason of the importation of nepheline syenite from Canada at LTFV" (25 F.R. 8394, September 1, 1960). Under its "statement of reasons," the Commission found that the pertinent Treasury file disclosed that Treasury's LTFV determination was based solely on pricing policies of the two Canadian exporters in which they quoted their nepheline syenite in dollars and accepted in payment Canadian dollars from the Canadian purchasers and United States dollars from the United States purchasers without regard to the prevailing exchange rates of the two currencies. As soon as the two Canadian companies were apprised of a possible charge of dumping based on their pricing policy, they immediately proceeded to change that policy and to revise their prices to take cognizance of the exchange rates. Therefore, the Commission found that if the domestic feldspar industry suffered any injury by virtue of sales of nepheline syenite at LTFV because of the exchange rate that existed at any time between the Canadian and the United States dollar, any such injury was inconsequential and no injury was likely to occur under the new pricing policies adopted by the two Canadian exporters.

During the course of investigation No. AD-13, counsel for three domestic feldspar producers (the petitioners) argued that Treasury's LTFV determination did not take into account freight allowances by the Canadian exporters and that petitioners had requested Treasury to recall the investigation from the Commission pending investigation by Treasury of the freight matter. However, Treasury did not recall the case.

On October 26, 1960, the Commission was advised by Treasury of a new determination that nepheline syenite from Canada was being, or was likely to be, sold in the United States at LTFV. This new Treasury determination resulted after Treasury considered two specific aspects of the pricing policies of the Canadian exporters, namely, a policy to disregard the rate of exchange between the United States and Canadian dollar, and a policy to absorb part of the freight charges. Consequently, the Commission instituted another

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[6] Commissioner Lodwick, who participated in the preliminary investigation, is no longer with the Commission; Commissioners Crawford, Nuzum, and Watson were not members of the Commission at that time.

investigation, No. AD-15 (25 F.R. 10584, November 4, 1960). No request for a hearing was made by any interested party, but written statements were received from the attorneys for the Canadian exporters and three domestic feldspar producers. On January 26, 1961, the Commission unanimously determined (Commissioners Schreiber and Sutton not participating because of absence) that an industry in the United States was not being, and was not likely to be, injured, or prevented from being established, by reason of the importation of nepheline syenite from Canada sold at LTFV (26 F.R. 956, January 31, 1961).

THE PRESENT INVESTIGATION

Petitioner filed this case on the basis of a regional industry consisting of the producers and customers of aplite and glass-grade feldspar located in the following States and territory: Connecticut, Illinois, Indiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, West Virginia, Wisconsin, and the Commonwealth of Puerto Rico. The region is described in the petition as including the northeastern/northcentral States and Puerto Rico (hereinafter referred to as the "NEC region" (figure 1)). Petitioner contends that (1) the producers in the NEC region sell almost all of their production in that area, (2) demand in the NEC region is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States, (3) the LTFV imports are concentrated primarily within the NEC region, (4) the NEC region accounts for a significant share of domestic consumption and production of the like product, and (5) the economic condition of producers of the like product in the NEC region is worse than that of the domestic industry at large. Petitioner argues that these criteria are sufficient for the NEC region to satisfy the statutory criteria for regional industry analysis.[7] Further, petitioner maintains that it is the only producer of the like product which operates in the NEC region.[8] In their views in the preliminary investigation, the Commissioners[9] determined that, for purposes of the preliminary determination, a regional analysis was appropriate using the NEC region. However, for the purposes of any final investigation, the Commissioners indicated that they would examine more closely whether a national industry analysis was more appropriate. Therefore, for the final investigation, information was also collected from producers, importers, and purchasers on a national basis.[10]

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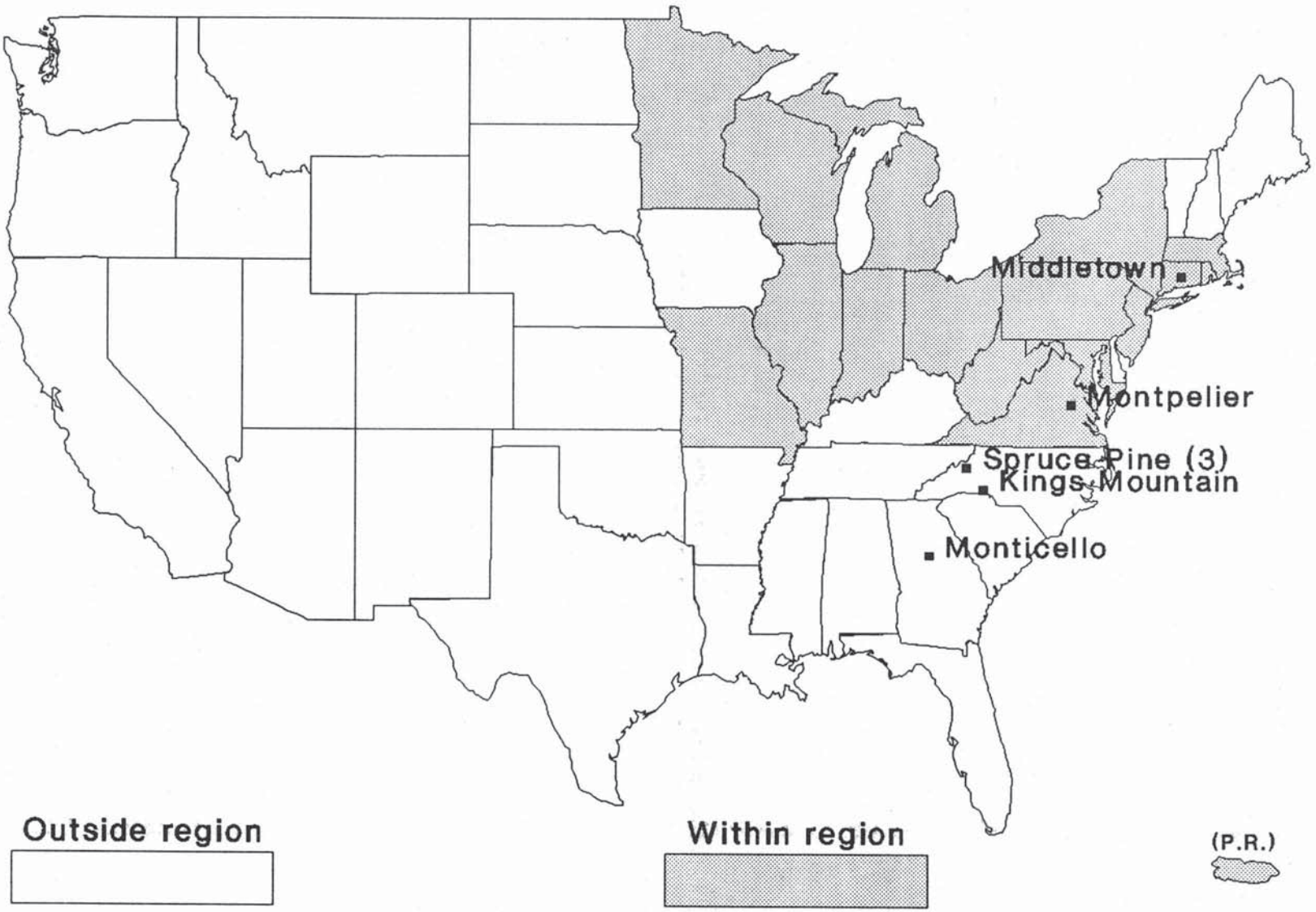
[7] 19 U.S.C. 1677(4)(C). TFC's prehearing brief, pp. 8-16.

[8] Transcript of the hearing (TR), p. 12.

[9] Commissioner Rohr concurred with the determination but also added considerations in his additional views.

[10] Shipment information was collected individually for the 50 States, Puerto Rico, the Virgin Islands (which are outside U.S. customs territory), and the District of Columbia. The Commission mailed producers' questionnaires to collect information on trade, financial, employment, and pricing data from all known producers of aplite and glass-grade feldspar in the United States. An importer questionnaire and a foreign producer questionnaire were sent to Unimin Corporation because Unimin is the only Canadian producer/exporter of nepheline syenite.

Figure 1
Petitioner's proposed region and locations of U.S. producers' plants



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

Respondent testified at the hearing that, in the event the Commission determines that aplite and glass-grade feldspar are the like product, it would not contest petitioner's contention that there is a regional industry.[11]

With respect to the issue of "like product," according to the petition, nepheline syenite is not produced in the United States, but U.S. companies do produce products that are like, or most similar in characteristics and uses to, nepheline syenite--aplite, glass-grade feldspar, and glass-grade feldspathic sand.[12] Also, nepheline syenite, aplite, feldspar, and feldspathic sand have in common certain chemical constituents--aluminum, sodium, potassium, calcium, and silica,[13] although the relative amounts of these components vary among the products.[14] In its preliminary determination, the Commission found that aplite and glass-grade feldspar are most similar to glass-grade nepheline syenite and constitute one like product. The Commission decided not to include feldspathic sand or ceramic-grade feldspar in the definition of the like product.[15]

At the hearing, counsel for petitioner testified that aplite and glass-grade feldspar are like nepheline syenite.[16] Counsel added, however, that glass-grade potash feldspar, produced at TFC's plant in Georgia and at KMG Minerals' plant in North Carolina, is not a like product[17] because it does not compete with the imported product or with the domestic like product.[18] [19] Respondent testified that aplite is more similar to nepheline syenite than to glass-grade feldspar because its alumina content makes it more readily interchangeable with nepheline syenite, because nepheline syenite and aplite are perceived to have greater product consistency on account of the homogeneity of the deposits from which they are mined, and because the processing of nepheline syenite and aplite is more similar than that for glass-grade feldspar.[20]

Insofar as the "domestic industry" is concerned, petitioner stated in the petition that TFC is the sole producer within the NEC region of products like nepheline syenite and, therefore, constitutes the domestic industry.

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[11] TR, p. 133; Unimin's posthearing brief, p. 1 and app. 1, p. 13.

[12] Petition, p. 8.

[13] Ibid, p. 9.

[14] Ibid, p. 10 at footnote 2.

[15] Based on the like product definition in the preliminary determination, the Commission did not request data for feldspathic sand or ceramic-grade feldspar in its questionnaires in this investigation.

[16] See TFC's prehearing brief, app. A.

[17] Since this was the first time the issue of glass-grade potash feldspar was raised, little trade and financial information is available on this type of feldspar.

[18] Potash feldspar is a high-priced product that is used in specialty glass applications rather than in the container glass industry which is the principal consumer of glass-grade feldspar; TR, pp. 9-10.

[19] ***. Glass-grade potash feldspar is used by producers of television glass, electrical insulators, and chinaware.

[20] TR, pp. 128-133. Respondent argued that by statute only one product should be included in the like product definition; and, therefore the like product should be aplite because it is the most similar to nepheline syenite.

However, there are four producers, including the petitioner, of glass-grade feldspar located outside the NEC region, three in Spruce Pine, NC, and one in Kings Mountain, NC.

THE PRODUCT

Description and Uses

Nepheline syenite (which is not produced in the United States), aplite, and glass-grade feldspar are each different kinds of feldspathic materials.[21] These materials have different chemical compositions, but are all, including nepheline syenite from Canada, primary sources of alumina for the glassmaking industry. Alumina is valued for certain beneficial qualities contributed to glass composition: increased resistance to scratching and breakage, improved thermal endurance, and increased chemical durability.[22] After the feldspathic materials have been extracted from the earth's crust, they are ground to a sand-like consistency and beneficiated[23] to specifications established by the end user (in this case, the glassmaking industry) to control uniformity by limiting variations in particle size and chemical composition.

Feldspathic materials provide the most economical way to introduce alumina in the production of glass. These materials melt at temperatures compatible with those customarily used to melt glass, and some of the other essential elements in feldspathic materials are creditable chemical ingredients for glass. Other essential elements include alkalis, potassium and sodium, which replace some of the soda ash (one of the more expensive input materials in glassmaking), and silica, which replaces some of the silica sand that would otherwise be required to make up the glass batch.[24]

Of the elements found in ground feldspathic materials, iron is the most common undesirable element for glassmakers. The presence of only a small percentage of iron colors glass green and must be neutralized by the addition of other elements in the manufacturing of all except green and amber glass. The usual maximum acceptable iron content of feldspathic material is 0.1 percent for flint glass (clear glass) and as much as 0.5 percent for green or amber glass and glass fiber.

To calculate the batch mixture for a specific glass product, glass technologists factor in the oxide composition of the necessary materials, including the feldspathic materials.[25] A switch from one feldspathic material to another may be made by adjusting the input material of a glass batch to the

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[21] Unless otherwise specified, the term "feldspathic materials" as used in this report refers to glass-grade feldspathic materials, specifically nepheline syenite, aplite, and glass-grade feldspar.

[22] Ceramic Industry, January 1991, p. 51.

[23] Purified by removing unwanted chemical elements.

[24] A glass batch is a mixture of various raw materials in proper proportions, depending on the kind of glass being made.

[25] H.N. Mills, "Glass Raw Materials," 4th ed., Industrial Minerals and Rocks, (American Institute of Mining, Metallurgical, and Petroleum Engineers, Inc., 1975), p. 328.

required formula. According to the petitioner, the adjustment can be done with little or no additional cost or downtime to the glass manufacturer.[26] However, according to the respondent, a glass producer would be reluctant to change raw materials unless there is a significant savings in cost.[27] A typical chemical oxide analysis of nepheline syenite, aplite, and glass-grade feldspar (potash and soda feldspar) used for making glass is provided in table 1.

