

UNITED STATES INTERNATIONAL TRADE COMMISSION

AUTOMOTIVE REPLACEMENT GLASS WINDSHIELDS FROM CHINA

Investigation No. 731-TA-922 (Final)

DETERMINATION AND VIEWS OF THE COMMISSION

(USITC Publication No. 3494, March 2002)

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DETERMINATION

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports of automotive replacement glass windshields from China, provided for in subheading 7007.21.10 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to those imports of the subject merchandise from China that were subject to the affirmative critical circumstances determination by the Department of Commerce.

BACKGROUND

The Commission instituted this investigation on March 20, 2001, following receipt of a petition filed with the Commission and the Department of Commerce by PPG Industries, Inc., Pittsburgh, PA; Safelite Glass Corp., Columbus, OH; and Apogee Enterprises, Inc., Minneapolis, MN. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of automotive replacement glass windshields from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of October 23, 2001 (66 FR 53630). The hearing was held in Washington, DC on February 5, 2002, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

² Vice Chairman Deanna Tanner Okun and Commissioner Jennifer A. Hillman dissenting.

IEWS OF THE COMMISSION

Based on the record in this investigation, we determine that an industry in the United States is materially injured by reason of imports of automotive replacement glass windshields (“ARG windshields”) from China that the U.S. Department of Commerce (“Commerce”) found were sold in the United States at less than fair value.³

I. DOMESTIC LIKE PRODUCT AND INDUSTRY

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”⁴ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “producers as a [w]hole 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.”⁵ In turn, the Act defines “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”⁶

The decision regarding the appropriate domestic like product(s) in an investigation is a factual determination, and the Commission has applied the statutory standard of “like” or “most similar in characteristics and uses” on a case-by-case basis.⁷ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁸ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁹ Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise that has been found to be sold at less than fair value, the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

³ Vice Chairman Deanna Tanner Okun and Commissioner Jennifer A. Hillman dissenting. Vice Chairman Okun and Commissioner Hillman join sections I.A through I.D of these views.

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(4)(A).

⁶ 19 U.S.C. § 1677(10).

⁷ See, e.g., NEC Corp. v. Department of Commerce, 36 F. Supp.2d 380, 383 (Ct. Int’l Trade 1998); Nippon Steel Corp. v. United States, 19 CIT 450, 455 (1995); Torrington Co. v. United States, 747 F. Supp. 744, 749 n.3 (Ct. Int’l Trade 1990), aff’d, 938 F.2d 1278 (Fed. Cir. 1991) (“every like product determination ‘must be made on the particular record at issue’ and the ‘unique facts of each case’”). The Commission generally considers a number of factors including: (1) physical characteristics and uses; (2) interchangeability; (3) channels of distribution; (4) customer and producer perceptions of the products; (5) common manufacturing facilities, production processes and production employees; and, where appropriate, (6) price. See Nippon, 19 CIT at 455 n.4; Timken Co. v. United States, 913 F. Supp. 580, 584 (Ct. Int’l Trade 1996).

⁸ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁹ Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration”).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find single
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B. Product Description

In its final determination, Commerce defined the imported merchandise within the scope of this investigation as:

ARG windshields, and parts thereof, whether clear or tinted, whether coated or not, and whether or not they include antennas, ceramics, mirror buttons or VIN notches, and whether or not they are encapsulated. ARG windshields are laminated safety glass (*i.e.*, two layers of (typically float) glass with a sheet of clear or tinted plastic in between (usually polyvinyl butyral)), which are produced and sold for use by automotive glass installation shops to replace windshields in automotive vehicles (*e.g.*, passenger cars, light trucks, vans, sport utility vehicles, etc.) that are cracked, broken or otherwise damaged.

ARG windshields subject to this investigation are currently classifiable under subheading 7007.21.10.10 of the Harmonized Tariff Schedules of the United States (“HTSUS”). Specifically excluded from the scope of this investigation are laminated automotive windshields sold for use in original assembly of vehicles. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.¹¹

C. Domestic Like Product

In the preliminary phase of this investigation, petitioners contended that the domestic like product should not be expanded beyond the scope of subject imports in this investigation to include original equipment manufacturer windshields (“OEM windshields”).¹² Two groups of respondents – Fuyao Glass Industry Co., Ltd. and Greenville Glass Industries, Inc. (collectively “FYG”) and Diamond Triumph Auto Glass, Inc.; TCG International, Inc.; Shenzhen Benxun Automotive Glass Co., Ltd.; Xinyi Automotive

¹⁰ (...continued)

domestic like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six domestic like products in investigations where Commerce found five classes or kinds).

¹¹ In its final determination, Commerce clarified that ARG windshields for campers, heavy trucks, buses, farm and heavy machinery are included in the scope of this investigation. 67 Fed. Reg. 6482 (Feb. 12, 2002). Respondents argued that this clarification in effect expands the scope to include all self-propelled or self moving vehicles covered under Chapter 87 of the HTSUS such as “motorcycles, heavy-duty trucks, recreational vehicles, trains, trolley cars, subways, airplanes, helicopters, motor boats -- even, perhaps, spacecraft.” Xinyi Prehearing Brief at 6; Xinyi Posthearing Brief at 6-7. According to respondents, the expansion allegedly complicates the Commission's definition of the domestic like product and of the domestic industry because “it leaves the Commission in the vulnerable position of rendering a final determination based upon its consideration of information about potential domestic like product(s) that is certainly incomplete or never collected.” Xinyi Posthearing Brief at 6-7. However, Commerce did not expand the scope, it merely clarified it, explaining that the scope includes automotive windshields not just automobile windshields. Thus arguments that the scope has been expanded to include windshields for airplanes, boats, trains, trolleys, and spacecraft are without basis. Moreover, we find that Commerce's scope clarification virtually has no effect on the Commission's industry data because the only known producers of these windshields are Viracon, Guardian, and PPG, all of which included such windshields in their questionnaire responses. Finally, at the Commission’s hearing, Commissioner Miller asked respondents to provide the Commission with useable data that would clarify whether companies other than automotive ARG windshield producers manufactured heavy-duty truck and recreational vehicle windshields, and if so, what percentage of the total ARG market these windshields represent. Hearing Tr. at 243-244. Respondents provided no information responsive to Commissioner Miller's request.

¹² Petitioners’ Postconference Brief at 7-21.

Glass (Shenzhen) Co., Ltd.; Peaceful City Ltd.; Hebei Tong Yong Glass Industry Co., Ltd.; Hangzhou Safety Glass Co., Ltd.; Elite Auto Glass; North Star Glass; and Mygrant Glass (collectively “the Diamond Respondents”) – argued that the domestic like product should include both ARG and OEM windshields.¹³ The Commission acknowledged that there were factors supporting both proposed domestic like products and recognized that the record was incomplete. For purposes of its preliminary determination, however, it found that there was one domestic like product consisting of all ARG windshields, not including OEM windshields. Specifically, it found that the physical characteristics and uses of ARG and OEM windshields were very similar, but that the differences, particularly the fact that OEM windshields are produced to manufacturers’ proprietary specifications with strict tolerances, were significant in the OEM market, and prevented ARG windshields from being interchangeable for OEM uses. It noted that there appeared to be largely different channels of distribution for ARG and OEM windshields because no manufacturers of new automobiles and vehicles purchased ARG windshields for production. While the manufacturing processes for OEM and ARG windshields are basically the same, and some domestic producers produce both OEM and ARG windshields using the same facilities and workers, the limited information on the record at that time suggested that the apparent majority of ARG and OEM windshields were produced in separate facilities with separate workers.¹⁴

In the final phase of this investigation, respondents renewed their argument that the Commission should find a single domestic like product that includes both ARG and OEM windshields,¹⁵ while the petitioners maintained that the Commission correctly defined the domestic like product in its preliminary determination.¹⁶ As set forth below, the Commission again finds one domestic like product comprised only of all ARG windshields.¹⁷

¹³ FYG’s Postconference Brief at 2-23; Diamond Respondents’ Postconference Brief at 3-19.

¹⁴ Automotive Replacement Glass Windshields from China, Inv. No. 731-TA-922 (Prelim.), USITC Pub. 3414 at 4-7 (Apr. 2001) (“Preliminary Determination”).

¹⁵ FYG’s Prehearing Brief at 16; FYG’s Posthearing Brief at 1-7; Diamond Respondents’ Prehearing Brief at 7-15.

¹⁶ See, e.g., Petition at 25-30; Petitioners’ Prehearing Brief at 10-12, 14-17, 22-23; Petitioners’ Posthearing Brief at 10-12, “Response to Commissioners’ Questions,” Hillman-6.

¹⁷ Commissioner Bragg does not join the remainder of Section I.C of these views. Based upon her review of the record in this final phase investigation, Commissioner Bragg finds that there is a single domestic like product consisting of both ARG and OEM windshields. In particular, Commissioner Bragg notes that in contrast to the record in the preliminary phase investigation, the final record contains two new facts that, in her view, change the balance of the domestic like product determination to include OEM windshields: (1) seven domestic producers, accounting for approximately *** percent of reported U.S. production of ARG windshields in 2000, produced ARG and OEM windshields on the same equipment and machinery with the same workers; and (2) the majority of purchasers reported that ARG and OEM windshields are interchangeable. CR at I-9-10, II-6 & Table D-1; PR at I-6-7, II-3 & Table D-1. Thus, although ARG and OEM windshields have different channels of distribution, different prices, unique design processes, and no interchangeability in the original equipment installment market, nonetheless, ARG and OEM windshields have essentially the same general physical characteristics and uses, common manufacturing facilities and production employees, interchangeability in the replacement market (the market segment in which subject imports compete with the domestic like product), and the majority of purchasers perceived ARG and OEM windshields to be interchangeable. CR at I-3-12 & II-3-4, 6-7, PR at I-3-I-8 & II-2-II-3, 3-4. Commissioner Bragg finds that the record in this final phase investigation fails to establish a sufficiently clear dividing line distinguishing ARG and OEM windshields; therefore, she determines that, on balance, the record supports the definition of a single domestic like product consisting of ARG and OEM windshields. As a result, Commissioner Bragg finds a single domestic industry consisting of all domestic producers of ARG and OEM windshields. Given her broader like product definition, Commissioner Bragg recognizes that there are data concerns regarding an inconsistency between official statistics and the questionnaire data for OEM windshield production. CR at III-1, PR at III-1. Nonetheless, the final record indicates that the Commission data account for

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1. Analysis

Physical characteristics and uses. The general physical characteristics of ARG and OEM windshields are essentially the same. Both ARG and OEM windshields are made of the same raw material, laminated glass (usually “float” glass), have the same basic dimensions, and are produced to satisfy the same federal safety regulations (e.g., Federal Motor Vehicle Safety Standard 205).¹⁸ ARG windshields, however, are produced to correspond to part numbers published by National Auto Glass Specifications (“NAGS”), while OEM windshields are not.¹⁹ Moreover, some ARG windshields may come in a wider variety of colors and with features not available on OEM windshields.²⁰ Although there may not be a discernible difference in size, shape, or tint, many, but not all, purchasers reported that OEM windshields have logos, trademarks, or some distinguishing marking to identify them as such.²¹

Both ARG and OEM windshields have the same uses, broadly speaking, i.e., to fill the opening in the vehicle and to protect the vehicle and its occupants from the elements. However, virtually all OEM windshields are used in the production of new vehicles, with the exception of a small volume of OEM windshields sent to dealers for use in warranty replacement work.²² ARG windshields are used to replace damaged windshields in the replacement market, and are seldom, if ever, used in the production of new vehicles.²³

OEM windshields are manufactured to precise proprietary specifications and tight tolerances specified by the vehicle manufacturer, which may include spectral properties, glass and sunshade colors, attachment characteristics, and dimensional control parameters. ARG windshields, on the other hand, are generally not produced to those proprietary specifications.²⁴ The automated assembly lines used by vehicle manufacturers require windshields produced to those precise specifications, and the use of ARG windshields deviating from those specifications can jam the robotic equipment and shut down the entire assembly line.²⁵

By contrast, many ARG windshields are “reverse-engineered” from OEM windshields, which attempt to match the specifications of corresponding OEM windshields. Typically, tolerances for ARG

¹⁷ (...continued)

the vast majority of domestic OEM production. *See* CR/PR at Table III-2 & C-2. Consequently, Commissioner Bragg finds that there is sufficient evidence on the record upon which to base her determination consistent with her domestic-like product finding.

¹⁸ Conference Tr. at 70 (Fennell); Hearing Tr. at 168 (Fennell).

¹⁹ CR at I-6 -I- 7; PR at I-5.

²⁰ Hearing Tr. 85-86 (Miner) (“Differences, different manufacturers in the after-market can create variations in product types that would not be acceptable in an OEM type product. Some customers on a windshield will add a sunshade where there is no sunshade in an OEM, totally unacceptable in one market, up to the manufacturer's discretion to create that product in a second market. We see that on a vast number of part numbers, different colors of glass. Coatings in some OEM type products that we provide that other after-market suppliers don't provide any coating at all on the product”).

²¹ CR at II-6 n.12; PR at II-3, n.12.

²² CR at I-2; PR at I-2.

²³ CR at I-4; PR at I-4. FYG argues that ***. The Commission economist, Mr. Deese, contacted *** in order to clarify this point. ***. See Staff notes of William Deese, March 8, 2002.

