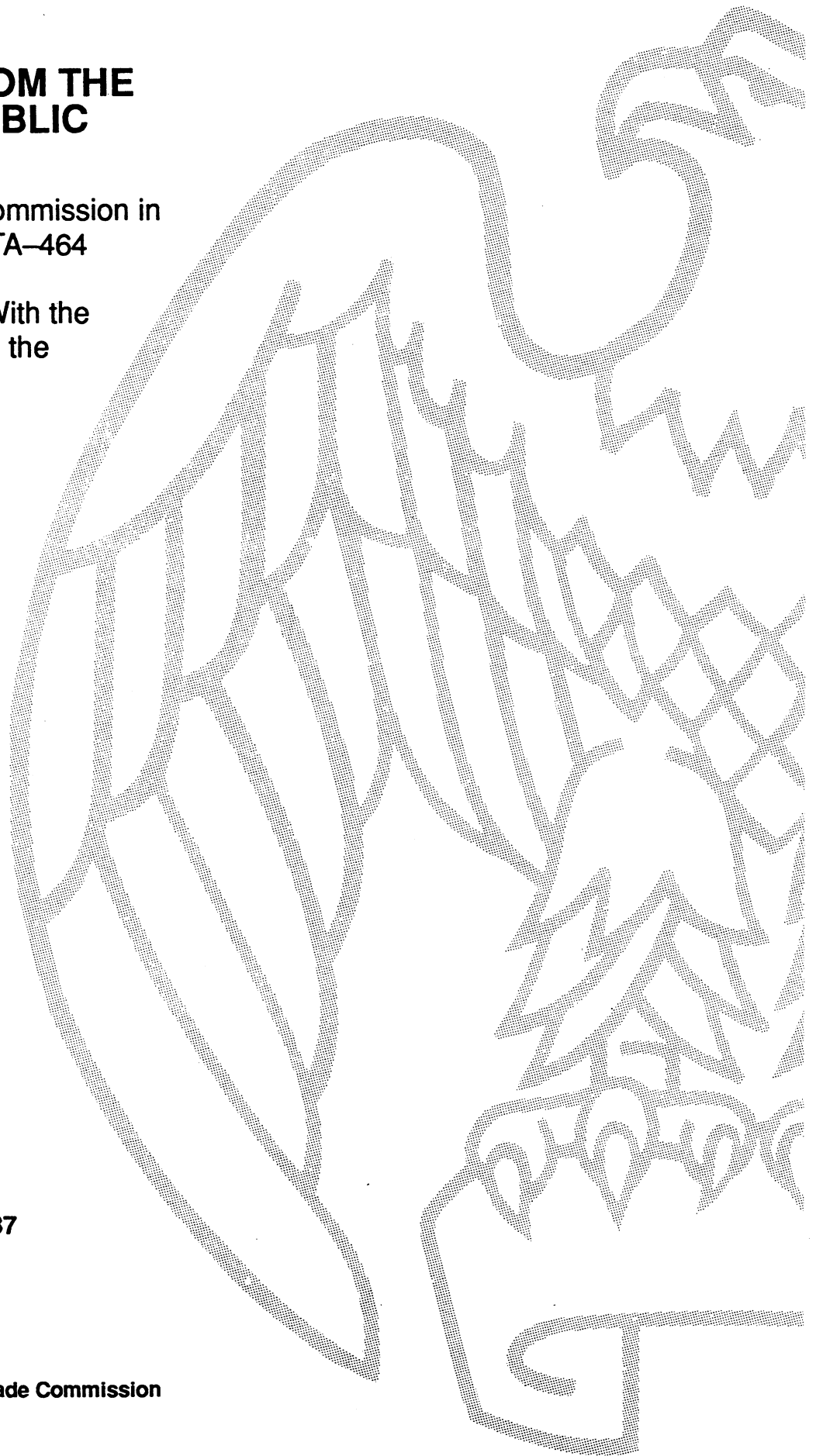


SPARKLERS FROM THE PEOPLE'S REPUBLIC OF CHINA

Determination of the Commission in
Investigation No. 731-TA-464
(Final) Under the Tariff
Act of 1930, Together With the
Information Obtained in the
Investigation



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

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Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-464 (Final)

SPARKLERS FROM CHINA

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from China of sparklers, provided for in subheading 3604.10.00 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 17, 1990, following a preliminary determination by the Department of Commerce that imports of sparklers from China were being sold at LTFV within the meaning of section 733(b) of the act (19 U.S.C. § 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of January 16, 1991 (56 F.R. 1650). The hearing was held in Washington, DC, on April 30, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

VIEWS OF THE COMMISSION

On the basis of the record ¹ developed in this final investigation, we unanimously determine that an industry in the United States is materially injured by reason of imports of sparklers from the People's Republic of China ("China") that the Department of Commerce has determined to have been sold in the United States at less than fair value.

I. Like Product and Domestic Industry

Before the Commission can determine whether a domestic industry is materially injured or is threatened with material injury by reason of the articles subject to investigation, it must first define the appropriate "like product" and "domestic industry." A like product is "[a] product that is like, or in the absence of like, most similar in characteristics and uses with the articles subject to investigation." ² The domestic industry is the "[d]omestic 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." ³

When defining like product the Commission generally considers several factors, including physical characteristics, uses, interchangeability of products, channels of distribution, production processes, customer or producer perceptions, common manufacturing facilities and production employees, and price. ⁴ Any one of these would not necessarily be dispositive. In fact, the

¹ The record is defined in Commission rule 207.2(h) (19 C.F.R. § 207.2(h)).

² 19 U.S.C. § 1677(10).

³ 19 U.S.C. § 1677(4)(A).

⁴ Tungsten Ore Concentrates from the People's Republic of China, Inv. No. 731-TA-497 (Preliminary), USITC Pub. 2367 (March 1991); Heavy Forged Handtools from the People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357 (February 1991).

Commission may consider other factors which it deems relevant based on the facts of a given investigation. ⁵

The Commission has found that minor product variations are not a sufficient basis for a separate like product analysis, and instead, has looked for clear dividing lines among products. ⁶ In this regard, the Commission generally has found that size difference alone is an insufficient basis for distinguishing separate like products. ⁷

The merchandise subject to investigation in this case is sparklers, a

⁵ *Asociacion Colombiana de Exportadores v. United States (ASOCOLFLORES)*, 693 F. Supp. 1165, 1169 (CIT 1988) (like product issue essentially one to be based on the unique facts of each case).

⁶ See, e.g., *Sony Corporation of America v. United States*, 712 F.Supp. 978 (CIT 1989); *Operators for Jalousie and Awning Windows from El Salvador*, Invs. Nos. 701-TA-272 and 731-TA-319 (Final), USITC Pub. 1934 (January 1987) at 4, n.4. In some investigations, when applying these principles, the Commission has defined the like product more broadly than the imported product described in Commerce's scope of investigation. See, e.g., *Chrome-Plated Lug Nuts from the People's Republic of China and Taiwan*, Invs. Nos. 731-TA-474-475 (Preliminary), USITC Pub. 2342 (December 1990); *Generic Cephalixin in Capsules from Canada*, Inv. No. 731-TA-423 (Final), USITC Pub. 2211 (August 1989); *Shock Absorbers and Parts, Components, and Subassemblies Thereof from Brazil*, Inv. No. 731-TA-421 (Preliminary), USITC Pub. 2128 (September 1988). Alternatively, it has also found two or more like products corresponding to a single class or kind of merchandise. See, e.g., *Badger-Powhatan, A Div. of Figgie Internl. v. United States*, 608 F.Supp. 653, 656-7 (CIT 1985), citing, *Color Television Receivers from the Republic of Korea and Taiwan*, Inv. No. 731-TA-134, USITC Pub. 1514 (April 1984); *Certain Welded Carbon Steel Pipes and Tubes from the Republic of Korea and Taiwan*, Invs. Nos. 731-TA-131, 132 and 138, USITC Pub. 1519 (April 1984); *Certain Radio Paging and Alerting Receiving Devices from Japan*, Inv. No. 731-TA-102, USITC Pub. 1410 (Aug. 1983).

⁷ *Ball Bearings, Mounted or Unmounted, and Parts Thereof from Argentina, Austria, Brazil, Canada, Hong Kong, Hungary, Mexico, the People's Republic of China, Poland, the Republic of Korea, Spain, Taiwan, Turkey and Yugoslavia*, Inv. No. 701-TA-307 (Preliminary) and Invs. Nos. 731-TA-498-511 (Preliminary), USITC Pub. No. 2374 (April 1991); *Sweaters Wholly or in Chief Weight of Manmade Fibers from Hong Kong, the Republic of Korea, and Taiwan*, Invs. Nos. 731-TA-448-450 (Preliminary), USITC Pub. 2234 at 11 (November 1989); *Mechanical Transfer Presses from Japan*, Inv. No. 731-TA-429 (Preliminary), USITC Pub. 2160 at 7 (February 1989); *Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore*, Invs. Nos. 731-TA-367-370 (Final), USITC Pub. No. 2046 at 5 (December 1987). See also *Citizens Watch Co. v. United States*, 733 F.Supp. 383, 389 (CIT 1990).

form of fireworks.⁸ A sparkler is made of a cut-to-length wire, one end of which is coated with a hardened chemical mixture which emits bright sparks when burning.⁹

Making sparklers is a fairly simple process of straightening wire and cutting it to length by machine. The diameter of the wire used depends on the length of the finished sparkler. Sparklers range from 7 - 1/4 inches long (a No. 8 sparkler) to 31 - 33 inches long (a No. 36 sparkler).¹⁰

Sparklers are usually made from steel wire. In the United States, a vibrating machine shakes the cut lengths of wire into wooden frames. In China, the workers place the wires into frames by hand. In both the United States and China, the frames are dipped into a vat containing a mixture of shellac or dextrin, pyroaluminum, metal filings and chemical compounds that regulates color, burn rate and other characteristics. Sparklers are generally dipped and dried twice to allow the chemical mixture to build up on the wire like wax on a candle wick. Gold sparklers can be dried with heated air but other sparklers need a lower drying temperature.¹¹

Size and color would appear to be the only basis for finding more than one like product. The U.S. industry makes all sizes of sparklers, but only No. 8, No. 10, and No. 20 sparklers are imported from China.¹²

In the preliminary investigation, the Commission determined that there was a single like product, viz., all sparklers. The record in this final

⁸ 56 Fed. Reg. 20588 (May 6, 1991). Report of the Commission (Report) at A-4.

⁹ "Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China" 56 Fed. Reg. 20588 (May 6, 1991).

¹⁰ There are also No. 10 sparklers, No. 14 sparklers, and No. 20 sparklers. The number of a sparkler is the length in inches of the box that holds it.

¹¹ Report at A-7.

¹² Id. at A-6.

investigation continues to support a finding of only one like product. All colors and sizes of sparklers have the same use. All are sold to the general public. All are sold through the same channels of distribution and are made in the same factories by the same workers.¹³ In general, the differences in color and size are only minor variations in characteristics and do not support a finding of more than one like product.

For these reasons, we determine that the like product in this investigation is all domestically produced sparklers. Accordingly, we also define the domestic industry as all domestic manufacturers of sparklers.^{14 15}

II. Related Parties.

The respondents contend that the Commission should not consider data for Diamond Sparkler Co., a domestic producer, because Diamond is related to B.J. Alan, which imports sparklers from China. They also contend that the Commission should not consider import data for B.J. Alan, because B.J. Alan is related to Diamond.

Under 19 U.S.C. § 1677(4)(B), when a producer is an importer or is

¹³ We note that the prices of the larger sparklers are generally higher than those of the smaller sparklers, presumably because they are more difficult to make and to handle without breaking. Petitioners' Post-Hearing Brief at 1-3.

¹⁴ There are three domestic producers, Diamond Sparkler Co., Elkton Sparkler Co., and New Jersey Fireworks Co.

¹⁵ Acting Chairman Brunsdale notes that in her recent opinion on Polyethylene Terephthalate Film etc. from Japan and Korea, Invs. Nos. 731-TA-458 and 459 (Final) (ITC Pub. _____), she refined the usual multipart test discussed here to focus on the substitutability of the potential like products among their purchasers and producers. Her intent was to identify the types of products that it was reasonable to expect would be directly affected by any dumping of the articles subject to investigation. She agrees that the record in this investigation reasonably indicates that those who buy sparklers view the Chinese and U.S. product as almost completely substitutable, in those sizes and colors made in both countries. She includes the longer sizes, which are made only in the U.S., because they are made in the same factories by the same workers. Their production would therefore be directly affected by the dumping.

related to an importer of the product under investigation, the Commission may exclude that producer from the domestic industry in "appropriate circumstances." ¹⁶ The Commission applies the related parties provision in its discretion based upon the facts in each case. ¹⁷

In previous investigations the Commission has generally applied a two-step analysis in determining whether to exclude a domestic producer from the industry under the related parties provision. The Commission considers, first, whether the company is a related party under section 771(4)(B) and, second, whether there are the requisite "appropriate circumstances" for excluding that company from the domestic industry definition. The Commission applies the related parties provision to avoid the distortion in the aggregate data on the condition of the domestic industry that may result from including related parties whose operations are shielded from the effects of or benefits from the subject imports. ¹⁸

In applying the two-step process, we have first determined that Diamond Sparkler Co. is related to B.J. Alan. Although the exact details of the relationship are confidential, there is ample evidence on the record supporting this finding. ¹⁹

When the Commission decides whether appropriate circumstances exist to exclude domestic industry data concerning related parties, it generally considers three factors:

- (1) the position of the related producers vis-a-vis the rest of the domestic industry;

¹⁶ 19 U.S.C. § 1677(4)(B).

¹⁷ *Empire Plow Co. v. United States*, 11 CIT 847, 675 F.Supp. 1348, 1352 (1987).

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

¹⁹ Report at A-8.