Table 1
Feldspathic materials: A typical chemical analysis for use in glassmaking

	(Oxide composition in percent)				
Chemical oxide	Nepheline syenite	Aplite	Glass-grade feldspar	Potash feldspar	Soda feldspar
Silica.....	60.000	62.200	68.000	67.040	67.540
Alumina.....	23.400	22.000	19.000	18.020	19.250
Iron.....	0.070	0.090	0.060	0.040	0.060
Titanium.....	-	0.260	0.002	-	-
Calcium.....	0.300	5.300	1.300	0.380	1.940
Magnesium.....	-	0.030	0.010	trace	trace
Sodium.....	10.500	6.000	6.800	2.120	6.960
Potassium.....	5.000	2.800	4.600	12.100	4.050
Lithium.....	-	-	-	-	-
Glass made[1]...	99.270	98.680	99.772	99.700	99.800
Fusion loss[2]..	0.730	1.320	0.228	0.300	0.200

[1] Represents the sum of the oxide composition for each feldspathic material.

[2] Represents the difference between 100 percent and the percent of glass made, and is the portion of each feldspathic material lost in the melting process.

Sources: Compiled from exhibit 1 of public conference, August 2, 1991; Carroll P. Rogers, Jr. and J. Philip Neal, "Feldspar and Aplite," p. 649; and H.N. Mills, "Glass Raw Materials," 4th ed., Industrial Minerals and Rocks, (American Institute of Mining, Metallurgical, and Petroleum Engineers, Inc., 1975), p. 329.

[26] TR, pp. 13-14, 30-33, and 64; TFC's posthearing brief, p. 11.

[27] Mr. Barnard, Senior Vice President of Sales and Marketing for Unimin-NC, estimated that a customer will not make a batch change formulation switch unless there's an annual savings of $35,000 to $50,000. This means a savings of about $8 to $9 per ton to justify the change; TR, pp. 136 and 147-151; posthearing brief, app. 1, pp. 9-13. However, Mr. Wood, Chief Operating Officer for TFC, testified at the hearing that customers will switch raw materials from one alumina source to another based on a very small difference in delivered cost, i.e., a $1 per ton change in delivered cost; TR, pp. 14-15. Mr. Holloway, Vice President, Marketing for TFC, estimated that the savings per year for a general changeover could vary from $5,000 to $20,000; TR, p. 71.

In addition to the chemical composition, consumers of ground feldspathic material are also concerned about particle size and distribution, setting specifications relative to end-use requirements. For the glass industry, materials covered in this investigation are typically ground to such a size that the mean value of particles passing through an American Standard for Testing Materials (ASTM) E-11 sieve sized 40 mesh and retained on an ASTM E-11 sieve sized 200 mesh will be no less than 70 percent by weight when these two sieves are used. The grain size and distribution are very critical to efficient melting and blending of the raw minerals that comprise a glass batch, while minimizing possible chemical segregation. The fine particle limitations also help to reduce health risks and equipment damage that might otherwise be caused by excess dust.

The Bureau of Mines estimates that 56 percent of the feldspar sold or used in the United States goes into glassmaking, including container glass and glass fiber, and 44 percent into pottery and other applications.[28]

Production Process

The mining of nepheline syenite, aplite, and glass-grade feldspar, typically from open pits, is less expensive than underground mining. The recovered material is then ground and beneficiated by one of two basic processes: a dry process or a wet process. The process used depends on the chemical composition of the mined material compared with the chemical specifications established for the end-use product.

In the dry process, mined material passes through a series of grinding and screening operations to reach the desired particle size, followed by removal of excess iron oxide with magnetic-type separators and by preparation for either bag or bulk shipment. This process is the least expensive and is used by the producer of nepheline syenite in Canada.

The wet process is used for aplite and feldspar deposits, but with some variations in the process because of differences in the chemical composition of each of these materials. The simplest wet process is used for aplite. Mined material moves through a series of wet grinding and screening procedures to achieve the desired particle size. The material, conveyed through a wet magnetic separator to remove any metallic minerals, is washed, and passed through a spiral concentrator in which centrifugal force separates mica and hornblend from the aplite. The resulting aplite concentrate then passes through a thermal dryer, which is a dry magnetic separator designed to remove any remaining metallic minerals, and is conveyed to silo storage bins in preparation for bulk shipping in closed containers. The wet process is more expensive because of the additional energy costs required to dry the final product.

Because of the chemical composition of some feldspar deposits, the grinding and screening steps described above are followed by a flotation procedure. Two stages of acid circuit flotation are typically used, with each

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[28] U.S. Department of the Interior, Bureau of Mines, "Feldspar, Nepheline Syenite, and Aplite," Annual Report (1990 Edition), p. 2.

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[28] U.S. Department of the Interior, Bureau of Mines, "Feldspar, Nepheline Syenite, and Aplite," Annual Report (1990 Edition), p. 2.

stage preceded by desliming and conditioning. The first stage uses an amine (an ammonia based chemical compound) collector to remove mica, and the second stage uses sulfonated oils to remove iron bearing minerals, such as garnet, which leaves a feldspar silica mixture.[29] The remaining mixture from the flotation process is dewatered in filters or in drain bins and dried in rotary driers for use as glass-grade feldspar.[30]

U.S. Tariff Treatment

U.S. imports of nepheline syenite from countries entitled to the column 1-general (most-favored-nation or MFN) duty rate, including Canada, enter free of duty under subheading 2529.30.00 of the HTS. U.S. imports of aplite and glass-grade feldspar from MFN countries also enter free of duty under HTS subheading 2529.10.00. The column 2 rate of duty, applicable to imports from those countries and areas specified in general note 3(b) of the HTS, is free for nepheline syenite and 49 cents per metric ton for feldspar.

NATURE AND EXTENT OF SALES AT LTFV

On March 17, 1992, Commerce published notice in the Federal Register (57 F.R. 9237) of its final determination of sales at LTFV (see app. A). It determined that nepheline syenite from Canada is being, or is likely to be, sold at LTFV. Commerce found dumping margins of 9.36 percent based on information supplied by Unimin Corp., the only Canadian producer of glass-grade nepheline syenite.

Commerce investigated sales during the period February 1, 1991, through July 31, 1991. Commerce compared the U.S. price of nepheline syenite to the foreign market value of identical or similar nepheline syenite in Canada. Commerce examined U.S. sales of nepheline syenite from Canada totaling *** tons with a total value of $***. Of this, *** percent by volume and *** percent by value were found to be sold at LTFV.

THE DOMESTIC MARKET

The Regional Character

According to the petition, the cost of transportation can have a considerable effect on the feasibility of a sale of feldspathic products because it may comprise 50 percent or more of the total delivered cost.[31] Because of this fact, most domestic feldspathic products are shipped less than 1,000 miles from the place of production. The following tabulation presents

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[29] Michael J. Potter, "Minerals Facts and Problems," Feldspar, 1985 Edition, U.S. Department of the Interior, Bureau of Mines, Preprint from Bulletin 675, p. 3.

[30] Ibid.

[31] TFC estimates that transportation costs can range from as little as 14 percent to over 100 percent of the f.o.b. price of the feldspathic material; posthearing brief, Ex. 10.

the distribution of U.S. producers' shipments of aplite and glass-grade feldspar, by distances, in 1991, compiled from questionnaire data and calculated on the basis of quantity (in percent):[32]

Aplite:

Miles shipped	Share of domestic shipments
0-200.....	***
201-500.....	***
501-1,000.....	***
1,000 or more..	***

Glass-grade feldspar:

Miles shipped	Share of domestic shipments
0-200.....	***
201-500.....	***
501-1,000.....	***
1,000 or more..	***

All aplite and glass-grade feldspar:

Miles shipped	Share of domestic shipments
0-200.....	***
201-500.....	***
501-1,000.....	***
1,000 or more..	***

The following tabulation presents the distribution of U.S. shipments of nepheline syenite from Canada by Unimin, by distance shipped, in 1991, compiled from questionnaire data (in percent):

Miles shipped	Share of import shipments
0-200.....	***
201-500.....	***
501-1,000.....	***
1,000 or more..	***

Information on the statutory criteria set forth for regional analysis is presented in table 2. In addition, appendix D presents selected trade and financial data by plants.

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[32] Figures presenting the distribution of U.S. producers' shipments by States are presented in app. C.

Table 2
Feldspathic materials: Selected data pertaining to the NEC region, 1989-91

(In percent, based on quantity)

Item	1989	1990	1991
*	*	*	*	*	*	*

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

Marketing Considerations and Channels of Distribution

As mentioned, nepheline syenite produced in Canada is marketed in the United States, primarily, as a source of alumina and, secondarily, as a source of alkalis and silica for glass production. Successful marketing requires the consideration of four important factors: availability of substitutes, delivered price, strength of the glass industry, and reliability of supply.

In addition to nepheline syenite, the glass industry has several alternative sources of alumina from which to choose. Glass-grade feldspar and aplite compete with nepheline syenite. However, each mineral has a distinct chemical composition and requires a slightly different batch configuration.[33] Although a new configuration can be composed relatively quickly, it would require a recalculation of the total batch cost, based on the cost of all the constituent components, and could require "downtime" for the end user.[34]

Nepheline syenite, aplite, and glass-grade feldspar all have a relatively low value-to-volume ratio. A significant component of the delivered price of these feldspathic materials, typically sold in bulk and shipped by truck or by rail in 100-ton hoppers, is the cost of transportation.[35] In order to reduce freight rates, which are frequently equal to or greater than the f.o.b. price of the feldspathic material, producers will often take an active role in negotiation. According to respondent, "Unimin's strategic emphasis has been to negotiate freight rates on our customers' behalf." Unimin frequently negotiates with its customers

[33] For this reason, a vast majority of end users who currently purchase nepheline syenite responded affirmatively to the question "Is there a significant difference between nepheline syenite, glass-grade feldspar, and aplite?"

[34] End users' responses to the question "How much time does it take to switch from one alumina agent to another?" ranged from very little time to 3-4 weeks of downtime. ***.

[35] For example, for feldspathic sand to compete in the NEC region, the f.o.b. price for nepheline syenite would have to exceed $130 a ton; TFC's posthearing brief, Ex. 4.

and the railroads, trying to obtain the lowest delivered cost without Unimin's lowering the price of its product.[36]

Aplite is marketed exclusively to the glass industry. Nepheline syenite and glass-grade feldspar have other applications, mostly in ceramics, but they, too, are marketed in large part to the glass industry.[37] Therefore, producers of all three feldspathic products have to be keenly aware of the glass industry's health,[38] particularly in the subsectors of containers and fiberglass, the major consumers of feldspathic materials (see tables 3 and 4).[39] Furthermore, their marketing strategies must respond to industry trends, such as the increasing use of recycled glass (cullet)[40] and the practice of "lightweighting," or the altering of the geometric shape of a container to reduce the amount of glass required to hold a given volume.[41]

Reliability of supply is a crucial concern to the highly competitive glass industry since most glass manufacturers maintain only marginal raw material inventories. Generally the producers of the feldspathic materials accommodate this need by negotiating long-term contracts. TFC typically negotiates one-year contracts; prices remain firm for the duration of the contracts, but TFC is obligated to match lower bids or allow purchasers to accept those bids. ***. ***.

***. Similarly, U.S. producers of aplite and glass-grade feldspar sell exclusively to ***.

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[36] TR, pp. 158-160; Unimin's posthearing brief, app. 1, pp. 13-18, and apps. 8 and 9.

[37] Bureau of Mines data indicate that 56 percent of all feldspar sold by U.S. producers in 1990 was shipped to the glass industry. TFC sells approximately *** percent of its aplite and glass-grade feldspar to glass container customers and *** percent to fiberglass customers; posthearing brief, Ex. 8.

[38] Respondent testified at the hearing that "the demand for all raw materials for the glass industry has declined due to a combination of the industrial recession, furnace shutdowns, plant consolidations, bottle recycling, and lightweighting;" TR, pp. 136-138.

[39] The demand for glass containers is declining. Respondent stated in its importers' questionnaire, attachment 37-A, that ***.

[40] The recycling of the glass back into the manufacturing of the containers results in a decline in purchases of raw materials. This is because the cullet is being used in a certain percentage of the batch, as high as 30 to 50 percent, and is a direct substitute for the raw materials; TR, p. 137. Mr. H. Mills, consultant on glass technology, estimates that demand for alumina sources (feldspathic materials) will decline by about 38 percent if cullet use increases to 50 percent of the total batch; TFC's posthearing brief, Ex. 7.

[41] The decline of the glass container during the 1980s, together with lightweighting and increased recycling, substantially reduced the demand for all glass raw materials. The positive impact generated by increased recycling of glass containers has had the opposite effect on glass raw material consumption. However, recycling has helped halt the downward spiral in the production and use of glass containers; Peter Harben, "Glass Raw Materials," No. 286, Industrial Minerals, July 1991, p. 31; TFC's posthearing brief, Ex. 16.

Table 3
Glass containers: U.S. production, 1969-90

Year	Production Millions of gross	Growth Percent	Year	Production Millions of gross	Growth Percent
1969...	260.3	-	1980...	328.0	0.6
1970...	269.2	3.4	1981...	325.5	-.7
1971...	264.8	-1.6	1982...	311.1	-4.4
1972...	268.5	1.4	1983...	294.1	-5.5
1973...	279.0	3.9	1984...	291.7	-.8
1974...	280.4	0.5	1985...	273.7	-6.2
1975...	283.1	.9	1986...	289.3	5.7
1976...	302.5	6.9	1987...	285.0	-1.5
1977...	303.2	.2	1988...	284.7	-.2
1978...	327.6	8.1	1989...	287.5	1.1
1979...	326.0	-.5	1990...	289.7	.8

Source: Bureau of the Census.