²⁴ CR at I-6; PR at I-5. Hearing Tr. at 22 (Dumbris) “That's why the OEM specification for this BMW windshield are three inches of paper in a binder weighing about eight pounds, while the ARG specification for a similar BMW windshield that was reverse engineered at Berea is two pages long. It's also why no OEM customer accepts ARG windshields for OEM application. The OEM customer demand these physical differences and the OEM windshield producers meet them.”

²⁵ CR at I-4, I-6; PR at I-4 - I-5; Hearing Tr. at 25 (Dumbris); see Petitioners' Postconference Brief, ***.

windshields are less exacting than those for OEM windshields. While producers of ARG windshields try to match the colors of the original equipment windshield, they have the latitude of offering colors not offered on an OEM basis, so the ARG counterpart to an OEM windshield can be visibly different.²⁶

Manufacturing Facilities and Employees. It is undisputed that production of OEM windshields involves the same basic procedures and raw materials as production of ARG windshields. However, there can be significant differences.

Production facilities for OEM windshields are designed for high-volume runs and maximum yields to minimize the per unit cost to the OEM customer, with production of a limited number of OEM windshield part numbers and limited pattern changes.²⁷ By contrast, facilities producing only ARG windshields are typically designed for flexibility, to produce large numbers of different windshield part numbers, with short-to-medium volume runs and frequent pattern changes.²⁸

As noted, ARG windshields are typically reverse-engineered using an OEM windshield obtained from a vehicle dealer, generally without access to the proprietary specifications for that OEM windshield.²⁹ Because OEM windshields are produced to meet the strict proprietary specifications of vehicle manufacturers, product development is considerably more lengthy and costly for OEM windshields than it is for ARG windshields. It can take 14 months to two years before the OEM windshield is ready for production and shipment, while the ARG windshield product development process can last three months or less. Additionally, the OEM product development process requires numerous engineers and technicians to work with the customer on its specifications, and can cost ten times more than the ARG product development process.³⁰

Of the seven reporting domestic ARG windshield producers, only one (***) does not produce OEM windshields as well.³¹ Six of seven of these producers make both ARG and OEM windshields using the same facilities and the same workers, and the record indicates that the majority of ARG windshields in 2000 were produced in the same facilities in which OEM windshields were produced. *** accounted for *** percent of domestic ARG production in 2000. The seven ARG producers, who accounted for *** percent of U.S. ARG production in 2000, stated that they did produce OEM windshields on the same equipment used in the production of ARG windshields.³² Specifically, PPG, which accounts for *** percent of domestic ARG production, produces ***.³³

Interchangeability. While OEM windshields can be used interchangeably with ARG windshields in the aftermarket, the evidence in this investigation indicates that such use in the aftermarket tends to be limited to replacement by automobile dealers pursuant to a warranty.³⁴ The OEM windshields sold in the replacement market tend to be more expensive than their ARG counterparts; thus, some installers reported that for practical purposes they are not interchangeable.³⁵ Reverse-engineered ARG windshields, however,

²⁶ CR at I-4, I-6, I-8; PR at I-4 - I-6; Hearing Tr. 85-86 (Miner).

²⁷ CR at I-8 to I-9; PR at I-6; Hearing Tr. at 22-30 (Dumbris).

²⁸ CR at I-8; PR at I-6; Hearing Tr. at 22-30 (Dumbris).

²⁹ CR at I-8; PR at I-6.

³⁰ CR at I-7 to I-9; PR at I-5 - I-6; Hearing Tr. at 25 (Dumbris).

³¹ CR at III-1; PR at III-1. Viracon/Curvlite produces primarily for the ARG market, but produces some OEM windshields for buses and recreational vehicles. CR at I-8 n.31; PR at I-6, n.32.

³² CR at I-9, PR at I-6.

³³ CR at I-8, III-1; PR at I-6, III-1.

³⁴ CR at I-10; PR at I-7.

³⁵ Questionnaire response of ***; CR at II-7; PR at II-3.

cannot be used in the OEM market because they are not designed to the vehicle manufacturers' precise proprietary specifications and may affect assembly operations.³⁶

Customer and Producer Perceptions. The evidence presented by petitioners indicates that they, as well as some original equipment manufacturers that use OEM windshields, consider ARG and OEM windshields as two different products.³⁷ Respondents, on the other hand, suggest that ARG distributors and vehicle owners, the ultimate end users, perceive them to be the same product.³⁸

The Commission's purchaser questionnaire data show that many distributors and retailers in the aftermarket tend to view ARG and OEM windshields as interchangeable in that market.³⁹ Nine out of 16 responding purchasers reported that they consider OEM windshields to be interchangeable with ARG windshields, but they also reported that the demand for OEM windshields in the ARG market is usually related to replacement under warranty or to customer preference, considered to account for a small share of aftermarket demand.⁴⁰

Purchaser *** stated that ARG and OEM windshields have the same characteristics, fit, and function.⁴¹ *** stated that, while ARG and OEM windshields may be technically interchangeable, the higher cost and limited availability of OEM windshields in the ARG windshield market made actual interchangeability impractical.⁴² *** stated that, although technically interchangeable, installation methods, packaging, and delivery methods were different between ARG and OEM windshields and thus ARG and OEM windshields were not actually used interchangeably. *** stated that ARG windshields may not meet OEM specifications.⁴³

The Commission asked automobile manufacturers if they could use ARG and OEM windshields interchangeably in their automotive assembly lines. *** stated that they could not use ARG and OEM windshields interchangeably.⁴⁴

³⁶ CR at II-6 - II-7; PR at II-3.

³⁷ CR at I-10; PR at I-7.

³⁸ CR at I-10; PR at I-7.

³⁹ CR at II-6 - II-7; PR at II-3. In evaluating customer perceptions in this investigation, we have relied primarily on the perceptions of those customers who purchase products from the manufacturers, rather than the perceptions of the ultimate end-users – individual car owners. The Commission has in prior investigations taken into account consumer perceptions in its domestic like product analysis, when the product is one the consumer purchases directly “off the shelf” at the retail level. See, e.g., Certain Pasta from Italy and Turkey, Invs. Nos. 701-TA-365-366, 731-TA-734-735 (Final), USITC Pub. 2977 at 10-11 (July 1996); Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 at 6 (July 1996); Fresh Cut Roses from Colombia and Ecuador, Invs. Nos. 731-TA-684-685 (Final), USITC Pub. 2862 at I-7 (March 1995). Car owners, however, generally do not purchase windshields “off the shelf.” Instead, they typically purchase the *service* of having a replacement windshield installed. For this reason, the producers of ARG windshields target their marketing campaigns at the installer and not at the car owner. CR at I-10 and II-8; PR at I-7. In such circumstances, we believe that perceptions of car owners are of less probative value than are the perceptions of producers and their customers, the distributors or OEMs, in ascertaining distinctions between the types of windshields at issue. Moreover, to the extent that such perceptions are relevant, the record contains no probative information concerning whether or why car owners prefer to use OEM or ARG windshields. See the Commission's similar conclusions about consumer perceptions in Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 (April 1997). (“Brake Drums”) at 11 n.37.

⁴⁰ CR at II-6; PR at II-3.

⁴¹ CR at II-6; PR at II-3.

⁴² CR at II-7; PR at II-3.

⁴³ CR at II-7; PR at II-3.

⁴⁴ CR at II-7; PR at II-3; CR at I-10; PR at I-7.

Channels of Distribution. OEM windshields are generally sold to vehicle manufacturers, with a small volume re-sold by the vehicle manufacturers to car dealerships for use in warranty replacement.⁴⁵ By contrast, ARG windshields are generally sold to distributors and auto glass installation shops, and are not sold to OEMs.⁴⁶ The domestic ARG producers have increasingly become vertically integrated from production through to wholesale distribution and retail glass installation operations. Domestic producers PPG, Safelite, and Apogee are vertically integrated into the wholesale distribution level, and Apogee, Guardian Industries, and Safelite are integrated into the glass installation shop level.⁴⁷

Price. To compare prices of ARG and OEM windshields, the Commission collected pricing data on four ARG windshields and their OEM counterparts. Because of the much larger volume production runs of OEM windshields, the cost per unit of an OEM windshield to vehicle manufacturers is lower than that for an ARG windshield, despite the larger development and engineering costs for OEM windshields. The lower prices of OEM windshields appear to reflect this lower per-unit cost.⁴⁸ However, there is evidence that OEM windshields purchased by a consumer through a dealer in the aftermarket will be considerably more expensive than an ARG windshield purchased through a distributor or retail shop.⁴⁹

2. Conclusion

We find one domestic like product comprised of ARG windshields. ARG and OEM windshields have the same basic physical characteristics and end uses; the differences between them, principally their conformity with vehicle manufacturers' proprietary specifications, are subtle. Nevertheless, those distinctions do have significant implications for other factors pertinent to the domestic like product analysis. Interchangeability is limited. ARG windshields, which are not designed to those proprietary specifications, may not be used in lieu of OEM windshields in automobile manufacturing. Although OEM windshields may be used in lieu of ARG windshields, this use appears to be limited primarily to warranty replacement where OEM windshields are required. There are significant differences in channels of distribution, in that OEM windshields are sold primarily to vehicle manufacturers, and ARG windshields are sold primarily to distributors and retail auto glass outlets. While certain basic manufacturing steps are the same for ARG and OEM windshields, and there is significant overlap in some common manufacturing facilities and employees producing both types of windshields in the United States, there are significant differences between the two in the time and expense devoted to product development. Moreover, while OEM windshields tend to be produced in high volume production runs with limited flexibility to change patterns, ARG windshields are generally produced in flexible production facilities that use low to moderate volume production runs, and make frequent pattern changes.

On the basis of this record, we find one domestic like product coextensive with the scope consisting of ARG windshields.

D. Domestic Industry and Related Parties

1. Domestic Industry

Section 771(4) of the Act defines the relevant industry as "the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major

⁴⁵ CR at I-10 - I-11, II-3 - II-4; PR at I-7, II-3; ***, however, reported that they sell OEM windshields to distributors and glass replacement shops. CR at II-6.

⁴⁶ CR at I-10 - I-11, II-3 - II-4; PR at I-7, II-3.

⁴⁷ CR at I-11; PR at I-7 - I-8.

⁴⁸ CR at I-12; PR at I-8.

⁴⁹ CR at I-12; PR at I-8.

proportion of that product.”⁵⁰ In defining the domestic industry, the Commission’s general practice has been to include in the industry all domestic production of the domestic like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.⁵¹

In the preliminary phase of this investigation, based on its domestic like product determination, the Commission found a single domestic industry that included all domestic producers of ARG windshields.⁵² For the same reason, we again define the domestic industry as all domestic producers of ARG windshields.^{53 54}

2. Related Parties

We must further determine whether any producer of the domestic like product should be excluded from the domestic industry pursuant to section 771(4)(B) of the Act. That provision of the statute allows the Commission, if appropriate circumstances exist, to exclude from the domestic industry producers that are related to an exporter or importer of subject merchandise or which are themselves importers.⁵⁵ Exclusion of such a producer is within the Commission’s discretion based upon the facts presented in each case.⁵⁶

In the preliminary phase of this investigation, no party argued for the exclusion of any domestic producers as a related party.⁵⁷ In the final phase of this investigation, petitioners argued that appropriate circumstances do not exist to exclude any domestic producers that are related parties from the domestic industry. None of the respondents addressed this issue.⁵⁸

⁵⁰ 19 U.S.C. § 1677(4)(A).

⁵¹ See United States Steel Group v. United States, 873 F. Supp. 673, 681-84 (Ct. Int’l Trade 1994), aff’d, 96 F.3d 1352 (Fed. Cir. 1996).

⁵² Preliminary Determination, USITC Pub. 3414 at 7-8.

⁵³ Except as otherwise noted in the staff report, the domestic industry’s trade data are based on information submitted by the following domestic producers – Carlex, Guardian, Pilkington, PPG, Safelite, Viracon/Curvlite, and Visteon. CR/PR at III-1.

⁵⁴ Commissioner Bragg defines the domestic industry as all domestic producers of ARG and OEM windshields; she further notes that this definition encompasses the same producers as those identified by her colleagues, although she relies on the available data from these producers for both domestic ARG and OEM production.

⁵⁵ 19 U.S.C. § 1677(4)(B).

⁵⁶ Sandvik AB v. United States, 721 F. Supp. 1322, 1331-32 (Ct. Int’l Trade 1989), aff’d mem., 904 F.2d 46 (Fed. Cir. 1990); Empire Plow Co. v. United States, 675 F. Supp. 1348, 1352 (Ct. Int’l Trade 1987). The primary factors the Commission has examined in deciding whether appropriate circumstances exist to exclude the related parties 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 less than fair value 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, 1168 (Ct. Int’l Trade 1992), aff’d mem., 991 F.2d 809 (Fed. Cir. 1993). The Commission has also considered the ratio of import shipments to U.S. production for related producers and whether the primary interests of the related producers lie in domestic production or in importation. See, e.g., Melamine Institutional Dinnerware from China, Indonesia, and Taiwan, Invs. Nos. 731-TA-741 to 743 (Final), USITC Pub. 3016 (Feb. 1997) at 14 n.81.

⁵⁷ Preliminary Determination, USITC Pub. 3414 at 8.

⁵⁸ See, e.g., Petitioners’ Prehearing Brief at 24, n.24.

