

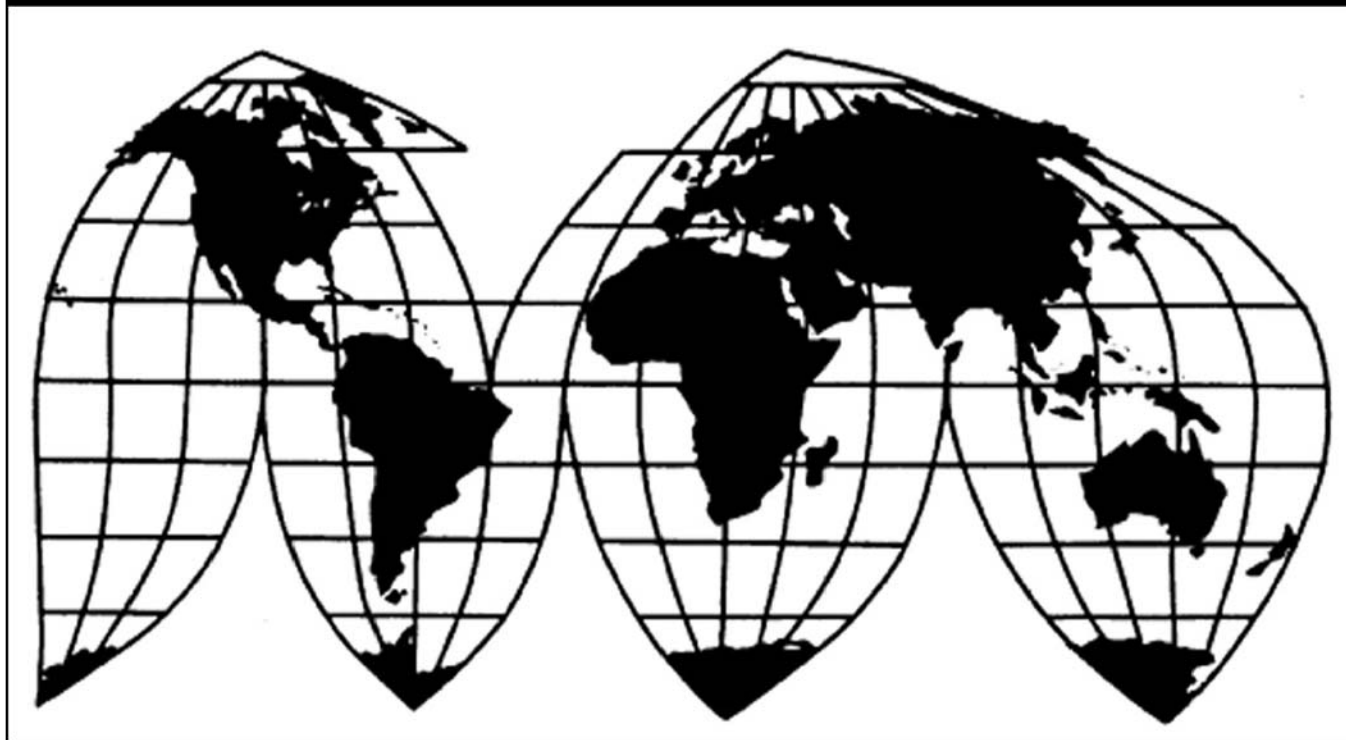
Certain Kitchen Appliance Shelving and Racks From China

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

Publication 4098

August 2009

U.S. International Trade Commission



Washington, DC 20436

U.S. International Trade Commission

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UNITED STATES INTERNATIONAL TRADE COMMISSION

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

CERTAIN KITCHEN APPLIANCE SHELVING AND RACKS FROM CHINA

DETERMINATIONS

On the basis of the record¹ developed in the subject investigations, the United States International Trade Commission (Commission) determines,² pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b) and 1673d(b)) (the Act), that the refrigeration shelving industry in the United States is materially injured and the oven racks industry in the United States is threatened with material injury by reason of imports from China of certain kitchen appliance shelving and racks,^{3 4} 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 have been found by the Department of Commerce (Commerce) to be subsidized by the Government of China and sold in the United States at less than fair value (LTFV). In addition, the Commission determines that it would not have found material injury with regard to imports of oven racks from China but for the suspension of liquidation.

BACKGROUND

The Commission instituted these investigations effective July 31, 2008, following receipt of a petition filed with the Commission and Commerce 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 Lodge 6, Clinton, IA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of certain kitchen appliance shelving and racks from China were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. § 1671b(b)) and being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of April 21, 2009 (74 FR 18249). The hearing was held in Washington, DC, on July 16, 2009, and all persons who requested the opportunity were permitted to appear in person or by counsel.

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

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

³ The Commission finds two domestic industries, one producing refrigeration shelving and one producing oven racks.

⁴ Vice Chairman Daniel R. Pearson, dissenting with regard to imports of certain oven racks from China, finds that the oven racks industry in the United States is neither materially injured nor threatened with material injury by reason of imports from China.

VIEWS OF THE COMMISSION

Based on the record in the final phase of these investigations, we find that the domestic industry producing certain refrigeration shelving is materially injured by reason of subject imports of certain refrigeration shelving from China that the U.S. Department of Commerce (“Commerce”) has found to be sold in the United States at less than fair value and imports of certain refrigeration shelving from China that Commerce has found to be subsidized by the Government of China. We also determine that the domestic industry producing certain oven racks is threatened with material injury by reason of subject imports of certain oven racks from China that Commerce has found to be sold in the United States at less than fair value and imports of certain oven racks that Commerce has found to be subsidized by the Government of China.^{1 2}

I. BACKGROUND

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 United Steelworkers and International Association of Machinists and Aerospace Workers (“IAMAW”), District Lodge 6 (Clinton, IA), unions representing workers in the domestic industry producing KASAR (collectively, “Petitioners”). Respondent Electrolux Home Products, Inc. (“Electrolux”), filed both prehearing and posthearing briefs, and representatives from Electrolux appeared at the hearing. Respondents General Electric Company (“GE”) and Whirlpool Corporation (“Whirlpool”), importers and purchasers of KASAR, filed a joint prehearing brief but did not appear at the hearing.

II. DOMESTIC LIKE PRODUCT

A. In General

In determining whether an industry in the United States is materially injured or threatened with material injury by reason of imports of the subject merchandise, the Commission first defines the “domestic like product” and the “industry.”³ Section 771(4)(A) of the Tariff Act of 1930, as amended (“the Tariff Act”), defines the relevant domestic industry as the “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”⁴ In turn, the Tariff 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.”⁵

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

¹ Commissioner Deanna Tanner Okun has recused herself from these investigations.

² Vice Chairman Pearson joins in the majority through Section VI of this opinion, concurring in the view that the industry manufacturing refrigeration shelving is materially injured by imports from China which Commerce has determined were sold at LTFV in the United States. However, Vice Chairman Pearson dissents from the majority and finds instead that an industry producing oven racks is not threatened with material injury.

³ 19 U.S.C. § 1677(4)(A).

⁴ 19 U.S.C. § 1677(4)(A).

⁵ 19 U.S.C. § 1677(10).

characteristics and uses” on a case-by-case basis.⁶ No single factor is dispositive, and the Commission may consider other factors it deems relevant based on the facts of a particular investigation.⁷ The Commission looks for clear dividing lines among possible like products and disregards minor variations.⁸ Although the Commission must accept Commerce’s determination as to the scope of the imported merchandise that is subsidized or sold at less than fair value,⁹ the Commission determines what domestic product is like the imported articles Commerce has identified.¹⁰

B. Product Description

Commerce has defined the imported merchandise within the scope of the 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

⁶ See, e.g., Cleo, Inc. v. United States, 501 F.3d 1291, 1299 (Fed. Cir. 2007); 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).

⁷ See, e.g., S. Rep. No. 96-249 at 90-91 (1979).

⁸ Nippon, 19 CIT at 455; Torrington, 747 F. Supp. at 748-49; see also S. Rep. No. 96-249 at 90-91 (1979) (Congress has indicated that the like product standard should not be interpreted in “such a narrow fashion as to permit minor differences in physical characteristics or uses to lead to the conclusion that the product and article are not ‘like’ each other, nor should the definition of ‘like product’ be interpreted in such a fashion as to prevent consideration of an industry adversely affected by the imports under consideration.”).

⁹ See, e.g., USEC, Inc. v. United States, 34 Fed. Appx. 725, 730 (Fed. Cir. 2002) (“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).

¹⁰ Hosiden Corp. v. Advanced Display Mfrs., 85 F.3d 1561, 1568 (Fed. Cir. 1996) (the Commission may find a single like product corresponding to several different classes or kinds defined by Commerce); Cleo, 501 F.3d at 1298 n.1 (“Commerce’s {scope} finding does not control the Commission’s [like product] determination.”); Torrington, 747 F. Supp. at 748-52 (affirming the Commission’s determination defining six like products in investigations in which Commerce found five classes or kinds).

- 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.¹¹

C. Like Product Analysis

In the preliminary phase investigations, the Commission found that there are two domestic products “like” the subject KASAR as defined by the scope of these investigations: (1) certain refrigeration shelving and baskets for refrigerators, freezers, combination refrigerator/freezers and other refrigerating or freezing equipment; and (2) certain oven racks, side racks, and subframes for cooking stoves, ranges, and ovens. Petitioners continue to support the Commission’s like product definitions.¹² Respondent Electrolux states that it does not challenge the definitions of the like products made by the Commission in its preliminary determinations.¹³ Although GE/Whirlpool argued in the preliminary phase of these investigations that the Commission should expand the like product beyond the scope to include all wire kitchen appliance shelving and cooking racks, it did not present any argument in the final phase that the like product definitions adopted by the Commission in its preliminary determinations should be changed.¹⁴ For the reasons discussed below, 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, ranges, and ovens, as we did in the preliminary phase investigations.

Whether certain refrigeration shelving and certain oven racks are separate like products

Physical characteristics and uses

All KASAR share certain physical characteristics. All are made from carbon or stainless steel wire that is straightened and cut according to product specifications.¹⁵ Refrigeration parts and oven parts, however, have different coatings, based on the functions of the appliance into which each will go. For

¹¹ 74 Fed. Reg. 36656, 36657-58 (July 24, 2009) and 74 Fed. Reg. 37012, 37013 (July 27, 2009).

¹² Hearing Tr. at 35 (Cannon).

¹³ Hearing Tr. at 163 (Jaffe).

¹⁴ In its preliminary determinations, the Commission stated that, if respondents wished to argue in the final phase investigations for an expansion of the domestic like product to include products outside the scope, they should identify the specific products for expansion in their written comments on the Commission’s draft questionnaires. See Certain Kitchen Appliance Shelving and Racks from China, Inv. Nos. 701-TA-458 and 731-TA-1154 (Prelim.), USITC Pub. 4035 at 10 n.43 (Sept. 2008). No party presented any comments on this issue.

¹⁵ CR at I-12-I-13; PR at I-10.

example, for refrigeration shelving, the coating is most often electrostatic powder paint.¹⁶ For oven racks, the coating process most often consists of a nickel plating process, but may also include porcelain or other coatings that can withstand high temperatures inside a cooking appliance.¹⁷ Although both types of KASAR provide physical support for items that are placed within or on a particular piece of equipment, refrigeration shelving and oven racks are used in products that serve totally different functions – refrigeration and cooking.¹⁸

Interchangeability

Refrigeration shelving and oven racks are designed and produced for specific original equipment manufacturer (“OEM”) kitchen appliance producers for specific model applications.¹⁹ Petitioners and respondents agree that kitchen refrigeration shelves are not interchangeable with oven racks.²⁰

Common manufacturing facilities, production processes, and production employees

Petitioners, who accounted for over *** percent of the reported domestic production of KASAR in 2008, produce refrigeration shelving and oven racks in separate facilities using dedicated fabrication and finishing equipment.²¹ The production processes for refrigerator shelving and oven parts are similar – obtaining wire rod, straightening it, then forming and/or welding, followed by pretreating or coating (although, as described above, the coatings used for refrigerator shelving and oven parts are different).²²

Channels of distribution

All domestically produced KASAR are produced specifically for and sold to end users, which are all OEMs of kitchen appliances.²³

Customer and producer perceptions

In the preliminary phase of these investigations, GE/Whirlpool argued that OEM customers for KASAR view KASAR producers as comprising a single industry and organize their sourcing operations accordingly. Petitioners assert, and the record indicates that customers perceive refrigeration shelving and oven racks to be different, as each item is designed to meet the size requirements of the specific appliance into which it will go, each is coated to serve the specific function of the appliance, and neither producers nor customers perceive the products to be interchangeable.²⁴ Petitioners also note that the

¹⁶ CR at I-12; PR at I-11.

¹⁷ CR at I-13; PR at I-11.

¹⁸ CR at I-12-I-13; PR I-10.

¹⁹ CR at I-14; PR at I-12.

²⁰ CR at I-14; PR at I-12.

²¹ CR/PR at Table III-1.

²² CR at I-11-I-13; PR at I-10-11.

²³ CR at I-15; PR at I-12.

²⁴ Petitioners’ Prehearing Brief at 6.

OEMs have their own separate, dedicated facilities for assembling and manufacturing the appliances in which the subject merchandise is used.²⁵

Price

There is a limited amount of information on the record of these investigations regarding relative prices of refrigeration shelving and oven racks. The record indicates that there is substantial overlap among prices for different sizes and types of KASAR.²⁶

Conclusion

In the final phase of these investigations, no party has argued that the Commission should alter the like product definition used in the preliminary phase investigations. The record indicates that, despite certain physical similarities, refrigeration shelving and oven racks have different uses. They also receive different coatings based on the function of the appliance into which they will go, which precludes interchangeability. Refrigeration shelving and oven racks are made in separate manufacturing facilities, using different employees and equipment. Moreover, customers have their own separate, dedicated facilities for assembling or manufacturing the two types of 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, and in the absence of any contrary argument by the parties, the Commission continues to find two domestic like products: (1) certain refrigeration shelving and baskets for refrigerators, freezers, combination refrigerator/freezers and other refrigerating or freezing equipment (hereinafter “refrigeration shelving”); and (2) certain oven racks, side racks, and subframes for cooking stoves, ranges, and ovens (hereinafter “oven racks”), as it did in the preliminary investigations.

III. DOMESTIC INDUSTRY

The domestic industry is defined as the domestic “producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.”²⁷ In defining the domestic industry, the Commission’s general practice has been to include in the industry producers of all domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market. Based on our finding that there are 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 freezing equipment; and (2) all producers of certain oven racks, side racks, and subframes for cooking stoves, ranges, and ovens.^{28 29 30}

²⁵ Petitioners’ Prehearing Brief at 6.

²⁶ GE/Whirlpool’s Postconference Brief at 11.

²⁷ 19 U.S.C. § 1677(4)(A).

²⁸ In the preliminary phase of these investigations, the Commission found that *** were related parties because they imported oven racks from China during the POI, but that appropriate circumstances did not exist to exclude either from the domestic industry producing oven racks. The record in the final phase of these investigations continues to show that *** imported and/or purchased oven racks from China. See CR/PR at Table III-12, 19 U.S.C. § 1677(4)(B) (no related party issue was 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. No party has argued for the exclusion of ***.

(continued...)

IV. LEGAL STANDARDS

A. In General

In the final phase of antidumping or countervailing duty investigations, the Commission determines whether an industry in the United States is materially injured or threatened with material injury by reason of the imports under investigation.³¹ 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 like product, but only in the context of U.S. production operations.³² The statute defines “material injury” as “harm which is not inconsequential, immaterial, or unimportant.”³³ In assessing whether the domestic industry is materially injured by reason of subject imports, we consider all relevant economic factors that bear on the state of the industry in the United States.³⁴ 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.”³⁵

²⁸ (...continued)

*** is a *** in these investigations and had imports of subject merchandise equivalent to *** percent of its *** production in 2006, *** percent in 2007, *** percent in 2008, *** percent in interim 2008, and *** percent in interim 2009. CR/PR at Table III-12. The company explained that it imported ***. CR/PR at Table III-12, n.1.

*** is a *** in these investigations and had imports of subject merchandise equivalent to *** percent of its domestic production throughout the POI. CR/PR at Table III-12. *** also purchased *** imports of certain oven racks in 2008. CR/PR at Table IV-1, n.1. Its purchases of subject merchandise were equivalent to ***] percent of its *** production in 2006, *** percent in 2007, *** percent in 2008, *** percent in interim 2008, and *** percent in interim 2009. CR/PR at Table III-12. The company explained that in 2003 it acquired ***, which was already engaged in the process of importing oven racks; as ***. CR at III-3, n.4; PR at III-2, n.4.

We find that appropriate circumstances do not exist to exclude *** from the domestic industry producing certain oven racks. Both are *** in these investigations, and their interests lie more with domestic production than with importing. Their volumes of imports and/or purchases were *** compared with their domestic production. Moreover, their U.S. operations do not appear to have benefitted financially from their relatively low volumes of imports and purchases, because their financial results ***. CR/PR at Table VI-4.

²⁹ 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.

³⁰ Commissioner Pinkert does not rely upon companies’ financial performance as a factor in determining whether there are appropriate circumstances to exclude them from the domestic industry in these investigations. The record is not sufficient to infer from their profitability on U.S. operations whether they have derived a specific benefit from importing. See *Allied Mineral Products v. United States*, 28 C.I.T. 1861, 1865-1867 (2004).

³¹ 19 U.S.C. §§ 1671d(b), 1673d(b).

³² 19 U.S.C. § 1677(7)(B)(i). The Commission “may consider such other economic factors as are relevant to the determination” but shall “identify each [such] factor . . . [a]nd explain in full its relevance to the determination.” 19 U.S.C. § 1677(7)(B).

³³ 19 U.S.C. § 1677(7)(A).

³⁴ 19 U.S.C. § 1677(7)(C)(iii).

³⁵ 19 U.S.C. § 1677(7)(C)(iii).

Although the statute requires the Commission to determine whether the domestic industry is “materially injured by reason of” or threatened with material injury by reason of unfairly traded imports,³⁶ it does not define the phrase “by reason of,” indicating that this aspect of the injury analysis is left to the Commission’s reasonable exercise of its discretion.³⁷ In identifying a causal link, if any, between subject imports and material injury to the domestic industry, the Commission examines the facts of record that relate to the significance of the volume and price effects of the subject imports and any impact of those imports on the condition of the domestic industry. This evaluation under the “by reason of” standard must ensure that subject imports are more than a minimal or tangential cause of injury and that there is a sufficient causal, not merely a temporal, nexus between subject imports and material injury.³⁸

In many investigations, there are other economic factors at work, some or all of which may also be having adverse effects on the domestic industry. Such economic factors might include nonsubject imports; changes in technology, demand, or consumer tastes; competition among domestic producers; or management decisions by domestic producers. The legislative history explains that the Commission must examine factors other than subject imports to ensure that it is not attributing injury from other factors to the subject imports, thereby inflating an otherwise tangential cause of injury into one that satisfies the statutory material injury threshold.³⁹ In performing its examination, however, the Commission need not isolate the injury caused by other factors from injury caused by unfairly traded imports.⁴⁰ Nor does the

³⁶ 19 U.S.C. §§ 1671d(b)(1), 1673d(b)(1).

³⁷ Angus Chemical Co. v. United States, 140 F.3d 1478, 1484-85 (Fed. Cir. 1998) (“{T}he statute does not ‘compel the commissioners’ to employ {a particular methodology}.”), aff’g 944 F. Supp. 943, 951 (Ct. Int’l Trade 1996).

³⁸ The Federal Circuit, in addressing the causation standard of the statute, observed that “{a}s long as its effects are not merely incidental, tangential, or trivial, the foreign product sold at less than fair value meets the causation requirement.” Nippon Steel Corp. v. USITC, 345 F.3d 1379, 1384 (Fed. Cir. 2003). This was further ratified in Mittal Steel Point Lisas Ltd. v. United States, 542 F.3d 867, 873 (Fed. Cir. 2008), where the Federal Circuit, quoting Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997), stated that “this court requires evidence in the record ‘to show that the harm occurred “by reason of” the LTFV imports, not by reason of a minimal or tangential contribution to material harm caused by LTFV goods.’” See also Nippon Steel Corp. v. United States, 458 F.3d 1345, 1357 (Fed. Cir. 2006); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001).

³⁹ SAA at 851-52 (“{T}he Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.”); S. Rep. 96-249 at 75 (1979) (the Commission “will consider information which indicates that harm is caused by factors other than less-than-fair-value imports.”); H.R. Rep. 96-317 at 47 (1979) (“in examining the overall injury being experienced by a domestic industry, the ITC will take into account evidence presented to it which demonstrates that the harm attributed by the petitioner to the subsidized or dumped imports is attributable to such other factors;” those factors include “the volume and prices of nonsubsidized imports or imports sold at fair value, contraction in demand or changes in patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry”); accord Mittal Steel, 542 F.3d at 877.

⁴⁰ SAA at 851-52 (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports.”); Taiwan Semiconductor Industry Ass’n v. USITC, 266 F.3d 1339, 1345 (Fed. Cir. 2001) (“{T}he Commission need not isolate the injury caused by other factors from injury caused by unfair imports Rather, the Commission must examine other factors to ensure that it is not attributing injury from other sources to the subject imports.” (emphasis in original)); Asociacion de Productores de Salmon y Trucha de Chile AG v. United States, 180 F. Supp. 2d 1360, 1375 (Ct. Int’l Trade 2002) (“{t}he Commission is not required to isolate the effects of subject imports from other factors contributing to injury” or make “bright-line distinctions” between the effects of subject imports and other causes.); see also Softwood Lumber from Canada, Inv. Nos. 701-TA-414 and 731-TA-928 (Remand), USITC Pub. 3658 at 100-01 (Dec. 2003) (Commission recognized that “{i}f an alleged other factor is found not to have or threaten to have injurious effects to the domestic industry, i.e., it is not an ‘other causal factor,’

(continued...)

“by reason of” standard require that unfairly traded imports be the “principal” cause of injury or contemplate that injury from unfairly traded imports be weighed against other factors, such as nonsubject imports, which may be contributing to overall injury to an industry.⁴¹ It is clear that the existence of injury caused by other factors does not compel a negative determination.⁴²

Assessment of whether material injury to the domestic industry is “by reason of” subject imports “does not require the Commission to address the causation issue in any particular way” as long as “the injury to the domestic industry can reasonably be attributed to the subject imports” and the Commission “ensure{s} that it is not attributing injury from other sources to the subject imports.”^{43 44} Indeed, the Federal Circuit has examined and affirmed various Commission methodologies and has disavowed “rigid adherence to a specific formula.”⁴⁵

The Federal Circuit’s decisions in Gerald Metals, Bratsk, and Mittal Steel all involved cases where the relevant “other factor” was the presence in the market of significant volumes of price-competitive nonsubject imports. The Commission interpreted the Federal Circuit’s guidance in Bratsk as requiring it to apply a particular additional methodology following its finding of material injury in cases involving commodity products and a significant market presence of price-competitive nonsubject

⁴⁰ (...continued)

then there is nothing to further examine regarding attribution to injury”), citing Gerald Metals, Inc. v. United States, 132 F.3d 716, 722 (Fed. Cir. 1997) (the statute “does not suggest that an importer of LTFV goods can escape countervailing duties by finding some tangential or minor cause unrelated to the LTFV goods that contributed to the harmful effects on domestic market prices.”).

⁴¹ S. Rep. 96-249 at 74-75; H.R. Rep. 96-317 at 47.

⁴² See Nippon Steel Corp., 345 F.3d at 1381 (“an affirmative material-injury [sic] determination under the statute requires no more than a substantial-factor showing. That is, the ‘dumping’ need not be the sole or principal cause of injury.”).

⁴³ Mittal Steel, 542 F.3d at 877-78; see also id. at 873 (“While the Commission may not enter an affirmative determination unless it finds that a domestic industry is materially injured ‘by reason of’ subject imports, the Commission is not required to follow a single methodology for making that determination {and has} broad discretion with respect to its choice of methodology.”) citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (Fed. Cir. 1996) and S. Rep. 96-249 at 75.

⁴⁴ Commissioner Pinkert does not join this paragraph or the following four paragraphs. He points out that the Federal Circuit, in Bratsk, 444 F.3d 1369, and Mittal, held that the Commission is required, when considering present material injury in certain circumstances, to undertake a particular kind of analysis of nonsubject imports. Mittal explains as follows:

What Bratsk held is that “where commodity products are at issue and fairly traded, price-competitive, non-subject imports are in the market,” the Commission would not fulfill its obligation to consider an important aspect of the problem if it failed to consider whether non-subject or non-LTFV imports would have replaced LTFV subject imports during the period of investigation without a continuing benefit to the domestic industry. 444 F.3d at 1369. Under those circumstances, Bratsk requires the Commission to consider whether replacement of the LTFV subject imports might have occurred during the period of investigation, and it requires the Commission to provide an explanation of its conclusion with respect to that factor.

542 F.3d at 878.

⁴⁵ Nucor Corp. v. United States, 414 F.3d 1331, 1336, 1341 (Fed. Cir. 2005); see also Mittal Steel, 542 F.3d at 879 (“Bratsk did not read into the antidumping statute a Procrustean formula for determining whether a domestic injury was ‘by reason’ of subject imports.”).

imports.⁴⁶ The additional “replacement/benefit” test looked at whether nonsubject imports might have replaced subject imports without any benefit to the U.S. industry. The Commission applied that specific additional test in subsequent cases, including the Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago determination that underlies the Mittal Steel litigation.

Mittal Steel clarifies that the Commission’s interpretation of Bratsk was too rigid and makes clear that the Federal Circuit does not require the Commission to apply an additional test nor any one specific methodology; instead, the Court requires the Commission to have “evidence in the record ‘to show that the harm occurred ‘by reason of’ the LTFV imports,’” and requires that the Commission not attribute injury from nonsubject imports or other factors to subject imports.⁴⁷ Accordingly, we do not consider ourselves required to apply the replacement/benefit test that was included in Commission opinions subsequent to Bratsk.

The progression of Gerald Metals, Bratsk, and Mittal Steel clarifies that, in cases involving commodity products where price-competitive nonsubject imports are a significant factor in the U.S. market, the Court will require the Commission to give full consideration, with adequate explanation, to non-attribution issues when it performs its causation analysis.^{48 49}

The question of whether the material injury threshold for subject imports is satisfied notwithstanding any injury from other factors is factual, subject to review under the substantial evidence standard. Congress has delegated this factual finding to the Commission because of the agency’s institutional expertise in resolving injury issues.^{50 51}

B. Material Injury by Reason of Subject Imports

In evaluating the volume of subject imports, section 771(7)(C)(i) of the Tariff 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.”⁵²

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

⁴⁶ Mittal Steel, 542 F.3d at 875-79.

⁴⁷ Mittal Steel, 542 F.3d at 873 (quoting from Gerald Metals, 132 F.3d at 722), 875-79 & n.2 (recognizing the Commission’s alternative interpretation of Bratsk as a reminder to conduct a non-attribution analysis).

⁴⁸ Commissioner Lane also refers to her dissenting views in Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates, Inv. Nos. 731-TA-1131-1134 (Final), USITC Pub. 4040 (Oct. 2008), for further discussion of Mittal Steel.

⁴⁹ To that end, after the Federal Circuit issued its decision in Bratsk, the Commission began to present published information or send out information requests in final phase investigations to producers in nonsubject countries that accounted for substantial shares of U.S. imports of subject merchandise (if, in fact, there were large nonsubject import suppliers). In order to provide a more complete record for the Commission’s causation analysis, these requests typically seek information on capacity, production, and shipments of the product under investigation in the major source countries that export to the United States. The Commission plans to continue utilizing published or requested information in final phase investigations in which there are substantial levels of nonsubject imports.

