

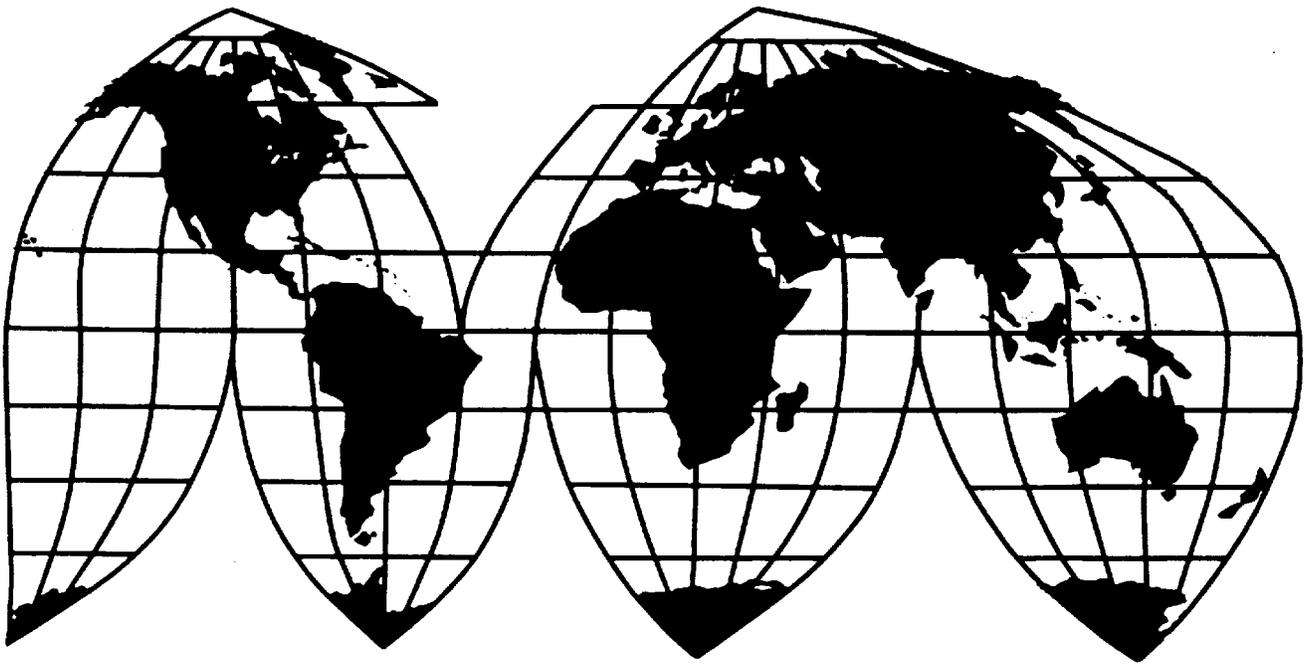
# Sparklers From China

Investigation No. 731-TA-464 (Second Review)

Publication 3814

November 2005

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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**Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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



# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation No. 731-TA-464 (Second Review)

## SPARKLERS FROM CHINA

### **DETERMINATION**

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty order on sparklers from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### **BACKGROUND**

The Commission instituted this review on June 1, 2005 (70 F.R. 31537) and determined on September 7, 2005 that it would conduct an expedited review (70 F.R. 55164, September 20, 2005).

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<sup>1</sup> 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

Based on the record in this five-year review, we determine under section 751(c) of the Tariff Act of 1930, as amended (the Act), that revocation of the antidumping duty order on sparklers from China is likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### I. BACKGROUND

The Commission determined that an industry in the United States was materially injured by reason of less than fair value (“LTFV”) imports of sparklers from China on June 10, 1991,<sup>1</sup> and Commerce issued an antidumping duty order on the subject merchandise on June 18, 1991.

On October 1, 1999, the Commission determined to conduct a full review of the antidumping duty order on sparklers from China. Although the Commission found the domestic interested party group response to be adequate and the respondent interested group response to be inadequate, it exercised its discretion to conduct a full review based upon information received from the parties concerning structural changes taking place in the U.S. industry. On July 6, 2000, the Commission determined that revocation of the order would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup> Subsequently, Commerce issued a continuation of the antidumping duty order, effective July 13, 2000.

The Commission instituted the second review of the order at issue on June 1, 2005. The Commission again found the domestic interested party group response to the notice of institution to be adequate and the respondent interested party group response to be inadequate, but found no other circumstances that would warrant conducting a full review. It therefore voted to conduct an expedited review.<sup>3</sup>

No respondent interested party has made an appearance in this review, or otherwise provided any information or argument to the Commission. Because this is an expedited review, no questionnaires were issued by the Commission. The record in this review thus consists of information provided to the Commission by the domestic parties in their responses to the notice of institution and adequacy comments, data from the original investigation and first review, public data compiled by Commission staff, and the domestic parties’ final comments.

### II. DOMESTIC LIKE PRODUCT AND INDUSTRY

#### A. Domestic Like Product

In making its determination under section 751(c), the Commission defines the “domestic like product” and the “industry.”<sup>4</sup> The Act defines the “domestic like product” as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation

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<sup>1</sup> Sparklers from China, Inv. No. 731-TA-464 (Final), USITC Pub. 2387 (June 1991) (“Original Determination”).

<sup>2</sup> Sparklers From China, Inv. No. 731-TA-464 (Review), USITC Pub. 3317 (July 2000) (“First Five-Year Review Determination”).

<sup>3</sup> 70 Fed. Reg. 55164 (September 20, 2005); see also Confidential Staff Report (“CR”)/Public Staff Report (“PR”) at Appendix B, Explanation of Commission Determination on Adequacy in Sparklers From China, Inv. No. 731-TA-464 (Second Review) (Commissioner Pearson dissented and voted to conduct a full review; Commissioner Aranoff did not participate in the adequacy determination).

<sup>4</sup> 19 U.S.C. § 1677(4)(A).

under this subtitle.”<sup>5</sup> The Commission’s practice in five-year reviews is to look to the like product definition from the original determination and any previous reviews and consider whether the record indicates any reason to revisit that definition.<sup>6</sup>

In this five-year review, Commerce has defined sparklers, the subject merchandise, as “fireworks each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning,” currently classifiable under Harmonized Tariff Schedule of the United States (“HTS”) statistical reporting numbers 3604.10.9010, 3604.10.10.00, and 3604.10.90.50.<sup>7</sup> The HTS classifications are broader than the subject merchandise included in the scope. Sparklers vary in length, but typically are boxed in five standard sizes, with No. 8 and No. 10 sparklers, the two smallest sizes, comprising the majority of both U.S. product and subject imports.<sup>8</sup>

The domestic interested parties do not argue for a definition of the domestic like product that differs from the Commission’s definition in the original investigation and first five-year review. In the original determination the Commission noted that differences in color and size, the only possible basis for finding separate like products, were only minor variations in characteristics and did not support a finding of more than one like product.<sup>9</sup>

The record here contains no information that would warrant a reconsideration of the domestic like product definition. We therefore define the domestic like product in this review as sparklers, coextensive with the like product definition in the first five-year review and the original determination, as well as with Commerce’s scope.

## **B. Domestic Industry**

Section 771(4)(A) of the Act defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”<sup>10</sup>

The domestic interested parties agree that Diamond Sparkler Manufacturing Company Inc. (“Diamond”) and Elkton Sparkler Company, Inc. (“Elkton”) are the only remaining domestic producers. Neither advocated the exclusion of any producer as a related party.

The only issue that arises in this second five-year review with respect to our definition of the domestic industry is whether either producer should be excluded under the related parties provision, 19 U.S.C. § 1677(4)(B). Section 771(4)(B) of the Act allows the Commission, if appropriate circumstances

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<sup>5</sup> 19 U.S.C. § 1677(10). See Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996); Torrington Co. v. United States, 747 F. Supp. 744, 748-49 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991). See also S. Rep. No. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 90-91 (1979).

<sup>6</sup> See Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan and the United Kingdom, Inv. No. 701-TA-380-382 and 731-TA-797-804 (Review), USITC Pub. 3788 (July 2005) at 6; Crawfish Tail Meat from China, Inv. No. 731-TA-752 (Review), USITC Pub. 3614 (July 2003) at 4; Steel Concrete Reinforcing Bar from Turkey, Inv. No. 731-TA-745 (Review), USITC Pub. 3577 (Feb. 2003) at 4.

<sup>7</sup> CR at I-8-9, PR at I-7-8.

<sup>8</sup> CR at I-10-11, PR at I-9-10.

<sup>9</sup> Original Determination, USITC Pub. 2387 at 4-5.

<sup>10</sup> 19 U.S.C. § 1677(4)(A). In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market, provided that adequate production-related activity is conducted in the United States. See United States Steel Group v. United States, 873 F. Supp. 673, 682-83 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise, or which are themselves importers.<sup>11</sup>

In the original investigation, the Commission found that Diamond was a related party because of its affiliation with B.J. Alan, an importer of sparklers from China, but that appropriate circumstances did not exist to exclude Diamond under the related parties provision. It noted that Diamond represented a significant portion of domestic production; its primary interest was that of a domestic producer; its operations had not been shielded by B.J. Alan from the effects of the subject imports; B.J. Alan had been importing sparklers to supplement its sparkler line in order to meet its customers' demands for lower prices; and, because Diamond's financial data was consistent with that of the other producers, including its data would not skew the industry data.<sup>12</sup> In the first five-year review, the Commission likewise found that in 1999, Diamond's ratio of production to B.J. Alan's imports was \*\*\* and that its interests lay primarily in domestic production. It therefore did not exclude Diamond from the domestic industry.<sup>13</sup>

The record of this review shows that Diamond is still related to B.J. Alan, an importer of sparklers from China, although Diamond itself does not import subject product and it asserts that B.J. Alan is mainly an importer of other types of fireworks.<sup>14</sup> The record shows that, in 1990, B.J. Alan accounted for \*\*\* percent of U.S. imports from China. In 1999 B.J. Alan imported \*\*\* sparklers from China, equivalent to about \*\*\* percent of Diamond's total U.S. shipments of \*\*\* sparklers.<sup>15</sup> By 2004, Diamond's total U.S. shipments had dropped to \*\*\* sparklers, but it had become the largest U.S. producer. There are no data in the record on the current level of subject imports by B.J. Alan. Because the current record does not indicate that Diamond's interests no longer lie primarily in domestic production, that it is benefitting from B.J. Alan's imports, or that its relationship with B.J. Alan shields it from the injurious effects of the subject imports, it does not appear appropriate to exclude Diamond under the related parties provision. Moreover, whereas Diamond was the \*\*\* U.S. producer in 1999, currently it is not only the largest U.S. producer but accounts for \*\*\* U.S. production.<sup>16</sup>

In the first five-year review, the Commission also considered whether Elkton, which had been the \*\*\* U.S. producer during the original investigation, should be excluded under the related parties provision. While Elkton had \*\*\* U.S. producer during most of the first review period, it stopped

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<sup>11</sup> The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude a related party include:

- (1) the percentage of domestic production attributable to the importing producer;
- (2) the reason the U.S. producer has decided to import the product subject to investigation, i.e., whether the firm benefits from the LTFV sales or subsidies or whether the firm must import in order to enable it to continue production and compete in the U.S. market; and
- (3) the position of the related producer vis-a-vis the rest of the industry, i.e., whether inclusion or exclusion of the related party will skew the data for the rest of the industry.

See, e.g., Torrington Co. v. United States, 790 F. Supp. 1161 (Ct. Int'l Trade 1992), aff'd without opinion, 991 F.2d 809 (Fed. Cir. 1993).

The Commission has also concluded that a domestic producer that does not itself import subject merchandise, or does not share a corporate affiliation with an importer, may nonetheless be deemed a related party if it controls large volumes of imports. The Commission has found such control to exist where the domestic producer was responsible for a predominant proportion of an importer's purchases and the importer's purchases were substantial. See, e.g., Foundry Coke from China, Inv. No. 731-TA-891 (Final), USITC Pub. 3449 (September 2001) at 8-9.

<sup>12</sup> Original Determination, USITC Pub. 2387 at 6-7.

<sup>13</sup> First Five-Year Review Determination at 7-8 (confidential version).

<sup>14</sup> Diamond's Supplemental Response to Notice of Institution (August 8, 2005) at 2.

<sup>15</sup> CR at I-18, I-21, I-23, n.89; PR at I-14, I-17, I-18, n.89.

<sup>16</sup> CR at I-21, PR at I-17.

manufacturing sparklers in June 1999, reportedly because of “continued pricing pressure from Chinese imports,” and began importing subject product. However, because \*\*\* and had ceased domestic production, the Commission determined it was not a related party under the statute.<sup>17</sup>

The record of this review shows that, although Elkton has resumed a \*\*\* level of domestic production, it is \*\*\* an importer of sparklers from China. In 2004, Elkton produced \*\*\* sparklers, but imported \*\*\* sparklers from China and shipped \*\*\* sparklers imported from China.<sup>18</sup> Because this is an expedited review, the record contains no current financial data on either Diamond or Elkton. Financial data from the first review period show that Elkton’s financial performance improved from 1998 to 1999, when it was still producing sparklers, although it was \*\*\* Diamond during the same period.<sup>19</sup> Elkton’s production of sparklers declined from 1998 to 1999 and, by the end of the first review period, despite its improved profitability, Elkton had ceased all domestic production. Given Elkton’s shift since the last review period from being the primary domestic producer to being \*\*\* an importer of subject product, it appears appropriate to exclude Elkton under the related parties provision. Excluding Elkton’s trade data in this review will have minimal impact on the industry data, as it represented only about \*\*\* percent of U.S. producers’ U.S. shipments in 2004.<sup>20</sup>

We therefore exclude Elkton as a related party and define the domestic industry in this review to consist only of Diamond, the remaining domestic producer of sparklers.

### **III. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF MATERIAL INJURY IF THE ANTIDUMPING DUTY ORDER IS REVOKED**

#### **A. Legal Standard in a Five-Year Review**

In a five-year review conducted under section 751(c) of the Act, Commerce will revoke an antidumping duty order unless: (1) it makes a determination that dumping or subsidization is likely to continue or recur, and (2) the Commission makes a determination that revocation of the antidumping duty order “would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.”<sup>21</sup> The SAA states that “under the likelihood standard, the Commission will engage in a counter-factual analysis; it must decide the likely impact in the reasonably foreseeable future of an important change in the status quo – the revocation or termination of a proceeding and the elimination of its restraining effects on volumes and prices of imports.”<sup>22</sup> Thus, the likelihood standard is prospective in nature.<sup>23</sup> The U.S. Court of International Trade has found that “likely,” as used in the sunset review

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<sup>17</sup> First Five-Year Review Determination (confidential version) at 8.

<sup>18</sup> CR at I-18-19, PR at I-15.

<sup>19</sup> First Five-Year Review CR/PR at Tables III-6, C-2, C-3.

<sup>20</sup> CR at I-21, PR at I-17.

<sup>21</sup> 19 U.S.C. § 1675a(a).

<sup>22</sup> SAA, H.R. Rep. No. 103-316, vol. I, at 883-84 (1994). The SAA states that “[t]he likelihood of injury standard applies regardless of the nature of the Commission’s original determination (material injury, threat of material injury, or material retardation of an industry). Likewise, the standard applies to suspended investigations that were never completed.” SAA at 883.

<sup>23</sup> While the SAA states that “a separate determination regarding current material injury is not necessary,” it indicates that “the Commission may consider relevant factors such as current and likely continued depressed shipment levels and current and likely continued [sic] prices for the domestic like product in the U.S. market in making its determination of the likelihood of continuation or recurrence of material injury if the order is revoked.” SAA at 884.

provisions of the Act, means “probable,” and the Commission applies that standard in five-year reviews.<sup>24</sup>  
25 26 27 28 29

The statute states that “the Commission shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time.”<sup>30</sup> According to

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<sup>24</sup> See NMB Singapore Ltd. v. United States, 288 F. Supp. 2d 1306, 1352 (Ct. Int’l Trade 2003) (“‘likely’ means probable within the context of 19 U.S.C. § 1675(c) and 19 U.S.C. § 1675a(a)”), aff’d without opinion, 05-1019 (Fed. Cir. August 3, 2005); Nippon Steel Corp. v. United States, Slip Op. 02-153 at 7-8 (Ct. Int’l Trade Dec. 24, 2002) (same); Usinor Industeel, S.A. v. United States, Slip Op. 02-152 at 4 n.3 & 5-6 n.6 (Ct. Int’l Trade Dec. 20, 2002) (“more likely than not” standard is “consistent with the court’s opinion”; “the court has not interpreted ‘likely’ to imply any particular degree of ‘certainty’”); Indorama Chemicals (Thailand) Ltd. v. United States, Slip Op. 02-105 at 20 (Ct. Int’l Trade Sept. 4, 2002) (“standard is based on a likelihood of continuation or recurrence of injury, not a certainty”); Usinor v. United States, Slip Op. 02-70 at 43-44 (Ct. Int’l Trade July 19, 2002) (“‘likely’ is tantamount to ‘probable,’ not merely ‘possible’”).