We find that the two domestic producers of ARG windshields, *** and ***, who directly imported Chinese subject merchandise during the period of investigation are related parties.⁵⁹ We do not, however, find appropriate circumstances exist to exclude either of these producers from the domestic industry. *** reported importing *** ARG windshields, valued at \$*** from China in 1999 and *** ARG windshields valued at \$*** from China in 2000.⁶⁰ *** was the ***-largest domestic producer of ARG windshields in 2000 with *** percent of reported production that year.⁶¹ Its ratio of subject imports to domestic production was *** percent in 1999 and *** percent in 2000.⁶² Given this low ratio of subject imports to production, it does not appear that *** primary interest lies in importing subject merchandise. Moreover, *** operating income ratio to net sales value was ***.⁶³ Given that there is no evidence that *** derived any significant benefit from importing, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.

*** reported importing *** ARG windshields, valued at \$*** from China in 1998, *** ARG windshields, valued at \$***, from China in 1999, and *** ARG windshields, valued at \$*** from China in 2000.⁶⁴ ***.⁶⁵ Its imports of subject merchandise from China were equivalent to *** percent of its U.S. production of ARG windshields in 1998, *** percent in 1999, and *** percent in 2000.⁶⁶ Given this low ratio of subject imports to production, *** primary interest appears to lie in its domestic production. Moreover, given that *** had the *** financial performance of ***, and the *** financial performance in 1999 and 2000,⁶⁷ we find no evidence that it has been shielded from the effects of any unfairly traded imports as a result of its own importation. Accordingly, we find that appropriate circumstances do not exist to exclude *** from the domestic industry.⁶⁸

II. MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS⁶⁹

In the final phase of an antidumping duty investigation, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.⁷⁰ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the

⁵⁹ See, e.g., CR at III-2, IV-1; PR at III-2, IV-1 ***. See, e.g., CR at III-2; PR at III-2; ***, Foreign Producer Questionnaire responses of ***.

⁶⁰ See, e.g., *** domestic producer and importer questionnaire responses; CR at III-4; PR at III-2; CR/PR at Table III-2.

⁶¹ See, e.g., CR at III-1; PR at III-1.

⁶² See, e.g., *** domestic producer and importer questionnaire responses; CR at III-4; PR at III-2; CR/PR at Table III-2.

⁶³ See, e.g., CR/PR at Table VI-2.

⁶⁴ See, e.g., CR at III-4; PR at III-2.

⁶⁵ See, e.g., *** Importer Questionnaire response at II-4.

⁶⁶ See, e.g., CR at III-4; PR at III-2. ***. See, e.g., Foreign Producer Questionnaire responses of ***; CR at III-3.

⁶⁷ See, e.g., CR/PR at Table VI-2.

⁶⁸ Therefore, for purposes of our analysis in the final phase of this investigation, the domestic industry consists of Carlex; Guardian; Pilkington; PPG; Safelite; Viracon/Curvlite; Visteon; and Daimler/Chrysler. See, e.g., CR/PR at III-1.

⁶⁹ Vice Chairman Okun and Commissioner Hillman do not join section II of these Views. See Separate and Dissenting Views of Vice Chairman Okun and Commissioner Hillman.

⁷⁰ 19 U.S.C. § 1673d(b).

context of U.S. production operations.⁷¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”⁷² In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.⁷³ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”⁷⁴

For the reasons discussed below, we determine that the domestic industry is materially injured by reason of subject imports from China found to be sold at less than fair value.

A. Conditions of Competition

Several conditions of competition are pertinent to our analysis.

Domestic producers, importers and purchasers agree that the demand for ARG windshields is primarily determined by the number of vehicles on the road, the number of miles driven, vehicle age, and weather. Since the 1990s, motor vehicle use and the average age of vehicles on the road has been increasing, which has led to a steady increase in the consumption of ARG windshields.⁷⁵ Apparent domestic consumption of ARG windshields increased from 11,939,656 units in 1998, to 12,314,872 units in 1999, and 12,612,138 units in 2000; apparent domestic consumption in interim 2001 was 10,137,666 units compared to 9,718,883 units in interim 2000.^{76 77}

A major segment of the ARG windshield market (possibly as much as 50 to 70 percent) is related to claims by insured motorists for windshield replacement.⁷⁸ Some or all of the U.S. producers act as third-party administrators for certain property and casualty insurance companies in the United States with respect to such claims for windshield replacement.⁷⁹ Petitioners contended, however, that the majority of auto glass claims are satisfied by the policy holder’s preferred shop, not a shop suggested by the auto glass replacement service provider.⁸⁰

While most domestic producers of ARG windshields also produce OEM windshields, we note that demand for OEM windshields differs from that of ARG windshields. Demand for OEM windshields is almost entirely driven by the demand for new vehicles whereas demand for ARG windshields is driven by such factors as the number of vehicles on the road, miles driven, vehicle age, and weather.

There has been increasing vertical integration in the domestic industry over the investigation period. As a result of recent mergers and acquisitions, some domestic producers now operate at several levels of the ARG windshield production and distribution system, including wholesale distribution and retail glass installation shops. Thus, some domestic producers supply and compete with independent

⁷¹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also *Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

⁷² 19 U.S.C. § 1677(7)(A).

⁷³ 19 U.S.C. § 1677(7)(C)(iii).

⁷⁴ *Id.*

⁷⁵ Preliminary Confidential Report (“PCR”) at II-12; Preliminary Public Report (“PPR”) at II-6.

⁷⁶ CR/PR at Table IV-2. However, on a value basis, apparent domestic consumption declined from \$649.5 million in 1998 to \$605.6 million in 1999, and then increased to \$618.3 million in 2000; apparent domestic consumption in interim 2000 was \$480.0 million compared to \$519.0 million in interim 2001. *Id.*

⁷⁷ PCR at II-8; PPR at II-4; Conference Tr. at 54 (Tann); PCR at II-13; PPR at II-7.

⁷⁸ PCR at II-2, II-7; PPR at II-1 to II-2, II-4.

⁷⁹ Conference Tr. at 54-55 (Tann); 103-104, 108-109 (Harris).

⁸⁰ Conf. Tr. at 13-16 (Jungbluth), 77-79 (Wiley); Petition at 30-32.

distributors for sales at both the wholesale and retail level. This vertical integration, along with increasing concentration, has contributed to the price competitiveness of this market.⁸¹

Windshield sales under insurance claims account for 56.2 percent of retail sales.⁸² Several domestic producers have arrangements with insurance companies through which they administer claims including locating installers.⁸³ Insurance companies are aggressive in reducing costs, and there is no evidence that any particular supplier or country of origin windshield is preferred.⁸⁴

The record indicates that subject imports from China and the domestic like product are highly substitutable.⁸⁵ While in the past Chinese ARG windshields were perceived to be of lower quality than domestically produced ARG windshields, in recent years this perception of lower quality has largely been eliminated, and subject imports from China are now viewed as substitutable for the domestic like product.^{86 87}

Finally, nonsubject imports declined over the period of investigation, both by quantity and by value.^{88 89}

B. Volume of Subject Imports

Section 771(7)(C)(i) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”⁹⁰

⁸¹ Conf. Tr. at 13-14, 15-16 (Jungbluth); 77-79 (Wiley); Petition at 30-32.

⁸² CR at II-7; PR at II-4.

⁸³ CR at II-7; PR at II-4.

⁸⁴ CR at II-8; PR at II-4.

⁸⁵ CR at II-15; PR at II-7; Conference Tr. at 43 (Chimka).

⁸⁶ CR at II-15; PR at II-7; Conference Tr. at 38-39 (Chimka); 62-63 (Tann); 63 (Jungbluth); 72 (Anderson).

⁸⁷ Commissioner Bragg notes that domestic producers AFG Industries, Guardian, Pilkington, and Visteon produce both ARG and OEM windshields whereas AP Technoglass, the DaimlerChrysler Corp., Carlex and a few smaller producers primarily produce OEM windshields. Safelite is the only company that produces exclusively ARG windshields. CR at II-1; PR II-1. Viracon/Curvelite produces primarily for the ARG windshield market but also produces OEM windshields for busses and recreational windshields. There are many importers of subject and nonsubject products (primarily from Canada and Mexico), as well as independent wholesalers and retailers. CR at II-1; PR II-1.

⁸⁸ Nonsubject imports increased in quantity from 5,368,130 units in 1998 to 5,514,042 units in 1999, then decreased to 5,202,413 units in 2000; nonsubject imports were 4,024,712 units in interim 2000 compared to 3,948,530 units in interim 2001. By value, nonsubject imports declined from \$212.3 million in 1998 to \$207.3 million in 1999 and \$200.4 million in 2000; nonsubject imports were \$155.5 million in interim 2000 compared to \$164.0 million in interim 2001. By value, the market share of nonsubject imports decreased from 32.7 percent in 1998 to 34.2 percent in 1999 and 32.4 percent in 2000. CR/PR at Tables IV-1 to IV-2.

⁸⁹ Petitioners argued for the inclusion of imports from Hong Kong in the Commission’s analysis of subject import volume alleging that these imports are of Chinese origin. However, Commerce has not addressed transshipments and the United States Customs Service’s country of origin designation does not identify imports from Hong Kong as being originally from China. We find that the record does not contain sufficient evidence to support an independent determination of transshipment. Therefore, we include imports from Hong Kong in our discussion and analysis of nonsubject imports. We note, however, that imports from Hong Kong were relatively insignificant during the period of investigation and would not have affected our ultimate injury determination had we decided to treat them as subject imports.

⁹⁰ 19 U.S.C. § 1677(7)(C)(i).

The volume of subject ARG windshields imported from China increased dramatically throughout the period of investigation from 481,393 units in 1998 to 1,089,278 units in 1999, and 1,808,630 units in 2000; subject imports were 1,217,620 units in interim 2000 compared to 1,680,646 units in interim 2001.⁹¹ Thus, the volume increased 275.7 percent between 1998 and 2000.⁹²

The market penetration of subject imports also increased during the period of investigation.⁹³ Subject import market penetration, measured by quantity, increased from 4.0 percent in 1998 to 8.8 percent in 1999, and to 14.3 percent in 2000. Subject import market penetration was higher in interim 2001, when it was 16.6 percent, than in interim 2000, when it was 12.5 percent.⁹⁴

The domestic industry lost market share to subject imports from China. Domestic producers' market share, measured by quantity, decreased from 51.0 percent in 1998 to 46.4 percent in 1999, and to 44.4 percent in 2000. The domestic industry's market share was lower in interim 2001, at 44.5 percent, than in interim 2000, when it was 46.1 percent.⁹⁵ The market share of nonsubject imports also decreased, from 44.9 percent in 1998 to 41.3 percent in 2000.⁹⁶

We consequently find the absolute volume of subject imports, and the increase in that volume relative to apparent domestic consumption, to be significant.

C. Price Effects of the Subject Imports

Section 771(7)(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.⁹⁷

As noted above, the domestic product and subject imports are highly substitutable, and price is an important factor in purchasing decisions.⁹⁸ While quality is also an important factor in purchasing decisions, contract bids are generally solicited from suppliers whose quality and reliability have already been established, making price and volume the focal point of contract negotiations.⁹⁹ For instance, some purchasers reported that they require potential suppliers to pass certain qualification procedures to assure that quality standards are met before they will enter into contract negotiations with them.¹⁰⁰ Some

⁹¹ CR/PR at Table IV-1.

⁹² CR/PR at Tables IV-1, C-1.

⁹³ Commissioner Bragg finds that when measured against her broader like product definition, both the absolute volume of subject imports and the increase in that volume relative to apparent domestic consumption, are significant. *See* CR/PR at Table C-2.

⁹⁴ CR/PR at Table IV-2.

⁹⁵ CR/PR at Table IV-2.

⁹⁶ CR/PR at Table IV-2.

⁹⁷ 19 U.S.C. § 1677(7)(C)(ii).

⁹⁸ Purchasers reported that quality and price are the most important factors in choosing a supplier. CR/PR Table II-3.

⁹⁹ CR at II-19; PR at II-10.

¹⁰⁰ CR at II-19; PR at II- II-10

purchasers reported disqualifying certain suppliers because of poor quality.¹⁰¹ Also, domestic producers and purchasers reported that most insurance companies, although not direct purchasers of windshields, want the lowest price regardless of brand or country of origin and that insurance companies are aggressive in reducing costs.^{102 103}

In the preliminary phase of the investigation the Commission noted that in the final investigation it would collect pricing data covering a broader product range than it did during the preliminary phase.¹⁰⁴ Thus, in the final phase of the investigation the Commission asked the parties to comment on how the Commission could best collect and analyze pricing data in order to cover a fair and accurate cross section of the ARG windshield market. Because of the large number of product types and wide disparity in prices between those products, the parties acknowledged that aggregate industry-wide pricing data would be of limited probative value in making direct price comparisons. Therefore, at petitioners' and respondents' suggestion, the Commission gathered pricing information on a representative sample of eight different ARG windshield model numbers.¹⁰⁵ According to the parties, these model numbers accounted for some of the largest volume sales of ARG windshields during the period of investigation and are a fairly representative sample of the market for ARG windshields.¹⁰⁶

The Commission requested that U.S. producers, importers, and purchasers of ARG windshields provide quarterly data for the total delivered quantity and value of ARG windshield transactions to unrelated parties in the U.S. market.¹⁰⁷ Data were requested from January 1998 to September 2001 for producers and importers and from January 1999 to September 2001 for purchasers.¹⁰⁸

For domestic producers, prices for ARG windshields fluctuated sharply downward throughout most of the investigation period.¹⁰⁹ While some of this decline may be attributable to expanded supply of particular ARG windshields as more companies produce them,¹¹⁰ we note that prices dropped even for products for which quarterly volumes remained relatively stable and also when quarterly volumes showed increases.¹¹¹ These price decreases were occurring as the Chinese product was increasing its presence in the market at price levels well below those of the domestic windshields, thereby depressing the domestic prices.

