

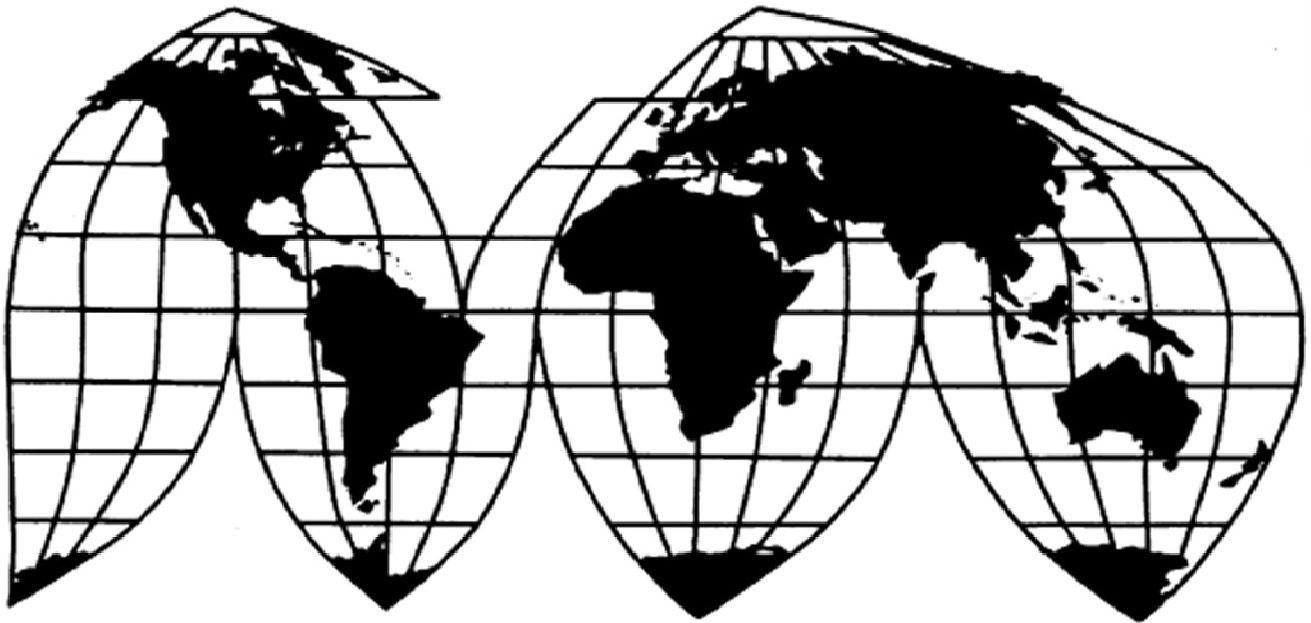
# **Certain Kitchen Appliance Shelving and Racks From China**

Investigation Nos. 701-TA-458 and 731-TA-1154 (Preliminary)

**Publication 4035**

**September 2008**

**U.S. International Trade Commission**



Washington, DC 20436

# U.S. International Trade Commission

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**Note.--Information that would reveal confidential operations of individual concerns may not be published and therefore has been deleted from this report.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

# UNITED STATES INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701-TA-458 and 731-TA-1154 (Preliminary)

## CERTAIN KITCHEN APPLIANCE SHELVING AND RACKS FROM CHINA

### DETERMINATIONS

On the basis of the record<sup>1</sup> developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of certain kitchen appliance shelving and racks, provided for in subheadings 7321.90.50, 7321.90.60, 8418.99.80, and 8516.90.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV).<sup>2</sup>

### COMMENCEMENT OF FINAL PHASE INVESTIGATIONS

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the *Federal Register* as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in these investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigations is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

### BACKGROUND

On July 31, 2008, a petition was filed with the Commission and Commerce by Nashville Wire Products Inc., Nashville, TN, SSW Holding Company, Inc., Elizabethtown, KY, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists and Aerospace Workers, District Loge 6, Clinton, IA., alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports of certain kitchen appliance shelving and racks from China allegedly subsidized by the government of China and sold at less than fair value. Accordingly, effective July 31, 2008, the Commission instituted countervailing duty investigation No. 701-TA-458 (Preliminary) and antidumping duty investigation No. 731-TA-1154 (Preliminary).

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

<sup>2</sup> Commissioner Deanna Tanner Okun recused herself to avoid any conflict of interest or appearance of a conflict.





## IEWS OF THE COMMISSION

Based on the record in the preliminary phase of these investigations, we find that there is a reasonable indication that the domestic industry producing certain refrigeration shelving is materially injured by reason of subject imports of certain refrigeration shelving from China that are allegedly sold in the United States at less than fair value, and are allegedly subsidized by the government of China. We also determine that there is a reasonable indication that the domestic industry producing certain oven racks is materially injured by reason of subject imports of certain oven racks from China that are allegedly sold in the United States at less than fair value, and are allegedly subsidized by the government of China.<sup>1</sup>

### I. THE LEGAL STANDARD FOR PRELIMINARY DETERMINATIONS

The legal standard for preliminary antidumping and countervailing duty determinations requires the Commission to determine, based upon the information available at the time of the preliminary determination, whether there is a reasonable indication that a domestic industry is materially injured, threatened with material injury, or whether the establishment of an industry is materially retarded, by reason of the allegedly unfairly traded imports.<sup>2</sup> In applying this standard, the Commission weighs the evidence before it and determines whether “(1) the record as a whole contains clear and convincing evidence that there is no material injury or threat of such injury; and (2) no likelihood exists that contrary evidence will arise in a final investigation.”<sup>3</sup>

### II. BACKGROUND

#### A. In General

The petitions in these investigations were filed on July 31, 2008. The petitioners are Nashville Wire Products Inc. (“Nashville”) and SSW Holding Company Inc. (“SSW”), the two largest domestic producers of certain kitchen appliance shelving and racks (“KASAR”), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union (“USW”), and the International Association of Machinists and Aerospace Workers (“IAMAW”), District Lodge 6 (Clinton, IA), unions representing workers in the domestic industry producing KASAR (collectively, “Petitioners”). General Electric Company (“GE”), Whirlpool Corporation (“Whirlpool”) and Maytag Corporation (“Maytag”), (collectively, “Respondents”) filed a postconference brief and representatives from GE and Whirlpool appeared at the staff conference.

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<sup>1</sup> Commissioner Deanna Tanner Okun has recused herself from these investigations.

<sup>2</sup> 19 U.S.C. § 1671b(a); 19 U.S.C. § 1673b(a); see, e.g., Co-Steel Raritan, Inc. v. United States, 357 F.3d 1294 (Fed. Cir. 2004); American Lamb Co. v. United States, 785 F.2d 994, 1001-04 (Fed. Cir. 1986); Aristech Chemical Corp. v. United States, 20 CIT 353, 354 (1996). No party argued that the establishment of an industry is materially retarded by reason of the allegedly unfairly traded imports.

<sup>3</sup> American Lamb, 785 F.2d at 1001; see also Texas Crushed Stone Co. v. United States, 35 F.3d 1535, 1543 (Fed. Cir. 1994).

### III. DOMESTIC LIKE PRODUCT

#### A. In General

In determining whether there is a reasonable indication that 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.”<sup>4</sup> Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Act”), defines the relevant domestic industry as the “[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.”<sup>5</sup> 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 . . . .”<sup>6</sup>

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.<sup>7</sup> No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.<sup>8</sup> The Commission looks for clear dividing lines among possible like products and disregards minor variations.<sup>9</sup> Although the Commission must accept the determination of Commerce as to the scope of the imported merchandise allegedly sold at LTFV,<sup>10</sup> the Commission determines what domestic product is like the imported articles Commerce has identified.<sup>11</sup> The Commission must base its domestic like product determination on the record in these investigations. The Commission is not bound by prior determinations, even those pertaining to the same imported products, but may draw upon previous

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<sup>4</sup> 19 U.S.C. § 1677(4)(A).

<sup>5</sup> 19 U.S.C. § 1677(4)(A).

<sup>6</sup> 19 U.S.C. § 1677(10).

<sup>7</sup> 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 the following: (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).

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

<sup>9</sup> Nippon Steel, 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.”).

<sup>10</sup> See, e.g., USEC, Inc. v. United States, Slip Op. 01-1421 (Fed. Cir. April 25, 2002) at 9 (“The ITC may not modify the class or kind of imported merchandise examined by Commerce.”); Algoma Steel Corp. v. United States, 688 F. Supp. 639, 644 (Ct. Int’l Trade 1988), aff’d, 865 F.3d 240 (Fed. Cir.), cert. denied, 492 U.S. 919 (1989).

<sup>11</sup> Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Torrington, 747 F. Supp. at 748-52 (affirming Commission determination of six like products in investigations where Commerce found five classes or kinds).

determinations in addressing pertinent like product issues.<sup>12</sup> There are no prior Commission antidumping or countervailing duty investigations covering KASAR.<sup>13</sup>

## **B. Product Description**

Commerce's notice of initiation defines the imported merchandise within the scope of these investigations as follows –

shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (“certain kitchen appliance shelving and racks” or “the subject merchandise”). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support rack assemblies utilizing extension slides) with the following dimensions:

- shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or
- subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass.<sup>14</sup>

## **C. Analysis**

In these preliminary investigations, Petitioners advocate that domestically produced KASAR corresponding to the scope of these investigations is comprised of two like products: (1) certain refrigeration shelving and baskets for residential and recreational vehicle refrigerators, freezers, combination refrigerator/freezers, and other refrigerating or freezing equipment, and (2) certain oven racks, side racks, and subframes for residential and recreational vehicle cooking stoves, ranges, and ovens. Respondents argue that the Commission should find a single like product expanded beyond the scope to include all wire kitchen appliance shelving and cooking racks, defined as shelving and racks made from carbon or stainless steel wire for refrigerators, refrigerated display case freezers, refrigerator-freezers, cook-tops, ranges, ovens, and grills, regardless of whether such wire shelving and cooking racks are intended for uses in commercial or residential equipment. Thus, one question presented is whether

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<sup>12</sup> Acciai Speciali Terni S.p.A. v. United States, 118 F. Supp. 2d 1298, 1304-05 (Ct. Int'l Trade 2000); Nippon Steel Corp. v. United States, 19 CIT at 455; Asociacion Colombiana de Exportadores de Flores v. United States, 693 F. Supp. 1165, 1169 n.5 (Ct. Int'l Trade 1988) (particularly addressing like product determination); Citrosuco Paulista, S.A. v. United States, 704 F. Supp. 1075, 1087-88 (Ct. Int'l Trade 1988).

<sup>13</sup> CR at I-3, PR at I-.

<sup>14</sup> 73 Fed. Reg. 50596 (Aug. 27, 2008).

there are clear lines dividing certain refrigeration shelving and certain oven racks such that there are two or more domestic like products corresponding to the scope of these investigations. A second question is whether the domestic like product should be expanded to include products outside the scope of these investigations to include all wire kitchen appliance shelving and cooking racks and all commercial appliance parts used to produce commercial ovens, dishwashers, refrigerators, and freezers. For purposes of the preliminary phase of these investigations, and based on the Commission's traditional six domestic like product factors, we find two domestic like products coextensive with the scope of these investigations: (1) certain refrigeration shelving and baskets for refrigerators, freezers, combination refrigerator/freezers, and other refrigerating or freezing equipment ("certain refrigeration shelving"), and (2) certain oven racks, side racks, and subframes for cooking stoves, ranges, and ovens ("certain oven racks").

**1. Whether certain refrigeration shelving and certain oven racks are separate like products**

a. Arguments of the Parties

Petitioners advocate that KASAR as defined by the scope of these investigations is comprised of two like products: certain refrigeration shelving and baskets for residential and recreational vehicle refrigerators, freezers, combination refrigerator/freezers, and other refrigerating or freezing equipment, and certain oven racks, side racks, and subframes for residential and recreational vehicle cooking stoves, ranges, and ovens. Petitioners argue that certain refrigeration shelving and certain oven racks have significant differences in physical characteristics and uses, production processes, and channels of distribution. Further, Petitioners argue that certain refrigeration shelving and certain oven racks are not interchangeable, are produced in separate manufacturing facilities, are produced on distinct equipment, by different employees, and are perceived by both producers and customers as different products.<sup>15</sup>

Respondents argue that the Commission should find one domestic like product expanded beyond the scope to include all wire kitchen appliance shelving and cooking racks. Respondents would define the domestic like product to be shelving and racks made from carbon or stainless steel wire for refrigerators, refrigerated display case freezers, refrigerator-freezers, cook-tops, ranges, ovens, grills, dishwashers, and other appliances, regardless of whether such wire shelving and cooking racks are intended for use in commercial or residential equipment.<sup>16</sup> Respondents argue that wire shelving and racks that go into the core kitchen appliances, refrigerators -- freezers, stoves and ovens, microwave appliances, and dishwashers -- all share the same general physical characteristics and uses, are manufactured using the same general production process in the same facilities, are sold through the same channel of distribution, and are perceived by customers as a single group of inputs provided by a single industry.<sup>17</sup>

b. Analysis

We provide the following comparison of certain refrigeration shelving to certain oven racks using the traditional six factor domestic like product analysis.

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<sup>15</sup> See Petitioners' Postconference Brief at 3-7.

<sup>16</sup> See Respondents' Postconference Brief at 4-5.

<sup>17</sup> Respondents' Postconference Brief at 4.

### *Physical characteristics and uses*

Certain refrigerator shelving and certain oven racks share some basic physical characteristics. They are made from carbon or stainless steel wire that is straightened and cut according to product specifications.<sup>18</sup> Refrigeration shelving, however, has different coatings than oven racks. These different coatings correspond to the different functions of the appliance containing the shelving or racks.<sup>19</sup> For example, for refrigeration shelving, the coating is most often electrostatic powder paint. For oven racks, the coating process is most often a nickel plating process, but may also include porcelain or other coatings that can withstand high temperatures inside a cooking appliance.<sup>20</sup> While the general use for certain refrigeration shelving and certain oven racks may be the same, to support items placed within or on a particular piece of equipment, the products into which they are incorporated serve totally different functions -- refrigeration or cooking.<sup>21</sup> Therefore, the coating of the product and the customer specifications dictate how and where that particular shelf or rack will be used, either in refrigeration or cooking, but not both.

### *Interchangeability*

Refrigerator shelving and oven racks are designed and produced for specific OEM kitchen appliance producers for specific model applications.<sup>22</sup> Petitioners and respondents agree that kitchen refrigeration shelving is not interchangeable with oven racks because each product is produced to a particular OEM's specifications.<sup>23</sup> Respondents acknowledge that the design of the "parts" (refrigeration shelving and oven racks) come in numerous sizes because the design of a part comes after the design of the appliance into which it will be incorporated and therefore its dimensions are always determined by the appliance design.<sup>24 25</sup>

### *Common manufacturing facilities, production processes, and production employees*

Petitioners, who accounted for over \*\*\* percent of the reported production of certain refrigeration shelving and certain oven racks in 2007, produce refrigeration shelving and oven racks in separate facilities using dedicated fabrication and finishing equipment.<sup>26</sup> Many of the production processes for refrigerator shelving and oven parts are similar – starting with wire rod, straightening it, then forming and/or welding, followed by pretreating or coating. As described above, however, the coatings used for

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<sup>18</sup> CR at I-10-I-11, PR at I-9-I-10.

<sup>19</sup> In any final phase of these investigations, we will further examine the significance of the coating stage in the production processes of certain refrigeration shelving and certain oven racks, and we ask the parties to provide any additional information as to the specific benefits of each coating to the final product.

<sup>20</sup> CR at I-11-I-12, PR at I-10.

<sup>21</sup> CR at I-13-I-14, PR at I-11-I-2.

<sup>22</sup> CR at I-12, PR at I-10.

<sup>23</sup> CR at I-12, PR at I-10.

<sup>24</sup> Tr. at 119-120 (Metzger).

<sup>25</sup> We note the fact that virtually all refrigerator shelving and oven racks are "made to order" and are therefore not interchangeable either between or within the two like products.

<sup>26</sup> CR/PR at Table III-1.

refrigerator shelving and oven parts are different.<sup>27</sup> We intend to further examine the significance of the differences in production processes, including the value added by coating, in any final phase of these investigations.

#### *Channels of distribution*

All domestically produced certain refrigeration shelving and certain oven racks are produced specifically for and sold to OEMs, the only end users of kitchen appliances.<sup>28</sup>

#### *Customer and producer perceptions*

The record with respect to customer and producer perceptions is mixed. Although both GE and Whirlpool produce all of the major core kitchen appliances, and have one buyer or sourcing manager who is responsible for all of the wire racks and shelving that go into these appliances,<sup>29</sup> OEMs have their own separate, dedicated facilities for assembling and manufacturing the appliances in which the subject merchandise is used, with no overlap in these facilities. We intend to further examine the issue of customer and producer perceptions in any final phase of these investigations.

#### *Price*

There is a limited amount of information on the record of these investigations regarding price.

#### *Conclusion*

The record indicates that refrigeration shelving and oven racks possess (1) both similarities and differences with respect to physical characteristics and uses and customer and producer perceptions, and (2) significant differences with respect to interchangeability and manufacturing facilities, employees, and processes, and (3) the same channels of distribution. Despite certain physical similarities, refrigeration shelving and oven racks receive different coatings based on the function of the appliance into which they will go, which precludes interchangeability. In addition, it appears that refrigeration shelving and oven racks are made in separate manufacturing facilities using different employees and equipment. Moreover, although it appears that customers centralize purchasing of refrigeration shelving and oven racks, customers have their own separate, dedicated facilities for assembling or manufacturing the different appliances into which refrigeration shelving and oven racks are incorporated. This lack of overlap, as well as the lack of interchangeability between the products, supports the argument that customers perceive these products as different.

On balance, the record suggests that there are more differences than similarities between refrigeration shelving and oven racks. Accordingly, we find two domestic like products: certain refrigeration shelving and baskets for refrigerators, freezers, combination refrigerator/freezers, and other refrigerating or freezing equipment, and certain oven racks, side racks, and subframes for cooking stoves,

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<sup>27</sup> CR at I-14, PR at I-11.

<sup>28</sup> CR at I-13, PR at I-11.

<sup>29</sup> CR at I-15, PR at I-12.

ranges, and ovens, coextensive with the scope of these investigations.<sup>30</sup> We intend to explore this issue further in any final phase of these investigations.

## **2. Whether the Commission Should Expand the Definition of the Domestic Like Products to Include Products Outside the Scope of the Investigations**

### **a. Arguments of the Parties**

Respondents argue that Petitioners' definitions for the like products exclude significant portions of a single industry. Respondents assert that the definition of the domestic like products should be expanded to include racks for dishwashers, the wire frames for glass refrigerator shelves, racks for microwave ovens, and other cooking racks, such as grills.<sup>31</sup>

Additionally, Respondents argue that the appliance environment includes commercial business applications, such as grocery stores and restaurants, as well as residential applications. Specifically, Respondents assert that the definition of the domestic like product should include kitchen appliance shelving and cooking racks used to produce commercial ovens, dishwashers, refrigerators, and freezers typically found in restaurants, grocery stores, processing factories, and other commercial establishments.<sup>32</sup> Respondents argue that the line between commercial and residential appliances has blurred in recent years with some home owners installing the types of ovens, cook tops, and refrigerators that one would normally see in a restaurant environment.

Petitioners argue that there is no factual justification for expanding the definitions of the like products. Petitioners assert that Respondents' suggestions that the like product should be defined as "racks {that} go into some sort of appliance or another for the purpose of holding {something} up" is vague, will be difficult to apply, and is not supported by the traditional factors the Commission examines in its like product analysis. Petitioners note that they do not manufacture dishwasher racks, and the producers that actually produce dishwasher racks tend to make that product only and not the domestic like products.<sup>33</sup> Moreover, Petitioners note that dishwasher racks are made on different production equipment than the domestic like products; GE and Whirlpool testified that they make their own dishwasher racks in distinct and separate facilities.<sup>34</sup> With regard to microwave racks, Petitioners note that both GE and Whirlpool testified that they do not produce microwave ovens in the United States, and thus, they do not purchase racks for these appliances in the United States.<sup>35</sup>

Petitioners also argue that KASAR for the residential/RV market are different from commercial appliance parts. First, Petitioners contend that commercial parts are not designed specifically for residential/RV applications, and thus do not meet the specifications for residential/RV appliances.<sup>36</sup> According to Petitioners, producers and OEMs of residential/RV appliances do not view commercial parts

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<sup>30</sup> Petitioners propose that each of the like products be limited to "residential and recreational vehicle." We find no such limitation in the scope, and therefore refrain from limiting the definition of each of the like products as such. While the size dimensions of the scope correspond roughly to residential and RV appliances, we find that certain refrigeration shelving and certain oven racks that are within the dimensional ranges as set out by the scope should be included in each of the like products regardless of whether it is labeled as for "residential and recreational vehicle" or "commercial."

<sup>31</sup> Respondents' Postconference Brief at 4.

<sup>32</sup> Respondents' Postconference Brief at 4.

<sup>33</sup> Petitioners' Postconference Brief at 10.

<sup>34</sup> Petitioners' Postconference Brief at 10; Tr. at 150 (Metzger), Tr. at 150 (Wessendorf).

<sup>35</sup> Petitioners' Postconference Brief at 10.

<sup>36</sup> Tr. at 34 (Gilbert).

to be interchangeable for the domestic like products because of differences in physical characteristics (commercial parts tend to be much larger dimensionally) and applications (commercial parts are used in supermarkets, convenience stores, or restaurants).<sup>37</sup> Petitioner Nashville, which makes products for the commercial refrigeration market, makes its commercial products on equipment entirely separate from its residential production.<sup>38</sup> Finally, Petitioners contend that the commercial market is much smaller than the residential/RV market, and that the customers are different.<sup>39</sup> Accordingly, Petitioners argue that commercial refrigeration shelving and oven parts should not be included in the same like product as residential/RV parts.

b. Analysis

The Commission must accept the determination of Commerce as to the scope of the imported merchandise alleged to be sold at less than fair value,<sup>40</sup> but the Commission may, where appropriate, include domestic articles in the domestic like product that are in addition to those described in the scope.<sup>41</sup>

In past investigations, the Commission has considered whether to define the domestic like product to include a product outside the scope by comparing scope merchandise with the product outside the scope using the six like product factors.<sup>42</sup>

Based on a review of the limited information on the record in these preliminary investigations, and for the reasons set forth below, we decline to expand the definition of the domestic like products beyond the scope as defined by Commerce. We note that the Commission's ability to consider Respondents' arguments for expanding the domestic like product is hindered by the lack of specificity in Respondents' proposal at this stage.<sup>43</sup>

i. **Expanding The Like Product to Include All Wire Kitchen Appliance Shelving and Cooking Racks**

For many of the same reasons set forth in our discussion finding two like products in these investigations, we decline to expand the domestic like product to include all wire kitchen appliance shelving and cooking racks. The record in these preliminary investigations supports a clear dividing line separating KASAR from products outside the scope of investigation. The channels of distribution for both products within the scope and outside the scope appear to be the same: they are sold directly to OEM

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<sup>37</sup> Tr. at 34 (Gilbert).

<sup>38</sup> Tr. at 49 (Rollins).

<sup>39</sup> Tr. at 48 (Rollins), Tr. at 35 (Gilbert), and Tr. at 151 (Metzger, Wessendorf). GE and Whirlpool testified that they make no commercial appliances, and thus, purchase no commercial parts.

<sup>40</sup> See USEC, Inc. v. United States, Slip. Op. 01-1421 (Fed. Cir. April 25, 2005) at 9 ("The ITC may not modify the class or kind of imported merchandise examined by Commerce.").