<sup>25</sup> Chairman Koplan agrees with the Court that “‘likely’ means ‘likely’...” Usinor Industeel, S.A. et al v. United States, No. 01-00006, Slip. Op. 02-39 at 13 (Ct. Int’l Trade April 29, 2002). Because Chairman Koplan also agrees that the term “likely” as used in the statute is not ambiguous, he does not believe that the Commission need supply a synonym for it. Nevertheless, were Chairman Koplan to select a synonym for “likely,” he would accept the Court’s conclusion that “likely” is best equated with “probable,” and that it does not mean “possible.” If some event is likely to happen, under common usage of the term, it probably will happen. If one considers the term “probably” to be tantamount to “more likely than not,” then in the context of a sunset review such as this one, upon revocation of the respective orders either injury probably will continue or recur (more likely than not) or it probably will not continue or recur.

<sup>26</sup> Vice Chairman Okun notes that consistent with her dissenting views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” to mean “probable.” See Usinor Industeel, S.A. et al v. United States, No. 01-00006, Slip Op. 02-39 at 13 (Ct. Int’l Trade April 29, 2002). However, she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue. Additional Views of Vice Chairman Deanna Tanner Okun Concerning the “Likely” Standard in Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany, and Italy, Inv. Nos. 731-TA-707-709 (Review)(Remand), USITC Pub. 3754 (Feb. 2005).

<sup>27</sup> Commissioner Hillman interprets the statute as setting out a standard of whether it is “more likely than not” that material injury would continue or recur upon revocation. She assumes that this is the type of meaning of “probable” that the Court intended when the Court concluded that “likely” means “probable”. See Separate Views of Vice Chairman Jennifer A. Hillman Regarding the Interpretation of the Term “Likely”, in Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, The Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom (Views on Remand), Invs. Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review) (Remand), USITC Pub. 3526 (July 2002) at 30-31.

<sup>28</sup> Commissioner Lane notes that, consistent with her views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 (June 2004) at 15-17, she does not concur with the U.S. Court of International Trade’s interpretation of “likely” but she will apply the Court’s standard in this review and all subsequent reviews until either Congress clarifies the meaning or the U.S. Court of Appeals for the Federal Circuit addresses the issue.

<sup>29</sup> While, for purposes of this review, Commissioner Pearson does not take a position on the correct interpretation of “likely,” he notes that he would have made the same determination under any interpretation of “likely” other than equating “likely” with merely “possible.” See Commissioner Pearson’s dissenting views in Pressure Sensitive Plastic Tape from Italy, Inv. No. AA1921-167 (Second Review), USITC Pub. 3698 at 15-17 (June 2004).

<sup>30</sup> 19 U.S.C. § 1675a(a)(5).

the SAA, a “‘reasonably foreseeable time’ will vary from case-to-case, but normally will exceed the ‘imminent’ timeframe applicable in a threat of injury analysis in original investigations.”<sup>31 32</sup>

Although the standard in a five-year review is not the same as the standard applied in an original antidumping duty investigation, it contains some of the same fundamental elements. The statute provides that the Commission is to “consider the likely volume, price effect, and impact of imports of the subject merchandise on the industry if the orders are revoked or the suspended investigation is terminated.”<sup>33</sup> It directs the Commission to take into account its prior injury determination, whether any improvement in the state of the industry is related to the order or the suspension agreement under review, whether the industry is vulnerable to material injury if the orders are revoked or the suspension agreement is terminated, and any findings by Commerce regarding duty absorption pursuant to 19 U.S.C. § 1675(a)(4).<sup>34</sup>

## **B. Conditions of Competition**

In evaluating the likely impact of the subject imports on the domestic industry, the statute directs the Commission to consider all relevant economic factors “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”<sup>35</sup> The following conditions of competition are relevant to our determination.

In the first five-year review, the Commission found that certain conditions of competition were unchanged from the original investigation and that others had developed since that time. It described the demand for sparklers as seasonal, with the majority of sales occurring in the spring for Fourth of July celebrations, and the market as mature, with no new uses developed or likely to develop in the reasonably foreseeable future. It noted that conditions such as weather and safety concerns could affect demand and that sales of assortment packages, including other fireworks in addition to sparklers, accounted for a significant portion of sales. Apparent U.S. consumption had declined since the original investigation, and the domestic industry had shrunk from three producers to two. Nonsubject imports had increased their presence in the U.S. market. Purchasers viewed quality and price as the two most important

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<sup>31</sup> SAA at 887. Among the factors that the Commission should consider in this regard are “the fungibility or differentiation within the product in question, the level of substitutability between the imported and domestic products, the channels of distribution used, the methods of contracting (such as spot sales or long-term contracts), and lead times for delivery of goods, as well as other factors that may only manifest themselves in the longer term, such as planned investment and the shifting of production facilities.” *Id.*

<sup>32</sup> In analyzing what constitutes a reasonably foreseeable time, Chairman Koplan examines all the current and likely conditions of competition in the relevant industry. He defines “reasonably foreseeable time” as the length of time it is likely to take for the market to adjust to a revocation or termination. In making this assessment, he considers all factors that may accelerate or delay the market adjustment process including any lags in response by foreign producers, importers, consumers, domestic producers, or others due to: lead times; methods of contracting; the need to establish channels of distribution; product differentiation; and any other factors that may only manifest themselves in the longer term. In other words, this analysis seeks to define “reasonably foreseeable time” by reference to current and likely conditions of competition, but also seeks to avoid unwarranted speculation that may occur in predicting events into the more distant future.

<sup>33</sup> 19 U.S.C. § 1675a(a)(1).

<sup>34</sup> 19 U.S.C. § 1675a(a)(1). There have been no duty absorption findings by Commerce with respect to the order under review. CR/PR at I-6. The statute further provides that the presence or absence of any factor that the Commission is required to consider shall not necessarily give decisive guidance with respect to the Commission’s determination. 19 U.S.C. § 1675a(a)(5). While the Commission must consider all factors, no one factor is necessarily dispositive. SAA at 886.

<sup>35</sup> 19 U.S.C. § 1675a(a)(4).

considerations in purchasing decisions. They generally found the quality of U.S. product and subject imports to be comparable, and subject imports to be lower priced.<sup>36</sup>

The domestic producers state that there have been no significant changes in the conditions of competition since 1999, including the product, demand patterns, and technology, nor are any likely to occur within a reasonably foreseeable time.<sup>37</sup>

Sparklers continue to be made using simple, minimal technology, sales are highly seasonal, and the product is sold either in individual packages of sparklers only or in multi-packs that include fireworks assortments.<sup>38</sup> Public data indicate that since the first review, certain new products have been developed, including Elkton's Easy-Lite sparklers that light in 1.5 seconds, whistling sparklers, and crackling sparklers. Chinese manufacturers have reportedly sold whistling sparklers and crackling sparklers into the U.S. market.<sup>39</sup>

Despite some product innovation, the market for sparklers is mature, and demand is relatively stable. U.S. demand continues to be highly seasonal, reaching peak levels near the Fourth of July holiday, although sparklers have been used increasingly at other events and celebrations such as weddings in recent years.<sup>40</sup> The demand for sparklers is influenced by the level of consumer spending on fireworks and devices for celebrations, as well as factors such as safety concerns and weather conditions.<sup>41</sup>

U.S. production, which in the first review period had decreased since the original investigation, decreased further in the second review period, to \*\*\* sparklers in 2004, from a low during the first review period of \*\*\* sparklers in 1999 and a low during the original investigation period of 57.5 million sparklers in 1990. The U.S. industry produced 137.6 million sparklers in 1988.<sup>42</sup> As noted, of Elkton's U.S. shipments in 2004, \*\*\* sparklers were subject imports, while only \*\*\* sparklers were U.S. production.<sup>43</sup> Diamond now accounts for \*\*\* U.S. production, but its production levels continue to decline, both since the original investigation and first review. Diamond's production in 2004 was \*\*\* sparklers as compared to \*\*\* sparklers in 1999.<sup>44</sup> At its peak, Diamond reportedly produced up to 1.5 million sparklers a day and employed 150 workers, but today reportedly employs only 18 full-time workers and 40 additional temporary workers during peak season.<sup>45</sup> Diamond now \*\*\*.<sup>46</sup>

According to Elkton, it was forced to cease U.S. production in 1999 "due to its inability to compete with low-priced subject imports" and switched to importing sparklers from China. It has since resumed a \*\*\* level of U.S. production and asserts that, "while it currently remains a small U.S. producer in comparison with Diamond Sparkler, Elkton hopes to increase its production in the foreseeable future."<sup>47</sup>

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<sup>36</sup> First Five-Year Review Determination, USITC Pub. 3317 at 8-9.

<sup>37</sup> Diamond's Response to Notice of Institution (July 21, 2005) at 4; Elkton's Response to Notice of Institution (July 21, 2005) at 8.

<sup>38</sup> CR at I-13, I-15, I-28; PR at I-11, I-13, I-22-23.

<sup>39</sup> CR at I-10, n.34; PR at I-9, n.34.

<sup>40</sup> CR at I-28, PR at I-22-23.

<sup>41</sup> CR at I-28, PR at I-22-23.

<sup>42</sup> CR/PR at Table I-2.

<sup>43</sup> CR at I-19, I-21; PR at I-15, I-17.

<sup>44</sup> CR at I-21, PR at I-17.

<sup>45</sup> CR at I-21, n.80; PR at I-17, n.80 (citing a news article on Diamond's website).

<sup>46</sup> CR at I-15, PR at I-12.

<sup>47</sup> Elkton's Response to Notice of Institution (July 21, 2005) at 8.

New Jersey Fireworks, the \*\*\* U.S. producer during the original investigation,<sup>48</sup> was sold to a former Canadian importer of sparklers at the end of 1990, and was reported during the first review to have ceased production and to be importing sparklers from India. Its facilities were reportedly being used as a packaging plant for fireworks (but not necessarily sparklers) as recently as July 2004.<sup>49</sup>

Since the first review, both Diamond and Elkton have received disbursements under the Continued Dumping and Subsidy Offset Act of 2000, 19 U.S.C. § 1675c (“Byrd Amendment”).<sup>50</sup>

The domestic producers identified three sparkler producers in China, Guangxi Native Produce Import & Export Corp., Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Co., and Jiangxi Native Produce Import & Export Corp. There were 20 producers of sparklers in China during the original investigation. A public source lists 16 current manufacturers/exporters of fireworks in China.<sup>51</sup>

Subject imports from China not only maintained a sizeable presence in the U.S. market during the instant review period, but also appear to have increased since the first review period, despite the order.<sup>52</sup> Sources of nonsubject imports in the U.S. market, as reported in the first review, include Mexico, India, Bolivia, and Indonesia.<sup>53</sup> While China accounted for the vast majority of total U.S. imports of sparklers during the original investigation and most reported U.S. imports during the first review period, current data on nonsubject imports, and hence the current level of apparent U.S. consumption, are not available in this expedited review.<sup>54</sup>

As stated in the first review, purchasers view quality and price as the two most important considerations in purchasing decisions. They generally perceive the quality of U.S. and Chinese sparklers to be comparable, but find Chinese sparklers to be lower priced than the domestic product.<sup>55</sup> Customers, in addition, are now able to obtain pricing and shipment information directly from Chinese suppliers via the internet.<sup>56</sup>

We find that these conditions of competition in the sparklers market provide us with a reasonable basis on which to assess the likely effects of revocation of the order.

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<sup>48</sup> CR at I-17, PR at I-14.

<sup>49</sup> CR at I-30, PR at I-23-24.

<sup>50</sup> CR/PR at Table I-1.

<sup>51</sup> CR at I-32, PR at I-26.

<sup>52</sup> CR/PR at Table I-3.

<sup>53</sup> CR at I-30, PR at I-26.

<sup>54</sup> CR at I-28, I-31; PR at I-23-24.

<sup>55</sup> First Five-Year Review Determination, USITC Pub. 3317 at 9.

<sup>56</sup> CR at I-15, PR at I-12.

### C. Likely Volume of Subject Imports

In evaluating the likely volume of imports of subject merchandise if the antidumping duty orders are revoked, the Commission is directed to consider whether the likely volume of imports would be significant either in absolute terms or relative to production or consumption in the United States.<sup>57</sup> In doing so, the Commission must consider “all relevant economic factors,” including four enumerated factors: (1) any likely increase in production capacity or existing unused production capacity in the exporting country; (2) existing inventories of the subject merchandise, or likely increases in inventories; (3) the existence of barriers to the importation of the subject merchandise into countries other than the United States; and (4) the potential for product shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products.<sup>58</sup>

In the original investigation, the Commission found that the absolute volume of subject imports increased, from 145.0 million sparklers in 1988 to 205.7 million sparklers in 1990. It also found that subject import market share rose dramatically, from 55.7 percent in 1988 to 76.2 percent in 1990, and that the U.S. industry lost market share to the subject imports.<sup>59</sup>

In the first five-year review, the Commission found that the likely volume of subject imports would be significant if the order were revoked. Although no subject country producers or exporters provided information to the Commission in the first review, the Commission noted that subject imports had maintained a substantial presence in the U.S. market even with the orders in place. They attributed the decrease in volume as compared to the original investigation period to the restraining effect of the order. The Commission reasoned that the record of the first review did not indicate that Chinese capacity had declined since the original investigation, that the sparkler industry in China appeared to still be export-oriented, that the rapid increase in subject imports during the original investigation period demonstrated the Chinese producers’ ability to rapidly increase shipments to the United States, and that it would not be technically difficult for Chinese producers to shift production from other fireworks to sparklers in the event of revocation.<sup>60</sup>

We find that the volume of subject imports would likely be significant if the order were revoked. Subject imports have maintained a sizeable presence in the U.S. market despite the order and as recently as the first review period accounted for the majority of U.S. imports.<sup>61</sup> Moreover, subject imports from China are estimated to have increased since the first review, to \*\*\* sparklers in 2004, from \*\*\* sparklers in 1999, despite the antidumping duty order.<sup>62</sup> We note that imports from China under the broad HTS statistical reporting number that includes other fireworks in addition to sparklers (3604.10.9010) have increased, from 57.8 million kilograms in 2000 to 94.3 million kilograms in 2004<sup>63</sup> and that trend is likely the same for the narrower category of sparklers as well.<sup>64</sup>

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<sup>57</sup> 19 U.S.C. § 1675a(a)(2).

<sup>58</sup> 19 U.S.C. § 1675a(a)(2)(A-D).

<sup>59</sup> Original Determination, USITC Pub. 2387 at 11-13.

<sup>60</sup> First Five-Year Review Determination, USITC Pub. 3317 at 9-10.

<sup>61</sup> CR at I-28, Table I-4; PR at I-23, Table I-4.

<sup>62</sup> CR/PR at Table I-3.

<sup>63</sup> CR at I-24, PR at I-19.

<sup>64</sup> Elkton’s Response to Notice of Institution at 3, Final Comments (October 12, 2005) at 3; Diamond’s Supplemental Response to Notice of Institution at 2-3.

In addition, given that the current level of subject imports, at \*\*\* sparklers, is higher than current U.S. production, at \*\*\* sparklers, subject imports' U.S. market share already exceeds that of the domestic industry and would be likely to increase even further if the order were revoked.<sup>65</sup>

The domestic producers further assert that the Chinese industry remains export-oriented and the record does not indicate that their capacity has declined since the original investigation.<sup>66</sup> Moreover, because sparkler production is simple and labor intensive, it would not be technically difficult for the Chinese producers to shift production to sparklers, given their large labor force,<sup>67</sup> and increase exports to the United States if the order were revoked.

Diamond also alleges that Chinese exporters are evading the current order by including sparklers in fireworks assortments and by mislabeling their exports. The apparent current level of subject imports may thus be understated.<sup>68</sup>

Based on the foregoing, we find that the likely volume of subject imports, if the order is revoked, would be significant, both in absolute terms and relative to consumption and production in the United States.

#### **D. Likely Price Effects of Subject Imports**

In evaluating the likely price effects of subject imports if the antidumping duty order is revoked, the Commission is directed to consider whether there is likely to be significant underselling by the subject imports as compared to the domestic like product and whether the subject imports are likely to enter the United States at prices that otherwise would have a significant depressing or suppressing effect on the price of the domestic like product.<sup>69</sup>

In the original determination, the Commission found that the overall decline in the average unit prices of sparklers was attributable to the increasing market share of the subject imports, which were concentrated at the lower end of the size and per unit price ranges. It further found a clear and consistent pattern of underselling by the subject imports and evidence of lost sales and lost revenues. It noted that certain purchasers stated that price was the motivating factor in their purchase decisions.<sup>70</sup>

In the first five-year review, the Commission found that, given the importance of price as a factor in purchasing decisions and the comparable quality of Chinese and U.S. sparklers, subject imports would likely continue to undersell the domestic like product at increasing margins in order to increase exports to the United States at prices that would likely have a significant depressing or suppressing effect on domestic prices. It noted that, even with the order in place, subject imports undersold the domestic product.<sup>71</sup>

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<sup>65</sup> CR/PR at Tables I-2, I-5.

<sup>66</sup> Elkton's Response to Notice of Institution at 3, Final Comments at 3; Diamond's Supplemental Response to Notice of Institution at 2-3.

<sup>67</sup> While the records from the original investigation and first review indicate that U.S. producers \*\*\* (CR at I-15, n.57; PR at I-13, n.57; First Five-Year Review CR at II-3, n.4, PR at II-n.4), this does not appear to be the case for the subject country producers. First Five-Year Review Determination, USITC Pub. 3317 at 9-10.

<sup>68</sup> Diamond's Supplemental Response to Notice of Institution at 3.

<sup>69</sup> 19 U.S.C. § 1675a(a)(3). The SAA states that "[c]onsistent with its practice in investigations, in considering the likely price effects of imports in the event of revocation and termination, the Commission may rely on circumstantial, as well as direct, evidence of the adverse effects of unfairly traded imports on domestic prices." SAA at 886.