(2) the reasons why the domestic producers have chosen to import the product 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 percentage of domestic production attributable to related producers.²⁰

The Commission has also considered whether each company's books are kept separately from those of the importer or exporter and whether the primary interest of the related domestic producer is domestic production or importation.²¹

In the preliminary investigation, the Commission decided that Diamond was a related party but that the circumstances were not appropriate to exclude its data from that of the domestic industry.²² The information on the record in this final investigation supports that determination.

The record shows that Diamond represents a significant portion of domestic production; its primary interest is that of a domestic sparkler producer; and that its operations have not been shielded by B.J. Alan from the effects of the PRC imports.²³ The record also shows that B.J. Alan has been importing sparklers in order to supplement its sparkler line to meet its customers' demands for lower prices.²⁴ The information concerning Diamond's financial data is consistent with that of the other domestic producers and, thus, Diamond's data will not skew the industry data. Excluding Diamond's data would, however, skew the domestic industry data because it represents a

²⁰ Heavy Forged Handtools from the People's Republic of China, Inv. No. 731-TA-457 (Final), USITC Pub. 2357 (Feb. 1991) at 18.

²¹ *Id.* at 18-20.

²² Sparklers from the People's Republic of China, Inv. No. 731-TA-464 (Preliminary), USITC Pub. 2306 at 8 (August 1990).

²³ Report at A-8; Hearing Tr. at 15.

²⁴ Hearing Tr. at 15.

significant portion of domestic sparkler production. Finally, Diamond and B.J. Alan keep separate books. ²⁵

For these reasons we decline to exclude the domestic industry data on Diamond Sparkler Co. under the related parties provision. We also will not exclude B.J. Alan's import data from consideration under the related parties provision. The related parties provision is part of the section of the statute addressing the definition of the domestic industry and does not provide any support for excluding information concerning imports. ²⁶

III. Condition of the Industry ²⁷

In determining the condition of the domestic industry, the Commission considers, among other factors, U.S. consumption, production, shipments, capacity utilization, domestic inventories, employment, wages, financial performance, capital investment, and research and development expenditures. ²⁸ No single factor is dispositive; in each investigation, the Commission considers the particular nature of the industry and any relevant economic factors affecting the industry, even if not enumerated by statute. ²⁹

Apparent U.S. consumption by quantity dropped from approximately 260 million sparklers in 1988 to 236 million in 1989. However, U.S. consumption

²⁵ Petitioners' Posthearing Brief at 9.

²⁶ S.Rep.No. 246, 96th Cong., 1st Sess. 82 (1979).

²⁷ Acting Chairman Brunsdale joins in this discussion of the condition of the domestic industry, except as otherwise indicated below. However, she does not reach a separate legal conclusion regarding the presence or absence of material injury based on this information. While she believes an independent determination of the condition of the domestic industry is neither required by the statute nor useful, she does find the discussion of the condition of the domestic industry helpful in deciding whether any injury resulting from dumped imports is material.

²⁸ See 19 U.S.C. § 1677(7)(C)(iii). The information on domestic inventories is business proprietary in its entirety, so we are unable to discuss it.

²⁹ The Commission is required to consider the condition of the industry in the context of the business cycle and conditions of competition that are distinctive to the domestic industry. 19 U.S.C. § 1677(7)(V)(iii).

then rose to 270 million in 1990. By value, consumption declined from \$3.4 million in 1988 to \$3.04 million in 1989. In 1990 consumption by value rose slightly to \$3.07 million. Although there was a slight rise in consumption by quantity of sparklers by the end of the period of investigation, U.S. production, capacity, capacity utilization, and domestic shipments all declined during the period of investigation.

During this period, U.S. productive capacity dropped by about 5 percent, from 339 million sparklers in 1988 and 1989 to 321 million in 1990. In spite of this decline in U.S. capacity during the period, capacity utilization dropped by one-half, declining from 40.6 percent in 1988 to 25.7 percent in 1989, and then to 17.9 percent in 1990. Much of U.S. productive capacity was periodically idle during the period of investigation. During 1988-1989, Diamond operated its production equipment about six months of each year and for at least the past five years Elkton has shut down its operations for much of July and August.³⁰ Before then, Elkton was able to produce sparklers for forty-nine or fifty weeks of the year, idling only for maintenance and repairs.³¹

During this period U.S. production fell by 58 percent. In 1988 the domestic industry produced 137.6 million sparklers. In 1989 production dropped to 87.3 million, and then in 1990 dropped further to 57.5 million sparklers. U.S. producers' shipments also declined during the period of investigation, by 46 percent in quantity and by 33 percent in value.³²

³⁰ Report at A-9.

³¹ Hearing Tr. at 12.

³² U.S. producers' U.S. shipments declined in quantity from 110.6 million sparklers in 1988 to 79.7 million sparklers in 1989 and then to 59.3 million in 1990. The value of shipments dropped from \$2.24 million in 1988 to \$1.78 million in 1989 to \$1.5 million in 1990. Report at A-11.

During this period unit values did increase from \$20.24 in 1988 to \$22.32 in 1989, and then to \$25.23 in 1990. This increase in unit value is due in part to the domestic industry's shift toward the production of larger sparklers which are more expensive. ³³

The ratio of U.S. shipments to apparent consumption (market share) steadily decreased in quantity terms from 42.6 percent in 1988 to 21.9 percent in 1990. In value, market share dropped from 65.3 percent in 1988 to 48.7 percent in 1990. The variation in ratios between quantity and value is attributable in part to the U.S. producers' increased production of larger, higher value sparklers, and in part to the lower unit values of small Chinese sparklers.

Employment indicators also declined during the period 1988-1990. The number of workers making sparklers dropped by 14 percent and the total hours worked, wages paid, and productivity all declined substantially. The number of production and related workers declined from 69 in 1988, to 67 in 1989, and then to 59 in 1990. The hours worked declined from 133,000 in 1988 to 120,000 in 1989 and then to 101,000 in 1990. Total wages paid to these production workers were \$693,000 in 1988, \$611,000 in 1989, and only \$573,000 in 1990. Productivity also declined during this period, from 1,030 sparklers per hour in 1988, to 730 in 1989, and then to 570 in 1990. ³⁴

While most of the employment indicators declined during the period of investigation, the hourly wages paid to the production workers increased irregularly from \$5.21 in 1988 to \$5.73 in 1990. However, unit labor costs increased from \$5.18 per thousand in 1988, to \$7.23 per thousand in 1989, and

³³ Report at A-4.

³⁴ Report at A-12.

then to \$10.42 per thousand in 1990. ³⁵

Based on the decline in U.S. production, shipments, employment, and market share while U.S. consumption of sparklers by quantity was increasing, and deteriorating financial indicators, ³⁶ we determine that the U.S. sparkler industry is materially injured.

IV. Material Injury by Reason of Imports. ³⁷

In addition to determining the condition of the domestic industry, the Commission, in a final antidumping investigation, is required to determine whether material injury to the domestic industry is by reason of the imports under investigation. ³⁸ The Commission may consider whether causes other than the subject imports are responsible for injury, but it must not weigh causes. ³⁹

The Commission need not determine that imports are the principal or a substantial cause of material injury in order to reach an affirmative determination. Instead, the Commission need only determine whether imports are a cause of material injury. ⁴⁰

The information available to the Commission in this final investigation demonstrates that the imports of sparklers from China have increased steadily during the period of investigation and have enjoyed their U.S. market share at

³⁵ Id.

³⁶ The financial indicators for the domestic industry are deteriorating. We cannot discuss these indicators in detail because they are business proprietary. Report at A-13-A-16. The information on capital expenditures is confidential. There is no information available on research and development. Id. at A-16.

³⁷ Acting Chairman Brunsdale disagrees with the analysis in this section, but reaches the same conclusion. See Additional Views of Acting Chairman Brunsdale, infra.

³⁸ 19 U.S.C. § 1673d(b).

³⁹ Citrosuco Paulista v. United States, 704 F.Supp. 1075, 1101 (1988).

⁴⁰ Iwatsu Elec. Co., Ltd. v. United States, 758 F.Supp. 1506, (CIT 1991); Maine Potato Council v. United States, 613 F.Supp. 1237, 1244 (CIT 1985).

the expense of the domestic industry. ⁴¹ In quantity, 145 million sparklers were imported in 1988, 152.3 million were imported in 1989, and 205.7 million were imported in 1990. ⁴²

The value of the imports also increased although the unit values declined. In 1988 the value of the imports was \$1.12 million; in 1989 it was \$1.19 million; and in 1990 the value rose to \$1.48 million. The unit value of

⁴¹ According to our usual practice, we have considered the import data and not the export data obtained during the investigation for our causation analysis. The import data was obtained from the importers' questionnaires. We note, however, that there is some inconsistency in the export data the Commission received. During the preliminary investigation the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Products and Animal-By-Products (CCCFNA) provided the Commission with export data for 1988 and 1989. This information indicated that the Chinese exported 170 million units of sparklers to the United States in 1988 and 185 million units of sparklers in 1989. The value of these exports was stated as \$867,000 in 1988 and \$1,318,000 in 1989. Report at A-20.

During the final investigation, counsel for the Chinese exporters alleged in their prehearing brief that the figures provided by CCCFNA were incorrect, and that they included exports to Hong Kong destined for third-country markets, and data for other types of fireworks to the United States. However, counsel for the exporters did not provide more accurate data from CCCFNA. Report at A-20, n.23. Although the Chinese counsel claims the CCCFNA data is inaccurate, it does correspond in the order of magnitude with the data we received concerning imports of sparklers into the United States.

Counsel for the exporters did provide information on exports from three major producers of sparklers in China. This data does not correspond with the data presented by either the CCCFNA or the importers of sparklers. *Id.* Since the data from the importers and CCCFNA have some correspondence in magnitude and the figures provided by the exporters participating in this case do not correspond to either the import or the CCCFNA data, we find the import and CCCFNA data to be more reliable. Moreover, although the exporters claimed the CCCFNA information was overstated, no amended CCCFNA data was provided. In any event, reliance on any export data was unnecessary in this case since we did not need to reach the issue of threat of material injury.

⁴² The petitioners have alleged that the U.S. imports of sparklers from China are transshipped through Hong Kong and may be incorrectly reported as imports from Hong Kong. Some importers reported imports from Hong Kong but identified the foreign manufacturer as a Chinese producer. Data on these imports are included with the imports from China. Other imports from Hong Kong, where the origin could not be identified, are provided in the Report separately. The number of imports that are identified as imports from Hong Kong are relatively small in comparison with the number identified as originating in China. Combined Hong Kong and Chinese imports were 149.1 million sparklers in 1988, 156.5 million in 1989, and 211 million in 1990. Report at A-21.

the imported sparklers was \$7.71 per thousand in 1988. The unit value increased to \$7.81 in 1989, but it then dropped to \$7.18 in 1990.

Consistent with the rise in imports from China, market penetration increased dramatically during the period of investigation. In 1988, imports from China accounted for 55.7 percent of the market. In 1989, market penetration rose to 64.5 percent and, in 1990, market penetration rose to 76.2 percent. The ratio of Chinese imports to U.S. consumption by value also increased from 32.6 percent in 1988, to 39.1 percent to 1989 and then to 48.1 percent in 1990.

There was an overall decline in the average unit prices of sparklers during the period of investigation. This is attributable to the increasing market share of the Chinese sparklers which are concentrated at the lower end of the range for size and per unit prices. ⁴³

Most of the pricing information is business proprietary so we are unable to discuss the comparative prices of the domestic product and the Chinese imports in detail. We do find, however, that the information on the record concerning pricing indicates a clear and consistent pattern of underselling of the domestic product by comparable Chinese imports. ⁴⁴

Most of the purchasers contacted about allegations of lost sales and lost revenues confirmed that there was little difference in the quality of the

⁴³ Report at A-22, Table 12.

⁴⁴ In the comparison of wholesalers' prices where there were twelve comparisons made for each of two sizes of sparklers, there was only one instance of overselling by the imported product. This was the result of a low volume sale with no discount from the list price. Report at A-24. In the comparison of retailers' prices, there were eight comparisons altogether for the two sizes of sparklers. In that case there were three instances of overselling by the imported product. In one instance the data covered a period after the preliminary investigation had been completed. In another instance, the higher Chinese import price was the result of a low volume sale. Id.

domestically produced and imported product, so that price was the motivating factor in their purchase decisions. One purchaser stated he purchased nearly all sparklers from the least expensive supplier regardless of the country of origin and that, since the preliminary investigation, there has been a notable increase in price and a decrease in the availability of imported sparklers from China. ⁴⁵ At least three other responding purchasers stated that price was the motivating factor in their purchase decisions. ⁴⁶

IV. Conclusion

For all of the reasons set forth above, we determine that the domestic sparkler industry is materially injured by reason of imports of sparklers from the People's Republic of China that the Department of Commerce has determined are sold at less than fair value.

⁴⁵ The pricing information obtained in this final investigation confirms this opinion. Report at A-24, Table 13.

⁴⁶ Report at A-27-A-28.

CONCURRING VIEWS OF ACTING CHAIRMAN ANNE E. BRUNSDALE
Sparklers From China

Inv. No. 731-TA-464 (Final)

Although I agree with my colleagues that an industry in the United States is being materially injured by reason of imports of sparklers from China that are sold at less than fair value ("LTFV"), I am writing separately because I feel their treatment of the law's requirement that the articles subject to investigation cause the material injury is inadequate.¹

After finding that the condition of the U.S. sparkler industry is one of being materially injured, the majority addresses whether that material injury "is by reason of the imports under investigation." Opin. at 12, supra. The majority's reasoning in support of its conclusion that the dumped imports caused the material injury to the domestic industry depends, at least in this case, on three facts: (1) the increase in Chinese sparkler exports and their market share, (2) the decline in U.S. production and its market share, and (3) what the majority calls "a clear and consistent pattern of underselling of the domestic product by comparable Chinese imports" despite the fact that the domestic and imported products are essentially interchangeable. Opin. at 12-15, supra.