<sup>41</sup> See, e.g., Pure Magnesium from China and Israel, Inv. Nos. 701-TA-403 and 731-TA-895-96 (Final), USITC Pub. 3467 (Nov. 2001) at 8, n. 34; Torrington Co. v. United States, 747 F.Supp. 744, 748-9 (Ct. Int'l Trade 1990), aff'd, 938 F.2d 1278 (Fed. Cir. 1991) (holding that the Commission is not legally required to limit its like product to the like product advocated by the petitioner, co-extensive with the scope).

<sup>42</sup> See Superalloy Degassed Chromium, USITC Pub. 3768 at 7; Aluminum Plate from South Africa, USITC Pub. 3734 at 7; Ironing Tables and Certain Parts Thereof from China, Inv. No. 731-TA-1047 (Final), USITC Pub. 3711 (July 2004) at 6-7; Certain Wax/Resin Thermal Transfer Ribbons from France and Japan, Inv. Nos. 731-TA-1039-1040 (Final), USITC Pub. 3683 (Apr. 2004) at 8.

<sup>43</sup> Should Respondents wish to argue for an expansion of the domestic like product to include products outside of the scope in the final phase investigations, we ask them to identify the specific products for expansion in their written comments to the Commission's questionnaires, pursuant to 19 C.F.R. § 207.20(b).



producers. Evidence regarding physical characteristics is mixed, but the uses for the different products vary. For example, refrigerator shelving, grills, and dishwasher racks may all be made from carbon or stainless steel wire, but they serve totally different functions -- refrigeration, cooking outside, and cleaning -- in totally different appliances. Products outside the scope are generally not interchangeable with products within the scope, and they are produced in separate manufacturing facilities utilizing different employees. Producers perceive products outside the scope to be different from products within the scope, and GE and Whirlpool testified that they manufacture their own dishwasher racks in facilities distinct from those that make products within the scope.<sup>44</sup> Moreover, it appears that producers of dishwasher racks manufacture only dishwasher racks and not the domestic like products, and vice versa. Petitioners do not manufacture dishwasher racks.<sup>45</sup>

Accordingly, based on the limited record in these investigations, it appears that a clear dividing line can be drawn separating KASAR from products outside the scope. We therefore decline to expand the domestic like products to include all wire kitchen appliance shelving and cooking racks.

## **ii. Expanding the Like Products to Include All Commercial Appliance Parts**

Although Respondents ask that the Commission find a like product broader than the scope of the imported products, it is unclear exactly what like product the Respondents are advocating. If they are arguing that “commercial” parts that are within the dimensions as dictated by the scope should be included within the definitions of the like products, then we agree with them. The scope does not limit products that fall within the scope by any “residential” versus “commercial” distinction. Accordingly, a part that falls within the dimensions of the scope is included within the like product definitions regardless of whether it is characterized as “commercial” or “residential.”

If Respondents are arguing, however, that the domestic like product should be expanded to include “commercial” parts that do not meet the dimensional definitions in the scope, we reject this argument. Most domestic producers manufacture either commercial parts or residential parts, and the one producer that manufactures both does so on entirely separate equipment. Further, the commercial market appears to be largely a separate market, and much smaller than the residential/RV market, with different purchasers for each. In fact, GE and Whirlpool, two major purchasers of residential/RV parts, make no commercial refrigeration or oven appliances, and therefore, do not purchase the parts. Although some “commercial” appliances may now be installed in some upscale homes, it appears that the vast majority of “commercial” appliances are used in supermarkets, warehouse clubs, convenience stores, drug stores, mass merchants, and food service establishments, not in residences.<sup>46</sup>

Accordingly, based on the limited record in these investigations, it appears that a clear dividing line can be drawn separating the two domestic like products coextensive with the scope from “commercial” products with dimensions outside the scope. We therefore decline to expand the domestic like products to include “commercial” kitchen appliance and shelving racks that are outside the scope.

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<sup>44</sup> Tr. at 150 (Metzger, Wessendorf). GE and Whirlpool acknowledged that they do not manufacture microwaves in the United States, and therefore do not purchase any microwave racks in the United States.

<sup>45</sup> Tr. at 161 (Rosenthal), Tr. at 47 (Kara, Rollins).

<sup>46</sup> It is also unclear whether commercial style appliances used in homes contain shelving or racks within the scope dimensions.

#### IV. DOMESTIC INDUSTRY

The domestic industry is defined 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.”<sup>47</sup> 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.<sup>48</sup>

Based on our finding that the domestic like product consists of two separate like products, we find two domestic industries consisting of the following: (1) all producers of certain refrigeration shelving and baskets for refrigerators, freezers, combination refrigerator/freezers, and other refrigerating or

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<sup>47</sup> 19 U.S.C. § 1677(4)(A).

<sup>48</sup> 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).

freezing equipment, and (2) all producers of certain oven racks, side racks, and subframes for cooking stoves, ranges, and ovens.<sup>49 50 51 52</sup>

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<sup>49</sup> In these investigations, no party has argued that a domestic producer should be excluded from the pertinent domestic industry as a related party. However, two responding domestic producers of certain oven racks, \*\*\*, reported importing and/or purchasing certain oven racks from China during the period examined. See CR/PR at Table III-12, 19 U.S.C. § 1677(4)(B). No related party issue is raised for the refrigeration shelving industry. We therefore consider whether appropriate circumstances exist to exclude either of these companies from the domestic industry producing certain oven racks as a related party.

\*\*\* accounted for \*\*\* percent of reported domestic production of certain oven racks in 2007. CR/PR at Table III-3. The company is a \*\*\* in these investigations. Its imports of subject merchandise were equivalent to \*\*\* percent of its \*\*\* production in 2005, \*\*\* percent of its \*\*\* production in 2006, \*\*\* percent of its \*\*\* production in 2007, and was \*\*\* percent of its \*\*\* production in interim 2008 as compared to \*\*\* percent of its \*\*\* production in interim 2007. CR/PR at Table III-12. The company explained that it imported \*\*\*. Tr. at 56 (Rollins). No party has argued that Nashville should be excluded from the domestic industry producing certain oven racks.

We find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry producing certain oven racks. It is a petitioner in these investigations, and its interests appear to lie more with domestic production than with importing. Its U.S. operations do not appear to have benefitted financially from its low volumes of imports as its financial results were \*\*\*. CR/PR at Table VI-4. Compared to its domestic production, the volume of its imports was \*\*\*; and its reason for importing was due to pressure from customers to meet a lower Chinese price.

\*\*\* accounted for \*\*\* percent of reported domestic production of certain oven racks in 2007. CR/PR at Table III-3. The company is a petitioner in these investigations. It \*\*\* import subject merchandise in 2005, and its imports as a percentage of domestic production were at \*\*\* percent throughout the rest of the POI. CR/PR at Table III-12. \*\*\* also purchased a predominant share of \*\*\* imports of certain oven racks in 2007. CR/PR at Table IV-1, \*\*\* at II-14. Its purchases of subject merchandise were equivalent to \*\*\* percent of its \*\*\* production in 2005, \*\*\* percent of its \*\*\* production in 2006, \*\*\* percent of its \*\*\* production in 2007, and was \*\*\* percent of its \*\*\* production in interim 2008 as compared to \*\*\* percent of its \*\*\* production in interim 2007. CR/PR at Table III-12. The company explained that in 2002 it acquired \*\*\*, who was already engaged in the process of importing oven racks, and as \*\*\* integrated that business, it was forced to continue importing and purchasing as it couldn't meet China pricing domestically. Tr. at 55 (Gritton), Tr. at 56-57 (Mara). No party has argued that \*\*\* should be excluded from the domestic industry producing certain oven racks.

We find that appropriate circumstances do not exist to exclude \*\*\* from the domestic industry producing certain oven racks. It is a petitioner in these investigations, and its interests appear to lie more with domestic production than with importing. Its U.S. operations do not appear to have benefitted financially from its relatively low volumes of imports and purchases as its financial results \*\*\*. CR/PR at Table VI-4. Compared to its domestic production, the volume of its imports and purchases was \*\*\*; and its reason for importing and purchasing was due to inheriting a preexisting importer and pressure from customers to meet a lower Chinese price.

<sup>50</sup> Consistent with her practice in past investigations and reviews, Chairman Aranoff does not rely on individual-company operating income margins, which reflect a domestic producer's financial operations related to production of the like product, in assessing whether a related party has benefitted from importation of subject merchandise. Rather, she determines whether to exclude a related party based principally on its ratio of subject imports to domestic production and whether its primary interests lie in domestic production or importation. She finds that appropriate circumstances do not exist to exclude \*\*\* or \*\*\* from the domestic industry producing certain oven racks.

<sup>51</sup> Commissioner Williamson does not join footnote 49. He finds that the volume of subject imports and/or purchases of subject imports by \*\*\* and \*\*\* is sufficiently modest so as not to raise a serious issue of exclusion.

<sup>52</sup> For purposes of these preliminary investigations, Commissioner Pinkert does not rely upon any related party's financial performance as a factor in determining whether there are appropriate circumstances to exclude it from the domestic industry and relies instead on the other information relevant to this issue that is discussed above. The present record is not sufficient to infer from any company's profitability on U.S. operations whether it has derived a specific benefit from importing. See Allied Mineral Products, 28 C.I.T. 1861, 1865-1867 (2004). In any final phase (continued...)

## V. CONDITIONS OF COMPETITION AND THE BUSINESS CYCLE

Several conditions of competition are pertinent to our analysis of both industries in the preliminary phase of these investigations.

### A. Demand Conditions

Demand for certain refrigeration shelving tends to follow demand in the sectors in which it is used. Respondents note that demand for refrigerators was down 13 percent from 2005 to 2007.<sup>53</sup> The parties state that demand has been down since 2005 due to declines in the housing market.<sup>54</sup> According to Respondents, demand for certain refrigeration shelving was inflated in 2005 because hurricanes Katrina and Rita had a disproportionate impact on demand.<sup>55</sup> Petitioners indicated, however, that they did not notice significant increases in demand in 2005 due to the hurricanes.<sup>56</sup>

When measured by apparent U.S. consumption, U.S. demand for certain refrigeration shelving declined steadily throughout the period, from \*\*\* units in 2005 to \*\*\* units in 2006, to \*\*\* units in 2007, for an overall decline of \*\*\* percent.<sup>57</sup> Apparent U.S. consumption was \*\*\* percent lower in interim (January to June) 2008, at \*\*\* units, than it was in interim 2007, at \*\*\* units.<sup>58</sup>

Despite a 16 percent drop in demand for cooking ranges over the last three years,<sup>59</sup> Petitioners indicate that demand for certain oven racks increased from 2005 to 2007.<sup>60</sup> Petitioners attribute the increase in demand for oven racks primarily to a change toward a more premium oven product, which includes more racks per range.<sup>61</sup>

When measured by apparent U.S. consumption, U.S. demand for certain oven racks increased steadily from \*\*\* units in 2005 to \*\*\* units in 2006 and 2007, for an increase of \*\*\* percent.<sup>62</sup> Apparent U.S. consumption was \*\*\* percent lower in interim 2008, at \*\*\* units, than it was in interim 2007, at \*\*\* units.<sup>63</sup>

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<sup>52</sup> (...continued)

of these investigations, Commissioner Pinkert invites the parties to provide any information they may have with respect to whether any company is benefitting financially from its status as a related party.

<sup>53</sup> Tr. at 122 (Metzger).

<sup>54</sup> CR at II-5, PR at II-3. Respondents also note that demand for certain refrigeration shelving has also decreased due to a shift in customer preferences in favor of glass shelving in refrigerators from wire shelving as well as movement of appliance manufacturing from the United States to Mexico. Tr. at 116 (Malashevich).

<sup>55</sup> CR at II-5, PR at II-4.

<sup>56</sup> CR at II-5, PR at II-4.

<sup>57</sup> CR/PR at Table C-1.

<sup>58</sup> CR/PR at Table C-1.

<sup>59</sup> Tr. at 122 (Metzger).

<sup>60</sup> CR at II-5, PR at II-3.

<sup>61</sup> Tr. at 61 (Gritton).

<sup>62</sup> CR/PR at Table C-2.

<sup>63</sup> CR/PR at Table C-2.

## B. Supply Conditions

The Commission received questionnaire responses from three U.S. producers, who are believed to account for the \*\*\* of U.S. production of certain refrigeration shelving and certain oven racks in 2007.<sup>64</sup> Both domestic industries' capacity exceeded apparent U.S. consumption throughout the period examined.<sup>65</sup>

The domestic refrigerator shelving industry's production and capacity decreased from 2005 to 2007, and were lower in interim 2008 than in interim 2007. Its production and capacity decreased from 2005 to 2007, by \*\*\* percent and \*\*\* percent, respectively, and dropped dramatically between the interim periods by \*\*\* percent and \*\*\* percent, respectively.<sup>66</sup> Domestic refrigerator shelving producers' share of the U.S. market, by quantity, declined during the period, from \*\*\* percent in 2005 to \*\*\* percent in 2006, and to \*\*\* percent in 2007, and was \*\*\* percent in interim 2008 as compared to \*\*\* percent in interim 2007.<sup>67</sup>

The domestic oven racks industry's production and capacity increased from 2005 to 2007, by \*\*\* percent and \*\*\* percent, respectively, but declined dramatically by \*\*\* percent and \*\*\* percent, respectively, during the interim periods.<sup>68</sup> Domestic oven racks producers' share of the U.S. market, by quantity, increased from \*\*\* percent in 2005 to \*\*\* percent in 2006, before declining to \*\*\* percent in 2007; but it declined precipitously to \*\*\* percent in interim 2008 compared to \*\*\* percent in interim 2007.<sup>69</sup>

As there were \*\*\* nonsubject imports of either certain refrigerator shelving or certain oven racks during the period, \*\*\* of the market share lost by the domestic producers in the two industries were gained by subject imports.

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<sup>64</sup> CR/PR at I-3, I-3 n.3. Two additional small producers of KASAR, \*\*\*, who both \*\*\* the petition, submitted partial responses to the Commission's questionnaires. CR/PR at III-1 n.2.

<sup>65</sup> CR/PR at C-1 and C-2.

<sup>66</sup> CR/PR at Table C-1.

<sup>67</sup> CR/PR at Table C-1.

<sup>68</sup> CR/PR at Table C-2.

<sup>69</sup> CR/PR at Table C-2.

### C. Interchangeability and Other Conditions

Certain refrigerator shelving and certain oven racks are generally produced to specific OEM design requirements. Currently, both domestic markets are being supplied entirely by domestic producers and Chinese producers that have been qualified by OEMs to meet their specific design requirements.<sup>70</sup> Petitioners note that there are multiple Chinese producers that have been qualified by OEMs to meet the manufacturing requirements for certain refrigeration shelving and certain oven racks.<sup>71</sup> Once qualified, there is a high degree of substitutability between the domestic like products and the subject imports.<sup>72</sup> All reporting U.S. producers and one importer found domestically produced KASAR to be always interchangeable with KASAR produced in China, while one importer reported that they were sometimes interchangeable.<sup>73</sup>

Petitioners indicate that, once a producer of certain refrigeration shelving and certain oven racks becomes qualified, the determining factor in purchasing decisions is price.<sup>74</sup> Respondents acknowledge that price is a component in their purchasing decisions, but claim that quality is a more important factor. Moreover, Respondents report that they have turned down opportunities to purchase products at a lower price because the supplier's product failed to qualify, or even if the product did qualify, the supplier lacked integrity, financial standing, or delivery capability.<sup>75</sup> All reporting U.S. producers and one importer indicated that differences other than price were either "never" or "sometimes" a significant factor in their firm's sales of KASAR, while one importer reported that differences other than price were "always" a significant factor.<sup>76</sup>

## VI. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF IMPORTS OF CERTAIN REFRIGERATION SHELVING FROM CHINA<sup>77</sup>

In the preliminary phase of antidumping or countervailing duty investigations, the Commission determines whether there is a reasonable indication that an industry in the United States is materially injured by reason of the imports under investigation.<sup>78</sup> In making this determination, the Commission must consider the volume of subject 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

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<sup>70</sup> Tr. at 30-31 (Gritton).

<sup>71</sup> Tr. at 62 (Gritton).

<sup>72</sup> CR at II-8-II-10, PR at II-5-II-6. As a Whirlpool representative stated, "Our specifications don't change from where the part is produced. The suppliers are expected to meet our specifications. You wouldn't be able to ascertain whether one was made in China or whether one was made in the United States." Tr. at 127 (Wessendorf).

<sup>73</sup> CR/PR at Table II-1. We note that the Commission's questionnaire asked market participants about the perceived degree of interchangeability of KASAR produced in the United States and in other countries. While KASAR includes both certain refrigeration shelving and certain oven racks, in any final phase investigations we will ask market participants specifically about certain refrigeration racks and certain oven racks consistent with our like product determinations.

<sup>74</sup> CR at II-8, PR at II-5.

<sup>75</sup> CR at II-8, PR at II-5.

<sup>76</sup> CR/PR at Table II-2.

<sup>77</sup> No party argues that negligibility is an issue in these investigations. Subject imports from China of certain refrigeration shelving far exceeded the negligibility threshold during the most recent 12-month period for which data are available preceding the filing of the petition. CR at IV-11. Consequently, we find that the subject imports of certain refrigeration shelving are not negligible under 19 U.S.C. § 1677(24)

<sup>78</sup> 19 U.S.C. §§ 1671b(a), 1673b(a).

operations.<sup>79</sup> The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”<sup>80</sup> In assessing whether there is a reasonable indication that 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.<sup>81</sup> 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.”<sup>82</sup>

For the reasons stated below, we find that there is a reasonable indication that the domestic industry producing certain refrigeration shelving is materially injured by reason of subject imports from China that are allegedly sold at less than fair value in the United States and imports of subject merchandise from China that are allegedly subsidized by the Government of China.

#### **A. Volume of Subject Imports**<sup>83</sup>

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.”<sup>84</sup>

The volume of subject imports of certain refrigeration shelving from China increased by \*\*\* percent from 2005 to 2007, from \*\*\* units in 2005 to \*\*\* units in 2006 and to \*\*\* units in 2007.<sup>85</sup> Subject import volume was \*\*\* units in interim 2008 compared to \*\*\* units in interim 2007.<sup>86</sup>

The share of apparent U.S. consumption held by subject imports, by quantity, increased dramatically from \*\*\* percent in 2005 to \*\*\* percent in 2006 and to \*\*\* percent in 2007, an increase of \*\*\* percentage points from 2005 to 2007.<sup>87</sup> The market share held by subject imports was \*\*\* percent in interim 2008 as compared to \*\*\* percent in interim 2007.<sup>88</sup> \*\*\* of the market share gained by subject imports was at the expense of the domestic industry as there were \*\*\* nonsubject imports of certain refrigeration shelving during the period examined.<sup>89</sup> Subject imports of refrigeration shelving were equivalent to \*\*\* percent of U.S. production (by volume) in 2005, \*\*\* percent in 2006, \*\*\* percent in 2007, and were \*\*\* percent of U.S. production (by volume) in interim 2008 as compared to \*\*\* percent in interim 2007.<sup>90</sup>

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<sup>79</sup> 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, e.g., Angus Chem. Co. v. United States, 140 F.3d 1478 (Fed. Cir. 1998).

<sup>80</sup> 19 U.S.C. § 1677(7)(A).

<sup>81</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>82</sup> 19 U.S.C. § 1677(7)(C)(iii).

<sup>83</sup> Since certain refrigeration shelving and certain oven racks are imported in basket categories in the HTS, official import statistics are not available for use in these investigations. CR/PR at IV-1. As a result, all import statistics are compiled from data gathered in response to Commission questionnaires.

<sup>84</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>85</sup> CR/PR at Table IV-3, Table C-1.

<sup>86</sup> CR/PR at Table IV-3.

<sup>87</sup> CR/PR at Table IV-9, Table C-1.

<sup>88</sup> CR/PR at Table IV-9.

<sup>89</sup> CR/PR at Table IV-9.

<sup>90</sup> CR/PR at Table IV-12.

We find for purposes of the preliminary phase of these investigations that the volume and increase in volume of subject imports was significant during the period examined both in absolute terms and relative to consumption and production in the United States.

## **B. Price Effects of the Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of 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.<sup>91</sup>

As we found above, there appears to be a high degree of interchangeability between the domestic like product and subject imports from China. The majority of market participants reported that domestically produced KASAR and subject imports were always or frequently interchangeable, particularly if they met industry standards,<sup>92</sup> and that differences other than price are relatively unimportant factors in purchasing decisions, although Respondents dispute this latter fact.<sup>93</sup>

The Commission collected quarterly pricing data from producers and importers on four pricing products for certain refrigeration shelving.<sup>94</sup> No clear overall trend in domestic prices occurred over the period, as prices for two products increased, while prices for the other two products decreased.<sup>95</sup> Direct price comparisons of shipments of U.S. producers and U.S. importers were limited to two pricing products and six comparisons, due mainly to the fact that the OEMs are often the direct importers of the subject merchandise. Subject imports undersold the domestic like product in all six of the available comparisons by high margins, ranging from \*\*\* percent to \*\*\* percent.<sup>96</sup>

The domestic industry's COGS as a share of net sales increased from \*\*\* percent in 2005 to \*\*\* percent in 2006, and to \*\*\* percent in 2007, and was \*\*\* percent in interim 2008 as compared to \*\*\* percent in interim 2007.<sup>97</sup> We thus find evidence of a cost-price squeeze, in that the domestic refrigerator shelving industry has been unable to raise prices sufficiently to recoup increased costs at a time of

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<sup>91</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>92</sup> CR/PR at Table II-1; CR at II-7, PR at II-4.

<sup>93</sup> CR/PR at Table II-2.

<sup>94</sup> Product 1 – Open-end freezer shelf that is about 17.8 inches by 27.9 inches, consisting of 26 filler wires, a front and a rear rail, an R-bar, and a back and front bar, and a white powder coat finish; Product 2– Refrigerator/freezer basket that is about 17.4 inches by 25.8 inches by 6.9 inches, consisting of 27 filler wires, an R-bar, and a frame wire, and a white powder coat finish; Product 3 – Refrigerator/freezer shelf that is about 9.5 inches by 15.9 inches, consisting of 9 filler wires, an R-bar, and a frame wire, and a white powder coat finish; and Product 4 – Fixed refrigerator/freezer shelf that is about 9.7 inches by 12.7 inches, consisting of 19 filler wires, a middle R-bar, a rear R-bar, two side arms and a roll form trim, and a white powder coat finish. CR at V-5, PR at V-2.

<sup>95</sup> The weighted-average sales price for U.S. produced product 1 decreased by \*\*\* percent between the first quarter of 2005 and the second quarter of 2008; the price for U.S. produced product 2 increased by about \*\*\* percent between the fourth quarter of 2005 and the second quarter of 2008; the price for U.S. produced product 3 increased by about \*\*\* percent between the first quarter of 2005 and the first quarter of 2008, and the price for U.S. produced product 4 decreased by about \*\*\* percent between the first quarter of 2005 and the third quarter of 2007, albeit based on very small quantities for products 2 through 4. CR at V-15-V-16, PR at V-5-V-6.

<sup>96</sup> CR/PR at Tables V-1 and V-2.

<sup>97</sup> CR/PR at Table VI-2.



significant market share loss to the subject imports.<sup>98</sup> We invite the parties to make specific proposals in their comments on draft questionnaires on how to improve our ability to gather more comprehensive pricing data in order to better assess the price effects of subject imports in any final phase of these investigations.<sup>99</sup>

### **C. Impact of the Subject Imports**<sup>100</sup>

Section 771(7)(C)(iii) of the Act 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.”<sup>101</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. 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.”<sup>102</sup>

We have examined the performance indicia for the domestic industry producing certain refrigeration shelving. A number of the domestic industry’s performance indicators (including production, capacity utilization, and employment) declined steadily over the period examined. The domestic industry was breaking even financially at the start of the period, but then suffered operating losses throughout the rest of the period, as further explained below.