Product-specific domestic producer and importer pricing data indicate frequent and substantial underselling by subject merchandise over the period of investigation. Subject imports undersold the domestic like product in all but five quarters. For the seven pricing products for which there were

¹⁰¹ CR at II-19; PR at II-10.

¹⁰² CR at II-8; PR at II-4.

¹⁰³ Commissioner Bragg notes that although quality is important, during contract negotiations quality has already been established and price is the most important factor.

¹⁰⁴ Preliminary Determination at 15.

¹⁰⁵ CR at V-5; PR at V-3 to V-4.

¹⁰⁶ See generally, Comments to draft Questionnaires filed September 10, 2001.

¹⁰⁷ Respondents argued that data should be gathered at the retail level instead of at the first unrelated sale level. The Commission practice has consistently been to gather pricing data, whenever practicable, at the first unrelated sale level. Although some importers may be integrated all the way down to the retail level and some U.S.-produced ARG windshields are sold through related parties at the retail level, many transactions still occur at the unrelated wholesale or distribution level. CR at V-5 n.9; PR at V-3 n.9. Thus, we find that the record evidence does not support deviation from our prior established practice.

¹⁰⁸ CR at V-5; PR at V-3.

¹⁰⁹ CR at Tables V-1 - V-8.

¹¹⁰ CR at V-19, n. 12.

¹¹¹ See, for example, Table V-3.

comparisons between the subject merchandise and the domestic like product, the underselling margins ranged from 0.7 to 67.5 percent.¹¹²

Purchaser pricing data also show consistent and pervasive underselling by subject imports. Subject imports from China undersold the domestic like product in 75 out of 88 quarters observed. Margins of underselling ranged from 1.5 to 68.2 percent.¹¹³

In light of the importance of price in purchasing decisions and the significant and increasing volume and market share of subject imports during the period of investigation, we find the underselling indicated by the pricing data to be significant. We also find that increased volumes of lower priced and substitutable subject imports depressed domestic prices to a significant degree.¹¹⁴

Respondents argued that price declines in the domestic ARG market during the period of investigation were largely due to the “product life cycle” effect.¹¹⁵ However, we find that the record does not suggest that product life cycle effects played an important role in domestic price declines during the period of investigation. First, respondents were unable to substantiate their argument with any quantifiable pricing data. Although domestic industry representatives did agree that prices may decline to certain plateaus over the product life span,¹¹⁶ petitioners refuted the basic premise of respondents’ argument. They stated that the information relied on by respondents was in reference to a division of Apogee that does not produce ARG windshields.¹¹⁷ We, therefore, cannot conclude that the price declines in this market over the period of investigation are explained to any significant degree by any product life cycle effect.

Respondents also claim that domestic ARG producers that also produce OEM windshields are able to sell their windshields at a substantial premium compared with the lower-priced Safelite (the only domestic ARG producer that does not produce OEM) windshields and subject imports from China. Respondents contend that the large price disparities between subject imports and the domestic like product can be explained by this price premium because domestic producers can market their windshields as manufactured by an “original equipment manufacturer.” Evidence on the record does not support this argument. When Safelite’s reported prices are compared to prices of subject imports from China, the imported Chinese product also undersold Safelite’s reported prices in every quarter for which comparable data were reported.¹¹⁸ Moreover, Safelite’s reported truckload prices were *** domestic producers’ prices

¹¹² Underselling margins ranged from 17.5 to 44.1 percent for product 1 over 11 quarters; from 26.9 to 67.5 percent for product 2 over 15 quarters; from 9.9 to 52.1 percent for product 4 over 15 quarters; from 1.0 to 36.0 percent for product 6 over 11 quarters; from 12.3 to 54.1 for product 7 over 15 quarters; from 10.8 to 53.9 percent for product 8 over 15 quarters; from 0.7 to 32.2 percent for product 9 over 15 quarters; and from 23.2 to 39.1 percent for product 11 over 11 quarters. CR/PR at Tables V-1 to V-8.

¹¹³ CR/PR Table V-11 to V-18.

¹¹⁴ Commissioner Bragg notes that there were no sales of subject merchandise for OEM applications and thus price comparisons involving domestic OEM windshields are not possible. Commissioner Bragg further notes that the decline in average unit values for the domestic like product, as she has defined it (*see* n.15), is consistent with record evidence that significant volumes of subject imports served to depress prices for the domestic like product to a significant degree. *See* CR/PR at Table C-2.

¹¹⁵ CR at V-19; PR at V-7. “As discussed in our prehearing brief, nominal prices declined over time for specific windshield specifications. But these are not necessarily indicative of adverse trends or adverse effects. As reported by Apogee in its SEC form 10Ks, prices for specific windshield models were generally characterized by declines over the product life cycles as new windshields and refinements and enhancements to older windshields are introduced.” Hearing Tr. at 185-186 (Klett).

¹¹⁶ Hearing Tr. at 112.

¹¹⁷ Petitioners’ Posthearing Brief at Okun-9-11.

¹¹⁸ CR/PR App E; CR at V-20 to V-21; PR at V-7 to V-8.

*** percent of the time, even though Safelite cannot market its windshields as manufactured by an “original equipment manufacturer.”¹¹⁹

We have also considered Respondents’ contention that vertical integration in the domestic industry insulates it from foreign price competition. As indicated earlier, the record shows that the domestic industry has become increasingly vertically integrated as some domestic producers became involved at the wholesale distribution and retail outlet levels, some produced their own float glass, and several domestic producers merged or formed other relationships with other players in the market, including insurance companies.¹²⁰ Further, information collected in this final phase of the investigation about vertical arrangements and the role of insurance companies, does not confirm respondents’ arguments that these arrangements curtailed competition from independent distributors. Only three out of fifteen purchasers agreed with this allegation,¹²¹ and record data showed ***.¹²² There is no indication that vertical integration or insurance company arrangements influence the purchasing decisions of retailers, or otherwise prevent retailers from buying Chinese ARG windshields.¹²³

Additionally, we find that while vertical integration by domestic producers is a significant condition of competition in this market, it does not insulate the domestic industry from foreign price competition to any measurable degree. For instance, one would not expect an insulated domestic industry to lose market share to subject imports, as the domestic industry did during the period of investigation. Moreover, the domestic industry’s volume, value, and average unit values of transfers to related firms decreased during the period of review, as did its volume, value, and average unit values of commercial sales.¹²⁴

Therefore, we find, based primarily on the evidence of declining price trends and significant underselling by subject imports, and the high degree of substitutability between the domestic like product and subject imports, that subject imports have significantly depressed prices and that subject imports are having significant negative price effects on the domestic like product.

D. Impact of the Subject Imports

In examining the impact of the subject imports on the domestic industry, we consider all relevant economic factors that bear on the state of the industry in the United States.¹²⁵ These factors include output,

¹¹⁹ CR at V-21; PR at V-8.

¹²⁰ In the preliminary phase of this investigation, we indicated that we would examine the significance of these trends in any final phase investigation. We attempted to collect additional information on this issue, including the collection of additional information about vertical arrangements, sending questionnaires to insurance companies, and asking for additional information at the hearing.

¹²¹ See, e.g., CR at II-2 to II-3; PR at II-1 to II-2.

¹²² See, e.g., Petitioners’ Posthearing Brief at Answers to Commissioner Hillman’s Questions at 1-3.

¹²³ The statute directs the Commission to examine the condition of the domestic industry as a whole, e.g., 19 U.S.C. §§ 1673d(b) 1677(4)(A); see also, e.g., Sandvik AB v. United States, 721 F. Supp. 1322, 1330 (Ct. Int’l Trade 1989) (“there is no basis” for a firm by firm analysis of the condition of the domestic industry due to the statute’s admonition to determine whether the domestic industry “as a whole” is materially injured by subject imports.”), aff’d, 904 F.2d 46 (Fed. Cir. 1990). Nevertheless, respondents raised a number of data problems with respect to individual companies’ reported information and argued such problems affected the Commission’s analysis. In any event, an examination of the financial condition of each responding U.S. producer does not lend credence to respondents’ argument. See, e.g., Mem. INV-Z-026 (Mar. 6, 2002).

¹²⁴ CR/PR Table VI-1.

¹²⁵ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an

(continued...)

sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”^{126 127 128}

The domestic industry’s condition declined between 1998 and 2000, as reflected by virtually all domestic industry performance indicators. The domestic industry’s production levels and the quantity and value of its U.S. shipments decreased between 1998 and 2000.¹²⁹ During this time, domestic ARG production capacity and capacity utilization also declined.¹³⁰ The number of production workers, hours worked, and wages paid each declined from 1998 to 2000.¹³¹ Domestic producers’ end-of-period ARG

¹²⁵ (...continued)

industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”).

¹²⁶ 19 U.S.C. § 1677(7)(C)(iii); see also SAA at 851, 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812 to 813 (Prelim.), USITC Pub. 3155 (Feb. 1999) at 25, n.148.

¹²⁷ The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its amended final antidumping determination, Commerce found the following weighted average margins: FYG 11.80; Xinyi 3.71; Benxun 9.84; Changchun 9.84; Guilin 9.84; Wuhan 9.84; TCGI 9.84; China-wide 124.50. 67 Fed. Reg. at 6484 (Feb. 12, 2002).

¹²⁸ Commissioner Bragg notes that she does not ordinarily consider the magnitude of the margin of dumping to be of particular significance in evaluating the effects of subject imports on the domestic producers. See Separate and Dissenting Views of Commissioner Lynn M. Bragg in Bicycles from China, Inv. No. 731-TA-731 (Final), USITC Pub. 2968 (June 1996); Anhydrous Sodium Sulfate from Canada, Inv. No. 731-TA-884 (Prelim.), USITC Pub. 3345 (Sept. 2000) at 11, n.63.

¹²⁹ ARG production declined from 6.4 million units in 1998 to 6.3 million units in 1999 and to 6.1 million units in 2000, a 4.6-percent decline. Production was lower in interim 2001, at 4.5 million units, than it was in interim 2000, when it was 4.7 million units. See, e.g., CR/PR at Table III-1. The quantity of the domestic industry’s U.S. ARG shipments declined from 6.1 million units in 1998 to 5.6 million units in 2000, a decline of 8.0 percent. The quantity of U.S. shipments was higher in interim 2001, at 4.51 million units, than it was in interim 2000, when it was 4.48 million units. See, e.g., CR/PR at Table III-1. The value of the domestic industry’s U.S. shipments declined from \$417.2 million in 1998 to \$365.5 million in 2000, a decline of 12.4 percent. The \$300.8 million in U.S. shipments in interim 2001 was more than the \$287.1 million in U.S. shipments in interim 2000. See, e.g., CR/PR at Table III-1.

¹³⁰ Domestic production capacity declined from 8.6 million units in 1998 to 8.0 million units in 2000, a decline of 3.3 percent. Capacity was higher in interim 2001, when it was 7.0 million units, than in interim 2000, when it was 6.3 million units. See, e.g., CR/PR at Table III-1. Capacity utilization fluctuated during the period of investigation, increasing from 74.4 percent in 1998 to 78.2 percent in 1999, and then decreasing to 73.4 percent in 2000. Capacity utilization was lower in interim 2001, at 64.7 percent, than in interim 2000, when it was 74.8 percent. See, e.g., CR/PR at Table III-1. Two domestic producers, Amilite Corp./dba Premier Autoglass Corp. and Calvin/AKG Industries, ceased production of ARG windshields. CR at III-1 n.2; PR at III-1. ***. CR at III-2; PR at II-2.

¹³¹ The number of production and related workers declined from 1,967 in 1998 to 1,837 in 2000. The 1,885 production and related workers in interim 2001 were more than the 1,807 workers in interim 2000. Hours worked declined from 2,795 in 1998 to 2,506 in 2000, and the 1,859 hours worked in interim 2001 were more than the 1,826 hours worked in interim 2000. Wages paid declined from \$52.6 million in 1998 to \$47.8 million in 2000, but were higher in interim 2001, at \$39.0 million, than in interim 2000, when they were \$37.0 million. CR/PR at Table III-1. On the other hand, some employment indicators improved during the period of investigation. Hourly wages increased from \$18.81 in 1998 to \$19.15 in 2000, and hourly wages in interim 2001 of \$21.00 were higher than in interim 2000, at \$20.27. Productivity increased from 1.96 units per hour in 1998 to 2.13 units per hour in 2000, although productivity in interim 2001 of 2.15 units per hour was lower than in interim 2000 of 2.25 units per

(continued...)

inventories fluctuated during the period of investigation but accounted for an increasingly larger ratio of total domestic shipments over time.¹³² These declines occurred during a period of increasing apparent domestic consumption.¹³³ While the subject imports were increasing in both quantity and market penetration, the domestic industry's market share declined from 51.0 percent in 1998 to 44.4 percent in 2000.¹³⁴

Domestic producers' per unit cost of goods sold generally decreased during the period of investigation, declining from \$41.69 in 1998 to \$40.11 in 2000.¹³⁵ The domestic industry's unit net sales value declined from \$67.63 in 1998 to \$64.73 in 2000.¹³⁶ Operating income as a share of net sales declined from 8.7 percent in 1998 to 1.3 percent in 1999, before recovering somewhat to 3.1 percent in 2000.¹³⁷ Although research and development expenses increased from \$*** in 1998 to \$*** in 2000, capital expenditures declined from \$*** in 1998 to \$*** in 2000.^{138 139} The decreased volume, market share, and revenue of the domestic industry contrast with the substantially increased volume of significantly lower-priced imports that have obtained a significant and growing share of the market, at the domestic industry's expense.