¹ The Commission majority recently began circulating drafts of their opinions, at least in cases where I concur with the result. This is, of course, a positive development, which allows us to find out where we agree, and so helps us focus our debate on the important differences in our analyses.

Each of these factors may reflect the effects of the dumped imports. The problem is that causes other than the unfairly low price of the Chinese sparklers may be responsible for much, if not all, of any of these factors. The Chinese industry may have increased its production and gained market share because its channels of distribution to the West became more efficient. The U.S. industry may have lost market share because its costs rose relative to those in other countries or any of a dozen other reasons. The trends in sparkler prices that the majority believes show evidence of underselling may show differences in trade or credit terms, geographic differences reflecting the cost of transportation, or any other characteristics that cause purchasers to differentiate between two products that are physically similar.

The shorthand recitation of a few facts and a conclusion does not adequately explain the relation of dumped imports to the quantity of sales made by domestic producers and the price at which these sales are made. It may be the case, for instance, that demand for sparklers is so remarkably elastic that even a slight decline in their price will cause their sales to mushroom. If so, the domestic industry might not be losing significant revenue to the dumped imports even if the Chinese sell large volumes.

Judge Re's warning to this agency is as timely now as it was when he first made it over ten years ago:

Congress intended the ITC to develop and refine the very general concept of injury as it is applied to individual

cases. This responsibility is not adequately discharged in a case in which the ITC determination is neither clearer nor more specific than the statutory language itself.

When the ITC fails to delineate and make explicit the basis for its conclusions, by articulating a rational connection between the facts found and the discretionary action taken, the court cannot decide, as it must, whether the ITC has exercised a reasoned discretion consistent with legislative intent.

SCM Corp. v. United States, 487 F. Supp. 96, 108 (Cust. Ct. 1980).

In determining whether or not the domestic sparkler industry is materially injured by reason of dumped imports,² I consider, as the statute directs, the volume and prices of the subject imports, the effects of these imports on the price in the United States of the like product, and the effects on the domestic industry producing the like product.³ As is obvious from these statutory factors, and as I have stated so often in the past,⁴ a coherent and transparent analysis of the kind demanded by the

² Of course, the elimination of the dumped imports could be accomplished by raising the price of those imports to the point where they are no longer being dumped.

³ 19 U.S.C. 1677(7)(B).

⁴ See, e.g., Certain Steel Pails from Mexico, Inv. No. 731-TA-435 (Final), USITC Pub. 2277, at 24-28 (May 1990) (Additional Views of Chairman Anne E. Brunsdale); Certain Residential Door Locks and Parts Thereof From Taiwan, Inv. No. 731-TA-433 (Final), USITC Pub. 2253, at 33-36 (January 1990) (Additional Views of Chairman Anne E. Brunsdale); Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, Inv. Nos. 701-TA-287 (Final) and 731-TA-378 (Final), USITC Pub. 2103, at 42-46 (August 1988) (Dissenting Views of Chairman Anne E. Brunsdale); and Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore, Inv. Nos. 731-TA-367-370 (Final), USITC Pub. 2046, at 23-32 (December 1987) (Additional Views of Vice Chairman Anne E. Brunsdale).

statute requires an assessment of the domestic market and an understanding of the role of the subject imports within that market. Economics, which is the study of markets and how they change, is an ideal source of the tools necessary for making that assessment.

Application of the tools of economics involves little more than organizing and evaluating the evidence in the record in a manner that permits me to assess the impact of the dumped imports in a rigorous fashion. These tools are not surrogates for the statutory factors. Rather, they permit me to analyze in a direct fashion the volume effect, the price effect, and the overall impact of the dumped imports on the domestic industry as the law specifically and unambiguously requires.⁵

(A) The Volume and Prices of the Imports. The market share of the Chinese sparklers is very large, and a large market share suggests that injury is more likely, *ceteris paribus*. In 1990, the most recent year for which we have data, Chinese sparklers captured 48 percent of the U.S. market in value and 76 percent in volume. A-22.

To gauge the effect of the dumped imports on domestic prices and quantities, one needs to know what a "fair" price for Chinese sparklers, calculated under title VII, would be. The best evidence of that key information is the dumping margin. In this case, that margin is high -- 75.88 percent, on a weighted basis.

⁵ 19 U.S.C. 1677(7)(B).

In other words, if sold at a fair price, Chinese sparklers would be 75.88 percent more expensive than they currently are.

(B) The Effect of the Imports on Domestic Prices.

The effect of the flood of Chinese sparklers onto the U.S. market is not determined by the volume of such imports and the dumping margin alone. One must place these imports and the price at which they are sold in the context of the domestic market in which they compete. This requires an examination of the increase in the quantity of sparklers sold that would result from a decline in the price of the product -- the elasticity of demand -- and the degree of substitutability between Chinese and U.S. sparklers.

Evidence on the elasticity of demand is mixed in this case. Because sparklers are not a significant part of any family's budget and are a traditional part of Independence Day, the quantity purchased may not depend, to a great extent, on the price charged -- i.e., demand may not be highly elastic. On the other hand, there are other types of fireworks to use in celebrating, and a higher price for sparklers might cause families to buy those products rather than sparklers. The Commission staff therefore placed this elasticity in a wide range of -0.5 to -2.0 for the elasticity of demand. Economics Memorandum at 12. I agree with this assessment, which leads me to believe that some of the sales of Chinese sparklers might not

have been made, if it were not for the lower prices their introduction into the market made possible.⁶

Another characteristic of the market that will have important implications for the degree of material injury resulting from the dumped sparklers is the substitutability between those sparklers and sparklers made by domestic producers in the United States, which is measured by the elasticity of substitution. On this issue, I agree with my colleagues that there is keen price competition between the domestic and imported products, and this is a good indicator of a high degree of substitutability. Staff also found the two products to be highly substitutable and placed the elasticity of substitution between Chinese and U.S. sparklers in the range of 5 to 8. Id. at 11.⁷ I agree with this evaluation of the evidence on the record.

Given the large volume and high degree of substitutability, I conclude that Chinese sparklers did not just carve out a niche for low priced, low quality sparklers -- they took away a large part of the market that otherwise would have gone to domestic producers. Moreover, because a fair price for Chinese sparklers

⁶ Neither Petitioners nor Respondents commented on staff's estimate of the aggregate elasticity of demand. (Economics Memorandum at 13.)

⁷ Counsel for respondents argued that the elasticity of substitution was lower than this because purchasers were allegedly loyal to American producers and because the Chinese exports are concentrated in smaller sized and colored sparklers. Staff responds that the record shows that most ultimate purchasers are unaware of the producer of the sparklers they buy and that both domestic and imported sparklers are in the same sizes. (Economics Memorandum at 12.) I find staff's response persuasive.

would have been so much higher, I doubt that any substantial number of them could have been sold at the statutorily defined fair price in this country. Consequently, but for the effects of dumping, the domestic industry would have made much more revenue. This loss of revenue from the dumping of Chinese sparklers materially injures the domestic sparkler industry and is reflected in the generally poor indicators of the condition of the industry described in part III of the Opinion.⁸

I therefore concur with my colleagues' affirmative determination.

⁸ In order to estimate the effect of the dumping, I must also consider the elasticity of domestic supply -- i.e., the change in the quantity of domestic sparklers supplied to the market as a result of a change in the price of sparklers. The staff, based on the extremely low capacity utilization rate of the domestic industry and the high level of inventories, judges the elasticity to be at least 10, which is very high. See Economics Memorandum at 7. I concur with this conclusion and note that it implies that the lost revenues came mostly from reduced sales volume rather than a collapse of prices for U.S. sparklers.

INFORMATION OBTAINED IN THE INVESTIGATION

INTRODUCTION

Following a preliminary determination by the U.S. Department of Commerce (Commerce) that imports of sparklers¹ from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV) (55 F.R. 51743), the U.S. International Trade Commission (Commission), effective December 17, 1990, instituted investigation No. 731-TA-464 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's investigation and establishment of a schedule for its conduct, including a public hearing to be held in connection with the investigation, was posted in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and published in the Federal Register on January 16, 1991 (56 F.R. 1650).² The hearing was held in Washington, DC, on April 30, 1991.³ Commerce's final LTFV determination was published on May 6, 1991 (56 F.R. 20588). The Commission voted on this investigation on May 29, 1991, and notified Commerce of its final injury determination on June 10, 1991.

BACKGROUND

This investigation results from a petition filed by Elkton Sparkler Co. (Elkton), North East, MD, and Diamond Sparkler Co. (Diamond), Youngstown, OH, on July 2, 1990, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of sparklers from China. In response to that petition the Commission instituted investigation No. 731-TA-464 (Preliminary) under section 733 of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) and, on August 17, 1990, issued a determination that there was a reasonable indication that the domestic industry was materially injured by reason of such imports.

The Commission has conducted no previous investigations on sparklers. A report issued in 1921 addressed fireworks, among other products. Also, report No. Con. 7-9-2 (1977) of the Summaries of Trade and Tariff Information covered fireworks, with supplements issued in 1981 and 1983.

NATURE AND EXTENT OF SALES AT LTFV

On December 17, 1990, the Department of Commerce published in the Federal Register its preliminary determination that imports of sparklers from China are being, or are likely to be, sold at LTFV. Commerce made its final determination that imports of sparklers are being, or likely to be, sold at LTFV, effective April 26, 1991. Commerce also made a final determination that critical circumstances do not exist in this case.

¹ Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Fireworks are classified in subheading 3604.10.00 of the Harmonized Tariff Schedule of the United States (HTS).

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

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

Commerce compared the U.S. purchase price with a foreign market value based on constructed value. (The constructed value was derived from Chinese factors of production with values taken from India, Pakistan, and the Philippines.) The period of investigation for the Commerce proceeding covered sparklers sold and shipped in the period February 1, 1990, through July 31, 1990.

The amount by which the foreign market value of sparklers exceeded the U.S. price was 93.54 percent ad valorem for Hunan Provincial Firecrackers & Fireworks Import and Export Corp. (Hunan), 1.64 percent for Guangxi Native Produce Import & Export Corp. (Guangxi), 65.78 percent for Jiangxi Native Produce Import & Export Corp. (Jiangxi), and 75.88 percent for all other manufacturers, producers, and exporters. For its determination, Commerce examined total sparklers valued at * * *.

THE PRODUCT

Description and Uses

The product that is the subject of this investigation is the type of civilian pyrotechnic fireworks known as sparklers, which are cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. The subject product falls into the category of so-called "safe-and-sane" fireworks.⁴ They throw off brilliant sparks when burning. Sparklers are legal in 38 states, as shown in figure 1, but they are prohibited in many local jurisdictions for safety reasons. Sparklers are used in the celebration of the Fourth of July and other holidays, birthdays, weddings, and other special occasions and in theatrical shows and other entertainments.

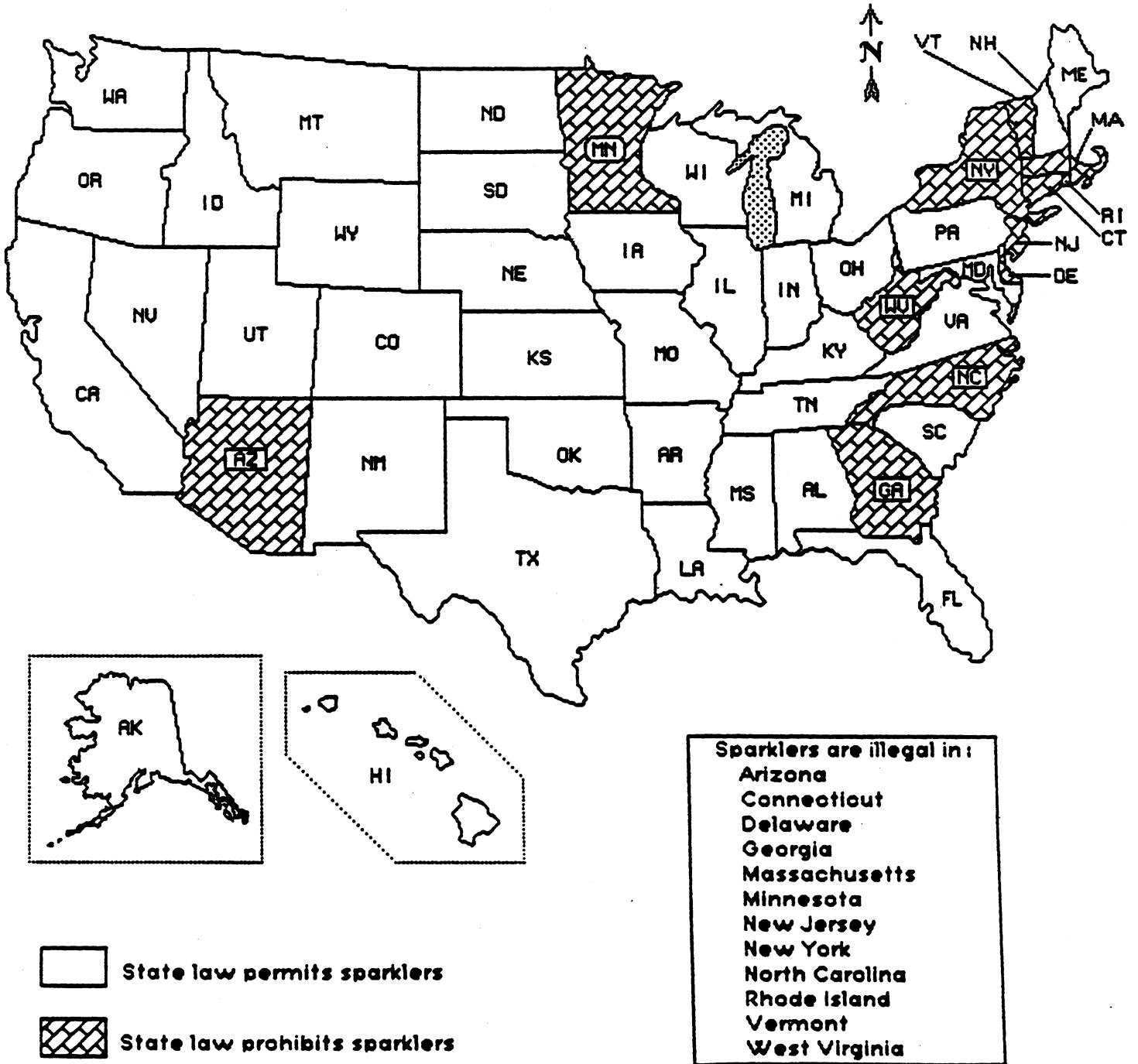
The demand for sparklers is influenced by the level of consumer spending on fireworks and devices for celebrations. Demand is highly seasonal, with the vast majority of sparklers consumed on the Fourth of July; therefore, sales to wholesalers and retailers are greatest during April-June of each year. Other factors, such as safety concerns and weather conditions, can also affect demand. For example, drought conditions in 1987-88 led a number of state governments to temporarily outlaw the use of all fireworks.