⁵⁰ Mittal Steel, 542 F.3d at 873; Nippon Steel Corp., 458 F.3d at 1350, citing U.S. Steel Group, 96 F.3d at 1357; S. Rep. 96-249 at 75 (“The determination of the ITC with respect to causation is ... complex and difficult, and is a matter for the judgment of the ITC.”).

⁵¹ We provide in the discussion of impact in sections VI.C. and VII.C. below a full analysis of other factors alleged to have caused any material injury experienced by the domestic industry.

⁵² 19 U.S.C. § 1677(7)(C)(i).

(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.⁵³

In examining the impact of subject imports, section 771(7)(C)(iii) of the Tariff Act provides that the Commission “shall evaluate all relevant economic factors which have a bearing on the state of the industry.”⁵⁴ These factors include output, sales, inventories, 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.”⁵⁵

C. Threat of Material Injury by Reason of Subject Imports

Section 771(7)(F) of the Tariff Act directs the Commission to determine whether the U.S. industry is threatened with material injury by reason of the subject imports by analyzing whether “further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted.”⁵⁶ The Commission may not make such a determination “on the basis of mere conjecture or supposition,” and considers the threat factors “as a whole” in making its determination whether dumped or subsidized imports are imminent and whether material injury by reason of subject imports would occur unless an order is issued.⁵⁷ In making our determination, we consider all statutory threat factors that are relevant to these investigations.⁵⁸

⁵³ 19 U.S.C. § 1677(7)(C)(ii).

⁵⁴ 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.”). The statute additionally instructs the Commission to consider the “magnitude of the dumping margin” in an antidumping investigation as part of its consideration of the impact of imports. 19 U.S.C. § 1677(7)(C)(iii)(V).

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

⁵⁶ 19 U.S.C. § 1677(7)(F)(ii).

⁵⁷ 19 U.S.C. § 1677(7)(F)(ii).

⁵⁸ These factors are as follows:

(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
(continued...)

V. CONDITIONS OF COMPETITION AND THE BUSINESS CYCLE

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

A. Demand Conditions

Demand for refrigeration shelving and oven racks is closely related to the U.S. housing market.⁵⁹ The parties, as well as the majority of market participants, agree that demand for refrigeration shelving and oven racks has declined since 2006 due primarily to declines in the housing market and the economic recession.⁶⁰

Apparent U.S. consumption of refrigeration shelving declined steadily, from *** units in 2006 to *** units in 2007 and *** units in 2008, an overall decline of *** percent.⁶¹ Apparent U.S. consumption of refrigeration shelving was *** percent lower in interim (January to March) 2009, at *** units, than in interim 2008, at *** units.⁶²

⁵⁸ (...continued)

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,

(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).

19 U.S.C. § 1677(7)(F)(i). To organize our analysis, we discuss the applicable statutory threat factors using the same volume/price/impact framework that applies to a material injury analysis. Statutory threat factors (I), (II), (III), and (V) are discussed in the analysis of subject import volume. Statutory threat factor (IV) is discussed in the price effects analysis, and statutory threat factor (IX) is discussed in the impact analysis. Statutory threat factor (VII) is inapplicable, as no imports of agricultural products are involved in these investigations. Although some Chinese producers produce wire products using the same equipment used to make KASAR, no argument has been asserted in these investigations that statutory threat factor (VI) concerning product shifting is applicable to production of oven racks. There was also no argument that the industry is currently engaging or will imminently engage in any efforts to develop a derivative or more advanced version of the domestic like product, which would implicate statutory threat factor (VIII).

⁵⁹ CR at II-4; PR at II-3. Seasonally adjusted monthly housing starts and completions have both declined since 2006. CR/PR at Figure II-1.

⁶⁰ CR at II-4-II-5; PR at II-3. Petitioners noted that demand has declined for a number of reasons, including a downturn in the housing market, the recession, and the fact that some OEMs have shifted their manufacturing to other countries. Hearing Tr. at 119-120 (Cannon). Electrolux stated that the decline in demand is primarily due to the corresponding decrease in U.S. demand for durable consumer goods caused by the current economic recession, including the ongoing housing slump. Electrolux's Prehearing Brief at 2 & Hearing Tr. at 189-190 (Market). GE/Whirlpool also stated that there was increased production by OEMs in other countries. GE/Whirlpool's Prehearing Brief at 3.

⁶¹ CR/PR at Table C-2.

⁶² CR/PR at Table C-2.

Apparent U.S. consumption of oven racks declined steadily, from *** units in 2006 to *** units in 2007 and *** units in 2008, an overall decline of *** percent.⁶³ Apparent U.S. consumption of oven racks was *** percent lower in interim 2009, at *** units, than in interim 2008, at *** units.⁶⁴

B. Supply Conditions

The Commission received questionnaire responses from four U.S. producers, which are believed to account for the *** of U.S. production of refrigeration shelving and oven racks in 2008.⁶⁵ The capacities of both domestic industries exceeded apparent U.S. consumption for their respective products throughout the period examined, and both have *** unused capacity that could be used to increase production.⁶⁶

The domestic refrigeration shelving industry's capacity decreased by *** percent from 2006 to 2008. Capacity was unchanged in interim 2009 from interim 2008.⁶⁷ Production dropped dramatically by *** percent from 2006 to 2008 and was *** percent lower in interim 2009 than in interim 2008.⁶⁸ The industry's share of the U.S. market, by quantity, declined from *** percent in 2006 to *** percent in 2007 and *** percent in 2008; it was *** percent in interim 2008 and *** in interim 2009.^{69 70}

The domestic oven rack industry's capacity increased by *** percent from 2006 to 2007, then remained constant.⁷¹ Its production dropped by *** percent from 2006 to 2008 and was *** percent lower in interim 2009 than in interim 2008.⁷² The industry's share of the U.S. market, by quantity, increased from *** percent in 2006 to *** percent in 2007, before declining to *** percent in 2008; it was *** percent in interim 2008 and *** percent in interim 2009.⁷³ Subject imports accounted for the remainder of the U.S. market because there were *** nonsubject imports of oven racks during the period.⁷⁴

⁶³ CR/PR at Table C-3.

⁶⁴ CR/PR at Table C-3.

⁶⁵ CR/PR at III-1, I-3 n.3. In addition to the questionnaire responses from Nashville and SSW, two small producers, ***, submitted partial questionnaire responses. CR/PR at III-1 n.2.

⁶⁶ CR/PR at Tables C-2 and C-3 & II-2.

⁶⁷ CR/PR at Table C-2.

⁶⁸ CR/PR at Table C-2.

⁶⁹ CR/PR at Table C-2.

⁷⁰ Subject imports' share of the U.S. market for refrigeration shelving, by quantity, increased from *** percent in 2006 to *** percent in 2007 and *** percent in 2008; it was *** percent in interim 2008 and *** percent in interim 2009. CR/PR at Table C-2. Nonsubject imports accounted for *** percent or less of the U.S. market over the period. CR/PR at Table C-2. ***. CR at IV-4, n.4.; PR at IV-2, n.4.

⁷¹ CR/PR at Table C-3.

⁷² CR/PR at Table C-3. The majority of U.S. producers' oven rack production is of standard nickel-plated oven racks, but they also produce "slide" oven racks and racks coated with porcelain. CR at I-13; PR at I-11. Hearing Tr. at 72 (Kara). The porcelain-coated racks and slide oven racks are higher valued than the standard nickel oven racks, but the markets for these products are limited. CR at VI-8; PR at VI-3; Hearing Tr. at 72-73 (Kara). Chinese producers currently produce the standard nickel-plated oven racks as well as slide oven racks, but they do not produce the porcelain-coated oven racks. Petitioners' Posthearing Brief at 15 & n.15, and Exhibit 17; Hearing Tr. at 109 (Gritton). Throughout this opinion, our references to nickel-plated oven racks include only the standard nickel-plated oven racks and not the higher value slide oven racks, which may also be nickel-plated.

⁷³ CR/PR at Table C-3.

⁷⁴ See CR/PR at Table C-3.

C. Interchangeability and Other Conditions of Competition

Refrigeration shelving and oven racks are generally produced to specific OEM design requirements. The record indicates that multiple Chinese producers have been qualified by OEMs to meet their manufacturing requirements for these products.⁷⁵ Once they are qualified, there is a high degree of interchangeability between domestically produced products and the subject imports.⁷⁶ All reporting U.S. producers and importers, as well as one purchaser, found domestically produced refrigeration shelving always to be interchangeable with the subject merchandise, while one purchaser reported that they were never interchangeable.⁷⁷ All reporting U.S. producers and purchasers found that domestically produced oven racks always were interchangeable with subject merchandise, one U.S. importer found that they were frequently interchangeable, and only one importer found that they were never interchangeable.⁷⁸

Petitioners indicate that, once a producer becomes qualified, the determining factor in purchasing decisions is price.⁷⁹ Electrolux acknowledges that price is a factor in its purchasing decisions regarding oven racks, but claims that “many other factors compare in importance, or may be even more important,” including quality, delivery capability, reliability of supply, and strategic business decisions.⁸⁰ Electrolux also states that non-price factors, including dual sourcing strategies, loyalty to long-term suppliers, and assurance of product and supply consistency, play decisive roles in purchasing decisions for oven racks.⁸¹

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 refrigeration shelving, while one importer reported that differences other than price were “frequently” a significant factor.⁸² All reporting U.S. producers and one importer indicated that differences other than price were “never” a significant factor in their firms’ sales of oven racks, while one importer reported that differences other than price were “frequently” a significant factor.⁸³ Accordingly, we find that price is an important consideration, although not the only consideration, when purchasers are choosing among competing suppliers of refrigeration shelving and oven racks.⁸⁴

VI. **MATERIAL INJURY BY REASON OF IMPORTS OF CERTAIN REFRIGERATION SHELVING FROM CHINA**⁸⁵

⁷⁵ Hearing Tr. at 28 (Gritton).

⁷⁶ CR at II-8-II-10; PR at II-7. As a Whirlpool representative stated during the preliminary staff conference, “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.” Conf. Tr. at 127 (Wessendorf).

⁷⁷ CR/PR at Table II-4.

⁷⁸ CR/PR at Table II-5.

⁷⁹ Hearing Tr. at 27-28 (Gritton).

⁸⁰ Electrolux’s Prehearing Brief at 5 & Hearing Tr. at 143-144 (Market) (discussing the five factors Electrolux examines when making its purchasing decisions for oven racks).

⁸¹ CR/PR at II-8, n.10 & Electrolux’s Prehearing Brief at 6.

⁸² CR/PR at Table II-6.

⁸³ CR/PR at Table II-7.

⁸⁴ When asked to list the top three factors considered when choosing among suppliers of refrigeration shelving and oven racks, 5 of 9 purchasers ranked “price” as their first or second most important factor, behind only “quality,” which 8 of 9 purchasers ranked as their first or second most important factor. CR/PR at Table II-2. Eight of 10 purchasers ranked “price” as a “very important” factor used in making purchasing decisions. CR/PR at Table II-3.

⁸⁵ 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
(continued...)

Based on the record in the final phase of these investigations, we find that an industry in the United States is materially injured by reason of imports of certain refrigeration shelving from China that Commerce has found are subsidized and sold in the United States at LTFV.

A. Volume of Subject Imports⁸⁶

The volume of subject imports declined from *** units in 2006 to *** units in 2007, then increased to *** units in 2008.⁸⁷ Subject import volume was *** units in interim 2008 and *** units in interim 2009.⁸⁸ Although subject import volume increased *** percent between 2006 and 2008, and was *** percent higher in interim 2009 than in interim 2008, apparent consumption declined by *** percent between 2006 and 2008 and was *** percent lower in interim 2009 than in interim 2008.⁸⁹

Subject imports gained *** percentage points of market share between 2006 and 2008 and *** percentage points of market share between the interim periods. These gains came *** at the expense of the domestic industry, which lost *** percentage points of market share between 2006 and 2008 and *** percentage points of market share between the interim periods.⁹⁰ As subject imports displaced domestic refrigeration shelving in the U.S. market, the ratio of subject imports to domestic production increased significantly, from *** percent in 2006 to *** percent in 2007 and *** percent in 2008, and was *** percent in interim 2008 and *** percent in interim 2009.⁹¹

Accordingly, we conclude that subject import volume is significant, both in absolute terms and relative to consumption and production in the United States, and that the increase in subject import volume and market share is also significant.

B. Price Effects of the Subject Imports

As addressed in section V.C. above, the record indicates that, once the suppliers are qualified by a purchaser, there is a high degree of interchangeability between subject imports and the domestic like product and that price is an important purchasing consideration.⁹² We note that one purchaser, when queried by Commission staff about domestic producer allegations of lost sales and lost revenues, confirmed that it switched its purchases from the domestic like product to subject imports due to price.⁹³

⁸⁵ (...continued)

are available preceding the filing of the petition. CR at IV-11; PR at IV-3. Consequently, we find that the subject imports of refrigeration shelving are not negligible under 19 U.S.C. § 1677(24).

⁸⁶ Because refrigeration shelving is 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.

⁸⁷ CR/PR at Table IV-3. We evaluate volume by quantity rather than value in these investigations. We typically rely on quantity-based measures of volume because value-based measures can be skewed by changes in the product mix and the fact that, for subject imports, the merchandise is sold at LTFV. The variations in the product mix in the scope of this case do not warrant a departure from past practice.

⁸⁸ CR/PR at Table IV-3.

⁸⁹ CR/PR at Tables IV-3 and C-2.

⁹⁰ CR/PR at Table IV-9.

⁹¹ CR/PR at Table IV-12.

⁹² See CR at II-9-11; PR at II-6-7; and CR/PR at Table II-2.

⁹³ CR at V-28; PR at V-6-7; and CR/PR at Table V-8. (*** agreed with all four of the lost sales allegations in which it was involved, totaling ***, although it stated that the prices that were alleged for the imports from China

(continued...)

The Commission obtained quarterly data on U.S. f.o.b. sales prices, delivered import prices, delivered U.S. purchase prices, and delivered Chinese purchase prices with respect to seven refrigeration shelving products, specifically Products 1, 2, 3, 4, 8, 9, and 10.⁹⁴ *** domestic producers and *** importers provided usable quarterly net U.S. f.o.b. selling price data for these products.⁹⁵ Pricing data on refrigerator shelving reported for 2006-2008 and January-March 2009 accounted for 16.1 percent of U.S. producer shipments and 13.6 percent of shipments of imports from China.⁹⁶ There were no pricing data, however, that allowed direct comparisons between domestic f.o.b. sales prices and importer f.o.b. sales prices for subject merchandise. Accordingly, we have only compared prices charged to purchasers for delivered subject merchandise with prices charged to purchasers for delivered domestic like product.⁹⁷ These direct price comparisons were limited to three pricing products (of the seven total refrigeration shelving products) and nine quarterly comparisons, due mainly to the fact that the industry is highly concentrated, with two U.S. producers accounting for about 90 percent of sales and three OEM purchasers accounting for about 90 percent of all purchases. These OEM purchasers are often the direct importers of the subject merchandise. Moreover, because refrigeration shelving is designed by specific OEM kitchen appliance producers for specific model applications, the seven pricing products that were selected for price comparisons account for only a small percentage of total sales.⁹⁸ Subject imports undersold the domestic like product in *** of the available comparisons.⁹⁹ Accordingly, we find subject import underselling of the domestic like product to be significant.

We have considered trends in refrigeration shelving prices over the period of investigation. The U.S. delivered purchase prices for all products but Product 8 were higher in the last quarter for which the Commission has data than in the first quarter.¹⁰⁰ Accordingly, we do not find that subject import underselling depressed prices for the domestic like product to a significant degree.

We have also considered the degree to which lower-priced subject imports prevented price increases, which otherwise would have occurred, to a significant degree. The domestic industry's cost of goods sold ("COGS") as a share of net sales remained relatively stable throughout the period of investigation, at *** percent in 2006, *** percent in 2007, and *** percent in 2008. COGS as a share of net sales, however, was *** percent in interim 2008 and *** percent in interim 2009.¹⁰¹ The rise in the domestic industry's COGS/sales ratio to its highest point in interim 2009 coincided with the highest levels of market penetration by subject imports over the period examined, which provides some evidence that by the end of the period the domestic producers were unable to raise their prices sufficiently to cover increased costs due to the significant volumes of lower-priced subject imports entering the U.S. market.

⁹³ (...continued)

were about 50 percent lower than the prices that it actually paid).

⁹⁴ Not all firms reported prices for all products for all quarters.

⁹⁵ CR at V-6; PR at V-4.

⁹⁶ CR/PR at V-6; PR at V-4.

⁹⁷ We have not compared prices charged to importers of subject merchandise with prices charged to purchasers for delivered domestic product, because the two types of transactions are arguably at different stages in the chain of distribution. CR at V-26, n.14; PR at V-6, n.14.

⁹⁸ The direct pricing comparisons were limited to pricing products 1, 9, and 10, and all involved price comparisons for the last quarter of 2006 and the first two quarters of 2007. CR/PR at Tables V-1, V-9, V-10.

⁹⁹ CR at V-26, n.14; PR at V-6, n.14. Three purchasers have also reported that the Chinese provide tooling at discounted prices to their customers, which is another way, besides lower prices, to undercut domestic sales negotiations. CR at V-5; PR at V-3.

¹⁰⁰ See CR/PR at Tables V-1-4, V-8-10. For Product 8, only two quarterly comparisons of U.S. delivered purchase prices, involving limited quantities, were available. CR/PR at Table V-8.

¹⁰¹ CR/PR at Table C-2.

Nevertheless, because the domestic industry's COGS as a share of net sales remained stable from 2006 through 2008, we find that subject imports did not suppress domestic price increases to a significant degree during the period examined.¹⁰²

In sum, the record indicates significant underselling by subject imports during the period examined. Moreover, the confirmed lost sales of refrigeration shelving to lower priced subject imports demonstrate that underselling by subject imports contributed significantly to the *** percentage points in market share that subject imports gained at the expense of the domestic industry between 2006 and 2008 and the further *** percentage points in market share in interim 2009 relative to interim 2008 that subject imports gained at the expense of the domestic industry. Accordingly, we find that subject imports have had significant adverse effects on domestic prices during the period of investigation.

C. Impact of the Subject Imports¹⁰³

We have examined the performance indicators in the trade and financial data for the domestic industry producing refrigeration shelving. These data declined throughout the period examined, with the steepest declines occurring in 2008 and interim 2009.

The domestic industry's market share declined by *** percentage points from 2006 to 2008 and was *** percentage points lower in interim 2009 than in interim 2008. The industry's share of apparent U.S. consumption by quantity declined from *** percent in 2006 to *** percent in 2007 and *** percent in 2008; it was *** percent in interim 2008 and *** percent in interim 2009.¹⁰⁴ At the same time, its U.S. shipments declined *** percent between 2006 and 2008, from *** units in 2006 to *** units in 2007 and *** units in 2008; it was *** units in interim 2008 and *** units in interim 2009.¹⁰⁵ The domestic industry's net sales quantity declined *** percent between 2006 and 2008, from *** units in 2006 to *** units in 2007 and *** units in 2008; it was *** units in interim 2008 and *** units in interim 2009.¹⁰⁶

The domestic industry's production, capacity, and capacity utilization all declined *** over the period examined. Specifically, capacity declined by *** percent between 2006 and 2008, from *** units

¹⁰² Commissioner Williamson does not join this paragraph. He finds that, while the industry's COGS/sales ratio was fairly steady from 2006 to 2008, there is some indication that lower-priced subject imports suppressed domestic prices to a significant degree toward the end of the period. The COGS/sales ratio was *** percent in 2006, *** percent in 2007, and *** percent in 2008; however, it was *** percent in interim 2009 as compared to *** percent in interim 2008. The rise in this ratio to its highest point in interim 2009 coincided with the highest levels of market penetration by subject imports over the period examined, which indicates that by the end of the period the domestic producers were unable to raise their prices sufficiently to cover increased costs due to the significant volumes of lower-priced subject imports.

¹⁰³ We have considered the magnitude of the dumping margins found by Commerce. Commerce did not differentiate between refrigeration shelving and oven racks in defining the scope of the subject products. In its antidumping investigation concerning subject imports from China, Commerce found a 44.77 percent dumping margin for New King Shan (Zhu Hai) Co., Ltd., Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia), Hangzhou Dunli Industry Co., Ltd., and Jiangsu Weizi Group Co.; a 95.99 percent dumping margin for Guangdong Wireking Housewares & Hardware Co., Ltd.; and a 95.99 percent PRC-wide rate. 74 F.R. at 36656. The Commission has also considered the magnitude of the countervailable subsidies found by Commerce. 19 U.S.C. § 1677(7)(C)(iii). Commerce found a subsidy rate of 170.82 percent for Asber Enterprises, Co., Ltd.; 149.91 percent for Changzhou Yixiong Metal Products, Co., Ltd., Foshan Winleader Metal Products Co., Ltd., Kingsun Enterprises Group Co., Ltd., Yuyao Hanjun Metal Work Co./Yuyao Hanjun Metal Products Co., Ltd., and Zhongshan Iwatani Co., Ltd.; and 13.30 percent for Guangdong Wireking Housewares & Hardware Co., Ltd. (formerly known as Foshan Shunde Wireking Housewares & Hardware Co., Ltd.) and all others. 73 Fed. Reg. at 37012.

¹⁰⁴ CR/PR at Table C-2.

¹⁰⁵ CR/PR at Table C-2.

¹⁰⁶ CR/PR at Table C-2.

in 2006 to *** units in 2007 and *** units in 2008, and remained level between the interim periods at *** units,¹⁰⁷ while production declined *** percent, from *** units in 2006 to *** units in 2007 and *** units in 2008, and was *** units in interim 2008 and *** units in interim 2009.¹⁰⁸ Despite declining capacity, capacity utilization declined from *** percent in 2006 to *** percent in 2007 and *** percent in 2008; it was *** percent in interim 2008 and *** percent in interim 2009.¹⁰⁹

A number of employment-related indicators, including the average number of production-related workers, hours worked, wages paid, and productivity, declined each year from 2006 to 2008 and between the interim periods.¹¹⁰ The domestic industry's average unit labor costs rose by *** percent from 2006 to 2008 and were *** percent higher in interim 2009 than in interim 2008.¹¹¹ Hourly wages increased by *** percent from 2006 to 2008 and by *** percent between the interim periods.¹¹²

Almost all of the domestic industry's financial performance indicators deteriorated during the period examined. The industry's net sales value declined *** percent over the period, from \$*** in 2006 to \$*** in 2007 and \$*** in 2008; it was \$*** in interim 2008 and \$*** in interim 2009.¹¹³ As discussed previously, the COGS/sales ratio increased irregularly during the period and was at its highest level in interim 2009 at *** percent.¹¹⁴

The domestic industry's operating income and operating margins were both *** throughout the period. Operating income declined from *** in 2006 to *** in 2007, but improved *** to *** in 2008; it was *** in interim 2008 and *** in interim 2009.¹¹⁵ The industry's ratio of operating income to net sales declined from *** percent in 2006 to *** percent in 2007 and *** percent in 2008; it was *** percent in interim 2008 and *** percent in interim 2009.¹¹⁶ The industry's capital expenditures fell *** by *** percent between 2006 and 2008 and were *** percent lower in interim 2009 than in interim 2008.¹¹⁷

Respondents GE/Whirlpool argue that any harm to the domestic industry was not caused by subject imports, but by the downturn in demand for refrigeration shelving due to the economic recession and the general decline of the U.S. housing and construction sectors.¹¹⁸ We reject that argument. We find that, although the decline in apparent U.S. consumption during the period examined had a negative impact on the domestic industry, that impact was exacerbated by significant volumes of low-priced subject imports entering the market and displacing domestic sales. In addition, the percentage drop in domestic producers' shipments and net sales exceeded the decline in apparent consumption. Finally,

¹⁰⁷ CR/PR at Table C-2.

¹⁰⁸ CR/PR at Table C-2.

¹⁰⁹ CR/PR at Table C-2.

¹¹⁰ CR/PR at Table C-2. The average number of production workers declined from *** in 2006 to *** in 2008 and was *** in interim 2008 and *** in interim 2009. Hours worked decreased from *** in 2006 to *** in 2008; they were *** in interim 2008 and *** in interim 2009. Wages paid decreased from \$*** in 2006 to \$*** in 2008; they were \$*** in interim 2008 and \$*** in interim 2009. Productivity declined from *** units per hour in 2006 to *** units per hour in 2008 and was *** units per hour in interim 2008 as compared to *** units per hour in interim 2009. CR/PR at Table C-2.

¹¹¹ CR/PR at Table C-2. Unit labor costs rose from \$*** in 2006 to \$*** in 2008.

¹¹² CR/PR at Table C-2. Hourly wages increased from \$*** in 2006 to \$*** in 2008, and were \$*** in interim 2008 as compared to \$*** in interim 2009.

¹¹³ CR/PR at Table C-2.

¹¹⁴ CR/PR at Table C-2.

¹¹⁵ CR/PR at Table C-2.

¹¹⁶ CR/PR at Table C-2.

¹¹⁷ CR/PR at Table C-2.

¹¹⁸ See GE/Whirlpool's Prehearing Brief at 5.

concurrent with declining demand, subject imports increased significantly, capturing significant market share directly from the domestic industry. Thus, declining domestic consumption does not sufficiently explain the negative trends in industry performance.^{119 120}

CONCLUSION

For the foregoing reasons, we find that the domestic industry producing certain refrigeration shelving is materially injured by reason of subject imports of certain refrigeration shelving from China found by Commerce to be sold in the United States at less than fair value and subsidized by the Government of China.

VII. THREAT OF MATERIAL INJURY BY REASON OF IMPORTS OF CERTAIN OVEN RACKS FROM CHINA¹²¹

Based on the record in the final phase of these investigations, we find that an industry in the United States is threatened with material injury by reason of imports of certain oven racks from China that Commerce has found are subsidized and sold in the United States at LTFV.¹²²

¹¹⁹ We note that nonsubject imports were not a significant factor in the U.S. market during the period examined -- the absolute volume of nonsubject imports decreased over the period of investigation and, at its highest level, accounted for only *** percent of the U.S. market. CR/PR at Table C-2.

¹²⁰ With respect to the analysis required by the Federal Circuit in Bratsk and Mittal, Commissioner Pinkert notes that, although refrigerator shelving is a highly customized product, purchasers report that refrigerator shelving from different suppliers is highly substitutable. It may therefore constitute a commodity product for purposes of this analysis. CR/PR at II-9-10 & n.11; PR at II-6, & n.11, CR/PR at Table II-4, Table II-6. He finds, however, that price-competitive nonsubject imports are not a significant factor in the U.S. market. Nonsubject imports decreased over the period of investigation and, at their highest level, accounted for only *** percent of the market. CR/PR at Table IV-2, Table C-2.

¹²¹ No party argues that negligibility is an issue in these investigations. Subject imports of certain oven racks from China 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).

¹²² Vice Chairman Pearson joins Sections VII.A.1, B.1., and C.1. in finding no material injury by reason of subject imports of certain oven racks from China. However, Vice Chairman Pearson does not join in Sections VII.A.2., B.2., or C.2. and, instead, finds no threat of material injury.