Table 4
Fiberglass: U.S. production, by types, 1973-89

Year	Total production Millions of pounds	Growth Percent	Textile fibers Millions of pounds	Growth Percent	Insulation fibers Millions of pounds	Growth Percent
1973..	2,683	-	708	-	1,975	-
1974..	2,721	1.4	707	-0.1	2,015	2.0
1975..	2,259	-17.0	569	-19.5	1,690	-16.1
1976..	2,833	25.4	735	29.2	2,097	24.1
1977..	3,383	19.4	819	11.4	2,564	22.3
1978..	3,735	10.4	996	21.6	2,739	6.8
1979..	3,943	5.6	1,076	8.0	2,867	4.7
1980..	3,646	-7.5	930	-13.6	2,716	-5.3
1981..	3,648	.1	1,112	19.6	2,536	-6.6
1982..	3,180	-12.8	918	-17.5	2,263	-10.8
1983..	3,874	21.8	1,298	41.4	2,576	13.8
1984..	4,780	23.4	1,703	31.2	3,077	19.5
1985..	4,852	1.5	1,735	1.9	3,118	1.3
1986..	5,109	5.3	1,735	0.0	3,373	8.2
1987..	5,003	-2.1	1,897	9.3	3,107	-7.9
1988..	5,148	2.9	1,961	3.4	3,188	2.6
1989..	5,174	.5	1,961	.0	3,214	.8

Source: Bureau of the Census.

Apparent U.S. Consumption

Table 5 shows apparent consumption of feldspathic materials (nepheline syenite, aplite, and glass-grade feldspar) in the NEC region, outside the NEC region, and for the total United States. Additionally, table 5 presents the quantity and value of consumption in these areas provided by plants located within the NEC region and outside the NEC region, as well as consumption supplied by imports of nepheline syenite from Canada.

Table 5
Feldspathic materials: U.S. shipments of domestic product, U.S. imports,[1] and apparent U.S. consumption, by regions, 1989-91

Item	1989	1990	1991
*	*	*	*	*	*	*

[1] U.S. imports are composed exclusively of nepheline syenite from Canada. Imports into the NEC region and outside the NEC region were provided by Unimin.

Note.--Because of rounding, value figures may not add to the totals shown.

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

Although imports of nepheline syenite, by quantity, into the NEC region declined during 1989-91, and imports outside the NEC region increased, most of the imports were concentrated in the NEC region.

Shipments from U.S. producers' plants located within the NEC region primarily go to destinations within the NEC region, and shipments from U.S. producers' plants located outside the NEC region primarily go to destinations outside the NEC region.

Apparent U.S. consumption decreased in terms of quantity each year during 1989-91, both within and outside the NEC region. On a national basis, apparent consumption declined by *** percent from 1989 to 1991.

U.S. Producers

There are currently four active producers of glass-grade feldspar (feldspar)[42] and aplite operating seven plants in the United States. The producers, plant locations, products, and shares of total reported 1991 production are presented in the following tabulation:

[42] ***; preliminary staff report, p. A-24.

Company	Plant location	Product	Share of reported 1991 production (Percent)[1]
Petitioner:			
The Feldspar Corporation	Montpelier, VA	Aplite	***
	Middletown, CT	Feldspar	***
	Monticello, GA	Feldspar	***
	Spruce Pine, NC	Feldspar	***
Other producers:			
KMG Minerals, Inc.[2]	Kings Mountain, NC	Feldspar	([3])
K-T Feldspar[4]	Spruce Pine, NC	Feldspar	***
Unimin Corp.[5]	Spruce Pine, NC	Feldspar	***

[1] Shares are calculated on the basis of quantity.
[2] ***.
[3] ***.
[4] ***.
[5] ***.

TFC is the sole producer in its proposed NEC region, with one plant in Connecticut and a second plant in Virginia. There are four producers of glass-grade feldspar outside the NEC region.[43] Questionnaires were sent to TFC; KMG Minerals, Inc.; K-T Feldspar (***); and Unimin-NC. Each firm was requested to file a separate questionnaire response for each of its plants. ***, all firms have responded to the Commission's questionnaire.

A number of significant changes took place in the domestic feldspathic materials industry during 1990-91. For example, on December 20, 1991, TFC permanently closed its Middletown, CT, plant. In the 1989 to 1991 period, the plant, which went from "profitability to break even to unsustainable losses," was forced to cut back on its labor force and on capital investment, and finally closed. The petitioner stated that the "final blow" was in November 1991, when four customers' plants switched from glass-grade feldspar to nepheline syenite because of price competition.[44] Respondent testified at the hearing that the closing of the Connecticut plant was not caused by low-priced imports of nepheline syenite but by high local labor costs, poor quantity and quality of the reserves adjacent to the plant, poor condition of the plant, declining demand for glass products, and the likelihood that the mining permit would not be renewed.[45] This was rebutted by Mr. Gerard Wood, Chief Operating Officer of TFC. Mr. Wood testified that 70 percent of the

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[43] This includes TFC's plants located in Georgia and North Carolina. As discussed earlier in the report, TFC argues that the potash feldspar produced at its Georgia plant is not like the product under investigation and that the data for this plant should be excluded from the Commission's analysis; TR, pp. 9-10.
[44] TR, pp. 15-16.
[45] TR, pp. 140-145; Unimin's posthearing brief, pp. 10-13.

plant feed came from mineral deposits in the Middletown area and only 30 percent came from the Portland area; the quality of the reserves was good; and the company did not expect any difficulty in renewing its 2-year lease.[46]

Unimin Corp. purchased the Canadian operations of Indusmin, Inc. (Indusmin), on September 25, 1990, and the operations were renamed Unimin Canada Limited.[47] Unimin-Canada is a wholly-owned subsidiary of Unimin Corp., which maintains its corporate headquarters in New Canaan, CT.[48] ***. ***.

U.S. Importers

The petition alleges that Unimin is the only importer of glass-grade nepheline syenite from Canada.[49] Because the petition listed a number of "customers" that were potentially importers, importers' questionnaires were sent to a number of glass producers in addition to Unimin in the preliminary investigation. This created a potential for double counting because some of the glass firms were unsure of their status as importers.[50]

The situation was further complicated by the change in ownership of the Canadian producer from Indusmin to Unimin. This was discussed with officials at Unimin, and the following statement was attached to Unimin's importers' questionnaire response: ***.

CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

The regional information presented in this section of the report is based on the questionnaire responses of TFC's plants located in Middletown, CT, and Montpelier, VA, because these plants are believed to account for all the production of aplite and glass-grade feldspar in the NEC region.

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[46] TR, pp. 18-20.

[47] Indusmin Division of Falconbridge, Ltd., is still the world's largest producer of nepheline syenite. The acquisition included mines, plants, and ancillary facilities in the Canadian Provinces of Ontario and Quebec. Unimin was subsequently forced to divest Indusmin's North Carolina feldspar assets. This operation combined with Unimin's existing feldspar operations in North Carolina and its nepheline syenite operations in Ontario, was deemed to undermine competitiveness in the market; Peter Harben, "Glass Raw Materials," No. 286, Industrial Minerals, July 1991, p. 31.

[48] The corporate headquarters in Connecticut maintains the financial records for Unimin-Canada and Unimin-NC. Unimin-NC is directly owned by Unimin Corp. The marketing personnel for Unimin-Canada and Unimin-NC are also in Connecticut; TR, pp. 179-183 and 190-191. The majority of Unimin-Canada's shipments of nepheline syenite are to States in which Unimin-NC does not sell (questionnaire response and TR, p. 154). ***. Unimin-NC accounted for only *** percent of total reported U.S. production of aplite and glass-grade feldspar in 1991.

[49] Petition, p. 15.

[50] Purchaser questionnaires were sent to approximately 30 firms in this investigation, all of which are end users.

Questionnaire responses were received from *** firms operating *** plants outside the NEC region,[51] which, in the aggregate, are believed to account for *** of U.S. production of aplite and glass-grade feldspar outside the NEC region.

The feldspathic materials aplite, glass-grade feldspar, and nepheline syenite are not chemically identical, but, in general, the same chemicals are present in each product in varying proportions. The fact that more than one of the chemicals in these feldspathic minerals are important in making glass presents a problem in the evaluation of statistical data since the data cannot be adjusted to a common component.

The questionnaires in this investigation collected gross-weight data and values; however, industry experts testified at the Commission's hearing that glass firms evaluate the total chemical composition of the feldspathic materials, not just one component.[52] Therefore, some caution should be exercised when viewing the statistical data because the different feldspathic materials are not precise "one for one" substitutes, nor does there appear to be a simple relationship to put them on an equivalent basis.[53]

U.S. Production, Capacity, and Capacity Utilization

Table 6 presents production of aplite and glass-grade feldspar inside and outside the NEC region, total U.S. production,[54] and corresponding data for capacity[55] and capacity utilization. Aplite is produced only in the NEC region and accounted for *** percent of total NEC production in 1991. TFC's aplite plant in Virginia ***.

Production of aplite and glass-grade feldspar within the NEC region decreased irregularly from *** tons in 1989 to *** tons in 1991, or by *** percent. Capacity remained constant at *** tons during 1989-91. Capacity utilization within the region decreased from *** percent in 1989 to *** percent in 1991.

Total U.S. production of aplite and glass-grade feldspar, including or excluding Unimin's North Carolina operation, decreased throughout the period, by approximately *** percent from 1989 to 1991. Capacity utilization on a national basis was lower than that in the NEC region in 1989 and 1990 but was higher in 1991. U.S. capacity utilization decreased by approximately *** percentage points from 1989 to 1991.

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[51] This includes TFC's plants in Monticello, GA, and in Spruce Pine, NC.

[52] TR, pp. 28-29, 61, 65, 67-68, and 130.

[53] The chemical differences among the three feldspathic materials are believed to have more of an effect on end users' perceptions than on statistical evaluation.

[54] Certain salient data of Unimin-NC are presented in table D-10.

[55] Production capacity is defined as "full production capacity"--the maximum level of production that a plant could reasonably be expected to attain under normal operating conditions.

Table 6
Aplite and glass-grade feldspar: U.S. capacity, production, and capacity utilization, by regions and by products, 1989-91

Item	1989	1990	1991
*	*	*	*	*	*	*

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

U.S. Shipments by U.S. Producers

Table 7 presents data on U.S. shipments by U.S. producers from plants located inside the NEC region, outside the NEC region, and in the entire United States. The shipment data associated with this investigation, as presented in table 7, are extensive; therefore, recitations of period-to-period changes for all these data would also be extensive and are not included here. In general, U.S. producers' shipments of aplite and glass-grade feldspar both in the NEC region and in the country as a whole fell during 1989-91.

Table 7
Aplite and glass-grade feldspar: Shipments by U.S. producers, by regions, by products, and by types, 1989-91

Item	1989	1990	1991
*	*	*	*	*	*	*

Note.--Because of rounding, value figures may not add to the totals shown. ***.

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

Export Shipments by U.S. Producers

* * * * * * *

End-of-Period Inventories of U.S. Producers

Producers' end-of-period inventories of aplite and glass-grade feldspar, by regions, are presented in table 8. Inventories of aplite and glass-grade feldspar are expensive to store; therefore, producers' inventories were small and varied little from period to period. Further, inventories were a small fraction of production during any given period.

Table 8
Aplite and glass-grade feldspar: End-of-period inventories of U.S. producers, by regions and by products, 1989-91

Item	1989	1990	1991
*	*	*	* * *

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

Employment, Wages, and Productivity

The majority of workers producing aplite and glass-grade feldspar are not unionized. The only plant that is unionized is located outside the NEC region. Unimin's North Carolina facility, which produces glass-grade feldspar, employed a total of *** unionized production and related workers (PRWs) in 1991.[56] ***.

In its questionnaire, the Commission requested aplite and glass-grade feldspar producers to provide detailed information concerning reductions in the number of PRWs producing such feldspathic materials during 1989-91, if such reductions involved at least 5 percent of the workforce, or 50 workers.

* * * * * * *

[56] Unimin's workers are represented by the United Textile Workers of America Local 436.

Employment and wage data are reported in table 9. The number of aplite PRWs remained constant at *** throughout the period 1989-91. Within the NEC region, the number of glass-grade feldspar PRWs fell *** percent in 1991, from *** in 1989 to *** in 1991. Outside the NEC region, the number of glass-grade feldspar PRWs also fell throughout the period. The number of PRWs employed by the U.S. aplite/glass-grade feldspar industry fell from 1989 to 1991, with or without Unimin-NC.

Table 9
Average number of production and related workers producing aplite and glass-grade feldspar, hours worked,[1] wages and total compensation paid to such employees, and hourly wages, productivity, and unit production costs,[2] by regions and by products, 1989-91[3]

Item	1989	1990	1991
*	*	*	*

[1] Includes hours worked plus hours of paid leave time.
[2] On the basis of total compensation paid.
[3] Plants providing employment data accounted for *** percent of reported total U.S. shipments in 1991.

Note.--Because of rounding, wages and total compensation figures may not add to the totals shown. Ratios are calculated from the unrounded figures.

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

The number of hours worked by aplite PRWs *** between 1989 and 1990, and *** between 1990 and 1991. The number of hours worked by glass-grade feldspar PRWs *** throughout the entire period in question, both inside the NEC region (*** percent between 1989 and 1991) and outside the NEC region. The number of hours worked by PRWs employed by the U.S. aplite/glass-grade feldspar industry *** fell between 1989 and 1991, with or without Unimin. The amount of wages paid to aplite PRWs *** throughout the period. Within the NEC region, wages for glass-grade feldspar PRWs *** slightly between 1989 and 1990, and then *** by *** percent between 1990 and 1991. Outside the NEC region, wages rose between 1989 and 1990, but declined between 1990 and 1991. Wages paid to all U.S. aplite and glass-grade feldspar PRWs rose between 1989 and 1990, and then fell between 1990 and 1991, with or without Unimin.