Sparklers vary in length, with five standard sizes, the smallest (No. 8) being about 7-1/4 inches long and the largest (No. 36) being up to 33 inches long.⁵ Most sparklers sold in the United States are the No. 8 and No. 10 sparklers, the two smallest sizes. These are less costly to manufacture and the least expensive to purchase. The price of sparklers generally increases with the length. Almost all imports are of No. 8 and No. 10 sparklers. The domestic industry supplies almost all of the longer sparklers sold in the United States. During 1988-90, there was a shift toward more shipments of larger sparklers by the U.S. producers. Importers of the product note that

⁴ Martin Grayson and David Eckroth, eds., Kirk-Othmer Encyclopedia of Chemical Technology, 3d ed. (New York: John Wiley & Sons Inc., 1982), pp. 486-487.

⁵ The size numbers correspond approximately to the length of the box, with the sparklers being slightly shorter. Transcript of the public hearing (transcript), p. 6.

Figure 1.--Sparklers: Regulations regarding use of sparklers



Source: Elkton Sparkler Co.

the longer sparklers are difficult to transport without substantial breakage.⁶ U.S. producers reported their 1990 U.S. shipments, and importers their 1990 imports,⁷ by size, as shown in the following tabulation (in percent of the total):

<u>Size</u>	<u>U.S. producers¹</u>	<u>Importers</u>
No. 8 (about 7-1/4 inches long).....	***	72.5
No. 10 (about 9-1/4 inches long).....	***	26.3
No. 14 (about 13-1/4 inches long)....	***	0.0
No. 20 (about 18 inches long).....	***	1.2
No. 36 (about 31-33 inches long).....	***	<u>0.0</u>
Total.....	100.0	100.0

¹ Includes data reported for B.J. Alan Co. rather than those reported for Diamond. (See discussion in the section of this report entitled "U.S. producers.")

The majority of sparklers sold in the United States give off a yellow ("gold") color while burning. Other sparklers, however, give off sparks of red, green, or blue color.⁸ Industry representatives reported that gold sparklers are relatively safer and more reliable than colored sparklers and result in fewer product liability and performance complaints.⁹ Also, the chemicals used in making colored sparklers are somewhat less stable than those used in making gold sparklers and the products must be handled more carefully in the manufacturing process. Only one U.S. producer, New Jersey Fireworks Manufacturing Co. (New Jersey), Elkton, MD, produces any colored sparklers; Elkton, which pioneered in the development of colored sparklers, discontinued their production 12 years prior to the period of investigation. U.S. producers reported their 1990 U.S. shipments, and importers their 1990 imports, by color, as shown in the following tabulation (in percent of the total):

<u>Color</u>	<u>U.S. producers¹</u>	<u>Importers</u>
Gold.....	***	50.0
Red.....	***	20.0
Green.....	***	20.0
Blue.....	***	<u>10.0</u>
Total.....	100.0	100.0

¹ Includes data reported for B.J. Alan rather than those reported for Diamond. (See discussion in the section of this report entitled "U.S. producers.")

⁶ Transcript, p. 56.

⁷ Data on shipments of imports are largely unavailable from questionnaire respondents.

⁸ Petitioners argue that these other colors are "very often faint and indistinguishable." Transcript, p. 9.

⁹ Transcript of public conference, pp. 36-37 and 42 and preliminary questionnaire response of * * *.

Substitute Products

* * *, 16 importers, and nearly all purchasers reported that there are no close substitutes for sparklers; * * *, 6 importers, and 2 purchasers reported that morning glories may be substituted for sparklers in some states depending on state laws. Morning glories have effects similar to sparklers, but utilize bamboo or wood sticks instead of wire and cost at least twice as much as sparklers. Several importers also observed that morning glories are less dangerous because they burn at a lower temperature; purchasers reported that sales of morning glories over the investigation period have been poor.

Manufacturing Process

Sparklers are manufactured by a relatively simple process. Rolls of wire are straightened and cut to length by machine. The length and diameter of the wire used is determined by the size of the finished sparkler. The wire is usually steel. The cut lengths of wire are placed in a vibrating machine that shakes them into wooden frames.¹⁰ The frames are then taken to a dipping area where the wires are dipped into a vat containing a viscous mixture of shellac or dextrin containing an oxidizing agent (usually a chlorate or nitrate); pyroaluminum; steel filings, zinc filings, or copper filings; and one or more other chemical compounds to impart color and control burn rate and other characteristics. The sparklers are dipped, dried, dipped again, and dried again. The burnable mixture is thus built up on the wire to the desired diameter in a manner similar to that used in making dipped candles. Two dips appear to be standard in the manufacturing of both domestic and imported sparklers. Gold sparklers are dried with heated air; sparklers of other colors require a lower drying temperature. The dried sparklers are then boxed and the boxes wrapped in plastic.

U.S. Tariff Treatment

Effective January 1, 1989, imports of sparklers are classified in HTS subheading 3604.10.00, covering all fireworks.¹¹ The column 1-general rate of duty for fireworks (including sparklers), currently applicable to imports from China, is 11 cents per kilogram, including the weight of all coverings, packing materials, and wrappings (19 percent ad valorem equivalent in 1990).¹²

¹⁰ In the Chinese industry, the wires are placed into frames by hand.

¹¹ Prior to 1989, sparklers were classified in item 755.15 of the former Tariff Schedules of the United States, which also covered all fireworks.

¹² The rates of duty in column 1-general of the HTS are the most-favored-nation (MFN) rates and are applicable to imported goods from all countries except those Communist countries and areas enumerated in general note 3(b) to the HTS. The column 2 duty rate is 26 cents per kilogram, inclusive of the weight of coverings, packing materials, and wrappings.

THE U.S. INDUSTRY

U.S. Producers

Three companies are known to have produced sparklers in the United States during the period of investigation. Petitioners Elkton and Diamond account for the majority of production. The third producer, New Jersey, is also in support of the petition.

Elkton is the largest U.S. producer of sparklers, accounting for * * * of 1990 U.S. shipments. Elkton was founded in 1945, and the company remains a family owned and operated fireworks supplier. * * *. (In * * *, Elkton imported * * *.)

Diamond is also a family owned and operated sparkler producer. Diamond began production in 1984, after purchasing the assets of a former sparkler producer, Acme Specialty Fireworks Co.¹³ In 1990, Diamond brand sparklers accounted for * * * of U.S. shipments. Diamond does not import sparklers.¹⁴ In 1990, Diamond * * *.

Diamond produces and packages sparklers for sale solely to B.J. Alan Co., a related company.¹⁵ (* * *.) Company transfers are valued at * * *. Shipments, inventory, financial, and pricing data were requested for B.J. Alan's sales of Diamond brand sparklers and are presented, as appropriate, in this report.¹⁶ The reporting entity is identified in each section of the report.

B.J. Alan is a * * * U.S. importer of sparklers from China. In 1990, imported sparklers accounted for * * *.

Data reported in questionnaires indicate that New Jersey is the * * * U.S. producer of sparklers, accounting for * * * of 1990 U.S. shipments of the subject product. Unlike the petitioners, New Jersey is primarily a producer of fireworks other than sparklers, and it is the only U.S. producer of colored sparklers (red and green). The firm has produced sparklers since 1946 and has never imported the subject product.¹⁷

New Jersey was purchased by a former * * * importer of sparklers at the end of 1990. Complete records of the firm's activities during the period of investigation have been sometimes difficult to construct because the previous owner, Mr. Fabriezi, died without passing on an organized set of company files. Data presented in this report concerning New Jersey's capacity, production, and shipments for 1988 and 1989 were derived from its questionnaire response in the preliminary investigation, which was determined to be the most accurate data available concerning the firm's operations under prior ownership.¹⁸

¹³ Meeting with company officials, July 5, 1990, and petition, pp. 21-22.

¹⁴ Petition, p. 9.

¹⁵ * * *.

¹⁶ With the exception of financial data on overall operations, the data presented for the U.S. industry exclude B.J. Alan's import activity.

¹⁷ Anthony P. Fabriezi, former President of New Jersey Fireworks, letter to Kenneth R. Mason, July 20, 1990.

¹⁸ Interview with Maurice Cardinal, President of New Jersey Fireworks, Mar. 28, 1991.

U.S. Importers

The petition identified six importers of sparklers from China. U.S. Customs sources identified many more firms as importers of fireworks. Questionnaires were sent to a total of 50 firms; 34 responses were received, including 7 that indicated that the firm was not an importer of sparklers. Data provided by importers are believed to account for about 80 percent of Chinese exports to the United States.¹⁹ Six firms, * * *, accounted for about * * * of reported 1990 imports from China. Of the six, * * *.

Channels of Distribution

U.S. producers and importers compete in similar markets for sales (figure 2). Sparklers are sold by these suppliers to distributors, retailers, and (in limited quantities) directly to consumers in seasonally-operated fireworks stands. Distributors resell to smaller retailers, including fireworks stand operators. U.S. producers sell a larger proportion of their output to wholesalers than do importers. Producers and importers reported their overall sales for 1990 by market, as shown in the following tabulation (as a percent of the total):

<u>Market</u>	<u>U.S. producers¹</u>	<u>Importers</u>
* * *	* * *	* * *

¹ Includes data reported by Diamond for B.J. Alan's sales of its products. (See discussion in the section of this report entitled "U.S. producers.")

CONSIDERATION OF MATERIAL INJURY TO AN INDUSTRY IN THE UNITED STATES

Information presented in this section of the report is based on the questionnaire responses of all three U.S. producers. The period for which data were requested is 1988-90. Petitioners note that the prosperous years for the industry were 1976-78, during and immediately following the U.S. bicentennial. They allege that the injurious effects of imports from China have been felt since the early 1980s and that such injury has worsened during the period of investigation and thus constitutes present injury.

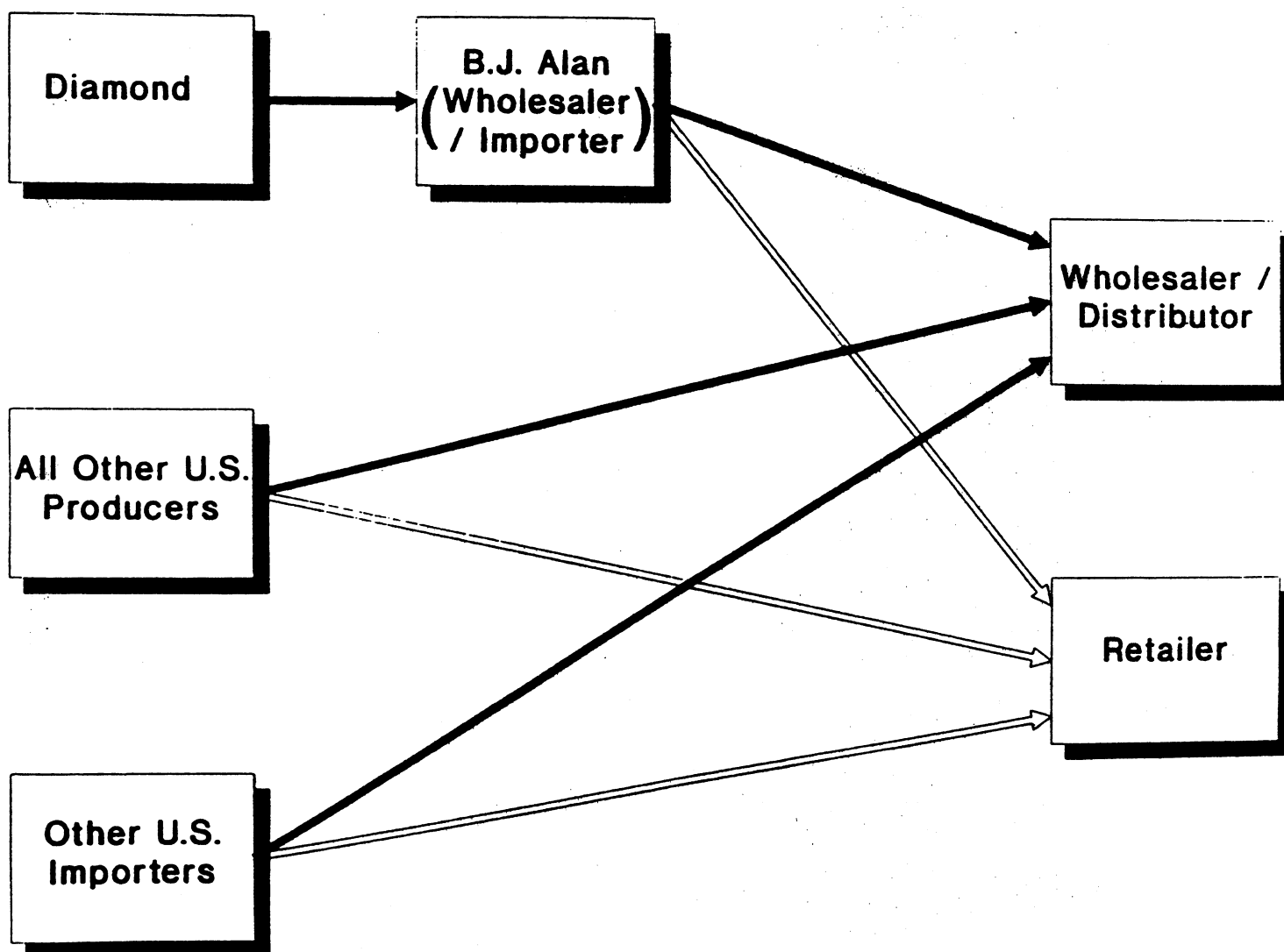
U.S. Production, Capacity, and Capacity Utilization

All producers provided capacity and production data for the period of investigation. As shown in table 1, production declined by about 58 percent during 1988-90.