A. Volume of the Subject Imports¹²³

1. Analysis of Material Injury by Reason of Subject Imports

The volume of subject imports rose irregularly from 2006 to 2008. Subject imports decreased from *** units in 2006 to *** units in 2007 before increasing to *** units in 2008.¹²⁴

Because apparent U.S. consumption declined from 2006 to 2008, subject import market share increased notably. Apparent U.S. consumption declined by *** percent from 2006 to 2008, while U.S. shipments of subject imports increased by *** percent. Consequently, subject import market share increased irregularly from *** percent in 2006 to *** percent in 2008. Even in the face of decreased demand and the imposition of provisional duties, subject import market share went from *** percent in interim 2008 to *** percent in interim 2009.¹²⁵ There were no nonsubject imports in the U.S. market and thus all of the market share gained by the subject imports was lost by the domestic industry. The domestic industry's share of the U.S. market fell by *** percentage points from 2006 to 2008, from *** percent to *** percent. Thus, although the domestic industry gained *** percentage points of market share in 2007, it lost a striking *** percentage points of market share in 2008. The domestic industry's share of the U.S. market was *** percentage points lower in interim 2009 than in interim 2008.¹²⁶ Subject imports also increased over the period examined relative to domestic production.¹²⁷

Based on the above information, we find the increase in subject imports, both on an absolute basis and relative to apparent U.S. consumption and production, to be significant.

¹²³ Since 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.

¹²⁴ CR/PR at Table IV-4. Consistent with our customary practice, we have relied on quantity-based measures of volume in these investigations. We typically rely on quantity-based measures of volume because (1) value-based measures can be skewed by changes of product mix and (2) for subject imports, the unit values are of merchandise sold at LTFV. Electrolux argues that we should rely principally on value-based measurements of volume in light of the potential distortions from variations in configuration and value of oven racks. See Electrolux's Posthearing Brief at 10. Although the Commission has relied on value-based measurements in rare instances in past investigations, those investigations involved variations in value among articles within the scope and/or domestic like product that were much larger than those present here. See Ball Bearings from China, Inv. No. 731-TA-989 (Final), USITC Pub. 3593 at 11 (Apr. 2003); Outboard Engines from Japan, Inv. No. 731-TA-1069 (Final), USITC Pub. 3752 at 24-27 & n.175 (Feb. 2005); Pneumatic Directional Control Valves from Japan, Inv. No. 731-TA-988 (Preliminary), USITC Pub. 3491 at 12 n.87 and I-4 (Mar. 2002); but see Color Televisions from China, Inv. No. 731-TA-1034 (Final), USITC Pub. 3695 at 7 n.36 (May 2004).

¹²⁵ CR/PR at Table C-3. Provisional countervailing duties were imposed on January 7, 2009; provisional antidumping duties were imposed on March 5, 2009. See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 74 Fed. Reg. 683, 693 (January 7, 2009) and Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 9591, 9603 (March 5, 2009).

¹²⁶ CR/PR at Table C-3.

¹²⁷ CR/PR at Table IV-13. The ratio of subject imports to U.S. production increased irregularly from *** percent in 2006 to *** percent in 2008 and was *** percent in interim 2008 and *** percent in interim 2009.

2. Analysis of Threat of Material Injury by Reason of Subject Imports^{128 129}

As explained below, we find that imports of the subject merchandise into the United States, in the absence of antidumping and countervailing duty orders, will continue to increase their market penetration at the expense of the domestic industry and despite declining apparent U.S. consumption.

At the outset, we note that subject imports grew rapidly on both an absolute and a relative basis from 2006 to 2008. In interim 2009, despite the imposition of provisional duties and although subject import volume declined in absolute terms as demand declined significantly, subject import market share continued to climb to its highest level of the period.¹³⁰

The reporting Chinese producers have substantial production capacity, specifically *** units in 2008, which is an increase from *** units in 2006.¹³¹ With capacity utilization in 2008 of only *** percent, Chinese producers had unused production capacity of *** units, equivalent to *** percent of apparent U.S. consumption that year. The Chinese oven rack industry's capacity utilization rate fell during the period of investigation and was lower in interim 2009 than in interim 2008.¹³² These data indicate that the Chinese oven rack industry can increase production and exports.

The Chinese oven rack industry has demonstrated a strong and growing interest in the U.S. market. Exports to the United States increased from *** oven racks in 2006 to *** in 2008, while exports to all other markets declined from *** to *** over the same period.¹³³ As a share of total Chinese producer shipments, exports to the United States increased from *** percent in 2006 to *** percent in

¹²⁸ Vice Chairman Pearson does not join this section. See Dissenting Views of Vice Chairman Daniel R. Pearson.

¹²⁹ We have taken into consideration the nature of the subsidies Commerce found to be countervailable, pursuant to statutory threat factor (I). Commerce found that the exemption/benefit provided by the income tax reduction for export-oriented Foreign-Invested Enterprises ("FIEs") and the exemption from local income taxes for productive and/or export-oriented FIEs were contingent on export performance and therefore specific under section 771(5A)(B) of the Tariff Act of 1930, as amended. 74 Fed. Reg. 37012 (July 27, 2009) (Commerce Decision Memorandum dated July 20, 2009). We note that there are no countervailing duty or antidumping duty orders or investigations concerning the subject merchandise in third-country markets. CR at VII-10, PR at VII-5.

¹³⁰ CR/PR at Table C-3.

¹³¹ Petitioners argue that Chinese capacity and excess capacity are greater than reflected in the Commission's data because not all Chinese producers responded to the Commission's questionnaires. Petitioners' Posthearing Brief at 14-15. Electrolux responds that qualification requirements limit the number of Chinese producers that can export oven racks to the United States and that qualification of a producer can take up to a year. Electrolux's Posthearing Brief at 12. Electrolux qualified and purchased oven racks from *** Chinese producers during 2006-2008. CR at VII-4, n.7; PR at VII-4, n.7. Six producers of oven racks responded to the Commission's questionnaire, namely Guangdong Wireking, Hangzhou Dunli, Jiangsu Weixi, New King Shan, Marmon, and Yuyao Hanjun. Two of those firms, Guangdong Wireking and Yuyao Hanjun, did not participate in the preliminary phase of these investigations. Two other firms (***) that responded to the preliminary questionnaires did not submit questionnaires in the final phase of these investigations, so their data are not in our final staff report. Thus, the data regarding the industry in China are likely somewhat understated. CR at VII-2-3, n.4; PR at VII-2, n.4. We also recognize, however, that qualification requirements may limit imminent additional suppliers of Chinese oven racks. Given these considerations, we have relied on the available data on the Chinese industry in these investigations. We note that the 2008 exports to the United States of *** units reported by the six responding Chinese firms are comparable to the reported 2008 U.S. imports from China of *** units. Compare CR/PR Table IV-4 (imports) with Table VII-4 (exports).

¹³² CR/PR at Table VII-4 (data on Chinese industry) and Table IV-10 (apparent U.S. consumption). As the Chinese producers added capacity over the period of investigation, the industry's capacity utilization rate declined sharply from *** percent in 2006 to *** percent in 2008; capacity utilization was *** percent in interim 2008 and *** percent in interim 2009. CR/PR at Table VII-4.

¹³³ CR/PR at Table VII-4.

2008.¹³⁴ Although exports to the United States were somewhat lower in interim 2009 than in interim 2008, this decrease may be at least in part due to the filing of the petitions, given that two of the responding Chinese producers reported that their U.S. sales had been affected by the imposition of provisional duties.¹³⁵ Thus, the record indicates that the Chinese industry has a strong and generally growing interest in the U.S. market.

Apparent U.S. consumption was *** percent lower in interim 2009 than in interim 2008. Although weak demand may dampen increases in subject import volume in absolute terms in the imminent future, we find that subject imports are likely to increase relative to apparent U.S. consumption, as they did from 2006 to 2008 and from interim 2008 to interim 2009.

Subject imports increasingly captured sales from the domestic industry over the full years of the period.¹³⁶ Most of the lost sales were of nickel-plated oven racks, which have lower unit values than porcelain or slide racks.¹³⁷ Chinese producers do not sell porcelain racks,¹³⁸ and ***.¹³⁹ SSW, which accounted for *** percent of U.S. oven rack production in 2008,¹⁴⁰ did produce porcelain oven racks, and ***.¹⁴¹ Accordingly, SSW's ***. The market for the higher-value porcelain racks, however, is limited.¹⁴² As discussed in greater detail in our pricing analysis, subject imports recently have begun to compete for sales in the slide rack segment of the U.S. market. Although slide racks represent a small segment of the market, they command a higher price than standard nickel-plated racks.¹⁴³

In light of these patterns, we find that the Chinese producers of subject merchandise are likely to continue to displace domestic sales of nickel-plated oven racks. Notwithstanding lower apparent U.S. consumption in interim 2009, we find that the Chinese producers' increasing interest in the U.S. market, their low capacity utilization, their increasing concentration on the U.S. market, and their interest in

¹³⁴ CR/PR at Table VII-4.

¹³⁵ CR/PR at Table VII-4 & n. 1. Although the reporting producers project lower capacity and exports to the United States in 2009 and 2010, we have not placed much weight on those data. First, two of the four producers, ***, revised their projected data to zero ***. These data are therefore not indicative of what would happen in the U.S. market in the imminent future in the absence of antidumping or countervailing duties. The statute, 19 U.S.C. § 1677(7)(F)(ii), indicates that the basis for our determination is whether "material injury by reason of subject imports would occur unless an order is issued," not what would happen if suspension of liquidation continues. The statute contemplates that the pendency of the investigation may have effects on behavior in the marketplace, and those effects may be discounted by the Commission. See 19 U.S.C. § 1677(7)(I). Further, these projections are inconsistent with the data showing increasing exports to the United States over the period examined. Finally, the group of responding Chinese producers in the preliminary phase of these investigations (which differed somewhat from the group of producers that responded in the final phase) projected 2009 exports to the United States at levels that were *** units), but comparable to, those in 2008 (*** units). CR/PR at Table VII-3, Preliminary Confidential Staff Report, Memorandum INV-FF-113 (Sept. 8, 2008). The projection for 2008 provided in the preliminary phase was lower than the actual data obtained in this final phase, which showed exports of *** units in 2008. CR/PR at Table VII-4.

¹³⁶ CR/PR at Table II-1. This trend was especially pronounced in the lower-cost, higher-volume portion of the market.

¹³⁷ Hearing Tr. at 50 (Hudgens).

¹³⁸ Hearing Tr. at 109 (Gritton).

¹³⁹ Petitioners' Posthearing Brief, Responses to Commissioner Questions at 14.

¹⁴⁰ CR/PR at Table III-3.

¹⁴¹ Petitioners' Posthearing Brief, Responses to Commissioner Questions at 14. SSW's sales of porcelain racks increased from *** units in 2006 to *** units in 2007, before declining to *** units in 2008. SSW's sales of nickel-plated racks fell steadily during the period from *** units in 2006 to *** units in 2007 and *** units in 2008. Id.

¹⁴² Hearing Tr. at 101-102 (Rosenthal).

¹⁴³ Petitioners' Posthearing Brief at 15& n.15, and Exhibit 17.

expanding into the U.S. market for higher-value oven racks demonstrate that they will continue to capture additional market share in the imminent future.¹⁴⁴

B. Price Effects of the Subject Imports

1. Analysis of Material Injury by Reason of Subject Imports

As explained above in the discussion of conditions of competition, the domestic like product and the subject imports are generally interchangeable, and price is an important consideration in purchasing decisions. Oven racks are produced for specific OEM models,¹⁴⁵ and purchasers tend to buy a given rack from only a few qualified suppliers. One of the major purchasers, Electrolux, maintains that it prefers to dual-source every component it purchases.¹⁴⁶

The Commission gathered quarterly data on U.S. f.o.b. sales prices, delivered import prices, delivered U.S. purchase prices, and delivered Chinese purchase prices with respect to five oven rack products (Products 5, 6, 7, 11, and 12). The pricing data accounted for 19 percent of U.S. producers' U.S. shipments of oven racks and 28.6 percent of U.S. shipments of oven racks imported from China during 2006-2008 and January-March 2009.¹⁴⁷ Price comparisons were limited in several categories. Therefore, we have considered comparisons of both f.o.b. sales prices and delivered purchase prices of U.S. and Chinese oven racks.¹⁴⁸

The price comparisons all involved nickel-plated oven racks, not the higher-value slide or porcelain oven racks. Subject imports undersold the domestic like product in 10 out of 30 available price comparisons. All of the comparisons in which subject imports were priced lower than the domestic like product were in the last two quarters of 2007 or in 2008.¹⁴⁹ Subject imports undersold the domestic like product in 7 out of 11 comparisons in 2008.¹⁵⁰ Electrolux tacitly acknowledged the existence of underselling by subject imports in 2008 by arguing at the hearing that the domestic producers kept their

¹⁴⁴ U.S. importers' inventories of subject imports increased irregularly *** from 2006 to 2008 and were lower in interim 2009 than in interim 2008. CR/PR at Table VII-8. Inventories of the subject merchandise held by the subject producers were at relatively modest levels relative to production and shipments throughout the period of investigation. CR/PR at Table VII-4.

¹⁴⁵ CR/PR at II-1, n.4.

¹⁴⁶ CR at II-8, n.10; PR at II-6, n.10. Petitioners provide at least two examples in which Electrolux did not dual-source a product. Petitioners' Posthearing Brief, Responses to Commissioners' Questions, Exhibit 2 and Exhibit 7. Electrolux representatives stated in a meeting that the reason they moved business from SSW to China was price. Petitioners' Posthearing Brief, Responses to Commissioners' Questions, Exhibits 7 and 8.

¹⁴⁷ CR at V-6; PR at V-4.

¹⁴⁸ We have not compared prices charged to importers of subject merchandise to prices charged to purchasers for delivered domestic product because the two types of transactions are arguably at different stages in the chain of distribution. CR at V-26, n.14; PR at V-6, n.14.

¹⁴⁹ With respect to Product 5, subject imports were priced higher than the domestic like product in two instances. For Product 6, with respect to f.o.b. sales prices, there were two instances of underselling by subject imports in the last quarter of 2007 and the first quarter of 2008. Also for Product 6, delivered purchase prices of subject imports were higher than delivered purchase prices for the domestic like product in six comparisons in 2006 and 2007 and were lower than domestic prices in all four available comparisons in 2008. For Product 7, delivered purchase prices for the subject imports were higher than the delivered domestic purchase prices in five comparisons and lower than the delivered domestic purchase prices in four instances. There were no direct price comparisons available with respect to Product 11. For Product 12, subject imports were priced higher than the domestic like product in seven comparisons. CR/PR at Figures V-5, V-6, V-7, V-11, and V-12 (all comparing prices for nickel-plated oven racks).

¹⁵⁰ CR/PR at Figures V-5, V-6, V-7, V-11, and V-12 (all comparing prices for nickel-plated oven racks).

prices too high after wire rod costs declined in 2008 and by stating that, to the extent there was underselling, it was limited to 2008.¹⁵¹

Although the evidence is somewhat mixed, the record shows that tooling costs and credit terms are increasingly the subject of negotiation between buyers and sellers. Three purchasers have reported that Chinese producers provide tooling at discounted prices to their customers, which is another way, besides lower per unit prices, to undercut domestic prices.¹⁵²

We find that there was mixed underselling and overselling of the domestic like product by the subject imports and that the underselling occurred primarily toward the end of the period examined, when subject import volume and market share increased.

Prices for both the domestic like product and the subject imports generally increased over the period.¹⁵³ Consequently, we conclude that the subject imports did not have significant price-depressing effects.

The domestic industry's ratio of COGS to net sales was at or close to 100 percent throughout the period of investigation. The ratio was *** percent in 2006, *** percent in 2007, *** percent in 2008, *** percent in interim 2008, and *** percent in interim 2009.¹⁵⁴

As import volume increased in 2008, the domestic industry increasingly relied on sales of higher-value oven racks that were not supplied by the Chinese producers, resulting in higher unit sales values overall for domestic producers' sales and an improved COGS/sales ratio. *** sold increased volumes of higher-value porcelain oven racks and decreased volumes of lower-value nickel racks.¹⁵⁵ In light of these facts, the record does not support a conclusion that the subject imports significantly suppressed prices during the period of investigation.

2. Analysis of Threat of Material Injury by Reason of Subject Imports¹⁵⁶

The record indicates that, as subject imports gain market share in the imminent future, the domestic industry will be unable to sustain its strategy of ceding market share to maintain price levels.¹⁵⁷ The Chinese industry will continue to compete on the basis of price to increase its market share in the U.S. market, even if apparent U.S. consumption remains depressed. The trend toward price underselling by subject imports seen in 2008 will likely continue in the imminent future. Thus, as explained below, we find that low prices for subject imports will likely negatively affect prices for the domestic like product by suppressing them to a significant degree.

¹⁵¹ Hearing Tr. at 149 (Hyde and Schaefer). Electrolux's Posthearing Brief at 3.

¹⁵² CR at V-5; PR at V-3. The record also shows that, in order to obtain sales, U.S. producers have *** See Petitioners' Posthearing Brief at Exhibit 1, p. 9 and Exhibit 11.

¹⁵³ CR/PR at Figures V-5, V-6, V-7, V-11, and V-12.

¹⁵⁴ CR/PR at Table VI-3. The principal raw material used in producing oven racks (as well as refrigeration shelving) is carbon or stainless steel wire. The cost of wire rod, which is used to make wire, increased irregularly from \$495 per short ton in January 2005 to a peak of \$956 per short ton in August 2008, and then decreased to \$525 per short ton in April 2009. CR/PR at V-1. Respondents argue that the domestic industry should have reduced its prices when wire rod prices began to decrease in September 2008. Hearing Tr. at 149 (Hyde and Schaefer). The statute focuses on whether the subject imports are having significant adverse effects on domestic prices. It does not authorize the Commission to assume there are benchmark prices that the domestic industry may not exceed. We also note that the domestic industry was unprofitable throughout the period of investigation and that it has acknowledged a business strategy of ceding market share in order to maintain price. CR/PR at Table C-2 & Hearing Tr. at 49 (Hudgens).

¹⁵⁵ CR at VI-7-8; PR at VI-2-3.

¹⁵⁶ Vice Chairman Pearson does not join this section. See Dissenting Views of Vice Chairman Daniel R. Pearson.

¹⁵⁷ Hearing Tr. at 71 (Rosenthal)

The domestic industry increasingly relied on sales of higher-value porcelain oven racks to avoid direct subject import competition.¹⁵⁸ The market for those products, however, is limited.¹⁵⁹ Accordingly, the domestic industry will not be able to continue to improve total net sales value by substituting higher-value sales for losses to subject imports at the low end of the market. Further, there is evidence on the record that Chinese producers have begun to price aggressively to win sales of higher-value slide oven racks.¹⁶⁰ The loss of those sales will put pressure on domestic producers' net sales, which is already evident in the interim 2009 data. Even with higher unit values, total net sales (by value) were *** percent lower in interim 2009 than in interim 2008, in contrast to an increase in total net sales of *** percent from 2006 to 2008.¹⁶¹

As the net sales value and domestic sales volume decline, the industry is likely to experience rising cost/sales ratios and rising per-unit costs. The domestic industry will not be able to raise prices to meet the increases in per-unit costs and will thus be exposed to significant price suppression by way of a cost-price squeeze.

We conclude that, in the imminent future, the aggressive price competition demonstrated by subject imports in 2008 in both nickel-plated racks and in higher valued slide racks will continue. As domestic sales deteriorate and per-unit costs increase, the domestic industry will experience significant price suppression.

C. Impact of the Subject Imports on the Domestic Industry¹⁶²

1. Analysis of Material Injury by Reason of Subject Imports

Over the period examined, the domestic industry was faced with price-based competition from subject imports in a severely declining market. The trends in the domestic industry's financial performance reflect sharply lower output and market share as well as improved – but still negative – operating margins.

Notwithstanding increased capacity from 2006 to 2007, the industry's output declined sharply during the period of investigation.¹⁶³ Production decreased from *** units in 2006 to *** units in 2007

¹⁵⁸ Petitioners' Posthearing Brief, Responses to Commissioners Questions at 14.

¹⁵⁹ Hearing Tr. at 51 (Hudgens).

¹⁶⁰ Petitioners' Posthearing Brief, Responses to Commissioner Questions, Exhibit 17. ***.

¹⁶¹ CR/PR at Table C-3.

¹⁶² We have considered the magnitude of the dumping margins found by Commerce. Commerce did not differentiate between refrigerator shelving and oven racks in defining the subject products. In its antidumping investigation concerning subject imports from China, Commerce found a 44.77 percent dumping margin for New King Shan (Zhu Hai) Co., Ltd., Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia), Hangzhou Dunli Industry Co., Ltd., and Jiangsu Weizi Group Co.; a 95.99 percent dumping margin for Guangdong Wireking Housewares & Hardware Co., Ltd.; and a 95.99 percent PRC-wide rate. 74 F.R. at 36656. We also considered the magnitude of countervailable subsidies. 19 U.S.C. § 1677(7)(C)(iii). Commerce found a subsidy rate of 170.82 percent for Asber Enterprises, Co., Ltd.; 149.91 percent for Changzhou Yixiong Metal Products, Co., Ltd., Foshan Winleader Metal Products Co., Ltd., Kingsun Enterprises Group Co., Ltd., Yuyao Hanjun Metal Work Co./Yuyao Hanjun Metal Products Co., Ltd., and Zhongshan Iwatani Co., Ltd.; and 13.30 percent for Guangdong Wireking Housewares & Hardware Co., Ltd. (formerly known as Foshan Shunde Wireking Housewares & Hardware Co., Ltd.) and all others. 73 Fed. Reg. at 37012.

¹⁶³ The domestic industry's capacity increased from *** oven racks in 2006 to *** oven racks in 2007. ***. ***.

and *** units in 2008.¹⁶⁴ Capacity utilization declined from *** percent in 2006 to *** percent in 2007 and *** percent in 2008.¹⁶⁵

The industry's U.S. shipments and total shipments fell during each year of the period of investigation. The most significant decrease in the domestic industry's shipment levels was from 2007 to 2008, when shipments to the U.S. market declined by *** percent from *** in 2007 to *** in 2008.¹⁶⁶ Unit values of U.S. shipments and exports increased over the period of investigation.¹⁶⁷ U.S. producers' inventories declined irregularly from 2006 to 2008 on an absolute basis, but increased slightly relative to production and shipments.¹⁶⁸ Net sales measured by quantity decreased from 2006 to 2008 and were lower in interim 2009 than in interim 2008.¹⁶⁹

The combination of declining shipments and sales by the domestic industry and rising volumes of subject imports caused the industry's market share to decline irregularly from *** percent in 2006 to *** percent in 2008.¹⁷⁰ The domestic industry lost *** percentage points of market share in 2008, when underselling was most prevalent and subject import volume increased.¹⁷¹ Its market share was *** percent in interim 2008 and *** percent in interim 2009.¹⁷²

The declines in the domestic industry's market share were caused by pricing and volume pressure from subject imports. The data on increases in purchases of subject imports in place of domestically produced oven racks,¹⁷³ as well as evidence on the record characterizing domestic prices as too high,¹⁷⁴ reflect the price pressure that caused the domestic industry to lose market share to subject imports. Given faltering demand, limited customers, and the tendency of purchasers to buy from only a few suppliers at a time, this pricing pressure was enough to cause purchasers to switch to subject imports, which resulted in lost sales and market share for the domestic industry. The record indicates that although the domestic industry was able to sustain or even raise its prices, it did so at the expense of market share.^{175 176}

Although the domestic industry's output was deteriorating, employment indicators were generally stable from 2006 to 2008, with the exception of productivity. The number of production and related workers increased slightly from 2006 to 2008; it decreased between interim 2008 and interim 2009.¹⁷⁷ Hourly wages increased from 2006 to 2007, before decreasing slightly in 2008; they increased between

¹⁶⁴ CR/PR at Table III-7.

¹⁶⁵ CR/PR at Table III-7.

¹⁶⁶ CR/PR at Table III-11, Table C-3. Domestic producers' U.S. shipments were *** in 2006.

¹⁶⁷ CR/PR at Table III-11.

¹⁶⁸ CR/PR at Table III-15.

¹⁶⁹ CR/PR at Table VI-3.

¹⁷⁰ CR/PR at Table C-3.

¹⁷¹ CR/PR at Table C-3.

¹⁷² CR/PR at Table C-3.

¹⁷³ Purchases of domestic oven racks fell from *** units in 2006 to *** units in 2008, while purchases of subject imports increased from *** units in 2006 to *** units in 2008. CR/PR at Table II-1.

¹⁷⁴ Petitioners' Posthearing Brief, Exhibit 2.

¹⁷⁵ Hearing Tr. at 49 (Hudgens)

¹⁷⁶ Vice Chairman Pearson does not join the majority in its finding that pricing pressures caused declines in the domestic industry's market share and lost sales. See Dissenting Views of Vice Chairman Daniel R. Pearson at Section I.B.

¹⁷⁷ The number of production and related workers increased from *** in 2006 to *** in 2007, and then declined to *** in 2008; it was *** in interim 2008 and *** in interim 2009. CR/PR at Table III-18.

interim 2008 and interim 2009.¹⁷⁸ Productivity declined steadily from 2006 to 2008 and decreased between interim 2008 and interim 2009.¹⁷⁹

The domestic industry ***, although the *** over the period. The industry's operating income margin improved from *** in 2006 to *** in 2007 and *** percent in 2008. It was *** in interim 2008 and *** in interim 2009.¹⁸⁰ The industry's absolute *** were *** in 2006, *** in 2007, and *** in 2008.¹⁸¹

The domestic industry's improved operating performance over the period examined is a function of higher unit values. The industry was able to obtain higher prices, albeit on lower quantities of sales.¹⁸² The higher prices reflected increased sales of higher-value products, porcelain oven racks and slide racks, while the lower quantities reflected decreased sales of lower-value nickel oven racks.¹⁸³ We find that SSW shifted its product mix away from nickel-plated oven racks because of pressure from subject imports but note that the Chinese industry has begun to compete on price in order to gain sales of certain higher-value oven racks.¹⁸⁴

In light of the foregoing, we do not find the causal link necessary to make a determination that the subject imports are currently having a significant adverse impact on the domestic industry.¹⁸⁵

2. Analysis of Threat of Material Injury by Reason of Subject Imports¹⁸⁶

We find the domestic industry to be vulnerable to the effects of further market penetration by subject imports. In the imminent future, exporters of the subject product will likely significantly increase their market share by offering nickel oven racks at prices lower than domestic industry prices. Further, the domestic industry is now facing price competition from China with respect to ***. The resulting increase in subject import market share will accelerate the adverse trends the domestic industry experienced during the latter part of the period examined with respect to production, shipments, market

¹⁷⁸ CR/PR at Table III-18.

¹⁷⁹ CR/PR at Table III-18.

¹⁸⁰ CR/PR at Table VI-3.

¹⁸¹ The domestic industry's operating *** was lower in interim 2009 (***) than in interim 2008 (***). CR/PR at Table VI-3.

¹⁸² We have also examined capital expenditures and research and development expenses; both categories of expenditures *** over the period of investigation and were *** in interim 2009 than in interim 2008. CR/PR at Table VI-9.

¹⁸³ SSW reports that its *** for oven racks increased from 2007 to 2008 because it sold a larger share of ***. CR at VI-7-8; PR at VI-2-3. The data provided by the domestic industry are consistent with SSW's assertions. *** shipments of nickel-plated racks decreased from *** racks in 2006 to *** racks in 2007, a decline of *** percent, before decreasing to *** in 2008, a decline of *** percent. At the same time, *** of porcelain racks remained relatively stable, fluctuating between *** and *** racks. Petitioners' Posthearing Brief, Responses to Commissioner Questions at 14.