<sup>70</sup> Original Determination, USITC Pub. 2387 at 13-14.

<sup>71</sup> First Five-Year Review Determination, USITC Pub. 3317 at 11.

While quality is an important consideration in purchasing decisions, purchasers view the quality of domestically produced sparklers and imports from China as comparable.<sup>72</sup> Price therefore continues to be a key element in purchasing decisions and subject imports appear to continue to undersell the domestic product despite the order. While we are mindful of possible product mix issues, the record of this review indicates that the average unit value of the subject imports utilized in the Commission’s report continues to be lower than the average unit value of the U.S. producers’ U.S. shipments.<sup>73</sup> Moreover, Chinese suppliers’ increasing use of the internet to make pricing information readily available to U.S. customers underscores the price competitiveness of the subject imports.<sup>74 75</sup>

We thus find that, if the order is revoked, the subject imports would likely undersell the U.S. product in order to gain even more U.S. market share, forcing U.S. producers to lower their prices to avoid further declines in their production and shipment levels.

We therefore conclude that, if the order is revoked, the likely significant increase in subject import volume at prices that would likely undersell the U.S. product would be likely to have significant adverse price effects on U.S. producers.

### **E. Likely Impact of Subject Imports**

In evaluating the likely impact of imports of subject merchandise if the antidumping duty order is revoked, the Commission is directed to consider all relevant economic factors that are likely to have a bearing on the state of the industry in the United States, including but not limited to: (1) likely declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity; (2) likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment; and (3) likely negative effects on the existing development and production efforts of the industry, including efforts to develop a derivative or more advanced version of the domestic like product.<sup>76</sup> All relevant economic factors are to be considered within the context of the business cycle and the conditions of competition that are distinctive to the industry.<sup>77</sup> As instructed by the statute, we have considered the extent to which any improvement in the state of the domestic industry is related to the order at issue and whether the industry is vulnerable to material injury if the order is revoked.<sup>78</sup>

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<sup>72</sup> CR at I-13, PR at I-11.

<sup>73</sup> CR/PR at Tables I-2, I-3.

<sup>74</sup> CR at I-15, PR at I-12.

<sup>75</sup> Diamond further argues that the Chinese producers’ failure to participate in any administrative reviews of the antidumping margins originally found by Commerce is an indication that the rate of underselling is actually much higher than Commerce’s margins. Diamond’s Supplemental Response to Notice of Institution at 3. We did not consider this argument in our affirmative determination.

<sup>76</sup> 19 U.S.C. § 1675a(a)(4).

<sup>77</sup> 19 U.S.C. § 1675a(a)(4). Section 752(a)(6) of the Act states that “the Commission may consider the magnitude of the margin of dumping or the magnitude of the net countervailable subsidy” in making its determination in a five-year review. 19 U.S.C. § 1675a(a)(6). The statute defines the “magnitude of the margin of dumping” to be used by the Commission in five-year reviews as “the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.” 19 U.S.C. § 1677(35)(C)(iv). See also SAA at 887. In the final results of its expedited sunset review of the antidumping order, Commerce published likely dumping margins of 41.75 percent for Guangxi Native Produce Import & Export Corp., Behai Fireworks and Firecrackers Branch, and 93.54 percent for all other companies. CR at I-6, PR at I-5.

<sup>78</sup> The SAA states that in assessing whether the domestic industry is vulnerable to injury if the order is revoked, the Commission “considers, in addition to imports, other factors that may be contributing to overall injury. While  
(continued...)

In the original determination the Commission found that the U.S. sparkler industry was materially injured by reason of the subject imports, based on the decline in U.S. production, shipments, employment, market share, and financial indicators, as U.S. consumption increased and the subject imports gained market share and caused adverse price effects.<sup>79</sup>

In the first five-year review, the Commission found that material injury would likely continue or recur were the antidumping order to be revoked, based on a likely “increase in subject imports selling at even lower prices in a market that is already experiencing a decline in demand.” The Commission found the industry vulnerable, despite the increase in U.S. producers’ market share, given the loss of one producer and the significant decline in Diamond’s sales from 1998 to 1999.<sup>80</sup>

The domestic producers in this review contend that material injury is likely to recur were the antidumping duty order to be revoked, given the likely increase in subject import volume and likely price effects.

Diamond states that it is “the last legitimate sparkler producer in the United States,” given that Elkton’s production is likely to be very low, and doubts that it would survive revocation of the order.<sup>81</sup> It does not address vulnerability.<sup>82</sup>

While there is no current financial information available on the U.S. industry, the record does show that the U.S. industry’s U.S. shipments have declined substantially since the first review, due to its significantly reduced production levels.<sup>83</sup> Indeed, the U.S. industry today is a shadow of its former self. Since the original investigation, the industry has shrunk from three producers to essentially one producer. Its production level has decreased from \*\*\* sparklers in 1988 to \*\*\* sparklers in 2004.<sup>84</sup> Employment has also plummeted. Diamond, which at its peak reportedly employed 150 workers, today reportedly employs only 18 full-time workers and 40 additional temporary workers during peak season, down from an industry total of \*\*\* full-time workers in 1988 and \*\*\* workers in 1998.<sup>85</sup> Diamond reports that it “struggles each year to make a profit.”<sup>86</sup> Given the steady decline in most of the industry’s performance

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<sup>78</sup> (...continued)

these factors, in some cases, may account for the injury to the domestic industry, they may also demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.” SAA at 885.

<sup>79</sup> Original Determination, USITC Pub. 2387 at 11-14.

<sup>80</sup> First Five-Year Review Determination, USITC Pub. 3317 at 12.

<sup>81</sup> Diamond’s Supplemental Response at 3-4.

<sup>82</sup> Elkton, which is primarily an importer and which we have excluded as a related party, asserts that the evidence on the record indicates that the U.S. industry remains in a vulnerable condition. It describes its position in the U.S. marketplace as tenuous, despite its resumption of U.S. production, and asserts that, without the protection of the antidumping order, it will be forced to again shut down U.S. production and return to solely importing sparklers to fill its product line. Elkton’s Response to Notice of Institution at 4, Final Comments at 5.

<sup>83</sup> CR at I-21, PR at I-17.

<sup>84</sup> CR/PR at Table I-2.

<sup>85</sup> CR at I-21, n.80; PR at I-17, n.80; CR/PR at Table C-1.

<sup>86</sup> CR at I-23, PR at I-18 (citing a news article on Diamond’s website). A November 2002 news article also reported that the \$1.6 million Diamond received in disbursements under the Byrd Amendment “put [it] in the black for the first time in years.” Id.

indicators since the order went into effect<sup>87</sup> and its current precarious situation, we find the domestic industry to be vulnerable.

We have found that subject import volume is likely to be significant if the order is revoked, resulting in likely significant price effects, and that the industry is vulnerable to material injury. We therefore conclude that revocation of the antidumping duty order would be likely to lead to significant declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, likely negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, and likely negative effects on the domestic industry's development and production efforts within a reasonably foreseeable time.

## **CONCLUSION**

For the foregoing reasons, we determine that revocation of the antidumping duty order on sparklers from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

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<sup>87</sup> In the first review period, although the profitability of the industry as a whole, and of Diamond in particular, rose, due primarily to higher sales values and lower costs, most of the performance indicators of Diamond, as well as of the industry as a whole, declined, including U.S. market share, production quantity, capacity utilization, the quantity of U.S. shipments and net sales, and the number of workers. First Five-Year Review CR/PR at Tables C-1, C-3.



**INFORMATION OBTAINED IN THE SECOND REVIEW**



## INTRODUCTION

### Background

On June 1, 2005, in accordance with section 751(c) of the Tariff Act of 1930, as amended,<sup>1</sup> the U.S. International Trade Commission (“Commission”) gave notice that it had instituted a review to determine whether revocation of the antidumping duty order on sparklers from China would be likely to lead to a continuation or recurrence of material injury within a reasonably foreseeable time.<sup>2</sup> On September 7, 2005, the Commission determined that the domestic interested party response to its notice of institution was adequate;<sup>3</sup> the Commission also determined that the respondent interested party response was inadequate.<sup>4</sup> The Commission found no other circumstances that would warrant conducting a full review.<sup>5</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930.<sup>6 7</sup> The Commission voted on this review on November 2, 2005, and notified the U.S. Department of Commerce (“Commerce”) of its determination on November 15, 2005. Information relating to the background of the review is presented below:<sup>8</sup>

| Effective date                            | Action  | Federal Register citation    |
|---|---|------------------------------|
| June 18, 1991                             | Commerce’s antidumping duty order   | 56 FR 27946, June 18, 1991   |
| July 29, 1993                             | Amendment to Commerce’s antidumping duty order                                      | 58 FR 40624, July 29, 1993   |
| July 13, 2000                             | Commerce’s continuation of antidumping duty order after first full five-year review | 65 FR 52985, August 31, 2000 |
| June 1, 2005                              | Commission’s institution of second five-year review                                 | 70 FR 31537, June 1, 2005    |
| <i>Tabulation continued on next page.</i> |   |                              |
| <i>Continuation.</i>                      |   |                              |

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<sup>1</sup> 19 U.S.C. 1675(c).

<sup>2</sup> 70 FR 31537, June 1, 2005. All interested parties were requested to respond to this notice by submitting the information requested by the Commission. The Commission’s notice of institution is presented in app. A.

<sup>3</sup> The Commission received two submissions in response to its notice of institution for the subject review (hereinafter “Responses”). They were filed on behalf of Diamond Sparkler Manufacturing Co., Inc. (“Diamond”) and Elkton Sparkler Co., Inc. (“Elkton”). Diamond is represented by the law firm of Baker & Hostetler LLP and Elkton is represented by the law firm of Barnes, Richardson and Colburn. Diamond and Elkton indicated in their responses that they are the only domestic producers of sparklers. Responses of Diamond (p. 2) and Elkton (p. 5). Elkton reported that it is also an importer of the subject merchandise from China. It is in support of the continuation of the antidumping duty order on sparklers from China. Response of Elkton, pp. 1-2.

<sup>4</sup> The Commission did not receive any responses to its notice of institution from respondent interested parties.

<sup>5</sup> The Commission’s statement on adequacy is presented in app. B.

<sup>6</sup> 19 U.S.C. § 1675(c)(3).

<sup>7</sup> Commissioner Pearson dissented and Commissioner Aranoff did not participate.

<sup>8</sup> Cited *Federal Register* notices beginning with the Commission’s institution of a second five-year sunset review are presented in app. A.

|                   |   |                                 |
|-------------------|---|---------------------------------|
| September 7, 2005 | Commission's determination to conduct expedited second five-year review | 70 FR 55164, September 20, 2005 |
| October 6, 2005   | Commerce's notice of final results of expedited sunset review           | 70 FR 58382, October 6, 2005    |
| November 2, 2005  | Commission's vote   | Not applicable                  |
| November 15, 2005 | Commission's determination sent to Commerce                             | Not applicable                  |

### **The Original Investigation and First Full Five-Year Review**

On July 2, 1990, a petition was filed with Commerce and the Commission alleging that an industry in the United States was materially injured by reason of less-than-fair-value imports of sparklers from China.<sup>9</sup> On May 6, 1991, Commerce made a final affirmative dumping determination, with margins as follows: Guangxi/Behai<sup>10</sup> (1.64 percent), Hunan<sup>11</sup> (93.54 percent), Jiangxi/Guangzhou<sup>12</sup> (65.78 percent), and all others (75.88 percent).<sup>13</sup> The Commission made its final affirmative injury finding that an industry in the United States was materially injured by reason of imports from China of sparklers on June 10, 1991 (hereinafter "original" or "final investigation")<sup>14</sup> and Commerce issued an antidumping duty order on June 18, 1991. On July 29, 1993, Commerce amended its margins as follows: Guangxi/Behai (to 41.75 percent), Hunan (no change at 93.54 percent), Jiangxi/Guangzhou (to 93.54 percent), and all others (to 93.54 percent).<sup>15</sup>

On July 1, 1999, the Commission instituted the first five-year sunset review (64 FR 35689). On October 1, 1999, the Commission determined that it should proceed to a full review (64 FR 55960, October 15, 1999).<sup>16</sup> On February 3, 2000, Commerce found that revocation of the antidumping duty order on sparklers from China would likely lead to continuation or recurrence of dumping as follows: Guangxi/Behai (41.75 percent), Hunan (93.54 percent), Jiangxi/Guangzhou (93.54 percent), and all others (93.54 percent).<sup>17</sup> On July 6, 2000, the Commission completed a full five-year review of the

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<sup>9</sup> The petition was filed by Diamond (Youngstown, OH) and Elkton (North East, MD).

<sup>10</sup> Guangxi Native Produce Import & Export Corp., Behai Fireworks and Firecracker Branch.

<sup>11</sup> Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Co.

<sup>12</sup> Jiangxi Native Produce Import & Export Corp., Guangzhou Fireworks Co.

<sup>13</sup> 56 FR 20588, May 6, 1991.

<sup>14</sup> *Sparklers From the People's Republic of China: Inv. No. 731-TA-464 (Final)*, USITC Pub. 2387, June 1991, p. 1.

<sup>15</sup> The amendment was in accordance with *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990).

<sup>16</sup> The Commission determined that the domestic interested party group response was adequate in the first five-year review. Because no respondent interested party other than Elkton responded to the notice of institution in the first five-year review, and Elkton accounted for only a *de minimis* share of the subject imports, the Commission determined that the respondent interested party group response was inadequate. However, the Commission determined to exercise its discretion to conduct a full review based upon information received from the parties regarding structural changes that were taking place in the U.S. industry.

<sup>17</sup> 65 FR 5312, February 16, 2000.

antidumping duty order (hereinafter “first review”)<sup>18</sup> in which it determined that revocation of the order on sparklers from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>19</sup> Subsequently, Commerce issued a continuation of antidumping duty order.<sup>20</sup>

### Commerce’s Final Results of Second Expedited Sunset Review

On October 6, 2005, Commerce published its *Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order* concerning the subject sparklers. Commerce determined that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| Manufacturer/exporter   | Margin (percent) |
|---|------------------|
| Guangxi Native Produce Import & Export Corp., Behai Fireworks and Firecrackers Branch | 41.75            |
| Hunan Provincial Firecrackers & Fireworks Import & Export Corp.                       | 93.54            |
| Jiangxi Native Produce Import & Export Corp., Guangzhou Fireworks Co.                 | 93.54            |
| China-wide  | 93.54            |

### Commerce’s Administrative Reviews<sup>21</sup>

Commerce has conducted four administrative reviews of the antidumping duty order on sparklers from China, as shown in the following tabulation:

| Period of review | Date review issued             | Margin (percent)   |
|------------------|--------------------------------|--------------------|
| 6/1/92 - 5/31/93 | March 31, 1995 (60 FR 16605)   | 93.54 <sup>1</sup> |
| 6/1/93 - 5/31/94 | October 23, 1995 (60 FR 54335) | 94.54 <sup>2</sup> |
| 6/1/94 - 5/31/95 | July 30, 1996 (61 FR 39630)    | 93.54 <sup>1</sup> |
| 6/1/98 - 5/31/99 | July 13, 2000 (65 FR 43293)    | 93.54              |

<sup>1</sup> Rate applies to Guangxi/Behai and to all others; Hunan and Jiangxi/Guangzhou were not reviewed.

<sup>2</sup> Rate applies to Guangxi/Behai. The rate for all others is 93.54 and Hunan and Jiangxi/Guangzhou were not reviewed.

<sup>18</sup> In response to its notice of institution, the Commission received responses from two domestic producers: (1) Diamond, which supported the continuation of the order, and (2) Elkton, which sought the revocation of the order. Elkton was also identified as an importer of the subject merchandise from China. No other responses were received by the Commission during the first review.

<sup>19</sup> 65 FR 41728, July 6, 2000. See also *Sparklers From China: Inv. No. 731-TA-464 (First Review)*, USITC Pub. 3317, July 2000, p. 1.

<sup>20</sup> 65 FR 52985, August 31, 2000. The effective date of Commerce’s continuation order was July 13, 2000.

<sup>21</sup> On September 20, 1993, Commerce announced its “Termination of Antidumping Duty Administrative Review” (58 FR 48849) for the period of December 17, 1990 through May 31, 1992.

No administrative reviews were conducted during the period examined in Commerce’s second five-year sunset review. In addition, no changed circumstances reviews or duty absorption reviews have been conducted.<sup>22</sup> Diamond states that “the Chinese producers have not participated in any administrative reviews at Commerce ... and have accepted the 93.54 percent ‘facts available’ rate.” They argue that this “leads the reasonable person to assume that the real rate of underselling is much higher than 93.54 percent.”<sup>23</sup>

### **Antidumping Duties Collected**

Since September 21, 2001, qualified U.S. producers of sparklers have been eligible to receive disbursements from U.S. Customs and Border Protection (“Customs”) under the Continued Dumping and Subsidy Offset Act of 2000 (“CDSOA”), also known as the Byrd Amendment.<sup>24</sup> Table I-1 presents CDSOA claims and disbursements for federal fiscal years 2001-04.<sup>25</sup>

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<sup>22</sup> Duty absorption inquiries may not be conducted on pre-Uruguay Round Agreement Act orders. Commerce’s *Issues and Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Sparklers from the People’s Republic of China*, p. 2.

<sup>23</sup> *Supplemental Response* of Diamond, p. 3.

<sup>24</sup> 19 CFR 159.64(g).