The record indicates limited improvement in certain financial indicators between 1999 and 2000,¹⁴⁰ and in performance indicators between interim 2000 and interim 2001. While we recognize that these improvements occurred as subject imports continued to increase, the domestic producers argued that some of these apparent improvements are due to the fact that subject imports induced domestic producers to cut costs and/or change their product mix towards production of the higher-end, ARG windshields, such as those for SUVs and minivans, which are larger, cost more, and have higher profit margins.¹⁴¹

¹³¹ (...continued)
hour. CR/PR at Table III-1.

¹³² End-of-period inventories were 2.1 million units in 1998, 2.0 million units in 1999, 2.3 million units in 2000, 2.0 million units in interim 2000, and 2.0 million units in interim 2001. The ratio of inventories to total domestic shipments was 33.3 percent in 1998, 34.6 percent in 1999, 39.4 percent in 2000, 32.1 percent in interim 2000, and 33.0 percent in interim 2001. CR/PR at Table III-1.

¹³³ Apparent domestic consumption increased from 11.9 million units in 1998 to 12.6 million units in 2000; apparent domestic consumption in interim 2001 was 10.1 million units compared to 9.7 million units in interim 2001. CR/PR at Table IV-2.

¹³⁴ CR/PR at Table IV-2. The domestic industry's market share was slightly lower in interim 2001, at 44.5 percent, than it was in interim 2000, when it was 46.1 percent. Id.

¹³⁵ CR/PR at Table VI-1.

¹³⁶ CR/PR at Table VI-1. Unit net sales declined from 6.2 million units in 1998 to 5.6 million units in 2000.

¹³⁷ Industry operating income declined from \$36.6 million in 1998 to \$4.9 million in 1999 and then increased to \$11.3 million in 2000; operating income in interim 2001 at \$13.4 million was lower than in interim 2000 when it was \$15.8 million. Operating income as a ratio of net sales declined from 8.7 percent in 1998 to 1.3 percent in 1999 then increased to 3.1 percent in 2000; the ratio in interim 2001 (4.4 percent) was lower than in interim 2000 (5.4 percent). CR/PR at Table VI-1.

¹³⁸ CR/PR at Table VI-3.

¹³⁹ Domestic producers also reported a number of other negative effects from subject imports on their firms' growth, investments, ability to raise capital, and/or development and production efforts. CR/PR at Appendix E. Safelite filed a voluntary petition under chapter 11 of the Federal Bankruptcy Code on June 9, 2000 as part of a pre-arranged plan to restructure its debt. See, e.g., CR at VI-3 n.4; PR at VI-1; Petitioners' Posthearing Brief at Ex. 16.

¹⁴⁰ CR/PR Table VI-3.

¹⁴¹ Petitioners' Final Comments at 10; Testimony of Safelite (recovery by going to lower volume higher margin). See, e.g., CR at VI-6; PR at V-1; Petitioner's Final Comments at 10; Hearing Tr. at 57, 211 (indicating that only in (continued...))

Furthermore, the improved operating income and margin still show an industry performing substantially worse than in the beginning of the investigation period.

The significant increase in the volume of subject imports both absolutely and relative to apparent domestic consumption combined with the significant underselling and price-depressing effects of subject imports resulted in overall declines in most domestic industry performance indicators, the departure of two domestic producers from the industry, the closures of production facilities, and the bankruptcy of another producer. We accordingly find that the subject imports are having a significant adverse impact on the domestic industry.¹⁴²

E. Critical Circumstances

Because Commerce made affirmative critical circumstances determinations with respect to certain imports of ARG windshields from China, and given our respective determinations that a domestic industry is materially injured by reason of the volume of subject imports, we must further determine “whether the imports subject to the affirmative [Commerce critical circumstances] determination . . . are likely to undermine seriously the remedial effect of the antidumping order to be issued.”¹⁴³ The URAA SAA indicates that the Commission is to determine “whether, by massively increasing imports prior to the effective date of the relief, the importers have seriously undermined the remedial effect of the order.”¹⁴⁴

¹⁴¹ (...continued)

the last three months had the Chinese started supplying ARG windshields for the Chevy Suburban DW1217, which domestic producers had supplied until then). We note that the domestic industry’s unit cost of goods sold in interim 2001 is 4.6 percent higher than in interim 2000 whereas unit cost of goods sold had fallen between 1998 and 1999 and between 1999 and 2000. Likewise, the domestic industry’s unit net sales value in interim 2001 was 4.3 percent higher than in interim 2000 whereas unit net sales value had fallen 5.6 percent between 1998 and 1999 and was only 1.4 percent higher in 2000 than in 1999. CR/PR at Table C-1.

¹⁴² Given her definition of the domestic like product and the domestic industry, Commissioner Bragg notes that inclusion of domestic OEM windshield production does not substantially alter the trends displayed in the data relied upon by the majority to assess the impact of subject imports, or the conclusions reached. Indeed, the record indicates that as the volume of significantly lower-priced subject imports captured increasing market share from domestic producers of ARG and OEM windshields, the financial performance of the domestic industry continuously deteriorated throughout the period of investigation. In particular, domestic production, capacity utilization, U.S. shipments, number of production workers, net sales, and capital expenditures each declined significantly; in addition, operating margins decreased from 8.2 percent in 1998 to -0.3 percent in 2000, and decreased between interim periods. CR/PR at Table C-2. Moreover, four domestic producers operated with losses in 2000, and two additional domestic producers ceased production of ARG windshields during the period of investigation. Domestic producer questionnaires; INV-Z-032; CR at III-1 n.2, PR at III-1; Tr. at 93-95 (Petitioners’ response to question posed by Commissioner Bragg). Consequently, Commissioner Bragg concurs that subject imports are having a significant adverse impact on the domestic industry she has defined (see n. 15).

¹⁴³ 19 U.S.C. § 1673d(b)(4)(A)(i)(emphasis added). The statute further provides that in making this determination:

the Commission shall consider, among other factors it considers relevant--

- (I) the timing and volume of the imports,
- (II) a rapid increase in inventories of the imports, and
- (III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

19 U.S.C. § 1673d(b)(4)(A)(ii).

¹⁴⁴ SAA at 877.

In its final determinations, Commerce made affirmative findings of critical circumstances with respect to the “all others” category of nonresponding producers and exporters of ARG windshields from China.¹⁴⁵

Consistent with Commission practice, in considering the timing and volume of imports, we have compared import quantities prior to filing of the petition with those subsequent to the filing of the petition.¹⁴⁶ The record contains monthly export data for the firms subject to the affirmative Commerce critical circumstances determinations. We have examined the data included in the six-month periods before and after the filing of the petitions.

Petitioners are not pursuing critical circumstances because the share of subject imports for which Commerce made an affirmative critical circumstances finding is ***.¹⁴⁷ Similarly, we determine that imports of ARG windshields subject to affirmative critical circumstances findings by Commerce will not seriously undermine the remedial effect of the antidumping orders as both the level of subject imports and importers’ inventory levels were lower in the months after the filing of the petition and were very small relative to the volume of ARG windshields from China not subject to critical circumstances.¹⁴⁸

Accordingly, we make negative critical circumstances determinations concerning those imports of ARG windshields from China that are subject to final affirmative critical circumstances findings by Commerce.

CONCLUSION

For the foregoing reasons, we determine that an industry in the United States is materially injured by reason of subject imports of ARG windshields from China that Commerce found to be sold at less than fair value in the U.S. market.

¹⁴⁵ 66 Fed. Reg. 6482 (Feb. 12, 2002).

¹⁴⁶ See Certain Preserved Mushrooms from China, India, and Indonesia, Invs. Nos. 731-TA-777-779 (Final), USITC Pub. 3159 (Feb. 1999) at 24 (Views of Vice Chairman Miller and Commissioners Hillman and Koplan), 28 (Views of Chairman Bragg and Commissioners Crawford and Askey); Certain Brake Drums and Rotors from China, Inv. No. 731-TA-744 (Final), USITC Pub. 3035 at 19 (April 1997).

¹⁴⁷ Petitioners’ Posthearing Brief at appendix Bragg-3.

¹⁴⁸ CR/PR Table IV-3.

DISSENTING VIEWS OF VICE CHAIRMAN DEANNA TANNER OKUN AND JENNIFER A. HILLMAN

Based on the record in this investigation, we find that an industry in the United States is not materially injured or threatened with material injury by reason of imports of automotive glass replacement (“ARG”) windshields from China that the U.S. Department of Commerce (“Commerce”) found were sold in the United States at less than fair value (“LTFV”).¹⁴⁹

I. NO MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS

In the final phase of antidumping duty investigations, the Commission determines whether an industry in the United States is materially injured by reason of the imports under investigation.¹⁵⁰ In making this determination, the Commission must consider the volume of imports, their effect on prices for the domestic like product, and their impact on domestic producers of the domestic like product, but only in the context of U.S. production operations.¹⁵¹ The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”¹⁵² In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.¹⁵³ No single factor is dispositive, and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the affected industry.”¹⁵⁴

For the reasons discussed below, we determine that the domestic ARG windshield industry is not materially injured by reason of subject imports from China that are sold in the United States at less than fair value.

A. Conditions of Competition¹⁵⁵

Several conditions of competition are pertinent to our analysis.

1. Demand / Major Market Segment

Domestic producers, importers and purchasers agree that the demand for ARG windshields is primarily determined by the number of vehicles on the road, the number of miles driven, vehicle age, and weather. Since the 1990s, motor vehicle use and the average age of vehicles on the road has been

¹⁴⁹ There is no issue in this investigation regarding whether there is a reasonable indication that a domestic industry is materially retarded by reason of subject imports.

¹⁵⁰ 19 U.S.C. § 1673d(b).

¹⁵¹ 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [and] explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B); see also *Angus Chemical Co. v. United States*, 140 F.3d 1478 (Fed. Cir. 1998).

¹⁵² 19 U.S.C. § 1677(7)(A).

¹⁵³ 19 U.S.C. § 1677(7)(C)(iii).

¹⁵⁴ *Id.*

¹⁵⁵ Based on our definition of ARG windshields as the domestic like product in these investigations, we find that Chinese subject imports exceeded the three percent statutory negligibility threshold during the pertinent period. CR/PR at Table IV-1; 19 U.S.C. § 1677(24). Accordingly, we conclude that Chinese subject imports are not negligible.

increasing, and has led to a steady increase in the consumption of ARG windshields.¹⁵⁶ Apparent domestic consumption of ARG windshields increased from 11,939,656 units in 1998, to 12,314,872 units in 1999, and 12,612,138 units in 2000; apparent domestic consumption in interim 2000 was 9,718,883 units compared to 10,137,666 units in interim 2001.^{157 158}

A major segment of the ARG windshield market (approximately 56.2 percent, but perhaps up to 70 percent) is related to claims by insured motorists for windshield replacement.¹⁵⁹ Many of the domestic producers act as third-party administrators for certain property and casualty insurance companies in the United States with respect to such claims for windshield replacement.¹⁶⁰ Based on limited data, the record reflects a significant portion of these claims are directed toward related installers.¹⁶¹

While most domestic producers of ARG windshields also produce OEM windshields, we note that demand for OEM windshields differs from that of ARG windshields. Demand for OEM windshields is almost entirely driven by the demand for new vehicles whereas, as noted above, demand for ARG windshields is driven by such factors as the number of vehicles on the road, the number of miles driven, vehicle age, and weather.

2. Domestic Industry / Supply

Domestic producers AFG Industries, Guardian, Pilkington, PPG and Visteon produce both ARG and OEM windshields whereas AP Technoglass, the DaimlerChrysler Corp., Carlex and a few smaller producers primarily produce OEM windshields. Safelite and Viracon/Curvlite produce almost exclusively ARG windshields. There are many importers of subject and nonsubject products (primarily from Canada and Mexico), as well as independent wholesalers and retailers.¹⁶²

¹⁵⁶ Confidential Staff Report (“CR”) at II-12, Public Staff Report (“PR”) at II-6.

¹⁵⁷ CR/PR at Table IV-2. However, on a value basis, apparent domestic consumption declined from \$649.5 million in 1998 to \$605.6 million in 1999, and then increased to \$618.3 million in 2000; apparent domestic consumption in interim 2000 was \$480.0 million compared to \$519.0 million in interim 2001. Id.

¹⁵⁸ There is evidence in the record that some domestic producers have advertised windshield repair as an alternative to windshield replacement, and that windshield repair has increased. (We note that some purchasers reported that windshield repair is only feasible for limited types of windshield damage). CR at II-13, PR at II-7; Transcript of Staff Conference (“Conference Tr.”) at 54 (testimony of Mr. Tann).) However, the Commission lacks data concerning windshield repair. While the increase in apparent domestic consumption appears to weigh against concluding that windshield repair has diminished demand for windshield replacement, without windshield repair data, it is impossible to conclude how much impact this has had on windshield replacement demand.