The domestic industry's unit net sales value increased from \$*** in 2006 to \$*** in 2007 and \$*** in 2008; the significant increase from 2007 to 2008 was driven by the increase in SSW's unit sales in that period from \$*** to \$***. CR/PR at Table VI-6.

¹⁸⁴ Petitioners' Posthearing Brief at 15 & n.15, and Exhibit 17.

¹⁸⁵ Respondent Electrolux argues that the domestic industry's poor financial performance is due to its own failure to control an *** in SG&A expenses and its *** in a bad economy. We find that the increase in per-unit SG&A expenses resulted primarily from ***. CR at VI-12; PR at VI-3.

¹⁸⁶ Vice Chairman Pearson does not join this section. See Dissenting Views of Vice Chairman Daniel R. Pearson.

share, capacity utilization, and employment levels, and it will deepen the losses incurred by the industry.¹⁸⁷

The domestic industry's strategy of ceding market share for price and focusing on higher-value porcelain or slide oven racks was "a very temporary development" and it cannot be sustained.¹⁸⁸ It is likely that, in the imminent future, subject imports will be priced aggressively, as they were in 2008, and continue to gain market share. The domestic industry has been unprofitable throughout the period of investigation. Capacity utilization was already at a *** level (***) in interim 2009.¹⁸⁹ If, as we have found, the industry cannot fully recover increases in its costs in the imminent future and it loses sales to subject imports, its operating losses will deepen and its financial performance will deteriorate significantly.

We conclude that, unless antidumping duty and countervailing duty orders are issued, significant volumes of dumped and subsidized imports will gain additional U.S. market share in the imminent future and material injury by reason of subject imports will occur. Accordingly, we determine that the domestic industry is threatened with material injury by reason of subject imports from China.¹⁹⁰

We further determine, pursuant to 19 U.S.C. §§ 1671d(b)(4)(B) and 1673d(b)(4)(B), that we would not have made a present material injury determination in the event that Commerce had not suspended liquidation of subject imports in January and March 2009.¹⁹¹ Our negative present material injury determination hinges on the fact that we did not find that the subject imports are currently having a significant adverse impact on the domestic industry, and we did not make such a finding in large part because of a strategy adopted by the domestic producers that was temporarily successful and enabled the domestic producers to increase their operating margins and operating income during 2008. Accordingly, the suspension of liquidation during the first quarter of 2009 did not materially affect our present injury analysis.

CONCLUSION

For the foregoing reasons, we determine that the domestic industry producing oven racks is threatened with material injury by reason of subject imports of certain oven racks from China found by Commerce to be sold in the United States at less than fair value and subsidized by the Government of China.

¹⁸⁷ In particular, given the limited size of the porcelain market, *** will no longer have the option of focusing on higher-value product to increase revenue in the face of declining market share. *** will continue to lose substantial sales of its nickel oven racks, and its unit values will not increase as they did during the period of investigation. In addition, the Chinese producers have begun to compete for sales of certain higher-value oven racks.

¹⁸⁸ Hearing Tr. at 57 (Gritton).

¹⁸⁹ CR/PR at Table III-7.

¹⁹⁰ We have not attributed to subject imports effects from nonsubject imports or the decline in the housing market and the general economic recession. As noted above, there were no nonsubject imports of certain oven racks during the period. Moreover, although we note that the declining housing market and the recession affected the domestic industry, and there is no record evidence that these trends are likely to reverse in the imminent future, we also note that the decline in domestic producers' shipments and net sales exceeded the decline in demand over the period. Moreover, during this period of declining demand for certain oven racks, subject imports increased significantly, capturing significant market share directly from the domestic industry. As explained above, we find that these trends are likely to continue in the imminent future.

¹⁹¹ CR/PR at I-1.

DISSENTING VIEWS OF VICE CHAIRMAN DANIEL R. PEARSON

I concur with the majority's discussions of the domestic like product in Section II, of the domestic industry in Section III, of the conditions of competition and the business cycle in Section IV, and of the applicable legal standards in Section V. I further concur with Section VI of the majority's views that finds that a domestic industry producing refrigeration shelving is materially injured by reason of subject imports of certain refrigeration shelving from China found by Commerce to be sold in the United States at less than fair value and subsidized by the Government of China. With respect to the domestic industry producing certain oven racks, I concur with the majority's determination that the domestic industry producing oven racks is not materially injured by reason of subject imports of oven racks from China and so join Sections VII.A.1., B.1., and C.1. However, I dissent from the majority's determination that the domestic industry producing certain oven racks is threatened with material injury by reason of subject imports of oven racks from China and I instead find that the domestic industry is not threatened with material injury by reason of subject imports of oven racks from China. As such, I do not join Sections VII.A.2., B.2., or C.2. of the majority's views and instead provide the following dissenting views.

I. NO THREAT OF MATERIAL INJURY BY REASON OF IMPORTS OF CERTAIN OVEN RACKS FROM CHINA

I find that there is not a threat of material injury to a domestic industry producing oven racks by reason of subject imports from China.¹

A. Volume of the Subject Imports

Despite the fact that U.S. shipments subject imports of certain oven racks grew rapidly late in the period, both absolutely² and in terms of market share,³ I do not expect that, in the absence of antidumping and countervailing duty orders, that subject import volumes will increase substantially.

I base this conclusion on market factors within the United States, primarily on the activities of the few U.S. purchasers and the demand conditions during this recession. Of primary importance in my analysis is the fact that demand for oven racks is derived from the demand for ovens, of which there are three domestic producers, GE, Whirlpool, and Electrolux, all of which have provided data in this final phase investigation.⁴ Because there are so few purchasers and because they all provided complete responses, understanding U.S. demand factors is relatively straightforward.

¹ For a discussion of the legal standards to be used in threat determinations, see Section V.C. of the Majority Views.

² U.S. shipments of subject imports of oven racks initially decreased from *** units in 2006 to *** units in 2007, before increasing to *** units in 2008, an overall increase of *** percent. U.S. shipments of subject imports of oven racks decreased to *** units in interim 2009, compared with *** units in interim 2008. CR/PR at Table C-3.

³ The share of U.S. shipments of subject imports in apparent U.S. consumption of oven racks initially decreased from *** percent in 2006 to *** percent in 2007, before increasing to *** percent in 2008, an overall increase of *** percentage points. U.S. shipments of subject imports of oven racks increased to *** percent in interim 2009, compared with *** percent in interim 2008. CR/PR at Table C-3.

⁴ CR/PR at II-1 n.2. These three OEMs produce 90 percent of kitchen appliances produced in the United States. *Id.* Also, of the *** importers of oven racks, ***. CR/PR at Table IV-7. *** instead supplied small quantities to distributors. CR at V-7 n.13; PR at V-5 n.13.

The record in these investigations shows that *** percent of the increase in U.S. shipments of subject imports between 2007 and 2008 came from increased imports by ***⁵ U.S. shipments of subject imports by other oven producers, *** over the period,⁶ indicating that the factors influencing *** purchases were not factors of widespread applicability across purchasers. Electrolux stated that the increase in subject imports in 2008 was “a temporary imbalance” that has already “self-corrected.”⁷ Electrolux further stated that “SSW and Nashville Wire are essential elements of Electrolux’s 2+1 strategy” and that “{purchases} will be more in the United States this calendar year.”⁸ Because ***, which, over the period examined, was responsible for ***,⁹ expects that it will purchase more from U.S. producers in the imminent future, and because other U.S. OEM purchasers have reduced their subject imports over the period examined, I find that, as a group, U.S. OEM purchasers will not contribute significantly to increased demand for subject imports.

I also note that the petitioners themselves were responsible, directly or indirectly, for a *** of subject imports over the period examined. In 2006, petitioners were responsible for *** percent of all subject imports, declining to *** percent in 2007, and declining further to *** percent in 2008.¹⁰ Because *** of U.S. demand for subject imports remains within the control of petitioners, and because they would be likely to maintain stable demand for subject imports, I conclude that overall demand for subject imports will be stable and there will be no imminent substantial increase in subject imports.

In addition to the factors associated with individual U.S. purchasers and importers of oven racks, I also note that the current recessionary environment has created conditions that favor neither an imminent substantial increase in demand nor a substantial increase in subject imports. Demand for oven racks declined steadily by *** percent over the period and a key driving factor for demand for ovens, new housing construction, continued to decline throughout the period examined.¹¹

⁵ CR/PR at Table IV-7. Between 2007 and 2008, at the same time that total U.S. shipments of subject imports of oven racks increased from *** units to *** units, or by *** units, *** U.S. shipments of subject imports increased from *** units to *** units, or by *** units, representing *** percent of the total increase in U.S. shipments of subject imports. *Id.*

⁶ *** U.S. shipments of subject imports declined steadily from *** units in 2006 to *** units in 2008. *** U.S. shipments of subject imports declined irregularly from *** units in 2006 to *** units in 2008. CR/PR at Table IV-7.

⁷ Respondent Electrolux’s Post-Hearing Brief at 13. As petitioners note, in 2008 *** Petitioners’ Post-Hearing Brief at 13. This leads me to believe that there is not much opportunity for *** to increase further its subject imports from China while still maintaining its sourcing strategy. Tr. at 182-83 (Market); CR at II-8 n.10; PR at II-6 n.10.

⁸ *Id.* (alteration in original). I note that although *** had fewer U.S. shipments of subject imports in interim 2009, when compared with interim 2008, *** began importing directly in interim 2009, resulting in higher total U.S. shipments of subject imports (both direct and indirect) for *** in interim 2009, *** units, than in interim 2008, *** units. CR/PR at Table IV-7. Given that this was only a 3-month interim period, I do not find this to be necessarily inconsistent with ***’s statements. See Respondent Electrolux’s Post-Hearing Brief, Responses to Questions Asked by the Commission, at 8 (including as an exhibit a ***).

⁹ CR/PR at Table IV-7. Between 2006 and interim 2009, *** was directly responsible for *** units in U.S. shipments of subject imports and *** was directly responsible for *** units in U.S. shipments of subject imports, for a total of *** units. Over the same period, *** imported, directly and indirectly, *** units in U.S. shipments of subject imports. *Id.* There is insufficient information on the record to determine the volumes of indirect subject imports *** to the three OEM purchasers.

¹⁰ CR/PR at Tables III-12 & IV-4 (own calculation). In quantity terms, the subject imports entered by or on behalf of the petitioners, after initially declining from *** units in 2006 to *** units in 2007, increased slightly to *** units in 2008. *Id.* I attribute the imports of *** indirectly to petitioner ***, as noted in the Commission’s staff report. CR/PR at Tables III-12 n.2 & IV-7 n.1.

¹¹ CR at II-4 & Figure II-1. I note that the recessionary pressures were particularly strong in interim 2009, the QI 2009, as evidenced by the *** percent decline in apparent U.S. consumption of oven racks when compared with
(continued...)

While unused capacity in China is unquestionably large and growing,¹² I do not put much weight on the Chinese production capacity data or on production capacity forecasts offered by the Chinese producers, primarily due to issues already noted by the majority.¹³ These investigations do not involve a multitude of anonymous Chinese producers exporting to many U.S. purchasers. Because the Commission has the complete responses of all three U.S. OEM purchasers of oven racks, and because the Chinese producers that they import from must be qualified by the U.S. purchasers in advance of any purchases,¹⁴ the overall supply conditions in the Chinese industry are of secondary importance to me in these investigations.

To summarize, I find that: (1) because the increase in subject imports in 2008 originated largely from the increased imports of *** the conditions that led to the increased demand for subject imports in 2008 did not appear to be widespread within the industry; (2) the *** that was largely responsible for the increase in subject imports has stated on this record that it would purchase more oven racks from U.S. producers this year and has provided evidence that it *** doing this; (3) petitioners, who were responsible for ***, would likely maintain stable demand for subject imports; and (4) despite the conditions of supply in China, demand for oven racks by U.S. OEM purchasers, about which we do have a well-developed record, will not increase, largely due to recessionary pressures, and this will act to limit subject imports. These findings allow me to conclude that no substantial increase in subject import volume is imminent.¹⁵

B. Price Effects of the Subject Imports

In a majority of the quarterly price comparisons, in 20 of 30 available pairings, subject imports oversold the U.S.-produced oven racks. In none of the five priced oven rack products is there an indication that subject imports would enter at prices that are likely to have a significant depressing or suppressing effect on domestic prices. One priced product, product 11, has no available quarterly price comparisons and two other priced products, products 5 and 12, show subject import ***. For product 6, there are *** of quarterly pricing comparisons showing subject import underselling and overselling and for product 7, *** available quarterly comparisons show subject import underselling.¹⁶ It is noteworthy

¹¹ (...continued)

interim 2008. CR/PR at Table C-3. One factor in the decline for U.S. demand of refrigeration shelving, foreign production of refrigerators for import into the United States, was apparently not a significant factor in the oven racks sector. Compare Tr. at 117-19 (Rosenthal) with Tr. at 180-81 (Market).

¹² CR/PR at Table VII-4. I note that inventories of subject imports held by U.S. importers, while they increased irregularly over the period examined, represented only *** percent of U.S. shipments of subject imports in 2008 and *** percent of subject imports in interim 2009. CR/PR at Table VII-8. I find that inventories of subject imports held by U.S. importers do not pose an imminent threat of material injury to the domestic industry producing oven racks.

¹³ Majority Views (business confidential version) at 32-33 nn.131 & 135.

¹⁴ CR/PR at VII-4 n.7.

¹⁵ I have taken into consideration the nature of the subsidies Commerce found to be countervailable, pursuant to statutory threat factor (I). Commerce found that the exemption/benefit provided by the income tax reduction for export-oriented Foreign-Invested Enterprises (“FIEs”) and the exemption from local income taxes for productive and/or export-oriented FIEs were contingent on export performance and therefore specific under section 771(5A)(B) of the Tariff Act of 1930, as amended. 74 Fed. Reg. 37012 (July 27, 2009) (Commerce Decision Memorandum dated July 20, 2009).

¹⁶ CR/PR at Tables V-5, V-6, V-7, V-11, & V-12. Because of disagreements among the parties regarding the importance of tooling costs, I base my determination solely on the pricing data contained in the Commission’s staff report. CR at V-4 to V-5; PR at V-3. As a matter of microeconomic theory, I would not expect that fixed costs

(continued...)

that, of the *** quarterly comparisons showing subject import underselling in these two products, *** occurred during the final quarter of 2007 or in 2008,¹⁷ a period when raw material costs were fluctuating greatly.

After moving in a relatively narrow range during the previous three years, the price of steel wire rod increased from about \$600 per short ton at the end of 2007 to a peak of \$956 per short ton in August 2008, an increase of nearly 60 percent; this price spike was followed by a collapse of almost equal magnitude, with steel wire rod prices returning to near \$600 per short ton by the end of 2008.¹⁸ That this rapid increase in raw material costs had an immediate impact on oven rack prices is evident from the pricing data. During the period of the most rapid raw material cost increases, between QI 2008 and QIII 2008, the prices of all five priced oven rack products (both U.S. and Chinese-produced) uniformly increased, irrespective of the method of measurement.¹⁹ In an environment of rapidly rising, then falling, raw material costs and uniformly rising oven rack prices, the presence of some mixed subject import underselling does not indicate to me an imminent threat of subject imports entering with significant price depressing or suppressing effects.²⁰ There is evidence on the record that raw material costs have now stabilized within their previous narrower range, which should also help to stabilize prices for oven racks.²¹

The lack of price suppressing effects from subject imports is evident from the drop in the ratio of COGS to net sales, which initially increased from *** percent in 2006 to *** percent in 2007, before falling to *** percent in 2008. The decline in the ratio of COGS to net sales between 2007 and 2008 indicates that U.S. producers were able to increase oven rack prices at a rate faster than the increase in their COGS during this period when both subject import volumes and market share were increasing substantially. Likewise, the ratio of COGS to net sales was lower in interim 2009, at *** percent, than in interim 2008, when it was *** percent.²²

Of the *** lost sales allegations involving *** oven racks, involving *** units and totaling \$***, *** involving *** units and totaling \$*** on *** was described by *** as having been transacted with a

¹⁶ (...continued)

would have a significant impact on prices as, in an environment of perfect competition, price will equal marginal cost.

¹⁷ CR/PR at Tables V-6 & V-7; see Respondent Electrolux's Post-Hearing Brief at 3-4.

¹⁸ CR/PR at V-1 & Figure V-1.

¹⁹ Between QI 2008 and QIII 2008, the:

1. **price of product 5** increased steadily from \$*** to \$*** (China delivered purchase price);
2. **price of product 6** increased from \$*** to \$*** (U.S. delivered purchase price), increased steadily from \$*** to \$*** (China delivered purchase price), and increased from \$*** to \$*** (China f.o.b. sales price);
3. **price of product 7** increased from \$*** to \$*** (China delivered purchase price);
4. **price of product 11** increased from \$*** to \$*** (China delivered import price); and
5. **price of product 12** increased from \$*** to \$*** (U.S. delivered purchase price), increased steadily from \$*** to \$*** (U.S. f.o.b. sales price), and increased from \$*** to \$*** (China delivered purchase price). CR/PR at Tables V-5, V-6, V-7, V-11, & V-12.

²⁰ See Respondent Electrolux's Post-Hearing Brief, Responses to Questions Asked by the Commission, at 6-8 (describing how prices for *** oven racks during this period). Cf. Petitioners' Post-Hearing Brief, Responses to Commission Questions at 18 (stating that a "lag occurs as rod prices fluctuate sharply, either if prices are increasing or decreasing.").

²¹ See Respondent Electrolux's Post-Hearing Brief, Responses to Questions Asked by the Commission, at 8 (indicating that *** has recently signed a contract ***).

²² Id.

Chinese supplier at a price lower than the domestic price.²³ This *** represents *** of subject import volume. For *** either stated that the alleged Chinese price was incorrectly quoted, and that the Chinese price was actually equal to or higher than the U.S. price, or that ***.²⁴ Thus, while *** alleged lost sales did result in the purchase of Chinese subject imports, respondent *** stated that petitioners did not lose these sales “to the Chinese supplier because of price.”²⁵ *** lost revenue allegations were made involving oven racks.²⁶

To summarize, I find that: (1) the relatively small number of quarters of subject import underselling occurred during a time of great market instability and that price trends appear to have stabilized; (2) subject imports did not have either a price depressing or a price suppressing effect on domestic prices during the period examined and that the trend in the ratio of COGS to net sales was in a direction opposite from one that would indicate increasing cost-price pressures; and (3) that there was *** evidence of lost sales or lost revenues. Because of these findings, I determine that there is no imminent threat of subject imports entering with significant price depressing or suppressing effects.

C. Impact of the Subject Imports on the Domestic Industry

Because, as I have stated above, I find neither an imminent threat of significantly increased volumes of subject imports nor an imminent threat that subject imports will be entering at significantly price-depressing or price-suppressing prices, I therefore find that there is no imminent threat of a negative impact by reason of subject imports on the domestic industry producing oven racks.

My confidence in a finding of no imminent threat of a negative impact is strengthened by the observation, made in Section VII.C.1. of the majority’s views,²⁷ that even when subject imports did enter in significant quantities, as they did in 2008, not only was there not a negative impact on the domestic industry’s operating income, but the domestic industry’s operating income noticeably improved.²⁸ This strong reverse correlation argues against a causality that is based on subject imports.

The domestic industry has argued that it is threatened with negative impact because it has had to shift some of its production away from basic nickel-plated racks and toward higher value-added niche products.²⁹ I find this to be unpersuasive. The domestic industry producing oven racks has *** by pursuing a strategy of greater innovation and high-quality production, which seems to be a clear example of moving up the value chain.³⁰ It is not clear that a return by the domestic industry to its previous business strategy of producing lower-value oven racks would lead to an increase in profitability. There is

²³ Although *** would not agree that this was a “lost sale,” the subject import price they did provide was *** provided by petitioners. CR at V-27 n.20; PR at V-7 n.20; CR/PR at Table V-8.

²⁴ CR at V-27 to V-28; PR at V-6 to V-7.

²⁵ Respondent Electrolux’s Post-Hearing Brief at 6.

²⁶ CR/PR at Table V-9.

²⁷ Majority Views (Business Confidential Version) at 42-43 & n.181.

²⁸ CR/PR at Table C-3. The improvement in operating margins was also seen at a disaggregated level in ***, with *** operating margin improving from *** percent in 2006 to *** percent in 2008, and with *** operating margin improving steadily from *** percent in 2006 to *** percent in 2008. In interim 2009, *** operating margin was *** percent and *** operating margin was ***; these *** improved over interim 2008, when *** had an operating margin of *** percent and *** had an operating margin of *** percent. CR/PR at Table VI-6.

²⁹ See, e.g., Tr. at 50-51 (Hudgens).

³⁰ See Respondent Electrolux’s Post-Hearing Brief, Responses to Questions Asked by the Commission, at 2.

record evidence indicating that production of lower-value oven racks was not profitable during at least a portion of the period examined.³¹

Finally, I find that the evidence provided to support the proposition that subject imports are now encroaching on the higher value-added niche products is less than compelling. Several statements were made at the hearing regarding the loss, by domestic producers, of higher value-added product sales to subject imports, a so-called “third wave” of subject import competition.³² It was well established that the Chinese producers do not make porcelain oven racks³³ and the documentation provided post-hearing to support the proposition that the Chinese were now producing slide racks was not well-suited to proving the point.³⁴

CONCLUSION

For the reasons stated above, I determine that an industry producing oven racks in the United States is not materially injured nor threatened with material injury by reason of subject imports from China that have been found by Commerce to be sold in the United States at less than fair value.

³¹ Tr. at 59 (Rosenthal) (“[T]hey’re improving their financial performance by selling lower volumes of product that they were losing money on.”); Tr. at 97-98 (Rosenthal) (“What you saw is lower volumes of domestic sales, which meant, since they’re losing money on every sale it meant that by selling less they were losing less.”).

³² Tr. at 57 (Gritton); Tr. at 70 (Kara); Tr. at 72-73 (Kara); Tr. at 73 (Gritton); Tr. at 101 (Rosenthal).

³³ Tr. at 109 (Gritton) (replying that Chinese producers “do not sell the porcelain coated [oven racks]”).

³⁴ See Petitioners’ Post-Hearing Brief at 15 n.15 (pointing to Exhibit 17). Exhibit 17 in petitioners’ post-hearing brief contains *** Petitioners’ Post-Hearing Brief at Exhibit 17. This is not sufficient to support a finding that any imports of higher value-added slide racks have entered, or are likely to enter, the United States from China.

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”), 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 and threatened with material injury by reason of subsidized and less-than-fair-value (“LTFV”) imports of certain kitchen appliance shelving and racks (“KASAR”)¹ from China. Information relating to the background of these investigations is provided below.²

Effective date	Action
July 31, 2008	Petition filed with Commerce and the Commission; institution of Commission investigations
August 26, 2008	Commerce’s notice of countervailing duty initiation
August 27, 2008	Commerce’s notice of antidumping duty initiation
September 24, 2008	Commission’s preliminary determinations
January 7, 2009	Commerce’s preliminary CVD determination
March 5, 2009	Commerce’s preliminary antidumping determination
April 15, 2009	Scheduling of final phase of Commission investigations (74 FR 18249, April 21, 2009)
July 16, 2009	Commission’s hearing ¹
July 24, 2009	Commerce’s final antidumping determination (74 FR 36656)
July 27, 2009	Commerce’s final CVD determination (74 FR 37012)
August 18, 2009	Commission’s vote
August 31, 2009	Commission’s determinations to Commerce
¹ A list of the witnesses appearing at the hearing is presented in appendix B.	

¹ See the section entitled “The Subject Merchandise” in *Part I* of this report for a complete description of the merchandise subject to these investigations.

² *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, 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 as well as information regarding nonsubject countries.

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 and SSW, accounting for over *** percent of reported U.S. production.³ At least eight firms have imported KASAR from China since 2006, with four U.S. importers *** accounting for 81.5 percent of reported subject imports from China in 2008. One U.S. importer, *** reported imports of KASAR from a nonsubject source during the period of investigation.⁴

Apparent U.S. consumption of KASAR totaled approximately *** million units (\$*** million) in the U.S. market in 2008. U.S. producers' U.S. shipments of KASAR totaled *** million units (\$*** million) in 2008, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from China totaled approximately *** million units (\$*** million) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. The only nonsubject U.S. imports were from Mexico, totaling approximately *** thousand units (\$*** million) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

Refrigeration shelving are used inside refrigerators, freezers, combined refrigerator/freezers, and other refrigeration or freezing equipment. Currently, at least seven firms are believed to produce refrigeration shelving in the United States, with the two petitioning firms, Nashville and SSW, accounting for over *** percent of reported U.S. production. At least three firms have imported refrigeration shelving from China since 2006. One U.S. importer, *** reported imports of refrigeration shelving from a nonsubject source during the period of investigation.

Apparent U.S. consumption of refrigeration shelving totaled approximately *** million units (\$*** million) in the U.S. market in 2008. U.S. producers' U.S. shipments of refrigeration shelving totaled *** million units (\$*** million) in 2008, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from China totaled approximately *** million units (\$*** million) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. The only nonsubject U.S. imports were from Mexico, totaling approximately *** thousand units (\$*** million) in 2008 and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value.

Oven racks are used inside cooking stove, ranges and ovens. Currently, at least seven firms are believed to produce oven racks in the United States, with the two petitioning firms, Nashville and SSW, accounting for the *** of U.S. production. At least eight firms have imported oven racks from China since 2006. No U.S. importer reported any imports of oven racks from a nonsubject source during the period of investigation.

³ Petition, exh. 1.

⁴ ***.

Apparent U.S. consumption of oven racks totaled approximately *** million units (\$*** million) in the U.S. market in 2008. U.S. producers' U.S. shipments of oven racks totaled *** million units (\$*** million) in 2008, and accounted for *** percent of apparent U.S. consumption by quantity and *** percent by value. U.S. imports from China totaled approximately *** million units (\$*** million) in 2008 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 these investigations is presented in appendix C, tables C-1, C-2, and C-3.⁵ U.S. industry data are based on questionnaire responses of four 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).

NATURE AND EXTENT OF SUBSIDIES AND SALES AT LTFV

Subsidies

On July 27, 2009, Commerce published a notice in the *Federal Register* of its final determination of countervailable subsidies for producers and exporters of KASAR from China.⁶ Table I-1 presents Commerce's findings of subsidization of KASAR in China.

Table I-1
KASAR: Commerce's final subsidy determination with respect to imports from China

Entity	Final countervailable subsidy margin (percent)
Asber Enterprises Co., Ltd. (China)	170.82
Changzhou Yixiong Metal Products Co., Ltd.	149.91
Foshan Winleader Metal Products Co., Ltd.	149.91
Guangdong Wireking Housewares & Hardware Co., Ltd. (formerly known as Foshan Shunde Wireking Housewares & Hardware Co., Ltd.)	13.30
Kingsun Enterprises Group Co., Ltd.	149.91
Yuyao Hanjun Metal Work Co./Yuyao Hanjun Metal Products Co., Ltd.	149.91
Zhongshan Iwatani Co., Ltd .	149.91
All others	13.30
Source: 74 FR 37012, July 27, 2009.	

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

⁶ *Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012, July 27, 2009. Commerce did not differentiate between refrigeration shelving and oven racks in its scope definition of the subject products.

Sales at LTFV

On July 24, 2009, Commerce published a notice in the *Federal Register* of its final determination of sales at LTFV with respect to imports from China.⁷ Tables I-2 presents Commerce's dumping margins with respect to imports of KASAR from China.