<sup>25</sup> The following tabulation lists actual duties collected prior to the implementation of the CDSOA along with total imports:

| Item                                   | Federal fiscal year <sup>1</sup> |       |       |       |       |
|--|----------------------------------|-------|-------|-------|-------|
|  | 1994                             | 1995  | 1996  | 1997  | 1998  |
| Total duties collected (1,000 dollars) | 452.7                            | 334.5 | 458.7 | 281.3 | 371.8 |
| Total imports (1,000 dollars)          | 646.1                            | 441.0 | 532.9 | 375.9 | 438.7 |
| Duties as a share of imports (percent) | 70.1                             | 75.9  | 86.1  | 74.8  | 84.8  |

<sup>1</sup> The Federal fiscal year is October 1-September 30.

Source: *U.S. Customs Service Annual Report, Part A* (as cited in the *Staff Report of June 9, 2000* (First Review), p. I-8).

Data for fiscal years 1999 and 2000 are not available.

**Table I-1**

**Sparklers from China: CDSOA claims and disbursements, federal fiscal years 2001-04<sup>1</sup>**

| Claimant            | Share of allocation | Amount of claim filed <sup>2</sup> | Amount disbursed |
|---------------------|---------------------|------------------------------------|------------------|
|                     | <i>Percent</i>      | <i>Dollars</i>                     |                  |
| FY 2001:<br>Diamond | 100.000             | 3,506,474                          | 1,582,575        |
| FY 2002:<br>Diamond | 32.512              | 2,027,387                          | 291,230          |
| Elkton              | 67.488              | 4,208,489                          | 604,541          |
| Total               | 100.000             | 6,235,876                          | 895,771          |
| FY 2003:<br>Diamond | 35.9032             | 2,018,712                          | 245,465          |
| Elkton              | 64.0968             | 3,603,947                          | 438,221          |
| Total               | 100.0000            | 5,622,659                          | 683,686          |
| FY 2004:<br>Diamond | 38.583              | 2,082,717                          | 205,586          |
| Elkton              | 61.417              | 3,315,288                          | 327,254          |
| Total               | 100.000             | 5,398,005                          | 532,840          |

<sup>1</sup> The Federal fiscal year is October 1-September 30.  
<sup>2</sup> Qualifying expenditures incurred by domestic producers since the issuance of the order.

Source: Customs' CDSOA Annual Reports.

## THE PRODUCT<sup>26</sup>

### Scope

The imported product covered by this review is sparklers, which were defined by Commerce in its notice of final results of its expedited sunset review (“final results notice”) as “fireworks each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning.”<sup>27</sup> The merchandise under review was listed in Commerce’s notice of continuation of its antidumping duty order (in the first review) as classifiable under Harmonized Tariff Schedule of the United States (“HTS”) subheading 3604.10.90 (statistical reporting number 3604.10.9010).<sup>28</sup> HTS

<sup>26</sup> All internet articles and other websites cited within this report were retrieved as of September 22 through September 28, 2005, unless otherwise noted.

<sup>27</sup> 65 FR 52985, August 31, 2000. Subsequent to the imposition of the antidumping duty order, Commerce determined that Fritz Companies, Inc.’s 14 inch Morning Glory products are outside the order. 60 FR 36782, July 18, 1995. *Staff Report of June 9, 2000* (First Review), p. II-5. See the section of this report entitled “Description and Uses” for a further description of Morning Glories.

<sup>28</sup> HTS statistical reporting number 3604.10.9010, which was established in 1996, covers consumer fireworks. Consumer fireworks are small fireworks devices designed for use by the public (see 27 CFR 555.11, Bureau of

(continued...)

subheading 3604.10.90 is dutiable at a column 1-general rate of 5.3 percent *ad valorem* applicable to products of China.<sup>29</sup> Commerce indicated in its final results notice that it had reviewed the current HTS categories and that sparklers may also be classified in HTS statistical reporting numbers 3604.10.1000<sup>30</sup> (display or special fireworks) and 3604.10.9050 (fireworks other than display or special fireworks, not including class 1.4G). The HTS classifications are provided for convenience and for Customs purposes; the written description remains dispositive as to the scope of the product coverage.

### **Domestic Like Product and Domestic Industry**

In its original determination and first review determination, the Commission defined the like product as all domestically produced sparklers and it defined the domestic industry as all domestic producers of sparklers.<sup>31</sup> In its response to the Commission's notice of institution in this second review, Elkton indicated that it agreed with the Commission's definitions of domestic like product and domestic industry.<sup>32</sup> Diamond did not provide a position on the Commission's definitions in its response.<sup>33</sup>

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<sup>28</sup> (...continued)

ATF). They fall in classification 1.4G or UN0336 (formerly known as "Class C" or "Common" fireworks). A wide variety of devices (including smokes, roman candles, fountains, snakes, popper rockets, and salutes along with sparklers) are included within the category. Consumer fireworks must be tested and approved by the Consumer Product Safety Commission (CPSC) (*see* 16 CFR 1500, 1507) and must meet certain labeling requirements. Among other regulations, consumer fireworks cannot be sensitive to friction or shock, and can only contain 500 grams of pyrotechnic composition and no more than 130 milligrams of flash powder in aerial effects." *See* <http://www.pyrouniverse.com/glossary.htm>.

<sup>29</sup> Imports of these products are eligible for duty-free entry from beneficiary countries under provisions of the Generalized System of Preferences, the United States-Australia Free Trade Agreement, the North American Free Trade Agreement, the United States-Chile Free Trade Agreement, the Caribbean Basin Economic Recovery Act, the United States-Israel Free Trade Area, the Andean Trade Preference Act, and the United States-Jordan Free Trade Area Implementation Act. These products also have a reduced duty rate of 2.5 percent *ad valorem* under the provisions of the United States-Singapore Free Trade Agreement. The 2005 column 2 rate of duty, applicable to countries listed in HTS general note 3(b), is 12.5 percent *ad valorem*.

<sup>30</sup> HTS subheading 3604.10.10 is dutiable at a column 1-general rate of 2.4 percent *ad valorem*.

<sup>31</sup> The Commission stated in its final views for the original investigation that "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. ... 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. 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." *Sparklers From the People's Republic of China* (Final), pp. 5-6. In its first review, the Commission noted that no party had argued for a different domestic like product and, finding that there was no new information obtained during its review that would suggest a reason for departing from the Commission's original definition of the domestic like product, defined the domestic like product as all domestically produced sparklers. *Sparklers From China* (First Review), p. 5.

<sup>32</sup> *Response* of Elkton, p. 9.

<sup>33</sup> *See Response* of Diamond. Both Diamond and Elkton agreed with the Commission's definitions of domestic like product and domestic industry during the Commission's first review of the antidumping duty order. *Sparklers From China* (First Review), p. 5.

## Description and Uses<sup>34</sup>

As indicated in the scope definition, a sparkler consists of a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. They were reported during the Commission's original and first review investigations to be legal in 38 states, but were prohibited in many local jurisdictions for safety reasons. Today most states continue to allow the use of sparklers, although some specific counties within those states may prohibit their use even though sparklers are no longer classified as fireworks by pertinent state authorities.<sup>35</sup> Sparklers are typically used to celebrate the Fourth of July and other holidays and may also be purchased for birthdays, weddings, and other special occasions. In addition, theatrical shows and other entertainments may incorporate sparklers. The demand for sparklers is, however, highly seasonal with the vast majority of sparklers consumed on the Fourth of July.<sup>36</sup>

Sparklers vary in length and were reported during the original investigation as typically boxed in five standard sizes, the smallest (No. 8) being about 7¼ inches long and the largest (No. 36) being up to 33 inches long. The sizing corresponds to the approximate length of the box; the actual sparklers are slightly shorter. The U.S. industry primarily manufactured No. 8 and No. 10 sparklers, the two smallest sizes, during the original investigation. These are less costly to manufacture and the least expensive to purchase, as the price of sparklers increases with the length. Likewise, almost all imports were of No. 8 and No. 10 sparklers. Data for U.S. sparkler shipments, by size, reported for 1990 are shown in the following tabulation (in *percent* of the total):

| Item   | Size                     | U.S. producers <sup>1</sup> | Importers |
|--------|--------------------------|-----------------------------|-----------|
| 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  | ***                         | 0.0       |
| Total  | --                       | 100.0                       | 100.0     |

*Notes on next page.*

<sup>34</sup> All of the discussion in this section is from the original investigation and/or first review, unless otherwise noted. *Staff Report of May 23, 1999* (Final), p. A-5 through A-8 and A-38, and *Staff Report of June 9, 2000* (First Review), p. I-8 through I-10 and II-7 through II-9. Elkton stated in its response that there have been no "significant" changes in the product since the antidumping duty order was imposed. *Response* of Elkton, p. 8. One new innovation, though, are Elkton's Easy-Lite sparklers that light in a rapid 1.5 seconds. "Elkton Sparkler: About Us" at <http://www.easylite.com>. Other new product developments include whistling and crackling sparklers. Whistling sparklers are standard gold sparklers that emit a loud whistle as they burn; cracking sparklers produce a series of popping or crackling noises. Both types were reportedly introduced into the U.S. market by Chinese manufacturers. "Sparklers at Weddings," *Skylighter*, <http://www.skylighter.com/Weddingsparklers.htm>. Diamond's "Made-in-America" website shows sparklers "with the awesome new crackling effect" for sale. See <http://www.diamondsparkler.com/sparklers.asp>.

<sup>35</sup> "Sparklers at Weddings," *Skylighter*, <http://www.skylighter.com/Weddingsparklers.htm>.

<sup>36</sup> Most sparklers consumed during the Fourth of July celebrations are actually purchased during April-June of each year.

*Continuation.*

<sup>1</sup> Includes data reported by B.J. Alan Co. ("B.J. Alan") rather than those reported directly by Diamond. See the section of this report entitled "U.S. Producers' Domestic Operations" for a discussion of the relationship between B.J. Alan and Diamond.

Source: *Staff Report of May 23, 1991 (Final)*, p. A-7.

As shown, almost all of the longer sparklers sold in the United States were supplied by U.S. manufacturers.<sup>37</sup>

The majority of sparklers sold in the United States emit a shower of yellow ("gold") color while burning and, since they throw off little smoke, may be used indoors. Sparklers with red, green, or blue color are also available.<sup>38</sup> Colored sparklers emit a smaller colored ball of flame surrounded by a less intense spray of sparks;<sup>39</sup> they are smokier than gold sparklers and are best used in larger, well-ventilated areas or outdoors.<sup>40</sup> Industry representatives have also reported that gold sparklers are relatively safer and more reliable than colored sparklers and result in fewer product liability and performance complaints. In addition, 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. Data for U.S. sparkler shipments, by color, reported for 1990 are shown in the following tabulation (in percent of the total):

| Color | U.S. producers <sup>1</sup> | Importers |
|-------|-----------------------------|-----------|
| Gold  | ***                         | 50.0      |
| Red   | ***                         | 20.0      |
| Green | ***                         | 20.0      |
| Blue  | ***                         | 10.0      |
| Total | 100.0                       | 100.0     |

<sup>1</sup> Includes data reported by B.J. Alan rather than those reported directly by Diamond.

Source: *Staff Report of May 23, 1991 (Final)*, p. A-8.

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<sup>37</sup> Importers of the product indicated during the original investigation that the longer sparklers were difficult to transport without substantial breakage.

<sup>38</sup> At one point silver sparklers (frequently used for weddings) were available for sale in the United States but are not now allowed under the current federal regulations for sparklers. "Sparklers at Weddings," *Skylighter*, <http://www.skylighter.com/Weddingsparklers.htm>.

<sup>39</sup> The domestic industry argued during the first review that these other colors are "very often faint and indistinguishable."

<sup>40</sup> "Sparklers at Weddings," *Skylighter*, <http://www.skylighter.com/Weddingsparklers.htm>.

Elkton, which reportedly pioneered in the development of colored sparklers, discontinued their production in 1999 when it shut down its manufacturing operations for a time.<sup>41</sup> Diamond's current "Made in America" website shows a multi-color assortment pack of sparklers for sale.<sup>42</sup>

With respect to quality, the wire stem on a good quality sparkler should be smooth and show no rust.<sup>43</sup> Most questionnaire respondents during the original investigation cited no difference in quality distinctions between imported and U.S.-produced sparklers. In the first review, Elkton stated that \*\*\*. The majority of importers, \*\*\*, indicated during that review that there are no differences in the product characteristics (or sales conditions) between domestic sparklers and those imported from China.<sup>44</sup> With respect to current conditions, there have been quality concerns about Chinese-manufactured bamboo sparklers that have been sold in the U.S. market in recent years. In these sparklers a thin section of bamboo is substituted for the metal wire that is normally used in the manufacturing process.<sup>45</sup> <sup>46</sup> Elkton was reported to have voluntarily recalled 1.7 million boxes of (imported) bamboo stick sparklers in early 2002.<sup>47</sup>

### **Manufacturing Process<sup>48</sup>**

Sparklers are manufactured by a relatively simple process.<sup>49</sup> 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. In the Chinese industry, the wires were reported during the original investigation to be placed into frames by hand. The frames are then taken to a dipping area where the

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<sup>41</sup> Additional information on the shutdown and subsequent restart of Elkton's manufacturing operations is provided in the section of this report entitled "U.S. Producers' Domestic Operations." During the first review of the sunset order one importer indicated the domestic companies did not offer colored sparklers and that, accordingly, it was forced to import such sparklers from China even though they were "expensive."

<sup>42</sup> See <http://www.diamondsparkler.com/sparklers.asp>.

<sup>43</sup> "Sparklers at Weddings," *Skylighter*, <http://www.skylighter.com/Weddingsparklers.htm>.

<sup>44</sup> Similarly, the majority of purchasers ranked the United States and China comparable for a series of characteristics that among other items included product quality, product range, and product consistency.

<sup>45</sup> See the following section of this report entitled "Manufacturing Process." Bamboo sparklers should not be confused with "Morning Glories." Morning Glories also utilize bamboo or wooden sticks instead of wire but are made of various compositions that are charged into long-thin walled paper tubes. *Staff Report of June 9, 2000* (First Review), p. I-11, and "Sparklers at Weddings," *Skylighter*, <http://www.skylighter.com/Weddingsparklers.htm>.

<sup>46</sup> According to one news report, "{t}he problem with bamboo sparklers is that as they burn, the bamboo splint becomes charred and is easily broken off in short pieces as the lit sparkler is waved about in the air. These short charred pieces remain very hot for some time and as they break off and fall to the ground can cause burn marks on floors and carpeting. Bamboo sparklers should not be used indoors for this reason and if outdoors, they should only be used with care." "Sparklers at Weddings," *Skylighter*, <http://www.skylighter.com/Weddingsparklers.htm>.

<sup>47</sup> "Elkton Sparkler Announces Recall of Bamboo-Stick Sparklers," *Safe Kids USA*, [http://www.usa.safekids.org/tier3\\_cd.cfm?content\\_item\\_id=8892&folder\\_id=2703](http://www.usa.safekids.org/tier3_cd.cfm?content_item_id=8892&folder_id=2703).

<sup>48</sup> All of the discussion in this section is from the original investigation and/or first review, unless otherwise noted. *Staff Report of May 23, 1999* (Final), p. A-9, and *Staff Report of June 9, 2000* (First Review), p. I-11. Elkton stated in its response that there have been no "significant" changes in the technology to manufacture sparklers since the antidumping duty order was imposed. *Response of Elkton*, p. 8.

<sup>49</sup> In their responses to the notice of institution, Diamond cites the relatively simple manufacturing process for fireworks and Elkton points out that it is a labor intensive process that requires little machinery. Both argue that Chinese producers could rapidly increase sparkler production for export to the United States. *Supplemental Response of Diamond*, p. 3, and *Response of Elkton*, p. 3.

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, control burn rate, and/or establish other characteristics.<sup>50</sup> The sparklers are dipped, dried, and then dipped 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 were reported during the original investigation 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 wrapped.

### Marketing<sup>51</sup>

U.S. producers and importers were reported to compete for the same customers in similar markets during both the original investigation and first review.<sup>52</sup> Sparklers are sold to distributors, retailers, and (in limited quantities in earlier years) directly to consumers in seasonally-operated fireworks stands. Distributors, in turn, resell to smaller retailers, including fireworks stand operations. Selling patterns can vary, however, for specific suppliers. Elkton, the \*\*\* U.S. producer during the original investigation and most of the first review period, reported selling to both wholesalers and retailers during the first review, while sparklers manufactured by Diamond have \*\*\*. Diamond reported in its response to the Commission's notice of institution for this review that \*\*\* in 2004.<sup>53</sup> In recent years, consumers have also begun to purchase sparklers directly from suppliers over the internet.<sup>54</sup> There are numerous web sites where sparklers originating from various sources may be purchased on-line (including from Canada) with shipment to U.S. home addresses.<sup>55</sup> Customers can also now obtain pricing and other shipment information directly from Chinese suppliers, for example through <http://www.allproducts.com> for merchandise from Hunan (Provincial Firecrackers & Fireworks IMP. and EXP. Corp., one of the Chinese manufacturers reviewed by Commerce).

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<sup>50</sup> An official from Diamond indicated in a trade article that U.S.-made sparklers differ from the foreign-made product in "the use of chlorates and perchlorates. Unlike foreign competitors, {Diamond} does not use these chemicals during the production process {since} they are harmful to the environment and result in a longer production process." "Celebrating Independence Day, Manufacturing Style," *NAM (National Association of Manufacturers)*, [http://www.nam.org/s\\_nam/doc1.asp?CID=201926&DID=234558](http://www.nam.org/s_nam/doc1.asp?CID=201926&DID=234558).