U.S. productive capacity for sparklers declined by about 5 percent from 1989 to 1990. * * *. Firms reported capacity on the basis of a 40-hour week, operating from 48 to 50 weeks a year. The only restraint on production capacity for sparklers is the wooden frames used to dip them, and those frames

¹⁹ Export figures provided by the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Products and Animal-By-Products, Aug. 2, 1990.

Figure 2
Sparklers: Channels of Distribution



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

Table 1

Sparklers: U.S. capacity,¹ production, and capacity utilization, 1988-90

Item	1988	1989	1990
Capacity (thousands).....	339,100	339,100	320,800
Production (thousands).....	137,600	87,300	57,470
Capacity utilization (percent)...	40.6	25.7	17.9

¹ Based on operating 40 hours per week, 48-50 weeks per year.

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

can be easily fabricated.²⁰ Much of U.S. productive capacity was periodically idle during the period of investigation. For example, during 1988-89, Diamond operated its production equipment about 6 months of each year * * *. Also, for at least the past 5 years, Elkton has shut down its operations for much of each July and August. No adjustments were made to the capacity data reported to account for seasonal idling of operations. Capacity utilization declined by about one-half during 1988-90.

U.S. Producers' Shipments

All producers provided data on U.S. shipments. These data are presented in table 2. No producer reported export shipments during the period of investigation. Diamond sells all of its production to B.J. Alan * * *. Because such intercompany transfers may be less reflective of market dynamics than are open-market sales, this section of the report presents B.J. Alan's shipment data.

Table 2

Sparklers: U.S. producers' U.S. shipments,¹ 1988-90

Item	1988	1989	1990
Quantity (thousands).....	110,610	79,700	59,250
Value (1,000 dollars).....	2,239	1,779	1,495
Unit value (per thousand).....	\$20.24	\$22.32	\$25.23

¹ U.S. shipments include company transfers and domestic shipments.

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

During 1988-90, the quantity of U.S. shipments declined by 46 percent, whereas the value decreased by about 33 percent. Unit values increased by 25 percent during the same period.

²⁰ Commission staff * * *.

U.S. Producers' Inventories

Inventories of sparklers reported by * * * are presented in table 3. * * *. Inventory levels were * * *. The ratio of inventories to shipments * * * during 1988-90. This trend is attributable to * * *.

Table 3

Sparklers: U.S. producers' inventories as of December 31 of 1988-90

* * * * *

Employment

All three producers provided requested data on employment in the production of sparklers. The industry work force is not unionized. * * * reported reducing their production and related workers producing sparklers by at least 5 percent in * * * during the period of investigation. The reasons given for the reductions were declining orders and sales, and reduced demand due to import competition. * * * reported specific incidents of workers permanently or "indefinitely" (for temporary periods) laid off each year, which are presented in the following tabulation:

<u>Company</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
* * *	*	*	*

In addition, * * * Diamond reported seasonal shutdowns and associated temporary layoffs affecting * * * production workers.

As presented in table 4, the number of production and related workers, hours worked by production and related workers, wages paid to such workers, and labor productivity all declined steadily during 1988-90, while unit labor costs increased steadily and hourly wages increased irregularly.

Table 4

Sparklers: Average number of production and related workers, hours worked,¹ wages paid, hourly wages, labor productivity, and unit labor costs, 1988-90

Item	1988	1989	1990
Number of production and related workers (PRWs).....	69	67	59
Hours worked by PRWs (thousands).....	133	120	101
Wages paid to PRWs (1,000 dollars).....	693	611	579
Hourly wages paid to PRWs.....	\$5.21	\$5.09	\$5.73
Productivity (thousands per hour).....	1.03	0.73	0.57
Unit labor costs (per thousand).....	\$5.18	\$7.23	\$10.42

¹ Includes hours worked plus hours of paid leave time.

Financial Experience of U.S. Producers

Elkton and Diamond, accounting for * * * of U.S. production of sparklers during the period of the investigation, provided financial information. B.J. Alan, which * * *, also provided financial information. Due to * * *. Since B.J. Alan's sales of sparklers to wholesalers/retailers were arms length transactions, B.J. Alan's financial data is presented in this section. With the exception of data on overall establishment operations, B.J. Alan's data exclude its import activity.

Due to a change in management, New Jersey only provided income-and-loss information on its 1988-90 overall establishment operations and its 1990 sparkler operations. No information on capital expenditures, value of property, plant, and equipment, or research and development expenses was available. New Jersey's overall establishment data are included with the other producers, but the sparkler data are displayed separately.

Elkton's data were verified by the Commission. No discrepancies were found, and no revisions were necessary.

OVERALL ESTABLISHMENT OPERATIONS

Income-and-loss data on overall establishment operations for B.J. Alan, New Jersey, and Elkton, individually and in the aggregate, are shown in table 5. Elkton's * * *.

* * *. B.J. Alan's net sales * * *.

SPARKLER OPERATIONS

Income-and-loss data on sparkler operations for B.J. Alan and Elkton are shown in table 6. Sparkler sales amounted to about * * * of B.J. Alan's, with * * *.

Elkton's sparkler operations were a * * *.

Elkton's * * *.

All of * * *.

New Jersey was able to provide only estimated data on its sparkler operations for 1990. These data were pieced together from records left behind by the previous management. New Jersey's current management feels certain net sales are correct, but stresses that cost of goods sold and SG&A expenses are estimates. They didn't know how the data compared with previous results.

The following tabulation presents New Jersey's estimated sparkler operations for 1990:

* * * * * * *

Table 5
Income-and-loss experience of U.S. sparkler producers on their overall establishment operations, by firms, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Net sales:			
Elkton.....	***	***	***
B.J. Alan ¹	***	***	***
New Jersey.....	***	***	***
Total.....	20,591	17,476	18,050
Cost of goods sold:			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Total.....	14,541	11,864	11,734
Gross profit:			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Total.....	6,050	5,612	6,316
Selling, general, and administrative expenses:			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Total.....	5,055	5,515	5,463
Operating income or (loss):			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Total.....	995	97	853
Interest expense:			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Total.....	781	923	880
Other income or (expense), net:			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Total.....	420	747	817
Net income or (loss):			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Total.....	634	(79)	790

(table continued on next page)

Table 5--Continued
 Income-and-loss experience of U.S. sparkler producers on their overall
 establishment operations, by firms, fiscal years 1988-90

Item	1988	1989	1990
	Value (1,000 dollars)		
Depreciation and amortization included above:			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Total.....	152	130	95
Cash flow: ²			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Total.....	786	51	885
	Ratio to net sales (percent)		
Cost of goods sold:			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Average.....	70.6	67.9	65.0
Gross profit or (loss):			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Average.....	29.4	32.1	35.0
Selling, general, and administrative expenses:			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Average.....	24.5	31.6	30.3
Operating income or (loss):			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Average.....	4.8	0.6	4.7
Net income or (loss):			
Elkton.....	***	***	***
B.J. Alan.....	***	***	***
New Jersey.....	***	***	***
Average.....	3.1	(0.5)	4.4

¹ Approximately * * *.

² Cash flow is defined as net income or loss plus depreciation and amortization.

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

Table 6

Income-and-loss experience of U.S. producers on their operations producing sparklers, by firms, fiscal years 1988-90

* * * * *

RELATED PARTY TRANSACTIONS

Elkton * * * of whom are also officers in the company. As is often the case in such companies, shareholders receive * * *. The following tabulation details * * *:

* * * * *

CAPITAL EXPENDITURES

Capital expenditures for * * * are shown in table 7.

Table 7

Capital expenditures by U.S. sparkler producers, by firms, fiscal years 1988-90

* * * * *

VALUE OF PROPERTY, PLANT, AND EQUIPMENT

The investment in facilities producing sparklers and the annual return on those investments are shown in table 8.

Table 8

Value of property, plant, and equipment of U.S. producers' establishments wherein sparklers are produced, by firms, as of the last day of fiscal years 1988-90, and return on assets for the years then ended

* * * * *

RESEARCH AND DEVELOPMENT EXPENSES

* * * * *

IMPACT OF IMPORTS ON CAPITAL AND INVESTMENT

The Commission requested the U.S. producers to describe any actual or anticipated negative effects, if any, of imports of sparklers from China on their growth, development and production efforts, investment, and ability to raise capital. Their comments are shown in appendix C.

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 factors²¹--

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

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

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

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

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

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

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

²¹ Sec. 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."

(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.²²

Available information on the volume, U.S. market penetration, and pricing of imports of the subject merchandise (items (III) and (IV) above) is presented in the section entitled "Consideration of the Causal Relationship Between Imports of the Subject Merchandise and the Alleged Material Injury" and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts (item (X)) is presented in the section entitled "Consideration of Material Injury to an Industry in the United States." Available information on U.S. importers' inventories (item V) and foreign producers' operations (items (II) and (VI)) follows. Other threat indicators have not been alleged or are otherwise not applicable. There are no outstanding third-country dumping orders.

U.S. Importers' Inventories

U.S. importers reported substantial inventories of Chinese sparklers at the end of 1988, but such inventories dropped sharply both in quantity and as a share of total imports by the end of 1989, as shown in table 9. Inventories rose substantially by the end of 1990, both in quantity and as a share of total imports. Two firms, * * *, accounted for * * * of the inventories held. The trends in their respective inventory holdings were * * *.

²² Sec. 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."

Table 9

Sparklers: Importers' inventories as of December 31 of 1988-90

Item	1988	1989	1990
Inventories (thousands).....	70,705	35,479	64,402
Share of imports (percent).....	48.7	23.3	31.3

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

Ability of Foreign Producers to Generate Exports and the Availability of Export Markets Other than the United States

China has traditionally been a producer and exporter of fireworks. Information regarding the Chinese sparkler industry was requested of respondents and through U.S. State Department channels. According to respondents, there are three major producers of sparklers in China: Hunan, Guangxi, and Jiangxi, each of which also produces other fireworks.

Responses from Hunan, Guangxi, and Jiangxi are presented in table 10. * * * is the largest respondent exporter, accounting for * * * of reported 1990 exports to the United States. * * * is the next largest, accounting for * * * of such exports, and * * * accounted for * * *. The data reported for these three respondents appear to account for * * * of Chinese exports to the United States during the investigation period (see discussion below regarding export estimates provided by the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Products and Animal-By-Products (CCCFNA)).

Table 10

Sparklers: Chinese¹ capacity,² production, shipments, and inventories, 1988-90

* * * * * * *

* * *. Data concerning 1991 projections were unavailable from the two * * * respondents, which accounted for * * * of 1990 exports to the United States.

Capacity increased slightly from 1988 to 1989, then decreased slightly from 1989 to 1990. Capacity utilization, production, total shipments, and exports to the United States all declined steadily throughout the period of investigation.

The decline in exports to the United States reported by the three responding exporters is inconsistent with the substantial rise in imports

reported during the same period by both U.S. importers (see section of this report entitled "U.S. Imports") and by the CCCFNA (see below).²³

There may be other smaller sparkler producers in addition to the producers named by respondents; petitioners estimate the number of producers at more than 20. In response to a request made through the State Department during the preliminary investigation, the Commission received two communications from the CCCFNA, named by petitioners as an exporter of sparklers.²⁴ According to the CCCFNA, China exports "small quantities of sparklers to the U.S.," such exports have "developed steadily," and they are not expected to increase "to a large extent." Reported 1988-89 exports are presented in the following tabulation. No further information was available concerning 1990 exports.

<u>Chinese exports of sparklers to the United States</u>	<u>1988</u>	<u>1989</u>
Quantity (million units).....	170	185
Value (\$1,000).....	867	1,318

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

Petitioners allege that U.S. imports of sparklers from China are transshipped through Hong Kong and may be incorrectly reported as imports from Hong Kong. Also, importers reported, as imports from Hong Kong, Chinese sparklers that were purchased from Hong Kong brokers.²⁵ There are no other countries known to be exporting sparklers to the United States.

U.S. Imports

Data on imports of sparklers are not available from official U.S. import statistics or other secondary sources. Importers' questionnaires were sent to 50 firms identified as importers of at least \$100,000 worth of fireworks from either China or Hong Kong, or of at least \$200,000 worth of fireworks from all other countries, in 1990. Data provided by importers are presented in table 11 and account for more than 80 percent of Chinese exports in 1988 and 1989, as reported by the CCCFNA.

²³ In their prehearing brief (p. 20), counsel for the Chinese respondents alleged that the figures provided by CCCFNA were incorrect, and that they included exports to Hong Kong destined for third-country markets, and data for other types of fireworks exports to the United States. Counsel did not provide more accurate data from CCCFNA.