Table I-2
KASAR: Commerce's final weighted-average LTFV margins with respect to imports from China

Exporter	Producer	Final dumping margin (<i>percent</i>)
Guangdong Wireking Housewares & Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares & Hardware Co., Ltd.)	Guandong Wireking Housewares & Hardware Co., Ltd.	95.99
New King Shan (Zhu Hai) Co., Ltd.	New King Shan (Zhu Hai) Co., Ltd.	44.77
Marmon Retail Services Asia	Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia)	44.77
Hangzhou Dunli Import & Export Co., Ltd.	Hangzhou Dunli Industry Co., Ltd.	44.77
Jiangsu Weixi Group Co.	Jiangsu Weixi Group Co.	44.77
PRC-wide Entity (including Asber Enterprise Co., Ltd. (China))		95.99
Source: 74 FR 36656, July 24, 2009.		

⁷ *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, July 24, 2009. Commerce did not differentiate between refrigeration shelving and oven racks in its scope definition of the subject products.

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 support surface is glass. The written description of the scope of this investigation is dispositive.⁸

Tariff Treatment

Certain KASAR is classifiable in the Harmonized Tariff Schedule of the United States (“HTS”) under subheadings 7321.90.50, 7321.90.60, 8418.99.80, and 8516.90.80, and reported for statistical purposes under 7321.90.5000, 7321.90.6090, 8418.99.8050, 8418.99.8060, and 8516.90.8000.⁹ All of these statistical reporting numbers are residual or “basket” categories and contain a number of other products besides certain KASAR. Table I-3 presents current tariff rates for KASAR.

⁸ *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, July 24, 2009.

⁹ Effective July 1, 2009, the statistical reporting number for 8516.90.8000 is now 8516.90.8010 and 8516.90.8050.

**Table I-3
KASAR: Tariff rates, 2009**

HTS provision	Article description	General ¹	Special ²	Column 2 ³
		Rates (percent ad valorem)		
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 00	Other parts of articles in subheading 7321.11.30	Free		45%
7321.90.60 90	Other parts of gas cooking appliances and plate warmers Other.....	Free		45%
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:			
50	Parts of combined refrigerator-freezers fitted with separate external doors and parts of household type refrigerators.....	Free		35%
60	Other.....	Free		35%
8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:			
8516.90.80	Other:			
10	Shelving and racks for cooking stoves and ranges....	Free		35%
50	Other.....	Free		35%

¹ Normal trade relations, formerly known as the most-favored-nation duty rate.

² Special rates not applicable when General rate is free. China is ineligible for special duty rate treatment.

³ Applies to imports from a small number of countries that do not enjoy normal trade relations duty status.

⁴ General note 3(c)(i) defines the special duty program symbols enumerated for this provision.

Source: Harmonized Tariff Schedule of the United States (July 1, 2009).

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

In its preliminary determinations, the Commission found 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, and (2) certain oven racks, side racks, and subframes for cooking stoves, ranges and ovens.^{10 11 12} Respondent Electrolux agrees with Petitioners that "none of the parties has challenged the existence of two domestic like products -- refrigerator shelving and oven racks -- in this proceeding."¹³ All of Electrolux's arguments in these investigations is with regard to oven racks.¹⁴

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 OEMs of residential and recreational vehicle refrigerators, freezers, and refrigerator/freezers. Oven racks are used by OEMs of residential and recreational vehicle appliances of freestanding ranges and wall ovens. Figures I-1 through I-6 present various refrigerator shelving and baskets and oven racks.

¹⁰ *Certain Kitchen Appliance Shelving and Racks from China, Inv. Nos. 701-TA-458 and 731-TA-1154 (Preliminary)*, USITC Publication 4035, September 2008, p. 6.

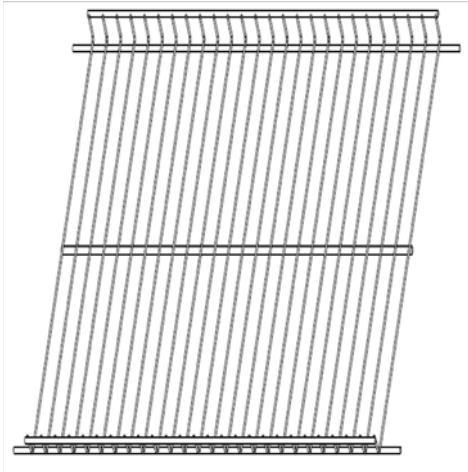
¹¹ Petitioners note that "no party has challenged the like product definition in this final phase of the investigation." Hearing transcript, pp. 34-35 (Cannon), and Petitioners' posthearing brief, ex. 1. p. 1 and p. 33.

¹² In the preliminary phase of these investigations, respondents GE and Whirlpool argued that the Commission should find a single 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. The Commission stated in its preliminary views that "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." *Certain Kitchen Appliance Shelving and Racks from China, Inv. Nos. 701-TA-458 and 731-TA-1154 (Final)*, USITC Publication 4035, September 2008, p. 10, fn. 43. Respondents GE and Whirlpool did not submit party comments regarding draft questionnaires, did not appear at the hearing, and did not submit a posthearing brief in these final phase investigations; however, they did submit a prehearing brief, but did not comment on the like product issue.

¹³ Respondent Electrolux's posthearing brief, p. 17.

¹⁴ Electrolux did state that the Commission should also determine that refrigeration shelving is not materially injured, nor threatened with material injury, by reason of subject imports of refrigeration shelving from China, but did not present any arguments for its claim. Respondent Electrolux's prehearing brief, p. 1, fn. 1.

Figure I-1
Open end freezer shelf



Source: SSW Holding Co.

Figure I-2
Refrigerator--Freezer basket



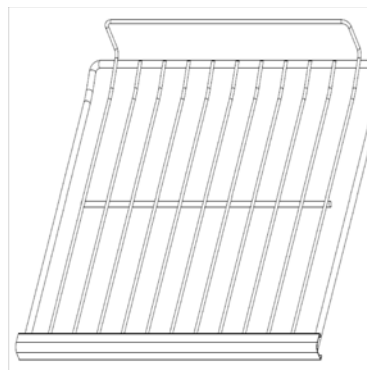
Source: SSW Holding Co.

Figure I-3
Refrigerator--Freezer basket #2



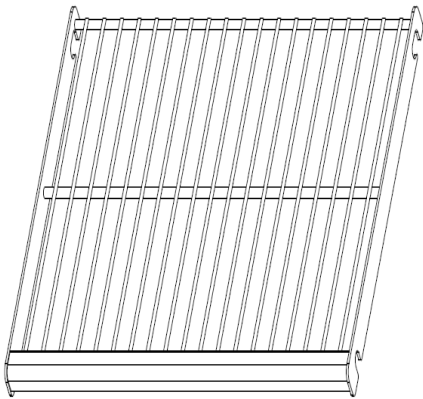
Source: SSW Holding Co.

Figure I-4
Refrigerator--Freezer shelf



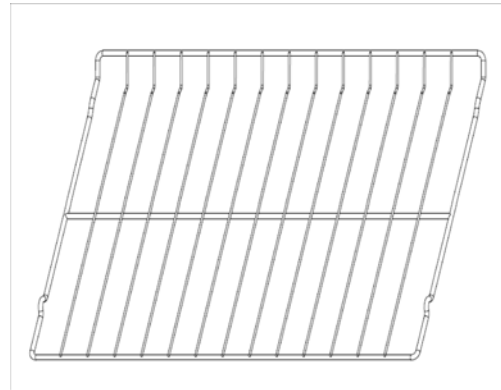
Source: SSW Holding Co.

Figure I-5
Fixed Refrigerator--Freezer shelf



Source: SSW Holding Co.

Figure I-6
Oven Rack



Source: SSW Holding Co.

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.¹⁵ Automatic spot welding machines are utilized to form and/or weld the steel frames.¹⁶ 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 customized for each specific model of each major appliance OEM producer.¹⁷ OEM producers account for approximately 90 percent of the U.S. kitchen appliance market.¹⁸

Refrigeration Shelving¹⁹

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.²⁰ 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, welding of mats, joining of the frames and mats and

¹⁵ Petition, p. 9.

¹⁶ Staff field trip to SSW plant, Fort Smith, AR, Aug. 12, 2008.

¹⁷ Hearing transcript, p. 14 (Kara).

¹⁸ Hearing transcript, p. 26 (Gritton).

¹⁹ Refrigeration shelving in which the support surface consists of glass is excluded from these investigations.

²⁰ Staff field trip to SSW plant, Fort Smith, AR, Aug. 12, 2008.

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 shelving parts are then manually loaded onto a finishing system where the shelving parts are sent through a cleaning, pretreatment, and coating process.²¹ 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. 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.

Oven Racks

The production of oven racks is capital intensive.²² 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 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.²³ Because refrigeration shelving and oven racks are products made to OEM specifications, it is relatively unimportant to the OEMs whether they use the product of one manufacturer or another or whether the product is produced domestically or by a Chinese manufacturer.²⁴

²¹ Petition, p. 9.

²² Hearing transcript, p. 25 (Rollins).

²³ Petition, pp. 9-10.

²⁴ Hearing transcript, p. 27 (Gritton).

Interchangeability

Refrigerator shelving and oven racks are designed and produced for specific OEM kitchen appliance producers for specific model applications.²⁵ Petitioners and respondents agree kitchen refrigeration shelving is not interchangeable with oven racks because each product is produced to a particular OEM's specifications.²⁶ Because refrigeration shelving and oven racks are products made to OEM specifications, it is relatively unimportant to the OEMs whether they use the product of one manufacturer or another or whether the product is produced domestically or by a Chinese manufacturer.

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.²⁷ In light of the capability of both U.S. and Chinese 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.²⁸ Respondent Electrolux claims that price is one of five tenets involved in its decision-making once a supplier is qualified.²⁹ Respondents GE and Whirlpool indicated that while price is a consideration, quality is a more important factor in their purchasing decisions.³⁰

Channels of Distribution

All domestically produced KASAR are produced specifically for and sold to end users, which are all OEMs of kitchen appliances.³¹ 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

In general, prices for refrigeration shelving is lower than prices for oven racks. Details for 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*.

²⁵ Hearing transcript, p. 15 (Kara).

²⁶ Conference transcript at 119-120 (Metzger).

²⁷ Conference transcript, p. 11 (Trossevin), pp. 37-38 (Hudgens), and pp. 62-64 (Gritton).

²⁸ Conference transcript, p. 62 (Gritton) and p. 65 (Rollins).

²⁹ "Quality is a piece of it; delivery capability is a piece of it; price or cost is a piece of it; technology is a piece of it, whether or not we have an advantage over, because of a technology advantage; then the fifth tenet is what we call a strategic business decision, whether a supplier relocates to one of our facilities." Hearing transcript, pp. 142-143 (Market).

³⁰ Conference transcript, p. 134 (Metzger) and pp. 134-134 (Wessendorf).

³¹ 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.

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

U.S. MARKET CHARACTERISTICS AND CHANNELS OF DISTRIBUTION

KASAR is sold to OEM manufacturers of kitchen appliances.¹ Producer and importer questionnaire responses indicate that all U.S. shipments of U.S.-produced certain refrigerator shelving and imports from China were made to end users during 2006-08 and January-March 2009.² In the case of certain oven racks, all shipments by U.S. producers went to end users during 2006-08 and January-March 2009 and most imports from China went to end users. For imports from China, shipments to distributors accounted for 2.2 percent of the total in 2006, 1.7 percent in 2007 and 0.4 percent in 2008. During January-March 2009, all importer shipments of certain oven racks from China went to end users.

U.S.- produced KASAR was sold in all areas of the continental United States during 2008, while sales of imports from China were limited to specific areas. Among responding producers, two firms reported that they sell nationally, one reported that it sells in the Midwest, one reported that it sells on the West Coast, and one reported that it sells in the Southeast. Among the three importers that sell KASAR, one reported sales in the Southeast, one reported sales in the Southwest, and one reported that its sales were in Tennessee.³ All reported shipments of KASAR by both producers and importers went to end users during 2006-08 and January-March 2009.

Most of the KASAR sold by U.S. producers and importers is produced to order rather than sold from inventories.⁴ Reported delivery lead times range from 1 day to 6 weeks for responding producers and from 1 to 7 weeks for importers. All OEM purchasers reported that all of their suppliers must be certified or prequalified with respect to quality, chemistry, or other performance characteristics for the KASAR that is sold to their firm. The qualification process often involves extensive testing and can require periods of as little as 30 days to as much as 2 years.

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 to large changes in the quantity of shipments of U.S.-produced KASAR to the U.S. market. The main contributing factors to the relatively high degree of responsiveness of supply for KASAR are the availability of unused capacity and the ability to produce alternate products.

Industry capacity

U.S. producers' capacity utilization rates for KASAR ranged from a low of *** percent in 2008 to a high of *** percent in 2006. During January-March 2009, the capacity utilization rate was ***

¹ Petition, p. 15 and Respondents' postconference brief, p. 11.

² Three OEMs, GE, Whirlpool, and Electrolux account for approximately 90 percent of the U.S. kitchen appliance market. Hearing TR, pp. 26- 27, (Rollins).

³ The three importers are ***, primarily import KASAR for final products, although they do sell very small quantities to their replacement customers.

⁴ Refrigeration shelving and oven racks are designed and produced for specific model applications. Hearing TR, p. 14 (Kara). Petitioners reported that there is no inventory held, even for higher volume product. Hearing TR p. 113 (Kara and Gritton).

percent. These data indicate that there is *** unused capacity which could be used to increase production of KASAR.

Alternative markets

Producers' export shipments, as a percentage of total shipments, were relatively ***, accounting for *** percent in 2006 and 2007, and *** percent in 2008. During January-March 2009, exports accounted for *** percent of total shipments.

Inventory levels

The ratio of U.S. producers' end-of-period inventories to their total shipments ranged from a low of *** percent in 2006 to a high of *** percent in 2009. During January-March 2009, the ratio was *** percent.

Production alternatives

Three of the four responding producers reported that they make other products in the facilities used to produce KASAR. Items mentioned included guards, barbeque grills, laundry suspension rods, and point of purchase store fixtures.

Subject Imports from China

Based on available information, Chinese producers have the ability to respond to changes in demand with moderate to large changes in the quantity of shipments of KASAR to the U.S. market. The main contributing factors to the relatively high degree of responsiveness of supply are the availability of unused capacity, the existence of alternate markets, and the ability to produce alternate products.

Industry capacity

Combined questionnaire responses by Chinese producers indicate that the Chinese industry may have potential for expanding exports to the United States due to its *** excess capacity. The Chinese industry reported a capacity-utilization rate of *** percent in 2006, *** percent in 2007, and *** percent in 2008. The estimated capacity-utilization rate is *** percent in 2009 and *** percent 2010.

Alternative markets

China's exports to the United States, as a percentage of its total shipments, increased from *** percent in 2006 to *** percent in 2007 and to *** in 2008. They are projected to account for *** percent in 2009 and *** percent in 2010. China's shipments to the home market and to export markets other than the United States consistently accounted for between *** and *** percent of its total shipments annually during 2006-08. These shipments are projected to account for *** percent of the total annually in 2009 and *** percent in 2010.

Inventory levels

China's inventories, relative to its total shipments, were *** percent in 2006, *** percent in 2007, and *** percent in 2008. Ratios of inventories to shipments were projected to be *** percent in 2009 and *** percent in 2010.

Production alternatives

In addition to KASAR, four of six Chinese producers reported producing other wire products using the same equipment and machinery used to produce KASAR. The other reported products included barbeque accessories, dishwasher racks, fan guards/grills for air conditioners, furniture racks and pet cages.

U.S. Demand

Demand Characteristics

There is evidence that the demand for KASAR is strongly related to activity in the U.S. housing industry.⁵ As shown in figure II-1, which presents seasonally adjusted monthly housing starts and completions from January 2005 through April 2009, both series have declined since early 2006. The demand for KASAR (as measured by apparent consumption) decreased from 40.9 million units in 2006 to 28.6 million units in 2008. During January-March 2009 U.S. apparent consumption was 5.2 million units, as compared to 7.8 million units in January-March 2008.

Producers and importers were asked whether demand for KASAR had changed since January 1 2006, and end user purchasers were asked whether the demand for their firms final products incorporating KASAR has changed since January 1, 2006. Among five responding producers, three reported that demand had decreased and two reported that it was unchanged.⁶ Among six responding importers, four reported that demand had decreased, one reported that demand was unchanged, and one reported that demand had fluctuated, increasing in 2006 after the hurricane Katrina disaster, and declining later as a result of the housing slump.⁷ Among the five responding purchasers, four reported that demand had decreased and one reported that there was no change. Firms reporting decreases in demand generally attributed the decreases to problems in the housing industry or the recession in general.

Substitute Products

When asked whether other products can be substituted for KASAR, the majority of questionnaire respondents answered no. None of the U.S. producers listed any substitutes. However, some importers and purchasers listed substitutes including glass, plastic and porcelain and plastic bins. None of these firms reported that changes in the prices of these substitutes influence the prices of the subject products.

Cost Share

When asked to estimate the cost of KASAR as a percentage of the cost of kitchen appliances, questionnaire respondents consistently estimated that the costs are relatively small. One U.S. producer estimated that the cost of KASAR in both oven ranges and refrigerators is 2.5 percent for both end use products. Another producer estimated that KASAR accounts for less than 2.0 percent of the total cost of these products. Overall among producers, importers and purchasers, cost share estimates for refrigerators

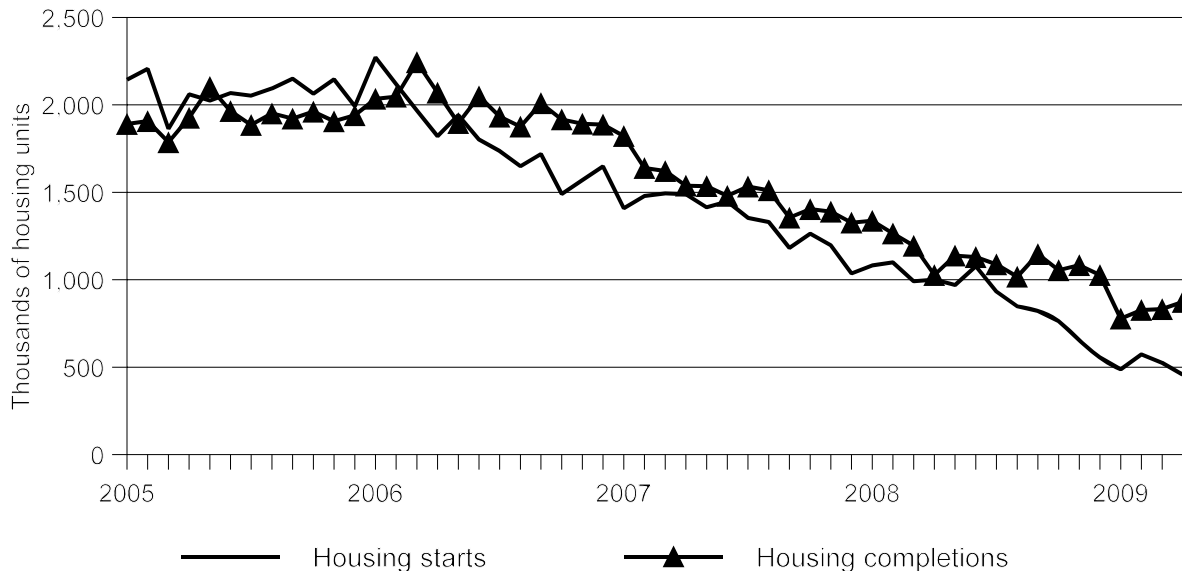
⁵ Conference transcript, p. 20 (Kara).

⁶ Petitioners noted at the hearing that demand has declined for a number of reasons, including a downturn in the housing market, the recession, and the fact that some of the OEMs have shifted their base to other countries. Hearing TR, pp. 119-120 (Cannon).

⁷ At the hearing, Electrolux stated that the housing market, the financial crisis, and consumer confidence have all had a large impact on the KASAR business. Hearing TR, pp. 189-90 (Market).

and freezers ranged from 0.6 percent to 3.0 percent, while estimates for ovens ranged from 1.5 to 4.0 percent.

Figure II-1



Housing data: Housing starts and housing completions, seasonally adjusted annual rate, monthly, January 2005 to April 2009

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

SUBSTITUTABILITY ISSUES

The degree of substitutability between domestic products and subject imports, between domestic products and nonsubject imports, and between subject and nonsubject imports is examined in this section. Much of the discussion is based on information obtained from questionnaire responses.

Of the eleven purchasers that submitted questionnaires, seven reported purchasing both refrigerator shelving and oven racks, three reported purchasing only oven racks, and one reported purchasing only refrigerator shelving. Seven of the purchasers are OEM's; one functions both as an OEM and distributor; two are distributors, and one reported that it is a reseller. Five of the firms have only purchased from U.S. producers since 2006, four have purchased from both the United States and China, and two do not know the country of origin of their purchases.⁸ Reported purchase quantities for refrigerator shelving and oven racks are presented in the table below.

⁸ One purchaser, ***, has also ***.

Table II-1**KASAR: Reported purchases by source by responding U.S. purchasers, by country sources 2006-08 and January-March 2009**

Item	2006	2007	2008	January-March 2009
Quantity (1,000 units)				
Purchases of refrigerator shelving:				
United States	22,556	16,488	15,625	2,506
China	229	1,899	2,357	446
Total	22,785	18,387	17,982	2,952
Purchases of certain oven racks				
United States	10,391	8,305	6,872	1,339
China	1,399	1,625	4,883	969
Total	11,790	9,930	11,755	2,308
Source: Compiled from data submitted in response to Commission questionnaires.				

Purchasers were asked to report whether their purchases of KASAR from different sources have changed during the past three years, and if so, to state the reason for the change. The four purchasers that have bought both U.S.-produced and imported products from China all reported some shifting during this period. One firm reported that it reduced its purchases from a U. S. source due to a requested *** percent price increase and thus it decided to increase its purchases from China. Another purchaser reported that it increased purchases from China and reduced purchases from the United States to balance the risk of sole sourcing and because of the lower landed-duty cost from China. Another purchaser reported that it reduced purchases from a U.S. source during 2006-08 and increased purchases from a China source in order to diversify its supplier base. However, this purchaser reported that in 2009 it increased its purchases of U.S.-produced KASAR and reduced its purchases of Chinese-produced KASAR due to changing market conditions. Another purchaser reported that it increased U.S. purchases and reduced purchases from China as a result of a shift in supplier choice.

Factors Affecting Purchasing Decisions

Purchasers were asked to rank the top three factors that they consider when making purchasing decisions. As indicated in table II-2, quality and price or cost, and followed by availability and supply and then delivery were ranked as the leading factors in purchasing decisions.⁹

⁹ Among the three largest KASAR purchasers, ***.

Table II-2

KASAR: Ranking of factors used in purchasing decisions as reported by U.S. purchasers

Factor	Number of firms reporting		
	Number one factor	Number two factor	Number three factor
Availability & supply	0	2	1
Price or cost	3	2	4
Quality	4	4	0
Delivery	0	0	3
Other ¹	2	1	1

¹ Other factors include prearranged contracts and reliability.

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

In order to obtain more information on purchasing decisions, firms were asked whether purchasing decisions are based mainly on price. Purchasers were instructed to answer “always,” “usually,” “sometimes,” or “never.” Six purchasers answered “usually,” one answered “sometimes,” and four answered “never.” No firm answered “always.”

Purchasers were also asked to report whether the factors shown in table II-3 are “very important,” “somewhat important,” or “not important” in their purchasing decisions. The factors firms cited most often as “very important” were product consistency (10 firms), quality meeting industry standards (9 firms), reliability of supply (9 firms), delivery time (9 firms), price (8 firms), and availability (8 firms). Quality exceeding industry standards was also cited as “very important” by the majority of purchasers.¹⁰

Comparisons of Domestic Products and Subject Imports and Nonsubject Imports

To determine whether U.S.-produced certain refrigerator shelving and certain oven racks generally can be used in the same applications as imports from China and nonsubject sources, producers, importers, and purchasers were asked whether the product can “always,” “frequently,” “sometimes,” or “never” be used interchangeably. The results are shown in table II-4 and II-5. The majority of questionnaire respondents reported that refrigerator shelving and oven racks produced in the United States and imported from China can be used interchangeably.¹¹ One firm that is both an importer and purchaser reported that China-origin oven racks are frequently but not always interchangeable with U.S.-origin oven racks. The one purchaser that reported that U. S.-produced and Chinese-produced refrigeration shelving are never interchangeable stated that ***. ***. One purchaser reported that if racks are made to the same tolerances, they should be interchangeable. Another firm that is an importer and purchaser *** reported that when it orders specific models of shelving and racks, it expects that the parts will be interchangeable regardless of the supplier.

¹⁰ While not noted in the table, Electrolux reported that having multiple sources of supply is an important factor in its purchasing decisions. Electrolux stated that its intention is to dual source for every component that it buys. Hearing TR, p. 140 (Market).

¹¹ Petitioners noted that “because refrigeration shelving and oven racks are products made to OEM specifications, it is relatively unimportant to the OEMs whether they use the product of one manufacturer or another or whether it is produced domestically or by a Chinese manufacturer.” Hearing TR, p. 27 (Gritton).

Table II-3

KASAR: Importance of purchasing factors, as reported by U.S. purchasers

Factor	Very important	Somewhat important	Not Important
	Number of firms responding		
Availability	8	2	0
Delivery terms	5	5	0
Delivery time	9	1	0
Discounts offered	3	7	0
Extension of credit	1	6	3
Finance terms	2	8	0
Price	8	2	0
Minimum quantity requirements	4	6	0
Packaging	5	5	0
Product consistency	10	0	0
Quality meets industry standards	9	1	0
Quality exceeds industry standards	6	4	0
Product range	0	9	1
Reliability of supply	9	1	0
Technical support/service	4	6	0
Tooling costs	4	5	1
U.S. transportation costs	5	5	0

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

Table II-4

REFRIGERATOR SHELVING: Perceived degree of interchangeability of product produced in the United States and in other countries¹

* * * * *

Table II-5

OVEN RACKS: Perceived degree of interchangeability of product produced in the United States and in other countries¹

* * * * *

In addition to questions concerning interchangeability, producers and importers were also asked to compare U.S.-produced products with imports from China and nonsubject imports in terms of product differences other than price such as quality, availability, product range, and other characteristics, as a factor in their sales of certain refrigerator shelving and certain oven racks. Responses are shown in tables II-6 and II-7.

Table II-6

Certain REFRIGERATOR SHELVING: U.S. producers' and importers' perceived importance of factors other than price in sales of products produced in the United States and in other countries¹

* * * * *

Table II-7

Certain OVEN RACKS: U.S. producers' and importers' perceived importance of factors other than price in sales of products produced in the United States and in other countries¹

* * * * *

Purchasers also were asked to compare U.S.-produced and imported KASAR from China and nonsubject imports with regard to the 17 selected characteristics listed in table II-8, noting whether the domestic product was superior, comparable, or inferior to the imported products. Seven purchasers provided comparisons for the selected categories with respect to China. The U.S. product was rated superior to imports from China in terms of delivery time and was rated inferior to China in tooling costs by a majority of purchasers. For all other categories, there was no clear-cut advantage for either the United States or China. In the comparisons between the U.S. product and nonsubject imports by a single purchaser; this firm reported that the products were ***. Also, in the comparisons between the China and nonsubject imports made by one firm, the Chinese and nonsubject product were ***.

ELASTICITY ESTIMATES

This section discusses elasticity estimates; parties were encouraged to comment on these estimates in their briefs. However, no party submitted any comments.