Hourly wages and hourly compensation *** steadily throughout the period in question for aplite inside the NEC region and for feldspar outside the NEC region. Hourly wages and hourly compensation for feldspar inside the NEC region *** from 1989 to 1990 but then *** from 1990 to 1991. During this period, aplite and feldspar PRWs within the NEC region received, on average, *** hourly wages and compensation than feldspar PRWs outside the NEC region.

Hourly wages and hourly compensation rose throughout the period for PRWs employed by the U.S. feldspar industry.

Productivity, as measured by tons of mineral produced per hour, remained *** within the NEC region between 1989 and 1991 for aplite (***). Productivity for feldspar produced within the region was *** tons per hour in 1989 and 1990 before *** to *** tons per hour in 1991. Productivity for the U.S. aplite/glass-grade feldspar industry was *** tons per hour in 1989 and 1990 before increasing to *** in 1991.

The unit labor cost (per ton) of aplite and feldspar produced within the NEC region rose throughout the period in question. Unit labor costs for the U.S. aplite/glass-grade feldspar industry increased between 1989 and 1990 and then decreased in 1991, with or without Unimin.

Financial Experience of U.S. Producers

NEC Region[57]

The petitioner, TFC, accounting for all U.S. production of aplite and all glass-grade feldspar production within the NEC region, furnished financial data for each of its two plants within the region.

TFC is a wholly-owned subsidiary of Zemex Corporation, a diversified minerals and materials company. Excerpts from Zemex's 1990 Form 10-K report and 1990 annual report pertaining to feldspathic minerals are presented in appendix E.

The mining of aplite is independent of other products, whereas the separation process used to obtain glass-grade feldspar results in two by-products: mica and sand. Aplite sales from TFC's Montpelier, VA, plant constitute *** percent of that plant's establishment sales. TFC's glass-grade feldspar from its Middletown, CT, plant accounted for approximately *** percent of total plant establishment sales during the period of investigation. This consisted of *** percent trade sales and *** percent internal transfers to ceramic grade. This plant terminated its operations ***.

Verification of data

The staff conducted a verification of TFC's questionnaire responses, resulting in the following adjustments in TFC's data for this final staff report:

* * * * * * *

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[57] Financial data in this section include detailed data for the two plants in the NEC region. Separate financial data for all plants are shown in app. D.

Operations on glass-grade feldspar--Connecticut plant

The income-and-loss experience of TFC's Middletown, CT, plant is presented in table 10.[58] Net sales *** percent from $*** in 1989 to $*** in 1990. Sales in 1991 were $***, a *** of *** percent from 1990 sales. ***. Operating *** ratios, as a share of net sales, were *** percent in 1989, *** percent in 1990, and *** percent in 1991. Net *** ratios, as a share of net sales, were *** percent in 1989, *** percent in 1990, and *** percent in 1991.

Table 10
Income-and-loss experience of TFC on its Middletown, CT, plant producing glass-grade feldspar, fiscal years 1989-91

Item	1989	1990	1991
*	*	*	*
*	*	*	*
*	*	*	*

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

Operations on aplite--Virginia plant

The income-and-loss experience of TFC's Montpelier, VA, aplite plant is presented in table 11. There were no reported *** of aplite. Net sales *** percent from $*** in 1989 to $*** in 1990. Sales in 1991 were $***, *** of *** percent from 1990 sales. Operating *** was $*** in 1989 and $*** in 1990. ***. Operating *** ratios, as a share of net sales, were *** percent in 1989, *** percent in 1990, and *** percent in 1991. Net income (loss) data were the same as the operating income (loss) data.

Table 11
Income-and-loss experience of TFC on its Montpelier, VA, plant producing aplite, fiscal years 1989-91

Item	1989	1990	1991
*	*	*	*
*	*	*	*
*	*	*	*

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

[58] ***. Refer to table 12 for a summary of the per-unit sales and cost values.

Per-unit analysis for both plants

Selected income-and-loss data on a dollars-per-ton basis for both plants are presented in table 12. ***.

Table 12
Selected income-and-loss data of TFC on its operations producing aplite and glass-grade feldspar on a dollars-per-ton basis, by plants, fiscal years 1989-91

Item	1989		1990		1991	
*	*	*	*	*	*	*

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

On a cost-per-ton basis, the cost of goods sold for aplite (Virginia plant) was *** than the cost of goods sold for glass-grade feldspar (Connecticut plant).[59] Labor costs constitute *** percent of total costs at each plant. The major overhead costs are supplies, repairs, services, power, fuel oil, and employee benefits.

At the Virginia plant the cost of goods sold per ton *** percent between 1989 and 1991. One of the factors contributing to the ***.[60] Costs at the Virginia plant include approximately $*** per ton in truck-to-rail cost.

One of the factors contributing to the *** unit costs at the Connecticut plant was its ***. At the Connecticut plant, royalties and hauling (mine to plant) costs are incurred. These amounted to $*** and $***, respectively, in 1991. At the preliminary conference, Mr. Wood stated:

> "The production processes are different, but it is also true to say that both plants employ very typical mineral processing techniques. The plant at Connecticut uses crushing, grinding, flotation, multi-step flotation, and then drying of the products. We also have a dry grinding section where we produce finer products; taking as the raw material feed for that final step the typical glass-grade material as a feedstock. The aplite plant is quite different from that in that there is no flotation in that plant. It uses crushing, grinding, classification, scrubbing, and spirals to remove heavy metals."[61]

[59] ***.

[60] Posthearing brief, app. 12, p. 1.

[61] Statement of Mr. Gerard Wood, CEO of TFC; Transcript of the conference, p. 59.

National Basis[62]

The aggregate income-and-loss experience of all U.S. producers on their operations producing aplite and glass-grade feldspar is presented in table 13. Net sales increased by *** percent, from $*** in 1989 to $*** in 1990. Sales in 1991 were $***, a decline of *** percent from 1990 sales. Operating ***. Net ***. Operating *** ratios, as a share of net sales, were *** percent in 1989, *** percent in 1990, and *** percent in 1991. Net income (loss) ratios, as a share of net sales, were *** percent in 1989, *** percent in 1990, and *** percent in 1991.

Table 13
Income-and-loss experience of certain U.S. producers on their operations producing aplite and glass-grade feldspar, fiscal years 1989-91

Item	1989		1990		1991	
*	*	*	*	*	*	*

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

Transportation costs

Transportation costs were not included (except the ***) in the income-and-loss data supplied by the producers. Most sales are on an f.o.b. plant and/or rail siding basis. The proportion of a plant's shipments utilizing a particular means of transportation varies from plant to plant. Transportation methods include various combinations of truck and/or rail. ***. In 1991, the Connecticut plant's glass-grade feldspar shipments were ***. In 1991, the Virginia plant's aplite shipments consisted of *** percent ***. The remaining *** percent of shipment quantities were shipped by ***. Of this amount, *** percent of total shipments went directly from *** and *** percent went from ***. A summary of U.S. producers' transportation methods for 1991 is shown in the following tabulation (in percent):

* * * * * * *

[62] This section does not include data for Unimin's North Carolina plant. Refer to app. D (tables D-5 and D-6) for income-and-loss data by plants and products.

Investment in productive facilities

U.S. producers' investment in property, plant, and equipment and returns on investment are shown in table 14.[63]

Table 14
Aplite and glass-grade feldspar: Value of assets and return on assets of certain U.S. producers, by regions and by products, fiscal years 1989-91

Item	As of the end of fiscal year--		
	1989	1990	1991
* * * * * * *			

Note: Returns are calculated from the unrounded data.

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

Capital expenditures

Capital expenditures by U.S. producers are shown in table 15.[64]

Table 15
Aplite and glass-grade feldspar: Capital expenditures by certain U.S. producers, by regions and by products, fiscal years 1989-91

(In thousands of dollars)

Item	1989	1990	1991
* * * * * * *			

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

[63] Rates of return on the book value of fixed assets for all producers, by plants, are presented in app. D (table D-7). Because of a low response rate or unreliable data, rates of return on total establishment assets for all producers are not available.

[64] Capital expenditures for all producers, by plants, are presented in app. D (table D-8).

Research and development expenses

Research and development expenses reported by certain U.S. producers are shown in the following tabulation (in thousands of dollars):[65]

* * * * * * *

Impact of imports on capital and investment

The Commission requested U.S. producers to describe any actual or potential negative effects of imports of nepheline syenite on their existing development and production efforts, growth, investment, and ability to raise capital. Their responses are shown in appendix F.

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 factors[66]--
>
> > (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,

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[65] Research and development expenses for all producers, by plants, are presented in app. D (table D-9).

[66] 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."

> (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,
>
> (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.[67]

Subsidies (item (I)) and agricultural products (item (IX)) are not issues in this investigation. 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

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[67] 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."

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 appendix F. Available information on U.S. inventories of the subject products (item (V)); foreign producer's operations, including the potential for "product-shifting" (items (II), (VI), and (VIII) above); any other threat indicators, if applicable (item (VII) above); and any dumping in third-country markets, follows.

U.S. Importers' Inventories

***. Because the cost of storage is high relative to the mineral's value, it is expensive to keep large inventories on hand.

Ability of the Canadian Producer to Generate Exports and the Availability of Export Markets Other Than the United States

In response to a Commission request, Unimin supplied information regarding its nepheline syenite operations in Canada (table 16). Production of nepheline syenite declined throughout the period, from *** tons in 1989 to *** tons in 1991. Unimin's production is projected to increase to *** tons in 1992 and to *** tons in 1993. Unimin's capacity during 1989-90 was constant at *** tons. ***. Capacity utilization fell throughout the period, from *** percent in 1989 to *** percent in 1991. *** noted above, capacity utilization rates are projected to increase to *** percent in 1992 and then to *** percent in 1993.

Table 16
Nepheline syenite: Canadian capacity, production, inventories, and shipments, 1989-91 and projected 1992-93

Item	Actual experience--			Projected--	
	1989	1990	1991	1992	1993
*	*	*	*	*	*	*

Note.--Because of rounding, figures may not add to totals shown. Ratios are calculated from the unrounded data.

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

Home market sales of nepheline syenite have traditionally represented only a small portion of the overall market. Domestic shipments decreased from *** tons in 1989 to *** tons in 1991, a decrease of *** percent. As a percentage of production, domestic consumption decreased from *** percent in 1989 to *** percent in 1991. Domestic consumption is expected to increase somewhat in 1992 before reaching its lowest level of *** tons in 1993.

Unimin's overall exports of nepheline syenite declined by *** tons between 1989 and 1991, or by *** percent. Its exports to the United States decreased by *** percent between 1989 and 1991. Such exports are projected to be *** tons in 1992 and 1993. Unimin's exports to the NEC region declined by *** tons between 1989 and 1991. Its exports to States outside the region increased by *** tons between 1989 and 1990 and then declined by *** tons between 1990 and 1991.

Unimin is not currently under investigation for dumping nepheline syenite in any country other than in the United States, nor are any antidumping remedies in place against nepheline syenite in any foreign countries.[68]

Unimin's shipments to export markets other than the United States increased between 1989 and 1990 and then decreased in 1991. Such shipments are expected to increase in 1992 and 1993. Unimin is in the process of increasing its sales of ground nepheline syenite product, especially ceramic-grade nepheline syenite, which is more profitable than the glass-grade product. Through its affiliate companies in Western Europe it is able to penetrate the worldwide markets for the higher margin products.[69] Unimin sees Europe as a region of growth in the coming years.

Unimin has some potential for shifting production of nepheline syenite away from glass applications.[70] Specifically, it stated that its "strategic plan calls for us to increase our business in ground nepheline syenite products." Ground nepheline syenite is a major batch material in the ceramic industry and filler industry, including paints, plastics, and rubber.[71]

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

U.S. Imports

Canada was the sole source of imports of nepheline syenite during 1989-91 (table 17). Official Commerce trade statistics could not be used because Commerce data include all imports of nepheline syenite, whereas the alleged injury is attributed to LTFV imports of glass-grade nepheline syenite. However, Unimin's questionnaire response provided 100 percent of the imports of glass-grade nepheline syenite because Unimin is the only producer of nepheline syenite in Canada.

Imports of nepheline syenite from Canada into the NEC region decreased by *** percent (in quantity) during 1989-91 but in value terms *** percent in 1989-90 and then *** percent during 1990-91. Imports into the NEC region accounted for *** percent of total imports in 1989, *** percent in 1990, and *** percent in 1991.

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[68] TR, pp. 191-192.

[69] TR, pp. 138-139.

[70] In addition to being used for container glass, flat glass, fiberglass, and specialized glass applications, nepheline syenite is also used for tiles. There is a new and growing market called the "fast fire tile market" that purchases tiles produced from nepheline syenite, which are less expensive than ceramic tiles; TR, p. 165.

[71] TR, pp. 138, 165, 170, and 182-183.

Table 17
Nepheline syenite: U.S. imports from Canada, by regions, 1989-91

Region	1989	1990	1991
*	*	*	*	*	*	*

Note.--Because of rounding, figures may not add to totals shown.