²⁴ "Statement on Export of the Chinese Sparklers to U.S. Market" (facsimile) dated July 28, 1990, and second facsimile dated Aug. 2, 1990.

²⁵ * * * firms reported imports from Hong Kong but identified the foreign manufacturer as a Chinese producer; their imports are presented as imports from China. Their imports accounted for * * * of 1990 reported imports from China. However, * * * firms reported imports from Hong Kong without identifying the foreign producer. These are presented as imports from Hong Kong.

Table 11
Sparklers: U.S. imports from China and Hong Kong, 1988-90

Item	1988	1989	1990
	<u>Quantity (thousands)</u>		
China.....	145,079	152,294	205,734
Hong Kong.....	4,015	4,167	5,198
Total.....	<u>149,094</u>	<u>156,461</u>	<u>210,932</u>
	<u>Value¹ (thousand dollars)</u>		
China.....	1,119	1,189	1,478
Hong Kong.....	72	73	99
Total.....	<u>1,191</u>	<u>1,262</u>	<u>1,577</u>
	<u>Unit value² (per thousand)</u>		
China.....	\$7.71	\$7.81	\$7.18
Hong Kong.....	17.93	17.52	19.05
Average.....	7.99	8.07	7.48

¹ Landed, duty-paid value.

² One of the six Hong Kong importers (* * *) reported a questionably high unit value. Hong Kong unit values without * * *.

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

Imports from China increased in quantity and value by 42 percent and 32 percent, respectively, during 1988-90, while unit values decreased irregularly during the same period. Imports from Hong Kong increased during 1988-90, as did their unit values.

Imports by B.J. Alan and all other importers combined are presented in the following tabulation:

* * * * * * *

B.J. Alan accounted for * * *.

Apparent U.S. Consumption and Market Penetration of the Subject Imports

Data on apparent U.S. consumption and import penetration from China and Hong Kong are presented in table 12.

Table 12

Sparklers: Apparent U.S. consumption¹ and ratios of imports to consumption, 1988-90

Period	Apparent U.S. consumption Thousands	Ratio of imports to consumption--		
		For China	For Hong Kong	Total
		-----Percent-----		
1988.....	259,704	55.7	1.6	57.4
1989.....	236,161	64.5	1.8	66.3
1990.....	270,182	76.2	1.9	78.1
	<u>\$1,000</u>	-----Percent-----		
1988.....	3,430	32.6	2.1	34.7
1989.....	3,041	39.1	2.4	41.5
1990.....	3,072	48.1	3.2	51.3

¹ U.S. producers' shipments, plus imports.

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

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

Apparent U.S. consumption in quantity terms increased irregularly during 1988-90, although in value terms it decreased irregularly during the same period. Import penetration rates for China increased substantially during the investigation period, whereas the increase for Hong Kong was slight. The ratio of U.S. shipments to apparent consumption decreased in quantity terms from 42.6 percent in 1988 to 21.9 percent in 1990, and in value terms from 65.3 percent to 48.7 percent during the same period. The variation in ratios between quantity and value is attributable in part to the U.S. producers' increased production of larger, higher-value sparklers, and in part to the lower unit values of small Chinese sparklers.

Prices

MARKET CHARACTERISTICS

Both domestic and imported sparklers are sold by the gross carton,²⁶ or as part of an assortment that contains other fireworks.²⁷ U.S. producers and importers reported their 1990 U.S. shipments to wholesalers and retailers by

²⁶ A gross carton contains 144 boxes of sparklers. One gross carton of No. 8 sparklers contains 864 sparklers (6 sparklers per box) and one gross carton of No. 10 sparklers contains 1,152 sparklers (8 sparklers per box). Several importers reported selling sparklers by the case, which contains two gross cartons; several others reported sales by the dozen.

²⁷ * * * do not manufacture other fireworks; therefore, they purchase other types of fireworks from domestic and foreign suppliers to package and sell with their sparklers.

method of packaging, as shown in the following tabulation (by value, as a percent of the total):

<u>Method of packaging for sale</u>	<u>U.S. producers¹</u>	<u>Importers</u>
Sold separately from other fireworks.....	***	91.2
Sold in assortments.....	***	<u>8.8</u>
Total.....	100.0	100.0

¹Includes data reported by * * *.

Most companies publish price lists; however, virtually all producers and importers reported discounting from their price lists. The majority of producers and importers reported that their discount is based on the quantity sold. A number also reported that they have no formal discounting policy and that the discount is determined through negotiation for each particular sale and depends on the competition. Although sales terms vary among firms, many do not require payment until after the Fourth of July, around the 10th or 15th of the month.

U.S. producers and importers sell sparklers to both wholesalers and retailers. The majority of sales are made to wholesalers and do not include return provisions. Sales to retailers (which accounted for 34 percent of producers' sales in 1990, and 42 percent of importers' sales) are often made on a consignment or guaranteed-sale basis in which the purchaser may return unsold merchandise to the vendor for credit after an agreed-upon date, usually the Fourth of July. * * * reported that * * * of their sales to retailers are made on a guaranteed-sale basis.²⁸ Return rates for * * * were * * * percent in 1988 and * * * in 1990. The return provision is one reason why prices to retailers for guaranteed sales are usually 10 to 30 percent and sometimes as much as 50 percent higher than for non-guaranteed sales. One purchaser noted that the seller usually adds a larger premium for a guaranteed sale made to an unfamiliar customer because there is uncertainty as to the portion of the sale that will be returned for credit. Conversely, when the customer is well known and has a low expected return rate, the added premium for the guaranteed sale is much lower.²⁹ Most fireworks assortments are also sold to retailers on a guaranteed-sale basis.

Most questionnaire respondents cited no differences in quality distinctions between imported and U.S.-produced sparklers. * * * reported that there are no quality differences between domestic and imported sparklers. * * *. Twenty importers reported that there is no difference between the quality of domestic and imported sparklers, while five stated that there is a difference. Of these five, three importers stated that the quality of the domestic product is superior,³⁰ one reported that the quality of the imported product is superior,³¹ and one did not specify which product was of a higher quality.

²⁸ * * * 1990 sales to retailers were guaranteed sales. * * * reported no sales to retailers during the investigation period. The majority of sales to retailers of Chinese sparklers were also on a guaranteed-sale basis.

²⁹ Discussion with * * *, Mar. 20, 1991.

³⁰ Reasons given included better packaging, longer length, thicker wire, and more pyrotechnic material with the domestic product.

³¹ Reasons given included brighter colors and easier ignition of Chinese products.

Virtually all sparklers are transported via truck. * * * reported that inland transportation costs are not an important factor in their customers' sourcing decisions, whereas * * * reported that inland transportation costs are. Among importers, 17 reported that transportation costs are not important to their customers, while 8 reported that they are. Transportation costs were estimated by producers and importers to be between 5 and 15 percent of the total cost of sparklers. Among 27 purchasers providing pricing data, 16 reported that their supplier pays shipping charges, 8 reported that the purchaser pays shipping, 1 reported that shipping is paid by the purchaser in some instances and the supplier in others, and 2 did not respond to the question. Reported lead times for delivery of domestic sparklers averaged 30 to 120 days.³² Average lead times reported by importers of sparklers from China varied widely, ranging from 1 to 120 days.³³

QUESTIONNAIRE PRICE DATA

The Commission requested U.S. producers³⁴ and importers³⁵ to provide quarterly pricing data between January 1988 and December 1990 for their largest single quarterly sale of No. 8 and No. 10 gold sparklers to unrelated wholesalers and retailers. * * * and 18 importers provided usable price information for one or both products (tables 13 and 14).³⁶ The majority of reported prices for sales to wholesalers of domestic and imported sparklers were f.o.b. their U.S. shipping point.

Table 13

Sparklers: Weighted-average net f.o.b. prices for sales to wholesalers reported by U.S. producers and importers and margins of underselling (overselling) of No. 8 and No. 10 gold sparklers, by quarters, January 1988-December 1990

* * * * *

Table 14

Sparklers: Weighted-average net f.o.b. prices for guaranteed sales to retailers reported by U.S. producers and importers and margins of underselling (overselling) of No. 8 and No. 10 gold sparklers, by quarters, January 1988-December 1990

* * * * *

³² * * * reported that the average lead time was between 1 and 45 days for its sales to retailers, and one week for its sales to wholesalers.

³³ One-day lead times are for product that is already in stock. The reported lead times for * * * sparkler sales are longer for orders placed several months in advance of the expected delivery date.

³⁴ In its producer's questionnaire response * * * No. 8 and No. 10 sparklers. Since * * *.

³⁵ * * *.

³⁶ An additional 7 importers did not provide pricing data, but were able to complete other portions of the questionnaire relating to transportation costs, quality, etc.

Price Trends for Sales to Wholesalers

Net f.o.b. prices for both * * * No. 8 and No. 10 gold sparklers sold to wholesalers * * * over the investigation period (table 13). Weighted-average net f.o.b. prices for sales to wholesalers * * * gold sparklers * * * per gross carton during the investigation period.³⁷ Fourth quarter 1990 prices of * * * per gross carton were roughly * * * prices in the first quarter of 1988. Weighted-average prices for Chinese No. 8 gold sparklers sold to wholesalers fluctuated between \$6.40 and \$7.99 per gross carton during January 1988 through March 1990. Prices increased to * * * in the second quarter of 1990 and reached * * * per gross carton by the fourth quarter.

Weighted-average prices for * * * 10 gold sparklers sold to wholesalers * * * over the investigation period, * * * by the fourth quarter of 1990. Prices for Chinese No. 10 gold sparklers increased by 31 percent from * * * per gross carton in the first quarter of 1988 to * * * by the fourth quarter of 1990.

Price Trends for Sales to Retailers

Limited pricing information is available for guaranteed sales to retailers of domestic and imported sparklers; the majority of data reported were for sales in the second quarter of each year of the investigation period. Prices in these quarters for domestic No. 8 and Chinese No. 10 sparklers * * *, while prices for domestic No. 10 and Chinese No. 8 sparklers * * *. Weighted-average prices for sales to retailers * * * reported no sparkler sales to retailers during the investigation period.³⁸ All sales reported were made on a net f.o.b., U.S. shipping point basis (table 14).

Prices for guaranteed sales of * * * No. 8 sparklers to retailers * * * per gross carton between the second quarters of 1988 and 1990. Weighted-average prices for guaranteed sales of Chinese No. 8 sparklers increased from * * * to * * * per gross carton between the second quarters of 1988 and 1989, and then decreased to * * * per gross carton in the second quarter of 1990.

Guaranteed-sale prices to retailers for * * * No. 10 sparklers * * * per gross carton between the second quarters of 1988 and 1989. Prices then * * * per gross carton in the second quarter of 1990. Chinese No. 10 sparklers decreased in price from * * * to * * * between the second quarters of 1988 and 1989, and then increased to * * * per gross carton in the second quarter of 1990.

³⁷ For certain quarters of the investigation period, * * * was only able to provide * * * prices for sales to wholesalers. Prices for these quarters were not included in the weighted averages to maintain consistency with the f.o.b. prices reported by * * *.

³⁸ For certain quarters of the investigation period, * * * was only able to provide * * * prices for consignment sales to retailers. Prices for these quarters were not included in the weighted averages to maintain consistency with the f.o.b. prices reported by * * *.

Price Comparisons

Quarterly price comparisons between U.S.-produced and imported sparklers sold to wholesalers and retailers were based on net f.o.b. selling prices developed from the largest quarterly sale reported by U.S. producers and importers in their questionnaire responses (tables 13-14). The available price data resulted in * * * quarterly price comparisons between domestic and imported sparklers at both the wholesale and the retail levels.

Because * * * U.S. producers and most importers sold to wholesalers, the majority of price comparisons were at this level. In * * * price comparisons for No. 8 and No. 10 sparklers sold at the wholesale level, the weighted-average net f.o.b. price of * * *. Margins of underselling for No. 8 sparklers * * *. The * * * occurred * * *. The reported price of the Chinese product * * * in this quarter because the majority of sales were made by one importer, * * *, whose largest single sale was one of a number of small-volume sales with no discount from list price.

In * * * price comparisons for guaranteed sales of No. 8 and No. 10 sparklers to retailers, the price of * * *. In * * *, Chinese No. 8 sparklers were * * * than the U.S. product, and in * * * Chinese No. 10 sparklers were * * * than domestic No. 10 sparklers, * * *. * * *.

Purchaser Price Data

The Commission requested 92 wholesalers and retailers of sparklers to provide quarterly price data for their largest single quarterly purchases of No. 8 and No. 10 gold sparklers during the investigation period. The majority of purchase price data reported by wholesalers and retailers were on a delivered basis, while * * *.

Roughly half of all purchasers indicated that they always know the manufacturer of the sparklers they purchase, and seven indicated that their customers are always aware of and/or interested in the manufacturer of the sparklers they purchase. Approximately half of all purchasers also reported that their customers consider the color of the sparklers when making purchase decisions. Most retailers and wholesalers purchase sparklers on an annual or semi-annual basis, usually during the first and second quarters of each year; and most reported reselling sparklers as part of an assorted fireworks package. Such packages account for, on average, 3-10 percent of total sparkler sales.

* * *, the majority of purchasers stated that there are no quality differences between domestic and imported sparklers. Fourteen purchasers reported that the quality of the domestic product is comparable to that of the Chinese product, six reported that the domestic product is superior,³⁹ two reported that the Chinese product is superior,⁴⁰ and five purchasers did not comment.

³⁹ Superior quality characteristics noted for the domestic products included a longer, higher-gauge wire with more pyrotechnic chemicals leading to longer and more consistent burning.

⁴⁰ Superior quality characteristics mentioned for the Chinese products included a longer burning time and a brighter color.