U.S. Supply Elasticity¹²

The domestic supply elasticity for KASAR measures the sensitivity of the quantity supplied by U.S. producers to changes in the U.S. market price of KASAR. The elasticity of domestic supply depends on several factors including the level of excess capacity, the ease with which producers can alter capacity, producers' ability to shift to production of other products, the existence of inventories, and the availability of alternate markets for U.S.-produced KASAR. Analysis of these factors, including the large amount of excess capacity indicates that the elasticity is likely to be relatively high. A range of 5 to 10 is suggested.

U.S. Demand Elasticity

The U.S. demand elasticity for KASAR measures the sensitivity of the overall quantity demanded to a change in the U.S. market price of KASAR. This estimate depends on factors discussed earlier such as the existence, availability, and commercial viability of substitute products, as well as the component share of the KASAR in the production of any downstream products. Since there are no close substitutes for these products, and since they account for a relatively small percentage of the price of final products, it is likely that the demand is inelastic; an elasticity range of -0.1 to -0.5 is suggested.

Substitution Elasticity

The elasticity of substitution depends upon the extent of product differentiation between the domestic and imported products.¹³ Product differentiation, in turn, depends upon such factors as quality (e.g., chemistry, appearance, etc.) and conditions of sale (availability, sales terms/discounts/promotions,

¹² A supply function is not defined in the case of a non-competitive market.

¹³ The substitution elasticity measures the responsiveness of the relative U.S. consumption levels of the subject imports and the domestic like products to changes in their relative prices. This reflects how easily purchasers switch from the U.S. product to the subject products (or vice versa) when prices change.

etc.). Based on available information, the elasticity of substitution between U.S.-produced KASAR and imported KASAR is likely to be in the range of 4 to 6.

Table II-8

KASAR: Comparisons between U.S.-produced and subject products from China, and subject and nonsubject products as reported by U.S. purchasers

Factor	U.S. vs. China			U.S. vs. nonsubject			China vs. nonsubject		
	S	C	I	S	C	I	S	C	I
	<i>Number of responses</i>								
Availability	2	5	0	***	***	***	***	***	***
Delivery terms	2	4	1	***	***	***	***	***	***
Delivery time	4	3	0	***	***	***	***	***	***
Discounts offered	0	6	1	***	***	***	***	***	***
Extension of credit	0	6	1	***	***	***	***	***	***
Lower price ¹	1	3	3	***	***	***	***	***	***
Finance terms	1	4	2	***	***	***	***	***	***
Minimum quantity requirements	2	5	0	***	***	***	***	***	***
Packaging	1	6	0	***	***	***	***	***	***
Product consistency	2	5	0	***	***	***	***	***	***
Quality meets industry standards	2	5	0	***	***	***	***	***	***
Quality exceeds industry standards	1	5	0	***	***	***	***	***	***
Product range	1	6	0	***	***	***	***	***	***
Reliability of supply	1	6	0	***	***	***	***	***	***
Technical support/service	2	5	0	***	***	***	***	***	***
Tooling costs	0	3	4	***	***	***	***	***	***
Lower U.S. transportation costs ¹	1	6	0	***	***	***	***	***	***

¹A rating of superior on price and U.S. transportation costs indicates that the first country generally has lower prices/U.S. transportation costs than the second country.

Note.--S=first listed country's product is superior; C=both countries' products are comparable; I=first listed country's product is inferior.

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

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 four firms which are believed to account for over *** percent of U.S. production of KASAR in 2008.¹

U.S. PRODUCERS

The Commission sent producer questionnaires to the seven firms identified in the petition as domestic producers of KASAR. The Commission received usable producer questionnaire responses from four producers.² 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 2008. 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 2008 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 2008.

**Table III-1
KASAR: U.S. producers, positions on the petition, plant locations, and shares of total reported U.S. production, 2008**

Firm	Position on petition	U.S. plant location(s)	U.S. production	
			Quantity (1,000 units)	Share (percent)
Matrix	Support	Auburn, AL	***	***
Nashville	Petitioner	Nashville, TN	***	***
SSW ¹	Petitioner	Clinton, IA Evansville, IN ² Fort Smith, AR Ludington, MI Madison, TN Newport, TN	***	***
***	***	***	***	***
Total			***	100.0
¹ *** ² Facility closed in April 2007. ³ Less than 0.05 percent.				
Source: Compiled from data submitted in response to Commission questionnaires.				

¹ The two petitioning firms, Nashville and SSW, account for *** percent of the domestic production of KASAR. Two small U.S. producers, *** and ***, also submitted producer questionnaire responses.

² 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, 2008

Firm	Position on petition	U.S. plant location(s)	U.S. production	
			Quantity (1,000 units)	Share (percent)
Matrix	Support	Auburn, AL	***	***
Nashville	Petitioner	Nashville, TN	***	***
SSW ¹	Petitioner	Clinton, IA Evansville, IN ² Fort Smith, AR Ludington, MI	***	***
***	***	***	***	***
Total			***	100.0
¹ *** ² 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, 2008

Firm	Position on petition	U.S. plant location(s)	U.S. production	
			Quantity (1,000 units)	Share (percent)
Matrix	Support	Auburn, AL	***	***
Nashville	Petitioner	Nashville, TN	***	***
SSW ¹	Petitioner	Madison, TN Newport, TN	***	***
***	***	***	***	***
Total			***	100.0
¹ ***				
Source: Compiled from data submitted in response to Commission questionnaires.				

As indicated in table III-1, no U.S. producer is affiliated with Chinese producers of the subject merchandise or affiliated with U.S. importers of the subject merchandise.^{3 4} In addition, as discussed in greater detail in table III-12, two U.S. producers directly import the subject merchandise and one also purchases the subject merchandise from U.S. importers.

³ ***

⁴ ***

Table III-4 presents information on U.S. producers' lists of other products produced on the same equipment in 2008.^{5 6}

Table III-4
KASAR: U.S. producers' lists of other products produced on the same equipment, 2008

* * * * *

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 10.4 percent decline in the capacity to produce KASAR and a larger decline of 39.5 percent in the actual production of KASAR from 2006 to 2008. Capacity utilization also fell by 17.0 percentage points from 2006 to 2008.

Table III-5
KASAR: U.S. producers' capacity, production, and capacity utilization, 2006-08, January-March 2008, and January-March 2009

* * * * *

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 for oven racks⁷ increased as production decreased. Production and capacity utilization decreased for both refrigeration shelving and oven racks during the period examined.

Table III-6
REFRIGERATION SHELVING: U.S. producers' capacity, production, and capacity utilization, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table III-7
OVEN RACKS: U.S. producers' capacity, production, and capacity utilization, 2006-08, January-March 2008, and January-March 2009

* * * * *

⁵ ***.

⁶ ***.

⁷ Nashville is the only responding U.S. producer to report an expansion of production capacity during the period of investigation. ***. Petitioners contend that this increase was a direct result of Nashville's attempt to satisfy Electrolux's production requirements, Petitioners posthearing brief, p. 16.

Table III-8
KASAR: Shares of U.S. production by product type, 2006-08, January-March 2008, and January-March 2009

* * * * *

U.S. PRODUCERS' SHIPMENTS

Table III-9 presents information on U.S. producers' shipments of KASAR from 2006 to 2008, January-March (interim) 2008, and January-March (interim) 2009. The quantity of U.S. producers' U.S. shipments fell from 2006 to 2008 and also fell in interim 2009 when compared with interim 2008. U.S. producers' exports of KASAR rose irregularly from 2006 to 2008 but declined in interim 2009 when compared with interim 2008. All U.S. shipments are commercial shipments with no internal consumption reported by responding producers.

Table III-9
KASAR: U.S. producers' shipments, 2006-08, January-March 2008, and January-March 2009

* * * * *

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, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table III-11 presents data on U.S. producers' U.S. shipments of oven racks. U.S. producers experienced an increase in export shipments of oven racks during the period examined, but U.S. shipments of oven racks declined from 2006 to 2008. U.S. shipments and exports both declined in interim 2009 when compared with interim 2008.

Table III-11
OVEN RACKS: U.S. producers' shipments, by types, 2006-09, January-March 2008, and January-March 2009

* * * * *

U.S. PRODUCERS' IMPORTS AND PURCHASES

For refrigeration shelving, ***⁸ For oven racks, the ***, imported and/or purchased subject oven racks from China. Table III-12 presents information on U.S. producers' production, subject imports, and subject purchases of oven racks.

Table III-12
OVEN RACKS: U.S. producers' U.S. production, U.S. subject imports, purchases of subject imports, ratio of subject imports to production, and ratio of subject purchases to production, 2006-08, January-March 2008, and January-March 2009

* * * * *

U.S. PRODUCERS' INVENTORIES

Tables III-13, III-14, and III-15 present end-of-period inventories and the ratio of 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 increased slightly throughout the period examined, while inventories for oven racks decreased from 2006 to 2008.⁹

Table III-13
KASAR: U.S. producers' end-of-period inventories, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table III-14
REFRIGERATION SHELVING: U.S. producers' end-of-period inventories, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table III-15
OVEN RACKS: U.S. producers' end-of-period inventories, 2006-08, January-March 2008, and January-March 2009

* * * * *

⁸ ***.

⁹ U.S. producers noted that they do not maintain large inventories to meet purchasers' orders. "Typical expectation is that we're making just-in-time shipments. So there's no inventory that's held at our customer other than maybe a day or two of product, and we're making daily shipments. And the expectation typically for us would be that our finished goods inventory would be somewhere in the range of three to six weeks probably on average." Hearing transcript, p. 113 (Rollins) and "in the case of higher volume products for example we wouldn't even have that amount of inventory. We often ship to daily or even multiple times in a day releases," Hearing transcript, p. 113 (Gritton).

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 2006 to 2008 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 2008.

Table III-16

KASAR: U.S. producers' employment-related indicators, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table III-17

REFRIGERATION SHELVING: U.S. producers' employment-related indicators, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table III-18

OVEN RACKS: U.S. producers' employment-related indicators, 2006-08, January-March 2008, and January-March 2009

* * * * *

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

U.S. IMPORTERS

Importer questionnaires were sent to twelve firms believed to be importers of subject KASAR, as well as to all U.S. producers of KASAR.¹ U.S. import data presented in this report are based on questionnaire responses of eight U.S. importers of the subject product, with four U.S. importers *** accounting for 81.5 percent of reported subject imports from China in 2008.² Table IV-1 lists all responding U.S. importers of KASAR from China,³ their locations, and their shares of U.S. imports, in 2008.

Table IV-1

KASAR: U.S. importers, Location, Type of KASAR imported, U.S. imports from China, and share of U.S. imports from China, 2008

Importer	Location	Type of KASAR		U.S. imports	
		Refrigeration shelving	Oven racks	Quantity (1,000 units)	Share (percent)
Eagletech International, Inc. ¹	Fremont, CA		✓	***	***
Electrolux Home Products, Inc. ²	Springfield, TN St. Cloud, MN	✓	✓	***	***
GE Consumer & Industrial ³	Louisville, KY Decatur, AL Bloomington, IN La Fayette, GA	✓	✓	***	***
King Shan LLC ⁴	Elk Grove Village, IL		✓	***	***
Nashville Wire Products	Nashville, TN		✓	***	***
RFC Wire	Ontario, CANADA		✓	***	***
SSW Holding Co., Inc.	Elizabethtown, KY		✓	***	***
Whirlpool Corp. ⁵	Benton Harbor, MI	✓	✓	***	***
Total				***	***

¹ ***.

² Owned by AG Electrolux, Stockholm, Sweden.

³ Owned by General Electric Company. GE owns *** percent of Mabe Mexico in Puebla, Mexico.

⁴ Affiliated with New King Shan Co. Ltd., Guangdong, China. King Shan is the importer of record, with Electrolux as the consignee. ***.

⁵ Owns Maytag Corp.

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

¹ The Commission sent questionnaires to those firms identified in the petition. Data provided by U.S. Customs and Border Protection (“Customs”) are not usable in identifying additional importers of KASAR due to imports of KASAR being classified in the HTS by “basket” categories.

² Petitioners believe that the importer data supplied by importers questionnaire responses are understated ***, Petitioners’ prehearing brief, footnote 24. Respondent Electrolux noted ***, Respondent Electrolux’s posthearing brief, exh. 1, p. 5.

³ ***.

U.S. IMPORTS

Table IV-2 presents data on U.S. imports of KASAR during the period examined. Imports from a nonsubject source were reported by one U.S. importer, ***.⁴ Subject imports increased irregularly in both quantity and value from 2006 to 2008. In interim 2009 subject imports increased when compared with interim 2008. Unit values of subject imports increased irregularly from 2006 to 2008 and also rose in interim 2009 when compared to the same period in 2008.

Table IV-2

KASAR: U.S. imports by source, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table IV-3 presents data on U.S. imports of refrigeration shelving during the period examined. For refrigeration shelving, subject imports declined from 2006 to 2007, but increased from 2007 to 2008 in quantity, value, and unit value. Subject imports also increased in quantity, value, and unit value in interim 2009 when compared with interim 2008. Imports from a nonsubject source were reported by one U.S. importer, ***.⁵

Table IV-3

REFRIGERATION SHELVING: U.S. imports by source, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table IV-4 presents data on U.S. imports of oven racks during the period examined. For oven racks, subject imports declined between 2006 and 2007 in quantity, value, and unit value, but increased in quantity, value, and unit value from 2007 to 2008. Quantity, value, and unit value for oven racks all declined in interim 2009 when compared with interim 2008. No importer reported any imports of oven racks from nonsubject sources.

Table IV-4

OVEN RACKS: U.S. imports by source, 2006-08, January-March 2008, and January-March 2009

* * * * *

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, 2006-08, January-March 2008, and January-March 2009

* * * * *

⁴ ***. No other firms reported any nonsubject imports during the period of investigation.

⁵ ***. No other firms reported any nonsubject imports during the period of investigation.

Table IV-6
REFRIGERATION SHELVING: U.S. importers' U.S. shipments, by importer, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table IV-7
OVEN RACKS: U.S. importers' U.S. shipments, by importer, 2006-08, January-March 2008, and January-March 2009

* * * * *

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.⁶

APPARENT U.S. CONSUMPTION

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. For KASAR, U.S. apparent consumption decreased by *** percent in quantity from 2006 to 2008. In interim 2009, U.S. apparent consumption of KASAR also decreased by *** percent in quantity when compared with interim 2008.

For refrigeration shelving, U.S. apparent consumption decreased by *** percent in quantity from 2006 to 2008, and decreased by *** percent in interim 2009 when compared with interim 2008. For oven racks, U.S. apparent consumption decreased by *** percent in quantity from 2006 to 2008, and decreased by *** percent in interim 2009 when compared with interim 2008.

Table IV-8
KASAR: Apparent U.S. consumption and U.S. market shares, 2006-08, January-March 2008, and January-March 2009

* * * * *

⁶ Petitioners estimate that imports from China of merchandise under HTS statistical annotation 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 annotation 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.

Table IV-9
REFRIGERATION SHELVING: Apparent U.S. consumption and U.S. market shares, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table IV-10
OVEN RACKS: Apparent U.S. consumption and U.S. market shares, 2006-08, January-March 2008, and January-March 2009

* * * * *

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, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table IV-12
REFRIGERATION SHELVING: U.S. production, imports, and ratios of imports to production, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table IV-13
OVEN RACKS: U.S. production, imports, and ratios of imports to production, 2006-08, January-March 2008, and January-March 2009

* * * * *

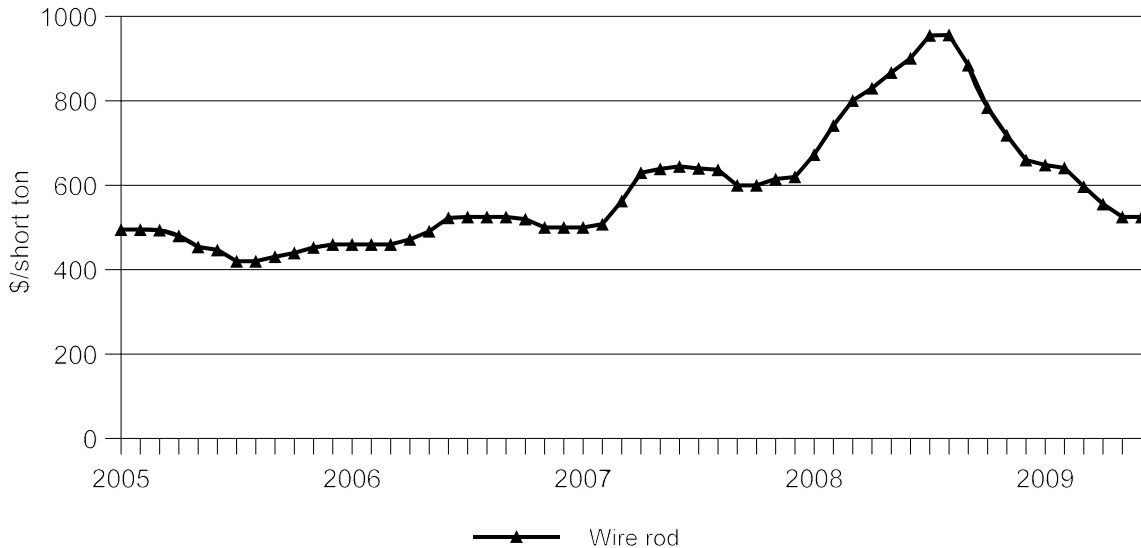
PART V: PRICING AND RELATED INFORMATION

FACTORS AFFECTING PRICES

Raw Material Costs

Raw materials constitute an important part of the final cost of KASAR. Raw material costs accounted for *** percent of the cost of goods sold in 2006, *** percent in 2007, and *** percent in 2008 and *** percent during January-March 2009. The principal raw material used for producing KASAR in the United States is carbon or stainless steel wire.¹ As shown in figure V-1, the cost of wire rod, used in making wire increased irregularly from \$495 per short ton in January 2005 to a peak of \$956 per short ton in August 2008, and then decreased to \$525 per short ton in April 2009.

Figure V-1
Wire rod prices: Imported wire rod, monthly, January 2005 to April 2009



Source: American Metal Market LLC.

So

U.S. Inland Transportation Costs

U.S. inland transportation costs account for a relatively small share of the delivered price of KASAR. In some cases, questionnaire respondents could not provide estimates because transportation is arranged by purchasers. Among producers, estimates ranged from less than 1.0 percent to less than 5.0 percent. One importer estimated that U.S. inland transportation accounted for 3.8 percent of the delivered price. For U.S. producers, approximately 43 percent of their sales involved shipping distances of less than 100 miles; 51 percent involved distances of 101 to 1,000 miles; and 6 percent were to distances of

¹ Petition, p. 14.

over 1,000 miles. Among importers, one firm estimated that all of its sales occurred within 100 miles of its facilities and another reported that all of its sales occurred more than 1,000 miles from its facility.

PRICING PRACTICES

Several methods of arriving at prices of KASAR were discussed in questionnaire responses.² Two U.S. producers reported that prices are determined principally by transaction-by-transaction negotiations. Another producer reported that prices are determined by a combination of transaction-by-transaction negotiations and contracts for multiple shipments. Another producer reported that it submits a quotation letter that lists parts and prices for each part. Among importers, one firm reported that prices are determined by transaction by transaction negotiations. Another importer reported that it quotes prices on imports from China on a cost-plus margin basis. Its customer then counters and negotiates to arrive at a final price. Another importer reported that prices are fixed from six months to one year depending on the customer.

KASAR are sold by both U.S. producers and importers on both a contract and a spot basis. Among five responding producers, one sells entirely on a short-term contract basis, one sells on both aspot and short-term contract basis, and the other three sell entirely on a spot basis. The short term contracts are for periods of one month to one year and prices are fixed during the contract period. The producers reported that there are no meet-or-release provisions in their contracts.³ Among the three responding importers, one sells entirely on a spot basis and the other two sell on a contract basis. The contracts for importers range from six months to one year. One importer reported that prices are fixed during the contract period and the contracts contain meet-or-release provisions, while the other importer reported that its prices are not fixed, and meet-or-release provisions do not apply.

Discount policies among responding producers and importers are widely varied. Just one of the four responding U.S. producers reported that it provides quantity discounts. Another producer reported that it does not have a discount policy, but may negotiate a discount when arriving at a price. Among the three responding importers of KASAR from China, one firm reported that it provides quantity discounts, while the other two firms do not offer discounts.

With regard to credit terms, petitioners argue that Chinese KASAR manufacturers offer longer credit terms (i.e., as long as 90 days or more) and that these beneficial credit terms reflect a price benefit to the OEM.⁴ Petitioners also stated that there has been pressure to compete against what's being offered in terms of credit terms and that their credit terms have been extended further out in order to compete.⁵ On the other hand, Electrolux stated that with respect to oven racks, the credit terms it has with domestic suppliers and with off-shore suppliers are identical and/or very similar. In response to a question as to whether or not differences in credit terms would be enough to affect its purchasing patterns, Electrolux reported that, while they are a factor in the total cost, they are not something that would deter us from sourcing domestic and/or off-shore, because they are similar.⁶ ***.

² Prices of KASAR are quoted on either an f.o.b. or delivered basis. All four responding U.S. producers reported that they quote prices on an f.o.b. basis. One responding importer reported that it quotes prices on a delivered, duty unpaid basis.

³ In its posthearing brief, Electrolux submitted copies of its contracts with *** for 2009. These contracts ***. Electrolux posthearing brief Exhibits 2 and 3.

⁴ Hearing transcript, p. 32 (Gritton).

⁵ Ibid, p. 88 (Rollins). Petitioner submitted *** Petitioners' posthearing brief, exhibit 11, p. 6.

⁶ Ibid, p. 151 (Hyde).

Questionnaire respondents that purchased KASAR and/or imported KASAR from China that was used internally were asked to compare credit terms for items purchased from China or imported directly with credit terms for KASAR produced in the United States. Of the six responding purchasers, one reported that the credit terms for U.S.-produced KASAR are better; four reported that the credit terms are the same; and one reported that credit terms for the Chinese imports are better.

Petitioners and Electrolux disagree on the importance of tooling costs in the KASAR industry. According to petitioners, there are significant tooling and design costs associated with the initial production of new refrigerator shelving and oven rack designs. Petitioner has argued that the cost of tooling has traditionally been incurred by the OEM; however, when Chinese suppliers entered the market, they offered to undertake tooling and charged much lower prices for tooling than competing U.S. producers could offer.⁷ Petitioners further note that tooling costs have become an additional point of negotiation in that not only do suppliers and purchasers negotiate the price of the KASAR, they also negotiate the tooling costs.⁸ On the other hand, Electrolux reports that “tooling costs are negligible over the expected life of the oven rack.”⁹ Electrolux provided data on tooling costs for various oven racks and based on that data, tooling costs account for a “fraction of a cent per unit”.¹⁰ In addition, Electrolux also noted that Chinese oven rack producers did not offer Electrolux discounted tooling costs.

Importers and purchasers were asked to compare tooling costs for KASAR imported from China with KASAR produced in the United States.¹¹ The question did not differentiate between refrigerator shelving and oven racks. Among firms that responded to the question, one importer of the Chinese product reported that the tooling costs for the U.S.-produced KASAR and Chinese-produced KASAR are the same. Among purchasers, one firm reported that tooling costs vary greatly and that generalizations cannot be made. However, three purchasers reported that tooling costs for imports from China are lower. One of these purchasers reported that the tooling costs were 75 percent lower in 2006, 2007, and 2008. Two other purchasers both reported that the Chinese tooling costs were 30 percent lower in 2008.

PRICE DATA

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

Product 1.—Open-end freezer shelf that is about 16.69 inches by 27.88 inches, consisting of 26 filler wires, a front and rear rail, an R-bar, a back and front bar, and a white powder coat finish. Part used in a Frigidaire/Electrolux manufactured upright freezer.

Product 2.— Freezer basket that is about 17.385 inches by 25.9997 inches by 6.9 inches, consisting of 27 filler wires, a frame wire, and a white powder coat finish. Part used in a Whirlpool manufactured bottom mount refrigerator/freezer.

⁷ Hearing transcript, pp. 32-33 (Gritton).

⁸ ***.

⁹ Electrolux posthearing brief, p. 7.

¹⁰ Electrolux posthearing brief, exhibit 4. These data present the tooling costs as a percent of the price and does so over the life span of the product.

¹¹ In their posthearing brief, the petitioners reported that tooling costs represent between *** percent and *** percent of the total price of refrigeration shelving and oven racks based on the allocation of these costs over the estimated annual usage of one year. Most often, tooling costs represent between *** percent of the U.S. producer total cost (Petitioner’s posthearing brief, Exhibit 1, p. 7). However, the respondent has reported that tooling costs are negligible over the expected life of the oven rack (Respondent’s post hearing brief, pp. 6 and 7. Tooling costs are not included in the price of KASAR.

Product 3.—Freezer shelf that is about 9.495 inches by 15.863 inches, consisting of 9 filler wires, an R-bar, a frame wire, and a white powder coat finish. Part used in a Whirlpool manufactured side by side refrigerator/freezer.

Product 4.—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 strip, and a white powder coat finish. Part used in a Whirlpool manufactured side by side refrigerator/freezer.

Product 5.—Nickel plated oven rack that is about 16.13 inches by 22.82 inches; consisting of 13 filler wires, an R-bar, a frame wire, and has a nickel plated finish. Part used in a Frigidaire/Electrolux manufactured freestanding range.

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. Part used in an Electrolux manufactured oven.

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. Part used in an Electrolux manufactured oven.

Product 8.—Freezer basket that is about 17.385 inches by 20.589 inches by 6.9 inches, consisting of 23 filler wires, a frame wire, and a white powder coat finish. Part used in a Whirlpool manufactured bottom mount refrigerator/freezer.

Product 9.—Open-end freezer shelf that is about 14.5 inches by 23.88 inches consisting of 22 filler wires, a front and a rear rail, an R-bar, a back and front bar, and a white powder coat finish. Part used in a Frigidaire/Electrolux manufactured upright freezer.

Product 10.—Open-end freezer shelf that is about 16.69 inches by 23.88 inches consisting of 22 filler wires, a front and a rear rail, an R-bar, a back and front bar, and a white powder coat finish. Part used in a Frigidaire/Electrolux manufactured upright freezer.

Product 11.—Nickel plated baking drawer rack that is about 22.5 inches by 15.5 inches; consisting of 1 frame, 2 braces, 9 filler wires, 3 wire assemblies, and has a nickel plated finish. Part used in a General Electric manufactured oven.

Product 12.—Nickel plated flat oven rack that is about 24.2 inches by 17.8 inches; consisting of 1 frame, 1 brace, and 13 filler wires, and has a nickel plated finish. Part used in an Electrolux manufactured oven.

Three U.S. producers and four importers provided varying amounts of usable pricing data for sales or direct imports of the requested products. Pricing data reported by these firms accounted for approximately 18 percent of U.S. producers' U.S. shipments of KASAR and 21 percent of U.S. shipments of imports of KASAR from China during 2006-08 and January-March 2009.

Price Trends

Quarterly price data are presented for products 1-12 in tables V-1 through V-12 and figure V-2 for January-March 2006 through January-March 2009.¹² The data include U.S. f.o.b. prices, delivered purchase prices for U.S.-produced products and delivered import prices from China for all 12 products, and delivered purchase prices of Chinese imports for most products. F.o.b. prices for sales of imports from China were only available for product 6.¹³ While most product series are not complete, most data indicate that prices of the U.S.-produced products and imports from China increased during the periods where data were collected.