¹⁵⁹ This figure is based on responses of purchasers that had retail sales. Producers and distributors generally reported that they did not know the share of their sales that were related to insurance claims. CR at II-7, PR at II-4. The actual share could be as much as 70 percent of the market. Conference Tr. at 107-108 (testimony of Mr. Harris); see also Safelite Glass Corp. SEC Form 10-K for FY 1999 at 1 (attached to FYG’s Prehearing Brief at exhibit 12) (“Safelite has targeted its marketing efforts principally towards auto insurance companies which management believes, through their policyholders, directly or indirectly influence approximately 70% of the selections of automotive glass replacement and repair providers”).

¹⁶⁰ Conference Tr. at 54-55 (testimony of Mr. Tann); 103-104, 107-109 (testimony of Mr. Harris).

¹⁶¹ Transcript of Hearing (“Hearing Tr.”) at 132-34 (testimony of Mr. Pearson) (“In some situations, that allocation goes to Safelite because of a pricing advantage that we provide to the insurance company”); Petitioners’ Posthearing Brief at Miller-8. The table gives the percentage of claims distributed to Safelite stores for five insurance companies. While this shows that *** claims for certain insurance companies (***) are directed toward related installers (**% percent and **% percent, respectively), the table provides no data concerning the quantity of claims, which could be significant for the larger insurance companies.

¹⁶² CR at II-1, PR at II-1.

The record indicates that domestic producers of both ARG and OEM windshields shift production between ARG to OEM windshields based on demand and OEM contractual obligations.¹⁶³ Indeed, domestic producer *** shifted production away from ARG windshields to OEM production during the period of investigation.¹⁶⁴ However, because of a high level of competition for OEM contracts and additional certification requirements by automotive OEMs, it may be easier to shift from producing for the OEM windshield market to producing for the ARG windshield market than vice versa.¹⁶⁵

The record also indicates that domestic producers recently have had some difficulty supplying the market because of increased consolidation and the switch by some domestic producers to manufacture mainly for the OEM market.¹⁶⁶ A purchaser stated that *** and *** had put it on allocation in the summer of 2000.¹⁶⁷ This is partially confirmed by the fact that two domestic producers stated that they had to place customers on allocation because of ***.¹⁶⁸

3. Vertical Integration

There has been increasing vertical integration in the domestic industry during the period of investigation. As a result of recent mergers and acquisitions, some domestic producers now operate at several levels of the ARG windshield production and distribution system, including wholesale distribution and retail glass installation shops.¹⁶⁹ Thus, an increasing number of domestic producers supply and compete with independent distributors for sales at both the wholesale and retail level.¹⁷⁰

4. Substitutability

The record indicates that subject imports from China and the domestic like product are highly substitutable.¹⁷¹ While in the past Chinese ARG windshields were perceived to be of lower quality than domestically produced ARG windshields, in recent years this perception of lower quality has largely been eliminated, and subject imports from China are now viewed as substitutable for the domestic like product.¹⁷² However, as the domestic industry has achieved greater vertical integration down to the retail level during the period of investigation, the importance of substitutability has diminished.

5. Price-Competitive Market

¹⁶³ CR at II-10, PR at II-5; Hearing Tr. at 23 (testimony of Mr. Dumbris), at 160-161 (testimony of Mr. Skidmore).

¹⁶⁴ *** is contractually obligated to produce OEM windshields for ***. CR/PR at Table III-2; CR at II-6, PR at II-3; *** Questionnaire Response at Question II-3, II-4.

¹⁶⁵ CR at II-10, PR at II-5.

¹⁶⁶ CR at II-11, PR at II-5 - II-6; Hearing Tr. at 164 (testimony of Mr. Topping), at 172 (testimony of Mr. Fennel). In its questionnaire response, *** stated that *** stopped selling ARG windshields to them because it had switched to the OEM market. *** Questionnaire Response. Moreover, as discussed above, *** also has shifted resources from ARG production to OEM production.

¹⁶⁷ *** Questionnaire Response.

¹⁶⁸ *** Questionnaire Response; *** Questionnaire Response.

¹⁶⁹ CR at II-1 - II-2, PR at II-1. Indeed, during the period of investigation, domestic producers reported that approximately 31 percent to *** percent of U.S. shipments are to related parties. Id.

¹⁷⁰ Conference Tr. at 13-14, 15-16 (testimony of Mr. Jungbluth); 77-79 (testimony of Mr. Wiley).

¹⁷¹ CR at II-15, PR at II-7; Conference Tr. at 43 (testimony of Mr. Chimka).

¹⁷² CR at II-15, PR at II-7; Conference Tr. at 38-39 (testimony of Mr. Chimka); 62-63 (testimony of Mr. Tann); 63 (testimony of Mr. Jungbluth); 72 (testimony of Mr. Anderson).

The ARG market is price competitive because there are numerous suppliers of ARG windshields, a significant portion of the market is supplied by nonsubject imports, and the insurance companies use their market position to leverage lower prices.¹⁷³ The available information in the record suggests that purchasing decisions are made largely on the basis of price.¹⁷⁴ Although concentration has increased in the U.S. windshield market and distribution system in recent years, domestic competitors and importers limit large domestic producers' ability to influence market prices.¹⁷⁵ Moreover, petitioners report that in the last few years, "the automotive replacement windshield installation industry has been going through a consolidation as smaller operators are unable to compete effectively with the larger, diversified companies. This has greatly increased the downward pressure on prices for ARG windshields at the wholesale level."¹⁷⁶

6. Nonsubject Imports

Finally, while nonsubject imports declined over the period examined, both by quantity and by value, they were a significant part of the market, holding market share similar to that of the domestic industry.¹⁷⁷ Nonsubject imports increased in quantity from 5,368,130 units in 1998 to 5,514,042 units in 1999 then decreased to 5,202,413 units in 2000; nonsubject imports were 4,024,712 units in interim 2000 compared to 3,948,530 units in interim 2001.¹⁷⁸ By value, nonsubject imports declined from \$212.3 million in 1998 to \$207.3 million in 1999 and \$200.4 million in 2000; nonsubject imports were \$155.5 million in interim 2000 compared to \$164.0 million in interim 2001.¹⁷⁹ By quantity, the market share of nonsubject imports was 44.9 percent in 1998 and 44.4 percent in 1999, then decreased to 41.3 percent in 2000; nonsubject imports' market share by quantity was 41.4 percent in interim 2000 compared to 38.9

¹⁷³ CR at II-8, PR at II-4. Domestic producers and purchasers reported that most insurance companies want the lowest price regardless of brand or country of origin and that insurance companies are aggressive in reducing costs. The record indicates that insurance companies tell retailers/installers what they can charge, which forces retailers to seek lower prices from distributors or manufacturers. *Id.*

¹⁷⁴ CR at II-15, PR at II-7 - II-8; Conference Tr. at 14 (testimony of Mr. Jungbluth); 23 (testimony of Mr. Tann); 37-41 (testimony of Mr. Chimka); 148 (testimony of Mr. Dunnegan).

¹⁷⁵ CR at II-1, PR at II-1.

¹⁷⁶ Petition at 35-36.

¹⁷⁷ CR/PR at Table C-1.

¹⁷⁸ CR/PR at Table IV-1. Petitioners argued for the inclusion of imports from Hong Kong in the Commission's analysis of subject import volume on the basis that these imports are of Chinese origin. However, Commerce has not addressed whether to include transshipments in the scope of subject merchandise and the U.S. Customs Service's country of origin designation through Hong Kong does not identify imports from Hong Kong as being originally from China. Consistent with Congressional direction to respect Hong Kong's status as a separate customs territory, we have not assumed imports from Hong Kong to be imports from China for purposes of evaluating subject import volume. 22 U.S.C § 5712(3). Moreover, it has been the Commission's consistent practice to decline to make a determination regarding the country of origin of imports or regarding transshipments, where to do so would be inconsistent with the Customs Service's country of origin designation or with Commerce's definition of the scope of subject merchandise – unless Commerce has specifically included transshipments in the scope of subject merchandise or the Commission itself has obtained persuasive evidence that the imports have been transhipped. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Italy, Malaysia, and the Philippines*, Invs. Nos. 731-TA865-867 (Final), USITC Pub. 3387 (January 2001) at 10-11, n. 64. Commerce did not include transshipments in its scope, and we find that the record does not contain sufficient evidence to support an independent determination of transshipment. Therefore, we include imports from Hong Kong in our discussion and analysis of nonsubject imports. We note, however, that imports from Hong Kong were relatively insignificant during the period of investigation and would not have affected our ultimate injury determination had we decided to treat them as subject imports.

¹⁷⁹ CR/PR at Table IV-1.

percent in interim 2001.¹⁸⁰ By value, the market share of nonsubject imports decreased from 32.7 percent in 1998 to 34.2 percent in 1999 and 32.4 percent in 2000.¹⁸¹

B. Volume

Section 771(C)(I) of the Act provides that the “Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.”¹⁸²

The volume of subject imports of ARG windshields from China increased 275.7 percent during 1998-2000, rising from 481,393 units to 1,808,630 units. Subject import volume was 38.0 percent higher in interim 2001 than in interim 2000, reaching 1,680,646 units.¹⁸³ As a share of apparent U.S. consumption (by volume), subject imports rose from 4.0 percent in 1998 to 14.3 percent in 2000, and were 16.6 percent in interim 2001 compared to 12.5 percent in interim 2000.¹⁸⁴ Consequently, we find the volume of subject imports, and the increase in that volume relative to apparent domestic consumption, to be significant.

C. Price Effects of the Subject Imports

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of the subject imports, the Commission shall consider whether –

- (I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and
- (II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.¹⁸⁵

As noted above, the ARG windshield market is price competitive, with increasing concentration in the market during the period of investigation. The Commission’s questionnaires identified eight specific ARG windshield products for comparison, representing *** percent of U.S. producers’ shipments during the period of investigation.¹⁸⁶ Specific product price comparisons indicate extensive underselling by subject imports over the investigation period.¹⁸⁷ Petitioners, however, recognize that the extensive underselling by subject imports throughout the period of investigation in part, reflects the advantages U.S. producers possess in availability, delivery time, and less restrictive quantity requirements.^{188 189 190} Nonetheless, based

¹⁸⁰ CR/PR at Table C-1.

¹⁸¹ Id.

¹⁸² 19 U.S.C. § 1677(7)(C)(I).

¹⁸³ CR/PR at Table IV-1; CR/PR at Table C-1.

¹⁸⁴ CR/PR at Table IV-2.

¹⁸⁵ 19 U.S.C. § 1677(7)(C)(ii).

¹⁸⁶ Total shipments reported by U.S. producers for the eight products totaled *** units, or *** percent of commercial sales, during the period of investigation. See CR/PR at Tables V-1 thru V-8, and Table III-3.

¹⁸⁷ CR/PR at Tables V-1 thru V-8.

¹⁸⁸ Petitioners’ Posthearing Brief at 5.

¹⁸⁹ CR/PR at Table II-5.

¹⁹⁰ The domestic product appears to have a large advantage in delivery time (nine out of 11 firms reporting).

on the limited price comparisons in the record, we find the underselling by subject imports to be significant when viewed in isolation.

However, we do not find that the record indicates significant price suppression or depression from subject imports. Rather we find the declines in prices for the specific ARG windshield products are more attributable to product life cycles, increasing pricing pressure from the largest purchaser segment – the insurance industry – and the increasing consolidation of the automotive replacement windshield installation industry. Furthermore, the increasing vertical integration of several large domestic ARG windshield producers has helped to insulate the domestic industry from subject import competition.

Petitioners and respondents agree that ARG windshield prices naturally trend downward over time, and prices are highest when the specific ARG windshield is first introduced into the market.¹⁹¹ All eight of the specific ARG windshields for which the Commission requested pricing data (1) are for vehicle models introduced from 1993 to 1998, (2) have been on the market for a long enough period of time to have significant competition in the ARG market, and (3) as noted above, represent a small share of the numerous ARG windshield products in the market.¹⁹² Consistent with the record evidence, natural price declines from product life cycles likely have contributed to the price declines reported for these specific products.¹⁹³

As noted above, the record also contains evidence of pricing pressure exerted by the insurance industry.¹⁹⁴ Apogee, the parent company of petitioner Viracon/Curvlite, stated that the ARG windshield market's pricing structure "has changed significantly in recent years as insurance companies seek volume pricing at discounted rates from historical levels . . . Consequently, margins have narrowed at the retail, wholesale and manufacturing levels . . ." ¹⁹⁵ Pilkington, in 1999, noted ***.¹⁹⁶ Moreover, *** reported that *** insurance company dictated retailer prices, forcing retailers to obtain lower prices from ARG windshield distributors and manufacturers.¹⁹⁷

Petitioners, however, argue that the presence of imports from China facilitated the ability of insurance companies to put downward pressure on prices.¹⁹⁸ The record does not support this theory. In its public SEC filings, Apogee reported that the insurance industry price pressure existed as far back as 1997, when the Chinese presence in the market was minimal.¹⁹⁹

In addition, petitioners report that consolidation at the automotive replacement windshield installation level has placed downward pressure on prices.

In the last few years, the automotive replacement windshield installation industry has been going through a consolidation as smaller operators are unable to compete effectively with

¹⁹⁰ (...continued)

CR/PR at Table II-5. Indeed, one purchaser, ***, reported having to wait four to six months for delivery of Chinese product. CR at V-34, PR at V-11.

