

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: (Insert date of publication in the *Federal Register*.)

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Julia Hancock,

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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, 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.

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.

David M. Spooner
Assistant Secretary
for Import Administration

Date

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 ¹	Total Value ² (\$U.S.)
1. Export Price ³			
2. Constructed Export Price ⁴			
3. Further Manufactured ⁵			
Total			

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

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

³ 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.

⁴ 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.

⁵ “Further manufactured” refers to merchandise that undergoes further manufacture or assembly in the United States before sale to the first unaffiliated customer.