Table V-1

KASAR : Prices and quantities for product 1, January-March 2006-January-March 2009

* * * * *

Table V-2

KASAR : Prices and quantities for product 2, January-March 2006-January-March 2009

* * * * *

Table V-3

KASAR : Prices and quantities for product 3, January-March 2006-January-March 2009

* * * * *

Table V-4

KASAR : Prices and quantities for product 4, January-March 2006-January-March 2009

* * * * *

Table V-5

KASAR : Prices and quantities for product 5, January-March 2006-January-March 2009

* * * * *

Table V-6

KASAR : Prices and quantities for product 6 and margins of underselling/(overselling), January-March 2006-January-March 2009

* * * * *

Table V-7

KASAR : Prices and quantities for product 7, January-March 2006-January-March 2009

* * * * *

Table V-8

KASAR : Prices and quantities for product 8, January-March 2006-January-March 2009

* * * * *

Table V-9

¹² In their prehearing brief and in contacts with the staff, the petitioners argued that the prices reported by Electrolux for purchases of imports of products *** were not accurate. The staff contacted the respondents, and asked that they recheck the price data for these products. The revised data submitted by Electrolux for the four products are included in this report.

¹³ One purchaser, ***, reported small quantities of sales of products *** imported from China to its customers. However, these sales did not compete with sales by U.S. producers. Similarly, one importer, *** reported sales of small quantities of product *** to distributors. Again, these sales did not compete with U.S. producers.

KASAR : Prices and quantities for product 9, January-March 2006-January-March 2009

* * * * *

Table V-10

KASAR : Prices and quantities for product 10, January-March 2006-January-March 2009

* * * * *

Table V-11

KASAR : Prices and quantities for product 11, January-March 2006-January-March 2009

* * * * *

Table V-12

KASAR : Prices and quantities for product 12, January-March 2006-January-March 2009

* * * * *

Figure V-2

KASAR: Prices of products 1-12, by quarters, January 2006-April 2009

* * * * *

Price Comparisons

In the two price comparisons between f.o.b. prices of U.S.-produced KASAR and imports from China sold on an f.o.b. basis, the imported product was priced lower in both comparisons by margins of 12.1 percent and 17.1 percent. Both of these comparisons concerned ***. In comparisons between delivered purchase prices paid for U.S.-produced KASAR and imported KASAR from China, imports were priced lower in 17 out of 37 comparisons.^{14 15}

LOST SALES AND LOST REVENUES

The Commission requested that U.S. producers of KASAR 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. In the final phase of the investigation *** additional lost sales allegations that involved *** units valued at \$*** were reported. The staff contacted the purchaser cited in the allegations and the purchaser responded. The results are summarized in tables V-13 and V-14 and are discussed below.

*** disagreed with the *** lost sales allegations involving his firm.¹⁶ In each of these four instances, *** provided revised competing import prices. In two instances ***, the import price reported

¹⁴ For delivered purchase price comparisons for freezer products, the Chinese prices were ***. For delivered purchase price comparisons for oven racks Chinese prices were ***. In comparing delivered purchase prices for U.S.-produced KASAR and the delivered price of Chinese products imported directly, the Chinese products were priced lower in 8 out of 10 instances. However, such comparisons are probably not as precise as those between delivered U.S. and Chinese purchase prices.

¹⁵ In the case of products 1, 9, and 10, ***.

¹⁶ ** allegations concerned ***.

by Electrolux was higher than the rejected U.S. price alleged by **.¹⁷ In the other two instances (the allegations involving *** and *** units), the revised import price reported by *** was below the domestic prices.¹⁸ *** indicated that sales were lost for a variety of reasons including better service, payment terms, flexibility in negotiations, options for consignment, price, and diversification of supplier base.

In addition to these allegations, *** also commented on 10 other lost sales allegations concerning transactions on ***.¹⁹ *** disagreed with all five of the allegations of ***. For the transaction involving an alleged Chinese import price lower than \$*** per unit, *** reported that the Chinese price was \$*** per unit. For the transaction involving an alleged Chinese price lower than \$***, *** reported that the Chinese price was \$*** per unit. For the transaction involving an alleged Chinese price lower than \$*** per unit, *** reported that the Chinese price was \$*** per unit. For the transaction involving an alleged Chinese price lower than \$***, *** reported that the Chinese price was \$*** per unit.²⁰

For the *** transaction involving an alleged U.S. price of \$*** per unit, *** denied the allegation, reporting that the U.S. price was \$*** per unit. It also reported that the Chinese price was \$*** per unit. For the *** transaction involving an alleged Chinese price of \$*** per unit, *** disagreed with the allegation, reporting that ***.

For the *** transaction involving an alleged Chinese price of \$*** per unit, ***disagreed with the allegation, reporting that ***. For the other *** transaction involving an alleged Chinese price of \$*** per unit, *** disagreed with the allegation, ***. For the transaction of *** involving an alleged Chinese price of \$*** per unit, *** disagreed with the allegation, reporting that the Chinese price was \$***.

*** disagreed with all of the lost sales (***) and lost revenues (***) involving his firm. He indicated that his company believes that there are numerous errors in the allegations, but did not identify what parts of the allegations were in error nor provide correct information. He also indicated that there are a host of factors which play a role in *** sourcing decisions, but did not identify any of these factors.

In the final phase of the investigations, *** agreed with all four of the lost sales allegations. However, he said that the alleged prices for the imports from China were about *** percent lower than the prices that they actually received.

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

* * * * *

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

* * * * *

¹⁷ ***.

¹⁸ ***.

¹⁹ The discussion concerning these 10 allegations is revised from the discussion in the prehearing reported and is based on the information presented in exhibit 5 of the respondents's posthearing brief. *** of these allegations concerned ***.

²⁰ While Electrolux disagrees with this allegation, the Chinese purchase price of \$***.

PART VI: FINANCIAL CONDITION OF U.S. PRODUCERS

BACKGROUND

The two petitioning producers, Nashville and SSW,¹ provided usable financial data for their operations on KASAR. These firms accounted for the vast majority of the domestic industry's production/sales volume during 2008. No internal consumption or related transfers were reported for either refrigerator shelving or oven racks.

The company records underlying the financial data of SSW were reviewed at Commission offices. The office review adjustments were incorporated into this final report. The financial data of SSW were revised for all periods to ***. The revisions resulted in ***.

OPERATIONS ON KASAR

Results of operations of the U.S. producers on their KASAR operations (both refrigeration 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 ratio. Results of the U.S. producers on their refrigeration 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 KASAR operations (table VI-1), lackluster to begin with, deteriorated over the period data were gathered. Net sales quantities decreased by over *** percent from 2006 to 2008, and were *** percent lower in January-March (interim) 2009 compared to interim 2008. Net sales values were down by lesser degrees (*** percent between the full-year periods and *** percent between the two interim periods), the result of increases in unit sales values, but were still down by considerable amounts. There were operating and net losses every period. Such losses unevenly lessened between the full-year periods and then increased relative to decreasing sales between the interim periods. Unit sales values increased by *** per unit (*** percent) between the full-year periods and were *** per unit (*** percent) higher in interim 2009 compared with interim 2008, but unit total costs (COGS and SG&A expenses combined) increased by *** per unit between the full-year periods and by *** per unit between the interim periods. Both producers reported *** every period.

The increases in the per-unit selling price and total cost are partially attributable to actual increases in the per-unit selling price and total cost and also partially attributable to a change in the product mix (see the discussion of *** that follows). Increases in per-unit COGS relative to per-unit selling prices by both producers resulted in increased operating losses in interim 2009 (\$***) compared to interim 2008 (\$***). Nonetheless, the operating margin (*** percent) was the worst during the entire period of data collected and examined.

The financial results of the producers on their operations producing refrigeration shelving (table VI-2) were generally similar to the overall KASAR operations results, but were a bit worse. Net sales quantities decreased by *** percent between 2006 and 2008, and were *** percent lower in interim 2009 compared with interim 2008. At the same time, net sales values were down by *** percent and *** percent, respectively. The absolute level of the operating loss was approximately the same from 2006 to 2008 (from \$*** to \$***), but increased as a ratio to net sales as the sales value plummeted; such loss was larger on an absolute level in interim 2009 compared with interim 2008, and as a ratio to net sales worsened to negative *** percent in interim 2009. Unit sales values increased every period, and were *** per unit higher in interim 2009 than in 2006, but unit total costs were *** higher.

¹ 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 usable financial data.

On the other hand, the financial results of operations on oven racks (table VI-3) were somewhat better than the results of operations on both KASAR and refrigeration shelving. Net sales quantities were down again (28.9 percent decrease between 2006 and 2008, and interim 2009 sales quantities were 28.8 percent lower than interim 2008 data), but net sales values actually increased by 23.9 percent from 2006 to 2008 before being 19.9 percent lower in interim 2009 than in interim 2008. The absolute level of operating losses decreased from period to period except for 2007, as did the ratio of operating loss to net sales value. Operating loss decreased *** between 2006 and 2008 because the increase in per-unit selling price (from *** per unit) was greater than the increase in per-unit total cost (from *** per unit). These increases were largely due to a change in product mix by SSW (see discussion that follows). Unit sales values increased every period, outpacing increases in unit total costs during the full-year periods and keeping pace with them (per-unit sales prices and costs both increased by the same amount *** per unit) between interim 2008 and interim 2009.

Table VI-1

KASAR: Results of U.S. producers on their combined refrigeration shelving and oven racks operations, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

Table VI-2

REFRIGERATION SHELVING: Results of operations of U.S. producers, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

Table VI-3

OVEN RACKS: Results of operations of U.S. producers, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

While per-unit average selling price and per-unit total cost of refrigeration shelving were consistently higher compared to those of oven racks for all periods, total operating loss, per-unit operating loss, and operating loss as a percentage of net sales value of refrigeration shelving were somewhat lower than those of oven racks in 2006 and 2007, but much higher in the recent periods, 2008 and interim 2009.

Selected financial data, by firm, are presented in table VI-4 (both refrigeration shelving and oven racks combined), table VI-5 (refrigeration shelving operations), and table VI-6 (oven racks operations). *** every period. Operating losses increased from 2006 to 2007 and then decreased from 2007 to 2008, as *** experienced substantial operating losses in 2007. The producers reported somewhat *** profitability in interim 2009 than in interim 2008.

While the majority of Nashville's sales were sales of *** (***) percent of its total net sales value in 2008), SSW's sales were more heavily focused on *** (***) percent in terms of sales value in 2008 and *** percent in 2007, but only *** percent of interim 2009 sales value). Nashville's refrigeration shelving and oven rack per-unit sales price and total unit costs ***. In addition, Nashville's ***.² Even though Nashville's sales quantities of ***.³ Comparing interim 2009 data with interim 2008 data, the company's

² May 28, 2009 e-mail from ***.

³ June 8, 2009 e-mail from ***.

unit sales and costs for refrigeration shelving and oven racks both increased, due partially to a change in the product mix.⁴ SSW's per-unit selling price and per-unit total cost for refrigeration shelving were ***.

The company's per-unit selling price and per-unit total cost for refrigeration shelving and oven racks increased *** from interim 2008 to interim 2009. SSW explained that *** from 2007 to 2008 because of a change in product mix. SSW further explained that it sold a larger share of ***.⁵ SSW's *** also increased, mainly due to *** in 2008 and interim 2009 compared to 2007 and interim 2008.⁶

Table VI-4

KASAR: Results of operations of U.S. producers, by firm, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

Table VI-5

REFRIGERATION SHELVING: Results of operations of U.S. producers, by firm, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

Table VI-6

OVEN RACKS: Results of operations of U.S. producers, by firm, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

Selected aggregate per-unit cost data of the producers on their operations, i.e., COGS and SG&A expenses, are presented in table VI-7. Raw material costs (largely wire rod and wire), and factory overhead increased over the period and *** from 2007 to 2008 and again from interim 2008 to interim 2009 which resulted in much higher COGS and total cost (which included SG&A expenses). SG&A expenses also increased *** from 2007 (\$*** per unit) to 2008 (\$*** per unit), the result of *** production/sales quantities for both producers.⁷

Table VI-7

KASAR: Per-unit costs of U.S. producers, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

⁴ June 15, 2009 e-mail from ***.

⁵ June 12, 2009 e-mail from ***.

⁶ June 2, 2009 e-mail from ***.

⁷ ***.

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-8. The analysis is summarized at the bottom of the table. The analysis indicates that the decrease in operating loss (\$***) between 2006 and 2008 was attributable mainly to the positive effect of increased prices (\$***) which was partially offset by the negative effect of increased costs/expenses (\$***). 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 2006, and volume declined between 2006 and 2008, the volume variance is positive because the producers made fewer sales of product on which they ***. The increase in *** in interim 2009 relative to interim 2008 was attributable to a negative cost/expense variance in conjunction with a favorable price variance and a favorable volume variance.

Table VI-8
KASAR: Variance analysis of operations of U.S. producers, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

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-9. *** accounted for a majority of the domestic industry's capital expenditures during the period for which data were collected.⁸ *** reported R&D expenses.⁹ Capital expenditures decreased *** between 2006 and 2008 and again between the two interim periods. R&D expenses also decreased *** between 2006 to 2008 and between the two interim periods. Capital expenditures, by firm, are presented in table VI-10.

Table VI-9
KASAR: Capital expenditures and R&D expenses by U.S. producers, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

Table VI-10
KASAR: Capital expenditures by U.S. producers, by firms, fiscal years 2006-08, January-March 2008, and January-March 2009

* * * * *

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 KASAR. Data on the U.S. producers' total assets and their ROI are presented in table VI-11.

⁸ ***.

⁹ ***.

The value of total assets decreased between 2006 and 2008 as net accounts receivable decreased due to lower sales. The negative return on investment decreased from 2006 to 2008 since operating losses decreased during the period. The trend of ROI over the period was the same as the trend of the operating loss margin to net sales in table VI-1 over the same period.

Table VI-11
KASAR: Value of assets and return on investment of U.S. producers, fiscal years 2006-08

* * * * *

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 KASAR from China. Their responses were as follows:

Actual Negative Effects

Nashville.—***

SSW.—***

Anticipated Negative Effects

Nashville.—***

SSW.—***

PART VII: THREAT CONSIDERATIONS AND INFORMATION ON NONSUBJECT COUNTRIES

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 factors¹--

(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

¹ Section 771(7)(F)(ii) of the Act (19 U.S.C. § 1677(7)(F)(ii)) provides that “The Commission shall consider *** . . . 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.”

under section 705(b)(1) or 735(b)(1) with respect to either the raw agricultural product or the processed agricultural product (but not both),

(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).²

Information on the nature of the subsidies was presented earlier in this report (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. Also presented in this section of the report is information obtained for consideration by the Commission on nonsubject countries and the global market.

THE INDUSTRY IN CHINA

The petition in these investigations identified 12 foreign producers in China allegedly producing KASAR.³ The Commission sent foreign producer questionnaires to all firms that were identified and received six usable foreign producer questionnaire responses.⁴ Table VII-1 lists all responding Chinese producers of KASAR, the type of KASAR production, production of KASAR, and shares of total reported Chinese production of KASAR in 2008.

² 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."

³ Petition, exh. 3.

⁴ Two firms, ***, submitted foreign producer questionnaire responses in the preliminary phase investigations only. *** were the two largest responding foreign producers based on data provided in the preliminary. Two firms who did not participate in the preliminary, ***, submitted foreign producer questionnaire responses in the final phase of these investigations.

Table VII-1
KASAR: Chinese producers, type of KASAR production, production of KASAR, and shares of total reported Chinese production, 2008

Firm	Type of KASAR production		Production	
	Refrigeration shelving	Oven racks	Quantity (1,000 units)	Share (percent)
Guangdong Wireking	✓		***	***
Hangzhou Dunli Imp. & Exp. Co., Ltd. (“Hangzhou Dunli”)		✓	***	***
Jiangsu Weixi Group Co. (“Jiangsu Weixi”)	✓	✓	***	***
New King Shan (Zuhai) Co., Ltd. (“New King Shan”)		✓	***	***
Marmon Retail Services Asia (“Marmon”) ¹	✓	✓	***	***
Yuyao Hanjun	✓		***	***
Total			***	***

¹ Formerly known as Leader Metal Industry Co., Ltd.

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

The exports to the United States of the responding Chinese firms accounted for more than 98 percent of the imports reported by U.S. importers of KASAR from China in 2008.^{5 6} Chinese producers increased capacity and production of KASAR during the period examined, but reported no future plans to change capacity or production in China. Capacity for responding firms was based on a range of 40 to 80 hours per week, eight to 50 weeks per year.

Table VII-2 presents information on the KASAR operations for the responding producers and exporters in China. Exports of KASAR (in both refrigeration shelving and oven racks) to the United States have grown markedly since 2006. Export sales were by far the largest component of shipments, while home market sales as a share of total shipments declined from 2006 to 2007, but increased from 2007 to 2008, with an overall decrease from 2006 to 2008. As a share of total exports, the share of exports destined for the United States increased dramatically from 2006 to 2008.

Table VII-3 presents information on responding Chinese producers’ and exporters’ production and exports of refrigeration shelving. Exports of refrigeration shelving to the United States and other export markets increased substantially from 2006 to 2008. Export sales were by far the largest component of shipments, while home market sales as a share of total shipments declined from 2006 to 2008. As a share of total exports, the share of exports destined for the United States increased sharply from 2006 to 2008 while the share of exports destined for other export markets decreased over the same period.

⁵ Responding exporters of KASAR in China accounted for an estimated *** percent of KASAR production in China for 2008 and an estimated *** percent of 2008 Chinese exports of KASAR to the United States.

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

Table VII-4 presents information on responding Chinese producers' and exporters' production and exports of oven racks.⁷ Like refrigeration shelving, exports of oven racks to the United States increased sharply from 2006 to 2008 as exports of oven racks to other export markets declined over the same period. Export sales were over 90 percent of total shipments of oven racks, while home market sales as a share of total shipments declined irregularly from 2006 to 2008. As a share of total exports, the share of exports destined for the United States increased from 2006 to 2008 while the share of exports destined for other export markets decreased from 2006 to 2008.

Table VII-2
KASAR: Chinese producers' operations, 2006-08, January-March 2008, January-March 2009, and projected 2009-10

* * * * *

Table VII-3
REFRIGERATION SHELVING: Chinese producers' operations, 2006-08, January-March 2008, January-March 2009, and projected 2009-10

* * * * *

Table VII-4
OVEN RACKS: Chinese producers' operations, 2006-08, January-March 2008, January-March 2009, and projected 2009-10

* * * * *

In addition to KASAR, four out of six Chinese producers reported producing nonsubject wire products using the same equipment and machinery while the other two Chinese producers reported devoting production exclusively to the subject products. Table VII-5 presents information on the types of products produced using the same equipment and machinery by Chinese subject producers in 2008.

Table VII-5
KASAR: Production of wire products using the same equipment and machinery in 2008, in percent

* * * * *

⁷ Petitioners argue that "China has increasing and excess capacity to produce oven racks" and that "the four responding subject producers have increased their capacity during the period of investigation" and that "the unused capacity of these four producers alone in 2008 accounts for *** of U.S. consumption of oven racks," Petitioners posthearing brief, p. 14. Conversely, respondent Electrolux contends that "only few Chinese oven rack producers qualify to manufacture and ship oven racks to U.S. purchasers, and of those few Chinese oven rack producers, only a limited portion of their production capabilities have been qualified to manufacture oven racks for use in ovens manufactured by U.S. purchasers in the United States. Electrolux has qualified and purchased oven racks from *** Chinese producers during 2006-08. Respondent Electrolux's posthearing brief, pp. 16-17.

U.S. IMPORTERS' INVENTORIES

Data collected in these investigations on U.S. importers' end-of-period inventories of KASAR are presented table VII-6.⁸ Responding U.S. importers' reported inventories from China increased from 2006 to 2008 and decreased from January to March 2009 when compared with the same period in 2008. One U.S. importer, ***, reported imports and inventories from a nonsubject source of refrigeration shelving. Tables VII-7 and VII-8 present information on U.S. importers' end-of-period inventories of refrigeration shelving and oven racks, respectively.

Table VII-6

KASAR: U.S. importers' end-of-period inventories of imports, by source, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table VII-7

REFRIGERATION SHELVING: U.S. importers' end-of-period inventories of imports, by source, 2006-08, January-March 2008, and January-March 2009

* * * * *

Table VII-8

OVEN RACKS: U.S. importers' end-of-period inventories of imports, by source, 2006-08, January-March 2008, and January-March 2009

* * * * *

ANTIDUMPING AND COUNTERVAILING DUTY ORDERS IN THIRD-COUNTRY MARKETS

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

⁸ "Typically there are very large inventories of the imports built up and held here in the United States for shipment to the OEM factories, so that supply chain is very long and there are huge inventories. Hearing transcript, p. 62 (Gritton).

INFORMATION ON NONSUBJECT SOURCES

In assessing whether the domestic industry is materially injured or threatened with material injury “by reason of subject imports,” the legislative history states “that the Commission must examine all relevant evidence, including any known factors, other than the dumped or subsidized imports, that may be injuring the domestic industry, and that the Commission must examine those other factors (including non-subject imports) ‘to ensure that it is not attributing injury from other sources to the subject imports.’”⁹

***. No other firm reported any nonsubject imports. Petitioners argued that there is no evidence that nonsubject imports can replace the volume of subject imports at similar prices.¹⁰

Table VII-9 presents data on ***, the only source of reported nonsubject imports of KASAR during the period of investigation, all of which were composed of ***. Its production accounted for an estimated *** of total refrigeration shelving production in Mexico in 2008 and an estimated *** of total exports to the United States for refrigeration shelving in 2008. *** reported no change in production capacity since 2006 and capacity was based on operating *** hours per week, *** weeks per year. Tables VII-10 and VII-11 present data on ***’s operations of refrigeration shelving and oven racks, respectively.

**Table VII-9
KASAR: ***’s operations, 2006-08, January-March 2008, January-March 2009, and projected 2009-10**

* * * * * * *

**Table VII-10
REFRIGERATION SHELIVING: ***’s producers’ operations, 2006-08, January-March 2008, January-March 2009, and projected 2009-10**

* * * * * * *

**Table VII-11
OVEN RACKS: ***’s operations, 2006-08, January-March 2008, January-March 2009, and projected 2009-10**

* * * * * * *

⁹ Mittal Steel Point Lisas Ltd. v. United States, Slip -Op. 2007-1552 at 17 (Fed. Cir., Sept. 18, 2008), quoting from Statement of Administrative Action on Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. I at 851-52; see also Bratsk Aluminum Smelter v. United States, 444 F.3d 1369 (Fed. Cir. 2006).

¹⁰ Petitioners’ postconference brief, pp. 36-37 and hearing transcript, p. 6 (Rosenthal) and p. 103 (Cannon). Respondents offered no comment at the hearing or in their posthearing brief with respect to *Bratsk* issues.

APPENDIX A
***FEDERAL REGISTER* NOTICES**

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 subsidized imports from China and less-than-fair-value imports from China of certain kitchen appliance shelving and racks, provided for in subheadings 8418.99.80, 7321.90.50, 7321.90.60, and 8516.90.80 of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigations, hearing procedures, 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 C (19 CFR part 207).

DATES: *Effective Date:* April 15, 2009.

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

¹ For purposes of these investigations, the Department of Commerce has defined the subject merchandise as “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 merchandise under investigation”). 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 merchandise under investigation 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 merchandise under investigation 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, 8418.99.8060, 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.”

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

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of certain kitchen appliance shelving and racks (74 FR 683), and that imports from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b) (74 FR 9591). The investigations were requested in a petition filed on July 31, 2008, by Nashville Wire Producers, 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 Lodge 6, Clinton, IA.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

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

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–458 and 731–TA–1154 (Final)]

Certain Kitchen Appliance Shelving and Racks From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–458 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731–TA–1154 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether

rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on July 1, 2009, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on July 16, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 10, 2009. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 13, 2009, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 9, 2009. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 23, 2009; witness testimony must be filed no later than three days before the hearing. In

addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before July 23, 2009. On August 6, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 12, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also 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).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the 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 207.21 of the Commission's rules.

Issued: April 15, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9-9091 Filed 4-20-09; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-941]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

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

DATES: *Effective Date:* July 24, 2009.

SUMMARY: On March 5, 2009, the Department of Commerce ("Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping duty investigation of certain kitchen appliance shelving and racks ("kitchen racks") from the People's Republic of China ("PRC"). We invited interested parties to comment on our preliminary determination of sales at LTFV. Based on our analysis of the comments we received, we have made changes from the *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 74 FR 9591 (March 5, 2009) ("*Preliminary Determination*"). The final dumping margins for this investigation are listed in the "Final Determination Margins" section below.

FOR FURTHER INFORMATION CONTACT: Julia Hancock or Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 482-1394 or (202) 482-7906, respectively.

Final Determination

We determine that kitchen racks from the PRC are being, or are likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended ("Act"). The estimated margins of sales at LTFV are shown in the "Final Determination Margins" section of this notice.

SUPPLEMENTARY INFORMATION:

Case History

The Department published its preliminary determination of sales at LTFV on March 5, 2009. See *Preliminary Determination*. The period of investigation ("POI") is January 1, 2008 to June 30, 2008.

On March 10, 2009, Petitioners¹ submitted a letter requesting that the Department issue an amended *Preliminary Determination* for New King Shan (Zhuhai) Co., Ltd. ("New King Shan") based on information obtained in New King Shan's supplemental Section C Questionnaire response filed on February 27, 2009. On March 27, 2009, the Department issued a memorandum stating that the Department would not issue an amended preliminary determination but that all information submitted subsequent to the *Preliminary Determination* will be considered for final determination.

Between April 13, 2009 and May 27, 2009, the Department conducted verifications of Guangdong Wireking Housewares & Hardware Co., Ltd. ("Wireking"), New King Shan (Zhu Hai) Co., Ltd. ("New King Shan"), and a separate rate respondent, Hangzhou Dunli Import & Export Co., Ltd. ("Hangzhou Dunli"). See the "Verification" section below for additional information.

Upon the June 9, 2009, release of the fifth of the five verification reports,² we

¹ 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 Lodge 6 (Clinton, IA) (hereafter referred to as the "Petitioners").

² See Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst: Verification of the Sales and Factors of New King Shan's U.S. affiliate in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 3, 2009) ("New King Shan Affiliate Verification Report"); Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, and Kathleen Marksberry, Case Analyst: Verification of the Sales and Factors of Guangdong Wireking Housewares &

invited parties to comment on the *Preliminary Determination*. On June 16, 2009, Petitioners, New King Shan, Wireking, and the Government of China submitted case briefs. On June 24, 2009, Petitioners, Wireking, and New King Shan submitted rebuttal briefs.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the "Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Issues and Decision Memorandum," ("Issues and Decision Memorandum"), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit ("CRU"), Room 1117, and is accessible on the World Wide Web at <http://trade.gov/ia/index.asp>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of information on the record of this investigation, we have made changes to the margin calculations for the final determination for New King Shan and have determined that the application of total adverse facts available ("AFA") is warranted in the case of Wireking. We have revalued certain surrogate values

Hardware Co., Ltd. ("Wireking") in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 8, 2009) ("Wireking Verification Report"); Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, and Kathleen Marksberry, Case Analyst: Verification of the Sales and Factors of Zhu Hai) Co., Ltd. ("New King Shan") in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 8, 2009) ("New King Shan Zhuhai Verification Report"); Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, and Kathleen Marksberry, Case Analyst: Verification of the Responses of Hangzhou Dunli Import and Export Co., Ltd. ("Hangzhou Dunli") in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 8, 2009); and Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, and Kathleen Marksberry, Case Analyst: Verification of the Responses of New King Shan (Zhu Hai) Co., Ltd. ("New King Shan") in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (June 9, 2009) ("New King Shan Taiwan Verification Report").

used in the *Preliminary Determination*. The values that were modified for this final determination are those for nickel anode and the surrogate financial ratios. For further details see Issues and Decision Memorandum at Comments 9 and 10, and Memorandum to the File from Kathleen Marksberry, Case Analyst, through Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9; Subject: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Surrogate Values for the Final Determination, date July 20, 2009 ("Final Surrogate Value Memo").