¹⁹¹ Hearing Tr. at 112 (testimony of Mr. Miner), 179-180 and 235-236 (testimony of Mr. Carino). See also FYG Posthearing Brief at exhibit 3.

¹⁹² CR at V-5, PR at V-3 - V-4; CR V-19, PR at V-6 - V-7.

¹⁹³ Id.; FYG Posthearing Brief at exhibit 3.

¹⁹⁴ At least 56.2 percent of windshield sales were to insured motorists. CR at II-7, PR at II-4.

¹⁹⁵ Apogee Enterprises, Inc. SEC Form 10-K for FY 2001 at 5 (attached to FYG's Prehearing Brief at exhibit 5).

¹⁹⁶ ***.

¹⁹⁷ CR at II-8, PR at II-4.

¹⁹⁸ Conference Tr. at 14 (testimony of Mr. Jungbluth); Hearing Tr. at 44 (testimony of Mr. Jungbluth).

¹⁹⁹ Apogee Enterprises, Inc. SEC Form 10-K for FY 1998 at 5 (attached to FYG's Prehearing Brief at exhibit 5).

the larger, diversified companies. This has greatly increased the downward pressure on prices for ARG windshields at the wholesale level.²⁰⁰

Moreover, during the period of investigation, an increasing share of the domestic industry's ARG windshield production was shielded from subject import price competition. Concentration in the domestic ARG market increased during the period as some U.S. producers enhanced their vertical integration. For example in 2000, the largest domestic producer, PPG ***. Under the agreement, PPG *** to distribution and retail markets for its ARG windshields through a large installer ***.²⁰¹

Increased integration by several domestic producers resulted in an increasing share of total shipments being transferred to related firms, with increasing unit values, rather than competing with subject imports.²⁰² Indeed, U.S. producers' transfers to related firms increased from 32.2 percent of total domestic ARG windshield shipments during 1998 to *** percent in interim 2001.²⁰³ On an absolute basis, related transfers were *** percent higher in 2001 (annualized) than in 1998.²⁰⁴ Average unit values for related transfers increased *** percent, from \$63.47 to *** during 1998-2000, and increased an additional *** percent, reaching ***, during interim 2001.²⁰⁵ The shift toward higher-value related transfer shipments during the period of investigation provided increased insulation for the domestic industry from subject import pricing.

Therefore, we find that pricing declines are more attributable to product life cycles, increased pricing pressure from the insurance industry, and consolidation at the automotive replacement windshield installation level than to subject imports. Furthermore, an increasing shift by domestic producers toward higher-value related transfer shipments has helped to shield the domestic industry from subject import price competition.

Finally, the declines in prices for the selected ARG windshield products contrasts sharply with trends in average unit values for the aggregate like product and the domestic industry's profitability, particularly during the period of investigation when the volume and market share of subject imports was greatest. The average unit values of U.S. producers' net sales declined 4.3 percent, from \$67.63 to \$64.73 during 1998-2000, then rebounded to \$67.61 in interim 2001, reaching the 1998 level.²⁰⁶ The domestic industry's profitability similarly improved, after declining sharply from 1998-1999.²⁰⁷ Consequently, we do not place substantial weight on the declines in prices for the selected domestic products given the limited volume of such sales, nor subject import underselling amidst increased profitability and aggregate prices, as measured in average unit values, during the height of subject import volumes and market share.^{208 209}

²⁰⁰ Petition at 35-36.

²⁰¹ CR at II-1, PR at II-1.

²⁰² CR/PR at Table III-3; CR/PR at Table VI-1.

²⁰³ CR/PR at Table III-3.

²⁰⁴ Id.

²⁰⁵ Id.

²⁰⁶ CR/PR at Table VI-1.

²⁰⁷ U.S. producers' operating income to net sales was 8.7 percent, 1.3 percent, and 3.1 percent during 1998-2000, and was 4.4 percent in interim 2001, compared with 5.4 percent during the same period in 2000. CR/PR at Table VI-1. We note that ***. CR at VI-3, PR at VI-1; CR/PR Table VI-2.

²⁰⁸ We are mindful that average unit values in this investigation cover a large number of ARG windshield products, may reflect shifting product mixes and are not necessarily a proxy for actual prices. However, we find the increasing trend in average unit values, which likely reflects an increasing share of higher-value related transfers and continuing shifts by U.S. producers' to the newest product models are inconsistent with reported product specific price declines and alleged subject import price suppression or depression. CR/PR at Table III-3; Hearing Tr. at 137-143 (discussion related to the value-added features present now in ARG products); Apogee
(continued...)

In sum, while the record indicates declining domestic prices and extensive underselling by subject imports during the period of investigation, we do not find that subject imports have suppressed or depressed the prices for the domestic like product to a significant degree. Accordingly, we find that the subject imports have not had significant adverse effects on domestic prices during the period of investigation.

D. Impact of the Subject Imports

Section 771(7)(C)(iii) provides that the Commission, in examining the impact of the subject imports on the domestic industry, “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”²¹⁰ These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, and research and development. No single factor is dispositive and all relevant factors are considered “within the context of the business cycle and conditions of competition that are distinctive to the industry.”^{211 212}

We find that the subject imports of ARG windshields have not had a significant impact on the condition of the domestic ARG windshield industry. Although the volume and market share of the subject imports increased substantially during the period of investigation, the record does not indicate that these increases had any significant impact on the condition of the domestic industry. Indeed, the record lacks a correlation between increasing subject imports and the performance of the domestic industry. This is consistent with the fact that the domestic industry increasingly is integrating vertically and relies on business generated from insurance claims to insulate itself from import competition.

²⁰⁸ (...continued)

Enterprises, Inc. SEC Form 10-K for FY 2000 at 4 (attached to FYG’s Prehearing Brief at exhibit 5) (“Viracon/Curvlite seeks to offer a broad selection of windshields by promptly adding new windshields as new models are introduced”); Hearing Tr. at 211 (testimony of Mr. Topping) (only in the last three months had the Chinese started supplying ARG windshields for the Chevy Suburban, part DW1217 – the most popular part in the United States – which domestic producers had supplied until then).

²⁰⁹ Additionally, although lost sales or lost revenues may constitute anecdotal evidence of direct price competition, there were few confirmed lost sales or lost revenues in this investigation. At best, the evidence of lost sales or lost revenues constitute a small volume and the results are mixed. CR at V-32 - V-35, PR at V-10 - V-11.

²¹⁰ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885 (“In material injury determinations, the Commission considers, in addition to imports, other factors that may be contributing to overall injury. While these factors, in some cases, may account for the injury to the domestic industry, they also may demonstrate that an industry is facing difficulties from a variety of sources and is vulnerable to dumped or subsidized imports.”)

²¹¹ 19 U.S.C. § 1677(7)(C)(iii). See also SAA at 851 and 885; Live Cattle from Canada and Mexico, Invs. Nos. 701-TA-386 and 731-TA-812-813 (Preliminary) USITC Pub. 3155 (Feb. 1999) at 25, n. 148.

²¹² The statute instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping proceeding as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V). In its amended final antidumping duty determination, Commerce assigned the following antidumping duty margins to subject imports: Benxun (9.84); Changchun (9.84); FYG (11.80); Guilin (9.84); TCGI (9.84); Wuhan (9.84); Xinyi (3.71); all others from China (124.50). 67 Fed. Reg. 11670, 11673 (March 15, 2002).

The data show that over the investigation period, the domestic industry experienced declines in many economic indicators, such as operating income, production, shipments and market share.^{213 214 215 216} However, most of the industry's declines over the investigation period in capacity, production and shipments are attributable to ***. ***, continued to shift resources from ARG windshield production to OEM windshield production ***.²¹⁷ Indeed, *** produced almost *** fewer ARG windshields in 2000 than *** in 1998, and *** fewer units between the interim periods.^{218 ***.}²¹⁹ As ***²²⁰ and *** is contractually obligated to produce OEM windshields for ***,²²¹ we attribute these declines in capacity, production and shipments, and the industry's declines for those factors, to *** shifting resources because of contractual obligations rather than to a producer exiting the ARG windshield market because of subject import competition.^{222 223}

Furthermore, there is little, if any, causal nexus between the subject imports and the financial condition of the industry, particularly at the end of the period of investigation when the volume of subject

²¹³ The domestic industry's production fell from 6,374,238 units in 1998 to 6,079,991 units in 2000; and it was 4,525,948 units in interim 2001 compared to 4,683,883 units in interim 2000. CR/PR at Table III-1. The industry's share of domestic apparent consumption declined, from 51.0 percent in 1998 to 44.4 percent in 2000, but slightly increased in interim 2001 to 44.5 percent. CR/PR at Table C-1. The industry's domestic shipments also declined from 6,090,133 units in 1998 to 5,601,095 units in 2000, but improved slightly over the interim periods. CR/PR at Table III-1.

²¹⁴ While employment, hours worked and wages declined from 1998 to 2000, they all improved in 2001. Moreover, the industry's hourly wages and productivity levels generally improved or remained stable over the period of investigation. Id.

²¹⁵ The domestic industry's capacity utilization fluctuated over the investigation period and did not decline significantly until the end of the period. Initially, it increased from 74.4 percent in 1998 to 78.2 percent in 1999 before it receded back to 73.4 percent in 2000. Id. The real decline occurred in interim 2001 when the domestic industry's capacity utilization declined from 74.8 percent in interim 2000 to 64.7 percent in interim 2001. Id. However, during this time of decline, the domestic industry significantly increased production capacity. Indeed, while the industry decreased capacity early in the period of investigation – decreasing by 6.2 percent between 1998 and 1999 – it increased capacity by 3 percent between 1999 and 2000 and by 11.7 percent between interim periods. CR/PR at Table C-1.

²¹⁶ Inventories increased over the period. Id. While inventories increased, we note that the domestic industry finds that it is necessary to maintain a “significant amount of inventory” to cover the breadth of product line as well as to be prepared for sudden localized swings in demand due to bad weather. CR at II-10, PR at II-5; Petitioners' Posthearing Brief at Okun-5. In addition, while capital expenditures slightly declined over the period of investigation, they remained at fairly high levels. CR/PR at Table VI-3. Finally, we note that research and development expenses actually increased slightly over the period. Id.

²¹⁷ CR/PR at Table III-2; *** Questionnaire Response at Question II-3, II-4.

²¹⁸ Id.

²¹⁹ *** Questionnaire Response at Question II-3, II-4.

²²⁰ CR at III-1, PR at III-1.

²²¹ CR at II-6, PR at II-3.

²²² Moreover, there is evidence that ***. See *** attached to FYG's Prehearing Brief at exhibit ***; Petition at ***.

²²³ In our preliminary determination, the Commission noted that we intended to “examine the performance of individual domestic producers to ensure that our assessment of the impact of subject imports on the domestic industry” was not distorted by the conditions of individual domestic producers unrelated to subject imports. Automotive Replacement Glass Windshields from China, Inv. No 731-TA-922 (Prelim), USITC Pub. 3414 at 15 (Apr. 2001). While the Commission must consider the industry as a whole, we must not attribute declines in important performance indicators to subject imports when the record demonstrates that those declines are driven by one producer that has shifted its priorities based on factors unrelated to subject import competition.

imports was the greatest.²²⁴ Significantly, the only major decline in performance indicators occurred between 1998 and 1999 – falling from 8.7 percent operating income margin to 1.3 percent and increasing from one firm reporting losses to three – when subject imports increased by about 608,000 units. But, in the next year when subject imports increased even more substantially, by almost 720,000 units, the industry began to rebound – improving from 1.3 percent operating income margin to 3.1 percent and declining from three firms reporting losses to one. This trend also continued in the interim period. In interim 2001, the operating income margin was 4.4 percent (compared to 5.4 percent in interim 2000) and no firm reported losses as imports continued to grow – increasing 38 percent between interim periods.²²⁵ Therefore, during the times when there was the greatest increase in subject imports, the financial condition of the industry actually improved.

While the domestic industry’s financial condition declined between 1998 and 2000, we attribute much of this deterioration to the pricing pressure exerted by the insurance industry and product life cycle.²²⁶ As noted above in the pricing section, the domestic industry recognizes that the ARG windshield market’s pricing structure has changed significantly in recent years as insurance companies seek volume pricing at discounted rates from historical levels, which has led to a decline in profitability.²²⁷ The insurance industry is looking for the lowest price as long as quality is met.²²⁸ As a major segment of ARG windshield market sales – approximately 56.2 percent, but perhaps up to 70 percent – is related to claims by insured motorists for windshield replacement,²²⁹ the insurance industry leverages lower prices. This pressure from the insurance industry significantly explains the decline in prices.

Furthermore, the record indicates that much of the domestic industry is sheltered from import competition by acting as third-party administrators in the insurance claims market. Arguably, the domestic industry has invested heavily in establishing insurance claim call centers so that it can reap at least one of

²²⁴ The statute permits the Commission to reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury or threat of material injury of an industry in the United States. 19 U.S.C. § 1677(I). The Commission may do this after considering “whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition . . . is related to the pendency of the investigation” *Id.* Based on the trends for these factors, there is no reason to discount the improvements in the condition of the domestic industry between the interim periods. The Commission often discounts the interim period data if subject import volume has ceased or slowed considerably. This did not occur in this investigation. Indeed, subject imports increased by 38 percent between interim periods and were on track to surpass the increase in the number of units between 1998-1999, based on annualized figures. CR/PR at Table C-1. While domestic producers argued that these apparent improvements were the result of reducing costs (*see, e.g.,* Petitioners’ Final Comments at 10, Hearing Tr. at 57 (testimony of Mr. Goudy)), this is a normal business practice that can be attributed to any type of competition, whether it be from subject imports, nonsubject imports, domestic competition or adjusting to the pressure applied by the insurance industry to lower prices.