The domestic industry’s production of certain refrigeration shelving decreased from \*\*\* units in 2005 to \*\*\* units in 2006, and to \*\*\* units in 2007.<sup>103</sup> Total U.S. shipments of certain refrigeration shelving declined by \*\*\* percent from 2005 through 2007, and by \*\*\* percent between the interim periods.<sup>104</sup>

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<sup>98</sup> In any final phase of these investigations we intend to further explore Petitioners’ argument that Chinese producers have employed a number of aggressive pricing strategies, including the extension of more favorable credit terms as well as providing substantial discounts on tooling costs.

<sup>99</sup> See 19 C.F.R. § 207.20(b).

<sup>100</sup> In its notice of initiation, Commerce did not provide estimated dumping/subsidy margins separately for certain refrigeration shelving and certain oven racks, but only for KASAR as a whole. Commerce estimated the dumping margins for imports of KASAR from China to range from 58.91 percent to 142.64 percent. CR at I-5 (citing 73 Fed. Reg. 50596 (Aug 27, 2008)). In its notice of initiation, Commerce indicated that it would investigate 25 programs alleged in the petitions to have provided countervailable subsidies to producers of KASAR in China. Commerce grouped the programs into the following categories: income tax programs; indirect tax programs and import tariff program; provincial/local subsidy programs; and provision of goods and services for less than adequate remuneration by the GOC. CR at I-5 (citing 73 Fed. Reg. 50596 (Aug. 27, 2008)).

<sup>101</sup> 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.”)

<sup>102</sup> 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, 731-TA-812-813 (Prelim.), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>103</sup> CR/PR at Table C-1. Production was \*\*\* units in interim 2008 as compared to \*\*\* in interim 2007.

<sup>104</sup> The domestic industry’s U.S. shipments of refrigerator shelving declined from \*\*\* units in 2005 to \*\*\* units in 2006 and to \*\*\* units in 2007; they were \*\*\* units in interim 2008 as compared to \*\*\* units in interim 2007. CR/PR at Table C-1.

The domestic industry's average production capacity declined by \*\*\* percent from 2005 to 2007, and by \*\*\* percent between the interim periods.<sup>105</sup> The domestic industry's capacity utilization levels also declined steadily, by \*\*\* percentage points from 2005 to 2007, and by \*\*\* percentage points between the interim periods.<sup>106</sup> The average number of production workers, as well as hours worked, total wages paid, and productivity all declined from 2005 to 2007, as unit labor costs increased.<sup>107</sup> The domestic industry's net sales declined by \*\*\* percent from 2005 to 2007, and by \*\*\* percent in the interim periods when measured by quantity, and by \*\*\* percent and \*\*\* percent over the same periods when measured by value.<sup>108</sup> As discussed previously, the domestic industry's COGS as a share of net sales increased from \*\*\* percent in 2005 to \*\*\* percent in 2006, and to \*\*\* percent in 2007, and was \*\*\* percent in interim 2008 as compared to \*\*\* percent in interim 2007.<sup>109</sup>

Respondents argue that the downturn in demand for certain refrigeration shelving, not subject imports, was the cause for these deteriorating indicators. While demand, as measured by apparent U.S. consumption, declined during the period, the percentage drop in almost all of these performance indicia far exceeded the decline in demand over the period. Moreover, during this period of declining demand for certain refrigeration shelving, subject imports more than doubled, capturing significant market share directly from the domestic industry. Thus, declining domestic consumption does not explain the negative trends in industry performance.

The domestic industry's financial indicators worsened substantially over the period examined. Operating \*\*\* fell from \$\*\*\* in 2005 to a \$\*\*\* in 2006 and a \$\*\*\* in 2007; the domestic industry experienced a \$\*\*\* in interim 2008 as compared to a \$\*\*\* in interim 2007.<sup>110</sup> The domestic industry's ratio of operating \*\*\* to sales (also known as the operating margin), decreased by \*\*\* percentage points from 2005 to 2007, before recovering \*\*\* percentage points in interim 2008 compared to interim 2007. The domestic industry's operating margin declined from \*\*\* percent in 2005 to a \*\*\* in 2006, and to a \*\*\* in 2007. The domestic industry experienced a \*\*\* in interim 2008 as compared to a \*\*\* in interim 2007.<sup>111</sup> Although it does appear that the domestic industry's operating income and operating margins recovered somewhat in interim 2008, they were still well below where they were at the start of the period, and still in the \*\*\* column. Capital expenditures declined substantially over the period, while R&D expenses \*\*\*.<sup>112</sup>

Given our findings concerning the significant absolute volume of subject imports from China and our findings concerning declines in the domestic industry's performance during the period of investigation, we find for purposes of our preliminary determinations in these investigations that subject

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<sup>105</sup> CR/PR at Table C-1. The domestic refrigerator shelving industry's capacity increased slightly from \*\*\* units in 2005 to \*\*\* units in 2006, before falling to \*\*\* units in 2007. CR/PR at C-1. Capacity was \*\*\* units in interim 2008 as compared to \*\*\* units in interim 2007.

<sup>106</sup> The domestic industry's capacity utilization levels declined from \*\*\* percent in 2005 to \*\*\* percent in 2006 and to \*\*\* percent in 2007, and was \*\*\* percent in interim 2008 as compared to \*\*\* percent in interim 2007. CR/PR at Table C-1.

<sup>107</sup> CR/PR at Table C-1. Hourly wages increased from 2005 to 2007.

<sup>108</sup> CR/PR at Table C-1.

<sup>109</sup> CR/PR at Table VI-1.

<sup>110</sup> CR/PR at Table C-1.

<sup>111</sup> CR/PR at Table C-1.

<sup>112</sup> CR/PR at Table VI-7. \*\*\* reported R&D expenses.

imports from China are having a material adverse impact on the domestic industry producing certain refrigeration shelving.<sup>113</sup>

## VII. REASONABLE INDICATION OF MATERIAL INJURY BY REASON OF IMPORTS OF CERTAIN OVEN RACKS FROM CHINA<sup>114</sup>

### A. Volume of Subject Imports<sup>115</sup>

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.”<sup>116</sup>

The volume of subject imports of certain oven racks from China increased by \*\*\* percent from 2005 to 2007, from \*\*\* units in 2005 to \*\*\* units in 2006, and to \*\*\* units in 2007.<sup>117</sup> Subject import volume of \*\*\* units in interim 2008 was dramatically higher when compared to \*\*\* units in interim 2007.<sup>118</sup>

The share of apparent U.S. consumption held by subject imports, by quantity, declined from \*\*\* percent in 2005 to \*\*\* percent in 2006, before increasing to \*\*\* percent in 2007, an increase of \*\*\* percentage point from 2005 to 2007.<sup>119</sup> The market share held by subject imports surged to \*\*\* percent in interim 2008, considerably higher than the \*\*\* percent market share held by subject imports in interim 2007.<sup>120</sup> \*\*\* of the market share gained by subject imports was at the expense of the domestic industry as there were \*\*\* nonsubject imports of certain oven racks during the period examined.<sup>121</sup> Total subject imports of certain oven racks were equivalent to \*\*\* percent of U.S. production (by volume) in 2005, \*\*\*

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<sup>113</sup> The replacement/benefit test required by the U.S. Court of Appeals for the Federal Circuit in Bratsk Aluminium Smelter v. United States, 444 F.3d 1369, 1375 (Fed. Cir. 2006), is not applicable in this investigation because there were no nonsubject imports of certain refrigeration shelving during the period of investigation. This inquiry addresses the question “whether nonsubject imports would have replaced the subject imports without any beneficial effect on domestic producers.” If any party maintains that the Bratsk replacement/benefit test should apply in any final phase investigation, it should comment on what additional information the Commission should collect and how that information should be collected.

For a complete statement of Vice Chairman Pearson’s interpretation of Bratsk in a preliminary investigation, see Separate and Additional Views of Vice Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminium v. United States in Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Prelim.), USITC Pub. 3912 at 19-25 (Apr. 2007).

<sup>114</sup> No party argues that negligibility is an issue in these investigations. Subject imports from China of certain oven racks far exceeded the negligibility threshold during the most recent 12-month period for which data are available preceding the filing of the petition. CR at IV-11/PR at IV-3. Consequently, we find that the subject imports of certain oven racks are not negligible under 19 U.S.C. § 1677(24)

<sup>115</sup> Since certain refrigeration shelving and certain oven racks are imported in basket categories in the HTS, official import statistics are not available for use in these investigations. CR/PR at IV-1. As a result, all import statistics are compiled from data gathered in response to Commission questionnaires.

<sup>116</sup> 19 U.S.C. § 1677(7)(C)(i).

<sup>117</sup> CR/PR at Table IV-4.

<sup>118</sup> CR/PR at Table IV-4.

<sup>119</sup> CR/PR at Table IV-10.

<sup>120</sup> CR/PR at Table IV-10.

<sup>121</sup> CR/PR at Table IV-10.

percent in 2006, and \*\*\* percent in 2007. Subject import volume was equivalent to \*\*\* percent of U.S. production (by volume) in interim 2008 as compared to \*\*\* percent in interim 2007.<sup>122</sup>

We find for purposes of the preliminary phase of these investigations that the volume and increase in volume of subject imports was significant during the period examined, especially the increase between the interim periods, both in absolute terms and relative to consumption and production in the United States.

## **B. Price Effects of the Subject Imports**

Section 771(C)(ii) of the Act provides that, in evaluating the price effects of 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.<sup>123</sup>

As we found above, there appears to be a high degree of interchangeability between the domestic like product and subject imports from China. The majority of market participants reported that domestically produced KASAR and subject imports were always or frequently interchangeable, particularly if they met industry standards,<sup>124</sup> and that differences other than price are relatively unimportant factors in purchasing decisions, although Respondents dispute this latter fact.<sup>125</sup>

The Commission collected quarterly pricing data from producers and importers on three pricing products for certain oven racks.<sup>126</sup> Domestic prices for all three pricing products increased over the period examined.<sup>127</sup> Because no sales of imported product from China were reported, due mainly to the fact that the OEMs are often direct importers of the subject merchandise, the Commission was not able to conduct any direct price comparisons of certain oven racks based on shipments of U.S. producers and U.S. importers.

The domestic industry's COGS as a share of net sales increased from \*\*\* percent in 2005 to \*\*\* percent in 2006, and to \*\*\* percent in 2007; it was \*\*\* percent in interim 2008 as compared to \*\*\* percent in interim 2007.<sup>128</sup> We thus find evidence of a cost-price squeeze, and that the domestic oven rack industry has been unable to raise prices sufficiently to recoup increased costs at a time of significant

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<sup>122</sup> CR/PR at Table IV-13.

<sup>123</sup> 19 U.S.C. § 1677(7)(C)(ii).

<sup>124</sup> CR/PR at Table II-1; CR at II-8.

<sup>125</sup> CR/PR at Table II-2.

<sup>126</sup> Product 5 – Nickel plated oven rack that is about 16.1 inches by 22.8 inches, consisting of 13 filler wires, an R-bar, and a wire frame, and has a nickel plated finish; Product 6– Nickel plated oven rack that is about 24.2 inches by 15.9 inches, consisting of 1 frame, 1 brace and 13 filler wires, and has a nickel plated finish; Product 7– Heavy-duty nickel plated oven rack that is about 24.2 inches by 15.9 inches, consisting of 1 frame, 1 brace and 13 filler wires, and has a nickel plated finish. CR at V-5, PR at V-2.

<sup>127</sup> The weighted-average sales price for U.S. produced product 5 increased by about \*\*\* percent between the first quarter of 2005 and the fourth quarter of 2007; the price for U.S. produced product 6 increased by \*\*\* percent between the first quarter of 2005 and the first quarter of 2008; and the price for U.S. produced product 7 increased by \*\*\* percent between the first quarter of 2005 and the second quarter of 2008, albeit based on very small quantities for product 7. CR at V-15-V-16, PR at V-5-V-6.

<sup>128</sup> CR/PR at Table VI-3.

market share loss to the subject imports.<sup>129</sup> We invite the parties to make specific proposals in their comments on draft questionnaires, on how to improve our ability to gather more comprehensive pricing data in order to better assess the price effects of subject imports in any final phase of these investigations.<sup>130</sup>

### **C. Impact of the Subject Imports**<sup>131</sup>

Section 771(7)(C)(iii) of the Act 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.”<sup>132</sup> These factors include output, sales, inventories, capacity utilization, market share, employment, wages, productivity, profits, cash flow, return on investment, ability to raise capital, research and development, and factors affecting domestic prices. 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.”<sup>133</sup>

We have examined the performance indicia for the domestic industry producing certain oven racks. The domestic industry’s production of certain oven racks increased from \*\*\* units in 2005 to \*\*\* units in 2006, but then declined to \*\*\* units in 2007, for a period increase of \*\*\* percent.<sup>134</sup> Production was \*\*\* units in interim 2008 as compared to \*\*\* in interim 2007, a decrease of \*\*\* percent. U.S. shipments of certain oven racks increased by \*\*\* percent from 2005 through 2007, but declined by \*\*\* percent between the interim periods.<sup>135</sup> Although U.S. production and shipments increased overall from 2005 to 2007, the percentage increase was below the \*\*\* percent increase in apparent consumption over the period, and both indicators declined substantially between the interim periods when demand fell and subject imports more than doubled.

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<sup>129</sup> In the final phase investigations we intend to further explore Petitioners’ argument that Chinese producers have employed a number of aggressive pricing strategies, including the extension of more favorable credit terms as well as providing substantial discounts on tooling costs.

<sup>130</sup> See 19 C.F.R. § 207.20(b).

<sup>131</sup> In its notice of initiation, Commerce did not provide estimated dumping/subsidy margins separately for certain refrigeration shelving and certain oven racks, but only for KASAR as a whole. Commerce estimated the dumping margins for imports of KASAR from China to range from 58.91 percent to 142.64 percent. CR at I-5, PR at I-5 (citing 73 Fed. Reg. 50596 (Aug 27, 2008)). In its notice of initiation, Commerce indicated that it would investigate 25 programs alleged in the petitions to have provided countervailable subsidies to producers of KASAR in China. Commerce grouped the programs into the following categories: income tax programs; indirect tax programs and import tariff program; provincial/local subsidy programs; and provision of goods and services for less than adequate remuneration by the GOC. CR at I-5, PR at I-4-I-5 (citing 73 Fed. Reg. 50596 (Aug. 27, 2008)).

<sup>132</sup> 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.”)

<sup>133</sup> 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, 731-TA-812-813 (Prelim.), USITC Pub. 3155 at 25 n.148 (Feb. 1999).

<sup>134</sup> CR/PR at Table C-2.

<sup>135</sup> The domestic industry’s U.S. shipments of certain oven racks increased from \*\*\* units in 2005 to \*\*\* units in 2006, before declining to \*\*\* units in 2007, and was \*\*\* units in interim 2008 as compared to \*\*\* units in interim 2007. CR/PR at Table C-2.

The domestic industry's average production capacity increased by \*\*\* percent from 2005 to 2007, but declined by \*\*\* percent between the interim periods.<sup>136</sup> The domestic industry's capacity utilization levels declined overall, by \*\*\* percentage points from 2005 to 2007, and \*\*\* percentage points between the interim periods.<sup>137</sup> The average number of production workers, hours worked, and total wages paid increased from 2005 to 2007, but declined between the interim periods.<sup>138</sup> Productivity declined throughout the period, as unit labor costs increased.

The domestic industry's net sales increased by \*\*\* percent from 2005 to 2007, but declined by \*\*\* percent between the interim periods when measured by quantity.<sup>139</sup> Net sales, measured by value, increased by \*\*\* percent from 2005 to 2007, but declined by \*\*\* percent between the interim periods.<sup>140</sup> As discussed previously, the domestic industry's COGS as a share of net sales increased from \*\*\* percent in 2005 to \*\*\* percent in 2006, and to \*\*\* percent in 2007; it was \*\*\* percent in interim 2008 as compared to \*\*\* percent in interim 2007.<sup>141</sup>

The domestic industry's financial indicators worsened substantially over the period examined before recovering slightly in interim 2008. Operating \*\*\* from a \$\*\*\* in 2005 to a \$\*\*\* in 2006 and to a \$\*\*\* in 2007. The domestic industry experienced a \*\*\* of \$\*\*\* in interim 2008 as compared to a \*\*\* of \$\*\*\* in interim 2007.<sup>142</sup> The domestic industry's ratio of operating income to sales (or operating margin), which was \*\*\* throughout the period, decreased by \*\*\* percentage points from 2005 to 2007, before recovering \*\*\* percentage points in interim 2008, as compared to interim 2007. The domestic industry's operating income margin declined from a \*\*\* in 2005 to a \*\*\* in 2006, and increased slightly to a \*\*\* in 2007. The domestic industry experienced a \*\*\* in interim 2008 as compared to a \*\*\* in interim 2007.<sup>143</sup> Capital expenditures increased overall from 2005 to 2007, but declined in the interim periods, while R&D expenses increased slightly throughout the period.<sup>144</sup>

We note that the domestic industry's operating income/loss improved somewhat in interim 2008, although it was still substantially lower than at the start of the period. We further note the apparent drop in demand for certain oven racks, by \*\*\* as large in interim 2008 than in interim 2007. Petitioners explained that despite the significant drop in shipments in interim 2008, the \*\*\* between the interim periods because of a change in product mix.<sup>145</sup> Petitioners noted that \*\*\* sold a larger share of \*\*\*.<sup>146</sup> We intend to explore this issue further in any final phase of these investigations.

Given our findings concerning the significant absolute volume of subject imports from China and our findings concerning declines in the domestic industry's performance during the period of

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<sup>136</sup> CR/PR at Table C-2. The domestic oven racks industry's capacity increased from \*\*\* units in 2005 to \*\*\* units in 2006, and to \*\*\* units in 2007. CR/PR at C-2. Capacity was \*\*\* units in interim 2008 as compared to \*\*\* units in interim 2007.

<sup>137</sup> The domestic industry's capacity utilization levels increased from \*\*\* percent in 2005 to \*\*\* percent in 2006, before falling to \*\*\* percent in 2007, and was \*\*\* percent in interim 2008 as compared to \*\*\* percent in interim 2007. CR/PR at Table C-2.

<sup>138</sup> CR/PR at Table C-2. Hourly wages declined overall from 2005 to 2007, but increased in the interim periods.

<sup>139</sup> CR/PR at Table C-2.

<sup>140</sup> CR/PR at Table C-2.

<sup>141</sup> CR/PR at Table VI-3.

<sup>142</sup> CR/PR at Table C-2.

<sup>143</sup> CR/PR at Table C-2.

<sup>144</sup> CR/PR at Table VI-7. \*\*\* reported R&D expenses.

<sup>145</sup> CR at VI-7. The unit values and unit COGS both increased by \*\*\* percent and \*\*\* percent, respectively, from interim 2007 to interim 2008. CR/PR at Table C-2.

<sup>146</sup> CR at VI-6.

investigation, we find for purposes of our preliminary determinations in these investigations that subject imports from China are having a material adverse impact on the domestic industry producing certain oven racks.<sup>147</sup>

### CONCLUSION

For the foregoing reasons, we find that there is a reasonable indication that the domestic industry producing certain refrigeration shelving is materially injured by reason of subject imports of certain refrigeration shelving from China that are allegedly sold in the United States at less than fair value, and are allegedly subsidized by the government of China. We also determine that there is a reasonable indication that the domestic industry producing certain oven racks is materially injured by reason of subject imports of certain oven racks from China that are allegedly sold in the United States at less than fair value, and are allegedly subsidized by the government of China.

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<sup>147</sup> The replacement/benefit test required by the U.S. Court of Appeals for the Federal Circuit in Bratsk Aluminium Smelter v. United States, 444 F.3d 1369, 1375 (Fed. Cir. 2006), is not applicable in this investigation because there were no nonsubject imports of certain oven racks during the period of investigation. This inquiry addresses the question “whether nonsubject imports would have replaced the subject imports without any beneficial effect on domestic producers.” If any party maintains that the Bratsk replacement/benefit test should apply in any final phase investigation, it should comment on what additional information the Commission should collect and how that information should be collected.

For a complete statement of Vice Chairman Pearson’s interpretation of Bratsk in a preliminary investigation, see Separate and Additional Views of Vice Chairman Daniel R. Pearson and Commissioner Deanna Tanner Okun Concerning Bratsk Aluminium v. United States in Sodium Hexametaphosphate from China, Inv. No. 731-TA-1110 (Prelim.), USITC Pub. 3912 at 19-25 (Apr. 2007).





## PART I: INTRODUCTION

### BACKGROUND

These investigations result from a petition filed with the U.S. Department of Commerce (“Commerce”) and the U.S. International Trade Commission (“USITC” or “Commission”) by Nashville Wire Products Inc. (“Nashville Wire”), Nashville, TN; SSW Holding Company, Inc. (“SSW”), Elizabethtown, KY; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists and Aerospace Workers, District Lodge 6, Clinton, IA, on July 31, 2008, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and less-than-fair-value (“LTFV”) imports of certain kitchen appliance shelving and racks (“KASAR”)<sup>1</sup> from China. Information relating to the background of these investigations is provided below.<sup>2</sup>

Effective date	Action
July 31, 2008	Petition filed with Commerce and the Commission; institution of Commission investigations (73 FR 46033, August 7, 2008)
August 21, 2008	Commission’s conference <sup>1</sup>
August 26, 2008	Commerce’s notice of countervailing duty initiation (73 FR 50304)
August 27, 2008	Commerce’s notice of antidumping duty initiation (73 FR 50596)
September 12, 2008	Date of the Commission’s vote
September 15, 2008	Commission determinations transmitted to Commerce
September 22, 2008	Commission views due to Commerce
<sup>1</sup> A list of witnesses appearing at the conference is presented in app. B.	

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<sup>1</sup> See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to this investigation.

<sup>2</sup> *Federal Register* notices cited in the tabulation are presented in app. A.

## STATUTORY CRITERIA AND ORGANIZATION OF THE REPORT

### Statutory Criteria

Section 771(7)(B) of the Tariff Act of 1930 (the “Act”) (19 U.S.C. § 1677(7)(B)) provides that in making its determinations of injury to an industry in the United States, the Commission--

*shall consider (I) the volume of imports of the subject merchandise, (II) the effect of imports of that merchandise on prices in the United States for domestic like products, and (III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and . . . may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.*

Section 771(7)(C) of the Act (19 U.S.C. § 1677(7)(C)) further provides that--

*In evaluating the volume of imports of merchandise, 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.*

. . .

*In evaluating the effect of imports of such merchandise on prices, 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.*

. . .

*In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate (within the context of the business cycle and conditions of competition that are distinctive to the affected industry) all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to*

. . .

*(I) actual and potential declines in output, sales, market share, profits, productivity, return on investments, and utilization of capacity, (II) factors affecting domestic prices, (III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment, (IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and (V) in {an antidumping investigation}, the magnitude of the margin of dumping.*

## Organization of the Report

*Part I* of this report presents information on the subject merchandise, alleged subsidy and dumping margins, and domestic like product. *Part II* of this report presents information on conditions of competition and other relevant economic factors. *Part III* presents information on the condition of the U.S. industry, including data on capacity, production, shipments, inventories, and employment. *Parts IV and V* present the volume and pricing of imports of the subject merchandise, respectively. *Part VI* presents information on the financial experience of U.S. producers. *Part VII* presents the statutory requirements and information obtained for use in the Commission's consideration of the question of threat of material injury and the judicial requirements and information obtained for use in the Commission's consideration of *Bratsk* issues.