<sup>51</sup> All of the discussion in this section is from the original investigation and/or first review, unless otherwise noted. *Staff Report of May 23, 1999* (Final), pp. A-12 and A-37 through A-38, and *Staff Report of June 9, 2000* (First Review), pp. II-1 through II-4, IV-1, and V-3 through V-4.

<sup>52</sup> Seven of 16 purchasers reported that they bought both domestic and Chinese-produced sparklers during 1998-99.

<sup>53</sup> *Supplemental Response* of Diamond, p. 2.

<sup>54</sup> *See*, for example, <http://www.kaboomfireworks.com/sparklers.html>. Sparklers are now classified as novelty items by the Federal government. (In contrast, varying state laws appear to prohibit the direct shipment of fireworks.) *See*, for example, <http://www.fireworks.com/fireworks%5Fgallery/>.

<sup>55</sup> According to one trade publication, "{s}parklers are classified as novelties by the federal government and are not defined as consumer fireworks. Under this classification sparklers can legally be shipped through the U.S. mail system and do not require any complicated hazardous material paperwork or special packing." "Sparklers at Weddings," *Skylighter*, <http://www.skylighter.com/Weddingsparklers.htm>. *See* the earlier discussion where sparklers are grouped with consumer fireworks in a common HTS statistical reporting number.

Both domestic and imported sparklers are sold by the gross carton<sup>56</sup> or as part of an assortment that contains other fireworks.<sup>57 58</sup> Sparklers were reported during the first review to be sold almost exclusively on a spot basis with prices determined using various methodologies that included negotiated final transaction prices, price lists, and cost-plus pricing.<sup>59</sup> Prices could be quoted on either an f.o.b. or delivered basis. In addition, discount policies varied widely. During the original investigation, sales to retailers (which accounted for 34 percent of producers' sales in 1990 and 42 percent of importers' sales) were often made on a consignment or guaranteed-sale basis in which the purchaser could return unsold merchandise to the vendor for credit after an agreed-upon-date, usually the Fourth of July.<sup>60</sup>

With respect to geographical distribution, U.S.-produced sparklers and imported sparklers from China were sold throughout the United States during the period examined in the first review. Diamond, through its distributor B.J. Alan, had a national distribution system, and Elkton stated that it sold \*\*\*. While imports from China were available in all areas of the United States where sales are allowed, individual importers generally limited their sales to specific states or regions.

## THE INDUSTRY IN THE UNITED STATES

### U.S. Producers' Domestic Operations<sup>61</sup>

At the time of the original investigation, there were three U.S. producers of sparklers: Diamond, Elkton, and New Jersey Fireworks Manufacturing Co. ("New Jersey Fireworks"). Diamond \*\*\* to B.J. Alan, a related wholesaler of fireworks.<sup>62</sup> The staff report for the first review indicated that, subsequent to the original investigation, New Jersey Fireworks ceased production and was importing sparklers from

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<sup>56</sup> A gross carton contains 144 boxes of sparklers.

<sup>57</sup> \*\*\* were reported to not manufacture other fireworks during the original investigation but to purchase other types of fireworks from domestic and foreign suppliers that then were packaged for sale with their sparklers.

<sup>58</sup> Elkton stated in its response that sparklers continue to be sold in individual packages or in a multi-pack containing assorted fireworks. *Response* of Elkton, p. 8.

<sup>59</sup> One importer of Chinese sparklers stated during the first review that it added up all costs including the antidumping duty to arrive at a total cost and then added a gross profit to arrive at a final price.

<sup>60</sup> The return provision was one reason why prices for retailers for guaranteed sales were usually 10 to 30 percent and sometimes as much as 50 percent higher than for non-guaranteed sales.

<sup>61</sup> All of the discussion in this section is from the original investigation and/or first review, unless otherwise indicated. *Staff Report of May 23, 1999* (Final), pp. A-10 through A-11, and *Staff Report of June 9, 2000* (First Review), pp. I-12, II-1, and III-1.

<sup>62</sup> \*\*\*. Diamond started operations in 1922 as Acme Sparklers (Chicago, Ill). B.J. Alan's internet website indicates that, in 1985, B.J. Alan acquired the assets of Acme Sparklers and moved the operation to Youngstown, OH, where it was established as Diamond Sparkler Manufacturing Co., Inc. [http://www.fireworks.com/about\\_us/sparklers.asp](http://www.fireworks.com/about_us/sparklers.asp). Another news article on the Diamond website lists B.J. Alan as the owner of Diamond, which "sells its product under the brand name Phantom Fireworks." In that same article, Diamond is reported to produce over 3 million sparklers annually while Phantom Fireworks "sells some 6.6 million Diamond {emphasis provided} sparklers annually through its own retail showrooms and through national retail chain stores such as K-Mart, Rite Aid and Eckert's Drugs." "BJ Alan Puts Sparkle on the Fourth," *Business Journal Online*, at <http://www.diamondsparkler.com/news.asp>. Phantom, also owned by B.J. Alan, is reportedly the largest U.S. fireworks retailer of consumer fireworks. It offers several brands of fireworks, including Phantom Brand Fireworks and Diamond Sparklers. "Lighting up Backyards of America from Coast to Coast," at [http://www.fireworks.com/about\\_us/brands.asp](http://www.fireworks.com/about_us/brands.asp). \*\*\*.

Phantom Fireworks (copyright 2005 B.J. Alan Company) maintains a separate website from Diamond (copyright 2005 Diamond Sparklers).

India.<sup>63</sup> Elkton also stopped manufacturing sparklers, in June 1999, reportedly because of “continued pricing pressure from Chinese imports.”<sup>64</sup> The firm maintained its production capability and has since resumed its sparkler operations.<sup>65</sup>

Elkton was the \*\*\* U.S. producer of sparklers during the original investigation, accounting for \*\*\* percent of U.S. shipments in 1990. Diamond brand sparklers accounted for \*\*\* percent of U.S. shipments in 1990 while sparkler sales by New Jersey accounted for the remaining \*\*\* percent. Elkton \*\*\* at the time of the first review and, in 1998, accounted for over \*\*\* percent of U.S. shipments of sparklers. Diamond estimates that it now accounts for virtually all U.S. sparkler production.<sup>66</sup> As indicated above, Elkton has resumed its U.S. production of sparklers. It states that while its volume of sparkler production is currently small compared to that of Diamond it is “interested in continuing its production and further expanding that production.”<sup>67</sup>

### U.S. Producers’ Import Operations

B.J. Alan was an importer of sparklers from China throughout the periods reviewed during both the original investigation and first review.<sup>68</sup> In 1999, B.J. Alan imported \*\*\* sparklers, valued at \$\*\*\*, from China.<sup>69</sup> B.J. Alan continues to import sparklers;<sup>70</sup> however, no data on the volume of such imports were provided in the institution phase of this second review. Diamond does not appear to have directly imported sparklers in the periods examined in the original investigation and first review; it responded “not

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<sup>63</sup> New Jersey Fireworks was primarily a producer of fireworks other than sparklers at the time of the original investigation and at one point was the only U.S. producer of colored sparklers (red and green). In 1988, the Maryland Department of the Environment (MDE) determined that the company was generating hazardous waste and issued a Consent Order to ensure proper handling and disposal of waste. “Site Fact Sheet (New Jersey Fireworks Site)” at [http://www.epa.gov/region03/revitalization/little\\_elk\\_creek/NJ\\_Fireworks\\_fs.pdf](http://www.epa.gov/region03/revitalization/little_elk_creek/NJ_Fireworks_fs.pdf). In 1990, New Jersey Fireworks was purchased by a former Canadian importer of sparklers. *Staff Report of May 23, 1991* (Final), p. A-11. In 1999, the New Jersey Fireworks site was inspected by the Federal Bureau of Alcohol Tobacco and Firearms (ATF) and the MDE. Their report indicated that the on-site manufacturing of sparklers (and “black powder explosives”) had shut down in the early 1990s but that large quantities of fireworks continued to be stored on the site in unsafe conditions. “Site Fact Sheet (New Jersey Fireworks Site),” as cited above. A July 2004 report (updated May 15, 2005) indicated that the facilities were being used as a fireworks packaging plant but that no manufacturing was occurring. *Ibid.*, at “EPA Regional III Area Wide One Cleanup Program Pilot.” New Jersey Fireworks did not respond to the Commission questionnaire sent during the first review.

<sup>64</sup> *Response of Elkton*, p. 2.

<sup>65</sup> *Response of Elkton*, p. 2. An article appearing in the *Wall Street Journal* (November 2002) contains the assertion that Elkton re-started production in order to establish eligibility for CDSOA funds. According to the *Wall Street Journal*, Elkton produced a “batch” of sparklers in September 2002 but did not plan to make “another batch or two” until the next year. “Host of Companies Pocket Windfalls from Tariff Law,” *Wall Street Journal*, November 5, 2002, at [http://www.global-trade-law.com/Article.Byrd%20Amendment%20&%20Firms%20\(WSJ%2012.02.02\).htm](http://www.global-trade-law.com/Article.Byrd%20Amendment%20&%20Firms%20(WSJ%2012.02.02).htm). As shown in table I-1, Elkton first became eligible for CDSOA funds in FY 2002.

<sup>66</sup> *Response of Diamond*, p. 2.

<sup>67</sup> *Response of Elkton*, p. 2.

<sup>68</sup> During the original investigation the Commission found that Diamond was related to B.J. Alan but declined to exclude domestic industry data for Diamond under the related parties provision. *Sparkler’s From the People’s Republic of China* (Final), pp. 6-9. Likewise, the Commission did not exclude Diamond from the domestic industry in the first review. *Sparklers From China* (First Review), p. 6.

<sup>69</sup> *Staff Report of June 9, 2000* (First Review), page III-1, n. 2.

<sup>70</sup> *Supplemental Response by Diamond*, p. 2.

applicable” to the question on the institution notice as to whether it was a U.S. importer of subject merchandise in 2004.<sup>71</sup>

During the original investigation, Elkton imported \*\*\*.<sup>72</sup> As indicated earlier, Elkton shut down manufacturing operations in 1999 and stated that it would begin importing sparklers from China in 2000.<sup>73</sup> The firm reported that, in 2004, it imported \*\*\* pieces from China, valued at \$\*\*\*, and it shipped \*\*\* pieces imported from China, valued at \$\*\*\*.<sup>74</sup> The following tabulation depicts the relative sizes of Elkton’s domestic and import operations for sparklers:

| Firm   | U.S shipments in 2004 of-- |           |                         |                   |           |                         |
|--------|----------------------------|-----------|-------------------------|-------------------|-----------|-------------------------|
|        | U.S.-produced sparklers    |           |                         | Subject imports   |           |                         |
|        | Quantity                   | Value     | Unit value <sup>1</sup> | Quantity          | Value     | Unit value <sup>1</sup> |
|        | (1,000 sparklers)          | (\$1,000) | (per 1,000 sparklers)   | (1,000 sparklers) | (\$1,000) | (per 1,000 sparklers)   |
| Elkton | ***                        | ***       | \$***                   | ***               | ***       | \$***                   |

<sup>1</sup> Calculated from unrounded figures.

Note.—In 2004, Elkton produced \*\*\* sparklers and imported \*\*\* sparklers from China. The ratio of Elkton’s U.S. production to its subject imports was \*\*\* percent.

Source: *Response of Elkton*, pp. 6-7.

Elkton is not related to any other U.S. producers or importers of sparklers, nor is it related to any foreign sparkler producers.<sup>75</sup>

### U.S. Production, Capacity, and Shipments

Data reported by the U.S. sparkler industry in the Commission’s original investigation and first review and in response to its second review institution notice are presented in table I-2. The capacity to produce sparklers reported during the first review was about one-half of that reported during the original investigation. As indicated earlier, New Jersey Fireworks, which accounted for slightly more than \*\*\* of U.S. shipments in 1990, shut down manufacturing operations in the early 1990s. Capacity utilization fell during both reporting periods from 40.6 percent in 1988 to 17.9 percent in 1990 and from \*\*\* percent in 1998 to \*\*\* percent in 1999. As indicated earlier, the demand for sparklers is seasonal and U.S. productive capacity is frequently idle during parts of the year. Diamond operated its production equipment about 6 months each year during the original investigation and Elkton shut down

<sup>71</sup> *Response of Diamond*, p. 3.

<sup>72</sup> *Staff Report of May 23, 1991 (Final)*, p. A-10.

<sup>73</sup> In the first review, the Commission considered but did not exclude Elkton as a related party because it \*\*\* and was no longer a domestic producer. *Confidential Determination (First Review)*, p. 8.

<sup>74</sup> *Response of Elkton*, p. 6.

<sup>75</sup> *Supplemental Response of Elkton*, p. 1. The firm does participate in joint ventures with Chinese fireworks manufacturers. “Elkton Sparkler: About Us,” at <http://www.easylite.com>.

**Table I-2**  
**Sparklers: U.S. producers' capacity, production, and U.S. shipments, 1988-90, 1998-99, and 2004**

| Item                              | Original investigation |                      |                      | First review     |                  | Second review    |
|-----------------------------------|------------------------|----------------------|----------------------|------------------|------------------|------------------|
|                                   | 1988                   | 1989                 | 1990                 | 1998             | 1999             | 2004             |
| Capacity (1,000 sparklers)        | 339,100 <sup>1</sup>   | 339,100 <sup>1</sup> | 320,800 <sup>1</sup> | ***              | ***              | (2)              |
| Production (1,000 sparklers)      | 137,600                | 87,300               | 57,470               | ***              | ***              | ***              |
| Capacity utilization (percent)    | 40.6                   | 25.7                 | 17.9                 | ***              | ***              | (2)              |
| U.S. shipments:                   |                        |                      |                      |                  |                  |                  |
| Quantity:                         |                        |                      |                      |                  |                  |                  |
| Open-market (1,000 sparklers)     | (2)                    | (2)                  | (2)                  | ***              | ***              | (2)              |
| Captive (1,000 sparklers)         | (2)                    | (2)                  | (2)                  | *** <sup>3</sup> | *** <sup>3</sup> | (2)              |
| Total (1,000 sparklers)           | 110,610 <sup>4</sup>   | 79,700 <sup>4</sup>  | 59,250 <sup>4</sup>  | ***              | ***              | ***              |
| Value:                            |                        |                      |                      |                  |                  |                  |
| Open-market (1,000 dollars)       | (2)                    | (2)                  | (2)                  | ***              | ***              | (2)              |
| Captive (1,000 dollars)           | (2)                    | (2)                  | (2)                  | ***              | ***              | (2)              |
| Total (1,000 dollars)             | 2,239 <sup>4</sup>     | 1,779 <sup>4</sup>   | 1,495 <sup>4</sup>   | ***              | ***              | ***              |
| Unit value:                       |                        |                      |                      |                  |                  |                  |
| Open-market (per 1,000 sparklers) | (2)                    | (2)                  | (2)                  | \$***            | \$***            | (2)              |
| Captive (per 1,000 sparklers)     | (2)                    | (2)                  | (2)                  | \$***            | \$***            | (2)              |
| Total (per 1,000 sparklers)       | \$20.24                | \$22.32              | \$25.23              | \$***            | \$***            | *** <sup>5</sup> |

Note.—Reporting domestic manufacturers during each period are believed to account for all known U.S. sparkler production.

<sup>1</sup> Firms reported capacity on the basis of a 40-hour week, operating 48-50 weeks per year.

<sup>2</sup> Not available.

<sup>3</sup> \*\*\*.

<sup>4</sup> Figures consist of \*\*\*.

<sup>5</sup> Calculated from unrounded figures.

Source: *Staff Report of May 23, 1991 (Final)*, pp. A-15; *Staff Report of June 9, 2000 (First Review)*, pp. III-1 and III-2; *Supplemental Response of Diamond*, pp. 1-2; and *Response of Elkton*, p. 6.

its operations for much of each July and August.<sup>76</sup> There is minimal information available on current U.S. sparkler capacity.<sup>77</sup>

U.S. sparkler production fell continuously throughout the periods examined during the original investigation and first review and, further, fell during the interim period between those proceedings. The current U.S. production of sparklers is, in turn, only a small proportion of that manufactured in 1999. As

<sup>76</sup> *Staff Report of May 23, 1991 (Final)*, p. A-14.

<sup>77</sup> Diamond, during the peak operating season, reportedly can produce approximately 800,000 sparklers per day. "Martha Stewart: Recommending Diamond Sparklers for Weddings" at <http://www.diamondsparkler.com/news.asp>.

shown in the tabulation below, the most recent fall-off of production<sup>78</sup> appears to be a result of Elkton's shift during 1999-2000 from domestically producing to importing sparklers:

| Firm    | U.S. shipments    |           |                         |                   |           |                       |
|---------|-------------------|-----------|-------------------------|-------------------|-----------|-----------------------|
|         | 1999              |           |                         | 2004              |           |                       |
|         | Quantity          | Value     | Unit value <sup>1</sup> | Quantity          | Value     | Unit value            |
|         | (1,000 sparklers) | (\$1,000) | (per 1,000 sparklers)   | (1,000 sparklers) | (\$1,000) | (per 1,000 sparklers) |
| Diamond | ***               | ***       | \$***                   | ***               | ***       | \$*** <sup>1 2</sup>  |
| Elkton  | ***               | ***       | ***                     | ***               | ***       | ***                   |
| Total   | ***               | ***       | ***                     | ***               | ***       | *** <sup>1</sup>      |

<sup>1</sup> Calculated from unrounded figures.  
<sup>2</sup> Calculated from figures that Diamond clearly indicates have been correctly reported as pieces and not cases of sparklers (see Diamond's supplemental response, p.1).  
Source: Staff Report of June 9, 2000 (First Review), p. III-6; *Supplemental Response* of Diamond, pp. 1-2; and *Response* of Elkton, p. 6.