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

Market Penetration by the LTFV Imports

Market penetration, on the basis of quantity, by imports of nepheline syenite from Canada decreased between 1989 and 1990 within the NEC region and then increased in 1991, although to a level lower than in 1989 (table 18). Import penetration of nepheline syenite from Canada outside the NEC region increased between 1989 and 1990 and then declined in 1991. Market penetration by imports from Canada was relatively low outside the region when compared with imports within the NEC region. On a national basis, market penetration by imports from Canada decreased from *** percent in 1989 to *** percent in 1990 and then increased to *** percent in 1991.[72]

Table 18
Feldspathic materials: Apparent consumption, by regions, and shares of apparent consumption accounted for by producers' shipments and imports, 1989-91

Item	1989	1990	1991
*	*	*	*	*	*	*

Note.--Because of rounding, value figures and shares may not add to the totals shown.

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

[72] Unimin argues that the Commission should examine market share over the entire period of investigation because 1990 was an aberrational year. Imports from Canada fell in 1990 due to market uncertainty associated with the sale of Indusmin to Unimin; posthearing brief, p. 3.

Market penetration levels by value, both inside and outside the NEC region and in the nation as a whole, were *** than those based on quantity. Figure 2 shows the distribution, by States, of U.S. shipments of nepheline syenite imported from Canada during 1989-91.

Figure 2
Unimin Corp. (Canada): Distribution of U.S. shipments of nepheline syenite, aggregated 1989-91

* * * * * * *

Prices

Market Characteristics

Nepheline syenite, aplite, and glass-grade feldspar act principally as sources of alumina, an important ingredient in the production of glass. Although alumina is essential in glass manufacturing, feldspathic materials generally comprise less than 10 percent of the glass batch by cost and by weight.[73] Soda ash, the most expensive ingredient in the batch, and sand, although relatively inexpensive, typically make up about 60 percent of the batch by volume. Aragonite, or limestone, is also a significant part of the batch.

The differences in the chemical compositions of nepheline syenite, aplite, and glass-grade feldspar affect the amount of the other ingredients in a glass batch. For example, because the alumina and alkali (sodium and potassium) levels in Canadian nepheline syenite are higher than in domestic aplite or glass-grade feldspar, greater concentrations of these products per ton exist, thus lessening the required amount of soda ash (an alkali), the most costly of the batch ingredients. Several purchasers reported that they are willing to pay a 10- to 40-percent premium for nepheline syenite over aplite or glass-grade feldspar because of its chemical composition.

While end users agree that any of the three products can serve as a source of alumina in glass production, nepheline syenite, aplite, and glass-grade feldspar are not interchangeable on a ton-for-ton basis, and glass manufacturers do not use these products simultaneously. In order to shift among these materials, a reformulation of the entire glass batch formula is necessary. Each glass manufacturer determines the alumina agent to use based on its particular, and often proprietary, batch formula used in its glass production. The major ingredients and amounts required in ***'s typical glass container batch are shown below for each of the feldspathic materials:

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[73] ***.

	Feldspar	Aplite	Nepheline syenite
Sand	***	***	***
Soda ash	***	***	***
Aragonite	***	***	***
Feldspathic material	***	***	***
Other	***	***	***

Shifting from one raw material to another can be carried out with little downtime and, for most purchasers, at a low cost. However, several purchasers stated that any change in materials is subject to potential quality and consistency problems and can cause a major tank upset with a significant loss of production for the manufacturer. Thus, end users may require a considerable economic incentive to shift.[74] ***, both reported that they would require a $50,000 savings per plant to shift alumina sources. On the other hand, *** said it would consider shifting for $10,000 per year.[75] If the alumina agent is changed, it usually occurs at the time a new contract is being negotiated.

In deciding which alumina agent to use, end users review several different factors. First, they prefer the agent with the greatest alumina content. Second, they consider the agent with the greatest amounts of alkali elements--sodium, potassium, and lithium--since these elements reduce the amount of soda ash required. Third, most glass makers prefer the agent with the least amount of iron oxide, an undesirable trace element which colors the glass. Several purchasers reported that they do not use aplite because of its high iron content. Finally, they prefer the alumina agent with the least amount of small or large particles (the most uniform mesh size distribution). *** reports that aplite is not an approved source at its plant because its typical screen analysis is too coarse, causing improper melting and glass defects. *** believes that nepheline syenite is superior to both aplite and glass-grade feldspar in each of these areas.

Materials named as substitutes for aplite, glass-grade feldspar, and nepheline syenite include feldspathic sand, blast furnace slag, cullet, kaolin clay, and lithospar. Feldspathic sand is used as an alumina agent in place of aplite, glass-grade feldspar, and nepheline syenite, but it appears rarely to be used in areas where aplite, glass-grade feldspar, and nepheline syenite are readily available. Other substitutes, such as cullet and slag, can decrease the amount of nepheline syenite, aplite, or glass-grade feldspar used but generally cannot completely replace them.

Sales to container-glass manufacturers account for a large proportion of sales of feldspathic materials. TFC's feldspar and aplite plants in the NEC region sold over *** percent of their glass-grade feldspathic materials to glass-container manufacturers in 1991, while about *** percent of Unimin's

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[74] Petitioner stated that shifts could occur with savings of as low as $5,000 to $20,000 per year or $1.00 per ton, while respondents stated that the savings would have to be $35,000 to $50,000 per year for shifts to be sufficiently attractive. TR, pp. 71 and 151.

[75] Conversation with ***.

nepheline syenite 1991 sales were to glass-container manufacturers.[76] Most of the competition between nepheline syenite and domestic feldspathic materials has occurred in the glass container industry. Almost all of the lost sale and lost revenue allegations and switches between different feldspathic materials reported in the producer and purchaser questionnaires involved container glass manufacturers.

The container glass industry is dominated by a few large producers. The two largest are Anchor Glass, which has *** plants, and Owens-Brockway, which also has *** plants. Other significant producers include Ball-Incon, Foster-Forbes, and Kerr.[77] These end users tend to use different feldspathic materials in each plant, with the choice of material depending on the specific characteristics of the material, the minerals customarily used by the plant, the type of furnace in the plant, the location of the plant in relation to the batch ingredients, and the end products.

The demand for nepheline syenite, aplite, and glass-grade feldspar is driven by demand for the end products in which the materials are used, mainly glass containers and fiberglass, and, to a lesser extent, flat glass and specialty glass. Sales of fiberglass and flat glass have been negatively affected by a decline in housing starts, automotive sales, and commercial construction. The main factor affecting demand for container-glass is competition from nonglass containers, such as aluminum, paper, and plastic containers, which led to glass plant closures and the consolidation of the glass industry during the 1980s. However, glass container shipments have increased slightly since 1989, although the demand for feldspathic materials continues to be weak.[78] Two reasons for the weak demand are the lightweighting of glass containers, which decreases the amount of raw materials needed to produce a glass container, and the increased use of recycled glass (cullet).

Curbside recycling programs have increased the amount of cullet available as an alternate source of alumina. Cullet is added after all of the raw materials are put into the batch, but it can be a substitute for the entire raw material batch mix. Therefore, using cullet will decrease the amount of all of the glass raw materials, including feldspathic materials. For example, if the batch contains 50 percent cullet, then 50 percent less of the feldspathic material will be required than if no cullet was used in the batch.[79] All of the purchasers reported that they use cullet in their glass manufacturing process, and many of them reported that their usage has increased since 1989. *** reported that overall cullet use has increased approximately 2 percent per year since 1989, while *** reported that the quantity of cullet used at its plants goes up 40 percent each year. ***

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[76] ***.

[77] Industrial Minerals, July 1991, p. 31. ***.

[78] "The real impact [of competition from aluminum and plastics] will be on glass raw material suppliers who have also been suffering from the fact that in order to maintain market competitiveness, glass container manufacturers have been unable to raise prices significantly, and are therefore unable (unwilling) to pay higher prices for their raw materials." Industrial Minerals, July 1991, p. 35.

[79] Industrial Minerals, August 1990, p. 22.

reported that its purchases of nepheline syenite fell from *** tons in 1989 to *** tons in 1991 because of the increased use of cullet.

Sales of nepheline syenite, aplite, and glass-grade feldspar are made principally through contracts of one year or more. Contracts generally lock in an annual price and estimate the customer's annual volume requirements. ***. Purchasers generally renegotiate prices informally each year with the supplier and may or may not request quotes from other suppliers.

* * * * * * *

Most contracts signed with TFC contain a "meet-or-release" provision, under which the customer could be released from the contract if it receives a better price that cannot be met by its current supplier. According to TFC, it has never lost a contract in midyear because of being unable to meet a competitor's price.[80] ***. However, shifting between different types of feldspathic materials usually occurs when negotiations for a new annual contract are underway.

Transportation Costs

Because nepheline syenite, aplite, and glass-grade feldspar have low value-to-weight ratios, transportation costs are an important part of the final delivered price to customers. Producers and importers both reported that transportation costs are a primary factor in determining their market areas. U.S. manufacturers indicated that transportation costs tend to limit their geographic market areas to end-user facilities within 500 miles of production facilities. Unimin-Canada reported a market area for nepheline syenite that includes ***, and tends to ship a greater percentage of its product longer distances than the petitioner.

***. Because of the high transportation costs associated with shipping nepheline syenite, aplite, and glass-grade feldspar, producers tend to concentrate sales in areas in which they have a transportation advantage. ***. For some end users, transportation costs accounted for more than 50 percent of the final delivered price, thus the ability of the producer or end user to negotiate attractive freight rates can influence the choice of supplier.

End users also need to consider the transportation costs for the other raw materials needed for producing glass. The cost of transporting soda ash can be an important factor since soda ash is only available from Wyoming and California. *** reported that it uses nepheline syenite because it decreases the amount of soda required in a batch and thereby lessens the transportation costs associated with having soda shipped from ***.

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[80] TR, p. 77.

Questionnaire Price Data

Contract prices for domestic aplite and glass-grade feldspar and for Canadian nepheline syenite were requested for U.S. producers' and Unimin's 10 largest customers by volume for all agreements made at any time for delivery in 1989, 1990, 1991, and after 1991. *** reported aplite and glass-grade feldspar prices almost exclusively on an f.o.b. basis. ***.

Prices for domestic aplite and glass-grade feldspar are shown by producer's location in tables 19-24. Prices for Unimin's imported nepheline syenite are shown in table 25. Detailed information regarding the switches between feldspathic materials that are shown in these tables is provided in the "Purchaser Responses" and "Lost Sales and Lost Revenues" sections of this report.

Price Trends

There are no quarterly pricing data available as sales for both the domestic and imported products are generally made through annual or multi-year contracts under which prices to larger customers tend to be fixed. However, yearly f.o.b. prices by customer for the domestic glass-grade feldspar and aplite and f.o.b. and delivered prices for the imported nepheline syenite generally show a slight upward trend for the period for which data were requested.

Aplite from Virginia

* * * * * * *

Glass-grade feldspar from Connecticut

* * * * * * *

Glass-grade feldspar from North Carolina

* * * * * * *

Table 19
TFC Virginia aplite f.o.b. prices, by customers,[1] 1989-91 and post-1991

(Per ton)

Customer and location	1989	1990	1991	After 1991
*	*	*	*	*	*	*

[1] ***.

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

Table 20
TFC Connecticut glass-grade feldspar f.o.b. prices, by customers, 1989-91 and post-1991

(Per ton)

Customer and location	1989	1990	1991	After 1991[1]
*	*	*	*	*	*	*

[1] These prices were negotiated prior to the closing of TFC's Connecticut plant in December 1991.

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

Table 21
TFC North Carolina glass-grade feldspar f.o.b. prices, by customers, 1989-91 and post-1991

(Per ton)

Customer and location	1989	1990	1991	After 1991
*	*	*	*	*	*	*

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

Table 22
K-T Feldspar North Carolina glass-grade feldspar f.o.b. prices, by customers, 1989-91 and post-1991

(Per ton)

Customer and location	1989	1990	1991	After 1991
*	*	*	*	*	*	*

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

Table 23
Unimin-North Carolina glass-grade feldspar f.o.b. prices, by customers, 1989-91 and post-1991

(Per ton)

Customer and location	1989	1990	1991	After 1991
*	*	*	*	*	*	*

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

Table 24
TFC Georgia potash[1] glass-grade feldspar f.o.b. prices, by customers, 1989-91 and post-1991

(Per ton)

Customer and location	1989	1990	1991	After 1991
*	*	*	*	*	*	*

[1] Potash glass-grade feldspar is a high-priced material used only in specialty glass applications.

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

Table 25
Unimin nepheline syenite f.o.b. Ontario and delivered prices for imports from Canada, by customers, 1989-91 and post-1991

		(Per ton)			
Customer and location	Grade[1]	1989	1990	1991	After 1991
*	*	*	*	*	*

[1] 131 and 134 are fiberglass grades, which are lower quality grades than the 333 and 340 grades used in container glass.

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

Potash glass-grade feldspar from Georgia

* * * * * * *

Nepheline syenite imported from Canada

Unimin acquired Indusmin's nepheline syenite operation in September 1990. At the public hearing, Unimin said that it increased prices effective January 1, 1991, and in 1992 it increased prices again by over 10 percent to some customers.[81]

* * * * * * *

Price Comparisons

It is impossible to compare directly per-ton prices of the domestic aplite and glass-grade feldspar and of the imported nepheline syenite. Although prices reported reflect actual contract prices for sales to unrelated end users, the price for the alumina agent should not be considered separately from the costs of the associated transportation and of other materials in a glass batch. As noted earlier, end users of nepheline syenite, aplite, and glass-grade feldspar consider the optimal chemical composition of all ingredients in a glass batch when deciding which material and source to choose.

[81] TR, p. 135.

Data show that per-ton f.o.b. prices for each type of feldspathic material vary greatly, ranging from $*** for nepheline syenite to more than $*** for potash glass-grade feldspar. The f.o.b. price of glass-grade feldspar produced in *** was *** than that of glass-grade feldspar produced in *** and *** the price of aplite from Virginia and nepheline syenite imported from Canada. However, useful price comparisons cannot be made except at the purchaser plant level, taking into consideration transportation and the cost of other ingredients in each plant's glass batch formula.