## U.S. MARKET SUMMARY

KASAR are used inside refrigeration and cooking appliances. Currently, seven firms are believed to produce KASAR in the United States, with the two petitioning firms, Nashville Wire and SSW, accounting for over \*\*\* percent of reported U.S. production.<sup>3</sup> At least eight firms have imported KASAR from China since 2005, with three firms, \*\*\*, \*\*\*, and \*\*\*, accounting for more than \*\*\* percent of U.S. imports from China in 2007.<sup>4</sup> No importer reported any nonsubject-country imports of KASAR during the period of investigation.

Apparent U.S. consumption of KASAR totaled approximately \*\*\* units (\$\*\*\*) in the U.S. market in 2007. U.S. producers' U.S. shipments of KASAR totaled \*\*\* units (\$\*\*\*) in 2007, and accounted for \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value. U.S. imports from China totaled approximately \*\*\* units (\$\*\*\*) in 2007 and accounted for \*\*\* percent of apparent U.S. consumption by quantity and \*\*\* percent by value.

## SUMMARY DATA AND DATA SOURCES

A summary of data collected in the investigation is presented in appendix C, tables C-1, C-2, and C-3.<sup>5</sup> U.S. industry data are based on questionnaire responses of three U.S. producers (see Part III of this report). U.S. import data are based on questionnaire responses of eight U.S. importers (see Part IV of this report). Information on the KASAR industry in China is based on questionnaire responses from six producers/exporters of KASAR in China (see Part VII of this report).

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<sup>3</sup> Petition, exh. 1. Staff believes that these two firms account for the vast majority of actual U.S. production of KASAR.

<sup>4</sup> Staff believes that importer questionnaire responses account for the majority of actual U.S. imports of KASAR in 2007.

<sup>5</sup> Table C-1 presents data for refrigeration shelving in the U.S. market; table C-2 presents data for oven racks in the U.S. market; and C-3 presents the combined data for both refrigeration shelving and oven racks oven racks.

## NATURE AND EXTENT OF ALLEGED SUBSIDIES AND SALES AT LTFV

### Alleged Subsidies

On August 26, 2008, Commerce published a notice in the *Federal Register* of the initiation of its countervailing duty investigation on KASAR from China.<sup>6</sup> The following government programs in China are involved:

#### ***A. Income Tax Programs***

1. “Two Free, Three Half” program
2. Income tax exemption program for export-oriented FIEs
3. Income tax refund for reinvestment of profits in export-oriented enterprises
4. Income tax subsidies for FIEs based on geographic location
5. Preferential tax subsidies for research and development by FIEs
6. Income tax credits on purchases of domestically-produced equipment by FIEs
7. Income tax credits for domestically-owned companies purchasing domestically-produced equipment
8. Income tax exemption for investment in domestic “Technological Renovation”
9. Reduction in or exemption from the fixed assets investment orientation regulatory tax

#### ***B. Indirect Tax Programs and Import Tariff Programs***

10. Value Added Tax (“VAT”) rebates for FIEs purchasing domestically-produced equipment
11. Import tariff and VAT exemptions for FIEs and certain domestic enterprises using imported equipment in encouraged industries
12. Import tariff exemptions for the “encouragement of investment by Taiwan Compatriots”

#### ***C. Provincial/Local Subsidy Programs***

13. Local income tax exemption and reduction program for “productive” FIEs in Guangdong Province
14. Exemption from city construction tax and education tax for FIEs in Guangdong Province
15. Exception from real estate tax and dike maintenance fee for FIEs in Guangdong Province
16. Import tariff refunds and exemptions for FIEs in Guangdong Province
17. Preferential loans and interest rate subsidies in Guangdong Province
18. Direct grants in Guangdong Province
19. Funds for “outward expansion” of industries in Guangdong Province
20. Land-related subsidies to companies located in specific regions of Guangdong Province
21. Government provision of electricity and water at less than adequate

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<sup>6</sup> *Notice of Initiation of Countervailing Duty Investigation: Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China*, 73 FR 50304, August 26, 2008.

remuneration to companies located in development zones in Guangdong Province and Zhejiang Province

22. Import tariff and VAT refunds and exemptions for FIEs in Zhejiang Province
23. Grants to promote exports from Zhejiang Province
24. Land-related subsidies to companies located in specific regions of Zhejiang Province

***D. Provision of Goods and Services for Less than Adequate Remuneration by the GOC***

25. Wire Rod and Nickel

**Alleged Sales at LTFV**

On August 27, 2008, Commerce published a notice in the *Federal Register* of the initiation of its antidumping duty investigation on KASAR from China.<sup>7</sup> Commerce has initiated an antidumping duty investigation based on estimated dumping margins ranging from 58.91 percent to 142.64 percent for KASAR from China.

**THE SUBJECT MERCHANDISE**

**Commerce's Scope**

Commerce has defined the scope of these investigations as follows:

*Certain kitchen appliance shelving and racks are shelving and racks for refrigerators, freezers, combined refrigerator/freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (“certain kitchen appliance shelving and racks” or “the subject merchandise”). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions: shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches. The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the*

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<sup>7</sup> *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 50596, August 27, 2008.

support surface is glass. The written description of the scope of this investigation is dispositive.<sup>8</sup>

### Tariff Treatment

According to the petition, certain KASAR are imported under Harmonized Tariff Schedule of the United States (“HTS”) statistical reporting numbers 7321.90.5000, 7321.90.6090, 8418.99.8050, and 8516.90.8000. All four of these statistical reporting numbers are residual or “basket” categories and contain a number of other products besides certain KASAR. Table I-1 presents current tariff rates for KASAR.

**Table I-1  
KASAR: Tariff rates, 2008**

HTS provision	Article description	General <sup>1</sup>	Special <sup>2</sup>	Column 2 <sup>3</sup>
		Rates (percent ad valorem)		
8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415; parts thereof:			
8418.99.80	Other (parts).....	Free		35%
50	Parts of combined refrigerator-freezers fitted with separate external doors and parts of household type refrigerators.....			
8516	Electric instantaneous or storage water heaters and immersion heaters; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof :	Free		35%
8516.90.80	Other (parts for appliances of subheading 8516.60.40).....	Free		35%
7321	Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, of iron or steel:			
7321.90.50	Other (parts of appliances of subheading 7321.11.30)....	Free		45%
7321.90.60	Other parts of gas cooking appliances and plate warmers.	Free		45%

<sup>1</sup> Normal trade relations, formerly known as the most-favored-nation duty rate.  
<sup>2</sup> Special rates not applicable when General rate is free. China is ineligible for special duty rate treatment.  
<sup>3</sup> Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

Source: Harmonized Tariff Schedule of the United States (2008).

### THE DOMESTIC LIKE PRODUCT

The Commission’s decision regarding the appropriate domestic product(s) that are “like” the subject imported product is based on a number of factors including: (1) physical characteristics and uses; (2) common manufacturing facilities and production employees; (3) interchangeability; (4) customer and

<sup>8</sup> *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 50596, August 27, 2008.

producer perceptions; (5) channels of distribution; and (6) price. Information regarding these factors is discussed below.

In these investigations, the petitioners contend that the Commission should find two domestic like products consisting of (1) certain refrigeration shelving and baskets for residential and recreational vehicle refrigerators, freezers, combination refrigerators/freezers, and other refrigerating or freezing equipment and (2) certain oven racks, side racks, and subframes for residential and recreational vehicle cooking stoves, ranges, and ovens.<sup>9</sup> Respondents argued that the Commission should define the domestic like product to include all wire kitchen appliance shelving and cooking racks.<sup>10</sup> A discussion of domestic like product and domestic industry issues is presented later in this section of the report.

### **Physical Characteristics and Uses**

KASAR consist of certain shelving and baskets for refrigerators, freezers, combined refrigerator-freezers, and other refrigerating or freezing equipment and racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) for cooking stoves, ranges, and ovens. Shelving and baskets are used by original equipment manufacturers (“OEMs”) of residential and recreational vehicle appliances of refrigerators, freezers, and refrigerator/freezers. Oven racks are used by OEMs of residential and recreational vehicle appliances of freestanding ranges and wall ovens.<sup>11</sup> Figures I-1 through I-6 present various refrigerator shelving and baskets and oven racks.

### **Manufacturing Processes**

The production processes of KASAR originate with straightening and cutting of low carbon steel wire according to product specifications. The wire is then transferred to a dedicated wire drawing and cutting machine area.<sup>12</sup> \*\*\*.<sup>13</sup> Refrigeration shelving and oven racks are produced in different production facilities using dedicated fabrication, tooling, and finishing equipment to produce parts to OEM specifications, and exact dimensional appearance. These parts are not generally interchangeable among different models and by the various OEMs. Production of certain refrigeration shelving and freezer baskets and oven racks are made to order for each specific model of each major appliance OEM producer.<sup>14</sup>

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<sup>9</sup> Petitioner’s postconference brief, pp. 2-3.

<sup>10</sup> Respondents’ postconference brief, p. 5.

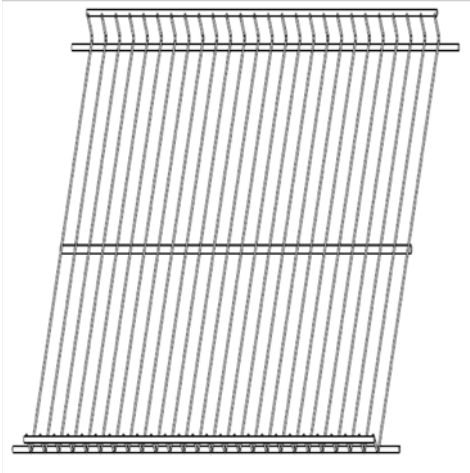
<sup>11</sup> Petition, pp. 5-6.

<sup>12</sup> Petition, p. 9.

<sup>13</sup> Staff field trip to SSW plant, Fort Smith, AR, Aug. 12, 2008.

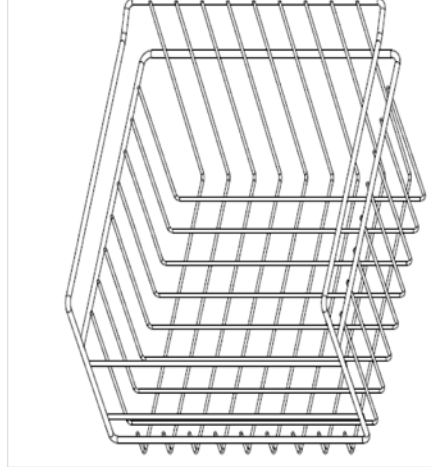
<sup>14</sup> Conference transcript, p. 14 (Kara).

**Figure I-1**  
Open end freezer shelf



Source: SSW Holding Co.

**Figure I-2**  
Refrigerator--Freezer basket



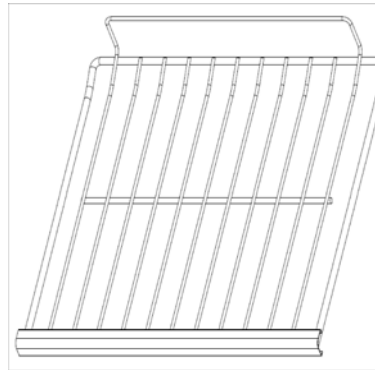
Source: SSW Holding Co.

**Figure I-3**  
Refrigerator--Freezer basket #2



Source: SSW Holding Co.

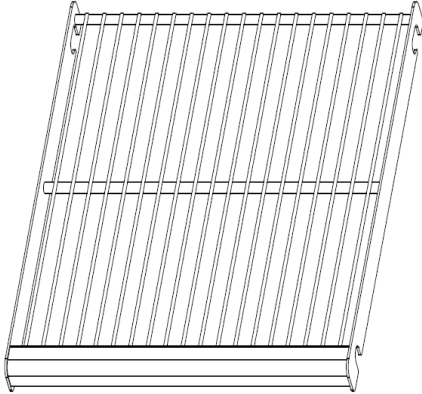
**Figure I-4**  
Refrigerator--Freezer shelf



Source: SSW Holding Co.

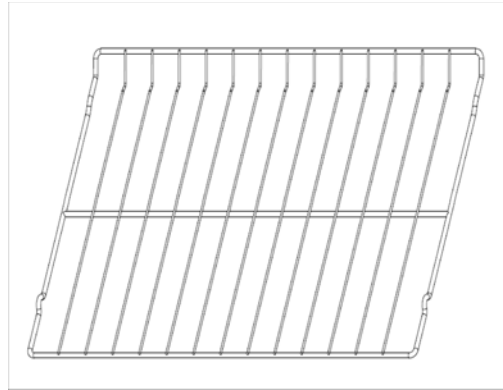


**Figure I-5**  
Fixed Refrigerator--Freezer shelf



Source: SSW Holding Co.

**Figure I-6**  
Oven Rack



Source: SSW Holding Co.

### **Refrigeration Shelving<sup>15</sup>**

The production of refrigeration shelving begins with wire being straightened and cut according to product specifications. A high-speed turret lathe milling machine is used to spin and shape the wire.<sup>16</sup> The forming and welding operations may be manual, semi-automatic, or automatic depending on the part complexity and volume. These operations may be completed in multiple steps. Automatic welding machines are employed to form the metal frames, weld the mats, join the frames and mats, and form the frame/mat assembly, among others. During the welding operations, other metal components may be added to the wire to form an assembly, depending on part design. The shelving parts are then manually loaded onto a finishing system where the shelving parts are sent through a cleaning, pretreatment, and coating process.<sup>17</sup> For refrigeration shelving, the coating is typically applied electrostatically and is then cured under heat to allow it to flow and form a “skin.” The application of powder paint employs filtered, compressed air, typically at 20 to 30 psi, which pushes the powder out of the spray paint gun past the electrode which then provides the powder a positive charge. For refrigeration shelving, the coating is most often electrostatic powder paint, but it can include a range of other finishes. Finishing system requirements are specified by OEM customers and typically include appearance as well as the ability to withstand corrosion and abrasion requirements.<sup>18</sup>

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<sup>15</sup> Refrigeration shelving in which the support surface consists of glass is excluded from these investigations.

<sup>16</sup> \*\*\*.

<sup>17</sup> Petition, p. 9.

<sup>18</sup> Conference transcript, p. 17 (Kara).

## **Oven Racks**

Like the production of refrigerator shelving, the production of oven racks begins with wire being straightened and cut according to product specifications. Wire drawing and cutting machines cut the wire and put it through forming and/or automatic welding machines and other machinery that is dedicated to the production of oven racks. The forming/welding operations may be manual, semi-automatic, or automatic depending on the part complexity and volume. These operations may be completed in multiple steps. These steps may include forming and welding of frames, welding of mats, joining of the frames and mats and forming of the frame/mat assembly, among others. During the welding operations other metal components may be added to the wire to form an assembly, depending on part design. The racks are then manually loaded onto a finishing system where the metal racks are cleaned and coated. The coating process is most often a nickel plating process, but may also include porcelain or other coatings with the ability to withstand temperatures present inside a cooking appliance. In the nickel plating process, racks are sent through a caustic bath containing nickel compounds. An electric charge occurs in the bath and nickel coating which is then deposited on the part. The metal racks are then sent through a series of rinses and a post dip sealer before being subjected to the final drying stage. The cleaning and coating process may be completed in multiple steps. Most racks are then packaged and moved to a staging area for shipment to OEM customers. Some racks may require further assembly. These assemblies are then packaged and moved to a staging area for shipment to customers.<sup>19</sup>

### **Interchangeability**

Refrigerator shelving and oven racks are designed and produced for specific OEM kitchen appliance producers for specific model applications.<sup>20</sup> Petitioners and respondents agree that kitchen refrigeration shelving is not interchangeable with oven racks because each product is produced to a particular OEM's specifications. Respondents acknowledge that kitchen appliance parts (refrigeration shelving and oven racks) come in numerous sizes because the design of the shelving and racks is determined by the appliances into which these parts will be inserted.<sup>21</sup>

### **Customer and Producer Perceptions**

Petitioners and respondents have indicated that quality standards for KASAR are very high for both U.S. and Chinese producers, with both being required to become qualified to produce product and supply product at the same levels of quality. In light of the capability of both U.S. and Chinese producers to produce to the same quality standards, petitioners believe that the determining factor in purchase decisions in the awarding and placement of business is price.<sup>22</sup> On the other hand, respondents GE and Whirlpool indicate that while price is a consideration, quality is a more important factor in their purchasing decisions.<sup>23</sup>

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<sup>19</sup> Petition, pp. 9-10.

<sup>20</sup> Conference transcript at 15 (Kara).

<sup>21</sup> Conference transcript at 119-120 (Metzger).

<sup>22</sup> Conference transcript, p. 62 (Gritton), p. 65 (Rollins).

<sup>23</sup> Conference transcript, p. 134 (Metzger), pp. 134-135 (Wessendorf).

## Channels of Distribution

All domestically produced KASAR are produced specifically for and sold to end users, which are all OEMs of kitchen appliances.<sup>24</sup> Additional details regarding the channel structure of domestically produced and imported KASAR are presented in Part II of this report, *Conditions of Competition in the U.S. Market*.

## Price

Pricing practices and prices reported for domestically produced and imported KASAR in response to the Commission's questionnaires are presented in Part V of this report, *Pricing and Related Information*.

## DOMESTIC LIKE PRODUCT AND THE DOMESTIC INDUSTRY

In these investigations, petitioners contend that the Commission should find two domestic like products consisting of (1) certain refrigeration shelving and baskets for residential and recreational vehicle refrigerators, freezers, combination refrigerators/freezers, and other refrigerating or freezing equipment; and (2) certain oven racks, side racks, and subframes for residential and recreational vehicle cooking stoves, ranges, and ovens<sup>25</sup> and two domestic industries producing the aforementioned like products.<sup>26</sup> On the other hand, respondents argue that the Commission should find a single domestic like product consisting of "all wire kitchen appliance shelving and cooking racks, defined as shelving and racks made from carbon or stainless steel wire for refrigerators, refrigerated display case freezers, refrigerator-freezers, cook-tops, ranges, ovens and grills, regardless of whether such wire shelving and cooking racks are intended for use in commercial or residential equipment," with one domestic industry producing those products.<sup>27</sup>

In support of two domestic like products/two domestic industries, petitioners argue (1) the two products are not interchangeable because both are produced to particular OEM specifications; (2) the two products are produced in different, dedicated production facilities with different employees, noting that "refrigeration and oven products are made using dedicated fabrication, tooling, and finishing equipment, in different facilities;"<sup>28</sup> (3) although the two production processes have some general similarities,<sup>29</sup> the coatings are very different between the two with refrigeration parts being coated with electrostatic powder paint and oven parts usually being nickel plated or porcelain coated to withstand high temperatures in cooking appliances;<sup>30</sup> (4) the two products are perceived differently by the customers with OEMs having "their own separate, dedicated facilities for assembling or manufacturing the appliances in which the

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<sup>24</sup> Each of the two like products are sold for different uses, either for refrigeration or cooking appliances, but not both. Petitioners' postconference brief, p. 6.

<sup>25</sup> Petitioners' postconference brief, pp. 2-3.

<sup>26</sup> Petitioners' postconference brief, p. 11.

<sup>27</sup> Respondents' postconference brief, p. 5.

<sup>28</sup> Petitioners' postconference brief, p. 4. See also, conference transcript, pp. 15 and 45 (Kara), p. 46 (Gritton), and pp. 46-47 (Rollins).

<sup>29</sup> Similarities include: starting with wire, straightening it, the forming and or/welding. Petitioners' postconference brief, p. 5.

<sup>30</sup> Petitioners' postconference brief, pp. 5-6.

subject merchandise is used;”<sup>31</sup> (5) although the two products are both sold to OEMs, they are “sold for different uses and go into separate manufacturing facilities – either refrigeration or cooking, but not both;”<sup>32</sup> and, (6) the two products have different appearances and end uses as “refrigeration parts have different coatings from oven parts, each based on the functions of the appliance into which each will go, which also means that the parts’ functions differ according to the type of appliance.”<sup>33</sup>

With regard to their one domestic like product/one domestic industry approach, respondents argue that (1) “all wire kitchen appliance shelving and cooking racks have the same general physical characteristics and the same general use” with all being made from carbon or stainless steel wire that is cut to size, bent, and welded into a variety of configurations and then coated before being used “to support items placed within or on a particular piece of equipment;”<sup>34</sup> (2) a variety of wire kitchen appliance shelving and racks share common manufacturing facilities, production processes, and production employees, with other producers having a “broader product portfolio” than petitioners suggest;<sup>35</sup> (3) “industry experts indicated that in certain circumstances the shelving and racks made to one particular OEM’s specifications could be substituted for shelving and racks made to another OEM’s specifications” pointing to “some limited interchangeability;”<sup>36</sup> (4) the OEM customers for kitchen appliance shelving and racks “not only view these products as comprising a single industry, they specifically organize their sourcing operations accordingly;”<sup>37</sup> and (5) based on the record data, there appears to be “substantial overlap in prices.”<sup>38 39</sup>

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<sup>31</sup> Ibid., page 6. In this regard petitioners noted that Whirlpool’s refrigeration manufacturing facilities are located in Amana, IA, Ft. Smith, AR, and Evansville, IN, while its cooking appliances are manufactured in Tulsa, OK, Oxford, MS, and Cleveland, TN. GE’s refrigeration manufacturing is done in Louisville, KY, Decatur, AL, and Bloomington, IN, while its cooking appliances are produced in Lafayette, GA. Ibid. See also, conference transcript, pp. 149-150 (Wessendorf), p. 150 (Metzger).

<sup>32</sup> Petitioners’ postconference brief, p. 6.

<sup>33</sup> Ibid, p. 7.

<sup>34</sup> Respondents’ postconference brief, p. 5.

<sup>35</sup> Ibid, pp. 7-9.

<sup>36</sup> Ibid, p. 10. See also, conference transcript, p. 129 (Wessendorf),

<sup>37</sup> Ibid, p. 10. In this regard, respondents note that GE produces core kitchen appliances (i.e., refrigerators, dishwashers, free-standing ranges, built-in ovens, etc.) and has one buyer and one quality engineer responsible for all wire hardware and formed-wire parts for those products. Conference transcript, pp. 114 and 116-117 (Metzger). Likewise, Whirlpool has a single sourcing manager for all of the wire racks and shelving that go into its core appliances. Conference transcript, pp. 124-135 (Wessendorf).

<sup>38</sup> Ibid., p. 11.

<sup>39</sup> With respect to channels of distribution, respondents state that the channels are identical for all kitchen appliance and cooking racks, with all product being sold directly to OEMs. Ibid., p. 11.

## **PART II: CONDITIONS OF COMPETITION IN THE U.S. MARKET**

### **U.S. MARKET CHARACTERISTICS**

KASAR is sold to OEM manufacturers of kitchen appliances.<sup>1</sup> \*\*\* U.S. shipments of U.S. produced KASAR and imports from China were made to end users \*\*\*. One responding importer and one responding producer reported selling KASAR nationally. Two of three remaining responding producers and the remaining responding importer reported selling to the Southeast region. One of these two producers reported making shipments also to the Northeast and Mid-Atlantic regions, and the remaining responding producer reported selling to the Southwest region.

### **SUPPLY AND DEMAND CONSIDERATIONS**

#### **U.S. Supply**

##### **Domestic Production**

Based on available information, U.S. KASAR producers have the ability to respond to changes in demand with moderate changes in the quantity of shipments of U.S.-produced KASAR to the U.S. market. The main contributing factors to the moderate degree of responsiveness of supply are the availability of unused capacity, constrained by an inability to produce alternate products, a limited ability to divert shipments from alternate markets, and a limited ability to use inventories to increase shipments to the U.S. market.

##### *Industry capacity*

U.S. producers' capacity utilization for KASAR decreased from \*\*\* percent in 2005 to \*\*\* percent in 2007, with capacity utilization for refrigerator shelving decreasing from \*\*\* percent in 2005 to \*\*\* percent in 2007 and capacity utilization for oven racks decreasing from \*\*\* percent in 2005 to \*\*\* percent in 2007. This level of capacity utilization indicates that U.S. producers have unused capacity with which they could increase production of both refrigerator shelving and oven racks in the event of a price change.