Elkton was \*\*\* U.S. producer in 1999 while Diamond's sparkler production accounted for \*\*\* U.S. production in 2004. Further, Diamond appears to not only have not benefitted from the departure of Elkton but to have itself experienced decreased sales during the intervening period. As shown above, U.S. sparkler shipments for Diamond alone also fell by \*\*\* from 1999 to 2004.<sup>79 80 81</sup>

U.S. producers' U.S. shipments of fireworks likewise declined steadily throughout the periods for which data are available. The unit value of U.S.-produced fireworks rose both during the period examined in the original investigation (fluctuating in the \$20 to \$25 per 1,000 sparkler range) and in the first review (when they fluctuated in the \$\*\*\* to \$\*\*\* per 1,000 sparkler range) and were calculated at over \$\*\*\* per 1,000 sparklers based upon the quantity and value data provided by Diamond and Elkton in their responses to the Commission's notice of institution. As shown in the above tabulation the

<sup>78</sup> Data on U.S. shipments are used as a proxy for production data in this discussion.

<sup>79</sup> The production (and shipment) figures that Diamond reported in its response to the Commission's notice of institution and which are shown in this report appear to be \*\*\*. As indicated earlier, Diamond was described in a news article appearing on its website as producing "over 3 million sparklers annually."

<sup>80</sup> Diamond's website indicates that at its peak the company produced up to 1.5 million sparklers a day and employed 150 workers. "Last American Fireworks Manufacturer Celebrates 80<sup>th</sup> Birthday," at <http://www.diamondsparkler.com/news.asp>. Diamond is now reported to employ 18 full-time workers and 40 additional temporary employees during peak season. "Martha Stewart: Recommending Diamond Sparklers for Weddings" at <http://www.diamondsparkler.com/news.asp>.

<sup>81</sup> In the intervening period since the end of the first review, Diamond's production of sparklers may, however, have actually increased to the level reported for 2004. A July 2003 article on Diamond's website indicated that production was up more than 30 percent in the wake of "911" as demand for sparklers increased "with the renewed spirit of patriotism resulting from terrorist threats that is being expressed in America." The same article quoted a Diamond official that "{o}rders are up, and as a result, we have increased our output over the last year and have been able to employ more people in our production facility." "BJ Alan Puts Sparkle on the Fourth," *Business Journal Online*, at <http://www.diamondsparkler.com/news.asp>.

magnitude of the increase in the unit value calculation in 2004 is due to data reported by \*\*\*; \*\*\* reported a unit value of \$\*\*\* per 1,000 sparklers for 2004. Reported unit values for \*\*\*, in 2004, are well outside the range of any of the pricing points reported to the Commission during the first review regardless of the point of sales or product (i.e., whether sales were to wholesalers or to retailers).<sup>82</sup> It is not clear from the record whether the \*\*\* figure is in error or can be attributed to product mix or another factor.

There are no current financial data available for the subject product. The Commission stated in its views during the original investigation that “the financial indicators for the domestic industry {were} deteriorating.”<sup>83</sup> It found during the first review that the sales of the sole remaining producer (Diamond) had declined “significantly” from 1998 to 1999 and determined the domestic industry to be in a vulnerable condition.<sup>84</sup> Diamond is quoted in a *Wall Street Journal* article, dated November 2002, as reporting that the \$1.6 million it obtained in CDSOA funds “put us in the black for the first time in years.”<sup>85</sup> Further, the company’s president is reported in a news article listed on its website as saying that “Diamond Sparkler struggles each year to make a profit.”<sup>86</sup>

## U.S. IMPORTS AND CONSUMPTION

### U.S. Importers<sup>87</sup>

During the original investigation, the Commission identified 50 possible U.S. importers of sparklers from China.<sup>88</sup> Approximately one-half of these firms<sup>89</sup> provided data on their sparkler imports that were believed to account for about 80 percent of subject Chinese exports to the United States.<sup>90</sup> The U.S. import data presented in the Commission’s first review report were based on the questionnaire responses of 12 firms<sup>91</sup> that appear to have accounted for about \*\*\* percent<sup>92</sup> of total imports during 1998.

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<sup>82</sup> See the section on “Price Data” in the *Staff Report of June 9, 2000* (First Review). Price data were gathered for gold sparklers (both No. 8 and No. 9). The producers’ price data accounted for \*\*\* percent of total U.S. producers’ shipments of sparklers in 1998 and \*\*\* percent in 1999. Ibid. \*\*\*.

<sup>83</sup> *Sparkler’s From the People’s Republic of China* (Final), p. 12, n. 36.

<sup>84</sup> *Sparklers from China* (First Review), p. 12.

<sup>85</sup> “Host of Companies Pocket Windfalls from Tariff Law,” *Wall Street Journal*, November 5, 2002, at [http://www.global-trade-law.com/Article.Byrd%20Amendment%20&%20Firms%20\(WSJ%2012.02.02\).htm](http://www.global-trade-law.com/Article.Byrd%20Amendment%20&%20Firms%20(WSJ%2012.02.02).htm).

<sup>86</sup> “Last American Fireworks Manufacturer Celebrates 80<sup>th</sup> Birthday,” at <http://www.diamondsparkler.com/news.asp>.

<sup>87</sup> All of the discussion in this section is from the original investigation and/or first review, unless otherwise noted. *Staff Report of May 23, 1999* (Final), pp. A-11 through A-12, and *Staff Report of June 9, 2000* (First Review), pp. I-12

<sup>88</sup> Firm names were obtained from the petition and from Customs.

<sup>89</sup> Six firms accounted for about \*\*\* percent of reported 1990 imports from China with \*\*\*.

<sup>90</sup> Percentage is based on a comparison made during the original investigation of questionnaire data to that provided by the China Chamber of Commerce of Importers and Exporters of Foodstuffs, Native Products and Animal By-Products (“CCCFNA”).

<sup>91</sup> The staff report for the first review indicated that the exact number of U.S. importers of sparklers was not known and that the Commission questionnaires were mailed to the possible importers identified during the original investigation.

<sup>92</sup> Percentage was calculated by dividing the value of Chinese sparkler imports in 1998 reported in response to Commission questionnaires (\$\*\*\* as shown in table I-3) by the value of Chinese sparkler imports reported in the  
(continued...)

Diamond indicated in its response to the notice of institution for this second review that it did not have additional information on U.S. subject importers but believes that the importers identified during the first review continue to import.<sup>93</sup> Elkton stated there are numerous importers and that it could not supply a complete list.<sup>94</sup>

### U.S. Imports

As indicated earlier, U.S. imports of sparklers are entered under HTS statistical reporting classifications that also include nonsubject fireworks.<sup>95</sup> As shown in the tabulation below, subject merchandise appears to account for a minimal portion of total U.S. imports from China<sup>96</sup> entered under HTS statistical reporting number 3604.10.9010 (which is believed to be the category where the bulk of the subject merchandise should be entered):

| Item   | 1998             | 1999    | 2000    | 2001    | 2002             | 2003             | 2004             |
|--|------------------|---------|---------|---------|------------------|------------------|------------------|
| Commerce data for U.S. imports from China under 3604.10.9010:<br>Quantity (1,000 kg) <sup>1</sup>  | 48,109           | 56,134  | 57,800  | 62,137  | 70,768           | 87,475           | 94,259           |
| Value (1,000 dollars) <sup>2</sup>   | 101,309          | 121,013 | 121,833 | 125,660 | 137,608          | 169,788          | 182,311          |
| Subject imports:<br>Value (1,000 dollars)  | 439 <sup>3</sup> | (4)     | (4)     | (4)     | 896 <sup>3</sup> | 684 <sup>3</sup> | 533 <sup>3</sup> |
| <p><sup>1</sup> Quantity data cannot be directly compared to questionnaire data, which were gathered using <u>pieces</u> as the unit of quantity.</p> <p><sup>2</sup> Landed duty-paid.</p> <p><sup>3</sup> Federal fiscal year (October 1-September 30).</p> <p><sup>4</sup> Not available.</p> <p>Source: Official Commerce statistics for U.S. imports entered under HTS statistical reporting number 3604.10.9010; <i>U.S. Customs Service Annual Report, Part A</i> and Customs' <i>CDSOA Annual Reports</i> for data on subject imports.</p> |                  |         |         |         |                  |                  |                  |

<sup>92</sup> (...continued)

*U.S. Customs Service Annual Report* for FY 1998 (\$438,700 as shown in the section of this report entitled "Antidumping Duties Collected").

<sup>93</sup> *Response* by Diamond, p. 3.

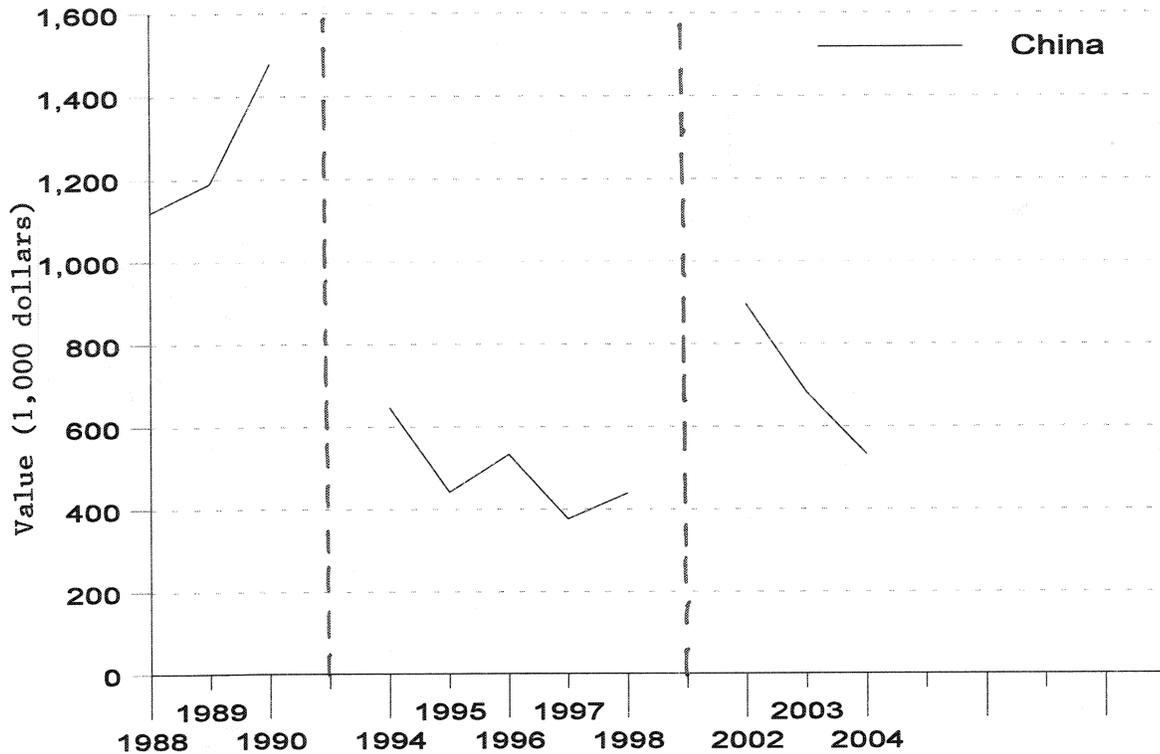
<sup>94</sup> Elkton reviewed import data available through PIERS but could not identify the names of firms that only imported sparklers since in many cases sparkler shipments are co-mingled with fireworks or other novelty items. *Response* of Elkton, p. 5, n. 1.

<sup>95</sup> In its final results notice, Commerce further expanded the list of HTS categories where sparklers may be entered.

<sup>96</sup> China was, by far, the largest source of U.S. imports entered under HTS statistical reporting number 3604.10.9010.

Figure I-1 presents a non-continuous data series for the value of subject imports reported in questionnaire responses during the original investigation (for 1988-90).

**Figure I-1**  
**Sparklers: U.S. imports from China, by value, 1988-90, 1994-98, and 2002-04**



Note.—Data on U.S. imports of sparklers from China are not available for the period following the imposition of the antidumping duty order. The above-presented data are: (1) the value of subject imports reported in response to Commission questionnaires for 1988-90; (2) the value of subject imports for which antidumping duties were collected for 1994-98 (data are for federal fiscal years); and (3) the value of CDSOA disbursements for 2002-04 (data are for federal fiscal years). The 1988-90 data are from *Staff Report of May 23, 1991 (Final)*, p. A-35; the 1994-98 data are from the *U.S. Customs Service Annual Report, Part A*; and (3) the 2002-04 data are from Customs' *CDSOA Annual Reports*.

Also included within figure I-1 are the value of subject imports for which antidumping duties were collected (for FY 1994-98)<sup>97</sup> and the value of CDSOA disbursements (for FY 2002-04).<sup>98</sup> Table I-3 presents quantity, value, and unit value data for U.S. imports of sparklers gathered through questionnaires during the original investigation and first review, and includes estimated figures for the current review.<sup>99</sup> Since all of the three data series are derived from differing data sources, they are not directly comparable even where (as is the case for the data in table I-3 for the original investigation and first review) questionnaires data is cited. As indicated in the note to table I-3, questionnaire responses were believed to account for approximately 80 percent of subject imports during the original investigation but only \*\*\* percent during the first review.

As shown in table I-3, the quantity of U.S. imports of sparklers from China rose during the original investigation by 41.8 percent from 1988 to 1990. U.S. imports of the subject merchandise are then believed to have fallen to lower levels following the imposition of the antidumping duty order in June 1991 (figure I-1)<sup>100</sup> but then increased by \*\*\* percent from 1998 to 1999 (table I-3). U.S. sparkler imports from China appear to have risen in 2004 compared to the period examined in the first review. Elkton, which is an importer of subject merchandise, states that in its “experience” imports of sparklers from China have increased since the first review. The firm also argues that the increasing trend shown for the aggregate classification for 2000 to 2004 for HTS statistical reporting number 3604.10.9010 (presented above) “suggests that Chinese exporters have been able to increase their volumes.”<sup>101</sup> There is some evidence of a recent fall in subject imports; the downward trend in CDSOA disbursements shown in table I-1 (and graphed in figure I-1) suggests that subject imports have actually declined since FY 2002. These data do not, however, measure actual import levels. Further, Diamond indicated in its response that the antidumping duty order is being “evaded” with sparklers included in fireworks assortments and being mislabeled.<sup>102</sup>

U.S. imports of sparklers from China accounted for the vast majority of total U.S. imports during the original investigation and most of total U.S. imports reported during the first review (table I-3). A post-order surge of sparkler orders from nonsubject countries does not appear to have occurred. The volume of U.S. imports of nonsubject sparklers for 1998 and 1999 was generally comparable to the

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<sup>97</sup> Questionnaire data collected during the first review for 1998-1999 are not presented since, as discussed above, such data are believed to have represented only about \*\*\* of actual U.S. imports of subject merchandise.

<sup>98</sup> The figures for FY 2002-04 are by definition incomplete since they measure the value of CDSOA disbursements and not the value of total subject imports. As indicated earlier, the applicable antidumping margin for all firms during this period was approximately 93.54 percent which suggests that these figures are a reasonable proxy for the value of actual subject merchandise imports. However, the correlation between the value of subject merchandise entered and the timing of any disbursement is not clear for a specific time period. In particular, CDSOA data for FY 2001 (which show disbursement of \$1.6 million) are not presented in figure I-1 since the amount disbursed may reflect entries made during prior periods. FY 2001 was the first year of operation for the CDSOA program.

<sup>99</sup> Although believed to be underestimated, questionnaire data for the first review are used in table I-3 in order to provide quantity and unit value figures in addition to value.

<sup>100</sup> The Commission found that “the lower volume levels during the {first} review period as compared to the original investigation are attributable in large measure to the effects of the antidumping duty order.” *Sparklers From China* (First Review), p. 10.

<sup>101</sup> *Response of Elkton*, p. 3.

<sup>102</sup> *Supplemental Response of Diamond*, p. 3. As noted earlier, Commerce further expanded the list of HTS categories where sparklers may be entered in its final results notice.