Two purchasers, *** and ***, provided extensive information and data on price comparisons for each of their plant locations. Price comparisons varied by plant location and, at individual plants, between furnaces, depending mainly on the color and type of glass produced in a particular furnace.

*** used the quoted and actual f.o.b. prices and freight costs of each of the feldspathic materials to determine a delivered price, if the materials were not quoted delivered. Then, each delivered price was substituted into the batch formula for each tank at each plant to determine the cost per-ton of glass using each of the feldspathic materials. The lowest calculated cost per ton of a batch using the most efficient of the three feldspathic materials was used as a benchmark against which to determine what the delivered price of the other two feldspathic materials would have to be to yield the same per-ton batch cost. *** showed the delivered price (the "break-even" price) for each material that would yield a glass cost equal to this lowest calculated glass cost and the percentage decrease in the actual delivered price of the feldspathic material that would be required to achieve the lowest per ton glass cost.

*** presented price comparisons for its *** that currently use aplite, feldspar, or nepheline syenite. *** currently use the feldspathic material that yields the lowest cost glass batch. ***. The reasons given by *** as to why it may not always use the lowest cost material include end product quality considerations and are detailed in the "Lost Sales and Lost Revenues" section of this report.

*** submitted similar information for 1991 prices. For each furnace at each plant in the NEC region, it presented the delivered price for the feldspathic material it used. In addition, for the two feldspathic materials not used, it presented an "equivalency" price which corresponds to ***'s "break-even" price, and a switch price which is the delivered price that would result in the $*** per year savings necessary for *** to switch feldspathic materials. *** also calculated a price premium, the difference between the actual delivered price paid for the feldspathic material used and the switch price for the alternative materials, for each furnace at each plant. In other words, *** showed what the price of the alternative feldspathic materials would have to be in order for *** to switch materials. However, *** did not show the actual quoted prices for materials not used at a particular plant.

* * * * * * *

Purchaser Responses

Twenty-three glass manufacturers supplied information in response to the purchaser questionnaire. Of the 23, there were 8 container-glass manufacturers, 6 fiberglass manufacturers, and 3 flat glass producers, with the remainder consisting of specialty glass manufacturers, who buy smaller amounts of the alumina agents.

Most of the purchasers reported that they have used only one supplier at each plant in the past 3 years. However, five companies[82] reported switching sources at 18 plants as shown in table 26.[83] Since 1989, seven plants have switched from feldspar to nepheline syenite, and three plants have switched from aplite to nepheline syenite. Conversely, five plants switched from nepheline syenite to aplite.[84] Also, three plants switched from feldspar to aplite. No purchasers reported switching to feldspar during 1989-91.

Table 26
Switches among aplite, glass-grade feldspar, and nepheline syenite since 1989

Plant	Year	From	To	Reason
*	*	*	*	* * *

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

Purchasers reported that 11 of these switches were made, at least partly, on the basis of delivered price or of total batch cost.[85] Four of these switches were from feldspar to nepheline syenite, and three were from aplite to nepheline syenite.[86] The other four switches were from nepheline syenite or feldspar to aplite. Detailed explanations on the switches are provided below and in the "Lost Sales and Lost Revenues" section of this report.

*** of *** stated that its *** switched from *** supplied by *** to nepheline syenite in *** when *** tried to raise prices $*** per ton. ***.

*** plant switched from *** in order to decrease its total batch cost. ***.

[82] Owens-Brockway is a division of Owens-Illinois.
[83] All switches which occurred involved suppliers and end users within the NEC region except ***.
[84] ***.
[85] These 11 switches involved only *** glass producers, ***.
[86] Of the 7 switches to nepheline syenite for price/cost reasons, *** occurred in 1990, *** in 1991, and *** in 1992.

When asked to compare the observed trends in prices of nepheline syenite, aplite, and glass-grade feldspar, many of the purchasers could not respond because they buy only one of the products from a single source and do not normally seek out other suppliers. Most of the others reported that prices of nepheline syenite have generally remained the same relative to prices of aplite and glass-grade feldspar. Three reported that nepheline syenite prices have decreased relative to aplite and glass-grade feldspar prices, whereas two reported that nepheline syenite prices have increased compared to glass-grade feldspar prices.

End users were asked to list the three most important factors in their purchasing decisions. Seventeen purchasers cited quality, including chemistry and conformance to engineering specifications, as the most important factor. Three purchasers listed price as the most important factor; three purchasers, as the second most important factor; and nine purchasers, as the third most important factor. Several purchasers mentioned such other factors as contracts, chemical consistency, availability, service, reliability of delivery, and total batch cost.

Lost Sales and Lost Revenues

*** submitted *** lost sale allegations totaling $*** and *** lost revenue allegations totaling $*** involving four end users in the NEC region. The lost sale allegations involved *** while the lost revenue allegations involved ***. In addition, *** submitted two lost revenue allegations involving ***. *** reported that it lost revenues totaling $*** for ***. Staff contacted all four end users named in the lost sale and the lost revenue allegations.

*** alleged *** lost sales involving *** and *** instances of lost revenues for sales of ***. One instance alleged as a lost sale involved shifting a plant from ***. Staff spoke with ***.

*** said that *** prefers not to change feldspathic materials if savings are minimal. For example, an annual savings of $*** may be more trouble than it is worth. However, no set dollar amount of savings applies to every plant. One must consider the type of furnace at the plant, individual plant manager preferences, and such innovative options as transportation provided by suppliers.

*** said that *** has a far better transportation department than does ***, although *** has greatly improved on transportation. ***.

*** alleged losing a sale of *** tons of *** to *** in ***. The allegation stated that *** shifted to nepheline syenite, which was quoted at $*** per ton delivered, and rejected ***'s quote for *** at $*** per ton delivered. *** said that ***'s quote was for ***. *** said that the correct quote for the nepheline syenite was $*** per ton delivered and was for ***. *** considers nepheline syenite to be a superior product since its alumina and soda ash levels offer a more usable product per ton than does ***.

*** alleged that ***. In ***, *** allegedly quoted *** an f.o.b. price of $*** per ton for *** tons of feldspar, but ***. *** reported that after quoting $*** per ton for ***, *** announced a $*** per ton increase, which prompted *** to evaluate other products, including nepheline syenite from Canada. However, after considering ***, *** selected *** at $*** per ton delivered. ***.

* * * * * * *

*** alleged having to lower its f.o.b price for *** from $*** to $*** per ton for a sale of *** tons to *** in ***. *** said that *** has been preferred and used historically. According to ***, *** uses *** there at an annual cost of $*** over what it would cost them to use nepheline syenite; he referred to this as a *** for using ***. ***. *** did negotiate the reduction in the per-ton price of ***, thus reducing its *** to $***.

For sales to ***, *** allegedly had to reduce its f.o.b. price per ton for *** from $*** to $*** in *** for a sale of *** tons. ***. In order to reduce the added cost of using ***, *** did negotiate the reduced price per ton.

At ***, *** allegedly had to reduce its quote for *** in *** from $*** f.o.b. *** to $*** for *** tons. *** stated that the initial quote was $*** per ton delivered, which was reduced to $*** per ton delivered. ***.

*** reported *** instances of lost revenues totaling $*** for *** tons of *** and one instance of lost revenues totaling $*** for *** tons of *** involving ***. *** said that ***'s purchasing decisions are based solely on total costs, taking into account the price of the feldspathic material, freight costs, and the costs of other inputs. He said that *** would normally accept a *** increase in price per year, but, if there was any difference in total delivered costs, *** would consider shifting sources for as little as $*** in savings per year.

. *** reported that it had to lower its per-ton f.o.b. price from $ to $***. ***.

*** allegation involved a quote on *** tons of *** to a ***. *** reported that it originally quoted $*** per ton f.o.b. but was forced to lower its price to $***. ***.

*** reported two lost sales of *** tons of *** totaling $*** at its *** and *** lost sales of *** tons of *** totaling $*** at its ***, all involving ***. ***.

*** reported that it quoted *** delivered prices of $*** and $*** for ***. *** reported that *** switched to nepheline syenite for $*** delivered at ***. *** reported that it quoted *** delivered for $*** for ***. *** said that it switched to nepheline syenite at *** for $***, $***, and $***, respectively.

* * * * * * *

*** alleged *** lost revenue instances involving *** and *** lost revenue instance involving ***. *** said that although the physical costs of switching are minimal, the long-term relationships with its suppliers are more important than short-term cost decreases.

*** alleged lost revenues in a *** sale of *** tons of *** to ***. *** reported having to lower its f.o.b. quote from $*** per ton to $*** at *** because of competition from Canadian nepheline syenite. *** reported that at its ***, *** had been used historically, and *** had neither asked for nor received any quotes on nepheline syenite prior to ***. ***. *** said that, in retrospect, *** could probably have reduced its costs by switching to nepheline syenite *** but that nepheline syenite had never been considered at this plant.

*** alleged lowering its f.o.b. price per ton of *** from $*** to $*** in a *** sale of *** tons to ***. ***. *** stated that a shift was made from nepheline syenite to *** during ***. *** pays a higher delivered price per ton for *** than it would for ***.

*** alleged having to lower its price on *** tons of *** from $*** per ton f.o.b. to $*** due to competition from nepheline syenite in a *** sale to ***. *** stated that there was *** between *** and nepheline syenite and that *** had been available at a much lower batch cost than *** to this plant for several years. ***. *** did lower its price for ***, and *** reported that *** was able to improve its freight rates by shipping ***. ***.

*** alleged having to lower its per-ton f.o.b price from $*** to $*** on a *** sale of *** tons of *** to *** because of competition from nepheline syenite imported from Canada. *** reported that *** and that nepheline syenite has not been considered ***.

Exchange Rates

Quarterly data reported by the International Monetary Fund indicate that during January-March 1989 through October-December 1991 the nominal value of the Canadian dollar fluctuated, appreciating overall by 5.1 percent relative to the U.S. dollar (table 27).[87] Adjusted for movements in producer price indexes in the United States and Canada, the real value of the Canadian currency depreciated 1.6 percent overall relative to the U.S. dollar between January-March 1989 and the fourth quarter of 1991.

[87] International Financial Statistics, February 1992.

Table 27
Exchange rates:[1] Indexes of nominal and real exchange rates of the Canadian dollar and indexes of producer prices in the United States and Canada,[2] by quarters, January 1989-December 1991

Period	U.S. producer price index	Canadian producer price index	Nominal exchange rate index	Real exchange rate index[3]
1989:				
January-March.....	100.0	100.0	100.0	100.0
April-June.....	101.8	100.3	99.9	98.4
July-September.....	101.4	99.9	100.8	99.3
October-December....	101.8	99.3	102.0	99.5
1990:				
January-March.....	103.3	99.6	100.8	97.3
April-June.....	103.1	99.8	101.8	98.6
July-September.....	104.9	99.9	103.4	98.4
October-December....	108.1	101.2	102.7	96.1
1991:				
January-March.....	105.9	100.8	103.1	98.2
April-June.....	104.8	99.3	103.7	98.2
July-September.....	104.7	98.5	104.2	98.1
October-December....	104.8	98.2[4]	105.1	98.4[4]

[1] Exchange rates expressed in U.S. dollars per Canadian dollar.
[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 Canada.
[4] Derived from Canadian price data reported for October-November only.

Note.--January-March 1989 = 100.

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

APPENDIX A

FEDERAL REGISTER NOTICES OF THE U.S. INTERNATIONAL TRADE COMMISSION AND THE U.S. DEPARTMENT OF COMMERCE

[Investigation No. 731-TA-525 (Final)]

Nepheline Syenite From Canada

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-525 (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 Canada of nepheline syenite,[1] provided for in subheading 2529.30.00 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: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-205-3190), Office of Investigaitons, 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 nepheline syenite from Canada are being sold in the United States at less than fair value within the meaning of section 733 of the act (19

[1] The product covered by this investigation is nepheline syenite, which is a coarse crystalline rock consisting principally of feldspathic minerals (i.e., sodium-potassium feldspars and nepheline) with little or no free quartz, and ground no finer than 140 mesh.

U.S.C. 1673b). The investigation was requested in a petition filed on July 12, 1991, by The Feldspar Corporation, Asheville, NC.

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 § 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 § 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 March 6, 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 March 19, 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 March 6, 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 March 10, 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 March 16, 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 March 27, 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 March 27, 1992. All written submissions must conform with the provisions of § 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 § 207.20 of the Commission's rules.

Issued: January 9, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-1058 Filed 1-14-92; 8:45 am]

BILLING CODE 7020-02-M

Postponement

This notice informs the public that we have received a request from Unimin Canada Limited and Unimin Corporation (Unimin) to postpone by one week the final determination in the investigation of nepheline syenite (NS) from Canada, in accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Unimin accounts for a significant proportion of exports of the subject merchandise from Canada to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing until not later than March 10, 1992 the final determination as to whether sales of NS from Canada have occurred at less than fair value.

Public Comment

In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation of NS from Canada. The hearing will be held on February 21, 1992, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than February 14, 1992, and rebuttal briefs no later than February 19, 1992. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

The U.S. International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: January 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-1315 Filed 1-16-92, 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-813]

Postponement of Final Antidumping Duty Determination: Nepheline Syenite From Canada

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

EFFECTIVE DATE: January 17, 1992.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at (202) 377-2778.

[A-122-813]

Final Determination of Sales at Less Than Fair Value: Nepheline Syenite From Canada

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

EFFECTIVE DATE: March 17, 1992.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumpting Investigations, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2778.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on December 27, 1991 (56 FR 67061), the following events have occurred.