##### *Alternative markets*

Exports by U.S. producers, as a share of total shipments, increased from \*\*\* percent in 2005 to \*\*\* percent in 2007, with exports of refrigerator shelving decreasing from \*\*\* percent in 2005 to \*\*\* percent in 2007 and exports of oven racks increasing from \*\*\* percent in 2005 to \*\*\* percent in 2007. These data indicate that U.S. producers have a limited ability to divert shipments of both refrigerator shelving and oven racks to or from alternative markets in response to changes in the price of both refrigerator shelving and oven racks.

##### *Inventory levels*

The ratio of end-of-period inventories to total shipments increased from \*\*\* percent in 2005 to \*\*\* percent in 2007, with end-of-period inventories to total shipments of refrigerator shelving decreasing from \*\*\* percent in 2005 to \*\*\* percent in 2007 and end-of-period inventories to total shipments of oven

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<sup>1</sup> Petition, p. 15 and Respondents' postconference brief, p. 11.

racks increasing from \*\*\* percent in 2005 to \*\*\* percent in 2007. These data indicate that U.S. producers have a limited ability to use inventories as a means of increasing shipments of both refrigerator shelving and oven racks to the U.S. market.

### ***Production alternatives***

According to petitioners, because the KASAR is manufactured on dedicated equipment and machinery, other wire and metal shelving do not share any commonality with production equipment and employees.<sup>2</sup> One of four responding producers indicated that it produced other products on the same equipment and machinery used in the production of KASAR in 2007. This producer (\*\*\*) indicated that 10 percent of its equipment and machinery used in the production of KASAR was allocated to produce other products. Accordingly, U.S. producers are believed to have limited capability to engage in product shifting.

### **Subject Imports**

Based on available information, Chinese producers have the ability to respond to changes in demand with large changes in the quantity of shipments of KASAR to the U.S. market. The main contributing factors to the high degree of responsiveness of supply for Chinese production is the availability of unused capacity, an ability to divert shipments from alternate markets, and an ability to produce alternative products, constrained by a limited availability of inventories.

### ***Industry capacity***

During the period for which data were collected, the capacity utilization rate for Chinese producers of KASAR increased from \*\*\* percent in 2005 to \*\*\* percent in 2007, with capacity utilization for refrigerator shelving increasing from \*\*\* percent in 2005 to \*\*\* percent in 2007 and capacity utilization for oven racks increasing from \*\*\* percent in 2005 to \*\*\* percent in 2007. These levels of capacity utilization indicate that Chinese producers have unused capacity with which they could increase production of both refrigerator racks and oven shelving in the event of a price change.

### ***Alternative markets***

Shipments of KASAR from China to markets other than the United States increased from approximately \*\*\* percent of total shipments in 2005 to \*\*\* percent in 2007, with shipments to other markets of refrigerator shelving increasing from \*\*\* percent in 2005 to \*\*\* percent in 2007 and with shipments to other markets of oven racks decreasing from \*\*\* percent in 2005 to \*\*\* percent in 2007. Available data indicate that subject producers in China have the ability to divert shipments of both refrigerator racks and oven shelving to or from the home market and alternative markets in response to changes in the price.

### ***Inventory levels***

Chinese producers' inventories, as a share of their total shipments, increased from \*\*\* percent in 2005 to \*\*\* percent in 2007, with end-of-period inventories to total shipments of refrigerator shelving increasing from \*\*\* percent in 2005 to \*\*\* percent in 2007 and end-of-period inventories to total shipments of oven racks increasing from \*\*\* percent in 2005 to \*\*\* percent in 2006 and then decreasing

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<sup>2</sup> Petition, p. 15.

to \*\*\* percent in 2007. These data indicate that subject foreign producers have a limited ability to use inventories as a means of increasing shipments of both refrigerator shelving and oven racks to the U.S. market.

### ***Production alternatives***

Three of six responding producers indicated that they produce other products on the same equipment and machinery used in the production of KASAR. These three foreign producers reported that in 2007 their equipment and machinery used in the production of KASAR was also used to produce other products such as pet cages, shower caddies, paper towel holders, dishwasher racks, and furniture racks. Accordingly, Chinese producers are believed to have the ability to engage in product-shifting.

### **U.S. Demand**

Based on the available information it is likely that changes in the price level of KASAR will result in a small change in the quantity of KASAR demanded. The main contributing factors to the small degree of responsiveness of demand is the limited substitutability of other products for KASAR and the low cost share of KASAR in its end uses.

### **Demand Characteristics**

The petitioners indicate that shelving and baskets are used by OEM manufacturers of residential and recreational vehicle appliances of refrigerators, freezers, and refrigerator/freezers and that oven racks are used by OEM manufacturers of residential and recreational vehicle appliances of freestanding ranges and wall ovens.<sup>3</sup>

Two of four responding producers and three of four responding importers indicated that demand for KASAR decreased in the United States since 2005. One responding U.S. producer and one responding importer indicated that demand has increased and the remaining one responding importer indicated that demand had not changed. The importer that reported that demand increased (\*\*\*) only reported imports of oven racks.

Petitioners indicated that demand for kitchen appliance shelving racks decreased somewhat since 2005 primarily due to the recent declines in the housing market.<sup>4</sup> Petitioners indicate that since 2005 there has been a decline in demand for refrigeration shelving, but for oven racks, the demand, particularly between 2005 and 2007, has shown an increase.<sup>5</sup> GE attributes the increase in demand for oven racks primarily to a change in product mix toward more premium products that include more racks per range.<sup>6</sup>

Respondents indicate that demand has decreased due to decreases in consumer spending and GDP; decreases in housing completions (more so than housing starts); decreases in shipments of various durable goods destined for the home; decreases in existing home sales; an increase in the unemployment rate; movement of appliance manufacturing from the United States to Mexico; and a shift in consumer preferences in favor of glass shelving in refrigerators from wire shelving.<sup>7</sup> Respondents also indicate that demand for KASAR was inflated in 2005 because the Katrina and Rita hurricanes had a disproportionate

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<sup>3</sup> Petition, p. 6.

<sup>4</sup> Conference transcript, p. 38 (Hudgens).

<sup>5</sup> Conference transcript, p. 57 (Hudgens).

<sup>6</sup> Conference transcript, p. 61 (Gritton).

<sup>7</sup> Conference transcript, pp. 114-116 (Malashevich) and Malashevich conference exhibit 2.

impact on demand for refrigerators, more so than ovens.<sup>8</sup> However, petitioners indicated that they did not notice significant increases in demand from Hurricane Katrina or other special events.<sup>9</sup> GE indicates that recent trends have supported more upscale products, such as a preference for glass versus wire refrigerator shelves and porcelain-coated versus the nickel-coated oven racks.<sup>10</sup>

As seen in figure II-1, between January 2005 and July 2008, the seasonally adjusted annual number of housing starts decreased by 49 percent and the seasonally adjusted number of housing completions decreased by 40 percent.

### **Substitute Products**

All four responding producers and two of five responding importers indicated that there are no substitute products for KASAR. However, three of five responding importers indicated that there are substitutes including glass or plastic shelving and bins and porcelain racks. Two importers indicated that glass shelves and molded plastic bins can be substituted for wire shelves and bins in the manufacture of finished refrigerators. One importer indicated that glass, wire, and plastic parts can be used in various combinations within the finished refrigerator. However, all three of these importers indicated that changes in the prices of these products have not affected the price for KASAR.

Petitioner indicates that since other wire and metal shelving are not designed specifically for kitchen appliances and do not meet the requirements of the OEM manufacturers, they are not substitutes for the subject merchandise and therefore OEM manufacturers do not consider these products in their purchasing decision regardless of pricing.<sup>11</sup> SSW indicated that glass shelving and plastic bins are more of a consumer preference than a real substitute for wire shelving and that glass can be up to two times more expensive than a wire rack of the same size and function.<sup>12</sup> Nashville Wire indicated that it is not aware of any substitutes for wire oven racks, although there has been exploration of alternative finishes potentially for the racks.<sup>13</sup>

### **Cost Share**

The reported share of total cost of end uses accounted for by the cost of KASAR is small for most end uses. Almost all U.S. producers and importers reported that the cost share was less than 4 percent for typical applications.

## **SUBSTITUTABILITY ISSUES**

The degree of substitution between domestic and imported KASAR depends upon such factors as relative prices, quality (e.g., grade standards, reliability of supply, defect rates, etc.), and conditions of sale (e.g., price discounts/rebates, leadtimes between order and delivery dates, payment terms, product services, etc.). Based on available data, staff believes that there is a high degree of substitutability between domestically produced KASAR and KASAR imported from China.

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<sup>8</sup> Conference transcript, p. 115-116 (Malashevich).

<sup>9</sup> Conference transcript, p. 121 (Gritton).

<sup>10</sup> Conference transcript, p. 99 (Metzger).

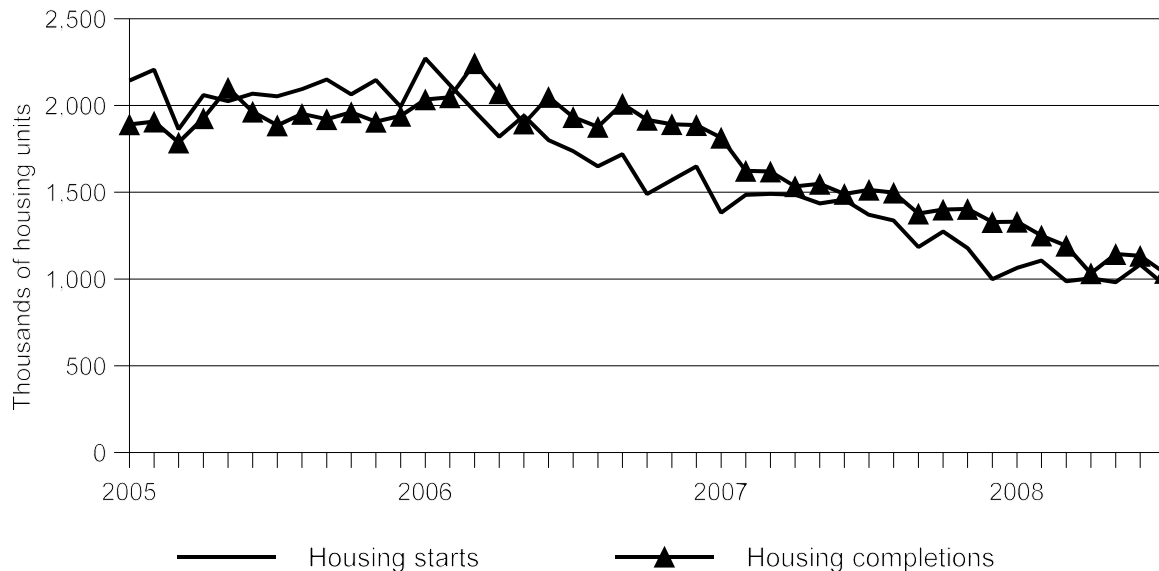
<sup>11</sup> Petition, p. 15.

<sup>12</sup> Conference transcript, pp. 74-75 (Gritton).

<sup>13</sup> Conference transcript, p. 76 (Rollins).



**Figure II-1**  
**Housing starts and housing completions, seasonally adjusted annual rate, January 2005 to July 2008**



Source: US Bureau of the Census, Mining, Manufacturing, and Construction Statistics, <http://www.census.gov/const/www/newresconstindex.html>, downloaded August 26, 2008.

### Factors Affecting Purchasing Decisions

Petitioners indicate that although quality standards in the industry are very high as the Chinese importers have become qualified to produce product and supply product at the same levels of quality, the determining factor in purchase decisions in the awarding and placement of business has been price.<sup>14</sup> Petitioners indicate that a couple of their major customers indicated that although they were reliable suppliers for many years, supplied a quality product, ship their product on time, and bring innovations to help improve the customer’s bottom line, the pricing of imports is too low to be ignored.<sup>15</sup> GE indicates that while price is clearly a component of its purchasing decision, quality is a more important factor and that quality is a necessary condition to secure their business.<sup>16</sup> Whirlpool indicates that quality is a major portion of every sourcing decision that it makes.<sup>17</sup>

Respondents indicated that in some instances they have turned down opportunities to purchase product at a lower price because the supplier’s product did not qualify or even if the product did qualify the supplier lacked integrity, financial standing, or the delivery capability.<sup>18</sup> Whirlpool indicated that it has turned down offers where the price offered was too low to be sustainable, feeling it would be putting itself at risk of a supply disruption later.<sup>19</sup> GE also indicated that it has shifted its business to a more expensive supplier if the product did not turn out to be what it thought it qualified and asked for and it

<sup>14</sup> Conference transcript, p. 62 (Gritton), p. 65 (Rollins).

<sup>15</sup> Conference transcript, pp. 62-63 (Gritton), p. 65 (Rollins).

<sup>16</sup> Conference transcript, p. 134 (Metzger).

<sup>17</sup> Conference transcript, pp. 134-135 (Wessendorf).

<sup>18</sup> Conference transcript, pp. 135-136 (Metzger), pp. 136-137 (Wessendorf).

<sup>19</sup> Conference transcript, pp. 136-137 (Wessendorf).

was having problems with the product; or if the new potential product offers value beyond its specification in terms of new technology, a better perceived look.<sup>20</sup>

Respondents indicate that many would-be suppliers fail to qualify and that not only must suppliers qualify initially, their quality performance is continuously monitored and closely tracked.<sup>21</sup> Respondents indicate that when problems materialize a corrective action plan is put in place and if serious problems persist, however, suppliers are placed on a “no bid” list.<sup>22</sup> Respondents indicate that there have been quality issues with both U.S. and foreign suppliers from time to time and that some have been resolved and some not.<sup>23</sup> As an example, respondents indicate that \*\*\*.<sup>24</sup>

Petitioners indicate that every couple of years purchasers switch, wanting to having multiple suppliers and securing reduced pricing from a long-term contract with an exclusive source.<sup>25</sup> Also, SSW indicated that it never lost business because it couldn't supply product and that it has not lost business because its quality was not good enough.<sup>26</sup>

### **Comparisons of Domestic Products and Subject Imports**

As indicated in table II-1, all responding producers and one of two responding importers indicated that KASAR produced in the United States and imported from China is “always” used interchangeably. The remaining responding importer indicated that KASAR produced in the United States and imported from subject sources is at least “sometimes” used interchangeably. Two additional importers (\*\*\*) that did not respond to the question indicated that interchangeability is difficult to address because there are many other types of kitchen appliance shelving and racks that have similar characteristics and uses but are not included within the scope. However, one of these importers (\*\*\*) indicated that when it orders specific models of shelving and racks its expectation is that the parts will be interchangeable regardless of supplier. Also, Whirlpool indicated it finds differences even in product that has met the threshold of quality expectations.<sup>27</sup>

As indicated in table II-2, two of four U.S. producers and one of two of responding importers indicated that differences other than price between KASAR produced in the United States and imported from China were “sometimes” a significant factor in their firm’s sales of the products. The remaining responding producers indicated that differences other than price between KASAR produced in the United States and imported from China were “never” a significant factor in their firm’s sales of the products, and the remaining responding importer indicated that they were “always” a significant factor.

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<sup>20</sup> Conference transcript, pp. 135-136 (Metzger).

<sup>21</sup> Respondents’ postconference brief, p. 15.

<sup>22</sup> Respondents’ postconference brief, p. 15.

<sup>23</sup> Respondents’ postconference brief, p. 15.

<sup>24</sup> Respondents’ postconference brief, pp. 15-16.

<sup>25</sup> Conference transcript, pp. 67-68 (Kara).

<sup>26</sup> Conference transcript, p. 67 (Gritton).

<sup>27</sup> Conference transcript, p. 127 (Wessendorf).

**Table II-1****KASAR: Perceived degree of interchangeability of product produced in the United States and in other countries<sup>1</sup>**

Country comparison	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. China	3	0	0	0	1	0	1	0
U.S. vs. other countries	2	0	0	0	0	0	0	0
China vs. other countries	2	0	0	0	0	0	0	0

<sup>1</sup> Producers and importers were asked if KASAR produced in the United States and in other countries is used interchangeably.

Note.--“A” = Always, “F” = Frequently, “S” = Sometimes, “N” = Never.

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

**Table II-2****KASAR: Differences other than price between products from different sources<sup>1</sup>**

Country comparison	Number of U.S. producers reporting				Number of U.S. importers reporting			
	A	F	S	N	A	F	S	N
U.S. vs. China	0	0	2	2	1	0	1	0
U.S. vs. other countries	0	0	2	1	1	0	0	0
China vs. other countries	0	0	1	1	1	0	0	0

<sup>1</sup> Producers and importers were asked if differences other than price between KASAR produced in the United States and in other countries are a significant factor in their firms' sales of KASAR.

Note.--“A” = Always, “F” = Frequently, “S” = Sometimes, “N” = Never.

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

### Comparisons of Domestic Products and Nonsubject Imports

As indicated in table II-1, both U.S. producers indicated that KASAR produced in the United States and imported from nonsubject sources are “always” used interchangeably. No importers responded to this question. As indicated in table II-2, two of three U.S. producers indicated that differences other than price between KASAR produced in the United States and imported from nonsubject sources were “sometimes” a significant factor in their firm’s sales of the products. The remaining responding producer indicated that differences other than price between KASAR produced in the United States and imported from nonsubject sources were “never” a significant factor in their firm’s sales of the products, and the sole responding importer indicated that they were “always” a significant factor.

### **Comparisons of Subject and Nonsubject Imports**

As indicated in table II-1, both U.S. producers indicated that KASAR imported from China and imported from nonsubject sources are “always” used interchangeably. No importers responded to this question. As indicated in table II-2, one of two U.S. producers indicated that differences other than price between KASAR imported from China and imported from nonsubject sources were “sometimes” a significant factor in their firm’s sales of the products, the remaining responding producer indicated that differences other than price were “never” a significant factor, and the only responding importer indicated that they were “always” a significant factor.

## PART III: U.S. PRODUCERS' PRODUCTION, SHIPMENTS, AND EMPLOYMENT

Information presented in this section of the report is based on (except as noted) the questionnaire responses of three firms which are believed to account for over \*\*\* percent of U.S. production of KASAR in 2007.<sup>1</sup>

### U.S. PRODUCERS

The Commission sent producer questionnaires to seven firms identified in the petition as domestic producers of KASAR. The Commission received usable producer questionnaire responses from three producers.<sup>2</sup> Table III-1 presents reporting U.S. producers' positions on the petition, plant locations, production of KASAR, and shares of total reported U.S. production of KASAR in 2007. Table III-2 presents reporting U.S. producers' positions on the petition, plant locations, production of refrigeration shelving, and shares of total U.S. production of refrigeration shelving in 2007 and table III-3 presents reporting U.S. producers' positions on the petition, plant locations, production of oven racks, and shares of total U.S. production of oven racks in 2007.

**Table III-1  
KASAR: U.S. producers, positions on the petition, plant locations, and shares of total reported U.S. production, 2007**

Firm	Position on petition	U.S. plant location(s)	U.S. production	
			Quantity (1,000 units)	Share (percent)
***	***	***	***	***
Nashville Wire	Petitioner	Nashville, TN	***	***
SSW <sup>1</sup>	Petitioner	Clinton, IA Evansville, IN <sup>2</sup> Fort Smith, AR Ludington, MI Madison, TN Newport, TN	***	***
Total			***	100.0
<sup>1</sup> Affiliated with Collis de Mexico. <sup>2</sup> Facility closed in April 2007.				
Source: Compiled from data submitted in response to Commission questionnaires.				

<sup>1</sup> The two petitioning firms, Nashville Wire and SSW, claim to account for \*\*\* percent of the domestic production of KASAR, petition, p. 4. A small U.S. producer, \*\*\*, also submitted a producer questionnaire response.

<sup>2</sup> Two additional producers submitted partial responses to the Commission's questionnaires. \*\*\*, \*\*\*, \*\*\*.

**Table III-2**

**Refrigeration shelving: U.S. producers, positions on the petition, plant locations, and shares of total reported U.S. production, 2007**

Firm	Position on petition	U.S. plant location(s)	U.S. production	
			Quantity (1,000 units)	Share (percent)
***	***	***	***	(1.0)
Nashville Wire	Petitioner	Nashville, TN	***	***
SSW	Petitioner	Clinton, IA Evansville, IN <sup>2</sup> Fort Smith, AR Ludington, MI	***	***
Total			***	100.0
<sup>1</sup> *** <sup>2</sup> Facility closed in April 2007.				
Source: Compiled from data submitted in response to Commission questionnaires.				

**Table III-3**

**Oven racks: U.S. producers, positions on the petition, plant locations, and shares of total reported U.S. production, 2007**

Firm	Position on petition	U.S. plant location(s)	U.S. production	
			Quantity (1,000 units)	Share (percent)
***	***	***	***	***
Nashville Wire	Petitioner	Nashville, TN	***	***
SSW	Petitioner	Madison, TN Newport, TN	***	***
Total			***	100.0
<sup>1</sup> Not applicable.				
Source: Compiled from data submitted in response to Commission questionnaires.				

Table III-4 presents information on U.S. producers' lists of other products produced on the same equipment in 2007.<sup>3 4</sup>

**Table III-4**

**KASAR: U.S. producers' lists of other products produced on the same equipment, 2007**

\* \* \* \* \*

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

<sup>4</sup> \*\*\*

## U.S. CAPACITY, PRODUCTION, AND CAPACITY UTILIZATION

U.S. producers' capacity, production, and capacity utilization data for KASAR are presented in table III-5. These data show a \*\*\* percent decline in the capacity to produce KASAR and a larger decline of \*\*\* percent in the actual production of KASAR from 2005 to 2007. Capacity utilization also fell by \*\*\* percentage points from 2005 to 2007.

**Table III-5**

**KASAR: U.S. producers' capacity, production, and capacity utilization, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

Tables III-6 and III-7 present data on U.S. producers' production, capacity, and capacity utilization for refrigeration shelving and oven racks, respectively. Table III-8 presents data on shares of U.S. production by each product type. During the period for which data were collected, capacity and production for refrigeration shelving decreased while capacity and production for oven racks increased, except for a decrease in the interim periods. Capacity utilization declined for both refrigeration shelving and oven racks during the period examined.<sup>5</sup>

**Table III-6**

**Refrigeration shelving: U.S. producers' capacity, production, and capacity utilization, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table III-7**

**Oven racks: U.S. producers' capacity, production, and capacity utilization, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table III-8**

**KASAR: Shares of U.S. production, by product type, 2005-07, January-June 2007, and January-June 2007**

\* \* \* \* \*

## U.S. PRODUCERS' SHIPMENTS

Table III-9 presents information on U.S. producers' shipments of KASAR from 2005 to 2007, January-June 2007, and January-June 2008. The quantity of U.S. producers' U.S. shipments fell between 2005 and 2007 and also fell in the January-June 2008 period when compared with the January-June 2007 period. U.S. producers' exports of KASAR rose \*\*\* between 2005 and 2007 and also rose in January-June 2008 when compared with January-June 2007. All U.S. shipments are commercial shipments with no internal consumption reported by responding producers.

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<sup>5</sup> "We attribute oven racks' increase in demand primarily to a change in product mix toward more premium products, finished goods, which actually include more racks per range as one strong contributing factor." Conference transcript, pp. 60-61 (Gritton).

**Table III-9**  
**KASAR: U.S. producers' shipments, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

Table III-10 presents data on U.S. producers' U.S. shipments of refrigeration shelving. Both U.S. shipments and export shipments of refrigeration shelving declined over the period examined.

**Table III-10**  
**Refrigeration shelving: U.S. producers' shipments, by types, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

Table III-11 presents data on U.S. producers' U.S. shipments of oven racks. Due to an increase in demand for oven racks, U.S. producers experienced \*\*\* increase in both U.S. and export shipments of oven racks during the period of investigation, except for a decline in U.S. shipments in the interim periods.