Weighted-average net delivered purchase prices reported by wholesalers for domestic No. 8 sparklers showed no clear trends over the investigation period, fluctuating between * * * per gross carton in the first quarter of 1988 and * * * in December 1990 (table 15). Purchase prices of Chinese No. 8 sparklers also fluctuated, increasing from * * * to * * * per gross carton between January 1988 and December 1990. In all 10 quarters for which price comparisons were possible, Chinese No. 8 sparklers were priced below the U.S. product, by margins ranging from 15.9 percent in the fourth quarter of 1990 to 49.7 percent in the third quarter of 1988.

Table 15

Weighted-average net delivered purchase prices for domestic and imported sparklers reported by U.S. wholesalers and margins of underselling (overselling) of No. 8 and No. 10 gold sparklers, by quarters, January 1988-December 1990

* * * * *

Net delivered purchase prices reported by wholesalers for domestic No. 10 sparklers increased slightly from * * * per gross carton in the first quarter of 1988 to * * * in the fourth quarter of 1990. Purchase prices for Chinese No. 10 sparklers varied considerably over the investigation period, increasing by 26 percent from * * * to * * * per gross carton. For all 9 quarters in which price comparisons were possible, Chinese No. 10 sparklers were priced below domestic No. 10 sparklers, with margins ranging from 20 percent in the second quarter of 1988 to 46.9 percent in the first quarter of 1989.

Exchange Rates

Since the value of the currency of China is determined by the Chinese Government, rather than by the free market, meaningful measures of China's exchange rate cannot be presented.

Lost Sales and Lost Revenues

FINAL INVESTIGATION

In the final investigation, the Commission received three new lost sales allegations from * * * and nine from * * * although the latter was unable to provide specific information such as the quantity involved and the accepted and rejected price quotes for these alleged lost sales.⁴¹ No new lost revenue allegations were received from any of the three U.S. producers in the final investigation.

* * * of No. 8 and No. 10 gold sparklers over the investigation period. In its questionnaire response, * * * noted that in each case * * * was not

⁴¹ * * * was unable to provide specific documentation, although it noted that sales have gradually decreased in recent years as customers expressed a preference for the lower-priced Chinese product.

able to quote a price low enough for the domestic product, but was able to * * *. The Commission was able to contact two of the three purchasers named by * * *; the third did not respond to several telephone calls by staff.

* * * alleged a lost sale of * * * in * * * for * * * gross cartons of * * * sparklers offered to * * *. * * * did not recall the specific allegation, but noted that it is common for a distributor to provide a customer with price lists for both domestic and Chinese sparklers in order to allow a wider selection and price range. He stated that since there is no significant quality difference between the domestic and foreign products, he purchases nearly all sparklers from the least expensive supplier regardless of the country of origin. * * *.

* * * named * * *. * * * could not recall this specific transaction, but he was also not aware of * * *. * * * stated that there is no major difference in quality between domestic and foreign sparklers and he generally purchases the lowest priced product available.

PRELIMINARY INVESTIGATION

The Commission received lost sales and lost revenues allegations from * * *. * * * reported * * * allegations of lost sales that totaled * * * and involved * * * gross cartons of sparklers during the period * * *. The * * * lost revenues allegations reported by * * * totaled * * * and involved * * * gross cartons of sparklers sold during the period. * * * of the * * * purchasers named in these allegations were contacted; the remaining two would not comment when contacted by Commission staff. A summary of the information follows.

* * * alleged that it lost revenue of * * * on a sale of * * * cartons of sparklers sold to * * * in * * *. * * * stated that he has not asked domestic companies to lower their prices. * * * reported that * * * has only purchased domestic sparklers during the last few years; prices for the domestic product are about 20-30 percent higher than those for the Chinese product. * * * stated that * * * pays the higher price for the domestic product because the package is more attractive. * * * added that * * *.

* * * in a lost revenue allegation of * * * involving * * *. * * * allegedly had to lower its price from * * * to make the sale. * * *, purchaser of fireworks for * * *, could not recall the specific instance, but stated that it was not unusual for * * * to play imports against the domestic product to get a better price. * * *. Currently, the Chinese product is priced at * * * compared to * * *. * * * stated that the U.S. product was of better quality as the import was smaller and did not burn as long.

* * * in a lost sale allegation of * * *. * * * reported that * * * did purchase this amount of Chinese-produced sparklers but that it purchased this product from * * *. In * * * purchased approximately * * * of sparklers, nearly all from * * *. Approximately 50 percent of * * * total purchases were Chinese-produced and 50 percent were U.S.-produced. * * * stated that there was very little difference between the U.S. and Chinese product; however, the Chinese product was approximately 5 to 10 percent less expensive than the U.S. product. * * * commented that he could have saved money by purchasing more Chinese product but that * * * could not sell * * * enough Chinese sparklers to satisfy its needs. * * * starts its purchasing cycle for sparklers approximately 5 months prior to the Fourth of July.

APPENDIX A
FEDERAL REGISTER NOTICES

International Trade Administration**(A-570-804)****Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China****AGENCY:** International Trade Administration, Import Administration, Commerce.**ACTION:** Notice.

SUMMARY: The Department of Commerce (the Department) has determined that sparklers from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value.

EFFECTIVE DATE: May 6, 1991.

FOR FURTHER INFORMATION CONTACT: Francis J. Sailer, Deputy Assistant Secretary for Investigations, or Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5497 and (202) 377-2613, respectively.

SUPPLEMENTARY INFORMATION:**Final Determination**

The Department determines that imports of sparklers from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since publication of the preliminary determination (55 FR 51743, December 17, 1990) the following events have occurred. On December 18, 1991, respondents requested that we postpone making our final determination by 60 days pursuant to 19 CFR 353.20(b)(1). On January 4, 1991, we published a notice postponing the final determination until April 23, 1991 (56 FR 417).

We verified the questionnaire response of Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation in Changsha, Hunan Province, PRC, from February 23 through March 1, 1991. Petitioner and respondents submitted comments for the record in case briefs on April 1, 1991. Both parties submitted rebuttal briefs on April 5, 1991. On April 8, 1991, we held a public hearing in

which petitioners and respondents participated.

Scope of the Investigation

The products covered by this investigation are sparklers from the PRC. Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3604.10.00. The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of this proceeding.

Period of Investigation

The period of investigation (POI) is February 1, 1990, through July 31, 1990.

Fair Value Comparisons

To determine whether sales of sparklers from the PRC 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.

United States Price

In calculating USP, the Department used purchase price, as defined in section 772 of the Act, because the sparklers were sold to unrelated purchasers for exportation to the United States prior to importation into the United States and because exporter's sales price (ESP) methodology was not indicated by other circumstances. Purchase price was based on the CIF, packed price to unrelated purchasers in Hong Kong for sparklers destined for the United States because the producers knew that the sparklers were destined for the United States. We made deductions for discounts, and charges incurred for inland freight, ocean freight, and marine insurance.

In accordance with the policy set forth in our final determination in the investigation of carbon steel wire rod from Poland (49 FR 29434, July 20, 1984), we based ocean and inland freight charges on freight rates in market economy countries (Hong Kong for ocean freight and India for inland freight).

Foreign Market Value

In past cases (e.g., *Tapered Roller Bearings from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 52 FR 19748 (May 27, 1987)), the Department has treated the PRC as a nonmarket economy

country (NME). As noted in our preliminary determination, we determined that nonmarket economy treatment is appropriate in this investigation.

As a result, section 773(c) of the Act, as amended by the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"), requires the Department to determine foreign market value on the basis of the market valuation of the factors of production utilized in producing the subject merchandise (unless the Department determines the available information on factor prices in market economies to be inadequate).

The 1988 Act further permits the Department to value the factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME and that are significant producers of comparable merchandise.

Of countries known to produce sparklers, we have determined that India, Pakistan and the Philippines are comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor. We calculated FMV based on factors of production reported by the Chinese exporters, Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation; Guangxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch; and, Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company. We used information from India and the Philippines regarding the values of various factors of production.

We chose India as the most comparable surrogate on the basis of per capita GNP, the growth rate in per capita GNP, and the national distribution of labor. Where possible, we obtained information for valuing factors of production from publicly available sources in India.

For the two items for which neither an actual market economy import price (paid by the PRC producer) nor an Indian price was available, we assigned a value based on data from the Philippines. We also based the value for one factor on the actual price paid by a PRC manufacturer for an input that was imported from a country with a market economy. Where appropriate, the factor values were inflated to POI levels using wholesale price indices published by the International Monetary Fund.

The three respondents reported the amounts of raw materials needed to manufacture one carton of sparklers. For

each sparkler type, we multiplied the per carton factor quantity by the value for each component material, and summed the resulting individual raw material values. We then added an amount for direct labor cost. We then added the statutory minimum of 10 percent for general expenses. We added the statutory minimum because it is higher than the percentage amount reported by the Indian manufacturer. We next added 10 percent for profit. We added 10 percent, the figure reported by the Indian manufacturer, because this figure is higher than the 8 percent statutory minimum for profit. Finally, we added an amount for packing costs to arrive at a constructed foreign market value for a single carton of sparklers. We then compared this value to the exporters' U.S. price for a single carton of sparklers.

We made currency conversions in accordance with 19 CFR 353.60(a).

Final Negative Determination of Critical Circumstances

Petitioner alleged that imports of sparklers from the PRC present "critical circumstances." Under section 735(a)(3) of the Act, "critical circumstances" exist if we determine (1) There is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on respondents' shipment data for equal periods immediately preceding and following the filing of the petition. Based on this analysis, we find that imports of the subject merchandise from the PRC during the period subsequent to receipt of the petition have not been massive when compared to recent import levels.

Since we do not find there have been massive imports, we do not need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value.

Therefore, we determine that critical circumstances do not exist with respect to imports of sparklers from the PRC.

Verification

As provided in section 776(b) of the Act, we verified all information used in making our final determination. We used standard verification procedures, including examination of relevant accounting records and original source documents provided by respondents.

Interested Party Comments

Comment 1: Respondents argue that the three PRC companies should be assigned separate dumping margins because they are legally and factually independent entities and because no direct, sparkler-industry-specific evidence of central control exists. Respondents cite as evidence of their independence: (a) Each company's possession of an "enterprise legal person" business license (which requires the bearer company to maintain its own accounts and be responsible for its own profits and losses); (b) various official and unofficial explanations that the companies have been separated from the national head office which is now unable to exert control over its former local offices; (c) that there is no evidence in the record indicating that the sparkler sellers are subject to centralized government control; and (d) that there is no evidence of coordination among the companies on such matters as price setting, market division, and production practices.

Petitioner contends that the PRC's status as a nonmarket economy, coupled with government ownership of the companies in question, creates a strong presumption of central government control. This requires the assignment of a single dumping margin covering all sparklers from the PRC in the absence of verifiable evidence of freedom from central control. If the Department were to assign separate margins in a case where such freedom has not been demonstrated, petitioner contends, the central authorities would be able to funnel output from different factories through the company assigned the lowest margin. Petitioner notes that documents submitted by respondents to establish separateness also contain general references to continuing centralized policy-making and control of prices with respect to the national trading companies' former local branch offices. Petitioner also states that it believes that central control of the sparkler industry exists.

DOC Position: We have determined that exporters in nonmarket economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of central government control, both in law and in

fact, with respect to exports. Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of central government control with respect to exports is based on two prerequisites: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

Each exporter of sparklers sets its own prices for export. At verification, we noted that the proceeds from all sales that we examined were deposited into the selling entity's bank account. Each company submitted its business license for the record before verification, along with explanations, published before this investigation began, of the substantive implications of receiving a business license. The explanations mentioned no stipulations that could be construed as specific central control of pricing or production.

We have therefore assigned separate, company-specific margins for purposes of our final determination.

Comment 2: Respondents urge the Department to obtain "more legally and factually defensible surrogate country information" because the information used for purposes of calculating foreign market value for the preliminary determination produced distorted results.

DOC Position: The Department used the most reasonable available information in making its preliminary determination. Since the preliminary determination, we have gathered additional information from an Indian sparkler manufacturer on input prices and industry experience (*i.e.*, with respect to raw materials, overhead, profit, and general expenses) and have made revisions in all instances where newer information was superior to that used for the preliminary determination.

Comment 3: Respondents argue that the Department should find the surrogate country factor prices used in the preliminary determination to be inadequate for purposes of calculating the foreign market value. In its final determination, the Department should, following the guidance of section 773(c)(2) of the Act in situations where surrogate country factor prices are inadequate, base FMV on the price of

sparklers in third countries that have economies comparable to the PRC and that produce merchandise comparable to the subject merchandise. Respondents recommend the use of sales prices in Pakistan. Respondents argue that the Act does not provide for using petitioner's information when the Department determines factor price information on the record to be inadequate and when sales prices in appropriate surrogate countries exist.

Petitioner contends that respondents have not justified the use of Pakistan sparkler prices over other information on the record. Petitioner contends that the Department should use the United States as a surrogate country because the three countries selected as appropriate surrogate countries are not significant sparkler producers. Petitioner proposes its own information as appropriate for valuing factors of production in the United States.

DOC Position: The information provided by an Indian manufacturer of sparklers, which we have used to value most of the factors of production, is adequate for purposes of calculating FMV pursuant to section 773(c) of the Act. Therefore, the issue of the most appropriate third country sparkler prices to be used as FMV need not be addressed.

Comment 4: Respondents contend that the Department should use Hunan's corrected factor amounts, reported at verification, for assorted sparkler production.

DOC Position: We agree. We verified the correct chemical amounts used in the manufacture of assorted sparklers and have incorporated those figures for purposes of our final determination.