On December 23, 1991 respondent, Unimin Canada, Ltd. (Unimin) requested that the Department postpone the final

determination in this investigation by one week, pursuant to 19 CFR 353.20(b).

On January 6, 1992, the petitioner, The Feldspar Corporation (TFC), requested a public hearing. On January 9, 1992, respondent notified the Department that it would no longer pursue a suspension agreement in the case.

On January 9, 1992, the Department solicited comments from interested parties on the scope of the investigation. The Department received comments from respondent and petitioner on January 16 and January 17, 1992.

On January 13 through January 15, 1992, the Department conducted verification in Canada of the questionnaire responses submitted by Unimin. On January 17, 1992, the Department published a notice in the **Federal Register** (57 FR 2078) postponing the final determination in this investigation until not later than March 10, 1992.

On January 31, 1992, respondent submitted a supplemental narrative response and a revised computer tape with changes required as a result of the Department's verification. Petitioner and Pittsburgh Corning Corporation, an interested party, filed case briefs on February 14, 1992, and petitioner and respondent filed rebuttal briefs on February 19, 1992. A public hearing was held on February 26, 1992.

Scope of Investigation

After soliciting comments from interested parties, the Department has amended the scope of the investigation to the following: The product covered by this investigation is nepheline syenite (NS). For purposes of this investigation, NS is a coarse, crystalline rock consisting principally of feldspathic minerals (*i.e.*, sodium-potassium feldspars and nepheline), with little or no free quartz, and whose typical mean value passing through ASTM E-11 mesh sieve no. 40 and retained on ASTM E-11 mesh sieve no. 200 (when solely said two sieves are used) is no less than 70 percent by weight.

NS is currently classifiable under item 2529.30.0010 of the Harmonized Tariff Schedule (HTS). Although the HTS item 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 February 1, 1991, through July 31, 1991.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of NS from Canada to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of NS to sales of identical or similar NS in Canada.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Tariff Act of 1930, as amended (the Act), because all sales were made to unrelated parties prior to importation into the United States. Exporter's sales price methodology is not appropriate here because the subject merchandise was not introduced into the inventory of Unimin's related U.S. selling agent, this was the customary commercial channel for sales of this merchandise between Unimin and its customers, and the selling agent acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. customers.

We calculated purchase price based on packed, f.o.b. plant and delivered prices. We made deductions, where appropriate, for foreign inland freight, inland freight, marine insurance, loading, U.S. brokerage and handling, and railcar leasing costs in accordance with section 772(d)(2) of the Act. In addition, we made deductions, where appropriate, for discounts, rebates, and post-sale price adjustments. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Canadian value-added tax that was forgiven by reason of the export.

Foreign Market Value

In order to determine whether there were sufficient sales of NS in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of NS to the volume of third country sales of NS, in accordance with section 773(a)(1) of the Act. Unimin had a viable home market with respect to sales of NS during the POI.

We calculated FMV based on delivered and f.o.b. plant prices to unrelated customers in the home market. We made deductions, where appropriate, for rebates, inland freight, railcar leasing, loading costs and post-sale price adjustments. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56 of the Department's regulations, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses. We recalculated Unimin's imputed credit expense incurred on home market and U.S. sales net of discounts and rebates.

Although Unimin borrowed in both markets, the U.S. interest rate was the lowest rate. Therefore, we have used Unimin's short-term U.S. interest rate to impute credit expenses on home market sales. This use of the lowest interest rate is consistent with the Court of Appeals' decision in *LMI—La Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455 (Fed. Cir 1990). We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

We have made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Analysis of Comments Received

We invited interested parties to comment on the preliminary determination of this investigation. We received case briefs from petitioner and an interested party and rebuttal briefs from petitioner and respondent. As noted above, we held a public hearing on February 26, 1992.

Comment 1: Petitioner claims there are discrepancies concerning the volume and value of sales reported during the POI in various sections of Unimin's response to the Department's questionnaire. Petitioner also claims that there are discrepancies between the value of sales used to calculate indirect selling expenses and the value used to calculate the difference of merchandise adjustment (difmer). Petitioner states that Unimin reported a lower value in the indirect selling expense calculation than it reported in the difmer calculation

in order to increase the amount of its indirect selling expense offset and, thus, decrease its dumping margin.

Petitioner further states that the Department's verification report finds discrepancies in all of the transactions examined during the verification process, indicating that respondent's data is generally unreliable. Petitioner states that it believes respondent did not permit proper verification of sales data because that data was not tied to respondent's financial statements.

Respondent claims that petitioner has taken out of context two sets of sales figures, which are not identical since they relate to different periods, and that the two data sets are appropriate for use in their respective calculations. Specifically, respondent argues that the reported sales figures properly include and exclude certain sales based on the Department's "date of sale" definition. It further contends that the cost of production figures used in the calculation of the difmer are based on its financial records, without regard to the date of sale considerations. Respondent claims that other supposed discrepancies claimed by petitioner are not actually discrepancies, but arise from petitioner's failure to distinguish tons shipped from tons sold.

Respondent contends that its calculation of indirect selling expenses is correct and that petitioner has improperly compared the revenue figure for home market and third country sales with a total revenue figure inclusive of sales to the U.S. market. Respondent also claims that it did permit proper verification procedures to be performed, and that representatives of the Department reviewed Unimin's Profit/Loss Statement to verify the total volume and value of sales reported.

DOC Position: We disagree with petitioner that there are discrepancies concerning the volume and value of sales reported during the POI. The volume and value of sales in Unimin's questionnaire responses were reported correctly according to the Department's date of sale methodology (*i.e.*, when the basic terms of sale were established, in particular, price and quantity). The accuracy and completeness of these figures were examined a tverification and no discrepancies were noted. The cost of production figures used in the calculation of the difmer adjustment, however, were based on Unimin's financial records, without regard to the Department's date of sale considerations. Since Unimin sells NS pursuant to long-term contracts, the volume and value of sales (according to the Department's date of sale methodology) will not match the volume and value of shipments during this same time period.

Furthermore, we agree with respondent that its calculation of indirect selling expenses is correct and that the total NS sales revenue figures used in this calculation were accurate. The difference between those revenue figures used to calculate the difmer adjustment and those used to calculate indirect selling expenses were explained on the record by respondent. The revenue figures used to calculate cost of production for the difmeer adjustment included U.S. sales revenue, and those used in the calculation of indirect selling expenses do not include U.S. sales revenue. Therefore, the figures are different. Furthermore, since we are not adjusting for commissions paid to respondent's parent company, petitioner's discussion of the indirect selling expense offset is moot.

We also disagree with petitioner's claim that there were discrepancies in all of the transactions examined during verification and that respondent's data is generally unreliable. This is not true because as stated in the verification report, we did not find discrepancies with every sale examined at verification. The verification report only discusses those sales where a discrepancy was noted. Furthermore, a review of the Department's verification report shows that these discrepancies were not significant. Therefore, there is no reason to call into question the validity of respondent's data.

Finally, we disagree with petitioner's statement that respondent did not permit proper verification of sales data because that data was not tied to respondent's financial statements. On page five of the Department's verification report, it states that sales figures were "all verified by tracing those reported in Unimin's financial statements to internal sales records and finally to those reported in the 11/91 computer database." Furthermore, on the same page it states that the Department "began verification of volume and value by examining Unimin's financial records, in particular the Profit/Loss (P/L) statement (Verification Exhibit A-9) which shows all home market sales of all products." Exhibit A-9 contains a copy of a combined "Actual Profit Contribution" report, which is part of Unimin's larger P/L financial statement.

Comment 2: Petitioner states that Unimin has improperly allocated leased railcar costs by weight rather than by time (*i.e.*, the period of the lease). Petitioner states that rather than allocating the total lease cost over total tonnage shipped, Unimin should have allocated the total lease cost during the POI over the number of days that leased cars were in service during that period. If the Department does not use petitioner's methodology, petitioner states that the Department should use best information available, which should be the average of the freight charges for all delivered price transactions.

Respondent argues that it has reported the cost of its leased railcars in the manner in which it is both invoiced and maintains its records. It further contends that Unimin is invoiced without regard to the length of time each car is in use and without regard to actual distance travelled. Since the Department has verified the accuracy of the data disclosed by Unimin, respondent claims the Department should not resort to best information available.

DOC Position: We disagree with petitioner that Unimin has improperly allocated leased railcar costs and have accepted Unimin's reported methodology for allocating its lease costs during the POI. At verification we examined all appropriate shipping documents, as well as the relevant lease contracts. The invoices which Unimin receives from its lease companies show a total lease charge for one month. On these invoices there is no indication of how many cars were in use, how many days in the month each car was used, or how many miles a particular car traveled. Furthermore, since the lease companies only issue one invoice per month to Unimin, there is no way to tie any portion of the total monthly lease cost to a particular sale or shipment. The invoices cover all shipments of NS (both subject and non-subject merchandise) in both the U.S. and home markets. Neither the products nor the markets are segregated on invoices.

Finally, it would be unreasonable for the Department to require a respondent to manually sort through documentation of all its shipments of all its products, including shipments of non-subject merchandise in both the U.S. and Canadian markets, in order to allocate a portion of a total lease cost to a particular sale because this would be unduly burdensome. As shown in verification exhibit C-1a, the total lease cost for one month is entered into Unimin's general ledger without any indication of whether the cost was incurred in the Canadian or U.S. market. In addition to these circumstances, it is not possible for the Department to verify the actual time in transit for any particular sale. The time it takes any given shipment to arrive at its

destination does not only depend on mileage; we would also have to consider rail routings, delays, and speed. Without this information, the Department could not adequately verify time of shipments. Given these circumstances, we feel that respondent's methodology was reasonable, and thus, acceptable.

Comment 3: Petitioner claims that there is no basis for a difmer adjustment between grades 131 and 134. Also, petitioner disagrees with the use of the "net realizable value" (NRV) method for cost allocation in respondent's calculation of difmer adjustments. Specifically, petitioner states that the NRV method has been inappropriately borrowed from "constructed value" calculations for use in this difmer calculation. Petitioner also states there is no evidence that the price differential between the products is due to any difference in physical characteristics of the merchandise, a necessary condition for allowing a difmer adjustment. Petitioner states that the NRV creates a cost difference by allocating costs based on different market values of the two products. Therefore, petitioner claims that such an adjustment should not be allowed. Petitioner further states that even if there were a basis for a difmer adjustment, Unimin's data cannot be relied upon to calculate the difmer adjustment since its volume and value data is inconsistent, and since various cost figures were not tied to financial statements at verification. Also, petitioner claims that Unimin has misapplied the NRV by not excluding costs associated with what it views as common stages of production.

Respondent claims that it properly calculated the difmer adjustment. Respondent claims that Department regulations state that where appropriate, the Secretary may also consider differences in market value between products to arrive at a difmer adjustment. Respondent also states that grades 131 and 134 are distinct and that there are differences in the cost of manufacture which are driven by the differences in physical characteristics. Unimin points specifically to the costly removal of iron and the fine content of the products. Unimin further claims that the different physical characteristics of the two products are reflected in their market values. Respondent also claims that the Department has verified information on differences in cost of manufacture, and, therefore, the Department should accept the difmer adjustment as provided by Unimin.

DOC Position: We agree with petitioner that the "net realizable value" method for co-product cost accounting is not normally an appropriate measure of a difmer adjustment. However, based on the facts on the record and the following analysis, we have accepted respondent's methodology for purposes of this final determination. In 19 CFR 353.57(a), it states that the "Secretary will make a reasonable allowance for differences in the physical characteristics of merchandise compared to the extent that the Secretary is satisfied that the amount of any price differential is wholly or partly due to such difference." Further, the regulations state in 19 CFR 353.57(b) that in "deciding what is a reasonable allowance for difference in physical characteristics, the Secretary normally will consider differences in the cost of production but, where appropriate, may also consider differences in the market value." There is a clear preference in the regulations for using cost of production figures, rather than market value, in the calculation of a difmer adjustment. However, an analysis of whether the circumstances in this particular investigation make it appropriate for the Department to consider differences in market value had to be conducted using the information submitted on the record by both parties to the investigation.

There is evidence on the record, submitted by both petitioner and respondent, that physical differences do exist and that the market value of each grade can vary based on these differences; they are: (1) The iron content and (2) the level of impurities and the particle size and distribution. This relationship between physical properties and market value has been supported on the record by both petitioner and respondent.

The iron content of Unimin's grade 131 has a typical mean value of 0.10 percent, and the iron content of grade 134 has a typical mean value of 0.35 percent. Since the removal of iron is a costly process involving the use of large amounts of electricity to power magnetic separators, a low-iron product such as 131 is more costly to produce than a higher-iron content product such as 134. This difference is reflected in the different market values placed on the two products. For example, in its petition, petitioner submitted a 1989 annual report from the U.S. Bureau of Mines which states that prices for Canadian nepheline syenite in the U.S. market were $22.00 to $28.00 per ton for glass grade, 30 mesh, bulk, depending on the iron content.

Furthermore, a petitioner stated in its petition that the price of grade 340 ("a low-iron 40 mesh product") is significantly higher than the price of grade 333 ("a high-iron 30 mesh product"). Also attached to its petition was an affidavit which referred to a 1991 Industrial Minerals edition which shows the price of Canadian 30 mesh, low-iron MS as $32..75 (Canadian dollars) per short ton, and that of Canadian 30 mesh, high-iron as $25.50 (Canadian dollars).