**Table III-11**  
**Oven racks: U.S. producers' shipments, by types, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**U.S. PRODUCERS' IMPORTS AND PURCHASES**

During the period of investigation, no U.S. producer reported purchases or imports of refrigeration shelving. However, the \*\*\* did import and/or purchase oven racks from China. Table III-12 presents information on U.S. producers' production, imports, and purchases of oven racks.

**Table III-12**  
**Oven racks: U.S. producers' U.S. production, U.S. imports, and ratio of imports to production, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**U.S. PRODUCERS' INVENTORIES**

Tables III-13, III-14, and III-15 present end-of-period inventories and the ratio for these inventories to U.S. producers' production, U.S. shipments, and total shipments for KASAR, as well as for refrigeration shelving and for oven racks over the period examined. Inventories for refrigeration shelving declined throughout the period examined, while inventories for oven racks increased from 2005 to 2007.



**Table III-13**  
**KASAR: U.S. producers' end-of-period inventories, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table III-14**  
**Refrigeration shelving: U.S. producers' end-of-period inventories, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table III-15**  
**Oven racks: U.S. producers' end-of-period inventories, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

### **U.S. PRODUCERS' EMPLOYMENT, WAGES, AND PRODUCTIVITY**

Tables III-16, III-17, and III-18 present data on U.S. producers' employment-related indicators on KASAR, refrigeration shelving, and oven racks. Employment of production related workers in the U.S. KASAR industry declined by \*\*\* percent from 2005 to 2007, with all of the decline being accounted for by producers and related workers producing refrigeration shelving. The largest employer in this industry was \*\*\*, accounting for \*\*\* percent of all KASAR employees in 2007.

**Table III-16**  
**KASAR: U.S. producers' employment-related indicators, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table III-17**  
**Refrigeration shelving: U.S. producers' employment-related indicators, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table III-18**  
**Oven racks: U.S. producers' employment-related indicators, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*



**PART IV: U.S. IMPORTS, APPARENT U.S. CONSUMPTION,  
AND MARKET SHARES**

**U.S. IMPORTERS**

Since KASAR is imported in “basket” categories in the HTS, official import statistics are not available for use in these investigations. As a result, all import statistics are compiled from data gathered in response to Commission questionnaires. The Commission requested information from 14 firms based on data provided in the petition,<sup>1</sup> and eight firms supplied usable data on their import operations.<sup>2</sup> Table IV-1 presents the responding eight U.S. importers of KASAR and their 2007 imports of KASAR.

**Table IV-1  
KASAR: Reported U.S. imports from China by importers, 2007**

Importer	U.S. location	Type of KASAR		U.S. imports	
		Refrigeration shelving	Oven racks	Quantity	Share
***	***		✓	*** <sup>1</sup>	***
***	***	✓	✓	***	***
***	***	✓	✓	***	***
***	***		✓	***	***
***	***		✓	***	***
***	***	✓		***	***
***	***		✓	***	***
***	***	✓	✓	***	***
Total				***	100.0
1 *** 2 *** 3 *** 4 *** 5 *** 6 *** 7 ***					
Source: Compiled from data submitted in response to Commission questionnaires.					

<sup>1</sup> Petition, exh. 6.

<sup>2</sup> One additional firm, \*\*\*, reported that it does not import the subject merchandise.

## U.S. IMPORTS

U.S. import data presented in this report are based on questionnaire responses of eight U.S. importers of the subject product, with three U.S. importers \*\*\* accounting for over \*\*\* percent of reported subject imports. Table IV-2 presents data on U.S. imports of KASAR during the period examined. No imports from any nonsubject country were reported by responding U.S. importers. Subject imports steadily increased in both quantity and value from 2005 to 2007 and in January-June 2008 when compared with January-June 2007. Unit values of subject imports decreased from 2005 to 2007, and also declined further in January-June 2008 when compared to the same period in 2007.

**Table IV-2**  
**KASAR: U.S. imports, by source, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

Table IV-3 presents data on U.S. imports of refrigeration shelving during the period examined. For refrigeration shelving, subject imports steadily increased in quantity, value, and unit value from 2005 to 2007 and also in January-June 2008 when compared with January-June 2007.

**Table IV-3**  
**Refrigeration shelving: U.S. imports, by source, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

Table IV-4 presents data on U.S. imports of oven racks during the period examined. For oven racks, subject imports steadily increased in quantity and value from 2005 to 2007 and in January-June 2008 when compared to January-June 2007. Unit values for oven racks increased from 2005 to 2006 and declined in 2007 and in January-June 2008 when compared with January-June 2007.

**Table IV-4**  
**Oven racks: U.S. imports, by source, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

## U.S. IMPORTERS' U.S. SHIPMENTS OF IMPORTS

Table IV-5 presents data on U.S. importers' U.S. shipments of KASAR over the period examined. Table IV-6 presents data on U.S. importers' U.S. shipments of refrigeration shelving and table IV-7 presents data on U.S. importers' U.S. shipments of oven racks over the period examined.

**Table IV-5**  
**KASAR: U.S. importers' U.S. shipments, by importer, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table IV-6**  
**Refrigeration shelving: U.S. importers' U.S. shipments, by importer, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table IV-7  
Oven racks: U.S. importers' U.S. shipments, by importer, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**NEGLIGENCE**

The Tariff Act of 1930 provides for the termination of an investigation if imports of the subject product from a country are less than 3 percent of total imports, or, if there is more than one such country, their combined share is less than or equal to 7 percent of total imports, during the most recent 12 months for which data are available preceding the filing of the petition. The share (in percent) of the total quantity of U.S. imports from China for the period of July 2007 to June 2008 using petitioners' methodology for the computation of U.S. imports was well above the 3 percent negligibility threshold.<sup>3</sup>

**APPARENT U.S. CONSUMPTION AND U.S. MARKET SHARES**

Table IV-8 presents data on apparent U.S. consumption and U.S. market shares during the period examined for all KASAR, table IV-9 presents data on U.S. apparent consumption and U.S. market shares for refrigeration shelving, and table IV-10 presents data on U.S. apparent consumption and U.S. market shares for oven racks. U.S. apparent consumption of KASAR and refrigerator shelving decreased by \*\*\* and \*\*\* percent, respectively, in quantity from 2005 to 2007, while U.S. apparent consumption for oven racks increased by \*\*\* percent in quantity from 2005 to 2007. In January-June 2008, U.S. apparent consumption of KASAR and both refrigeration shelving and oven racks fell when compared with January-June 2007.

**Table IV-8  
KASAR: Apparent U.S. consumption and U.S. market shares, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table IV-9  
Refrigeration shelving: Apparent U.S. consumption and U.S. market shares, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table IV-10  
Oven racks: Apparent U.S. consumption and U.S. market shares, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

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<sup>3</sup> Petitioners estimate that imports from China of merchandise under HTS statistical reporting number 8418.99.8050 accounted for 29.5 percent of all merchandise imported into the United States from June 2007 to May 2008 under that statistical annotation and that imports from China of merchandise under HTS statistical reporting numbers 7321.90.50.00 and 8516.90.80.00 accounted for 39.6 percent of all merchandise imported into the United States from June 2007 to May 2008 under those statistical annotations. Petition, pp. 16-17.

**RATIO OF IMPORTS TO U.S. PRODUCTION**

Table IV-11 presents data on the ratio of imports to U.S. production of KASAR. Table IV-12 presents data on the ratio of imports to U.S. production of refrigeration shelving and table IV-13 presents data on the ratio of imports to U.S. production of oven racks.

**Table IV-11**  
**KASAR: U.S. production, imports, and ratios of imports to production, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table IV-12**  
**Refrigeration shelving: U.S. production, imports, and ratios of imports to production, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table IV-13**  
**Oven racks: U.S. production, imports, and ratios of imports to production, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

## **PART V: PRICING AND RELATED INFORMATION**

### **FACTORS AFFECTING PRICES**

#### **Raw Material Costs**

The principal raw material used for producing KASAR in the United States is carbon or stainless steel wire.<sup>1</sup> Raw materials as a share of cost of goods sold for domestic producers of KASAR decreased between 2005 and 2007, decreasing from \*\*\* percent of the cost of goods sold in 2005 to \*\*\* percent in 2007. Petitioners indicate that raw material costs have more than doubled since 2005.<sup>2</sup> The price of imported wire rod increased by 82 percent between January 2005 and June 2008 (see figure V-1).

#### **Transportation Costs to the U.S. Market**

Transportation costs for KASAR from China to the United States (excluding U.S. inland costs) are estimated to be approximately 6.3 percent of the total cost for KASAR in 2007, ranging from 4.9 percent of the total cost for HTS subheading 8516.90.80 (shelving and racks for electric stoves), to 6.7 percent for HTS statistical reporting number 8418.99.80.50 (shelving and racks for refrigerators and freezers), to 8.7 percent for HTS subheading 7321.90.50 (shelving and racks for non-electric stoves). These estimates are derived from official import data and represent the transportation and other charges on imports valued on a c.i.f. basis, as compared with customs value.

#### **U.S. Inland Transportation Costs**

Transportation costs on U.S. inland shipments of KASAR generally account for about three to 20 percent of the delivered price of these products. U.S. producers reported costs ranging from three to five percent of the delivered price for KASAR. For importers, the costs ranged from 15 to 20 percent of the delivered price for KASAR.

#### **Exchange Rates**

Quarterly data reported by the International Monetary Fund indicate that the nominal value of the Chinese currency appreciated by 19.0 percent relative to the U.S. dollar from the first quarter of 2005 to the first quarter of 2008 (figure V-2).

### **PRICING PRACTICES**

#### **Pricing Methods**

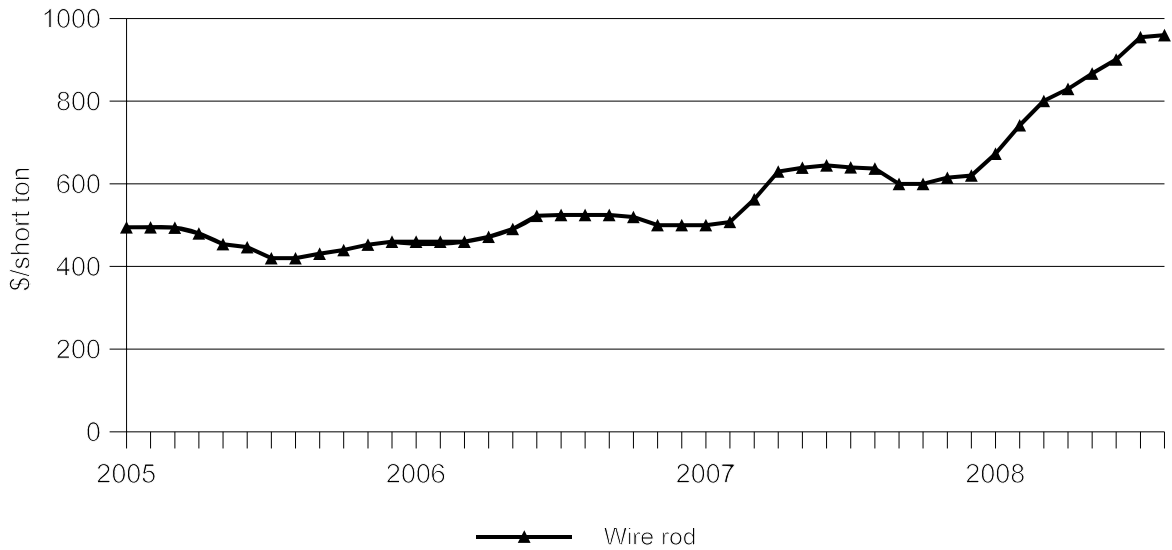
When the U.S. producers and importers were asked how they determined the prices that they charge for KASAR, responses were varied. Two of three responding producers and one of two responding importers used transaction-by-transaction negotiations, while the other responding producer and importer used price lists. All four responding U.S. producers reported that they quote prices of KASAR on an f.o.b. basis, and while one importer quotes shipments over \$2,000 on a delivered basis and

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<sup>1</sup> Petition, p. 14.

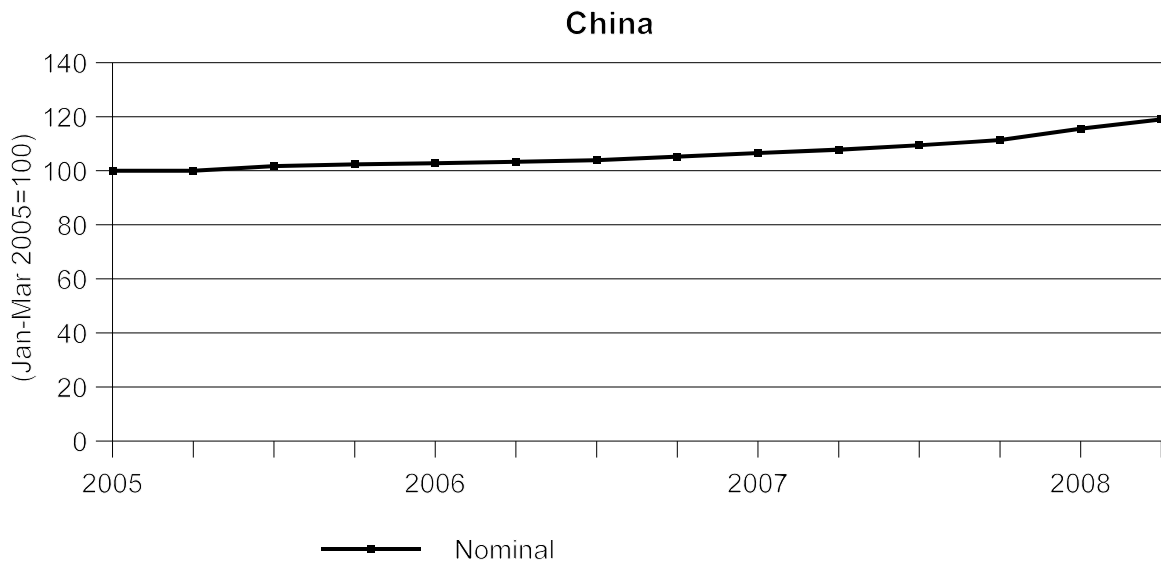
<sup>2</sup> Petition, p. 22 and conference transcript, p. 59 (Kara).

**Figure V-1**  
**Wire rod prices: Imported wire rod, monthly, January 2005 to July 2008**



Source: American Metal Market LLC.

**Figure V-2**  
**Exchange rates: Indices of the nominal exchange rate of the currency of China relative to the U.S. dollar, by quarters, January-March 2005-April-June 2008**



Source: International Monetary Fund, *International Financial Statistics* online, <http://imfstatistics.org/imf>, retrieved August 28, 2008.

the rest on an f.o.b. basis, the other responding importer reported shipping delivered duty-paid less freight to its client's warehouse.



Three of four responding producers and one of two responding importers reported that at least 95 percent of their sales of KASAR are to order, while the remaining responding producer (\*\*\*) reported making 50 percent of its sales to order and 50 percent from inventory, and the remaining responding importer (\*\*\*) reported that all of its sales were from inventory. U.S. producers reported lead times to order of one to 32 days, while importers reported lead times to order of 21 to 60 days. Both U.S. producers and importers reported lead times from inventory of one to five days.

### **Sales Terms and Discounts**

Two of four responding producers reported that they make about 50 percent of their sales on a short-term contract basis and one producer reported making all of its sales on a short-term contract basis. One producer reported making all of its sales on a long-term basis and another reported making about half of its sales on a long-term basis. One producer reported making about half of its sales on a spot market basis. One responding importer reported making all of its sales on a short-term contract basis and the other indicated that it did not make sales on a contract basis.

Petitioners claim that Chinese producers have employed a number of aggressive pricing strategies, including the extension of credit terms that are far more favorable than those offered by domestic producers, indicating that \*\*\*.<sup>3</sup> In its questionnaire response, U.S. producer \*\*\* indicates that \*\*\*. The other responding producers reported making sales on net 15, net 28 and net 30 bases. One responding importer (\*\*\*) reported making sales on a net 60 basis and another (\*\*\*) reported making sales on a net 90 basis.

Petitioners also claim that although tooling and design costs associated with the initial production of new refrigerator shelving and oven rack designs have been traditionally incurred by the OEMs, Chinese producers either have provided tooling at extremely reduced prices or, in some instances, have not charged at all for the tooling costs as a negotiating tool to increase their sales in the United States.<sup>4</sup> Petitioners estimate that tooling costs range between \*\*\*.<sup>5</sup>

In response to a question by staff regarding whether Chinese producers provided more favorable payment terms or tooling costs than U.S. producers, Whirlpool responded that “credit terms are only one factor in a more complex contract negotiation. While there may be \*\*\* between U.S. and Chinese suppliers, they are \*\*\*. Thus, it is not possible to make a meaningful comparison in the abstract.”<sup>6</sup> GE responded that tooling costs and credit terms “are only two elements of a pool of terms and conditions that play into sourcing decisions. Terms and conditions must be considered in their totality and cannot be meaningfully segregated or evaluated in isolation. Generally speaking, however, terms and conditions are comparable overall for U.S. and Chinese suppliers.”<sup>7</sup>

Two of three responding producers and both responding importers reported that they do not have discount policies for their sales of KASAR. One responding producer (\*\*\*) indicated that it provides an annual cost reduction.

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<sup>3</sup> Petitioners’ postconference brief, p. 25.

<sup>4</sup> Petitioners’ postconference brief, pp. 25-26.

<sup>5</sup> Petitioners’ postconference brief, p. 26.

<sup>6</sup> Respondents’ postconference brief, exhibit 1.

<sup>7</sup> Respondents’ postconference brief, exhibit 6.

## PRICE DATA

The Commission requested U.S. producers and importers of KASAR to provide quarterly sales and purchase data for the following products:

**Product 1.**—Open-end freezer shelf that is about 17.8 inches by 27.9 inches, consisting of 26 filler wires, a front and a rear rail, an R-bar, and a back and front bar, and a white powder coat finish.

**Product 2.**—Refrigerator/freezer basket that is about 17.4 inches by 25.8 inches by 6.9 inches, consisting of 27 filler wires and a frame wire, and a white powder coat finish.

**Product 3.**— Refrigerator/freezer shelf that is about 9.5 inches by 15.9 inches, consisting of 9 filler wires, an R-bar, and a frame wire, and a white powder coat finish.

**Product 4.**—Fixed refrigerator/freezer shelf that is about 9.7 inches by 12.7 inches, consisting of 19 filler wires, a middle R-bar, a rear R-bar, two side arms and a roll form trim, and a white powder coat finish.

**Product 5.**—Nickel plated oven rack that is about 16.1 inches by 22.8 inches, consisting of 13 filler wires, an R-bar, and a frame wire, and has a nickel plated finish.

**Product 6.**—Nickel plated oven rack that is about 24.2 inches by 15.9 inches, consisting of 1 frame, 1 brace and 13 filler wires, and has a nickel plated finish.

**Product 7.**—Heavy-duty nickel plated oven rack that is about 24.2 inches by 15.9 inches, consisting of 1 frame, 1 brace and 13 filler wires, and has a nickel plated finish.

Three U.S. producers (\*\*\*) and one importer from China (\*\*\*) provided usable pricing data for sales of the requested products, although not all firms reported pricing for all products for all quarters.<sup>8</sup> In addition, \*\*\* reported data for direct imports and/or purchases of these products.<sup>9</sup> Pricing data reported by these firms accounted for approximately \*\*\* percent of U.S. producers' commercial shipments of KASAR and \*\*\* percent of U.S. commercial shipments of subject imports from China in 2007.

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<sup>8</sup> \*\*\* provided sales price data for products 2, 3, and 4 for the small quantities of replacements parts it imported from China and sold to unrelated customers. These data were not used in the pricing analysis.

<sup>9</sup> In addition, \*\*\* provided price data for its purchases of U.S.-produced and imports from China of a product it deemed similar to product 3 (\*\*\*). These data were also not included in the pricing analysis.

In their postconference brief, petitioners indicated that the pricing data received at the time of their brief were incomplete because \*\*\*. Petitioners' postconference brief, p. 24. \*\*\* has provided purchase and direct import price data for products 2, 3, and 4, but \*\*\* indicated that it does not produce a product matching the description of product 1. Petitioners indicate that \*\*\* should match the description in product 1, but \*\*\* indicates that \*\*\* does not match the description of product 1 and that product number \*\*\* is \*\*\* inches by \*\*\* inches (product 1 is 17.8 inches by 27.9 inches). Email from \*\*\*, August 19, 2008 and email from \*\*\*, August 20, 2008.

## Price Trends

Weighted-average prices of KASAR are presented in tables V-1 through V-7 and figure V-3. Data are presented for sales, direct imports, and purchases. Weighted-average sales prices for most U.S.-

**Table V-1**

**KASAR : Weighted-average prices and quantities for product 1 and margins of underselling/(overselling), January 2005-June 2008**

\* \* \* \* \*

**Table V-2**

**KASAR : Weighted-average prices and quantities for product 2 and margins of underselling/(overselling), January 2005-June 2008**

\* \* \* \* \*

**Table V-3**

**KASAR : Weighted-average prices and quantities for product 3 and margins of underselling/(overselling), January 2005-June 2008**

\* \* \* \* \*

**Table V-4**

**KASAR : Weighted-average prices and quantities for product 4 and margins of underselling/(overselling), January 2005-June 2008**

\* \* \* \* \*

**Table V-5**

**KASAR : Weighted-average prices and quantities for product 5 and margins of underselling/(overselling), January 2005-June 2008**

\* \* \* \* \*

**Table V-6**

**KASAR : Weighted-average prices and quantities for product 6 and margins of underselling/(overselling), January 2005-June 2008**

\* \* \* \* \*

**Table V-7**

**KASAR : Weighted-average prices and quantities for product 7<sup>1</sup> and margins of underselling/(overselling), January 2005-June 2008**

\* \* \* \* \*

**Figure V-3**

**KASAR: Weighted-average f.o.b. sales prices of products 1-7, January 2005-June 2008**

\* \* \* \* \*

produced products increased between periods with available data. The weighted-average sales price for U.S. produced product 1 decreased by \*\*\* percent between the first quarter of 2005 and the second quarter of 2008, while the weighted-average sales price of U.S. produced product 7 increased by \*\*\* percent during the same period. Between the first quarter of 2005 and the first quarter of 2008, the weighted-average sales prices of U.S. produced products 3 and 6 increased by about \*\*\* and \*\*\* percent respectively. The weighted-average sales price of U.S. produced product 5 increased by about \*\*\* percent between the first quarter of 2005 and fourth quarter of 2007; the price of U.S.-produced product 4 fell by about \*\*\* percent between the first quarter of 2005 and the third quarter of 2007; and the price of U.S.-produced product 2 increased by about \*\*\* percent between the fourth quarter of 2005 and the second quarter of 2008.

Figure V-4 compares indices of the weighted average prices of U.S.-produced products 1-7 with quarterly indices of housing starts and the price of wire rod.

**Figure V-4**  
**KASAR: Quarterly indices of housing starts, wire rod prices, and f.o.b. sales prices of products 1-7, January 2005-June 2008**

\* \* \* \* \*

**Price Comparisons**

There were six instances for products 1 and 2 where prices for domestic and subject imported KASAR could be compared. The subject imported product was priced below the domestic product in all six of these comparisons. Margins of underselling were \*\*\* to \*\*\* percent for product 1 and \*\*\* percent to \*\*\* percent for product 2. For pricing products 3-7, no sales of imported product from China were reported.