In addition, we have made some company-specific changes since the *Preliminary Determination*. Specifically, we have incorporated, where applicable, post-preliminary clarifications based on verification and corrected certain clerical errors for New King Shan. We have also applied partial AFA, where applicable, for various findings from the verification of New King Shan. For further details on these company-specific changes, see Issues and Decision Memorandum at Comments 17B, 17C, 17D, 17G, 17H, 17I, 17K, 17L, and 17M. See Memorandum to the File from Kathleen Marksberry, Case Analyst: Program Analysis for the Final Determination of Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: New King Shan (Zhuhai) Co., Ltd. (July 20, 2009) ("New King Shan Final Analysis Memo").

Scope of 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 merchandise under investigation"). 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 merchandise under investigation 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 merchandise under investigation 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, 8418.99.8060, 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.

Affiliation

In the *Preliminary Determination*, the Department determined that, based on the evidence on the record in this investigation and based on evidence presented in Wireking’s questionnaire responses, we preliminarily found that Wireking is affiliated with Company G,³ which was involved in Wireking’s sales process, and other companies, pursuant to sections 771(33)(E), (F) and (G) of the Act, based on ownership and common control. In addition to being affiliated, there is a significant potential for price manipulation based on the level of common ownership and control, shared management, shared offices, and an intertwining of business operations. See 19 CFR 351.401(f)(1) and (2). Accordingly, we also found that Wireking and Company G should be

³ The identity of this company is business proprietary information; for further discussion of this company, see Memorandum to Catherine Bertrand, Program Manager, AD/CVD Operations, Office 9, from Julia Hancock, Senior Case Analyst, AD/CVD Operations, Office 9: Preliminary Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Affiliation Memorandum of Wireking, (February 26, 2009) (“Wireking Affiliation Memo”).

considered as a single entity for purposes of this investigation.

No other information has been placed on the record since the *Preliminary Determination* to contradict the above information upon which we based our finding that these companies constitute a single entity. Therefore, for the final determination, we continue to find that Wireking and Company G are a single entity pursuant to sections 771(33)(E), (F), and (G) of the Act, based on ownership and common control. We also continue to determine that they should be considered as a single entity for purposes of this investigation. See 19 CFR 351.401(f).

Additionally, in the *Preliminary Determination*, we found based on the evidence on the record in this investigation that New King Shan is affiliated with Company A, Company B, Company C, and Company D,⁴ pursuant to sections 771(33)(A), (E), (F), and (G) of the Act, based on ownership and common control. No other information has been placed on the record since the *Preliminary Determination* to contradict the above information upon which we based our finding that these companies constitute a single entity. Therefore, for the final determination, we continue to find that New King Shan is affiliated with Company A, Company B, Company C, and Company D, pursuant to sections 771(33)(A), (E), (F), and (G) of the Act, based on ownership and common control.

Use of Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {the Department} for information, notifies

⁴ The identities of these companies are business proprietary; for further discussion of these companies, see Memorandum to the File from Katie Marksberry, Case Analyst: Preliminary Determination of Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Affiliation Memorandum of New King Shan (Zhuhai) Co., Ltd., (February 26, 2009) (“New King Shan Affiliation Memo”).

{the Department} that such party is unable to submit the information in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information,” the Department may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed “deficient” under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states that if the administering authority finds that an interested party has not acted to the best of its ability to comply with a request for information, the administering authority may, in reaching its determination, use an inference that is adverse to that party. The adverse inference may be based upon: (1) The petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753, or (4) any other information placed on the record.

Wireking

Pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we are applying facts otherwise available to Wireking because the Department finds that the information necessary to calculate an accurate and otherwise reliable margin is not available on the record with respect to Wireking. Additionally, the Department finds that Wireking withheld information, failed to provide the information requested by the Department in a timely manner and in

the form required, and significantly impeded the Department's ability to calculate an accurate margin for Wireking. Specifically, in its questionnaire responses, Wireking reported that because it produces both subject-kitchen racks and non-subject products and that it does not maintain production records that trace consumption to a specific product, it could not report factors of production ("FOPs") specific to subject-kitchen racks. Because Wireking had reported its FOPs broadly over all products, we issued numerous questionnaires to Wireking that asked detailed questions of the actual and standard production records maintained by the company, all efforts taken by Wireking to report more kitchen rack-specific FOPs, and provided sample allocation methods for how they might allocate their FOPs on a more specific basis. See the Department's January 16, 2009, questionnaire; the Department's January 14, 2009, letter; and the Department's March 16, 2009, questionnaire. Despite our efforts to obtain kitchen rack-specific FOPs, Wireking refused to comply with our requests and maintained that the most accurate method for reporting its FOPs was using a broad allocation over all products (both subject merchandise and non-subject merchandise). However, at verification, we found for the first time that Wireking maintained a standard bill-of-materials and actual production notes, which are generated for each production run of a product. See Wireking's Verification Report, at 18. These actual production notes identify the quantity of each product run and the quantity of steel wire, the intermediate product, records of which Wireking repeatedly stated that they do not maintain. See Wireking's March 30, 2009, submission at 25. The Department finds that if we had been notified of the existence of these records, we would have been able to obtain FOPs from Wireking on a more specific basis. However, because of Wireking's refusal to answer the entirety of our questions and refusal to attempt to report FOPs on a kitchen rack-specific basis, we only have FOPs that are broadly allocated over both kitchen racks and non-kitchen rack products and do not accurately capture the cost of production of only subject-kitchen racks. Accordingly, the Department finds that the application of facts available is necessary in this case because Wireking's broadly reported FOPs, which includes the most significant input, steel wire rod, and accounts for the majority of the normal value, are inaccurate and unreliable.

Therefore, pursuant to sections 776(a)(1) and (2)(A), (B), and (C) of the Act, the Department is resorting to facts otherwise available.

In addition, in accordance with section 776(b) of the Act, the Department is applying an adverse inference in selecting the facts available rate, as it has determined that Wireking did not act to the best of its ability to cooperate with the Department in this investigation because it did not disclose until verification that it had the production records that would have allowed the Department to obtain kitchen rack-specific FOPs. As AFA, we are applying the PRC-wide rate of 95.99 percent. For further discussion, please see Issues and Decision Memorandum at Comment 16A and Memorandum to the File, through James C. Doyle, Director, Office 9, AD/CVD Operations, and Catherine Bertrand, Program Manager, Office 9, AD/CVD Operations, from Julia Hancock, Senior Case Analyst, Office 9, AD/CVD Operations, Subject: Application of Adverse Facts Available for Guangdong Wireking Housewares & Hardware Co., Ltd. in the Final Determination of the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, (July 20, 2009) ("Wireking AFA Memo").

New King Shan

For the final determination, in accordance with section 776(a)(1) of the Act, we have determined that the use of facts available ("FA") is warranted for New King Shan's indirect selling expenses for its affiliates. See Issues and Decision Memorandum at Comment 17I; New King Shan's Taiwan Verification Report at VE 6; New King Shan's Chicago Verification Report. We note that New King Shan has submitted indirect selling expenses for certain of its affiliates to the Department. However, because the submitted information from New King Shan regarding the total indirect selling expenses for New King Shan's U.S. affiliate and the other affiliated companies includes indirect selling expenses for activity not associated with the U.S. sales, the Department finds that it does not have the necessary information to quantify the portion of the indirect selling expense associated with U.S. sales, pursuant to section 776(a)(1) of the Act. Therefore, as FA, pursuant to section 776(a) of the Act, the Department will calculate the total indirect selling expenses incurred by New King Shan's affiliated companies by multiplying total indirect selling expenses for each company by the ratio of total sales revenue of U.S. sales of

subject-kitchen racks divided by total sales revenue of each company, and then multiplying the ratio of total indirect selling expenses for subject-kitchen racks divided by total sales revenue to the gross unit price of each sale.⁵ See New King Shan Final Analysis Memo. Additionally, in accordance with sections 773(c)(3)(B) of the Act, section 776(a)(2)(A), (B) and (D) of the Act, and section 776(b) of the Act, we have determined that the use of partial AFA is warranted for New King Shan's unverified U.S. duty calculation. See Issues and Decision Memorandum at Comment 17K; New King Shan's Taiwan Verification Report at 23. As partial AFA, we are using the highest reported U.S. duty expense reported in New King Shan's U.S. sales database and applying this as the AFA plug for U.S. duties to all sales. See New King Shan Final Analysis Memo.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by mandatory respondents Wireking and New King Shan, and separate rate respondent Hangzhou Dunli for use in our final determination. See New King Shan Affiliate Verification Report, Wireking Verification Report, New King Shan Zhuhai Verification Report, Hangzhou Dunli Verification Report, and New King Shan Taiwan Verification Report. For all verified companies, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by respondents.

Surrogate Country

In the *Preliminary Determination*, we stated that we selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to 773(c)(4) of the Act; and (3) we have reliable data from India that we can use to value the factors of production. See *Preliminary Determination*. For the final determination, we received no comments and made no changes to our findings with respect to the selection of a surrogate country.

⁵ *Mitsubishi Heavy Indus. v. United States*, 23 CIT 326, 328 (1999) ("Mitsubishi"); *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006) and accompanying Issues and Decision Memorandum at Comment 11.

Separate Rates

In proceedings involving non-market-economy (“NME”) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department’s policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”), and Section 351.107(d) of the Department’s regulations.

In the *Preliminary Determination*, we found that New King Shan, Wireking, and the separate rate applicants (Marmon Retail Services Asia, Jiangsu Weixi Group Co., and Hangzhou Dunli, collectively, the “Separate Rate Applicants”) demonstrated their eligibility for, and were hence assigned, separate-rate status. No party has commented on the eligibility of these companies for separate rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation. Thus, we continue to find that they are eligible for separate rate status. Normally, the separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA. See section 735(c)(5)(A) of the Act.

In the *Preliminary Determination*, the Department assigned to the Separate Rate Applicants’ exporter/producer combinations that qualified for a separate rate a weighted-average margin based on the experience of the mandatory respondents, excluding any *de minimis* or zero rates or rates based on total AFA. See *Preliminary Determination*. For the final determination, we are granting Wireking a separate rate based on information that was verified.⁶ The Department is basing

this rate for Wireking on total AFA.⁷ Therefore, the Department will assign New King Shan’s calculated rate as the separate rate for the Separate Rate Applicants’ exporter/producer combinations. See section 735(c)(5)(A) of the Act.

The PRC-Wide Rate

In the *Preliminary Determination*, the Department found that Asber Enterprise Co., Ltd. (China) and the PRC-wide entity did not respond to our requests for information. In the *Preliminary Determination* we treated PRC exporters/producers that did not respond to the Department’s request for information as part of the PRC-wide entity because they did not demonstrate that they operate free of government control. No additional information has been placed on the record with respect to these entities after the *Preliminary Determination*. The PRC-wide entity has not provided the Department with the requested information; therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC-wide rate. Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). See also, Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (“*SAA*”). We find that, because the PRC-wide entity did not respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC-wide entity.

Because we begin with the presumption that all companies within a NME country are subject to government control and because only the companies listed under the “Final Determination Margins” section below

⁷ See Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations: Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Issues and Decision Memorandum for the Final Determination (July 20, 2009) (“*Issues and Decision Memorandum*”).

have overcome that presumption, we are applying a single antidumping rate—the PRC-wide rate—to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. See, e.g., *Synthetic Indigo from the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from New King Shan, Wireking, Marmon Retail Services Asia, Hangzhou Dunli, and Jiangsu Weixi Group Co., which are listed in the “Final Determination Margins” section below.

Corroboration

At the *Preliminary Determination*, in accordance with section 776(c) of the Act, we based the adverse facts available (“AFA”) rate on margins from the petition,⁸ and corroborated it using information submitted by certain respondents. Petitioners’ methodology for calculating the export price (“EP”) and NV in the petition is discussed in the initiation notice. See *Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Initiation of Antidumping Duty Investigation*, 73 FR 50596, 50598–99 (August 27, 2008) (“*Initiation Notice*”). In the final determination, only one mandatory respondent, New King Shan Co, received an individually calculated weighted-average margin. Thus, the Department had limited information from which to corroborate the selected AFA rate. To assess the probative value of the total AFA rate selected for the PRC-wide entity and the total AFA rate chosen for the other mandatory respondent, Wireking, we compared the transaction-specific rates calculated for New King Shan to the margins contained in the petition. The Department concludes that by using New King Shan’s highest transaction specific margin as a limited reference point, the highest petition margin that can be corroborated is 95.99 percent. Furthermore, we find that the rate of 95.99 percent is corroborated within the meaning of section 776(c) of the Act. See Memorandum to the File: Corroboration of the PRC-Wide Facts Available Rate and Wireking’s AFA Rate for the Final Determination in the Antidumping Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China, (July 20, 2009) (“*Final Corroboration Memo*”). Thus, we determine that 95.99 percent is the single AFA antidumping rate for the

⁸ See Petition, at Volume II, Exhibit 14.

⁶ Wireking Verification Report.

PRC-wide entity, and that 95.99 percent is also the single AFA antidumping duty rate for Wireking for this final determination.

Combination Rate

In its *Initiation Notice*, the Department stated that it would

calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. See *Initiation Notice*. Therefore, for the final determination, we have assigned a combination rate to respondents that are eligible for a separate rate.

Final Determination Margins

We determine that the following percentage weighted-average margins exist for the POI:

Exporter	Producer	WA margin
Guangdong Wireking Housewares & Hardware Co., Ltd. (a/k/a Foshan Shunde Wireking Housewares & Hardware Co., Ltd.)	Guangdong Wireking Housewares & Hardware Co., Ltd	95.99
New King Shan (Zhu Hai) Co., Ltd	New King Shan (Zhu Hai) Co., Ltd	44.77
Marmon Retail Services Asia	Leader Metal Industry Co., Ltd. (a/k/a Marmon Retail Services Asia)	44.77
Hangzhou Dunli Import & Export Co., Ltd	Hangzhou Dunli Industry Co., Ltd	44.77
Jiangsu Weixi Group Co	Jiangsu Weixi Group Co	44.77
PRC-wide Entity (including Asber Enterprise Co., Ltd. (China))		95.99

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (“CBP”) to continue to suspend liquidation of all entries of subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after March 5, 2009, the date of publication of the *Preliminary Determination*. CBP shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown above. These instructions suspending liquidation will remain in effect until further notice.

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of subject certain kitchen appliance shelving and racks from the PRC as described in the “Scope of Investigation” section, entered, or withdrawn from warehouse, for consumption from Wireking, New King Shan, Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., Jiangsu Weixi Group Co., and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond for all entries of certain kitchen appliance shelving and racks from the People’s Republic of China.

Additionally, the Department has continued to find in its *Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final*

Affirmative Countervailing Duty Determination, (July 20, 2009) (“*CVD Final*”) that the products under investigation, exported and produced by Wireking, benefitted from an export subsidy. The following export subsidies were determined in the *CVD Final*: Income Tax reduction for Export Oriented FIEs; countervailable subsidy of 0.94 percent; and Local Income Tax Reduction for “Productive” FIEs: Countervailable subsidy of 0.23 percent. In the *CVD Final*, Wireking’s rate was assigned to the All-Others rate as it was the only rate that was not zero, *de minimis* or based on total facts available. Accordingly, as the countervailing duty rate for New King Shan, Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., and Jiangsu Weixi Group Co. is the All-Others rate, which includes two countervailable export subsidies, we will instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above for these companies adjusted for the countervailing duties imposed to offset export subsidies determined in the *CVD Final*. The adjusted cash deposit rate for New King Shan is 43.60 percent and, as the antidumping duty cash deposit rate assigned to the separate rate companies is New King Shan’s rate, the adjusted cash deposit rate for Marmon Retail Services Asia, Hangzhou Dunli Import & Export Co., Ltd., and Jiangsu Weixi Group Co. also is 43.60 percent.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (“ITC”) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section

735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: July 20, 2009.

Ronald K. Lorentzen,

*Acting Assistant Secretary for Import
Administration.*

**Appendix I—Changes From the
Preliminary Determination**

General Issues

- Comment 1: Double Remedy: Antidumping Duties and CVD Duties
- Comment 2: New King Shan's Antidumping Duty Margin
- Comment 3: Filing Issues Concerning Petitioners' Submissions
- Comment 4: Rejection of New King Shan's Minor Corrections
- Comment 5: Rejection of New Information in New King Shan's Surrogate Value Rebuttal Submission

Surrogate Values

- Comment 6: Wire Rod
- Comment 7: Hydrochloric Acid
- Comment 8: Sodium Triphosphate
- Comment 9: Nickel Anode

Surrogate Financial Ratios

- Comment 10: Surrogate Financial Companies
- Comment 11: Treatment of Gratuity Benefits
- Comment 12: Treatment of Commissions
- Comment 13: Treatment of Advertising
- Comment 14: Treatment of Job Work Charges
- Comment 15: Treatment of Labor Expenses

Company-Specific Issues

- Comment 16: Wireking
 - A. Total Adverse Facts Available ("AFA") for Wireking
 - B. Partial AFA for Factors of Production ("FOPs")
 - C. Partial AFA for Labor
 - D. Partial AFA for Underreported Weight-per-Piece FOPs
 - E. Partial AFA for Yield Loss
 - F. Partial AFA for Market Economy Movement Expenses
 - G. Facts Available ("FA") for PVC Buffer
 - H. Water
 - I. Unreported U.S. Sales
 - J. Distance from Factory to Port
 - K. Name Correction
- Comment 17: New King Shan
 - A. Total AFA for New King Shan
 - B. Partial AFA for FOPs
 - C. Yield Loss and Steel Scrap
 - D. Allocation of Stainless Steel and Steel Plate Products
 - E. Date of Sale
 - F. Verification of Quantity and Value of U.S. Sales
 - G. Interest Rate for Sale Expenses
 - H. U.S. Warehousing
 - I. U.S. Indirect Selling Expenses
 - J. Credit Expenses
 - K. U.S. Customs Duty
 - L. Reporting of Ocean Freight
 - M. Affiliate's Market Economy ("ME") Purchases
 - N. Period for Credit Expenses

[FR Doc. E9-17717 Filed 7-23-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

(C-570-942)

Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the "Department") has determined that countervailable subsidies are being provided to producers and exporters of kitchen shelving and racks from the People's Republic of China ("PRC"). For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

EFFECTIVE DATE: July 27, 2009.

FOR FURTHER INFORMATION CONTACT:

Shane Subler or Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0189 or (202) 482-1279, respectively.

SUPPLEMENTARY INFORMATION:**Petitioner**

Petitioners in this investigation are 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) (collectively, "Petitioners").

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2007, through December 31, 2007.

Case History

The following events have occurred since the announcement of the preliminary determination published in the **Federal Register** on January 7, 2009. See *Certain Kitchen Appliance Shelving*

and Racks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 74 FR 683 (January 7, 2009) ("Preliminary Determination").

The Department issued the third and fourth supplemental questionnaires to respondent Guangdong Wire King Housewares and Hardware Co., Ltd. ("Wire King") on December 29, 2008 and March 17, 2009, respectively. We received responses from Wire King to the third supplemental questionnaire on January 22, 2009, and to the fourth supplemental questionnaire on April 3, 2009. The Department also issued second, third, and fourth supplemental questionnaires to the Government of the PRC ("GOC") on February 11, 2009, March 19, 2009, and March 25, 2009, respectively. We received responses from GOC to the second supplemental questionnaire on March 11, 2009, and to the third and fourth supplemental questionnaires on April 9, 2009.

The GOC, Wire King, Petitioners, and interested parties also submitted factual information, comments, and arguments at numerous instances prior to the final determination based on various deadlines for submissions of factual information and/or arguments established by the Department subsequent to the *Preliminary Determination*.

From May 5, 2009 to May 28, 2009, we conducted verification of the questionnaire responses submitted by GOC and Wire King. See Memorandum from Shane Subler and Scott Holland, International Trade Compliance Analysts, to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled "Verification Report: Guangdong Wireking Housewares and Hardware Co., Ltd." (June 19, 2009); and Memorandum from The Verification Team to Susan H. Kuhbach, Office Director, AD/CVD Operations, Office 1, entitled "Verification Report of the Foshan Municipal Government, Shunde District Government and the Guangdong Provincial Government of the People's Republic of China" (June 19, 2009) ("Verification Report").

On May 8, 2009, we issued our post-preliminary analysis regarding the provision of electricity for less than adequate remuneration ("LTAR"). We addressed our preliminary findings in a May 8, 2009, memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled "Preliminary Findings Regarding Electricity Pricing in China: Kitchen Appliance Shelving and Racks from the

People's Republic of China," which is on file in the Central Records Unit.

We received case briefs from the GOC, Wire King, and Petitioners on June 26, 2009. The same parties submitted rebuttal briefs on July 1, 2009. A public hearing was not requested.

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 0.10 inch to 16 inches by 30 inches by 4 inches; or
- Subframes from 6 inches by 10 inches by 0.10 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 0.20 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, 8418.99.80.60, 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.

Scope Comments

Since the *Preliminary Determination*, the Department added an additional HTSUS number to the scope of the investigation. On January 29, 2009, we added other refrigerator parts, HTSUS number 8418.99.80.60 to the scope of the investigation. See Memorandum to the File, dated January 29, 2009.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended (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. On September 24, 2008, the U.S. International Trade Commission ("ITC") issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports of certain kitchen appliance shelving and racks from the PRC. See *Certain Kitchen Appliance Shelving and Racks From China*, 73 FR 55132 (September 24, 2008); and *Certain Kitchen Appliance Shelving and Racks from China (Preliminary)*, USITC Pub. 4035, Inv. Nos. 701-TA-458 and 731-TA-1154 (Sept. 2008).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled "*Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Kitchen Appliance Shelving and Racks from the People's Republic of China*" (July 20, 2009) (hereafter "Decision Memorandum"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/frn/>. The paper copy and electronic version of the

Decision Memorandum are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we have continued to rely on facts available and have continued to use adverse inferences in accordance with sections 776(a) and (b) of the Act to determine the countervailable subsidy rates for Asber Enterprise Co. ("Asber"), which is one of the two companies selected to respond to our questionnaires. A full discussion of our decision to apply adverse facts available is presented in the Decision Memorandum in the section "Use of Facts Otherwise Available and Adverse Facts Available."

In a departure from the *Preliminary Determination*, the Department now finds that the use of "facts otherwise available" is warranted with regard to provision of electricity for LTAR because the Department was not able to verify, *inter alia*, the GOC's questionnaire responses regarding the process for setting electricity rates and the relation of those rates to the electricity generation costs. See Decision Memorandum, at "Use of Facts Otherwise Available and Adverse Facts Available". Moreover, the GOC failed to cooperate to the best of its ability because it failed to provide requested documents, provided inconsistent responses regarding the availability of the documents, and because it did not disclose in its questionnaire responses that the electricity price adjustment process started from a National Development and Reform Commission-determined national price adjustment. In misrepresenting this information, the GOC did not provide the Department with full and complete answers. See Verification Report at 2-9. Accordingly, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act. Specifically, we find that the GOC's provision of electricity constitutes a financial contribution within the meaning of section 771(5)(D) of the Act and is specific within the meaning of section 771(5A)(D)(iv) of the Act. We have also relied on an adverse inference in selecting a benchmark for determining the existence and amount of the benefit.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated individual rates for Wire King and Asber. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an "all others" rate equal to the weighted-average countervailable subsidy rates

established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act.

Exporter/Manufacturer	Net Subsidy Rate
Guangdong Wire King Co., Ltd. (formerly known as Foshan Shunde Wireking Housewares & Hardware)	13.30
Asber Enterprises Co., Ltd. (China)	170.82
Changzhou Yixiong Metal Products Co., Ltd.	149.91
Foshan Winleader Metal Products Co., Ltd.	149.91
Kingsun Enterprises Group Co, Ltd.	149.91
Yuyao Hanjun Metal Work Co./Yuyao Hanjun Metal Products Co., Ltd.	149.91
Zhongshan Iwatani Co., Ltd.	149.91
All-Others	13.30

Also, in accordance with section 703(d) of the Act, we instructed U.S. Customs and Border Protection to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after May 7, 2009, but to continue the suspension of liquidation of entries made from January 7, 2009, through May 6, 2009.

We will issue a countervailing duty order if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an administrative protective order (“APO”) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 20, 2009.
Ronald K. Lorentzen,
Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

General Issues

Comment 1 Application of CVD Law to a Country the Department treats as an NME in a Parallel AD Investigation

Comment 2 Double Counting/ Overlapping Remedies

Comment 3 Proposed Cutoff Date for Identifying Subsidies

Program Specific Issues

Comment 4 Certain Wire Rod Suppliers as Authorities

Comment 5 Wire Rod Provided by Private Suppliers

Comment 6 Wire Rod Provided by Trading Companies

Comment 7 Application of Adverse Facts Available for Wire Rod Production Data

Comment 8 Benchmarks for Wire Rod

Comment 9 Adding the Cost of Insurance to the Wire Rod Benchmark Value

Comment 10 Tying the Wire Rod Subsidy

Comment 11 Provision of Electricity for LTAR

Comment 12 FIE Tax Programs - Whether FIE Tax Programs are Specific [FR Doc. E9-17867 Filed 7-24-09; 8:45 am]

APPENDIX B
HEARING WITNESSES

CALENDAR OF PUBLIC HEARING

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

Subject: Certain Kitchen Appliance Shelving and Racks from China
Inv. Nos.: 701-TA-458 and 731-TA-1154 (Final)
Date and Time: July 16, 2009 - 9:30 a.m.

Sessions were held in connection with these investigations in the Main Hearing Room (room 101), 500 E Street, S.W., Washington, D.C.

OPENING REMARKS:

Petitioners (**Paul C. Rosenthal**, Kelley Drye & Warren LLP)
Respondents (**Alexander H. Schaefer**, Crowell & Moring LLP)

In Support of the Imposition of Antidumping and Countervailing Duty Orders:

Kelley Drye & Warren LLP
Washington, D.C.
on behalf of

Nashville Wire Products and SSW Holding Co.

Paul Kara, President and CEO, 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
Brad Hudgens, Economist, Georgetown Economic Services

Paul C. Rosenthal)
) – OF COUNSEL
Kathleen W. Cannon)

In Opposition to the Imposition of Antidumping and Countervailing Duty Orders:

Crowell & Moring LLP
Washington, D.C.
on behalf of

Electrolux Home Products, Inc. (“Electrolux”)

Don J. Market, Vice President, Global Steel, Electrolux
Griffin Hyde, Commodity Manager, Mechanical Components, Electrolux
John A. Heer, Assistant General Counsel, Electrolux

Matthew P. Jaffe)
) – OF COUNSEL
Alexander H. Schaefer)

APPENDIX C
SUMMARY DATA

Appendix C Index

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Table C-1
KASAR: Summary data concerning the U.S. market, 2006-08, January-March 2008, and
January-March 2009

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Table C-2
REFRIGERATION SHELVING: Summary data concerning the U.S. market, 2006-08, January-March 2008, and January-March 2009

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Table C-3
OVEN RACKS: Summary data concerning the U.S. market, 2006-08, January-March 2008, and
January-March 2009

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