²²⁵ The domestic industry’s financial condition most likely will have improved from 2000 to full year 2001. The nine-month period in 2000, when the industry reached 5.4 percent operating income margin, but then declined in the full-year period to 3.1 percent, was not typical. This is explained by the fact that ***, this affected the industry’s operating margins for interim 2000 and calendar year 2000. CR at VI-3, PR at VI-1.

²²⁶ As noted above, the financial condition of the industry began to improve in 2000.

²²⁷ Apogee Enterprises, Inc. SEC Form 10-K for FY 2001 at 5 (attached to FYG’s Prehearing Brief at exhibit 5). *See also* Pilkington “Step Change Programme in North America,” March 2000 at slide 10 (attached to FYG’s Prehearing Brief at exhibit 2); CR at II-8, PR at II-4.

²²⁸ “[I]nsurance companies expect to receive a better deal than a cash customer because they are buying hundreds of thousands of windshields.” Hearing Tr. at 73-74 (testimony of Mr. Pearson). However, we note that if the domestic producers can capture more volume in the insurance claims replacement market, then they can afford to offer lower prices, which in turn helps them secure more of the claims.

²²⁹ CR at II-7, PR at II-4; Conference Tr. at 107-108 (testimony of Mr. Harris).

two benefits from it – (1) insurance claims call center administration fees,²³⁰ and/or (2) the ability to direct a larger portion of the claims to their own products.^{231 232} This has allowed them to control a large segment of the windshield replacement market because domestic ARG windshield producers have increasingly integrated operations down to the retail level. While they do not capture all of the insurance claims, they secure a significant portion of them.²³³ This helps to insulate domestic producers from subject import competition.

Finally, concentration in the domestic ARG windshield industry also helps to insulate the industry from subject import competition. The industry increasingly has moved toward vertical integration. As a result of recent mergers and acquisitions, some domestic producers now operate at several levels of the ARG windshield production and distribution system. Some domestic producers have become involved at the wholesale distribution and retail glass installation levels. Some produce their own float glass and several domestic producers have merged or formed distribution relationships.²³⁴ Domestic producers reported that approximately 31 percent to *** percent of U.S. shipments are to related parties.²³⁵ The record data show a shift toward sales to related distributors from unrelated parties.^{236 237 238}

We find that this growing vertical integration by domestic producers is a significant condition of competition in the ARG windshield market and that it helps to insulate the domestic industry from subject import competition. While the domestic industry has lost market share since the beginning of the period, this loss of market share has decreased (1) as the industry became more vertically integrated, (2) as the

²³⁰ CR at II-7, PR at II-4; Hearing Tr. at 149 (testimony of Mr. Harris) (stating that installers also pay fees to PPG and have paid fees to both Harmon and Safelite in certain insurance programs).

²³¹ Hearing Tr. at 103-104, 107-108, 215-216 (testimony of Mr. Harris); Chapter 11 Plan of Reorganization, filed in the United States Bankruptcy Court for the District of Delaware, June 9, 2000, at II.A. (attached to Petition at exhibit 35) (“Safelite acts as administrator of an insurance company’s automotive glass claims. By entering into these arrangements . . . , Safelite has been able to increase its volume and enhance its base of recurring revenues”).

²³² Petitioners argue that insurance companies require that customer preference is always honored, and they submitted the scripts used by the third-party administrators to process claims. Hearing Tr. at 132-134 (testimony of Mr. Pearson). However, consumer choice is relatively rare in this industry. Most consumers do not have experience with auto glass companies because the their demand for ARG windshields is erratic. Therefore, when a third-party administrator inquires whether the insured has a preference for an installer, it is unlikely that they will have one. Hearing Tr. at 216-217 (testimony of Mr. Harris). If the policyholder does not have a preference, then the insurance companies direct the third-party administrator as to how they would like that business allocated. Petitioners admit that some of that allocation goes to them because of a pricing advantage that they provide to the insurance company. Hearing Tr. at 132-134 (testimony of Mr. Pearson).

²³³ Hearing Tr. at 132-34 (testimony of Mr. Pearson) (“In some situations, that allocation goes to Safelite because of a pricing advantage that we provide to the insurance company.”); Petitioners’ Posthearing Brief at Miller-8; Chapter 11 Plan of Reorganization, filed in the United States Bankruptcy Court for the District of Delaware, June 9, 2000, at II.B. (attached to Petition at exhibit 35) (“Given Safelite’s vertical integration, a transaction with a policyholder of an insurance company customer is more profitable for Safelite when its shop, rather than that of a network affiliate, provides the replacement glass or repair service.” ***).

²³⁴ CR at II-1 to II-2, PR at II-1.

²³⁵ CR at II-1, PR at II-1; CR/PR at Table III-3.

²³⁶ While the record indicates that subject imports from China and the domestic like product are highly substitutable, we note that as the domestic industry has achieved greater vertical integration down to the retail level during the period of investigation, the importance of substitutability has diminished.

²³⁷ While transfers to related firms declined from 1998 to 2000, the trend reversed between interim periods. Domestic producers transferred 1,370,463 units to related firms in interim 2000 compared to *** units in interim 2001. CR/PR at Table III-3. This change is attributable to *** as it *** shifted its sales to related distributors from unrelated end users. See also Petitioners’ Posthearing Brief at ***.

²³⁸ ***.

increase in subject imports grew the most, and (3) as the industry had problems supplying the retail level of the market in 2000 and interim 2001. In addition, as noted above, the domestic industry's volume, value and average unit values of transfers to related firms increased during the investigation period as the same factors for commercial sales decreased.²³⁹ These trends indicate that the domestic industry is becoming more insulated from import competition and help to explain the industry's improved financial performance in the face of increased subject import volumes.

Therefore, we find that subject imports from China have not had a substantial negative impact on the domestic industry. Accordingly, we do not find that the domestic ARG windshield industry is materially injured by reason of subject imports from China.

II. NO THREAT OF MATERIAL INJURY BY REASON OF LESS THAN FAIR VALUE IMPORTS

Section 771(7)(F) of the Act directs the Commission to determine whether the domestic industry is threatened with material injury by reason of the subject imports by analyzing whether "further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted."²⁴⁰ The Commission may not make such a determination "on the basis of mere conjecture or supposition," and considers the threat factors "as a whole."²⁴¹ In making our determination, we have considered all factors that are relevant to this investigation.²⁴² Based on an evaluation of the relevant statutory factors, we find that an industry in the United States is not threatened with material injury by reason of imports of ARG windshields from China that are sold in the United States at less than fair value.

Initially, we find that the domestic industry is not vulnerable to a threat of material injury by reason of the subject imports from China. As was the case with our present material injury analysis, there are two major factors in our analysis of threat of material injury. First, the domestic industry is becoming increasingly insulated from subject import competition. Second, through these changes, the industry's condition has improved even as the increases in subject imports were the greatest. Therefore, there are no imminent changes that would lead to a threat of material injury by reason of subject imports. We discuss the statutory factors below.

A. Foreign Production Capacity

The record indicates that there may be unused production capacity in China to produce ARG windshields. In particular, there are a large number of ARG windshield producers in China, and exports of ARG windshields from China have been increasing over the investigation period, both to the United States

²³⁹ CR/PR at Table III-3; CR/PR at Table VI-1.

²⁴⁰ 19 U.S.C. §§ 1673b(a) and 1677(7)(F)(ii).

²⁴¹ 19 U.S.C. § 1677(7)(F)(ii). An affirmative threat determination must be based upon "positive evidence tending to show an intention to increase the levels of importation." Metallverken Nederland B.V. v. United States, 744 F. Supp. 281, 287 (Ct. Int'l Trade 1990), citing American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1280 (Ct. Int'l Trade 1984); see also Calabrian Corp. v. United States, 794 F. Supp. 377, 387-88 (Ct. Int'l Trade 1992), citing H.R. Rep. No. 98-1156 at 174 (1984).

²⁴² 19 U.S.C. § 1677(7)(F)(I). Factor I regarding countervailable subsidies and Factor VII regarding raw and processed agriculture products are inapplicable to the product at issue. See 19 U.S.C. § 1677(7)(F)(I)(I) and (VII).

and to other export markets.²⁴³ ²⁴⁴ The record overall indicates that the recent increase in subject imports to the United States is likely to continue.

B. Volume and Market Penetration

As noted in our material injury analysis, the rate of increase of volume and market penetration has been high.²⁴⁵ Eight firms reported imports or arrangements for importation of about 460,000 units after interim 2001.²⁴⁶

C. Likely Price Effects

As noted in our material injury analysis, data are mixed. While the record indicates declining domestic prices and extensive underselling by subject imports during the period of investigation, these declines contrast sharply with trends in average unit values for the aggregate like product and the domestic industry's profitability, particularly during the period of investigation when the volume and market share of subject imports was the greatest. We find that it is unlikely that subject imports will enter the U.S. market at prices likely to suppress or depress domestic prices to any significant degree. As noted above, the record indicates that subject import prices have had no significant adverse effects on domestic prices. We see nothing in the record that indicates that conditions of competition in the industry will change so significantly in the imminent future that domestic prices will likely be adversely affected to a significant degree by subject import prices. Indeed, the domestic industry is becoming increasingly insulated from subject import competition because of vertical integration.

D. Inventories

The ratios of Chinese producers' home inventories to production and shipments both declined during the period of investigation.²⁴⁷ The ratio of importers' inventories to imports declined during the period of investigation whereas the ratio of importers' inventories to U.S. shipments of imports rose during the period.²⁴⁸ These ratios increased in interim 2001 as compared to interim 2000, as the increases

²⁴³ The Commission received data from 12 of 14 Chinese producers, which accounts for a substantial portion of the total production in China, and accounts for essentially all U.S. imports of ARG windshields from China in 2000. CR at VII-1, PR at VII-1.

²⁴⁴ Chinese producers have increased their capacity from 2,865,674 units in 1998 to 4,189,474 units in 2000. CR/PR at Table VII-1. They project total capacity to expand to 4.9 million units in 2001 and to almost 5.5 million units in 2002. Id. Chinese producers also have increased their production from 1,827,902 units in 1998 to 3,563,392 units in 2000. Id. They project total production to expand to a little more than 4 million units in 2001 and to almost 4.8 million units in 2002. Id. Over the period of investigation, approximately two-thirds of Chinese production has been for export and approximately two-thirds of those exports have been directed toward the United States. Id. Capacity utilization was at almost 64 percent in 1998 and has grown to about 85 percent in 2000. Id. Chinese producers anticipate that capacity utilization will remain at about that level in 2002. Id.

²⁴⁵ CR/PR at Table VII-1. Respondents contend that Chinese market penetration is not significant when compared to that of nonsubject imports.

²⁴⁶ CR at VII-3, PR at VII-3.

²⁴⁷ CR/PR at Table VII-1 (from 14.5 percent in 1998 to 8.4 percent in 2000 and from 14.4 percent in 1998 to 8.4 percent in 2000, respectively).

²⁴⁸ CR/PR at Table VII-2 (from *** percent in 1998 to *** percent in 2000 and from *** percent in 1998 to *** percent in 2000, respectively).

coincided with an increase in exports to the United States during the same period.²⁴⁹ However, the inventory-to-shipment ratio reported by Chinese producers and U.S. importers are much lower than those reported by domestic producers.²⁵⁰ Accordingly, we find that inventory levels do not indicate a likelihood of increased imports in the imminent future, which would threaten to injure the domestic industry.²⁵¹

E. Negative Effects on Development and Production Efforts

As noted in our material injury analysis, while capital expenditures slightly declined during the period of investigation, they remained at fairly high levels. Moreover, research and development expenses actually increased slightly over the period.²⁵² Therefore, we also find that subject imports are not likely to have an actual or potential negative effect on the domestic industry's existing development and production efforts.

F. Dumping in Third-Country Markets

On December 19, 2001, Canada instituted an antidumping duty investigation on ARG windshields from China. On February 15, 2002, Canada made a preliminary determination of injury.²⁵³ This may or may not shift Chinese exports from Canada to the United States.

As noted above, due to the facts that (1) the domestic industry is becoming increasingly insulated from subject import competition, and (2) through these changes, the industry's condition has improved as the increase in subject imports grew the greatest, we do not find it likely that imports of subject merchandise will significantly depress or suppress domestic prices. Nor do we find any other demonstrable trends indicating a likely threat of material injury.

Therefore, based on the record in this investigation, we find that the domestic industry producing ARG windshields is not threatened with material injury by reason of subject imports from China.

III. CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing ARG windshields is neither materially injured nor threatened with material injury by reason of subject imports from China that are sold in the United States at less than fair value.

²⁴⁹ The ratios of inventories to imports and inventories to U.S. shipments of imports increased to *** percent and *** percent, respectively. *Id.*

²⁵⁰ See Tables III-1, VII-1 and VII-2.

²⁵¹ We also find no reasonable indication of likely product shifting in China. The record contains no evidence that equipment in China used in the production of other products is likely to be directed to the production of subject imports.

²⁵² CR/PR at Table VI-3.

²⁵³ CR at VII-3, PR at VII-3.