**LOST SALES AND LOST REVENUES**

The Commission requested U.S. producers of KASAR to report any instances of lost sales or revenues they experienced due to competition from imports of KASAR from China since 2005. In their petition, U.S. producers reported \*\*\* lost sales allegations totaling \$\*\*\* and involving \*\*\* units of KASAR and \*\*\* lost revenues allegations totaling \$\*\*\* and involving \*\*\* units of KASAR. Staff contacted the \*\*\* purchasers cited in the allegations and all of these purchasers responded. The results are summarized in tables V-8 and V-9 and are discussed below.

\*\*\*.

**Table V-8**  
**KASAR: U.S. producers' lost sales allegations**

\* \* \* \* \*

**Table V-9**  
**KASAR: U.S. producers' lost revenue allegations**

\* \* \* \* \*

## PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

### BACKGROUND

The two petitioning producers, Nashville and SSW,<sup>1</sup> provided useable financial data for their operations on KASAR. These firms accounted for approximately \*\*\* percent<sup>2</sup> of the domestic industry's production/sales volume during 2007. No internal consumption or related transfers were reported for either refrigerator shelving or oven racks.

### OPERATIONS ON CERTAIN KASAR

Results of operations of the U.S. producers on their certain KASAR operations (both refrigerator shelving and oven racks combined) are presented in table VI-1, which includes data on a per-unit basis as well as operating income (loss) to net sales ratios. Results of the U.S. producers on their refrigerator shelving operations are presented in table VI-2, and results of the U.S. producers on their oven racks operations are separately shown in table VI-3.

The financial results of the producers on their certain KASAR operations (table VI-1) deteriorated continuously from 2005 to 2007. Net sales quantity and value both decreased in each period, due mainly to an increase in the per-unit total cost (from \*\*\* per unit), in addition to a decrease in sales quantities. As a result, the \*\*\* reported in 2005 \*\*\* through 2007.

While sales quantity decreased again in interim (January-June) 2008 compared to interim (January-June) 2007, this time by \*\*\* percent, a \*\*\* increase in the per-unit sales value (from \*\*\* per unit) moderated the decrease in sales value. The increase in the per-unit selling price is partially attributable to an actual increase in the per-unit selling price and partially attributable to a change in the product mix; refer to the discussion of \*\*\* that follows. Increases in per-unit selling prices relative to per-unit cost of goods sold ("COGS") by both producers resulted in \*\*\* in interim 2008 (\$\*\*\*) compared to interim 2007 (\$\*\*\*). Nonetheless, the operating margin (\*\*\* percent) was worse than the one posted in 2005.

Much like the results of operations on certain KASAR, sales quantity and value and operating income on refrigerator shelving (table VI-2) decreased continuously between 2005 and 2007. The \*\*\* in 2005 \*\*\* in 2006 and 2007 as unit costs increased relative to unit revenues. Between the two interim periods, despite decreases in both sales quantity and value, the operating loss decreased \*\*\*. Reversing the full-year trends, per-unit selling price increased (from \*\*\* per unit) relative to unit costs, despite increased selling, general, and administrative ("SG&A") expenses on the part of \*\*\* (see footnote 3 in this section). While \*\*\* between the two interim periods (from \$\*\*\* to \$\*\*\*), it was \*\*\*.

On the other hand, the full-year financial results of operations on oven racks (table VI-3) are somewhat different from results of operations on both certain KASAR and refrigerator shelving, as sales quantity increased irregularly between 2005 and 2007 while sales value increased continuously. However, \*\*\* decreased continuously over the same period because the increase in per-unit total cost (from \*\*\* per unit) was greater than the increase in per-unit selling price (from \*\*\* per unit). \*\*\* increased continuously during the same period from \*\*\*. Comparing interim 2008 to interim 2007, while both sales quantity and value decreased, all levels and measures of profitability increased to a limited

---

<sup>1</sup> The producer with a fiscal year end other than December is SSW (June 30). However, the financial data of \*\*\* were submitted on a calendar year basis. \*\*\*'s incomplete responses contain virtually no useable financial data.

<sup>2</sup> Petition, p.4.

extent, as per-unit sales prices and costs both increased by large amounts. These increases were largely due to \*\*\* (see discussion that follows).

**Table VI-1**

**Certain KASAR: Results of U.S. producers on their combined refrigerator shelving and oven racks operations, fiscal years 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table VI-2**

**Refrigerator shelving: Results of operations of U.S. producers, fiscal years 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table VI-3**

**Oven racks: Results of operations of U.S. producers, fiscal years 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

While per-unit average selling price and per-unit total cost of refrigerator shelving were consistently higher compared to those of oven racks for all periods, \*\*\* of refrigerator shelving were somewhat lower than those of oven racks except for interim period 2007.

Selected financial data, by firm, are presented in table VI-4. \*\*\* in 2005. \*\*\* increased throughout the full-year periods and \*\*\* experienced \*\*\* in 2007. The producers reported somewhat \*\*\*.

While \*\*\* of Nashville's sales were sales of oven racks (\*\*\* percent of its total net sales value in 2007), SSW's sales were \*\*\* on refrigerator shelving (\*\*\* percent in terms of sales value in 2007 and \*\*\* percent of interim 2008 sales value). Nashville's refrigerator shelving and oven rack per-unit sales price and total unit costs all \*\*\* irregularly throughout the full-year periods. Comparing interim 2008 data to interim 2007 data, the company's unit sales and costs for refrigerator shelving continued to \*\*\*, while both \*\*\* for oven racks, due partially to \*\*\*. SSW's per-unit selling price and per-unit total cost for refrigerator shelving were \*\*\* than those for oven racks except for interim 2008. The company's per-unit selling price and per-unit total cost for refrigerator shelving and oven racks \*\*\* from interim 2007 to interim 2008. SSW explained that \*\*\* between the two interim periods because of \*\*\*. SSW further explained that it sold a larger share of \*\*\*. SSW's \*\*\* increased, mainly due to \*\*\* in interim 2008 compared to interim 2007.

**Table VI-4**

**Certain KASAR: Results of operations of U.S. producers, by firm, fiscal years 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

Selected aggregate per-unit cost data of the producers on their operations, i.e., COGS and SG&A expenses, are presented in table VI-5. Raw material costs (largely wire rod), and factory overhead increased over the period and \*\*\* from interim 2007 to interim 2008 which resulted in \*\*\* higher COGS

and total cost (which included SG&A expenses). SG&A expenses also increased \*\*\* from interim 2007 (\$\*\*\* per unit) to interim 2008 (\$\*\*\* per unit), the result of a \*\*\* in interim 2008.<sup>3</sup> \*\*\*.

**Table VI-5**  
**Certain KASAR: Per-unit costs of U.S. producers, fiscal years 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

A variance analysis showing the effects of prices and volume on the producers' sales of KASAR, and of costs and volume on their total cost, is shown in table VI-6. The analysis is summarized at the bottom of the table. The analysis indicates that \*\*\* (\$\*\*\*) between 2005 and 2007 was attributable mainly to the negative effect of increased costs/expenses (\$\*\*\*) which was partially offset by the positive effect of increased price (\$\*\*\*). Even though sales volume declined \*\*\*, the volume variance is positive because it is determined by multiplying the beginning period average unit operating profit or (loss) by the change in volume from the first period to the last period. Since the producers \*\*\* in 2005, and volume declined between 2005 and 2007, the volume variance is positive because the producers made fewer sales of product on which they \*\*\*. The decrease in \*\*\* in interim 2008 relative to interim 2007 was attributable to a favorable price variance in conjunction with a negative cost/expense variance and a favorable volume variance.

**Table VI-6**  
**Certain KASAR: Variance analysis of operations of U.S. producers, fiscal years 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

### CAPITAL EXPENDITURES AND RESEARCH AND DEVELOPMENT EXPENSES

The responding firms' aggregate data on capital expenditures and research and development ("R&D") expenses are presented in table VI-7. \*\*\* accounted for a majority of the domestic industry's capital expenditures during the period for which data were collected.<sup>4</sup> \*\*\* reported R&D expenses.<sup>5</sup> Capital expenditures \*\*\* from 2005 to 2006 and decreased \*\*\* in 2007 compared to 2006. R&D expenses also \*\*\* from 2005 to 2006 and decreased \*\*\* from 2006 to 2007. While capital expenditures decreased \*\*\*, R&D expenses \*\*\* from interim 2007 to interim 2008. Capital expenditures, by firm, are presented in table VI-8.

**Table VI-7**  
**Certain KASAR: Capital expenditures and R&D expenses by U.S. producers, fiscal years 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

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<sup>3</sup> \*\*\*.  
<sup>4</sup> \*\*\*.  
<sup>5</sup> \*\*\*.

**Table VI-8**

**Certain KASAR: Capital expenditures by U.S. producers, by firms, fiscal years 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**ASSETS AND RETURN ON INVESTMENT**

U.S. producers were requested to provide data on their assets used in the production and sales of KASAR during the period for which data were collected to assess their return on investment (“ROI”). Although ROI can be computed in different ways, a commonly used method is income earned during the period divided by the total assets utilized for the operations. Therefore, staff calculated ROI as operating income divided by total assets used in the production and sales of certain KASAR. Data on the U.S. producers’ total assets and their ROI are presented in table VI-9.

The value of total assets \*\*\* somewhat from 2006 to 2007 as net accounts receivable \*\*\* due to lower sales. The return on investment decreased over the same period since \*\*\* continuously during the period. The trend of ROI over the period was the same as the trend of the \*\*\* margin to net sales in table VI-1 over the same period.

**Table VI-9**

**Certain KASAR: Value of assets and return on investment of U.S. producers, fiscal years 2005-07**

\* \* \* \* \*

**CAPITAL AND INVESTMENT**

The Commission requested U.S. producers to describe any actual or potential negative effects on their return on investment, or their growth, investment, ability to raise capital, existing development and production efforts, or the scale of capital investments as a result of imports of certain KASAR from China. Their responses were as follows:

**Actual Negative Effects**

*Nashville.*—\*\*\*

*SSW.*—\*\*\*

**Anticipated Negative Effects**

*Nashville.*—\*\*\*

*SSW.*—\*\*\*



## PART VII: THREAT CONSIDERATIONS AND BRATSK INFORMATION

Section 771(7)(F)(I) of the Act (19 U.S.C. § 1677(7)(F)(I)) provides that—

*In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors<sup>1</sup>--*

*(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether imports of the subject merchandise are likely to increase,*

*(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,*

*(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,*

*(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,*

*(V) inventories of the subject merchandise,*

*(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,*

*(VII) in any investigation under this title which involves imports of both a raw agricultural product (within the meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 705(b)(1) or 735(b)(1) with respect to either the raw*

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<sup>1</sup> Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider [these factors]. . . as a whole in making a determination of 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 under this title. The presence or absence of any factor which the Commission is required to consider . . . shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.”

*agricultural product or the processed agricultural product (but not both),*

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

*(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).<sup>2</sup>*

Information on the nature of the alleged subsidies is presented in Part I; information on the volume and pricing of imports of the subject merchandise is presented in Parts IV and V; and information on the effects of imports of the subject merchandise on U.S. producers' existing development and production efforts is presented in Part VI. Information on inventories of the subject merchandise; foreign producers' operations, including the potential for "product-shifting;" any other threat indicators, if applicable; and any dumping in third-country markets, follows.

## **THE INDUSTRY IN CHINA**

The petition in these investigations identified 12 foreign producers in China allegedly producing KASAR.<sup>3</sup> The Commission sent foreign producer questionnaires to all firms that were identified and received six completed foreign producer questionnaire responses.<sup>4</sup> The exports to the United States of the responding Chinese firms accounted for more than 100 percent of the imports reported by U.S. importers of KASAR from China.<sup>5 6</sup> Chinese producers increased capacity and production of KASAR during the period examined, but reported no plans to change capacity or production in China. Capacity for responding firms was based on a range of 40 to 80 hours per week, 44 to 50 weeks per year.

Exports of KASAR (in both refrigeration shelving and oven racks) to the United States and other export markets have grown \*\*\* since 2005. Export sales were \*\*\* the largest component of shipments, while home market sales as a share of total shipments declined during the period examined. As a share of total exports, the share of exports destined for the United States declined \*\*\* from 2005 to 2007 while the share of exports destined for other export markets increased from 2005 to 2007. Table VII-1 presents information on the KASAR operations for the responding producers and exporters in China. Table VII-2 presents information on responding Chinese producers' and exporters' production and exports of

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<sup>2</sup> Section 771(7)(F)(iii) of the Act (19 U.S.C. § 1677(7)(F)(iii)) further provides that, in antidumping investigations, ". . . the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry."

<sup>3</sup> Petition, exh. 3.

<sup>4</sup> One additional firm, \*\*\*, reported that it does not produce or export the subject merchandise in China.

<sup>5</sup> Exporters of KASAR in China reported to account for an estimated \*\*\* percent of KASAR production in China for 2007 and an estimated \*\*\* percent of 2007 Chinese exports of KASAR to the United States.

<sup>6</sup> Other export markets reported by Chinese producers included: Australia, Brazil, Canada, European Union, India, Italy, Japan, Mexico, New Zealand, and Thailand. Foreign producer questionnaires, sections II-7, II-8, and II-9.

refrigeration shelving and table VII-3 presents information on responding Chinese producers' and exporters' production and exports of oven racks.

**Table VII-1**  
**KASAR: Chinese producers' operations, 2005-07, January-June 2007, January-June 2008, and projected 2008-09**

\* \* \* \* \*

**Table VII-2**  
**Refrigeration shelving: Chinese producers' operations, 2005-07, January-June 2007, January-June 2008, and projected 2008-09**

\* \* \* \* \*

**Table VII-3**  
**Oven racks: Chinese producers' operations, 2005-07, January-June 2007, January-June 2008, and projected 2008-09**

\* \* \* \* \*

In addition to KASAR, three out of six Chinese producers reported producing nonsubject wire products using the same equipment and machinery while three Chinese producers reported devoting production exclusively to the subject products. Table VII-4 presents information on the types of products produced using the same equipment and machinery by Chinese subject producers in 2007.

**Table VII-4**  
**KASAR: Production of wire products using the same equipment and machinery in 2007, in percent**

\* \* \* \* \*

**U.S. IMPORTERS' INVENTORIES**

Data collected in these investigations on U.S. importers' end-of-period inventories of KASAR are presented tables VII-5, VII-6, and VII-7. Responding U.S. importers' reported inventories from China jumped in 2007 when compared to both 2005 and 2006. U.S. importers did not report imports or inventories from any nonsubject source.

**Table VII-5**  
**KASAR: U.S. importers' end-of-period inventories of imports, by source, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table VII-6**  
**Refrigeration shelving: U.S. importers' end-of-period inventories of imports, by source, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table VII-7**

**Oven racks: U.S. importers' end-of-period inventories of imports, by source, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**ANTIDUMPING AND COUNTERVAILING DUTY ORDERS  
IN THIRD-COUNTRY MARKETS**

There are no known antidumping or countervailing duty orders on KASAR in third-country markets.

**INFORMATION ON NONSUBJECT SOURCES**

**“Bratsk” Considerations**

As a result of the Court of Appeals for the Federal Circuit (“CAFC”) decision in *Bratsk Aluminum Smelter v. United States* (“Bratsk”), the Commission is directed to:<sup>7 8</sup>

*undertake an “additional causation inquiry” whenever certain triggering factors are met: “whenever the antidumping investigation is centered on a commodity product, and price competitive non-subject imports are a significant factor in the market.” The additional inquiry required by the Court, which we refer to as the Bratsk replacement/benefit test, is “whether non-subject imports would have replaced the subject imports without any beneficial effect on domestic producers.*

Petitioners argued that *Bratsk* is inapplicable to these investigations because KASAR are not a commodity product as they must be “made to order” and must be “qualified” by the OEMs. In addition, there exist virtually no U.S. imports of KASAR from nonsubject countries and no evidence that nonsubject imports can replace the volume of subject imports at similar prices should duties be imposed.<sup>9</sup>

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<sup>7</sup> *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2; citing *Bratsk Aluminum Smelter v. United States*, 444 F.3d at 1375.

<sup>8</sup> In the silicon metal remand, Chairman Pearson noted “consistent with his views in *Lined Paper School Supplies From China, India, and Indonesia, Inv. Nos. 701-TA-442-443 and 731-TA-1095-1097 (Final)*, USITC Pub. 3884 (Sept. 2006) at 51, that while he agrees with the Commission that the Federal Circuit’s opinion suggests a replacement/benefit test, he also finds that the Federal Circuit’s opinion could be read, not as requiring a new test, but rather as a reminder that the Commission, before it makes an affirmative determination, must satisfy itself that it has not attributed material injury to factors other than subject imports.” *Silicon Metal from Russia, Inv. No. 731-TA-991 (Second Remand)*, USITC Publication 3910, March 2007, p. 2, fn. 17. Commissioner Okun joined in those separate and dissenting views in *Lined Paper*.

<sup>9</sup> Petitioners’ postconference brief, pp. 36-37. Respondents offered no comment at the conference or in their postconference brief with respect to *Bratsk* issues.

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



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**INTERNATIONAL TRADE  
COMMISSION**

**[Investigation Nos. 701-TA-458 and 731-TA-1154 (Preliminary)]**

**Certain Kitchen Appliance Shelving  
and Racks From China**

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

**ACTION:** Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

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**SUMMARY:** The Commission hereby gives notice of the institution of investigation and commencement of preliminary phase countervailing duty investigation No. 701-TA-458 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of certain kitchen appliance shelving and racks, provided for in subheadings 7321.90.50, 8418.99.80, and 8516.90.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of the People's Republic of China. The Commission also hereby gives notice of the institution of investigation and commencement of preliminary phase antidumping investigation No. 731-TA-1154 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of certain kitchen appliance shelving and racks, currently provided for in the subheadings identified above of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B)), the Commission must reach preliminary determinations in

antidumping and countervailing duty investigations within 45 days, or in this case by September 15, 2008. The Commission's views are due at Commerce within five business days thereafter, or by Monday, September 22, 2008.

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

**EFFECTIVE DATE:** July 31, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Joanna Lo (202-205-1888), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

**SUPPLEMENTARY INFORMATION:**

*Background.*—These investigations are being instituted in response to a petition filed on July 31, 2008, by Nashville Wire Products Inc., Nashville, TN, SSW Holding Company, Inc., Elizabethtown, KY, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists and Aerospace Workers, District Loge 6, Clinton, IA.

*Participation in the investigation and public service list.*—Persons (other than petitioners) wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their

representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 21, 2008, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Joanna Lo (202-205-1888) not later than August 18, 2008, to arrange for their appearance. Parties in support of the imposition of countervailing or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 26, 2008, a written brief containing information and arguments pertinent to the subject matter of these investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the

Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

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

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: August 1, 2008

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E8-18118 Filed 8-6-08; 8:45 am]

**BILLING CODE 7020-02-P**



appliance shelving and racks (“kitchen shelving and racks”). In response to the Department’s requests, the petitioners provided timely information supplementing the petition on August 13 and 15, 2008.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (“the Act”), the petitioners allege that manufacturers, producers, or exporters of certain kitchen appliance shelving and racks in the People’s Republic of China (the “PRC”), receive countervailable subsidies within the meaning of section 701 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act and the petitioners have demonstrated sufficient industry support with respect to the countervailing duty investigation (*see* “Determination of Industry Support for the Petition” section below).

#### Period of Investigation

The period of investigation is January 1, 2007, through December 31, 2007.

#### Scope of the Investigation

The scope of this investigation consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens (“certain kitchen appliance shelving and racks” or “the subject merchandise”). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions: —shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or —baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or —side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or

—subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass. The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (“HTSUS”) statistical reporting numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.90 and 8516.90.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

#### Comments on the Scope of the Investigation

During our review of the petition, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations (*Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages all interested parties to submit such comments within 20 calendar days of the publication of this notice. Comments should be addressed to Import Administration’s Central Records Unit (“CRU”), Room 1117, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

#### Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Government of the PRC for consultations with respect to the countervailing duty petition. The Department held these consultations in Beijing, China, with representatives of the Government of the PRC on August 15, 2008. *See* the Memorandum to The File, entitled, “Consultations with Officials from the Government of the People’s Republic of China” (August 15,

## DEPARTMENT OF COMMERCE

### International Trade Administration

(C-570-942)

#### Notice of Initiation of Countervailing Duty Investigation: Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China

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

**EFFECTIVE DATE:** August 26, 2008.

**FOR FURTHER INFORMATION CONTACT:** Scott Holland and Yasmin Nair, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1279 and (202) 482-3813, respectively.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On July 31, 2008, the Department of Commerce (the “Department”) received a petition filed in proper form by Nashville Wire Products Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists and Aerospace Workers, District Lodge 6 (Clinton, IA) (the “petitioners”), domestic producers of certain kitchen

2008) on file in the CRU of the Department of Commerce, Room 1117.

#### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the

domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioners contend that there are two domestic like products: certain refrigeration shelving and certain oven racks. The petitioners note that the two like products, when considered together, correspond to the product scope description. Based on our analysis of the information submitted on the record, we have determined that refrigeration shelving and certain oven racks constitute two domestic like products, and we have analyzed industry support in terms of those domestic like products. For a discussion of the domestic like product analysis in this case, *see* "Countervailing Duty Investigation Initiation Checklist: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China ("Initiation Checklist"), Industry Support at Attachment II, on file in the CRU, Room 1117 of the main Department of Commerce building.

With regard to section 702(c)(4)(A) of the Act, in determining whether the petitioners have standing (*i.e.*, the domestic workers and producers supporting the Petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition), we considered the industry support data contained in the Petition with reference to the domestic like products. To establish industry support, the petitioners provided their own production volume of the domestic like products for calendar year 2007, and compared that to total production volume of the domestic like products for the industry. We have relied upon data the petitioners provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II (Industry Support).

The Department's review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that petitioners have established industry support. First, the petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like products and, as such, the Department is not required to take further action in order to evaluate industry support (*i.e.*, polling). *See* section 702(c)(4)(D) of the Act and Initiation Checklist at

Attachment II (Industry Support). Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like products. *See* Initiation Checklist at Attachment II (Industry Support). Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the petition account for more than 50 percent of the production of the domestic like products produced by that portion of the industry expressing support for, or opposition to, the petition. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* Initiation Checklist at Attachment II (Industry Support).

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and have demonstrated sufficient industry support with respect to the countervailing duty investigation that they are requesting the Department initiate. *See* Initiation Checklist at Attachment II (Industry Support).

#### Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

#### Allegations and Evidence of Material Injury and Causation

The petitioners allege that imports of certain refrigeration shelving and certain oven racks from the PRC are benefitting from countervailable subsidies and that such imports are causing or threaten to cause, material injury to the domestic industries producing certain refrigeration shelving and certain oven racks. In addition, the petitioners allege that subsidized imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioners contend that the industries' injured condition is illustrated by reduced market share, underselling and price depressing and

suppressing effects, lost sales and revenue, reduced production and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III (Injury).