**Table I-3**  
**Sparklers: U.S. imports from all sources, 1988-90, 1998-99, and 2004**

| Source   | Original investigation                                   |         |         | First review |       | Second review    |
|--|--|---------|---------|--------------|-------|------------------|
|  | 1988   | 1989    | 1990    | 1998         | 1999  | 2004             |
|  | <b>Quantity (1,000 sparklers)</b>                        |         |         |              |       |                  |
| China  | 145,079  | 152,294 | 205,734 | ***          | ***   | *** <sup>1</sup> |
| All other sources <sup>2</sup>   | 4,015  | 4,167   | 5,198   | ***          | ***   | (3)              |
| Total  | 149,094  | 156,461 | 210,932 | ***          | ***   | (3)              |
|  | <b>Landed duty-paid value (1,000 dollars)</b>            |         |         |              |       |                  |
| China  | 1,119  | 1,189   | 1,478   | ***          | ***   | *** <sup>4</sup> |
| All other sources <sup>2</sup>   | 72   | 73      | 99      | ***          | ***   | (3)              |
| Total  | 1,191  | 1,262   | 1,577   | ***          | ***   | (3)              |
|  | <b>Landed duty-paid unit value (per 1,000 sparklers)</b> |         |         |              |       |                  |
| China  | \$7.71   | \$7.81  | \$7.18  | \$***        | \$*** | \$***            |
| All other sources <sup>2</sup>   | 17.93  | 17.52   | 19.05   | ***          | ***   | (3)              |
| Average  | 7.99   | 8.07    | 7.48    | ***          | ***   | (3)              |
| <p><sup>1</sup> Estimated by applying the most recently available unit value for subject imports (\$***) to the estimated value of subject merchandise (see footnote 4 below).</p> <p><sup>2</sup> Hong Kong was the only other source from which U.S. imports of sparklers were reported in questionnaire responses for the original investigation while Mexico was the only other source for the first review.</p> <p><sup>3</sup> Not available.</p> <p><sup>4</sup> Figure is the value of CDSOA disbursements in FY 2004 for the antidumping duty order on sparklers from China (table I-1). Since the antidumping margin for all Chinese sparkler manufacturer/exporters is 93.54 percent, the value figure is believed to approximate the value of U.S. imports of subject merchandise.</p> <p>Note.—Data on U.S. sparklers are not available from Commerce statistics or from other secondary sources. Questionnaire responses are believed to account for approximately 80 percent of subject imports during the original investigation and *** percent during the first review.</p> <p>Source: <i>Staff Report of May 23, 1991 (Final)</i>, p. A-35, and <i>Staff Report of June 9, 2000 (First Review)</i>, pp. IV-2.</p> |  |         |         |              |       |                  |

1988-90 import levels.<sup>103</sup> The unit value of subject merchandise in 1998 (\$\*\*\*) was substantially higher than that reported in 1990 (\$7.18) but declined over the two-year review period (to \$\*\*\* in 1999).

### Apparent U.S. Consumption and Market Shares

The demand for sparklers is influenced by the level of consumer spending on fireworks and devices for celebrations. Other factors, such as safety concerns and weather conditions, can also affect

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<sup>103</sup> There may well have been, however, some degree of incomplete reporting of nonsubject imports during the first review. See, further, the discussion of nonsubject sparkler imports in the next section of this report.

demand. For example, in the past drought conditions have caused a number of state governments to temporarily outlaw the use of all fireworks in some areas. In recent years, sparklers have been increasingly used at entertainments and celebrations such as weddings.<sup>104</sup> As discussed earlier, the overall U.S. demand for sparklers is highly seasonal, reaching peak levels near the Fourth of July holiday.<sup>105</sup>

Apparent U.S. consumption of sparklers is shown in table I-4 as rising irregularly from 259.7 million sparklers in 1988 to 270.2 million sparklers in 1990 and then declining to \*\*\* sparklers in 1998 and to \*\*\* sparklers in 1999. There was some question during the first review whether the magnitude of the decline shown in the Commission figures for 1998 and 1999 accurately represented market conditions. When asked during that review whether the overall demand in the United States for sparklers had changed since 1991, the \*\*\* and the majority of other questionnaire respondents that were able to answer the question generally agreed that it had been stable or had declined.<sup>106</sup> The Commission stated in its views for the first review that:

“Diamond asserts that the data may understate consumption because they do not include sparklers that are sold as part of assortment packages. There is some evidence to support the assertion that our data may understate consumption somewhat. Specifically, while Elkton stated that the reported data accurately reflected a drop in consumption due to the banning of sparklers in California, the ban would not account for the magnitude of the decline shown in the data. Also, no purchasers noted the kind of significant decline in consumption that our data appear to indicate.”<sup>107</sup>

Additionally, nonsubject imports are probably under-reported. Data for both subject and nonsubject imports are calculated from responses to Commission importer questionnaires. As noted earlier, during the first review Commission questionnaires were mailed to the possible importers identified during the original investigation. There may well have been some shifts in import sourcing subsequent to the imposition of the antidumping duty order that are not fully reflected in the figures in table I-4. Mexico was the only source of the data on nonsubject imports of sparklers reported to the Commission in the first review (*see* notes to table I-3). However, market sources also indicated during that review that imports of sparklers were known to come from Bolivia, India, and Indonesia in addition to Mexico (and China).<sup>108</sup> Further, New Jersey Fireworks, which accounted for a \*\*\* portion of U.S. sparkler production during the original investigation, was reported during the first review to have ceased production and to be currently importing sparklers from India (emphasis supplied).<sup>109</sup> As indicated earlier in this report, New Jersey Fireworks was sold to a former Canadian importer of sparklers at the end of 1990<sup>110</sup> and its

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<sup>104</sup> See, for example: “Sparklers at Weddings,” *Skylighter*, <http://www.skylighter.com/Weddingsparklers.htm>; “Amazing Butterflies Wedding Sparklers at <http://www.amazingbutterflies.com/sparklers.htm>; and “Last American Fireworks Manufacturer Celebrates 80<sup>th</sup> Birthday” at <http://www.diamondsparkler.com/news.asp>.

<sup>105</sup> *Staff Report of May 23, 1991* (Final), p. A-5; *Staff Report of June 9, 2000* (First Review), p. II-5. Elkton stated in its response that there have been no “significant” changes in the demand patterns since the antidumping duty order was imposed. *Response of Elkton*, p. 8.

<sup>106</sup> *Staff Report of June 9, 2000* (First Review), p. II-5.

<sup>107</sup> *Sparklers From China* (Final), p. 8.

<sup>108</sup> *Staff Report of June 9, 2000* (First Review), p. II-8.

<sup>109</sup> *Staff Report of June 9, 2000* (First Review), p. I-12, n.-13.

<sup>110</sup> *Staff Report of May 23, 1991* (Final), p. A-11.

Table I-4

**Sparklers: U.S. producers' U.S. shipments, U.S. imports, and apparent U.S. consumption, on the basis of quantity, 1988-90, 1998-99, and 2004**

| Source  | Original investigation                |         |         | First review     |                  | Second review |
|---|---------------------------------------|---------|---------|------------------|------------------|---------------|
|   | 1988                                  | 1989    | 1990    | 1998             | 1999             | 2004          |
|   | <b>Quantity (1,000 sparklers)</b>     |         |         |                  |                  |               |
| U.S. producers' U.S. shipments  | 110,610                               | 79,700  | 59,250  | ***              | ***              | ***           |
| U.S. imports from--<br>China (subject imports)  | 145,079                               | 152,294 | 205,734 | ***              | ***              | ***           |
| All other sources   | 4,015                                 | 4,167   | 5,198   | ***              | ***              | (1)           |
| Total   | 149,094                               | 156,461 | 210,932 | ***              | ***              | (1)           |
| Apparent U.S. consumption   | 259,704                               | 236,161 | 270,182 | *** <sup>2</sup> | *** <sup>2</sup> | (1)           |
|   | <b>Share of consumption (percent)</b> |         |         |                  |                  |               |
| U.S. producers' U.S. shipments  | 42.6                                  | 33.7    | 21.9    | ***              | ***              | (1)           |
| U.S. imports from--<br>China (subject imports)  | 55.7                                  | 64.5    | 76.2    | ***              | ***              | (1)           |
| All other sources   | 1.6                                   | 1.8     | 1.9     | ***              | ***              | (1)           |
| Total   | 57.4                                  | 66.3    | 78.1    | ***              | ***              | (1)           |
| <p><sup>1</sup> Apparent U.S. consumption (and market shares) for 2004 were not calculated since data on nonsubject imports were not available.</p> <p><sup>2</sup> Apparent U.S. consumption for 1998-99 was calculated using <u>shipments</u> of imports.</p> <p>Note--As described earlier (see notes to table I-2 and table I-3), the figures for U.S. producers' U.S. shipments are believed to account for 100 percent of the total U.S. sparkler industry during each period while subject imports account for approximately 80 percent of actual U.S. imports of sparklers from China for 1988-90 and *** percent for 1998-1999. In addition, U.S. imports of sparklers from nonsubject sources may account for an even lesser portion of actual nonsubject U.S. imports than shown above, particularly for 1998-99. Accordingly, total apparent U.S. consumption is understated and U.S. producers' market shares are overstated compared to the market shares of U.S. importers.</p> <p>Source: Table I-2 for U.S. producers' U.S. shipments, table I-3 for U.S. imports for 1988-90 and 2004, and <i>Staff Report of June 9, 2000</i> (First Review) for U.S. <u>shipments</u> of imports for 1998-99.</p> |                                       |         |         |                  |                  |               |

facilities were reported as being used as a fireworks (although not necessarily sparkler) packaging plant as recently as July 2004.

Data on U.S. imports from nonsubject sources are not available for 2004 and no attempt was made to calculate apparent U.S. consumption for 2004 in table I-4. In order to compare U.S. and subject import market shares, U.S. consumption figures were recalculated for 1988-90 and 1998-99 to exclude nonsubject imports (table I-5). Subject imports as a share of consumption rose from 56.7 percent to 77.6 percent during the original investigation, fell to \*\*\* percent in 1998 and \*\*\* percent in 1999 after the imposition of the antidumping duty order, and then rose sharply to \*\*\* percent in 2004 with the recent drop-off of domestic sparkler production.

**Table I-5**

**Sparklers: U.S. producers' U.S. shipments, U.S. subject imports,<sup>1</sup> and apparent U.S. consumption, on the basis of quantity, 1988-90, 1998-99, and 2004**

| Source   | Original investigation                |         |         | First review |      | Second review |
|--|---------------------------------------|---------|---------|--------------|------|---------------|
|  | 1988                                  | 1989    | 1990    | 1998         | 1999 | 2004          |
|  | <b>Quantity (1,000 sparklers)</b>     |         |         |              |      |               |
| U.S. producers' U.S. shipments   | 110,610                               | 79,700  | 59,250  | ***          | ***  | ***           |
| U.S. imports from China (subject imports)  | 145,079                               | 152,294 | 205,734 | ***          | ***  | ***           |
| Apparent U.S. consumption  | 255,689                               | 231,994 | 264,984 | ***          | ***  | ***           |
|  | <b>Share of consumption (percent)</b> |         |         |              |      |               |
| U.S. producers' U.S. shipments   | 43.3                                  | 34.4    | 22.4    | ***          | ***  | ***           |
| U.S. imports from China (subject imports)  | 56.7                                  | 65.6    | 77.6    | ***          | ***  | ***           |
| <p><sup>1</sup> Data, as presented, exclude U.S. imports of sparklers from nonsubject countries. Such data were unavailable for 2004. Apparent U.S. consumption is, therefore, understated and market shares are calculated on the basis of only U.S. producers' U.S. shipments and U.S. subject imports.</p> <p>Note.—Apparent U.S. consumption for 1998-99 was calculated using <u>shipments</u> of imports.</p> <p>Source: Table I-4.</p> |                                       |         |         |              |      |               |

## PRICING

There are no current pricing data available for the subject product. With reference to pricing for the original investigation, the Commission indicated that “the information on the record concerning pricing indicates a clear and consistent pattern of underselling of the domestic product by comparable Chinese imports.”<sup>111</sup> It stated in its views for the first review that “{e}ven with the order in effect, the subject merchandise still undersells the domestic like product. The pricing information collected on product 1, which accounts for the highest volume of the subject imports, shows underselling of the U.S. product. Price data on other products, for which Chinese volume was lower, were mixed.”<sup>112</sup> In its response to the notice of institution for this second review, Diamond states that “{t}he Chinese imports have continued to undersell Diamond’s sparklers even with the 93.54 margin in place ...”<sup>113</sup> Elkton cites the earlier Commission findings that price is a key element in purchasing decisions for sparklers.<sup>114</sup>

<sup>111</sup> *Sparkler’s From the People’s Republic of China*, p. 14.

<sup>112</sup> *Sparklers from China (First Review)*, p. 11.

<sup>113</sup> *Supplemental Response* of Diamond, p. 3.

<sup>114</sup> *Response* of Elkton, p. 4.

## THE FOREIGN INDUSTRY

At the time of the original investigation, there were approximately 20 producers of sparklers in China. The three major producers at that time were Guangxi/Behai (Guangxi Native Produce Import & Export Corp.), Hunan (Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Co.), and Jiangxi/Guangzhou (Jiangxi Native Produce Import & Export Corp., Guangzhou Fireworks Co.). Twelve Chinese producers were identified and were sent questionnaires during the first review of the antidumping duty order, but none responded.<sup>115</sup> In their responses to the Commission's notice of institution, the domestic interested parties identified only Guangxi, Hunan, and Jiangxi as sparkler producers in China.<sup>116</sup> *The Directory of Fireworks Manufacturers, Fireworks Exporters (Entertainment)* lists 18 manufacturers/exporters, all of which are located in China (except for two firms in India).<sup>117</sup>

There is minimal available public information on sparkler production in China. Sparklers as a category falls within the much larger Chinese firecracker industry. See, for example, Hunan's (Hunan Provincial Firecrackers & Firework IMP. & EXP. Corp.) website at <http://www.allproducts.com/prc/firework/>. Hunan is described as the only state-operated enterprise in Hunan province that exports firecrackers and fireworks, although about 60 factories reportedly manufacture throughout the province. Appendix D presents an article that includes a description of the evolution and re-structuring of the Chinese firecracker and firework industry.

## COMMENTS REGARDING THE LIKELY EFFECTS OF REVOCATION OF THE ANTIDUMPING DUTY ORDER

Diamond stated that any revocation "will lead to increasing imports into the United States which will lead to dumping, price depression and suppression, further market loss and the likely demise of Diamond. Nothing has changed since the {first} sunset review of this order in 2000."<sup>118</sup> Elkton maintains that revocation of the antidumping duty order "would result in significant increases in the volume of U.S. imports of sparklers from China at extremely low prices. This would create pricing pressure on Elkton resulting in declining U.S. prices, lost sales, declining profitability and would likely again force Elkton to cease production."<sup>119</sup>

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<sup>115</sup> Only one Chinese exporter responded to the Commission's foreign producer/exporter questionnaire during that full review; the firm was believed to have accounted for less than one percent of exports of subject merchandise to the United States during 1998. See table IV-3 of the *Staff Report of June 9, 2000* (First Review), p. IV-4.

<sup>116</sup> *Response of Diamond*, p. 2, and *Response of Elkton*, p. 5.

<sup>117</sup> See <http://www.exportbureau.com/entertainment/fireworks.html?manufacturer=1>.

<sup>118</sup> *Response of Diamond*, p. 2.

<sup>119</sup> *Response of Elkton*, pp. 2-3.

**APPENDIX A**  
***FEDERAL REGISTER* NOTICES**



**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 23, 2005.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05-10884 Filed 5-31-05; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-464 (Second Review)]

### Sparklers From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of a five-year review concerning the antidumping duty order on sparklers from China.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on sparklers from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;<sup>1</sup> to be assured of consideration, the deadline for responses is July 21, 2005. Comments on the adequacy of responses may be filed with the Commission by August 16, 2005. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** June 1, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.** On June 18, 1991, the Department of Commerce issued an antidumping duty order on imports of sparklers from China (56 FR 27946). Following five-year reviews by Commerce and the Commission, effective July 13, 2000, Commerce issued a continuation of the antidumping duty order on imports of sparklers from China (65 FR 52985, August 31, 2000). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.** The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) *The Subject Country* in this review is China.

(3) *The Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and in its full five-year review determination, the Commission defined the *Domestic Like Product* as all domestically produced sparklers.

(4) *The Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full five-year review determination, the Commission defined the *Domestic Industry* as all domestic producers of sparklers.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the review and public service list.** Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission is seeking guidance as to whether a second transition five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.** Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties

<sup>1</sup> No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 05-5-128, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 10 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

authorized to receive BPI under the APO.

**Certification.** Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

**Written submissions.** Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 21, 2005. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 16, 2005. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

**Inability to provide requested information.** Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative

forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

**Information to be Provided in Response to this Notice of Institution:** As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 1999.

(7) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2004 (report quantity data

in number of sparklers and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in number of sparklers and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2004 (report quantity data in number of sparklers and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise*

in the *Subject Country* accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 1999, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 23, 2005.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05-10883 Filed 5-31-05; 8:45 am]

**BILLING CODE 7020-02-P**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 9, 2005, and published in the **Federal Register** on February 15, 2005, (70 FR 7760),

Clariant LSM (Missouri) Inc., 2460 W. Bennett Street, Springfield, Missouri 65807-1229, (Mailing Address: P.O. Box 1246, Springfield, Missouri 65801) made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture the listed controlled substance in bulk for research purposes.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Clariant LSM (Missouri) Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Clariant LSM (Missouri) Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: May 25, 2005.

**William J. Walker,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 05-10787 Filed 5-31-05; 8:45 am]

**BILLING CODE 4410-09-P**

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## DEPARTMENT OF JUSTICE

### Parole Commission

#### Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94-409) (5 U.S.C. 552b)

**DATE AND TIME:** 10:30 a.m., Thursday, June 2, 2005.

**PLACE:** U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

**STATUS:** Closed—Meeting.

**MATTERS TO BE CONSIDERED:** The following matter will be considered during the closed portion of the Commission's Business Meeting:

Case deliberations or review of two original jurisdiction cases conducted pursuant to 28 CFR Sec. 2.17 and 28 CFR Sec. 2.27.

**AGENCY CONTACT:** Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492-5990.

Dated: May 26, 2005.