Another cost of production difference relates to the material composition and particle distribution of the two grades. Both grades 131 and 134 are blended products which contain fines, or waste material; however, grade 134 contains a higher percentage of fines than 131 (75 percent and 65 percent, respectively). This is evident in the technical data sheet for 134 which shows higher values for the amount of material typically passing through a 100 mesh screen. This means that 131 has less waste material and more higher priced, non-waste material.

An finally, in its petition, petitioner states that glass grade NS is generally ground no finer than 140 mesh, and that NS ground to a size of 200 mesh, (*i.e.*, to a greater degree of fineness), typically sells for two or three times the price of a coarser glass-grade NS. Petitioner further states that NS ground to an even greater degree of fineness (325 mesh) typically sells for three to four times the price of coarser glass grade NS.

As already state, the Department's regulations clearly state a preference for cost. Nvertheless, where appropriate the Department will use market value as a basis for calculating a difmer adjustment. In this investigation, although our policy and procedural preference would have been to seek additional information regarding cost, we did not do so. Given the fact that it is now too late to request further cost of production data and the fact that the difmer has a very small impact on the overall margin, we set aside our preference for cost, and evaluated whether the use of market valuc is appropriate. Because there is substantial evidence on the record showing differences in the physical characteristics of respondent's product 131 and 134, and because these physical differences have been shown to have an impact on the market value of these products, there is sufficient evidence to support the appropriateness of using market value. Furthermore, we disagree with petitioner's statement that Unimin's data used to calculate the difmer is not reliable because the data is inconsistent and was not tied to any financial statements. This is discussed under *Comment 1* of this notice.

Therefore, we accept respondent's calculation of its difmer adjustment.

Comment 4: Petitioner claims that commission payments made by respondent to its U.S. parent should be the basis for a price adjustment because they are directly related to the sales in question.

Petitioner states that the Department erred in not making an adjustment in its preliminary determination, and it presumes this error is due to the Department's belief that the payments failed the arm's-length test. Citing *LMI—La Metalli Industriale* v. *U.S.*, ("LMI") 912 F.2d 455 (Fed. Cir. 1990), petitioner argues that the Court of Appeals for the Federal Circuit has adopted a test to determine arm's-length transactions which is based on evaluation of the full circumstances as revealed by the evidence at hand. Citing *Coated Groundwood Paper from Finland*, 56 FR 56,363, (November 4, 1991), petitioner argues that although the affiliation between the exporter and the agent may be a relevant factor, such a relationship does not automatically disqualify an adjustment from consideration, and that under *LMI* other factors must also be examined.

Petitioner states that evidence of unrelated party commissions and other evidence of bona fides of the commission relationship exist. Specifically, petitioner argues that there is no dissimilarity between the basis of a commission to an unrelated agency in the third country and the basis of the commision in this investigation. Petitioner also argues that Unimin's descriptions in company documents referring to the payments as"commissions" clarifies the true nature of these payments. Petitioner also points to the specific services for which the payment is rendered.

Petitioner also claims that the home market indirect selling expenses listed by Unimin should be rejected for various reasons: the total sales figure appears unreasonably low, improper inclusion of distribution and customer service costs in its reporting of total sales expense, improper use of non-subject merchandise in irrelevant markets to calculate indirect expenses, inappropriate inclusion of "Credit Department" expenses, and the appearance that sales expense figures are unverified.

Respondent claims that the Department's treatment of commisisons is correct and fully in accord with *LMI* and tha' the Federal Circuit did not implicitly reject the Department's test. Unimin contends that they do pay a commision to an unrelated agency in a third country and that this payment does not support a finding that the payment to Unimin Corporation is at arm's-length. Respondent also argues that peitioner would have the Department improperly apply different standards for considering related party commissions depending on the market in which the commision is paid.

With respect to its indirect selling expenses, respondent states that petitioner improperly extrapolates using a Unimin accounts receivable figure to arrive at a total sales figure for the POI. Unimin contends that peitioner is erroneously attempting to draw conclusions about a revenue number which excludes U.S. sales from a revenue number which includes U.S. sales. Respondent holds that distribtion and customer service expenses are properly included in caluculating indirect selling expenses.

DOC Position: We disagree with petitioner and have not deducted the commission paid by Unimin Canada to its U.S. parent, Unimin Corporation. In *LMI*, the Federal Circuit adopted a test for determining the arm's length nature of a transaction which requires consideration of the full circumstances of the transactions in question. Consistent with *LMI*, we have considered all of the circumstances of the commision relationship in question. We have compared payments to respondent's related selling agent in the U.S. with those to an unrelated selling agent in a third country. We have determined that these relationships are not comparable because the method of determining the amounts of payment are not similar to each other and because the requirements placed on each agent by the Canadian manufacturer are not comparable (*i.e.*, the obligations and responsilbilites placed on the selling agents were different). For example, one selling arrangement allows for the sales of all Unimin products in a broadly and generally defined area, whereas, the other selling arrangement strictly limits the number of products and the geographical territory open to the agent.

In addition, we found that the company's internal reference to these payments as "commissions" does not indicate that they are made at arm's-length. We also did not find any indication of arm's length transactions from petitioner's claim that respondent's U.S. parent performed traditional commission agent services.

Based on this information, we cannot determine that the related party commission in question is in fact an arm's length payment for services rendered, and, therefore, we have not deducted the commission from U.S. price.

Petitioner claims that home market indirect selling expenses reported by Unimin should be rejected by the Department for various reasons, and because the expense figures were not verified. As stated in the Final Results of Antidumping Duty Administrative Review: Lug Nuts from the People's Republic of China (56 FR 46153) (September 10, 1991), "During verification, it is the Department's practice to select only a certain number of items to verify. Due to time constraints, the Department often is unable to complete the review of source documentation for all selected items. Nevertheless, if the Department's verification team establishes the integrity of the source documents for those sales that it does review, then it assumes that source documents for the remaining sales are similarly reliable." In this investigation, the verifiers established the reliability of those items examined at verification. Since we did not verify those indirect selling expenses reported by Unimin, we have no reason to reject what Unimin reported. (For further discussion, see *Comment 1* and the *DOC Position*).

Comment 5: Pittsburgh Corning, an interested party in this investigation, claims that the Department should determine that TFC is not an interested party because TFC does not manufacture a like product. Pittsburgh Corning claims that we are obligated to evaluate the petitioner's standing and that we are not bound by the ITC's preliminary like product determination. In its brief, Pittsburgh Corning states that one class or kind of merchandise subject to this investigation is NS. Corning submits that TFC's products, aplite and glass grade feldspar, are not like products.

Citing High Information Content Flat Panel Displays and Display Glass Thereof from Japan: Final Determination: Rescission of Investigation and Partial Dismissal of Petition, 56 FR 32376 (July 16, 1991) ("Flat Panel Displays"), Pittsburgh Corning states that the Department determined that there were four separate classes or kinds of merchandise in that investigation. Since petitioners in that case did not produce one of the classes or kinds of merchandise, the Department evaluated whether the petitioners had standing to file a petition with respect to that class or kind of merchandise by conducting a like product inquiry.

Pittsburgh Corning points out that a petitioner may qualify as a producer of a like product for purposes of an ITC injury investigation and yet lack

standing to file a petition. In Flat Panel Displays, the Department examined the same six factors that the ITC considers in its injury like product analysis. Pittsburgh Corning has requested that the Department conduct a such a like product analysis for purposes of determining petitioner's standing and that in conducting this anaylsis, the Department should apply the traditional like product factors, and conclude that NS is not a like product of aplite or feldspar.

DOC Position: While we agree with Pittsburgh Corning that the Department is not bound by the ITC's like product determination, we may nevertheless agree with and accept it. Indeed, absent any indication that the ITC's definition of like product for purposes of determining injury would not be suitable for purposes of standing, we will accept the ITC definition. Therefore, we disagree with Pittsburgh Corning that the Department must evaluate petitioner's standing in this investigation by conduction our own "like product" analysis.

In its preliminary determination, the ITC found that petitioner's products, aplite and glass-grade feldspar, are the products most similar to NS and included them in its definition of "like product." We have analyzed the information on the record pertaining to this issue (*see*, Memorandum to File dated March 9, 1992) and have determined that we have no basis to disagree with the ITC's "like product" determination. Consequently, we are not required, as Pittsburgh Corning claims, to undertake our own "like product" analysis.

Therefore, since petitioner is a producer of a "like product," it is an interested party pursuant to section 771(9)(C) of the Act, and, as such, petitioner has met the standing requirement of section 732(b)(1) of the Act for filing this antidumping duty petition.

Comment 6: Petitioner claims that the Department should reject any changes in Unimin's January 31, 1992 submission that are more than mere corrections made during the course of the verification.

DOC Position: We have accepted only those changes noted during the course of verification, consistent with Department practice.

Continuation of Suspension of Liquidation

For Unimin and all other producers/manufacturers/exporters, we are directing the Customs Service to continue to suspend liquidation of all entries of NS from Canada that are entered, or withdrawn from warehouse, for consumption on or after December 27, 1991, which is the date of publication of our preliminary determination in the **Federal Register.**

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the FMV of the merchandise subject to this investigation exceeds the U.S. price as shown in the table below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Producer/manufacturer/exporter	Weighted-average margin percentage
Unimin Corporation	9.36
All Others	9.36

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

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

Dated: March 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-6198 Filed 3-16-92; 8:45 am]

BILLING CODE 3510-DS-M

APPENDIX B

CALENDAR OF PUBLIC HEARING

CALENDAR OF PUBLIC HEARING

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

Subject	:	NEPHELINE SYENITE FROM CANADA
Inv. No.	:	731-TA-525 (Final)
Date and Time	:	March 19, 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:

Crowell & Moring
Washington, D.C.
On behalf of

The Feldspar Corporation (TFC)

Kenneth B. Loritsch, Vice-President, Manufacturing

Gerard E. Wood, Chief Operating Officer (TFC)

Robert Morris, Secretary/Treasurer, Zemex Corporation

Michael Holloway, Vice President, Marketing (TFC)

Harry Mills, consultant on Glass Technology

Lucinda Lewis, Economist, Econsult, Inc.

Barry E. Cohen)
)--OF COUNSEL
M. Roy Goldberg)

In Opposition to the Imposition of Antidumpting Duties:

Unimin Corporation
New Canaan, Connecticut

H. Frederick Barnard III
Senior Vice President/Sales

Andrew J. Regis
Vice President/Geology and Environmental Affairs

Joseph C. Shapiro
Senior Vice President/Legal and Regulatory Affairs

Andrew G. Bradley)--SENIOR COUNSEL

- END -

APPENDIX C

MAPS SHOWING DISTRIBUTION OF U.S. PRODUCERS' SHIPMENTS, BY PLANTS

Figure C-1
The Feldspar Corp. (Montpelier, VA): Distribution of U.S. shipments of aplite, aggregated 1989-91

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Figure C-2
The Feldspar Corp. (Middletown, CT): Distribution of U.S. shipments of feldspar, aggregated 1989-91

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Figure C-3
The Feldspar Corp. (Spruce Pine, NC): Distribution of U.S. shipments of feldspar, aggregated 1989-91

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Figure C-4
The Feldspar Corp. (Monticello, GA): Distribution of U.S. shipments of feldspar, aggregated 1989-91

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Figure C-5
K-T Feldspar Corp. (Spruce Pine, NC): Distribution of U.S. shipments of feldspar, aggregated 1989-91

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Figure C-6
Unimin Corp. (Spruce Pine, NC): Distribution of U.S. shipments of feldspar, aggregated 1989-91

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APPENDIX D

SELECTED TRADE AND FINANCIAL DATA, BY REGIONS, BY PRODUCTS, AND BY PLANTS

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APPENDIX E

EXCERPTS FROM ZEMEX CORPORATION'S 1990 10-K REPORT AND 1990 ANNUAL REPORT

EXCERPTS FROM ZEMEX CORPORATION'S 1990 10-K REPORT AND 1990 ANNUAL REPORT

"Sales of feldspar to both the ceramic and glass industry in 1990 were slightly below 1989 levels due to plant closures in the glass industry and the general slowdown in the economy. Because of low demand and excess capacity for feldspathic minerals, product prices did not increase appreciably in 1990."[1]

"Industrial mineral prices generally are not subject to the price fluctuations typical of commodity metals. Demand for industrial minerals is primarily related to general economic conditions, particularly in the housing and construction and glass container industries. In the United States there are four major feldspathic mineral producers. Markets for industrial mineral products are sensitive not only to service, product performance and price, but to competitive price pressures caused by transportation costs."[2]

"The recession first became evident during September and increased in severity during the fourth quarter. The construction industry, end user of many of The Feldspar Corporation's products, suffered its lowest level of activity in December for any year since the recession of 1982."[3]

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[1] Zemex Corporation's 1990 10-K Report, p. 8, description of business.

[2] Ibid, p. 10.

[3] Zemex Corporation's 1990 Annual Report, p. 2, letter to shareholders from the President (CEO) and Chairman.

APPENDIX F

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS OF NEPHELINE SYENITE FROM CANADA ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND EXISTING DEVELOPMENT EFFORTS

COMMENTS RECEIVED FROM U.S. PRODUCERS ON THE IMPACT OF IMPORTS OF NEPHELINE SYENITE FROM CANADA ON THEIR GROWTH, INVESTMENT, ABILITY TO RAISE CAPITAL, AND EXISTING DEVELOPMENT EFFORTS

The Commission requested U.S. producers to describe and explain the actual and anticipated negative effects, if any, of imports of nepheline syenite from Canada on their investment, ability to raise capital, or existing development and production efforts (including efforts to develop a derivative or improved version of their products). Producers were also asked whether the scale of capital investments undertaken has been influenced by the presence of imports of this product from Canada. The responses are shown below.

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APPENDIX G

ADDITIONAL TFC APLITE PRICES

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