We are including in our investigation the following programs alleged in the petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

#### A. Income Tax Programs

1. "Two Free, Three Half" program
2. Income tax exemption program for export-oriented FIEs
3. Income tax refund for reinvestment of profits in export-oriented enterprises
4. Income tax subsidies for FIEs based on geographic location
5. Preferential tax subsidies for research and development by FIEs
6. Income tax credits on purchases of domestically-produced equipment by FIEs
7. Income tax credits for domestically-owned companies purchasing domestically-produced equipment
8. Income tax exemption for investment in domestic "Technological Renovation"
9. Reduction in or exemption from the fixed assets investment orientation regulatory tax

#### B. Indirect Tax Programs and Import Tariff Programs

10. Value Added Tax ("VAT") rebates for FIEs purchasing domestically-produced equipment
11. Import tariff and VAT exemptions for FIEs and certain domestic enterprises using imported equipment in encouraged industries
12. Import tariff exemptions for the "encouragement of investment by Taiwan Compatriots"

#### C. Provincial/Local Subsidy Programs

13. Local income tax exemption and reduction program for "productive" FIEs

##### Guangdong Province:

14. Exemption from city construction tax and education tax for FIEs in Guangdong Province
15. Exemption from real estate tax and dyke maintenance fee for FIEs in

- Guangdong Province
  16. Import tariff refunds and exemptions for FIEs in Guangdong Province
  17. Preferential loans and interest rate subsidies in Guangdong Province
  18. Direct grants in Guangdong Province
  19. Funds for "outward expansion" of industries in Guangdong Province
  20. Land-related subsidies to companies located in specific regions of Guangdong Province
  21. Government provision of electricity and water at less than adequate remuneration to companies located in development zones in Guangdong Province
- ##### Zhejiang Province
22. Import tariff and VAT refunds and exemptions for FIEs in Zhejiang
  23. Grants to promote exports from Zhejiang Province
  24. Land-related subsidies to companies located in specific regions of Zhejiang

#### D. Provision of Goods and Services for Less than Adequate Remuneration by the GOC

25. Wire Rod and Nickel  
For further information explaining why the Department is investigating these programs, *see* Initiation Checklist. We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

#### A. Government Restraints on Exports

1. Wire Rod and Nickel  
Petitioners allege the GOC restrains exports of wire rod and nickel by means of export taxes and export licenses, which artificially suppress the prices wire rod and nickel producers in China can charge for these products. Petitioners have not adequately shown how these particular export taxes and licenses constitute entrustment or direction of private entities by the GOC to provide a financial contribution to producers of subject merchandise. Moreover, the petitioners have not provided sufficient data regarding historic price trends demonstrating, *e.g.*, price decreases correlated with the imposition of the alleged export restraints. Therefore, we do not plan to investigate this program.

#### B. Preferential Lending

1. Preferential policy loans to favored industries, including the electrical appliance industry in Guangdong Province  
The petitioners allege that the Guangdong province's five-year plan

stipulates that the provincial government will actively coordinate financing from the financial market. According to this policy, the provincial government will support the home electric appliances industry, including suppliers of parts or components, by coordinating financial institutions to assemble funds to stimulate investments in the form of bank credit or loans. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. For example, there is insufficient evidence that kitchen shelving and racks products are within the scope of the provincial government's economic development plans. Moreover, there is no clear indication that any such plans include lending to the kitchen shelving and racks producers. Therefore, we do not plan to investigate this program.

2. Preferential policy loans to favored industries, including the electrical appliance industry in Zhejiang Province

Petitioners allege that the electrical appliance industry is considered a "pillar" industry at both the provincial and local-levels in Zhejiang province. Petitioners assert that preferential lending exists to support "pillar" industries pursuant to five-year plans or other policies issued by provincial and local authorities in these provinces. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. For example, there is insufficient evidence that kitchen shelving and racks products are within the scope of the provincial government's economic development plans. Moreover, there is no clear indication that any such plans include lending to the kitchen shelving and racks producers. Therefore, we do not plan to investigate this program.

#### C. Income Tax Programs

1. Tax reduction for enterprises making little profit  
Petitioners allege that "enterprises making little profit" pay reduced income taxes and that such enterprises comprise a *de jure* specific group. Petitioners have not established with reasonably available evidence that "enterprises making little profit" are a specific group pursuant to section 771(5A)(D) of the Act. Therefore, we do not plan to investigate tax reductions for enterprises making little profit.

2. Tax incentives for domestic enterprises engaging in research and development

According to China's WTO subsidies notification, domestic industrial enterprises whose research and development expenses increased 10 percent from the previous year may offset 150 percent of the research expenditures from their income tax obligation. Petitioners allege that domestic companies engaging in research and development comprise a *de jure* specific group. Petitioners have not established with reasonably available evidence that such enterprises are a specific group pursuant to section 771(5A)(D) of the Act. Therefore, we do not plan to investigate this program.

#### D. Indirect Tax Programs

1. Import tariff and VAT refunds to promote the development of equipment manufacturing in China  
Petitioners allege that the Chinese government refunds import tariffs and VAT for equipment and raw materials that cannot be domestically produced. Petitioners have not sufficiently established that this import tariff and VAT refund program is specific. Therefore, we do not plan to investigate this program.

2. VAT exemptions for the "encouragement of investment by Taiwan Compatriots"  
Petitioners allege that the Chinese government offers VAT exemptions to encourage Taiwanese investors to establish export-oriented and technologically advanced enterprises. Petitioners have not sufficiently established that this VAT exemption program constitutes a countervailable subsidy because our regulations permit exemption or remission of indirect taxes such as the VAT, unless the exemption or remission is excessive in accordance with 19 C.F.R. 351.517(a). Therefore, because petitioners have not shown that there is an excessive exemption, remuneration or rebate of VAT, we do not plan to investigate this program.

#### E. Provincial/Local Subsidy Programs

1. VAT Refunds and Exemptions for FIEs in Guangdong Province  
The petitioners allege that, in Guangdong province, export-oriented FIEs are exempt from import-related VAT on raw materials, parts and components, accessories, packing materials, and other inputs used in production. Encouraged FIEs in Guangdong also receive VAT exemptions on imported equipment. The petitioners provided evidence that certain Chinese producers of kitchen shelving and racks are export-oriented FIEs that are located in Guangdong province. However, petitioners have not sufficiently established that the VAT

exemption program for export-oriented FIEs in Guangdong constitutes a countervailable subsidy because our regulations permit exemption or remission of VAT, unless the exemption or remission is excessive, and petitioners have not provided allegation or information regarding excessivity in accordance with 19 C.F.R. 351.517(a). Therefore, we do not plan to investigate this program.

2. Provision of land at less than adequate remuneration in specific regions of Zhejiang Province  
Petitioners allege that firms in the Ningbo Economic and Technological Development Zone ("ETDZ") are eligible to receive reductions or exemptions of the land-use fee and site-developing fee. We do not recommend plan to investigate the provision of land for less than adequate remuneration in Ningbo ETDZ or the reduction in or exemption from site use fees in Ningbo ETDZ, because the petitioners have not provided evidence that any Chinese producers of kitchen shelving or racks are located in Ningbo city, generally, or in the Ningbo EDTZ.

#### F. Currency Manipulation

Petitioners allege that the PRC government's policy of maintaining an undervalued RMB is an export subsidy that provides either a direct transfer of funds or the provision of a good or service at less than adequate remuneration. Petitioners have not sufficiently alleged the elements necessary for the imposition of a countervailing duty and did not support the allegation with reasonably available information. Therefore, we do not plan to investigate the currency manipulation program.

#### Respondent Selection

To determine the total and relative volume and value of import data for each potential respondent, the Department normally relies on Customs and Border Protection import data for the POI. However, in the instant proceeding, HTSUS categories that include subject merchandise are very broad, and include products other than products subject to this investigation. Therefore, because of the unique circumstances of this case, the Department will issue "Quantity and Value Questionnaires" to potential respondents for the purposes of respondent selection.

The Department will send the quantity and value questionnaire to those PRC companies identified in the July 31, 2008, petition, at Exhibit 3. The responses must be submitted by those exporters/producers that receive a

quantity and value questionnaire no later than September 4, 2008. The Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration's website, at <http://ia.ita.doc.gov/ia-highlights-and-news.html>.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, a copy of the public version of the petition has been provided to the Government of the PRC. As soon as and to the extent practicable, we will attempt to provide a copy of the public version of the petition to each exporter named in the petition, consistent with 19 CFR 351.203(c)(2).

#### ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of the initiation, whether there is a reasonable indication that imports of subsidized kitchen appliance shelving and racks from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 20, 2008.

**David M. Spooner,**  
*Assistant Secretary for Import Administration.*

[FR Doc. E8-19778 Filed 8-25-08; 8:45 am]

Billing Code: 3510-DS-S

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-941]

**Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Initiation of Antidumping Duty Investigation**

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

**EFFECTIVE DATE:** August 27, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Catherine Bertrand or Julia Hancock, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, US Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3207 or (202) 482-1394, respectively.

**SUPPLEMENTARY INFORMATION:****The Petition**

On July 31, 2008, the Department of Commerce (the "Department") received a Petition concerning imports of certain kitchen appliance shelving and racks ("shelving and racks") from the People's Republic of China ("PRC") filed in proper form by Nashville Wire Products Inc., SSW Holding Company, Inc., United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists & Aerospace Workers, District 6 (hereafter referred to as the "Petitioners"). See Petition for the Imposition of Antidumping Duties: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China (in two volumes), dated July 31, 2008 ("Petition"). On August 5, 2008, the Department issued a request for additional information and clarification of certain areas of the Petition. Based on the Department's request, the Petitioners filed supplemental information on the following topics: general issues (*i.e.*, scope, injury and industry support) and U.S. price and normal value ("NV") calculations on August 8, 2008. In addition, on August 11, 2008, the Department issued a second request for additional information and clarification of certain areas of the Petition. Based on the Department's request, the Petitioners filed supplemental information on the following topics: general issues (*i.e.*, scope and industry support) and U.S. price and NV calculations on August 13, 2008. Moreover, on August 14, 2008, the Department requested, via a telephone conversation with the Petitioners'

counsel, additional information and clarification of certain areas of the Petition. See Memo to the File from Victoria Flynn, dated August 14, 2008. Based on the Department's request, the Petitioners filed supplemental information on the following topics: general issues (*i.e.*, scope and industry support) on August 15, 2008.

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), the Petitioners allege that imports of shelving and racks from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that the Petitioners filed this Petition on behalf of the domestic industry because the Petitioners are an interested party as defined in sections 771(9)(C) and (D) of the Act, and have demonstrated sufficient industry support with respect to the antidumping duty investigation. See "Determination of Industry Support for the Petition" section, *infra*.

**Period of Investigation**

The period of investigation ("POI") is January 1, 2008, through June 30, 2008. See 19 CFR 351.204(b)(1).

**Scope of Investigation**

The merchandise covered by this investigation is certain kitchen appliance shelving and racks. See Appendix I to this notice for a complete description of the merchandise covered by this investigation.

**Comments on Scope of Investigation**

During our review of the Petition, we discussed the scope with the Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments by September 10, 2008, which is 21 calendar days from the date of signature of this notice. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all

comments and to consult with parties prior to the issuance of the preliminary determination.

**Comments on Product Characteristics for Antidumping Duty Questionnaire**

The Department is requesting comments from interested parties regarding the appropriate physical characteristics of shelving and racks to be reported in response to the Department's antidumping questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise to allow respondents to accurately report the relevant factors of production, as well as develop appropriate product reporting criteria, in accordance with the Department's non-market economy ("NME") methodology, as described in the "Normal Value" section, *infra*.

Interested parties may provide any information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, interested parties may provide comments as to which characteristics are appropriate to use as: (1) general product characteristics; and (2) product reporting criteria. The Department notes that it is not always appropriate to use all product characteristics as product reporting criteria. While there may be some physical product characteristics that manufacturers use to describe shelving and racks, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics of shelving and racks.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaire, the Department must receive public comments at the above-referenced address by September 10, 2008, and receive rebuttal comments by September 15, 2008.

**Determination of Industry Support for the Petition**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition

does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), *citing Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Although the reference point from which the domestic like product analysis begins is usually "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition), the Petitioners argue that there is one class or kind of merchandise, but two domestic like products.

The Petitioners note that the two like products, when considered together, correspond to the product scope description. Based on our analysis of the information submitted on the record, we have determined that certain refrigeration shelving and certain oven racks constitute two domestic like products and we have analyzed industry

support in terms of those domestic like products. For a discussion of the domestic like product analysis in this case, *see* "Antidumping Duty Investigation Initiation Checklist: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China ("Initiation Checklist"), Industry Support at Attachment II, on file in the Central Records Unit ("CRU"), Room 1117 of the main Department of Commerce building.

With regard to section 732(c)(4)(A) of the Act, in determining whether the Petitioners have standing (*i.e.*, the domestic workers and producer supporting the Petition account for (1) at least 25 percent of the total production of the domestic like product and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition), we considered the industry support data contained in the Petition with reference to the domestic like products. To establish industry support, the Petitioners provided their own production volume of the domestic like products for calendar year 2007, and compared that to total production volume of the domestic like products for the industry. We have relied upon data the Petitioners provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II (Industry Support).

The Department's review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that the Petitioners have established industry support. First, the Petition establishes support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like products and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling). *See* section 732(c)(4)(D) of the Act and Initiation Checklist at Attachment II (Industry Support). Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like products. *See* Initiation Checklist at Attachment II (Industry Support). Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the

production of the domestic like products produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* Initiation Checklist at Attachment II (Industry Support).

The Department finds that the Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C) and (D) of the Act and have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. *See* Initiation Checklist at Attachment II (Industry Support).

#### **Allegations and Evidence of Material Injury and Causation**

The Petitioners allege that the U.S. industries producing the domestic like products are being materially injured, or are threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The Petitioners contend that the industries' injured condition is illustrated by reduced market share, underselling and price depressing and suppressing effects, lost sales and revenue, reduced production and capacity utilization, reduced shipments, reduced employment, and an overall decline in financial performance. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III (Analysis of Injury Allegations and Evidence of Material Injury and Causation).

#### **Allegations of Sales at Less Than Fair Value**

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of shelving and racks from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the initiation checklist. *See* Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determination, we will reexamine the information and

revise the margin calculations, if appropriate.

#### Export Price

The Petitioners relied on seven U.S. price quotes for shelving and racks manufactured in the PRC and offered for sale in the United States. The prices quoted were for four types of refrigerator shelving and three types of oven racks. See Petition, Volume II, at Exhibits 8 & 11. The Petitioners made deductions from these prices to arrive at an ex-works price. See Petition, Volume II, at Exhibits 10, 13 & 14; see also Second Supplement to the Petition at Exhibit 3.

#### Normal Value

The Petitioners note that the PRC is a NME country and that no determination to the contrary has yet been made by the Department. See Petition, Volume II, at 2. The Department has previously examined the PRC's market status and determined that NME status should continue for the PRC. See Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, regarding The People's Republic of China Status as a Non-Market Economy, dated May 15, 2006 (available online at <http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf>). In addition, in recent investigations, the Department has continued to determine that the PRC is an NME country. See *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007); *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007).

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. We have determined in previous investigations that we are not able to calculate NV using internal PRC prices. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market economy country, in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The Petitioners argue that India is the appropriate surrogate country for the PRC, because it is a market-economy country at a comparable level of economic development and the Petitioners were able to identify a major Indian producer of shelving and racks. See Petition, Volume II, at 3-4. The Petitioners assert that they were not able to identify major producers of shelving and racks in other potential surrogate countries (e.g., Egypt, Indonesia, the Philippines and Sri Lanka). See Petition, Volume II, at 4. Based on the information provided by the Petitioners, the Department believes that the use of India as a surrogate country is appropriate for purposes of initiation. However, after initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

The Petitioners calculated NVs and dumping margins for the U.S. prices, discussed above, using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. The Petitioners calculated NV based on one of its own company's consumption rates for producing seven models of shelving and racks from the PRC during the POR. See Petition, Volume II, at 4-5 and Exhibit 1; Second Supplement to the Petition at Exhibit 3; and Initiation Checklist. The Petitioners state that their production experience is representative of the production process used in the PRC because all of the material inputs and processing are unlikely to be materially different for a Chinese producer of racks and shelving. See Petition, Volume II, at 5; see also Supplement to the Petition at 2.

The Petitioners valued the factors of production based on reasonably available, public surrogate country data, including official Indian government import statistics and sources recently used in other PRC proceedings conducted by the Department. Since the Petitioners were unable to find input prices contemporaneous with the POI for electricity, water and gas, they adjusted for inflation using the wholesale price index for India, as published by the International Monetary Fund, *International Financial Statistics*. See Petition, Volume II, at 6 and Exhibit 3. In addition, the Petitioners made currency conversions, where necessary, based on the POI average rupee/U.S. dollar exchange rate, as reported on the

Department's website. See Petition, Volume II, at 7 and Exhibit 4. The Petitioners calculated a labor usage rate for the PRC based upon its own experience. See Petition, Volume II, at 6. To value labor, the Petitioners used a labor rate of \$1.04 per hour, as published on the Department's web site, in accordance with the Department's regulations. See 19 CFR 351.408(c)(3) and the Initiation Checklist. The Department determines that the surrogate values used by the Petitioners are reasonably available and, thus, acceptable for purposes of initiation.

The Petitioners based factory overhead expenses, selling, general and administrative expenses, and profit, based on the experience of Usha Martin, an Indian manufacturer of wire rope because its products and shelving and racks use wire as a major input. See Petition, Volume II, at 20. For purposes of initiation, the Department finds the Petitioners' use of Usha Martin's most recently available financial statement to calculate the surrogate financial ratios appropriate.

#### Fair Value Comparison

Based on the data provided by the Petitioners, there is reason to believe that imports of shelving and racks from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margin for shelving and racks from the PRC ranges from 58.91 percent to 142.64 percent. See Second Supplement to the Petition at Attachment 3.

#### Initiation of Antidumping Investigation

Based upon the examination of the Petition on shelving and racks from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of shelving and racks from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

#### Respondent Selection

In this investigation, the Department will request quantity and value information from all known exporters and producers identified in the Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory

respondents. The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. See *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 10221, 10225 (February 26, 2008); and *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005). Appendix II of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters/producers no later than September 10, 2008. In addition, the Department will post the quantity and value questionnaire along with filing instructions on the Import Administration website, at <http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department will send the quantity and value questionnaire to those PRC companies identified in the Petition, Volume I, at Exhibit 3.

#### Separate Rates

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005) ("Separate Rates/Combination Rates Bulletin"), available on the Department's website at <http://ia.ita.doc.gov/policy/bull05-1.pdf>. The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, available on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days from the date of publication of this initiation notice in the **Federal Register**. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status.

#### Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The

Separate Rates/Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Separate Rates/Combination Rates Bulletin at 6.

#### Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petition have been provided to the representatives of the Government of the PRC. We will attempt to provide a copy of the public version of the Petition to the foreign producers/exporters, consistent with 19 CFR 351.203(c)(2).

#### International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

#### Preliminary Determination by the International Trade Commission

The ITC will preliminarily determine, no later than September 15, 2008, whether there is a reasonable indication that imports of shelving and racks from the PRC are materially injuring, or threatening material injury to, a U.S. industry. A negative ITC determination with respect to this investigation will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 20, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

#### Appendix I

##### Scope of the Investigation

##### *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China*

The scope of this investigation consists of shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens ("certain kitchen appliance shelving and racks" or "the subject merchandise"). Certain kitchen appliance shelving and racks are defined as shelving, baskets, racks (with or without extension slides, which are carbon or stainless steel hardware devices that are connected to shelving, baskets, or racks to enable sliding), side racks (which are welded wire support structures for oven racks that attach to the interior walls of an oven cavity that does not include support ribs as a design feature), and subframes (which are welded wire support structures that interface with formed support ribs inside an oven cavity to support oven rack assemblies utilizing extension slides) with the following dimensions:

- shelving and racks with dimensions ranging from 3 inches by 5 inches by 0.10 inch to 28 inches by 34 inches by 6 inches; or
- baskets with dimensions ranging from 2 inches by 4 inches by 3 inches to 28 inches by 34 inches by 16 inches; or
- side racks from 6 inches by 8 inches by 0.1 inch to 16 inches by 30 inches by 4 inches; or
- subframes from 6 inches by 10 inches by 0.1 inch to 28 inches by 34 inches by 6 inches.

The subject merchandise is comprised of carbon or stainless steel wire ranging in thickness from 0.050 inch to 0.500 inch and may include sheet metal of either carbon or stainless steel ranging in thickness from 0.020 inch to 0.2 inch. The subject merchandise may be coated or uncoated and may be formed and/or welded. Excluded from the scope of this investigation is shelving in which the support surface is glass. The merchandise subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting numbers 8418.99.8050, 7321.90.5000, 7321.90.6090 and 8516.90.8000. Although the HTSUS



subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

**Appendix II**

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930, as amended, permits us to investigate: (1) a sample of exporters, producers, or types of products that is statistically valid based

on the information available at the time of selection; or, (2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In providing the information in the chart below, please provide the total quantity in pieces/units and total value (in U.S. dollars) of all your sales to the United States during the period January 1, 2008 through June 30, 2008, covered

by the scope of this investigation *see* Appendix I of this notice), produced in the PRC.

Additionally, if you believe that you should be treated as a single entity along with other named exporters, please complete the chart, below, both in the aggregate for all named parties in your group and, in separate charts, individually for each named entity. Please label each chart accordingly.

Market: United States	Total Quantity (# of Units)	Terms of Sale <sup>1</sup>	Total Value <sup>2</sup> (\$U.S.)
1. Export Price <sup>3</sup> .....	.....	.....	.....
2. Constructed Export Price <sup>4</sup> .....	.....	.....	.....
3. Further Manufactured <sup>5</sup> .....	.....	.....	.....
Total .....	.....	.....	.....

<sup>1</sup> To the extent possible, sales values should be reported based on the same terms (*e.g.*, FOB).

<sup>2</sup> Values should be expressed in U.S. dollars. Indicate any exchange rates used, their respective dates and sources.

<sup>3</sup> Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before the goods are imported into the United States.

<sup>4</sup> Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation. Do not report the sale to the affiliated party in the United States, rather report the sale made by the affiliated party to the unaffiliated customer in the United States.

<sup>5</sup> "Further manufactured" refers to merchandise that undergoes further manufacture or assembly in the United States before sale to the first unaffiliated customer.



**APPENDIX B**  
**CONFERENCE WITNESSES**



**CALENDAR OF THE PUBLIC CONFERENCE**

Those listed below appeared as witnesses at the United States International Trade Commission’s conference:

**Subject: Certain Kitchen Appliance Shelving and Racks from China**

**Inv. Nos.: Investigation Nos. 701-TA-458 and 731-TA-1154 (Preliminary)**

**Date and Time: August 21, 2008 - 9:30 am**

The conference was held in Room 101 (Main Hearing Room) of the United States International Trade Commission Building, 500 E Street, SW, Washington, DC.

**IN SUPPORT OF THE IMPOSITION OF COUNTERVAILING AND ANTIDUMPING DUTIES:**

Kelley Drye & Warren LLP  
Washington, DC  
on behalf of

Nashville Wire Products Inc., SSW Holding Company, Inc., the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, and the International Association of Machinists and Aerospace Workers, District Loge 6, Clinton, IA.

Paul Kara, President and Chief Executive Officer, SSW Holding Co..  
Mark A. Gritton, Sr. Vice President, Operations, Sales & Marketing, SSW Holding Co.  
Brad Nall, Director of Marketing, SSW Holding Co.  
Steven Rollins, President, Nashville Wire Products Inc.  
Brad Hudgens, Economist, Georgetown Economic Services, Inc.

Paul C. Rosenthal )  
Robin H. Gilbert )--OF COUNSEL  
Grace W. Kim )

**IN OPPOSITION TO THE IMPOSITION OF COUNTERVAILING AND ANTIDUMPING DUTIES:**

Jochum, Shore & Trossevin, PC  
Washington, DC  
on behalf of

General Electric Company, Whirlpool Corporation, and Maytag Corporation

David Metzger, Program Manager for Sourcing, Consumer & Industrial, General Electric Co.  
Scott Wessendorf, Commodity Manager, North American Procurement, Whirlpool Corp.  
Bruce Malashevich, President, Economic Consulting Services  
Alexander Cook, Economist, Economic Consulting Services

Marguerite Trossevin )--OF COUNSEL



**APPENDIX C**  
**SUMMARY DATA**





**Table C-1**  
**Refrigeration shelving: Summary data concerning the U.S. market, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table C-2**  
**Oven racks: Summary data concerning the U.S. market, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

**Table C-3**  
**KASAR: Summary data concerning the U.S. market, 2005-07, January-June 2007, and January-June 2008**

\* \* \* \* \*