Comment 5: Respondents contend that the values that the Department assigned to certain raw materials (iron wire, aluminum powder, aluminum-magnesium alloy powder, resin, epoxy powder, paste, silver powder, and ignition chemical) are unreasonably high. Respondents specifically call into question the following Departmental decisions in determining factors' prices:

a. The use of the price reportedly paid for iron wire by the sparkler industry in the Philippines when the characteristics of that wire are uncertain;

b. In the case of aluminum-magnesium alloy powder, which had three components for which prices are available, the assumption that the factor was one hundred percent aluminum (the most expensive component) because respondent had failed to provide full and timely information on the percentage of each component in the factor;

c. The use of values based on Indian import statistics for determining the values of aluminum powder and ignition chemical rather than prices reported by the sparkler industries in the Philippines or Pakistan for those items;

d. Not adjusting for differences when basing the value of resin on epoxy resins, a commodity only similar to resin;

e. In assigning a value to paste, the use of an Indian import statistics-based value for glue—a product less similar to that used in making sparklers—instead of using the value for paste cited in the Philippines import statistics; and

f. The use of an Indian import statistics-based value for silver powder when the category may have included varieties of silver powder not specifically used in sparkler manufacture.

Petitioner contends that Filipino and Pakistani prices are not appropriate because the sparkler industries in those countries are small and not comparable to the PRC sparkler industry. Petitioner further contends that factor prices would be higher for the PRC sparkler industry, were it located in one of the surrogate countries, than the prices reported by the producers in the surrogate countries. Thus, the Department "should value all inputs at the industrial level in the surrogate country to the extent data are available and appropriate."

DOC Position: We generally seek to value factors using (in order of preference): (1) Prices paid by the NME manufacturer for items imported from a market economy; (2) prices in the primary surrogate country of domestically produced or imported materials; (3) prices in one or more secondary surrogate countries reported by the industry producing subject merchandise in the secondary country or countries; and (4) prices in one or more secondary surrogate countries from sources other than the industry producing the subject merchandise. This ranking of data sources reflects the Department's desire to use to the greatest extent possible factor prices in a single surrogate country. We determined that India was the most appropriate surrogate for the PRC in this case. (One of the respondents, Hunan, reported that it imported two raw material inputs for sparkler production. However, verification revealed that the raw materials were further processed in the PRC before their incorporation into sparklers. We were unable to determine the cost of such processing in a market economy country. Thus, we could not use the import prices paid by Hunan for

the raw materials that were processed further after importation.)

To value wire, we used the price reported by the sparkler industry in the Philippines. Although we do not know the characteristics of the wire used by the Philippines sparkler industry, the wire is nevertheless used to produce sparklers and is the best information we were able to develop.

For purposes of our final determination, we have used prices from the sparkler industry in India to value aluminum-magnesium alloy powder, aluminum powder, and ignition chemical. Respondents' concerns about the values used for these factors in the preliminary determination are therefore moot. We have also used prices from the sparkler industry in India to value barium nitrate, iron filings sulfur in both lump and powder form, potassium perchlorate, wheat flour, mucilage, plastic bags, caddies, cellophane film, master cartons, moistureproof paper and identifying dye.

With respect to resin, we agree with respondents that the use of the value for epoxy resins was inappropriate. Because resin is considered a phenolic resin, we have valued this factor using the average price of phenolic resins imported into India.

With respect to paste, we agree with respondents that the Philippines import statistics value for paste is more appropriate than the Indian import statistics value for glue. We therefore have valued paste using the average price of paste imported into the Philippines, which we calculated from Philippines import statistics.

With respect to silver powder, we have valued this factor using the average price of silver powder imported into India which we calculated from Indian import statistics. We adjusted the average import price for known differences based on information reported by respondents.

Comment 6: Respondents contend that the Department inappropriately valued labor based on the average wage rate for unskilled labor in major industrial groups in India, as reported in the petition. Respondents argue that the industries included in the average are "highly developed and sophisticated industries (while) the sparkler industry * * * is a handicrafts or cottage industry * * *". Respondents suggest that unskilled labor rates reported for the Indian cotton textile industry or the minimum wage in New Delhi, India, would be more reasonable than petitioner's information. Respondents further argue that, because sparklers are

produced in a rural area of India (Tamil Nadu) where the minimum wage would likely be lower than in New Delhi, the Tamil Nadu minimum wage reported by respondents would be most appropriate.

DOC Position: For purposes of our final determination, we valued PRC labor using actual wage rates paid by an Indian sparkler manufacturer to its workers.

Comment 7: Respondents contend that the Department's calculation of factory overhead using a combination of information supplied in the petition and information reported by the sparkler industry in Pakistan was unjustified. Respondents' contention hinges on three arguments: (a) That the Department's conclusion that the overhead level in the PRC sparkler industry is somewhere between the overhead levels in the United States and Pakistan is inappropriate because it is based on a videotape of a PRC sparkler factory that is no longer in operation; (b) that the Department could have used the respondents' reported factory overhead attributable to sparkler production; and (c) that the Department alternatively could have used overhead information reported by the Pakistan sparkler industry.

Respondents further contend that the Department inappropriately applied the factory overhead percentage used to the packing-inclusive cost of manufacture rather than the packing-exclusive cost of manufacture.

Petitioner argues that costs associated with placing sparklers into caddies should be treated as normal labor and material costs, and that only costs associated with preparing cartons of sparklers should be considered packing costs. Petitioner also argues that, in addition to overhead attributable to the manufacturer, the Department should include in its overhead calculation overhead attributable to the exporter. Petitioner points out that Hunan did not report as overhead tools and equipment utilized in sparkler production.

Petitioner argues that factory workers' "down-time," as well as the time of supervisory and indirect labor, should be accounted for in factory overhead.

DOC Position: At the time of the preliminary determination, we had not developed any meaningful information concerning factory overhead expense in market economy countries. Since that time, an Indian manufacturer of sparklers has reported information on its factory overhead to us.

The Indian manufacturer reported that overhead is 17 percent of "total cost" and, further, that overhead is composed almost entirely of packing materials and labor. The manufacturer could not

calculate a packing-exclusive overhead figure. We are nevertheless able to infer from the manufacturer's account that packing-exclusive overhead is very small as a percentage of direct materials and labor.

For purposes of our final determination, we assumed factory overhead to be zero as the closest approximation of the actual overhead figure. The Indian manufacturer also supplied us with separate packing material and labor costs which we used in our normal calculation of FMV.

Petitioner's suggestion that overhead attributable to the reseller be included in factory overhead is inappropriate since exporter-related overhead expenses are captured by imputing selling, general, and administrative expenses in the FMV.

Comment 8: Respondents argue that the Department erred in including a dangerous cargo surcharge in its calculation of surrogate freight charges because the PRC companies did not incur such a surcharge when shipping using nonmarket freight carriers.

DOC Position: We disagree. Since the PRC companies incurred the freight charges using NME carriers, we used surrogate freight information (see the "Foreign Market Value" section of this notice). The information we obtained indicated that, in a market economy, a dangerous cargo surcharge would be applied to sparkler shipments. Respondents' home market experience is not applicable since market forces are not at work.

Comment 9: Respondents claim that the Department's decision to exclude one Guangxi sale was improper because Guangxi had reported all POI sales to the United States.

DOC Position: We disagree. We excluded this sale because the sale was reported as a telephone order. In its November 19, 1990, questionnaire response, Guangxi reported that, in cases where orders come over the telephone, it does not know the destination of the merchandise in question. Because Guangxi does not know at the time of sale whether telephone order sales are U.S.-bound, we did not consider this to be a U.S. sale and therefore excluded this sale from our margin calculations.

Comment 10: Respondents contend that Hunan's failure to report in its questionnaire response the use of flour and dye in its manufacturing process does not warrant the use of best information available because the factors are insignificant. Respondents further contend that the Department should ignore the factor amounts

reported at verification because they are *de minimis*.

Petitioner argues that, because Hunan failed to submit information on flour and dye before verification, the Department must make adverse inferences in determining the best information available as to these factors.

DOC Position: We determined that the omission of these factors from the questionnaire response represented a clerical error that was easily corrected. We have therefore used the quantities verified, and valued them based on prices reported by the Indian sparkler manufacturer.

Comment 11: Respondents contend that the Department should determine that critical circumstances do not exist based on information reported in questionnaire responses and gathered at verification.

DOC Position: We have determined that critical circumstances do not exist with respect to the subject merchandise. See the "Critical Circumstances" section of this notice for further details.

Comment 12: Petitioner contends that the Department should modify the scope of the investigation for the final determination so as to include sparklers made of bamboo, wood, plastic or other materials besides wire in order to forestall potential circumvention.

Respondents argue that no scope modification is warranted because petitioner defined the scope in its petition and has presented no evidence as to why a modification is not appropriate.

DOC Position: Petitioner has not provided adequate information as to why the scope of the investigation should be modified for the final determination. Under 19 CFR 353.29, interested parties may formally request that the Department determine whether particular merchandise is within the scope of an antidumping duty order. Should the Department issue an order in this case, petitioner may choose to renew its request for such a ruling and provide the necessary support.

Comment 13: Petitioner contends that the Department should use all of the Hunan information that changed at verification and that was verified. Petitioner also contends that the Department should use the best information available for Hunan information that could not be verified. In the latter category, petitioner specifically includes the imported factor prices and Hunan's overhead figures.

DOC Position: We have used all of Hunan's verified information, including information that changed as a result of verification. We did not use any

imported factor prices because, among other reasons, we could not verify payment for these factors. We applied overhead information reported by an Indian sparkler manufacturer.

Comment 14: Petitioner argues that a figure reported as a commission should be considered a discount because no commissionaire agreement exists.

DOC Position: We agree, and, as in our preliminary determination, have treated this amount as a discount for purposes of our final determination.

Comment 15: Petitioner contends that Hunan's reported packing labor figures are not credible and should be disregarded in favor of best information available.

Respondents contend that Hunan's reported packing labor figures were verified and thus cannot be rejected.

DOC Position: We verified Hunan's reported packing labor figures and have therefore used them for purposes of our final determination.

Continuation of Suspension of Liquidation

In accordance with 19 CFR 353.15(a)(3)(i), we are directing the United States Customs Service to continue to suspend liquidation of all entries of sparklers from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after December 17, 1990, the date of publication of the preliminary determination in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the FMV of subject merchandise from the PRC exceed the U.S. price, as shown below.

Manufacturer/producer/exporter	Margin percentage
Gaungd Native Produce Import & Export Corporation, Benai Fireworks and Firecrackers Branch.....	1.64
Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation.....	93.54
Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company.....	65.78
All Others.....	75.88

This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(f) of the Act, we have notified the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary

information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

The ITC will determine within 45 days from the date of this final determination whether there is material injury, or the threat thereof, to the domestic industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that material injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on sparklers from the PRC entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, equal to the amount by which the FMV exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: April 28, 1991.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-10567 Filed 5-3-91; 8:45 am]

BILLING CODE 3810-02-01

[Investigation No. 731-TA-464 (Final)]

Sparklers From China

AGENCY: United States International Trade Commission.

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

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-464 (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 China of sparklers, provided for in subheading 3604.10.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce will make its final LTFV determination on or before April 28, 1991, and the Commission will make its final injury determination by June 10, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673(b))).

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 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: December 17, 1990.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-252-1182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of sparklers from China are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on July 2, 1990, by Elkton Sparkler Co., North East, MD, and Diamond Sparkler Co., Youngstown, OH. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (55 FR 34628, August 23, 1990).

Participation in the Investigation

Persons wishing to participate in this 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 (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), 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. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be 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 business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on April 15, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 30, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 24, 1991. 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 April 29, 1991, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to

submit a hearing brief to the Commission. The deadline for filing prehearing briefs is April 25, 1991. If prehearing briefs contain business proprietary information, nonbusiness proprietary version is due April 28, 1991.

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

Written Submissions

Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on May 6, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due May 7, 1991. 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 May 6, 1991.

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

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than May 13, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due May 14, 1991.

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 (19 CFR 207.20).

Issued: January 10, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-1022 Filed 1-15-91; 8:45 am]

BILLING CODE 7020-02-M

APPENDIX B

LIST OF WITNESSES WHO APPEARED AT THE HEARING

LIST OF WITNESSES WHO APPEARED AT THE HEARING

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

Subject : SPARKLERS FROM CHINA
Inv. No. : 731-TA-464 (Final)
Date and Time : April 30, 1991 - 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 Street, SW, Washington, DC.

In Support of the Imposition of Antidumping Duties

Barnes & Thornburg
Washington, D.C.
On behalf of

Elkton and Diamond Sparkler Companies

Charles Shivery, President, Elkton Sparkler Co.

Bruce Zoldan, President, Diamond Sparkler Co.

Jerry Bostocky, Vice President of Sales, B.J. Alan, Co.

Mark W. Love, Vice President, Economic Consulting Services, Inc.

Daniel J. Cannistra, Staff Economist, Economic Consulting Services Inc.

Marcy B. Stras)
Richard H. Streeter)--OF COUNSEL
Randolph J. Stayin)

In Opposition to the Imposition of Antidumping Duties

Klayman & Associates, P.C.
Washington, D.C.
On behalf of

The Association of Sparkler Importers of America (also known as the National Pyrotechnics Importers Association)

Eric Turner, Vice President, Family Fireworks

Tim Corley, Vice President, China Pyrotechnics

Larry Klayman--OF COUNSEL

In Opposition to the Imposition of Antidumping Duties--Continued

Akin, Gump, Strauss, Hauer & Feld

Washington, D.C.

On behalf of

Guangxi Native Produce Import and Export Corporation

Hunan Native Produce Import and Export Corporation

Jiangxi Native Produce Import and Export Corporation

Spencer S. Griffith--OF COUNSEL

APPENDIX C

**EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND
PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND
ABILITY TO RAISE CAPITAL**

EFFECTS OF IMPORTS ON PRODUCERS' EXISTING DEVELOPMENT AND
PRODUCTION EFFORTS, GROWTH, INVESTMENT, AND
ABILITY TO RAISE CAPITAL

The Commission requested the U.S. producers to describe any actual or anticipated negative effects, if any, of imports of sparklers from China on their growth, development and production efforts, investment, and ability to raise capital. Their responses are shown below:

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