**Rockne Chickinell,**  
*General Counsel.*

[FR Doc. 05-10943 Filed 5-27-05; 10:40 am]

**BILLING CODE 4410-31-M**

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## DEPARTMENT OF JUSTICE

### Parole Commission

#### Public Announcement Pursuant to the Government in the Sunshine Act (Pub. L. 94-409) (5 U.S.C. 552b)

**TIME AND DATE:** 9:30 a.m., Thursday, June 2, 2005.

**PLACE:** 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

**AGENCY CONTACT:** Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492-5990.

Dated: May 26, 2005.

**Rockne Chickinell,**

*General Counsel, U.S. Parole Commission.*

[FR Doc. 05-10944 Filed 5-27-05; 10:40 am]

**BILLING CODE 4410-31-M**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Solicitation for Grant Applications (SGA); Prisoner Re-Entry Initiative

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice; additional information and correction.

**SUMMARY:** The Employment and Training Administration published a document in the **Federal Register** on April 1, 2005, concerning the availability of grant funds for eligible faith-based and community organizations under the Prisoner Re-Entry Initiative: SGA/DFA PY-04-08. This is to make the following clarifications and corrections to SGA/DFA PY-04-08:

1. The SGA intended that Workforce Investment Boards (WIBs) would have a

**SUMMARY:** The Bureau of Land Management (BLM) will file the plats of survey of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Josh Alexander, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, PO Box 36800, Billings, Montana 59107-6800, telephone (406) 896-5123 or (406) 896-5009.

**SUPPLEMENTARY INFORMATION:** This survey was executed at the request of the Crow Agency, through the Rocky Mountain Regional Director, Bureau of Indian Affairs and was necessary to determine Trust and Tribal land.

The lands we surveyed are:

**Principal Meridian, Montana**

T. 5 S., R. 31 E.

The plat, in 1 sheet, representing the dependant resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the adjusted original meanders of the right bank of the Big Horn River, downstream, through section 25, and the subdivision of section 25, and the survey of the meanders of the present right bank of the Big Horn River, downstream, through section 25, and certain division of accretion lines, Township 5 South, Range 31 East, Principal Meridian, Montana, was accepted September 7, 2005.

**Principal Meridian, Montana**

T. 5 S., R. 32 E.

The plat, in 1 sheet, representing the dependant resurvey of a portion of the west boundary, a portion of the subdivisional lines, the subdivision of section 30, a portion of the adjusted original meanders of the right bank of the Big Horn River, downstream, through section 30, and a certain division of accretion line, and the subdivision of section 30, and the survey of a portion of the meanders of the present right bank of the Big Horn River, downstream, through section 30, and a certain division of accretion line, Township 5 South, Range 32 East, Principal Meridian, Montana, was accepted September 8, 2005.

We will place copies of the plats, in 2 sheets, and related field notes we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against these surveys, as shown on these plats, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file these plats, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: September 13, 2005.

**Steven G. Schey,**

*Acting Chief Cadastral Surveyor, Division of Resources.*

[FR Doc. 05-18686 Filed 9-19-05; 8:45 am]

**BILLING CODE 4310-SS-P**

**INTERNATIONAL TRADE COMMISSION**

**[Investigation No. 731-TA-464 (Second Review)]**

**Sparklers From China**

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of an expedited five-year review concerning the antidumping duty order on sparklers from China.

**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on sparklers from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** September 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202-205-3180), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

**Background.** On September 7, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 31537, June 1, 2005) of the subject five-year review was adequate and that the respondent interested party group

response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.<sup>1</sup> Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.<sup>2</sup>

**Staff report.** A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 6, 2005, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

**Written submissions.** As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,<sup>3</sup> and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 12, 2005 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 12, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic

<sup>1</sup> A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

<sup>2</sup> Commissioner Pearson dissented and Commissioner Aranoff did not participate.

<sup>3</sup> The Commission has found the responses submitted by Diamond Sparkler Manufacturing Co., Inc. and Elkton Sparkler Co., Inc. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

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

**Determination.** The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 14, 2005.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05-18625 Filed 9-19-05; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-318 and 731-TA-538 and 561 (Second Review)]

### Sulfanilic Acid From India and China

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the countervailing duty and antidumping duty orders on sulfanilic acid from China and India.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on sulfanilic acid from China and India would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** September 12, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain

information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.** On August 5, 2005, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (70 FR 48588, August 18, 2005). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

**Participation in the review and public service list.** Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.** Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those

parties authorized to receive BPI under the APO.

**Staff report.** The prehearing staff report in the reviews will be placed in the nonpublic record on January 5, 2006, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

**Hearing.** The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on January 26, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 17, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 19, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

**Written submissions.** Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is January 17, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 6, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before February 6, 2006. On March 1, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 3, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must

the preliminary results to a maximum of 365 days from the last of the anniversary month of the order. Accordingly, the Department is extending the time limit for the completion of the preliminary results until no later than February 28, 2006. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results, unless extended.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: September 29, 2005.

**Barbara E. Tillman,**  
Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5-5516 Filed 10-5-05; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-804]

**Sparklers From the People's Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order**

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

**SUMMARY:** On June 1, 2005, the Department of Commerce ("the Department") initiated the sunset review of the antidumping duty order on sparklers from the People's Republic of China ("China") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of Notices of Intent to Participate, adequate substantive responses filed on behalf of domestic interested parties, and lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins likely

to prevail if the order were revoked are identified in the *Final Results of Review* section of this notice.

**DATES:** October 6, 2005.

**FOR FURTHER INFORMATION:** Maureen Flannery, AD/CVD Operations, Office 8, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3020.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 1, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on sparklers from China. See *Initiation of Five-Year ("Sunset") Reviews*, 70 FR 31423 (June 1, 2005). On June 8, 2005 and June 16, 2005, the Department received Notices of Intent to Participate from Diamond Sparkler Manufacturing Company and Elkton Sparkler Company (collectively "domestic interested parties") within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as a manufacturer, producer, or wholesaler in the United States of a domestic like product. On June 22, 2005, and July 1, 2005, the Department received complete substantive responses from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited review of this order.

**Scope of the Order**

The products subject to this order 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 classified under subheadings 3604.10.10.00, 3604.10.90.10, and 3604.10.90.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Sparklers were formerly classified under HTSUS subcategory 3604.10.00. The Department has reviewed current categories and has determined that sparklers are currently classified in the above subcategories. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

**Analysis of Comments Received**

All issues raised in this review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 29, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>, under the heading "October 2005." The paper copy and electronic version of the Decision Memo are identical in content.

**Final Results of Review**

We determine that revocation of the antidumping duty order on sparklers from China would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| Manufacturers/Exporters/Producers   | Weighted average margin (percent) |
|---|-----------------------------------|
| Guangxi Native Produce Import & Export Corporation, Behai Fireworks and Firecrackers Branch ..... | 41.75                             |
| Hunan Provincial Firecrackers & Fireworks Import & Export Corporation .....                       | 93.54                             |
| Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company .....             | 93.54                             |
| China-wide rate .....   | 93.54                             |

This notice also serves as the only reminder to parties subject to administrative protective order ("APO")

of their responsibility concerning the return or destruction of proprietary information disclosed under APO in

accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction

of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 29, 2005.

**Barbara E. Tillman,**  
Acting Assistant Secretary for Import Administration.

[FR Doc. E5-5513 Filed 10-5-05; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-570-601]

**Tapered Roller Bearings from the People's Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order**

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

**SUMMARY:** On June 1, 2005, the Department ("the Department") initiated the sunset review of the antidumping duty order on tapered roller bearings from the People's Republic of China ("China") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a Notice of Intent to Participate, adequate substantive responses filed on behalf of domestic interested parties, and lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins likely to prevail if the order were revoked are identified

in the *Final Results of Review* section of this notice.

**DATES:** October 6, 2005.

**FOR FURTHER INFORMATION:** Maureen Flannery, AD/CVD Operations, Office 8, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3020.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 1, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on tapered roller bearings from China. See *Initiation of Five-Year ("Sunset") Reviews*, 70 FR 31423 (June 1, 2005). On June 16, 2005, the Department received a joint Notice of Intent to Participate from RBC Bearings and The Timken Company (collectively "domestic interested parties") within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product. On July 1, 2005, the Department received a complete substantive response from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited review of this order.

**Scope of the Order**

Merchandise covered by this order is tapered roller bearings from China; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings

(except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

**Analysis of Comments Received**

All issues raised in this review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated September 29, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>, under the heading "October 2005." The paper copy and electronic version of the Decision Memo are identical in content.

**Final Results of Review**

We determine that revocation of the antidumping duty order on tapered roller bearings from China would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| Manufacturers/Exporters/Producers                                 | Weighted average margin (percent) |
|---|-----------------------------------|
| Zhejiang Changshan Changhe Bearing Co. ....                       | 0.00                              |
| China National Machinery Import & Export Corp. ....               | 0.03                              |
| Zhejiang Wanxiang Group .....                                     | 0.03                              |
| Zhejiang Machinery Import & Export Corp. ....                     | 0.11                              |
| Luoyang Bearing Corporation .....                                 | 3.20                              |
| Premier Bearing & Equipment, Ltd. ....                            | 5.43                              |
| Liaoning Mec Group, Ltd. ....                                     | 9.72                              |
| China National Machinery and Equipment Import & Export Corp. .... | 29.40                             |
| China-wide Rate .....   | 29.40                             |



**APPENDIX B**  
**STATEMENT ON ADEQUACY**



## EXPLANATION OF COMMISSION DETERMINATION ON ADEQUACY

in

*Sparklers from China,*

*Inv. No. 731-TA-464 (Second Review)*

On September 7, 2005, the Commission determined<sup>1</sup> that it should proceed to an expedited review in the subject five-year review pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1675(c)(3)(B).<sup>2</sup>

The Commission received responses to the notice of institution from two domestic producers, Diamond Sparkler Manufacturing Co., Inc. (Diamond) and Elkton Sparkler Co., Inc. (Elkton), which it determined were individually adequate. Because Diamond and Elkton represent the entire domestic production of sparklers, the Commission further determined that the domestic interested party group response was adequate.

The Commission did not receive a response from any respondent interested party, and therefore determined that the respondent interested party group response to the notice of institution was inadequate. In the absence of an adequate respondent interested party group response, or any other circumstances that it deemed warranted proceeding to a full review, the Commission determined to conduct an expedited review.<sup>3</sup> A record of the Commissioners' votes is available from the Office of the Secretary and the Commission's web site (<http://www.usitc.gov>).

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<sup>1</sup> Commissioner Aranoff did not participate in this determination.

<sup>2</sup> Commissioner Pearson voted in favor of conducting a full review.

<sup>3</sup> Commissioner Pearson notes that one of the two domestic producers of sparklers (Elkton) currently supports continuation of the order whereas in the first sunset review it opposed continuation. He notes further than Elkton has now restarted production in the United States whereas at the time of the first sunset review it was exclusively an importer of sparklers. Commissioner Pearson determined that these changed circumstances regarding the structure of the domestic industry warranted conducting a full review of the order.



**APPENDIX C**  
**SUMMARY DATA FROM THE ORIGINAL INVESTIGATION AND FIRST**  
**FULL FIVE-YEAR REVIEW**



**Table C-1**  
**Sparklers: Summary data from the original investigation and first review, 1988-90 and 1998-99**

\* \* \* \* \*



**APPENDIX D**  
**ARTICLE ON CHINESE FIREWORKS INDUSTRY**





## [FIREWORKS UNIVERSITY : HISTORY OF FIREWORKS](#)

Fireworks originated in China some 2,000 years ago. The most prevalent legend has it that fireworks were discovered or invented by accident by a Chinese cook working in a field kitchen who happened to mix charcoal, sulphur and saltpeter (all commonly found in the kitchen in those days). The mixture burned and when compressed in an enclosure (a bamboo tube), the mixture exploded.

Some sources say that the discovery of fireworks occurred about 2,000 years ago, and other sources place the discovery sometime during the 9th century during the Song dynasty (960-1279), although this could be confusion between the discovery of gunpowder by the cook and the invention of the firecracker.

Some sources suggest that fireworks may have originated in India, but in the October 18, 2003, online edition of The Hindu, an Indian national newspaper, the Chinese are credited with the discovery of gunpowder.

A Chinese monk named Li Tian, who lived near the city of Liu Yang in Hunan Province, is credited with the invention of firecrackers about 1,000 years ago. The Chinese people celebrate the invention of the firecracker every April 18 by offering sacrifices to Li Tian. During the Song Dynasty, the local people established a temple to worship Li Tian.

The firecrackers, both then and now, are thought to have the power to fend off evil spirits and ghosts that are frightened by the loud bangs of the firecrackers. Firecrackers are used for such purposes today at most events such as births, deaths and birthdays. Chinese New Year is a particularly popular event that is celebrated with firecrackers to usher in the new year free of the evil spirits.

To this day the Liu Yang region of Hunan Province remains the main production area in the world for fireworks. It is important to remember the geographic origin of fireworks, because often detractors of the fireworks industry say that fireworks are produced in China to take advantage of cheap labor. But the reality is that the fireworks industry existed in China long before the advent of the modern era and long before the disparity in east-west wage rates, and hopefully the fireworks industry will exist long after the existence of communism has an effect over the Chinese economy.

Generally Marco Polo is credited with bringing the Chinese gunpowder back to Europe in the 13th century, although some accounts credit the Crusaders with bringing the black powder to Europe as they returned from their journeys.

Once in Europe, the black powder was used for military purposes, first in rockets, then in canons and guns. Italians were the first Europeans who used the black powder to manufacture fireworks. Germany was the other European country to emerge as a fireworks leader along with Italy in the 18th century. It is interesting to note that many of the leading American display companies are operated by families of Italian descent such as the Grucci family, Rozzi family, and Zambelli family.

The English were also fascinated with fireworks. Fireworks became very popular in Great Britain during the reign of Queen Elizabeth I. William Shakespeare mentions fireworks in his works, and fireworks were so much enjoyed by the Queen herself that she created the position of "Fire Master of England." King James II was so pleased with the fireworks display that celebrated his coronation that he knighted his Fire Master.

In the modern era, the American fireworks industry really began to influence Chinese



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manufacturers following President Nixon's normalization of relations with the Chinese Communist government in the early 1970s. Prior to that time, business was being done between U.S. and Chinese companies through Hong Kong brokers with little or no direct contact with mainland manufacturers.

Throughout the 1970s and 1980s, the distribution channels in China were essentially state owned factories producing fireworks that were then exported through government owned provincial export corporations. Products produced in Hunan went through the Hunan Export Corporation, and products produced in Jiangxi went through the Jiangxi Export Corporation, and so on. During this period, factories were not required to make a profit, but rather their goal was to keep people working in a region of China where there was no real industry other than agriculture. The Chinese government subsidized these factories to keep production going.

The Provincial Export Corporation in turn sold to Hong Kong brokers who were the link between Mainland China and the foreign business entities. The Hong Kong brokers procured orders, arranged logistics, and helped finance shipments to the U.S. distributors.

It was also during this time period that the first formally educated leader of China, Chairman Deng Xiaoping, saw what his counterparts in the former Soviet Bloc did not see, and that is that Communism simply did not work economically. Chairman Deng began a policy of economic reform that basically set China on the road toward capitalism.

During the 1980s, China opened up dramatically to travel within its borders for visiting U.S. importers. This enabled the first American fireworks buyers to travel to the production regions and establish relations with Hong Kong exporters and the provincial export corporations.

In the late 1980s, consumer fireworks became the focus of intense scrutiny by the U.S. Consumer Product Safety Commission. Up to this point, most of the fireworks products had old generic export corporation labels that had incorrect warning labels based on item size and performance. To correct the situation, representatives from the CPSC, American Pyrotechnics Association, and Hong Brokers Association spent 10 days in Southern China meeting with representatives from each export corporation and factory managers, on a province by province basis.

The meetings involved shooting each item produced in China and determining what the appropriate and correct warning descriptions and print size should be from the point of view of providing safe warning labels for the American consumers. The Americans involved took on the infamous moniker of "The Shekou Six" by most of the shell shocked Chinese industry people, and from that meeting and a few that followed was born the American Fireworks Standards Laboratory (AFSL) which monitors firework production within China to this day.

In the 1990s, economic reform continued under Chairman Jiang Zemin as Chinese factories were weaned off government funding and forced to turn a profit for the first time. It was during this period that many Provincial Export Corporation personnel left the government owned companies and were permitted to start their own.

Initially these new private companies worked through the established Hong Kong brokers to reach the U.S. market, but within a few years they were selling directly to U.S. importers.

In order to survive, Hong Kong brokers invested money into Chinese factories and joint-ventured with Chinese entrepreneurs to start their own exclusive product lines and for their remaining larger customers. With the loss of key personnel, the government provincial export corporations never quite adapted to economic reform, and today most are gone or left selling to domestic Chinese markets.

The 1990s saw the rapid growth of private labels in order for U.S. companies to differentiate their product lines. In the 2000s, China is a basic "free for all," with small mainland export-broker companies forming and folding each month. Additionally, separate factories are attempting to bypass historical channels and selling directly to U.S. importers. Each week American companies receive a half dozen e-mails or fax communications asking for the American companies to place orders directly with some small new and obscure factories that would like to begin exporting to the United States.

The B.J. Alan Company, parent to the Phantom Fireworks chain of retail showrooms, currently has offices in Guangzhou and Liu Yang from which offices our team members serve as quality control and logistics monitors within China. Our goal is to continue to bring into the United States the best performing and safest consumer fireworks for our customers.

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